

**AN ORDINANCE TO AUTHORIZE A MUNICIPAL DISCOUNT DISPOSAL FEE AGREEMENT WITH THE DELAWARE SOLID WASTE AUTHORITY FOR THE DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS**

#4227

Sponsor:

Council  
Member  
Shabazz

WHEREAS, the City of Wilmington ("City") is required pursuant to 7 Del. C. §6422 (b) to dispose of all solid wastes generated within the city at a Delaware Solid Waste Authority ("DSWA") facility;

WHEREAS, the City currently disposes its solid waste at DSWA's Cherry Island Landfill at a cost of \$85 per ton in tipping fees;

WHEREAS, DSWA has initiated, for the first time, a contractual arrangement in which municipalities that collect and transport solid and dry waste generated within their own municipal boundaries with their own equipment and labor force will receive a discount off specified base rates if the municipalities enter into a five year Municipal Discount Disposal Fee Agreement ("MDDFA") with DSWA to deliver solid wastes and recyclable materials to DSWA;

WHEREAS, the discount allows the City to save \$20 per ton of solid waste for the first year, \$19 per ton the second year, \$18 per ton the third year, \$17 per ton the fourth year, and \$16 per ton the fifth year if the City enters into this MDDFA to deliver solid waste to DSWA;

WHEREAS, if the City also agrees to deliver its recyclable materials to DSWA, this MDDFA would allow the City to pay \$0.00 per ton for recyclable material over the course of five years, with a reduced discount for solid wastes;

WHEREAS, if the City agrees to deliver both recyclable material and solid waste to DSWA, the discount allows the City to save \$16 per ton of solid waste for the first

year, \$15 per ton the second year, \$14 per ton the third year, \$13 per ton the fourth year, and \$12 per ton the fifth year;

**WHEREAS**, if the City does not dispose of recyclable materials at a DSWA partner facility, the City would otherwise pay a variable rate for recycling over the next five years, which is currently at \$32 per ton;

**WHEREAS**, the City Public Works Department and the City Parks and Recreation Department wish to enter into a MDDFA that includes disposal of recyclable material;

**WHEREAS**, entering into the MDDFAs would save the City approximately \$1,828,000 over the course of five years in solid waste disposal costs, and up to \$150,400 per year (at current market rates) in recycling costs;

**NOW, THEREFORE THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The Agreement between the City and the Delaware Solid Waste Authority, to enter into a Municipal Discount Disposal Fee Agreements for a period of five years beginning upon execution hereof.

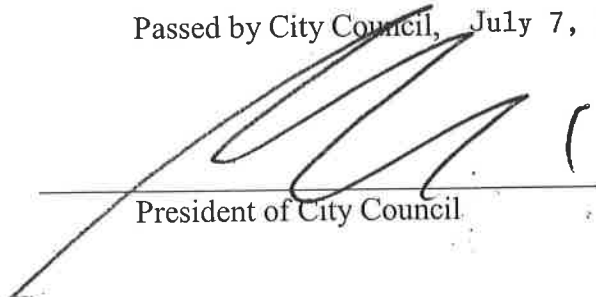
The Municipal Discount Disposal Fee Agreement shall be between the Delaware Solid Waste Authority and the City of Wilmington for delivery of solid waste and recyclable materials. The price per ton for recyclables shall not exceed \$0.00 per ton; for solid waste, the price shall not exceed Sixty Nine Dollars (\$69.00) for each ton of solid and dry waste delivered to the Authority Landfills from the effective date hereof through June 30, 2017; Seventy Dollars (\$70.00) for each ton of solid and dry waste delivered to the Authority Landfills from July 1, 2017 through June 30, 2018; Seventy One Dollars (\$71.00) for each ton

of solid and dry waste delivered to the Authority Landfills from July 1, 2018 through June 30, 2019; Seventy Two Dollars (\$72.00) for each ton of solid and dry waste delivered to the Authority Landfills from July 1, 2019 through June 30, 2020; and Seventy Three Dollars (\$73.00) for each ton of solid and dry waste delivered to the Authority Landfills from July 1, 2020 through June 30, 2021. A copy of this Agreement, in substantial form, is attached hereto as "Exhibit A," and is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute as many copies of said agreement, as well as all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

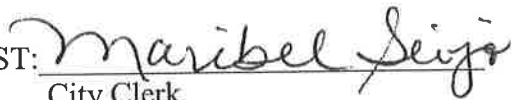
First Reading . . . . June 2, 2016  
Second Reading . . . June 2, 2016  
Third Reading . . . . July 7, 2016

Passed by City Council, July 7, 2016

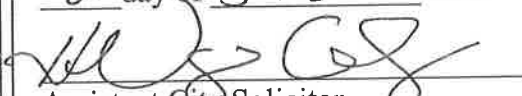


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President of City Council

ATTEST:   
City Clerk

Approved as to form this  
2 day of June 2016



\_\_\_\_\_

Assistant City Solicitor

Approved this 11 day of  
July, 2016

Devin O. Williams  
Mayor

**SYNOPSIS:** This Ordinance authorizes the City to enter into an agreement with the Delaware Solid Waste Authority, to obtain reduced tipping fees on solid waste and recyclable materials generated within the City for a period of five years, for a savings of approximately \$1,828,000.00 over the course of five years in solid waste disposal and up to \$150,400 per year (at current market rates) for recyclable material.

# EXHIBIT A

**MUNICIPAL DISCOUNT DISPOSAL FEE AGREEMENT  
(OPTION FOR REBATE OR DISCOUNT)**

THIS AGREEMENT, entered into by and between the Delaware Solid Waste Authority ("Authority") and \_\_\_\_\_ ("Customer"), made this \_\_\_\_\_, of \_\_\_\_\_, 20\_\_\_\_.

WHEREAS, the Authority owns and operates facilities throughout the State of Delaware; and

WHEREAS, the Authority receives solid waste at its facilities from various customers who collect and/or transport solid waste generated in the State of Delaware; and

WHEREAS, the Authority is required to accept recyclable materials from municipalities and nonmunicipal persons at no cost under such contractual terms and conditions as mutually agreed; and

WHEREAS, the Customer wishes to utilize the services of the Authority for the receipt and disposal of all Customer's solid waste and recyclable materials collected in the State of Delaware; and

WHEREAS, for municipalities within the State of Delaware that collect and transport solid waste and dry waste generated within their municipal boundaries with their own equipment and labor force the Authority is willing to provide an option to such municipalities that allows the municipality to choose to receive a rebate or a discount off of the specified base rates; and

WHEREAS, the Authority wishes to provide disposal services to Customer under this Agreement as an integral part of fulfilling its statutory responsibilities and satisfying its financial obligations.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

1. Customer shall, subject to the exceptions set forth in Paragraph 11 hereafter, deliver to Authority designated facilities all solid waste, including all recyclable materials as defined in Section 2.0 of the *Regulations of the Delaware Solid Waste Authority* ("Recyclable Materials"), that is generated in the State of Delaware which is collected and/or transported by Customer during the term of this Agreement.

2. Excepting special categories of waste for which the Authority sets special disposal fees from time to time, for the term of this Agreement, Customer shall pay to the Authority disposal base rates as follows:
  - (a) A base rate of Eighty Five Dollars (\$85.00) for each ton of solid waste (excluding construction and demolition waste) delivered to the Authority designated facilities.
  - (b) Base rates for construction and demolition waste, as defined in the Regulations of the Delaware Solid Waste Authority, 1 De. Admin. C. § 501, shall be determined by the Authority from time to time for each Authority facility, provided that the Authority shall post the base rates and any changed base rates for construction and demolition waste applicable to its designated facilities at least ten (10) days in advance of the effective date of such base rates for the facility. Customer shall pay a disposal fee for construction and demolition waste that is \$10 less than the published and applicable base rate for construction and demolition waste for the term of this Agreement.
  - (c) The Authority shall charge a base rate of \$0 for the delivery of Recyclable Materials to Authority designated facilities.
3. In the event the Authority establishes a general base rate for disposal of solid waste below the base rates specified in Paragraph 2 above for the time periods indicated, Customer shall be entitled to such lower base rates while such lower base rates are in effect. The delivery of yard waste to Authority facilities shall be subject to any limitations or prohibitions imposed by law, regulations and permit conditions, and any special restrictions or requirements imposed by the Authority.
4. The term of this Agreement shall be from July 1, 2016 or the execution date of this Agreement thereafter to June 30, 2021.
5. The following rebates shall be paid to Customer upon all fees paid pursuant to Paragraph 2(a) of this Agreement: for each ton of solid waste delivered to the Authority landfills; namely, the Northern Solid Waste Facility located at Cherry Island in Delaware, the Central Solid Waste Facility located at Sandtown in Delaware, and the Southern Solid Waste Facility located at Jones Crossroads in Delaware:
  - (a) A rebate of Sixteen Dollars (\$16.00) shall be paid by the Authority for solid waste so delivered from the effective date hereof through June 30, 2017;
  - (b) A rebate of Fifteen Dollars (\$15.00) shall be paid by the Authority for solid waste so delivered from July 1, 2017 through June 30, 2018;
  - (c) A rebate of Fourteen Dollars (\$14.00) shall be paid by the Authority for solid waste so delivered from July 1, 2018 through June 30, 2019;

- (d) A rebate of Thirteen Dollars (\$13.00) shall be paid by the Authority for solid waste so delivered from July 1, 2019 through June 30, 2020; and
  - (e) A rebate of Twelve Dollars (\$12.00) shall be paid by the Authority for solid waste so delivered from July 1, 2020 through June 30, 2021.
6. The following rebates shall be paid to Customer upon all fees paid pursuant to Paragraph 2(a) of this Agreement for each ton of solid waste delivered to the Authority transfer stations; namely, the Pine Tree Corner facility, the Milford facility, and the Route 5 facility:
- (a) A rebate of Six Dollars (\$6.00) shall be paid by the Authority for solid waste so delivered from the effective date hereof through June 30, 2017;
  - (b) A rebate of Five Dollars and Fifty Cents (\$5.50) shall be paid by the Authority for solid waste so delivered from July 1, 2017 through June 30, 2018;
  - (c) A rebate of Five Dollars (\$5.00) shall be paid by the Authority for solid waste so delivered from July 1, 2018 through June 30, 2019;
  - (d) A rebate of Four Dollars and Fifty Cents (\$4.50) shall be paid by the Authority for solid waste so delivered from July 1, 2019 through June 30, 2020; and
  - (e) A rebate of Four Dollars (\$4.00) shall be paid by the Authority for solid waste so delivered from July 1, 2020 through June 30, 2021.
7. The rebates set forth in Paragraphs 5 and 6 above shall be paid to Customer by Authority in two installments per fiscal year running July 1<sup>st</sup> through June 30<sup>th</sup>. The first installment shall be such rebate as is due on all fees paid by Customer to the Authority through December 31<sup>st</sup>, and shall be due on or before February 15<sup>th</sup>. The second and final installment for the fiscal year in question shall be such rebate as is due on all fees paid by Customer to the authority from January 1<sup>st</sup> through June 30<sup>th</sup>, and shall be due no later than August 15<sup>th</sup> of the following fiscal year.
8. Provided that Customer owns and operates its own solid waste and dry waste collection system, Customer shall have the option under this Agreement to pay the following discounted rates for the periods indicated in lieu of receiving the rebates otherwise provided for in paragraphs 5 and 6 of this Agreement:
- (a) Sixty Nine Dollars (\$69.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority landfills; namely, the Northern Solid Waste Facility located at Cherry Island in Delaware, the Central Solid Waste Facility located at Sandtown in Delaware, and the Southern Solid Waste Facility located at Jones Crossroads in Delaware; and Seventy Nine



Dollars (\$79.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority transfer stations, namely the Pine Tree Corner facility, the Milford facility, and the Route 5 facility, from the effective date hereof through June 30, 2017.

- (b) Seventy Dollars (\$70.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority landfills; namely, the Northern Solid Waste Facility located at Cherry Island in Delaware, the Central Solid Waste Facility located at Sandtown in Delaware, and the Southern Solid Waste Facility located at Jones Crossroads in Delaware; and Seventy Nine Dollars and Fifty Cents (\$79.50) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority transfer stations, namely the Pine Tree Corner facility, the Milford facility, and the Route 5 facility, from July 1, 2017 through June 30, 2018.
- (c) Seventy One Dollars (\$71.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority landfills; namely, the Northern Solid Waste Facility located at Cherry Island in Delaware, the Central Solid Waste Facility located at Sandtown in Delaware, and the Southern Solid Waste Facility located at Jones Crossroads in Delaware; and Eighty Dollars (\$80.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority transfer stations, namely the Pine Tree Corner facility, the Milford facility, and the Route 5 facility, from July 1, 2018 through June 30, 2019.
- (d) Seventy Two Dollars (\$72.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority landfills; namely, the Northern Solid Waste Facility located at Cherry Island in Delaware, the Central Solid Waste Facility located at Sandtown in Delaware, and the Southern Solid Waste Facility located at Jones Crossroads in Delaware; and Eighty Dollars and Fifty Cents (\$80.50) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority transfer stations, namely the Pine Tree Corner facility, the Milford facility, and the Route 5 facility, from July 1, 2019 through June 30, 2020.
- (e) Seventy Three Dollars (\$73.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority landfills; namely, the Northern Solid Waste Facility located at Cherry Island in Delaware, the Central Solid Waste Facility located at Sandtown in Delaware, and the Southern Solid Waste Facility located at Jones Crossroads in Delaware; and Eighty One Dollars (\$81.00) for each ton of solid waste and dry waste (excluding construction and demolition waste) delivered to the Authority transfer stations, namely the Pine Tree Corner facility, the Milford facility, and the Route 5 facility, from July 1, 2020 through June 30, 2021.

In order to exercise the option provided under this Paragraph 8, the Customer shall provide written notice to the Authority of its election at the time of execution of this Agreement and prior to July 1 of any subsequent yearly period that the discount applies, and indicate in such written notice the number of yearly periods covered by the exercise of the option. In the event Customer wishes to make a change to the rebate system of payments, it may do so by providing written notice to the Authority prior to July 1, of any yearly period that the discount applies, and indicate in such written notice the number of yearly periods covered by the notice.

9. No rebate otherwise payable under Paragraphs 5 and 6 hereof shall be due to Customer unless all payments have been made to the Authority by Customer for all services provided by the Authority for the period in question. If Customer has not made full payment due for all services provided by the Authority within ninety (90) days of the end of the applicable period, then the entire rebate for the period shall be forfeited without offset for any amounts due from Customer. Payment of all rebates pursuant to Paragraphs 5 and 6 are conditioned on Customer's full compliance with the terms and conditions of this Agreement during the applicable rebate delivery period.
10. The rates and rebates set forth herein shall be conditioned on full payment by Customer of all amounts due, when due, by Customer under the Authority's payment policy for services provided by the Authority, provided, however, that delinquent payment shall not relieve Customer of the obligation to deliver all solid waste and Recyclable Materials to designated Authority facilities in accordance with the requirements set forth in Paragraph 1 above.
11. For purposes of this Agreement the solid waste and Recyclable Materials required to be delivered to designated Authority facilities under Paragraph 1 above shall not include:
  - (a) Special solid waste as defined by the Authority;
  - (b) Industrial solid waste as defined by the Authority;
  - (c) Agricultural waste generated on a farm;
  - (d) Tires;
  - (e) Non-hazardous waste resulting from emergency clean-up actions;
  - (f) Waste materials collected from industrial facilities which have adopted and implemented a company wide policy requiring all waste materials generated at the industrial facility to be disposed at waste to energy plants. In order to qualify for the exemption, Customer must provide prior written notification from the industrial facility to the Authority stating the industrial facility's policy, and the

name and location of the waste to energy plant where the waste materials are being taken;

- (g) Yard waste; and
- (h) Construction and demolition waste not diverted to a recycling facility if generated and collected in New Castle County, Delaware.

Customer may, however, deliver to Authority designated facilities the solid waste generated in the State of Delaware and identified in subparagraphs (a) through (i) above, subject to payment of the applicable disposal fee, and subject to compliance with laws, regulations and permit conditions, and the Authority's rules, regulations and procedures pertaining to such solid waste.

12. By entering into this Agreement Customer expressly waives any right to challenge, or otherwise raise the legal sufficiency of, the Regulations of the Authority and/or the Statewide Solid Waste Management Plan in effect as of the date of this Agreement to the extent that such regulations or Statewide Solid Waste Management Plan addresses requirements for the delivery of solid waste to Authority designated facilities.

13. It shall be a condition of default and cause for termination if Customer:

- (a) Fails to maintain a current payment account in accordance with Authority's rules, regulations, procedures, and payment policies;
- (b) Fails to deliver the solid waste and Recyclable Materials required to be delivered to the Authority's facilities under this Agreement, provided, however, that unintentional and non-material failures by Customer to make the required delivery of solid waste will not be grounds for termination if the Customer provides written notice of the failure within seventy-two (72) hours of the event, and cures such failure by making arrangements for delivery to Authority facilities of sufficient amounts of acceptable alternative or replacement solid waste and Recyclable Materials generated in the State of Delaware, and not subject to the requirements of Paragraph 1 above, to account for the short fall in tonnage and user fee loss experienced by the Authority as a result of the failure;
- (c) Fails to comply with any other provision of this Agreement; or
- (c) Fails on a repeated basis to comply with laws and regulations applicable to solid waste collection and transportation, or the Authority's rules, regulations and policies.

14. It shall be a condition of default and cause for termination if the Authority engages in the curbside collection of municipal solid waste or Recyclable Materials, provided that the default is not cured by Authority within (30) days of written notification by Customer to Authority of the default.

15. Customer and Authority shall be relieved of responsibility for performance under this Agreement to the extent and for such time or times in which Customer or Authority are prevented or substantially impaired from performing obligations under this Agreement by reason of changes in law or official governmental action by rule, order, regulation or otherwise.
16. This Agreement shall inure to the benefit of and be binding on Customer, its successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, contractors and sub-contractors, and all other entities, existing or newly formed, controlled directly or indirectly by Customer or its successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, and all other entities, existing or newly formed, controlled directly or indirectly by them, through changes in ownership or status, by transfer of assets or otherwise, and which engage in the collection and/or transportation of solid waste and/or Recyclable Materials generated in the State of Delaware.
18. This Agreement shall be interpreted in accordance with the laws of the State of Delaware. Any lawsuit initiated with respect to this Agreement shall be filed in the State courts of the State of Delaware.
19. This Agreement represents the entire understanding of the parties. This Agreement shall not be amended without the written consent of both parties. If Customer has entered a separate Discount Disposal Fee Agreement with the Authority which is in effect at the time of execution of this Agreement, such prior Agreement shall remain in effect until its expiration date.

IN WITNESS WHEREOF, the Authority and Customer have entered this Discount Disposal Fee Agreement on the date and year first above written.

*[Signature page follows]*

**DELAWARE SOLID WASTE AUTHORITY**

**CUSTOMER**

By: \_\_\_\_\_ (S)  
(Signature)

By: \_\_\_\_\_ (S)  
(Signature)

By: \_\_\_\_\_  
(Please Print Name)

By: \_\_\_\_\_  
(Please Print Name)

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

DSWA Account # \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_