

**SECOND AMENDMENT TO
WASTE SUPPLY AND DISPOSAL AGREEMENT**

This **SECOND AMENDMENT TO THE WASTE SUPPLY AND DISPOSAL AGREEMENT**, dated this ____ day of June, 2022, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (“LFUCG”), an urban county government duly created and existing pursuant to the provisions of Chapter 67A of the Kentucky Revised Statutes, and **WASTE SERVICES OF THE BLUEGRASS, INC.** (“WSB”), a corporation organized and existing under the laws of the Commonwealth of Kentucky (collectively, “the parties”).

WITNESSETH:

WHEREAS, LFUCG and WSB previously executed a Waste Supply and Disposal Agreement dated March 19, 2015 (“Agreement”), pursuant to which WSB has been leasing and operating a transfer station owned by LFUCG and located at 1505 Old Frankfort Pike for the acceptance of LFUCG’s waste, and pursuant to which WSB has been transporting LFUCG’s waste to a contained landfill at prices contained in Schedule A to the Agreement, which was attached to and incorporated into the Agreement; and

WHEREAS, the parties previously executed an Amendment to the Waste Supply and Disposal Agreement dated December 7, 2021, accepting WSB’s declaration of an event of force majeure based on the COVID-19 pandemic and adopting an adjusted schedule of contract unit prices for the disposal of municipal solid waste and municipal sewage sludge by incorporating an additional amount of \$9.95 per ton to the per-ton contract unit prices, subject to the terms and conditions of the Amendment to the Waste Supply and Disposal Agreement dated December 7, 2021; and

WHEREAS, WSB has requested the immediate imposition of a fixed fuel surcharge to provide the services provided for in the Waste Supply and Disposal Agreement, citing the rising costs of diesel fuel and in reliance upon diesel fuel cost averages posted by the U.S. Department of Energy; and

WHEREAS, LFUCG and WSB have negotiated in good faith regarding the request for a fixed fuel surcharge and desire to amend the Agreement to reflect the agreed-upon fixed fuel surcharge and the terms and conditions for the imposition of the agreed-upon fixed fuel surcharge, in order to ensure continuity of service.

NOW, THEREFORE, for and in consideration of the mutual promises and obligations made and exchanged herein, the Waste Supply and Disposal Agreement between LFUCG and WSB, dated March 19, 2015, as renewed by its terms effective July 5, 2020, and as amended by the Amendment to Waste Supply and Disposal Agreement dated December 7, 2021, be and hereby is further amended as follows:

1. **Fixed Fuel Surcharge**. The parties hereby agree to a fixed fuel surcharge in the amount of **TWO DOLLARS AND SIXTY EIGHT CENTS (\$2.68)** per ton, subject to the following terms and conditions:

(a) **Base price**. The base price for determining whether the fixed fuel surcharge shall be due and payable is **THREE DOLLARS AND SEVENTY-FIVE CENTS (\$3.75)** per gallon (hereinafter, "the base price"). The fixed fuel surcharge shall be triggered only in the event that the retail cost of diesel fuel exceeds \$3.75 per gallon for a period of not less than four (4) consecutive weeks, as determined by reference to the U.S. Energy Information Administration, Midwest (PADD 2), Weekly Retail Gasoline and Diesel Prices.

(b) **Notice.** LFUCG's obligation to pay the fixed fuel surcharge shall be triggered upon notice from WSB that it is invoking the fixed fuel surcharge, documenting the retail fuel cost of diesel fuel that triggers the surcharge and the period during which the retail cost of diesel fuel exceeded the base price, which shall not be less than four (4) consecutive weeks preceding the invocation of the fixed fuel surcharge, as determined by reference to the U.S. Energy Information Administration, Midwest (PADD 2), Weekly Gasoline and Diesel Prices. LFUCG's obligation to pay the fixed fuel surcharge shall be prospective; in no event shall LFUCG be required to make a retroactive payment for any period preceding the institution of the fixed fuel surcharge.

(c) **Payment of Fixed Fuel Surcharge.** Following the invocation of the fixed fuel surcharge by WSB, and subject to LFUCG's concurrence that the retail cost for diesel fuel has exceeded the base price for a period of not less than four (4) consecutive weeks preceding the invocation of the fixed fuel surcharge, LFUCG agrees to pay the fixed fuel surcharge to WSB on a per ton basis in accordance with the terms and conditions of the Waste Supply and Disposal Agreement, as amended.

(d) **Suspension of Fixed Fuel Surcharge.** The fixed fuel surcharge shall be suspended upon notice by LFUCG to WSB that the retail cost of diesel fuel has decreased below the base price for a period of not less than four (4) consecutive weeks preceding such notice, as determined by reference to the U.S. Energy Information Administration, Midwest (PADD 2), Weekly Gasoline and Diesel Prices. In that event, the fixed fuel surcharge shall be deemed suspended under the authority of the agreement and LFUCG shall be under no further obligation to pay the fixed fuel surcharge, unless and until the retail cost of diesel fuel exceeds the base price for a period of four (4) consecutive weeks.

2. **Adjustment of Fixed Fuel Surcharge.** The Mayor or her designee is authorized to enter into additional adjustments to the fixed fuel surcharge set forth in this Second Amendment to Waste Supply and Disposal Agreement, if warranted by additional increases to the retail cost of diesel fuel, provided that the cumulative amount of such additional adjustments do not result in an increase to the fixed fuel surcharge in an amount greater than thirty percent (30%) of the fixed fuel surcharge authorized by this agreement (i.e., \$2.68 per ton).

(a) **Ceiling Price.** In no event shall any additional adjustment be authorized unless the retail cost of diesel fuel exceeds **SIX DOLLARS AND FIFTY CENTS (\$6.50)** per gallon (hereinafter, "the ceiling price"), for a period of not less than four (4) consecutive weeks, as determined by reference to the U.S. Energy Information Administration, Midwest (PADD 2), Weekly Gasoline and Diesel Prices.

(b) **Notice.** No adjustment shall be made unless and until WSB provides notice to LFUCG that it is requesting an adjustment, documenting the retail fuel cost of diesel fuel that supports the request for an adjustment and the period during which the retail cost of diesel fuel exceeded \$6.50 per gallon, which shall not be less than four (4) consecutive weeks preceding the request for an adjustment, as determined by reference to the U.S. Energy Information Administration, Midwest (PADD 2), Weekly Gasoline and Diesel Prices. Upon receipt of such request, the parties agree to meet and negotiate in good faith. No additional adjustment shall be effective unless and until LFUCG provides written notice evidencing its agreement to an additional adjustment. LFUCG's obligation to pay any adjustment shall be prospective; in no event shall LFUCG be required to make a retroactive payment for any period preceding the institution of the fixed fuel surcharge.

(c) **Payment of Additional Adjustments to Fixed Fuel Surcharge.** Provided the parties agree to an additional adjustment to the fixed fuel surcharge, LFUCG agrees to pay any additional adjustment to the fixed fuel surcharge to WSB on a per ton basis in accordance with the terms and conditions of the Waste Supply and Disposal Agreement, as amended.

(d) **Suspension of Adjustments to Fixed Fuel Surcharge.** Any adjustments to the fixed fuel surcharge shall be suspended upon notice by LFUCG that the retail cost of diesel fuel has decreased below the ceiling price for a period of not less than four (4) consecutive weeks preceding the notice of suspension, as determined by reference to the U.S. Energy Information Administration, Midwest (PADD 2), Weekly Gasoline and Diesel Prices. In that event, any adjustments to the fixed fuel surcharge shall be deemed suspended under the authority of the agreement and LFUCG shall be under no further obligation to pay the adjustments to the fixed fuel surcharge, unless and until the retail cost of diesel fuel exceeds the ceiling price for a period of four (4) consecutive weeks.

3. All other provisions of the Waste Supply and Disposal Agreement dated March 19, 2015, as renewed by its terms effective July 5, 2020 through July 4, 2025, and as amended by the Amendment to the Waste Supply and Disposal Agreement dated December 7, 2021, not amended herein, shall be otherwise unaffected by this amendment and shall otherwise remain in force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their respective signatures to be affixed hereto by their proper officers duly authorized, all of the day and year first above written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
ITS: Mayor _____
Pursuant to Resolution _____
Passed _____

ATTEST:

Council Clerk

