

AGREEMENT

THIS **AGREEMENT** made and entered into on this the 30th day of May 2025, by and between **Lexington-Fayette Urban County Government**, hereinafter called **LFUCG**, owner of said property and **L-M Asphalt Partners Ltd dba ATS Construction**, hereinafter called **ATS**, doing business as a partnership located in the City of Lexington, County of Fayette, and State of Kentucky.

WITNESSETH: LFUCG and ATS wish to formalize an agreement for the use of **LFUCG** property located at 1960 Bryan Station Road, Lexington Kentucky, hereinafter called the **Property**. **ATS** is currently working project CID#241005 (Fayette Co. NHPP 754) and desires to utilize this **Property** to access the work zone for delivery of materials including rock, gravel, and asphalt without having to access the work zone via the nearest interstate on-ramp which could create additional congestion and safety hazards during ingress and egress from the work zone. In addition, being able to use this access would create a shorter truck hauling route from the **ATS / Vulcan** plant, which is more desirable given the anticipated 35,00 to 45,000 tons of rock, asphalt, and millings leaving and entering the property for the southbound construction work which equates to 1,400 to 1,800 tri-axle truck loads.

SECTION 1- ATS RESPONSIBILITIES

- 1.1 **ATS** shall complete a hydro-excavation to field-locate the two (2) Sanitary Sewer Force Mains prior to potential use of the **Property**. **ATS** shall share the results of the hydro-excavation with **LFUCG**. The ability to proceed with this **Agreement** will be based on the outcome of this locate as decided by **LFUCG**.
- 1.2 **ATS** shall take photos and/or videos of the existing conditions of the **Property** before any materials are brought to the **Property** or earthwork is performed. **ATS** shall share all photos and/or videos with **LFUCG** before work commences.
- 1.3 **ATS** shall place 5' tall woven wire right-of-way (ROW) fence staked along either side of the designated haul road as shown in Exhibit A. **ATS** will determine the field alignment of the fencing with **LFUCG** staff prior to installation. At **LFUCG's** direction, the ROW fence will be placed at grade or 1' off of the ground. This fencing is to prevent trucks from leaving the truck route and damaging any trees or any other areas on **LFUCG's** property. The length of the fence will be approximately 1,500' on both sides of the truck route through the **Property**. **ATS** will add three gates or accesses (two on the Bryan Station side and one on the opposite side) along the fences for mowing and access to the **Property** by **LFUCG** staff and contractors. **ATS** nor its employees or subcontractors shall move any portion of the fence throughout the duration of this **Agreement**. **ATS** will remove and take possession of the fence upon completion of the project.
- 1.4 **ATS** shall place silt fence on the inside of woven wire ROW fence at the locations where they are grading or creating the bulb outs. This shall also be removed once the project is complete. **ATS** shall perform and document regular inspection/maintenance of the erosion control items in compliance with **LFUCG** standards.
- 1.5 **ATS** shall construct truck route, roughly 15' wide, with bulb outs for truck turnarounds / passing, as shown on Exhibit A. **ATS** shall place asphalt millings for this haul route and leave this route upon completion, except for the areas that were not originally gravel

roadway (see Exhibit A). These areas shall be reclaimed or haul route to be removed per **LFUCG** discretion.

- 1.6 **ATS** shall reclaim any disturbed areas by removing the asphalt millings if applicable, rototilling to a depth of 2 feet, bringing in and spreading topsoil, seeding, and strawing with seeding and protection.
- 1.7 No material for filling and grading shall be borrowed from the **Property** outside the proposed haul route.
- 1.8 No trees, vegetation, or brush shall be removed by **ATS**, except for the trees, vegetation, and brush inside the temporary ROW fence. **LFUCG** shall be notified 48 hours prior to the commencement of tree, vegetation, or brush removal to allow sufficient time for staff representation to be on site. Unless otherwise directed, **ATS** shall haul off and properly dispose of all trees, vegetation, and brush that are removed from the **Property**.
- 1.9 **ATS** shall only use the **Property** for a haul route; no storing of materials, equipment, or employee or subcontractor vehicles are permitted.
- 1.10 **ATS** shall “daisy chain” their own lock on the gate at the Bryan Station Road entrance. The gate is to remain closed and locked at all times that the haul route is not being actively used by **ATS**. **ATS** shall provide three (3) copies of the key to their lock to **LFUCG** prior to **ATS**’s use of the **Property**.
- 1.11 All ROW fence along the interstate that is removed, shall be replaced at the completion of the project.
- 1.12 **ATS** to pay for and provide ten (10) 1½” to 2” caliper trees (approximately \$300/each) for **LFUCG** to plant. Tree species will be selected and planted by **LFUCG** Division of Environmental Services.
- 1.13 **ATS** shall provide appropriate traffic control and signage on Bryan Station Road near the entrance to the **Property** to notify motorists of the temporary construction entrance.
- 1.14 **ATS** agrees that no hazardous materials (including, but not limited to, flammable materials or liquids, explosives, poisonous materials, paints, or strong acids or caustics) will be brought onto or through the **Property** or used in any way while occupying any portion of the **Property**.

SECTION 2- FINANCIAL RESPONSIBILITY

- 2.1 **ATS** agrees to take complete financial responsibility for all activities, material, and service required by this **Agreement**. **ATS** shall be responsible for any unforeseen issues that arise due to their use of the **Property**.
- 2.2 **LFUCG** shall have no financial responsibility to or for any item in this **Agreement**.

SECTION 3- INDEMNIFICATION AND HOLD HARMLESS PROVISION

- 3.1 It is understood and agreed by the parties that **ATS** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **ATS** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this **Agreement** and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- 3.2 **ATS** shall indemnify, save, hold harmless and defend the **LFUCG** and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and

against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **ATS'** performance or breach of the **Agreement** and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the **ATS**; and (b) not caused solely by the active negligence or willful misconduct of **LFUCG**.

- 3.3** Notwithstanding, the foregoing, with respect to any professional services performed by **ATS** hereunder (and to the fullest extent permitted by law), **ATS** shall indemnify, save, hold harmless and defend **LFUCG** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **ATS** in the performance of this **Agreement**.
- 3.4** In the event **LFUCG** is alleged to be liable based upon the above, **ATS** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by **LFUCG**, which approval shall not be unreasonably withheld.
- 3.5** These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this **Agreement**.
- 3.6** **LFUCG** is a political subdivision of the Commonwealth of Kentucky. **ATS** acknowledges and agrees that **LFUCG** is unable to provide indemnity or otherwise save, hold harmless, or defend **ATS** in any manner.

SECTION 4 – ALTERATIONS

- 4.1** **ATS** may desire to make alteration to **ATS'** responsibilities that are provided by the expressed intent of this Agreement. Such alterations shall be made Supplemental to this **Agreement**, setting forth, in writing, the character and scope thereof.
- 4.2** Work, under such alterations shall not proceed until the **LFUCG** gives written consent.

SECTION 5- GENERAL CONSIDERATIONS

- 5.1** **Termination:** Either party may terminate this **Agreement** by giving at least thirty (30) days prior written notice to the other party. Failure of either party to meet the terms of this **Agreement** is grounds for termination and must be expressed in writing at least 30 days prior to termination.
- 5.2** **Legal Responsibilities and Legal Relations**

- 5.2.1** **ATS** shall familiarize itself with and shall at all times comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this **Agreement**.
- 5.2.2** In performing the services hereunder, **ATS** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **LFUCG** in any manner whatsoever. Except as otherwise provided in this **Agreement**, **ATS** shall be acting as an independent contractor. **ATS** shall not hold itself out as, nor claim to be, an officer or employee of **LFUCG** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **LFUCG**. **ATS** shall be solely responsible for any claims for wages or compensation by **ATS**' employees, agents and representatives, including ats, and shall save and hold **LFUCG** harmless therefrom.
- 5.2.3** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this **Agreement**.

5.3 Successors and Assigns

- 5.3.1** **ATS** binds itself and its partners, successors, executors, administrators, assigns and legal representatives to this **Agreement** in respect to all covenants, agreements, and obligations of this **Agreement**. **ATS** shall not assign any interest, obligation or benefit in this **Agreement**, nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **LFUCG**. **LFUCG'S** consent shall not relieve **ATS** of any responsibility for compliance with the provisions of this **Agreement**.
- 5.3.2** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **LFUCG** and **ATS**.

- 5.4 Disputes.** Except as otherwise provided in this **Agreement**, any dispute hereunder may be resolved by agreement of the **LFUCG'S** Agent (Section 8.1.1) and **ATS**. In the absence of such an agreement, the dispute shall be submitted to the **LFUCG'S** Commissioner, Department of Environmental Quality & Public Works, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, **ATS** shall proceed diligently with the performance of the **Agreement** in accordance with the directions of **LFUCG**.

SECTION 6 - SPECIAL PROVISIONS

- 6.1** This **Agreement** is subject to the following provisions.

- 6.1.1** Pursuant to subparagraph 3.4 of this **Agreement**, **LFUCG** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**LFUCG'S Agent**"), as the authorized agent of **LFUCG**, to monitor, direct and review the performance of work of the **ATS**. Documents, data, reports, and all matters associated with carrying out this **Agreement** shall be addressed to the **LFUCG'S Agent** or his designee. Questions by **ATS** regarding interpretations of the terms, provisions and requirements under this **Agreement** shall be addressed to the **LFUCG'S Agent** or his designee. **ATS** shall look only to the **LFUCG'S Agent** or his designee for direction in its performance under this **Agreement**; no other direction shall be binding upon **LFUCG**.
- 6.2** This **Agreement** constitutes the entire agreement between **LFUCG** and **ATS** and supersedes all prior written or oral understandings. This **Agreement** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 6.3** **NO THIRD PARTY RIGHTS.** This **Agreement** does not create a contractual relationship with or right of action in favor of a third party against either **LFUCG** or **ATS**.
- 6.4** **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this **Agreement** shall be found to be illegal or unenforceable, this **Agreement** shall remain in full force and such term or provision shall be deemed stricken. The provisions of **Section 3 of this Agreement** shall survive its termination.
- 6.5** **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this **Agreement** shall not be a waiver of any such right to which the party is entitled.

SECTION 7- DURATION

- 7.1** **ATS'** use of the **Property**, under the terms stated in this **Agreement**, will commence on June 1, 2025 and end on December 31, 2025.
- 7.2** **LFUCG**, at its sole discretion, may extend the duration of the **Agreement** until May 1, 2026, to accommodate for any unforeseen delays.

IN WITNESSETH WHEREOF, the parties hereto have executed this **Agreement** as of the date and year above written.

LFUCG:

**Lexington-Fayette Urban
County Government**

BY: _____
LINDA GORTON, MAYOR

ATS: Brian R. Billings

**L-M Asphalt Partners Ltd
dba ATS Construction**

DocuSigned by:
Brian Billings
BY: _____
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Brian R. Billings

