

AGREEMENT

This Agreement is made and entered into on this 2nd day of July, 2019, by and between Lexington Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky pursuant to KRS 67A (hereinafter "LFUCG"), whose mailing address is 200 East Main Street, Lexington, Kentucky 40507, and the Transylvania University, (hereinafter "TRANSY"), whose mailing address is 300 N Broadway, Lexington, Kentucky 40508.

WITNESSETH

WHEREAS, LFUCG received federal funding under the Congestion Mitigation Air Quality (CMAQ) Program from the Kentucky Transportation Cabinet (hereinafter "the CABINET") for the Fourth Street Corridor Enhancement Project; and

WHEREAS, the Project has been approved for federal funding in the amount of \$1,040,080.00 by the Kentucky Transportation Cabinet under the Congestion Mitigation Air Quality (CMAQ) Program (Catalog of Federal Domestic Assistance Number 20.205), for design, utilities and construction of the Project; and

WHEREAS, as a condition of acceptance of these funds from the CABINET, a local match in the amount of \$260,000.00 is required.

WHEREAS, LFUCG and TRANSY have agreed to collaborate in the implementation of the Project outlined in Appendix A and TRANSY has agreed to provide the required local match; and

WHEREAS, the parties have a mutual understanding concerning the responsibilities and obligations of each party in connection with the Project and wish to memorialize their understanding into this Agreement.

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

ARTICLE I

General Terms:

1. LFUCG agrees to be responsible for completion of the Scope of Work made a part of this Agreement attached hereto as Appendix A and incorporated herein by reference, in accordance with the application for federal funds as approved by the CABINET and with the terms and conditions of this Agreement, and all applicable regulations or directives issued by the CABINET.

2. The term of this Agreement shall be for a period beginning immediately after it is fully executed by both parties and after execution of the contract between the CABINET and LFUCG and continuing until the Project has been completed and all federal requirements have been fulfilled.
3. The responsibility for implementation of the Project including all recordkeeping for grant compliance and accounting shall be the responsibility of the LFUCG.
4. The parties agree that neither is an agent, servant, or employee of the other. 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.

ARTICLE II

Obligations of LFUCG:

1. Be the lead agency for all aspects of the Project and ensure compliance with all federal, state, and local laws and regulations that are applicable to the Project.
2. Submit appropriate invoices for reimbursement from the CABINET in accordance with applicable federal and state legislation and regulations.
3. Maintain the facilities in an acceptable condition and for a public purpose in an acceptable condition.

ARTICLE III

Obligation of TRANSY:

1. TRANSY agrees to provide matching funds at a rate of 20% of the total project cost in the amount of up to \$260,000.00 and agrees to reimburse LFUCG on a quarterly basis in response to submission of timely and complete invoices.

ARTICLE IV

Additional Provisions

1. To the extent provided by law, parties agree to defend, indemnify, and hold each other harmless 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, 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.

2. This Agreement shall be governed by the laws of the Commonwealth of Kentucky. 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.
3. This Agreement may be terminated by LFUCG upon thirty days written notice if TRANSY materially fails to comply with any term of the Agreement.
4. TRANSY 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.
5. This Agreement may be amended in writing and by the agreement of and signed by both parties.
6. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to TRANSY:

Transylvania University
Attention: Marc Mathews
Vice President for Finance and Business
300 North Broadway
Lexington, Kentucky 40508

If to LFUCG:

Lexington-Fayette Urban County
Government
Attention: W. Douglas Burton
Director of Engineering
Government Center
200 East Main Street
Lexington, Kentucky 40507

7. This Agreement contains the entire and complete understanding of the parties with respect to the subject matter and supersedes any and all prior agreement or understanding of any kind.
8. The signatories to this Agreement warrant and represent that each has the authority to enter into this Agreement on behalf of the Party represented.

[INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

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

Lexington-Fayette Urban County Government

By: *Linda Gorton*
Linda Gorton, Mayor

ATTEST: *Abigail Allan*
Abigail Allan
Clerk of the Urban County Council

Transylvania University

By: *Marc Mathews*
Vice President for Finance

COMMONWEALTH OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing Memorandum of Agreement was subscribed, sworn to and acknowledged before me by *MARC A. MATHEWS*, as Vice President for Finance of Transylvania University, on this the *6* day of *June*, 2019.

ATTEST: *Leresa Epley*

My commission expires: *May 17, 2021*

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APPENDIX A – Project Description

4th Street in downtown Lexington, Kentucky is becoming a significant east – west corridor that is providing connectivity to various important urban nodes in the downtown areas. Recent developments along 4th Street are emphasizing the need for this corridor to be a safe environment for the integration of pedestrian and vehicular traffic. As a primary gateway from Newtown Pike into the downtown areas or Lexington, the 4th Street corridor is also being designed as a primary urban sector of the Legacy Trail. This grant will integrate and enhance the corridor as a true Complete Street.

The completion of the Bluegrass Community and Technical College campus on 4th Street and Newtown Pike and the recent completion of the new Transylvania University Athletic Complex on 4th Street gives rise to the significance of continued improvements along 4th Street. Right of way improvements for the 4th Street section between Jefferson Street and the railroad tracks near Newtown Pike are being completed as a partnering project between the LFUCG and Transylvania University. Recent activity at the Transylvania University Athletic Complex has shown a large number of Transylvania University students use 4th Street to walk between the core campus further east on 4th Street and the Athletic Complex. While the new improvements on 4th Street, west of Jefferson have provided a safer pedestrian environment, it has also shown the inadequacies of the pedestrian route on 4th Street east of Jefferson Street.

This project will provide an integrated, safe pedestrian and vehicular environment on 4th Street between Jefferson Street and Upper Street. This route will enhance the connectivity of vehicular and pedestrian traffic for the northern edge of downtown Lexington. Upon the opening of the Bluegrass Community and Technical College, there will be an increase in pedestrian traffic from the downtown area, particularly due to exchange programs between students of Transylvania University and Bluegrass Community and Technical College. In addition, improved connectivity to the Jefferson Street corridor will enhance the distribution of this growing area with economic benefits.

Streetscape, vehicular and pedestrian improvements to the 4th Street Right of Way corridor between Jefferson Street and Upper Street will include:

- New curb and gutter
- New sidewalks
- New asphalt pavement surfacing
- Signage improvements
- Intersection traffic calming at 4th and Bourbon Street