

**AMENDMENT TO WASTE SUPPLY AND  
DISPOSAL AGREEMENT**

This **AMENDMENT TO THE WASTE SUPPLY AND DISPOSAL AGREEMENT**, dated this 7<sup>th</sup> day of December, 2021, 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.

**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 initial term of the Agreement between LFUCG and WSB commenced on July 5, 2015 and was for five (5) years through July 4, 2020, and the Agreement was extended and renewed by its terms for one (1) additional five (5) year term commencing on July 5, 2020 and scheduled to terminate on July 4, 2025; and

**WHEREAS**, Section 15 of the Agreement provides that, if an Event of Force Majeure materially and adversely increases either party's costs to perform under the Agreement, LFUCG and WSB shall meet and negotiate in good faith regarding any adjustment in fees; and

**WHEREAS**, the Agreement defines Force Majeure as “any act, event, or condition” reasonably relied upon by WSB or LFUCG which is “beyond the reasonable control of WSB or LFUCG or its agents relying thereon,” specifically including without limitation the occurrence of an epidemic; and

**WHEREAS**, on January 31, 2020, the United States Department of Health and Human Services declared a public health emergency for the novel coronavirus (COVID-19), beginning January 27, 2020; and

**WHEREAS**, on March 6, 2020, Governor Andy Beshear declared a state of emergency in the Commonwealth of Kentucky due to the outbreak of the COVID-19 virus, a public health emergency; and

**WHEREAS**, on March 6, 2020, Linda Gorton, Mayor of the City of Lexington, declared a state of emergency in Lexington-Fayette County due to the outbreak of the COVID-19 virus, a public health emergency; and

**WHEREAS**, the ongoing COVID-19 global pandemic has wrought collateral financial consequences on national, state and local economies, including supply chain interruptions, labor shortages, and equipment shortages, which have decreased the availability of labor, equipment, and supplies, and have increased costs of labor, equipment, and supplies, affecting almost every market sector but especially those market sectors involving essential public infrastructure, including transportation; and

**WHEREAS**, on November 11, 2021, WSB declared that an Event of Force Majeure has occurred (the “Declaration”) and has invoked Section 15 of the Agreement to request a price adjustment, citing the “astronomical financial strain on businesses worldwide” and

increased costs to WSB for the performance of the Agreement presented by the COVID-19 pandemic; and

**WHEREAS**, WSB also asserts in its Declaration that the actions and/or omissions of third-party governmental and/or non-governmental actors have precluded WSB from the lawful operation of the Central Kentucky Landfill owned by WSB thereby triggering the force majeure provisions of the Agreement, but LFUCG denies that said events constitute Events of Force Majeure under the Agreement; and

**WHEREAS**, LFUCG accepts WSB's declaration that the ongoing global COVID-19 pandemic constitutes an Event of Force Majeure under the Agreement and has considered a price adjustment for the duration of the Event of Force Majeure and based solely on the continuing impacts of the ongoing global COVID-19 pandemic; and

**WHEREAS**, pursuant to Section 15 of the Agreement, and in reliance upon the Event of Force Majeure described herein, LFUCG and WSB have negotiated in good faith for a price adjustment, which reflects the sharing of the increased costs for solid waste disposal services by each party in an amount not to exceed fifty percent (50%) of the total estimated increase, applicable for the duration of the Event of Force Majeure; and

**WHEREAS**, LFUCG and WSB desire to amend the Agreement to reflect the agreed-upon price adjustment, and to ensure continuity of service for the duration of the impacts of the Event of Force Majeure, effective as of December 1, 2021.

**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, be and hereby is amended as follows:

1. A new schedule ("SCHEDULE B: COVID-19 IMPACTS") be and hereby is created and appended to the Agreement, to read as follows:

**SCHEDULE B: COVID-19 IMPACTS – Effective 12/1/21**

The parties agree that the ongoing COVID-19 global pandemic has wrought collateral consequences on national, state and local economies, including supply chain interruptions, labor shortages, and equipment shortages, and has increased costs of labor, equipment, and supplies in almost every market sector, especially in those market sectors involving essential public infrastructure, including transportation. The parties agree that these impacts, while they continue, constitute an Event of Force Majeure under the Agreement.

For the duration of these impacts, the contract unit prices contained in Schedule A of the Agreement shall be adjusted by payment of an additional amount on a per-ton basis as follows:

**\$9.95 per ton (Municipal Solid Waste)**

**\$9.95 per ton (Municipal Sewage Sludge)**

These additional per ton amounts shall be cumulative and inclusive of all disposal, transportation, and other fees. In no event shall the total price exceed the following (calculated using prices under Schedule A + Schedule B supplement):

**\$27.70 Total, Per Ton (Municipal Solid Waste)**

**\$28.70 Total, Per Ton (Municipal Sewage Sludge)**

All other fees set forth in Schedule A shall remain the same during the Event of Force Majeure. When WSB or LFUCG believes that the effect of the Event of Force Majeure has ceased, WSB or LFUCG shall provide notice in writing to declare the cessation of the Event of Force Majeure. No later than ten (10) days following such written notice, the parties shall meet and negotiate the reduction of contract prices for the remainder of the contract term based upon cessation of the Event of Force Majeure.

Notwithstanding the foregoing, for the duration of the Event of Force Majeure, WSB shall continue to use its best efforts to minimize the impacts of the Event of Force Majeure as expeditiously as possible, including the exploration of lower cost disposal sites or other cost savings that reasonably inure to the benefit of the parties hereto. Should a lower cost disposal site become available during the Event of Force Majeure, including but not limited to the Central Kentucky Landfill, or

should other cost savings be identified, the parties agree to meet and negotiate the reduction of contract prices for the remainder of the contract term.

2. Section 2.4 of the Agreement ("Covenant for Delivery of Waste") be and hereby is amended in part to read as follows:

2.4 Covenant for Delivery of Waste. [...] LFUCG agrees not to contract during the term of this Agreement with any other Person for the transfer or disposal of LFUCG waste or operate any facility within Fayette County offering the same or similar services as the Transfer Station or the Disposal Site; provided, however, that LFUCG may take all reasonable measures to ensure continuity of service to the maximum extent practicable, including but not limited to re-bidding the services in the event that LFUCG determines that continuity of service may be in jeopardy for any reason. Provided further, that LFUCG specifically reserves the right to dispose of construction and demolition waste collected or generated by LFUCG or LFUCG contractors, Recyclable Materials, and grass, brush, leaves, and similar wastes which are collected by LFUCG, in any manner it determines to be appropriate, whether pursuant to this Agreement or otherwise. [...]

3. Section 8 of the Agreement ("TERMINATION") be and hereby is amended to read as follows:

8. TERMINATION. Either party may terminate this Agreement upon an Event of Default under this Agreement and failure to cure pursuant to Section 10 below by the other party. Provided, however, that if either party believes that continuity of the services provided for by the Agreement are in jeopardy for any reason, this Agreement may be terminated upon written notice not less than sixty (60) days prior to the effective date of termination. In that event, the parties shall continue to take all reasonable measures to ensure continuity of service to the maximum extent practicable, and WSB shall continue to provide the services required by the Agreement for a period of not less than sixty (60) days.

4. A new section of the Agreement be and hereby is created as Section 23 ("Continuity of Service") to read as follows:

23. Continuity of Service. The parties acknowledge and agree that ensuring continuity of the waste disposal service is a material term

of this Agreement. In the interest of ensuring continuity of service, WSB shall clearly identify all primary and backup disposal options it intends to utilize, including but not limited to the legal owner(s) of the facilities, WSB's contractual relationship with the legal owner(s) of the facilities, the available capacity for disposal such facilities, the duration for which the stated capacity is anticipated to be available, documentation reflecting an assurance of disposal capacity for LFUCG waste for the duration of this Agreement, and all disposal cost impacts to LFUCG. Nothing in the agreement, as amended, is intended to nor shall be construed to require that WSB own the disposal facilities that it may resort to utilizing in order to maintain continuity of service, provided WSB provides the required assurance of continuity of service by providing the information and supporting documentation as set forth herein.

Furthermore, WSB shall provide quarterly reports to LFUCG, summarizing disposal and transportation activity provided for LFUCG in the previous quarter, the costs incurred by LFUCG under the Agreement for those services during the previous quarter, and any known circumstances or developments anticipated to occur during the next two (2) quarters which may jeopardize continuity of service under the Agreement, as amended. The parties shall take all reasonable measures to ensure continuity of service to the maximum extent practicable.

5. 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, 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: Linda Gorton

ITS: Mayor

Pursuant to Resolution R-681-2021

Passed 12/2/2021

ATTEST:

MacKenzie Stark  
Council Clerk

**WASTE SERVICES OF THE  
BLUEGRASS, INC.**

BY: W. Todd Skaggs

Name: W. TODD SKAGGS

Title: PRESIDENT

**ACKNOWLEDGMENT**

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF FAYETTE            )

This Amendment to the Waste Supply and Disposal Agreement was acknowledged before me on this the 7<sup>th</sup> day of December, 2021, by W. TODD SKAGGS, as PRESIDENT of WASTE SERVICES OF THE BLUEGRASS, INC., a Kentucky Corporation, on behalf of said corporation.

My Commission Expires: 7/19/22

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