

R-121-2018

C-316-2018

**SECOND AMENDMENT TO
LEASE AGREEMENT**

This **SECOND AMENDMENT TO LEASE AGREEMENT** is made this 18th day of August, 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "Lessor") and **CREECH SERVICES, INC.**, 4100 Heraldry Court, Lexington, Kentucky 40513 (hereinafter referred to as "Lessee") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Lessee originally leased twenty (20) acres of land in the borrow area of the Haley Pike Landfill located at 4172 Hedger Lane through a Lease Agreement dated January 25, 2001 (hereinafter referred to as "Lease Agreement"); and

WHEREAS, during the initial five (5) year term of the Lease Agreement, Lessor and Lessee entered into an Amendment to Lease Agreement, dated April 5, 2005 (hereinafter referred to as "Amendment to Lease Agreement"), to include an additional 5.743 acres of borrow area to use as a water retention basin, to extend the renewal options for the Lease, and to address issues relating to water quality and testing; and

WHEREAS, the Amendment to Lease Agreement amended Section 2 of the Lease Agreement to provide that the Lease Agreement may be extended for an additional five (5) successive five (5) year terms, subject to the terms and conditions set forth in the Lease Agreement, which allows the Parties, upon mutual agreement, to extend the Lease Agreement for successive five (5) year terms through January 25, 2031;

WHEREAS, the Parties now desire to amend the Lease Agreement a second time to authorize the extension of the Lease Agreement for five (5) additional successive five (5) year terms, subject to the terms and conditions set forth in the Lease Agreement and the Amendment to Lease Agreement, which will allow the Parties, upon mutual agreement, to extend the Lease Agreement for successive five (5) year terms through January 25, 2056; and

WHEREAS, any reference within the Lease Agreement or the Amendment to the Lease Agreement to numerical "paragraphs" should be construed as synonymous with reference to numerical "sections" within this Second Amendment to the Lease Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Section 2 of the Lease Agreement, as amended by the Amendment to Lease Agreement, be and hereby is further amended to provide that the Lease Agreement may be extended for five (5) additional successive five (5) year terms, upon the agreement of the Parties for each subsequent extension. Should Lessee desire to extend the term of this lease at the end of each five (5) year term, written notice of such desire shall be delivered to the Lessor's Commissioner of Environmental Quality and Public Works, or her equivalent, by no later than ninety (90) days prior to the expiration of the respective term. Lessor agrees that it will not unreasonably withhold approval of requests for additional terms. The additional terms authorized this amendment shall be in addition to the five (5) successive five (5) year terms previously authorized by the Amendment to Lease Agreement. As a result of this amendment, the Parties may, upon

mutual agreement at the end of each respective term, extend the Lease Agreement through January 25, 2056.

2. Section 4 of the Lease Agreement, as amended by the Amendment to Lease Agreement, be and hereby is further amended to read as follows:

If the Lessor terminates the Lease Agreement for reasons other than (a) violation of local, state, or federal law; (b) violation of a condition imposed by the Board of Adjustment; or (c) the failure of the Lessee to otherwise fulfill any term of the Lease Agreement, as amended, Lessor agrees to pay Lessee an amount equal to the value of permanent improvements installed by the Lessee, as determined by the average of three (3) appraisals by three (3) different appraisers, selected by the Lessor and compensated by the Lessee. Notwithstanding the above, reimbursement shall not exceed \$2.5 million. Lessee shall provide, annually, a list of all permanent improvements installed by the Lessee currently existing on the property for which this Section would apply.

3. Section 6 of the Lease Agreement, as amended by the Amendment to the Lease Agreement, be and hereby is further amended to allow the composting of brewers mash, once and if the Lessee obtains the relevant permits from the Board of Adjustment, or any federal, state, or local agency. This use is subject to the conditions and requirements imposed by said permit(s). The indemnification requirements contained within Section 13 of the Lease Agreement, as amended, shall apply to claims resulting from or otherwise related to this additional use.

4. Section 7 of the Lease Agreement be and hereby is amended to allow members of the public to have access to the leased premises for educational purposes with the prior written permission of the Lessor. The indemnification requirements

contained within Section 13 of the Lease, as amended, shall apply to claims resulting from or otherwise related to the presence of members of the public on the leased premises.

5. Section 8 of the Lease Agreement be and hereby is amended to increase the maximum amount of unprocessed compost material on the site at any given time to no more than 18' high unless such material is in windrows. Lessee shall provide a fire control plan to the Lessor's Division of Fire, which shall be approved prior to operation of the composting facility with unprocessed compost material at heights greater the heights previously allowed. The Lessor may reduce this number at its discretion upon written notice to the Lessee if the Lessor determines the height creates a risk to public safety or public health. The indemnification requirements contained within Section 13 of the Lease Agreement, shall apply to claims resulting from or otherwise related to the increased height of the unprocessed compost material.

6. Section 13 of the Lease Agreement shall survive the termination of this Lease Agreement, as amended.

7. Section 14 of the Lease Agreement be and hereby is amended to read as follows:

If Lessee violates or otherwise fails to fulfill any term of this Lease Agreement, as amended, Lessee shall cure such default within thirty (30) days of receipt of notice by Lessor of the default. If a state or federal agency provides time to cure violations relating to state or federal permits, the Lessee shall cure such default within said time. The Lessee shall, at all times during said cure period, work diligently to resolve the violation(s) to Lessor's satisfaction (for violations of the Lease Agreement, as amended) or to the

relevant agency's satisfaction (for violations of state or federal permits). Should the Lessor or relevant federal or state agency at any time become unsatisfied by the progress of the Lessee in correcting violations relating to the Lease Agreement, as amended, or the relevant state or federal permit, respectively, the cure period provided herein shall terminate immediately. There shall be no cure period if, in the sole discretion of the Lessor, the Lessee's violation of the Lease Agreement, as amended, or relevant local, state, or federal law results in the likelihood of significant harm to public safety or public health.

After the relevant cure period provided above, Lessor may terminate the Lease Agreement, as amended, for failure of the Lessee to fulfill any term thereof, or for violation of the Lease Agreement, as amended, or any local, state, or federal law, or condition imposed by the Board of Adjustment by providing ten (10) days written notice to Lessee.

Notwithstanding the above, the Lessor may otherwise terminate the Lease Agreement, as amended, without the ability to cure, by providing the Lessee sixty (60) days written notice upon the occurrence of any one or more of the following events:

- (a) Lessee shall discontinue the use of said premises; or
- (b) If, in the judgment of the Commissioner of Environmental Quality and Public Works, or her equivalent, the maintenance or use of said premises by the Lessee unduly interferes with the operation or maintenance of the Lessor's landfill facility, or with present or future use of said premises by the Lessor for its purposes.

Upon being provided notice of termination as described above, Lessee shall stop accepting any new materials on the leased premises, nor make any new improvements,

and shall thereto timely wind-down its operations at the leased premises to remove all material and equipment therefrom. In no event shall this wind-down period exceed twelve (12) months from the notified end date, provided (a) the Lease was not terminated due to Lessee's violation of the Lease Agreement, as amended, or relevant local, state, or federal law, resulting in the likelihood of significant harm to public safety or public health; (b) the Lease was not terminated due to Lessee's violation of any local, state, or federal law, which would have the effect of prohibiting the Lessee from processing material or selling processed material; (c) the Lessee continues to pay the lease payments and other fees required in the Lease Agreement, as amended, throughout the wind-down period (as if the Lease Agreement, as amended, was not terminated); and (d) the Lessee continues to fulfill all non-monetary conditions contained in the Lease Agreement, as amended, throughout the wind-down period (as if the Lease Agreement, as amended, was not terminated).

Should any of the above conditions become applicable or otherwise remain at any time unsatisfied, the Lessee shall, within the period provided in the sole discretion of the Lessor or the relevant federal, state, or local authority, remove all materials and equipment from the leased premises and otherwise cease operation thereupon. The provisions of Section 16 of the Lease Agreement, as amended, shall apply should the Lessee fail to remove materials and equipment or fail to restore the surface and subsurface of the leased premises by the date the Lessee is required to vacate the premises as provided above. The continuation of the Lessee's use of the leased premises during this wind-down period shall not constitute a waiver by the Lessor of its claims against the Lessee hereunder. Nothing contained in this Section 14 shall provide the

Lessee with any additional rights than those provided in this section. This provision shall survive the termination of the Lease Agreement, as amended.

8. In all other respects, except as specifically modified herein, the terms of the Lease Agreement dated January 25, 2001, as amended by the Amendment to Lease Agreement dated April 5, 2005, shall remain in full force and effect with respect to the terms outlined therein.

IN WITNESS WHEREOF, the Lessor and Lessee sign this Second Amendment to Lease Agreement on the day and year first above written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: *Linda Gorton*
Linda Gorton, Mayor
Pursuant to Resolution No. 425-2023

ATTEST:

Marcie Sock
Deputy Clerk of the Urban County Council

CREECH SERVICES, INC.

BY: *Charles F. Creech*
CHARLES CREECH

ATTEST:

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