

Effective Dates:

Begin: July 1, 2016

End: June 30, 2021



DISCOUNT DISPOSAL FEE AGREEMENT

THIS AGREEMENT, entered into by and between the Delaware Solid Waste Authority ("Authority") and The Town of Elsmere ("Customer"), made this 16th, of June, 2016.

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 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 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

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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, 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 Twenty Dollars (\$20.00) shall be paid by the Authority for solid waste so delivered from the effective date hereof through June 30, 2017;
 - (b) A rebate of Nineteen Dollars (\$19.00) shall be paid by the Authority for solid waste so delivered from July 1, 2017 through June 30, 2018;
 - (c) A rebate of Eighteen Dollars (\$18.00) shall be paid by the Authority for solid waste so delivered from July 1, 2018 through June 30, 2019;
 - (d) A rebate of Seventeen Dollars (\$17.00) shall be paid by the Authority for solid waste so delivered from July 1, 2019 through June 30, 2020; and
 - (e) A rebate of Sixteen Dollars (\$16.00) 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 Ten Dollars (\$10.00) shall be paid by the Authority for solid waste so delivered from the effective date hereof through June 30, 2017;

- (b) A rebate of Nine Dollars and Fifty Cents (\$9.50) shall be paid by the Authority for solid waste so delivered from July 1, 2017 through June 30, 2018;
 - (c) A rebate of Nine Dollars (\$9.00) shall be paid by the Authority for solid waste so delivered from July 1, 2018 through June 30, 2019;
 - (d) A rebate of Eight Dollars and Fifty Cents (\$8.50) shall be paid by the Authority for solid waste so delivered from July 1, 2019 through June 30, 2020; and
 - (e) A rebate of Eight Dollars (\$8.00) 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 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. 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.
12. 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
 - (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.
13. 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.
14. 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.
15. 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.

- 16. 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.
- 17. 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: [Signature] (S)
(Signature)

By: [Signature] (S)
(Signature)

By: Michael D. Parkowski
(Please Print Name)

By: John S. Gills Jr
(Please Print Name)

Witness: Jodie H. Stewa

Witness: Dana J Reed

DSWA Account # 000029

Address: 11 Poplar Avenue
Elsmere DE 19805



DELAWARE SOLID WASTE AUTHORITY

Richard P. Watson, P.E., BCEE
Chief Executive Officer

Robin M. Roddy, P.E., BCEE
Chief Operating Officer

Board of Directors

Gerard L. Esposito
Chairman
Ronald G. McCabe
Vice Chairman
Timothy P. Sheldon
Tonda L. Parks
Norman D. Griffiths
Michael R. Paraskewich, Jr., Ph.D., P.E.
William J. Strickland

June 27, 2016

The Town of Elsmere
11 Poplar Avenue
Elsmere, DE 19805

Dear Customer:

RE: Account 0029

On behalf of the Delaware Solid Waste Authority I would like to thank you for becoming a Discount Disposal Fee (DDF) Customer. Enclosed you will find a signed copy of the DDF contract. Keep this copy for your records. If you have any questions or concerns, please call me on my cell phone at 302-242-4491.

Thank you,

Michael D. Parkowski
Chief of Business & Governmental Services

RECEIVED
JUN 29 2016

BY: _____