

AGREEMENT

THIS AGREEMENT entered into this, the _____ day of _____, 2021, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, with offices at 200 East Main Street, Lexington, Kentucky (hereinafter referred to as “LFUCG”) and **Transit Authority of the Lexington-Fayette Urban County Government** (hereinafter referred to as “Lextran”), with offices at 200 West Loudon Avenue, Lexington, KY 40508.

W I T N E S S E T H

WHEREAS, the parties to this Agreement are committed to delivery of the highest possible level of radio communications capability;

WHEREAS, the parties to this Agreement believe that interoperability is a critical component in providing these services;

WHEREAS, LFUCG has purchased and provided for installation of a state-of-the-art interoperable public safety radio communications system based upon the 800 megahertz P25 trunked radio system (hereinafter referred to as the “Radio System”) that is capable of supporting trunked radio services and capable of being expanded in a manner consistent with current public safety communications technical standards;

WHEREAS, LFUCG co-owns certain infrastructure for its public safety radio communications system with Bluegrass Airport; and

WHEREAS, Lextran has or will purchase and provide for installation of public safety radio communications equipment required and necessary to communicate across the Radio System and wishes to use its purchased communications equipment across the Radio System within its jurisdiction; and

WHEREAS, the parties to this Agreement desire to participate in the use and support of the Radio System, in order to ensure that it will provide a means of communication with Transportation Authorities in the Lexington-Fayette County area;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual undertakings and obligations hereinafter agreements hereinafter set forth, LFUCG and Lextran agree as follows:

I. DEFINITIONS

1. "SUBSCRIBER" means each radio supplied by and used by Lextran;
2. "SUBSCRIBER UNIT IDENTIFICATION NUMBER" or "SUID" means the identification number assigned to each radio. SUIDs will be issued to Lextran by LFUCG in blocks of 100; therefore, Lextran may receive more SUIDs than radios.
3. "TALK GROUP" means a group chat for use by the radios assigned to Lextran by LFUCG to increase efficiency of operations.

II. INCORPORATIONS, COMPLETENESS OF AGREEMENT, AMENDMENTS.

1. The above recitals are incorporated herein by reference, as if fully stated.
2. This Agreement and the documents incorporated herein, contain the entire Agreement between the parties, and no statement, promises, or inducements by either party or agent of either party that is not contained in this written Agreement shall be valid and binding. Any alterations, variations, modifications, or waivers of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.

III. DUTIES, RESPONSIBILITIES, AND PROVISION OF SERVICES.

1. **Lextran** shall perform and provide the following duties, responsibilities, and services:
 - a. Lextran shall pay to LFUCG a subscriber fee for the use of the Radio System on a quarterly basis as follows:
 - i. The subscriber fee shall be \$131.13 per subscriber for the first year of this Agreement. The Subscriber Unit Identification numbers (SUID) cost \$1,300.00 per 100 Lextran subscribers. If Lextran places more than 100 subscribers on the Radio System it will be responsible for paying the cost of additional SUIDs at cost, which may not be purchased in blocks of less than 100 IDs. This fee shall include initial system side setup of talkgroups.

- ii. The subscriber fee shall increase 3% annually in years two (2) through five (5) of this Agreement. Should this contract be extended for years six (6) through ten (10) upon requisite approval by the Lextran Board of Directors the subscriber fee shall be based on the annual radio system maintenance increase implemented by the manufacturer following radio system refresh or replacement, but the increase will not be less than 3%.
 - b. Lextran shall purchase its own mobile and portable radios necessary to access the Radio System and shall be responsible for the maintenance of all related consoles, control station radios, mobile radios, hand-held radios for such access;
 - c. Lextran shall operate two-way radio communications equipment in accordance with Federal Communications Commission (hereinafter referred to as the "FCC") regulations;
 - d. Lextran may choose to maintain a fiber or microwave back-haul connection to the Radio System necessary for implementation of the AVTEC Scout dispatch console. The fiber and/or microwave back-haul connections must meet the minimum requirement as set forth herein;
 - e. Lextran is responsible for the cost of the installation and reoccurring maintenance of the fiber and/or microwave back-haul connection between the requisite Sites;
 - f. Lextran shall ensure that only authorized and permitted Lextran users are provided access to the Radio System and Lextran owned subscriber equipment;
 - g. Lextran shall notify the Division of Enhanced 911 Radio System Manager within 30 days of adding additional radios to the system. The cost of newly added radios will be prorated from the date they come on the Radio System.
2. **LFUCG** shall perform and provide the following duties, responsibilities, and services:
- a. LFUCG shall be responsible for the cost of the Radio System maintenance;
 - b. LFUCG shall provide technicians, which shall program all necessary encryption keys, if applicable. LFUCG technicians will also provide and assign Unit Identification

numbers for all portable and mobile radio units owned by Lextran that are used on the Radio System;

- c. LFUCG shall invoice Lextran quarterly for its apportioned subscriber fee, based on the number of Lextran's subscribers on the Radio System;
- d. LFUCG shall maintain all required FCC licenses necessary to operate the Radio System;

IV. EFFECTIVE DATE AND TERM OF AGREEMENT.

1. This Agreement shall take effect upon execution by both parties hereto, and shall remain in effect for a period of five (5) years, unless termination at an earlier point in time as further provided herein.
2. If no action is taken to terminate this Agreement pursuant to the termination provisions herein, at the end of the initial term of five (5) years, this Agreement shall automatically renew for additional one (1) year terms upon requisite approval by the Lextran Board of Directors.

V. TERMINATION AND DEFAULT.

1. Either party may terminate this Agreement at any time and for any reason by providing notice in writing at least six (6) months in advance. However because of complexity and the interoperability of the Radio Systems, the parties agree to cooperate for a period of time it requires for complete severance of the relationship, provided this period of time is no longer than two (2) years.
2. If either party materially breaches the terms of this Agreement, the other party may terminate this Agreement after providing the breaching party written notice of such breach and the breaching party shall have failed to cure the same within thirty (30) calendar days after receipt of such notice.

VI. CONFORMANCE TO PLANS, USE OF FREQUENCIES.

1. All equipment purchased and owned by the parties which operates on the Radio System shall comply with technical and performance standards established by LFUCG based on vendor recommended requirements relating to hardware and/or software.
2. All frequencies received by Lextran shall not be re-broadcasted or made available to an outside entity.

VII. INFRASTRUCTURE AND EQUIPMENT OWNERSHIP.

1. LFUCG and the Bluegrass Airport shall own all infrastructures that each party respectively purchased relating to the Radio System.
2. LFUCG is the owner of the Master Site controller for the Radio System.
3. Lextran is the owner of their purchased public safety radio communications equipment required and necessary to communicate across the Radio System.
4. Lextran will not have access to the Bluegrass Airport tower site and as such, Blue Grass Airport is not a party to this agreement.

VIII. PERMITTED USERS, LIMITATIONS, SYSTEM PRIORITY.

1. LFUCG shall establish the System priority of all users on its Radio System based on consultation with Lextran.
2. Lextran will not expand subscribers beyond its agency without approval of LFUCG. Any approved expansion will incur additional fees to Lextran.
3. Upon approval of LFUCG, any non-public safety user will be afforded a lower priority than Lextran based on the System priority established by LFUCG.
4. In order to maintain the necessary channel capacity on the Radio System, Lextran shall not utilize telephone interconnect (a/k/a private talk) capability on its subscriber radios.

IX. DATA PRIVACY.

1. Parties agree to abide by all applicable Federal and State laws and regulations concerning confidential and non-public information relating to individuals and/or data.

X. INDEPENDENT CONTRACTOR AND INDEMNIFICATION.

1. To the extent allowable by law LFUCG and Lextran are and shall remain independent contractors with respect to all services performed under this Agreement. Except as provided, within this Agreement, LFUCG and Lextran shall independently select the means, method, and manner of performing their respective services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the LFUCG and Lextran hereto or as consulting either party as the agent, representative, or employee of the other for any purpose or in any manner whatsoever.

2. Each party shall defend, indemnify, and hold the other party, its directors, board members, officers, agents, and employees harmless from and against any claims of third parties and losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees), arising out of or resulting from the acts or omissions of the other party, or anyone acting on the other party's behalf in connection with this Agreement or its performance; provided, however, neither party shall not be required to indemnify the other against liability for damages to the extent caused by or resulting from a party's own negligence. This shall not be deemed a waiver of sovereign immunity or any other third party defense available to parties.

XI. FORCE MAJEUR AND DISCLAIMER OF WARRANTIES.

1. Neither party shall be liable for the delay, failure or interruptions in the Radio System service caused by circumstances beyond their reasonable control.
2. LFUCG makes no warranties, express or implied, including without limitation, any implied warranty of merchantability or fitness for a particular purpose to Lextran in connection with its use of service.

XII. GOVERNING LAW AND COMPLIANCE WITH APPLICABLE LAW.

1. This Agreement shall be governed by, construed and enforced under, subject to, and in accordance to the laws of the Commonwealth of Kentucky and FCC regulations as applicable.
2. The parties acknowledge, agree, and warrant that they shall maintain compliance with all applicable laws, rules and regulations, in connection with this Agreement and their relationship.

XIII. NOTICES.

All notices under this Agreement shall be in writing and shall be delivered by registered or certified mail, return receipt requested to the addresses specified below.

FOR LFUCG:

Lexington-Fayette Urban County
Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Commissioner of Public Safety

FOR Lextran:

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

