

COST SHARING AGREEMENT
REVISION No. 1

between

Lexington-Fayette Urban County Government and
Transylvania University

THIS COST SHARING AGREEMENT (the “Agreement”) is made and entered into at Lexington, Kentucky this 21st day of November, 2013, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to authority of Kentucky Revised Statutes Chapter 67A (hereinafter referred to as “LFUCG”) and the **TRANSYLVANIA UNIVERSITY** (hereinafter referred to as “TRANSYLVANIA”), a Kentucky non-profit corporation.

WHEREAS, TRANSYVLANIA is developing land at 523 – 555 W. Fourth Street as an athletics field complex and plans to replace the sidewalks on the north side of West Fourth Street from Jefferson Street west to the CSX railroad line currently leased to R.J. Corman Railroad, just west of Henry Street; and

WHEREAS, LFUCG plans to repave West Fourth Street west of Jefferson Street to the CSX railroad line currently leased to R.J. Corman Railroad and to replace sidewalks on the south side of W. Fourth Street, as well as gutters and curbs on both sides of the street; and

WHEREAS, TRANSYVLANIA and LFUCG have agreed that joint design and construction of this project will provide coordinated and superior project results and that a cost-sharing arrangement makes the most sense for all parties involved;

NOW, THEREFORE, in consideration of the foregoing premises and in consideration of the mutual undertakings and obligations hereinafter set forth, the parties agree to the following covenants and conditions:

1. Definitions.

a. Project Area. The Project Area shall be the right of way of West Fourth Street from the western side of the intersection with Jefferson Street west to the east side of the CSX railroad right of way currently leased to R. J. Corman Railroad just west of Henry Street in Lexington, Fayette County, Kentucky.

b. Project. The Project shall be the construction and/or replacement of sidewalks along both sides of Fourth Street, the replacement of curbs and gutters along both sides of West Fourth Street, and the repaving of West Fourth Street, all within the Project Area.

c. Carman. Carman shall mean John L. Carman & Associates, Inc., doing business as Carman. Carman is the designer for the Project.

d. Construction Contract. Construction Contract means the contract which will be entered into between TRANSYLVANIA and the contractor which is selected to perform the construction work as set forth in this Cost Sharing Agreement.

e. Contractor. Contractor shall mean the contractor which is selected to perform the construction work and which executes the Construction Contract.

2. Engineering and Construction. TRANSYLVANIA, utilizing the services of Carman, shall bid, contract for and cause to be prosecuted to completion, the design and construction of the Project. TRANSYLVANIA agrees that the Project shall be designed and constructed in accordance with the requirements of the appropriate LFUCG Division of Engineering manuals. LFUCG shall supply the resident construction inspector. TRANSYLVANIA agrees that LFUCG shall have the right to enter and inspect the Project to insure the facilities are constructed pursuant to this Agreement.

3. Drawings Requirements. LFUCG shall contract with Carman to provide completed plans, drawings and specifications for the Project. TRANSYLVANIA shall notify LFUCG in writing of any additional requirements for the Project within fifteen (15) days of TRANSYLVANIA's receipt of said plans, drawings and specifications.

4. Cost Allocation and Reimbursement. TRANSYLVANIA and LFUCG shall share cost of the construction of the Project. Bid proposals will be structured so that line item bidding can be separated for work that will be reimbursed by LFUCG to TRANSYLVANIA. Also, the bid proposal shall be structured so that milling and resurfacing shall be a separate line item that can be removed from the Project by agreement between LFUCG and TRANSYLVANIA. If milling and resurfacing is removed from the Project, any milling and/or resurfacing of Fourth Street shall be the sole responsibility of LFUCG.

A. Transylvania Costs. TRANSYLVANIA shall be responsible only for the cost of installation of sidewalk on the north side of West Fourth Street in the Project Area and any costs of grading from the back edge of curb to the edge of the right of way on the north side of West Fourth Street in the Project Area. In addition, TRANSYLVANIA shall be responsible for any demolition, filling and regrading behind the right of way line on the north side of Fourth Street which may be necessary in conjunction with the work on the sidewalk on the north side of the street.

B. LFUCG Costs. LFUCG will be responsible for all costs of design for the Project. Also, LFUCG shall be responsible for all construction costs not allocated to TRANSYLVANIA in Section 4.A. above. In addition, LFUCG shall be responsible for any demolition, filling and regrading behind the right of way line on the south side of Fourth Street which may be necessary in conjunction with the work on the south side of the street.

C. Reimbursement. LFUCG agrees to reimburse TRANSYLVANIA in cash, certified check, or other collected funds all costs incurred by TRANSYLVANIA associated with the Project that are the responsibility of LFUCG. The estimated reimbursement amount is \$400,000.00. The final reimbursement amount shall be based on the actual final costs of construction of the Project. Reimbursement shall be due in full within thirty (30) days of TRANSYLVANIA's presentation of proof of payment to LFUCG. TRANSYLVANIA may impose a late fee of one percent (1%) of the amount due and owing for each thirty (30) days that said payment from LFUCG to TRANSYLVANIA is late.

5. Change Orders. Within five (5) days after it is determined that a change order is necessary to the construction plans for the Project, the affected party shall notify the other party in writing as to the nature, probable magnitude and timing of the needed change.

6. Erosion Prevention and Sedimentation Control. TRANSYLVANIA and LFUCG shall insure the Construction Contract requires that the Contractor utilized in the construction of the Project, follows all applicable erosion prevention and sediment control guidelines. Plans shall be submitted to LFUCG and the Kentucky Division of Water for review and approval.

7. Insurance. TRANSYLVANIA shall require in the Construction Contract that the Contractor shall procure and maintain during the life of this Agreement insurance coverage and limits at levels no lower than those set forth in the Bid Documents and Specifications Manual.

8. Bonding. TRANSYLVANIA shall require in the Construction Contract that the Contractor shall procure a payment and performance bond as recommended by Carman. No bond, however, shall be required of TRANSYLVANIA.

9. Inspection. Inspection of the Project shall be performed by LFUCG.

10. Retainage. The Construction Contract shall contain a retainage provision, as recommended by Carman. It shall also contain a provision for a final punch list of items for the Contractor, a requirement for an affidavit and release of liens by the Contractor and sub-contractors, and a one year warranty of work by the Contractor. Except for the sidewalk on the north side of West Fourth Street, TRANSYLVANIA shall transfer the warranty to LFUCG, so that warranty work shall be resolved directly between LFUCG and the Contractor.

11. Signal work at Fourth and Jefferson Street. Any work on the traffic signals at the intersection of West Fourth Street and Jefferson Street shall be outside the scope of this Agreement and shall be performed by LFUCG, if LFUCG deems it appropriate.

12. Selection of contractor. TRANSYLVANIA shall follow its regular procedures for selection of a contractor. The parties understand that the contractor may be TRANSYLVANIA's current contractor, it may be a contractor determined by bids, or it may be a contractor pursuant to a unit price contract in effect by LFUCG. The contractor shall be reasonably agreed upon by both parties before TRANSYLVANIA signs the Construction Contract. However, if LFUCG does not give its approval for a contractor within thirty (30) days after request by TRANSYLVANIA, TRANSYLVANIA may proceed to approve the contractor and sign the Construction Contract on its own.

13. Sewer construction work. The parties understand that LFUCG is considering whether it should replace or repair storm and/or sanitary sewers under West Fourth Street. Any such work shall be outside the scope of this Agreement and shall be the sole responsibility of LFUCG. LFUCG shall, however, make a final decision as to whether sewer work will be performed, and shall schedule said sewer work so that it is performed prior to the commencement of the work set forth in this Agreement. LFUCG shall notify

TRANSYLVANIA and Carman within thirty (30) days of its execution of this Agreement as to whether it is going to perform sanitary or storm sewer repair or reconstruction work in the Project Area.

14. Contact persons. The contact persons for day-to-day administration of this Contract shall be: Bob Bayert, Division of Engineering for the LFUCG, and Marc A. Mathews, Vice-President for Finance and Business for TRANSYLVANIA.

15. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the executors, heirs, successors and assigns of the parties hereto; however neither party shall assign, sublet or transfer its interests in this contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, employee or agent or any public body which may be a party hereto.

16. Entire Agreement. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, among the parties and no part of this Agreement may be altered, modified, or changed in any way except in writing signed by the parties hereto or signed by the duly authorized representatives of said parties.

17. Severance. If any section, clause or provision of this Agreement shall be held invalid, such holding of invalidity shall not affect the validity of any remaining section, clause, paragraph, portion or provision of this Agreement.

18. Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the parties any

right, remedy or claim under or by reason of any such agreement or any covenant, condition or stipulation herein or therein contained.

19. Amendments. This Agreement may only be amended by written agreement of all the parties hereto.

20. Governing Law. The laws of the Commonwealth of Kentucky shall govern the validity, construction, and performance of this Agreement.

21. Notices. All notices, consents, or other communications required or permitted hereunder shall be deemed sufficiently given or serviced if given in writing, mailed by first class mail, postage prepaid and addressed as follows:

(i) If to LFUCG:

Mr. Bob Bayert
Division of Engineering
101 E. Vine Street
4th Floor
Lexington, Kentucky 40507

(ii) If to TRANSYVLANIA:

Marc A. Mathews, CPA, CTP
Vice President for Finance and Business
300 North Broadway
Lexington, KY 40508

22. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto, any legal or equitable right, remedy, or claim under or in respect to this Agreement.

IN WITNESS WHEREOF, the parties hereto executed this Contract on the day and year first above written.

WITNESS:

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

Maths Joe

BY: J. G. [Signature]

TITLE: Mayor

WITNESS:

TRANSYLVANIA UNIVERSITY

Mark Baker

BY: Mark Mathews

TITLE: Vice President for Finance and Business

APPROVED FOR LEGAL FORM:

BY: Edward [Signature]
Attorney Sr.

Date 12/3/13

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