

AGREEMENT

THIS AGREEMENT, made and entered into on this 17th day of May, 2012, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and **FAYETTE COUNTY ATTORNEY'S OFFICE**, whose post office address is 110 West Vine Street, Lexington, Kentucky, 40507 (hereinafter referred to as "FCAO").

WHEREAS, the GOVERNMENT owns property at 1631 Old Frankfort Pike, Lexington, KY 40504, (hereinafter referred to as "Old Frankfort Pike Landfill" or "Landfill");

WHEREAS, the FCAO has established a Drivers' Education program and operated said program since June, 2011;

WHEREAS, the FCAO and the GOVERNMENT previously entered into an agreement that permitted the FCAO access to and use of the Old Frankfort Pike Landfill's paved areas to host a drivers' education program;

WHEREAS, the FCAO has coordinated with multiple private business entities to design and construct, without cost to the GOVERNMENT, a new paved driving pad on the undeveloped area in the southeast section of the Old Frankfort Pike Landfill to facilitate the operation of the FCAO's Driver Education program;

WHEREAS, the GOVERNMENT seeks to utilize the facilities installed at the landfill by the FCAO to train drivers of government vehicles through customized driving simulators;

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

I. SCOPE OF SERVICES**A. Activities**

The FCAO has developed and operated a Driver's Education program which, since June 2011, has and will continue to be conducted in a manner satisfactory to the GOVERNMENT and in compliance with all local, state and federal laws and regulations. The program shall be conducted in a manner maintaining the integrity of the landfill cap. FCAO has located a modular classroom building on the property which the FCAO shall continue to use for classroom instruction as a part of their Drivers' Education program. FCAO shall be responsible for maintenance of the building.

B. Construction

The FCAO has coordinated with multiple private business entities for the design and construction of a new paved driving pad on the undeveloped area of the Old Frankfort Pike Landfill to facilitate the operation of the FCAO's Driver Education program. All design and construction plans shall be in compliance with all local,

state and federal laws and are contingent upon written approval by the Kentucky Department for Environmental Protection's Division of Waste Management and approval by the Government prior to construction.

C. Maintenance

The FCAO shall be responsible for the regular maintenance (e.g. repair, resurfacing, refuse clean-up and removal) of the new paved driving pad and the classroom building. The GOVERNMENT shall continue the regular maintenance of the currently installed driving pad as well as the grounds surrounding both the currently installed driving pad and the new paved driving pad. The FCAO shall be responsible for paying for any utilities associated with the classroom building.

D. Storm water Fees/Costs

The FCAO shall be responsible for one hundred (100) percent of the costs associated with the installation of a storm water system and/or storm sewers. The FCAO shall be responsible for one hundred (100) percent of the storm water quality fee associated with the new pad, which shall be paid upon demand.

E. Access to/Use of Current Driving Pad

The GOVERNMENT'S Division of Waste Management shall continue to grant access to the currently installed driving pad for dates and times scheduled by the FCAO, provided those dates and times have received prior written approval from the Division of Waste Management. Gates shall be opened by the FCAO no sooner than one hour prior to scheduled times and dates and must be secured by the FCAO at the conclusion of each session. Use of the currently installed driving pad is normally reserved for GOVERNMENT business activities. The GOVERNMENT reserves the right to schedule other events at the currently installed driving pad during normal business hours and weekends.

F. Access to/Use of New Driving Pad

The GOVERNMENT shall provide a key to the padlocked gate at the entrance to the landfill to allow the FCAO full access to the new paved driving pad. The FCAO shall only use the key to access the new paved driving pad or to access the currently installed driving pad on dates and times previously scheduled and approved by the Division of Waste Management. The Government shall have access and use of the new pad as long as the use does not conflict with the scheduled use by the FCAO. The FCAO may not grant permission to other parties to use the pad.

G. Hours of Operation

The GOVERNMENT shall grant access to the currently installed driving pad for

the Driver's Education Program if the requested use does not conflict with the needs of the Division of Waste Management or other entities scheduled to use the pad. Requests to use the pad must be submitted to the DWM at least two weeks prior to the scheduled use.

The FCAO may determine the hours of operation for sessions of the Drivers' Education Program conducted on the newly installed driving pad and shall have priority in use of the new pad. Government may use the new pad when it is not scheduled for use by the FCAO. A schedule for use of the pad by the FCAO shall be updated and forwarded to the DWM every month. A shared drive will be pursued by both parties to provide more convenient sharing of the information.

H. General Rules of Conduct

The FCAO shall ensure that participants in the drivers' education program adhere to the following rules of conduct:

1. No alcohol or firearms
2. No studded tires on vehicles
3. No spikes, poles, signs, or flags may be driven into the asphalt or the grounds surrounding the asphalt.
4. All temporary fixtures must be removed by the end of the day.
5. All litter and refuse generated as part of the drivers' education program must be removed and disposed of properly. No dumping is allowed in the herbie containers or dumpsters located on the landfill.
6. All activities of the drivers' education program must remain on the asphalt area. Driving, walking, parking or equipment storage on the grounds surrounding the asphalt pad is not allowed.
7. At the end of each day, the FCAO shall assure that the main gate to the landfill is locked.
8. No permanent paint or markings may be used on the pavement on the currently installed driving pad. Temporary wash-away markers or paint are allowed.

I. Liability

The GOVERNMENT shall not be liable for injuries or accidents occurring on the landfill. All participants and parents of participants in the Drivers' Education program must sign a waiver of liability prior to entering the landfill. This waiver will be provided to the FCAO by the GOVERNMENT.

J. Access to Classroom Facilities by GOVERNMENT

The FCAO shall grant access to the classroom building installed at the landfill for dates and times that have received prior written approval from the FCAO's Director of Instruction.

The GOVERNMENT may procure appropriate driving simulation software for use on the FCAO computers. The FCAO shall provide the GOVERNMENT access to the FCAO computers and software when not in use by the FCAO's Drivers' Education program, during dates and times with prior written approval from the FCAO's Director of Instruction.

K. Fees

Although the charge for use of the currently installed driving pad is \$500/day, the GOVERNMENT agrees to waive the fee for the purpose of the Drivers' Education program according to this Agreement.

II. TIME OF PERFORMANCE

The terms of this Agreement shall continue through Wednesday, December 31st, 2014, the last day of the current elected term of Fayette County Attorney Larry S. Roberts. The GOVERNMENT and the FCAO can extend the terms of this Agreement through mutual agreement of the parties. Upon the expiration of this or any subsequent Agreement between the parties, full access, rights, ownership and interest in the newly installed driving pad or any other permanent improvements on the landfill property reverts to the GOVERNMENT.

III. NOTICES

All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.

IV. GENERAL CONDITIONS

- A. The FCAO agrees to defend, indemnify, and hold harmless GOVERNMENT from any and all losses or claims of whatever kind, that are in any way incidental to, or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this agreement by FCAO, 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 agreement commencement date, regardless of when such losses or claims are made or incurred. This indemnity agreement shall in no way be limited by any financial responsibility, or loss control requirements below, and shall survive the termination of this agreement;


For the purpose of this Indemnity Provision:

1. The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at FCAO's expense, using attorneys approved in writing by GOVERNMENT, which approval shall not be unreasonably withheld.

2. 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.
 3. 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 FCAO and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.
- B. As applicable, the FCAO shall provide Workers' Compensation insurance coverage for all its employees involved in the performance of this Agreement.
 - C. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and the FCAO.
 - D. This Agreement can be terminated if FCAO fails to comply with any term of the Agreement. This Agreement may be terminated upon written notice by the GOVERNMENT.
 - E. GOVERNMENT and the FCAO each bind 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.

IN WITNESS WHEREOF, the parties executed this Agreement the day, month, and year above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT



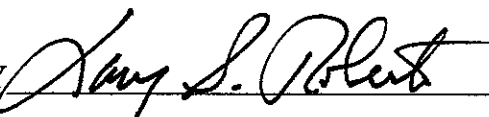
 Jim Gray, Mayor

ATTEST:



 Clerk of Urban County Council

FAYETTE COUNTY ATTORNEY'S OFFICE

BY 

 Harry S. Roberts Fayette County Attorney
 Printed Name Title