

AGREEMENT

THIS AGREEMENT, made and entered into this 6 day of December, 2016, by and between the 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 Transit Authority of Lexington-Fayette Urban County Government, Kentucky, (hereinafter "LEXTRAN"), whose mailing address is 200 West Loudon Avenue, Lexington, Kentucky 40508.

WITNESSETH:

WHEREAS, LFUCG has been awarded federal funds from the Commonwealth of Kentucky, Transportation Cabinet under the Highway Planning and Construction Program Discretionary PL funding (Catalog of Domestic Assistance Program Number 20.205) for the support of Lexington Transit Route Inventory;

WHEREAS, the LFUCG'S responsibility for ensuring compliance with all grant requirements necessitates a written Agreement with LEXTRAN;

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, 2016, and continuing until June 30, 2018. This Agreement is contingent upon continued availability of appropriated federal funds.
2. The total amount of grant funds available for distribution by LFUCG for the support of the herein-described services shall be \$40,000.

ARTICLE II

Obligation of LFUCG:

1. To provide up to \$40,000 in grant funds for the support of the herein-described contractual obligations.
2. LFUCG 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. The MPO shall assist LEXTRAN with the management of this project and serve in an advisory role on development of the data collection approach and review of progress.

ARTICLE III

Obligations of LEXTRAN:

1. LEXTRAN 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.
2. LEXTRAN shall submit to the LFUCG invoices requesting payment for services provided. Invoices shall include evidence of work completed and copies of invoices for which reimbursement is requested. Invoices shall be submitted to the LFUCG on a monthly basis. LEXTRAN also agrees to submit a quarterly progress report within 30 days of the end of each calendar quarter for the duration of this Agreement.

3. LEXTRAN 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 LFUCG. LEXTRAN shall also submit to LFUCG a copy of the fully executed consultant agreement or agreements.
4. LEXTRAN 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.
5. LEXTRAN 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. LEXTRAN shall not discriminate on the basis of race, color, national origin, disability, gender, age, and sexual orientation. LEXTRAN 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. LEXTRAN shall incorporate the foregoing requirements of this paragraph in all contracts for services covered by this Agreement.
6. LEXTRAN agrees to comply with the DBE requirements contained within 49 CFR Part 26.

DBE Assurance: LEXTRAN and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Failure by LEXTRAN 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: LEXTRAN 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 LEXTRAN has been paid for work performed or services delivered. LEXTRAN may not withhold retainage on a subcontract of this Agreement.

7. LEXTRAN 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. LEXTRAN shall also provide officials of the LFUCG, 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 LEXTRAN 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 LFUCG, 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.
8. LEXTRAN 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.

9. If applicable, pursuant to KRS 45A.485, LEXTRAN shall reveal to the LFUCG 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.

LEXTRAN 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.

10. TO THE EXTENT PROVIDED BY LAW, the parties agree to defend, indemnify, and hold harmless each other 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;

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, , using attorneys approved in writing by the parties..
 - 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 LEXTRAN and LFUCG, and damage to, or destruction of, any property, including the property of LEXTRAN and LFUCG.
11. LEXTRAN 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.

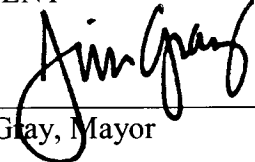
ARTICLE IV

Additional Terms:

1. This Agreement, in accordance with 49 CFR 18.43, may be terminated by the LFUCG upon thirty days written notice, if LEXTRAN 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 LFUCG.
3. LFUCG and LEXTRAN 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. LEXTRAN shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the LFUCG prior to the execution of such agreement.
5. If this Agreement results in any copyrightable material or inventions, the LFUCG 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 LFUCG and LEXTRAN.

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: 
Jim Gray, Mayor

ATTEST:


Clerk of Urban County Council

TRANSIT AUTHORITY OF LEXINGTON-
FAYETTE URBAN COUNTY GOVERNMENT

BY: 
Carrie Butler, General Manager

December 6, 2016
Date

EXHIBIT A – SCOPE OF WORK AND BUDGET SUMMARY

The Lexington Area MPO and the Transit Authority of Lexington-Fayette Urban County Government (Lextran) will engage consultants to prepare a comprehensive inventory of all fixed route bus stops that Lextran currently serves. A better understanding of the conditions and connections of the stops with community areas and infrastructure is needed for strategic transit planning purposes. Lextran and the MPO have been mostly reactive to issues on a case-by-case basis when dealing with transit access issues and how this relates to the community and system at large. There has long been a need for a comprehensive database containing this type of information to accomplish community wide transit/transportation planning goals in a systematic and holistic manner.

The proposed inventory would cover existing bus stops that Lextran utilizes currently. Field technicians will utilize mobile tablets to collect critical data and attributes at each bus stop including photographs with geographic coordinates attached. There shall be aspects of ADA compatibility and conformance measurements. Safety factors will be considered with respect to the built environment considering geometry as it relates to its specific location. Adequacy ratings will be applied so that queries can be done to glean inadequacies and prioritize a strategic approach to making each stop on each route as safe and efficient as it could possibly be. Furthermore, multimodal system interconnectivity opportunities can be realized and leveraged as a result of this detailed inventory.

The selected consultants will be asked to develop the best data to collect at each stop and criteria to evaluate/score the stops for improvement prioritization. Also, consultants will be asked to identify transit stops that are in an undesirable, unsafe, inaccessible or insecure location and that could be relocated to a better location.

The GIS Department of LFUCG has agreed to create a custom GIS program that utilizes mobile tablets that can be taken into the field for data collection. Consultants will be tasked to collect the desired field data in a consistent manner and format to accomplish this inventory in a timely manner. Assistance during the project with Arc/GIS Online accounts utilizing the Collector Application as well as post processing of the data can be provided by LFUCG GIS experts as needed.

In order to accomplish this comprehensive approach to collecting data, we estimate that the project will cost \$40,000 total, \$32,000 MPO Federal Funds with \$8,000 match provided by LFUCG. This funding will cover consulting, labor, any required software and data processing of the data into a deliverable or format that can be worked with. Arc/GIS Online accounts will be utilized with the ESRI Mobile Collector App for tablets. Upon completion, LFUCG and the MPO will be able to more effectively work with Lextran to integrate the modality function of transit in the community, a major goal for the Lexington Area MPO 2040 Metropolitan Transportation Plan. The MPO and Lextran shall share the end data product for planning and assessment purposes allowing for updates to the inventory as changes occur ongoing.