

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Agreement") is made and entered into on this ____ day of _____, 2025, by and between **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government and political subdivision of the Commonwealth of Kentucky pursuant to KRS 67A (hereinafter "**LFUCG**"), whose mailing address is 200 East Main Street, Lexington, Kentucky 40507, and the **TRANSIT AUTHORITY OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, KENTUCKY**, (hereinafter "**LEXTRAN**"), whose mailing address is 200 West Loudon, Lexington, Kentucky 40508.

WITNESSETH

WHEREAS, LEXTRAN, in collaboration with local partner organizations, has proposed the reintroduction of a downtown circulator service as a pilot project to enhance mobility, connectivity, and economic activity in and near downtown Lexington, beginning in 2026 (the "Downtown Circulator Pilot Project" or "Project"); and

WHEREAS, the Lexington Area MPO Transportation Policy Committee approved the use of Carbon Reduction Program funds for the capital costs associated with the Downtown Circular Project on February 26, 2025, by including the Project in the adopted Transportation Improvement Program (TIP), with an amount of approved Project funds totaling \$480,000.00 and requiring LEXTRAN to contribute a local match in the amount of \$120,000.00 ("Match"), which funding will support capital expenditures necessary for vehicle acquisition, supplemental equipment, and custom branding wraps for the Project; and

WHEREAS, in recognition of the public purposes promoted by the Project in promoting public transit, reducing traffic congestion, lowering greenhouse gas emissions, and enhancing mobility, connectivity, and economic activity in and near downtown Lexington including underserved areas and historically and culturally significant neighborhoods, LFUCG has agreed to contribute \$250,000.00 in local funding for the operational costs associated with the Downtown Circulator Pilot Project as part of its FY2026 budget; and

WHEREAS, LFUCG and LEXTRAN agree to collaborate with the implementation of the Downtown Circulator Pilot Project; and

WHEREAS, the parties are in general agreement about the responsibilities and obligations of each party in connection with the Downtown Circulator Pilot Project and wish to memorialize their understandings into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **EFFECTIVE DATE; TERM.** This Agreement shall commence as of the date set forth hereinabove and continue through December 31, 2026, unless terminated by LFUCG at an earlier time.
2. **RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated herein by reference as if fully stated:

- a. Exhibit "A" – Scope of Services and Grant Proposal
- b. Exhibit "B" – Letter of Commitment

To the extent that there is conflict between or among these documents, the terms and provisions of this Agreement shall prevail, followed by Exhibit "B", then Exhibit "A."

3. RIGHTS AND OBLIGATIONS OF LFUCG.

- a. PAYMENT. LFUCG shall pay LEXTRAN a total amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) ("Funds"), representing its share of the operational costs of the Downtown Circulator Pilot Project for the term of this Agreement. The Funds are limited to the costs of operations as set forth herein and as further outlined in the attached Exhibit A" – Scope of Services and Grant Proposal and may not be spent by LEXTRAN for any other purpose without the prior written consent of LFUCG.
- b. TERMINATION. LFUCG, through the Mayor or the Mayor's designee, may terminate this Agreement for any reason whatsoever by providing LEXTRAN with at least thirty (30) days advance written notice. In that event, LEXTRAN shall immediately repay to LFUCG all monies received from LFUCG pursuant to this Agreement less any amount representing just and equitable compensation for LEXTRAN's share of any satisfactory work completed pursuant to the Agreement, calculated on a reasonable basis. Additionally, this Agreement is contingent upon the availability of appropriated federal funding, as well as contributions by other local partner organizations (including LEXTRAN's Match); if funding for the Project becomes unavailable for any reason, any termination or amendment of the Agreement because of such interruption in funding shall not constitute a default or breach and shall not give rise to any claim against LFUCG.
- c. MONITORING. LFUCG may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by LEXTRAN. LFUCG, its agents, and its employees shall have, at all times, 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 LEXTRAN or to constitute LEXTRAN as an agent of LFUCG.
- d. NON-APPROPRIATIONS. LEXTRAN acknowledges that LFUCG is a governmental entity, and that the validity of this Agreement is based upon the availability of appropriated funding. In the event that any necessary funding is not appropriated or becomes otherwise unavailable, now or in the future, LFUCG's obligations under this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to LEXTRAN. LFUCG shall exercise any application of this provision in good faith.

4. RIGHTS AND OBLIGATIONS OF LEXTRAN.

- a. LEXTRAN shall perform the Downtown Circulator Pilot Project as outlined in the attached Exhibit "A" – Scope of Services and Grant Proposal and shall satisfactorily complete all requirements necessary to receive all federal, state, and/or other funding from any local partner organizations necessary to complete the Downtown Circulator

Pilot Project in a timely and professional manner. LEXTRAN shall use all sums paid to LEXTRAN by LFUCG under this Agreement to fulfill the activities and services referenced herein and for no other purposes. LEXTRAN shall provide its Match required for the Downtown Circulator Pilot Project and is responsible for securing such additional funding as may be necessary to perform the Downtown Circulator Pilot Project as outlined in the attached Exhibit A.

- b. **COMPLIANCE WITH LAWS.** LEXTRAN shall keep itself fully informed of all federal 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.
- c. **REPORTING.** LEXTRAN shall provide LFUCG with timely reports and updates related to the provision of the Downtown Circulator Pilot Project set forth herein, in the form and manner reasonably specified by LFUCG. At the conclusion of the Project or upon the exhaustion of funding for the Project, LEXTRAN shall, upon LFUCG's request, make one (1) presentation to the Mayor and Council detailing the status and progress of the Downtown Circulator Pilot Project and provide such other information as the Mayor or Council may request relating to the Downtown Circulator Pilot Project.
- d. **AUTHORITY TO SIGN.** LEXTRAN represents that the person signing this Agreement is fully authorized to do so and agrees that LEXTRAN shall remain in compliance with all federal, state, and local law governing its operations for the duration of this Agreement. LFUCG may request, at any time, proof that LEXTRAN is compliant with all federal, state, and local requirements governing the Downtown Circulator Pilot Project.
- e. **INDEMNITY.** To the extent permitted by law, LEXTRAN agrees to defend, indemnify, and hold harmless LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, 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, or that arise or are alleged to have arisen, directly or indirectly, from or by LEXTRAN's performance of, or breach of this Agreement and/or the provision of goods or services thereunder, provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors, or omissions or willful misconduct of LEXTRAN or its officials, employees, or agents; and (b) not caused solely by willful misconduct of LFUCG. LEXTRAN's obligation to defend LFUCG includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at LEXTRAN's expense, using attorneys approved in writing by the LFUCG, which approval shall not be unreasonably withheld. LEXTRAN's obligation to indemnify includes, but is not limited to: attorney fees and expenses, costs of litigation, court and administrative costs, expert witness fees and expenses, judgments, fines, penalties, interest, and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of LEXTRAN and LFUCG, and damage to, or destruction of, any property, including the property of LFUCG. This indemnity agreement shall in no way be limited by any financial responsibility or insurance

requirements and shall survive the termination of this Agreement. LEXTRAN understands that LFUCG is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend LEXTRAN in any manner.

- f. **INSURANCE.** LEXTRAN shall procure and maintain for the duration of this Agreement insurance coverages or provide self-insurance in at least the following amounts. Evidence of such coverage shall be made available to LFUCG upon request.

General Liability (\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit); Commercial Automobile Liability (combined single, \$1 million per occurrence); (if applicable); Professional Liability (\$1 million per occurrence, \$2 million aggregate); Worker's Compensation (Statutory); Employer's Liability (\$1 million); Excess/Umbrella Liability (\$1 million per occurrence). LFUCG shall be named as an additional insured on any General Liability Policy or applicable policy of self-insurance. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG. The General Liability Policy shall also include Premises and Operations coverage unless it is deemed not to apply by LFUCG.

- g. **RECORDS.** LEXTRAN shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance of the services for a period of at least five (5) years following the expiration or termination of this Agreement, or as otherwise required depending upon the source of funds. Books of accounts shall be kept by LEXTRAN and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of LEXTRAN related to this Agreement and shall be made available to LFUCG upon request. The books of accounts shall be maintained at the principal place of business of LEXTRAN. LFUCG shall have free and complete access to the books, papers, and affairs of LEXTRAN relating to the funds provided hereunder at all reasonable times. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by LEXTRAN and submitted to LFUCG under this Agreement. LEXTRAN understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to assist with such a request.
- h. **ANNUAL AUDIT.** LEXTRAN shall comply with the audit requirements of 200 CFR Part 200, Subpart F, if applicable. LFUCG shall also have the option to request an audit of all revenue and expenditures related to this Agreement. If such an audit is requested by LFUCG, the audit shall be conducted by independent certified public accountants at LEXTRAN's expense, who shall express an opinion as to whether or not revenue and expenditures have conformed to state and local law and regulation. For any audit performed, including an audit performed pursuant to 200 CFR Part 200, a copy of the audit, or clean audit opinion letter from an independent certified public accountant, shall be submitted to LFUCG upon request.
- i. **EQUAL OPPORTUNITY.** LEXTRAN shall provide equal opportunity in employment for all qualified persons and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, and (b) cause any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This assurance of equal employment opportunity

shall apply to every aspect of its employment policies and practices. Subject to compliance with applicable federal laws and mandates, LEXTRAN agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

- j. SEXUAL HARASSMENT. LEXTRAN shall adopt or have 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. The policy shall be given to all employees and clients and shall be posted at all locations where LEXTRAN conducts business. The policy shall be made available to LFUCG upon request.

5. MISCELLANEOUS TERMS AND CONDITIONS.

- a. LEXTRAN and LFUCG each binds itself and its partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement.
- b. CONTRACTUAL RELATIONSHIP ONLY. In no event shall the parties be construed, held, or become in any way or for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise. The parties agree that neither is an agent, servant, or employee of the other and each party agrees that it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.
- c. NO ASSIGNMENT. LEXTRAN may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.
- d. NO THIRD-PARTY RIGHTS. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either LEXTRAN or LFUCG.
- e. KENTUCKY LAW AND VENUE. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky.
- f. AMENDMENTS. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. LEXTRAN acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of the Mayor or their designee.
- g. WAIVER. The waiver by 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 of either the same or another provision.
- h. NOTICE. Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

If to LEXTRAN:

Transit Authority of
Lexington-Fayette County
Attn: General Manager
200 West Loudon Avenue
Lexington, Kentucky 40508

If to LFUCG:

Lexington-Fayette Urban County Government
Attn: Chief Administrative Officer
Government Center
200 East Main Street
Lexington, Kentucky 40507

- i. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not incorporated by reference 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 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 the Urban County Council

BY: _____
FRED COMBS
GENERAL MANAGER

NOTARY PUBLIC