

AN ORDINANCE TO AUTHORIZE AND APPROVE A DISCOUNT DISPOSAL FEE AGREEMENT BETWEEN THE CITY OF WILMINGTON AND THE DELAWARE SOLID WASTE AUTHORITY

#0089

Sponsor:

Council
Member
Oliver

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City is required, pursuant to 7 *Del. C.* § 6422(b), to dispose of all solid waste collected by the City in the State of Delaware at a Delaware Solid Waste Authority (“DSWA”) facility; and

WHEREAS, the City desires to enter into a discount disposal fee agreement with DSWA for (1) receipt and disposal of all solid waste collected and/or transported by the City in Delaware and (2) receipt and processing of some or all of the recyclable materials collected and/or transported by the City in Delaware (the “Agreement”), a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit “A”; and

WHEREAS, the term of the Agreement is for a period of three (3) years from July 1, 2021 through June 30, 2024; and

WHEREAS, the City will pay DSWA the following rates (net of rebates) for each ton of solid waste (excluding construction and demolition waste) delivered by the City to DSWA: Seventy Dollars (\$70.00) for the first year of the Agreement; Seventy-One Dollars (\$71.00) for the second year of the Agreement; and Seventy-Two Dollars (\$72.00) for the third year of the Agreement; and

WHEREAS, the City will pay DSWA a discounted variable rate for each ton of construction and demolition waste delivered by the City to DSWA; and

WHEREAS, the City will pay DSWA Zero Dollars (\$0.00) for each ton of recyclable materials delivered by the City to DSWA; and

WHEREAS, it is the recommendation of the Department of Public Works that the City enter into the Agreement with DSWA.

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

SECTION 1. The Agreement between the City and the Delaware Solid Waste Authority for receipt and disposal of solid waste and receipt and processing of recyclable materials, a copy of which, in substantial form, is attached hereto as Exhibit "A", for the term of three (3) years from July 1, 2021 through June 30, 2024, at (i) the rates of Seventy Dollars (\$70.00) for the first year of the Agreement, Seventy-One Dollars (\$71.00) for the second year of the Agreement, and Seventy-Two Dollars (\$72.00) for the third year of the Agreement for each ton of solid waste (excluding construction and demolition waste), (ii) a discounted variable rate for each ton of construction and demolition waste, and (iii) the rate of Zero Dollars (\$0.00) for recyclable materials, is hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

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

First Reading..... August 26, 2021
Second Reading..... August 26, 2021
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of a discount disposal fee agreement between the City of Wilmington and the Delaware Solid Waste Authority for receipt and disposal of solid waste and receipt and processing of recyclable materials for the period of three (3) years from July 1, 2021 through June 30, 2024.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is an agreement for the period of three (3) years from July 1, 2021 through June 30, 2024 at (i) the rates of Seventy Dollars (\$70.00) for the first year of the Agreement, Seventy-One Dollars (\$71.00) for the second year of the Agreement, and Seventy-Two Dollars (\$72.00) for the third year of the Agreement for each ton of solid waste (excluding construction and demolition waste), (ii) a discounted variable rate for each ton of construction and demolition waste, and (iii) the rate of Zero Dollars (\$0.00) for recyclable materials. For reference, the City paid approximately Two Million Dollars (\$2,000,000.00) to DSWA for the aforementioned services in Fiscal Year 2021.

W0115191

EXHIBIT A

Effective Dates:

Begin: July 1, 2021

End: June 30, 2024

DISCOUNT DISPOSAL FEE AGREEMENT

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 and recyclable materials at its facilities from various customers who collect and/or transport solid waste and/or recyclable materials generated in the State of Delaware; and

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

WHEREAS, the Customer wishes to utilize the services of the Authority for the receipt and processing of some or all of Customer's recyclable materials collected in the State of Delaware; and

WHEREAS, if the Customer is a solid waste hauler licensed as such by DSWA, the Customer is willing to provide certain products or services to DSWA as an inducement for DSWA to enter into this Agreement; 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 10 hereafter, deliver to Authority designated facilities all solid waste 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.
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, 2021 or the execution date of this Agreement thereafter to June 30, 2024.
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 Fifteen Dollars (\$15.00) shall be paid by the Authority for solid waste so delivered from the effective date hereof through June 30, 2022;
 - (b) A rebate of Fourteen Dollars (\$14.00) shall be paid by the Authority for solid waste so delivered from July 1, 2022 through June 30, 2023; and
 - (c) A rebate of Thirteen Dollars (\$13.00) shall be paid by the Authority for solid waste so delivered from July 1, 2023 through June 30, 2024.
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 Seven Dollars and Fifty Cents (\$7.50) shall be paid by the Authority for solid waste so delivered from the effective date hereof through June 30, 2022;
 - (b) A rebate of Seven Dollars (\$7.00) shall be paid by the Authority for solid waste so delivered from July 1, 2022 through June 30, 2023; and

- (c) A rebate of Six Dollars and Fifty Cents (\$6.50) shall be paid by the Authority for solid waste so delivered from July 1, 2023 through June 30, 2024.
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 1st through June 30th. The first installment shall be such rebate as is due on all fees paid by Customer to the Authority through December 31st, and shall be due on or before February 15th. 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 1st through June 30th, and shall be due no later than August 15th of the following fiscal year.
8. 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.
9. 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 to designated Authority facilities in accordance with the requirements set forth in Paragraph 1 above.
10. For purposes of this Agreement the solid waste required to be delivered to designated Authority facilities under Paragraph 1 above shall not include:
- (a) Recyclable materials source separated at the place of generation (which includes construction and demolition waste diverted to a recycling facility as well as any materials collected under curbside recycling programs), provided however, the waste residue resulting from the recycling, resource recovery or beneficial use of such source separated recyclable materials which is generated from recycling, resource recovery or beneficial use operations conducted within the State of Delaware shall not be subject to this exemption.
- (i) In order to qualify for the exemption respecting source separated recyclable materials, Customer shall provide written advance notification to the Authority of the location and name of the facility at which recyclable materials are being processed, and written certification of the percentage by weight of the recyclable materials that are recovered by the facility and reused. In order to qualify for the exemption (1) the rate of recovery from source separated recyclable materials shall be at least eighty percent (80%) by weight; (2) the rate of recovery from construction and demolition waste shall be at least fifty percent (50%) by weight; and (3) such recovered recyclable materials must be recovered and reused. This exception shall not

apply to solid waste collected for purposes of incineration or conversion to any type or form of waste derived fuel, in whole or in part. This exception shall also not apply if the facility at which the recyclable materials are being handled or processed is not operating in full compliance with applicable federal, state and local laws, regulations, ordinances, permits, conditions or other requirements.

- (b) Special solid waste as defined by the Authority;
- (c) Industrial solid waste as defined by the Authority;
- (d) Agricultural waste generated on a farm;
- (e) Tires;
- (f) Non-hazardous waste resulting from emergency clean-up actions;
- (g) 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;
- (h) Yard waste; and
- (i) 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.

11. If Customer is a hauler licensed by the Authority, Customer agrees to the additional requirements set forth in Exhibit A hereto.

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 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 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
 - (d) 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.
15. It shall be a condition of default and cause for termination if the Authority engages in the curbside collection of municipal solid waste, excluding recyclable materials, provided that the default is not cured by Authority within (30) days of written notification by Customer to Authority of the default.
16. 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.
17. 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 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.

DELAWARE SOLID WASTE AUTHORITY

CUSTOMER

By: _____ (S)
(Signature)

By: _____ (S)
(Signature)

By: _____
(Please Print Name)

By: _____
(Please Print Name)

Witness: _____

Witness: _____

DSWA Account # _____

Address: _____
