

UTILITY COMMITTEE

A G E N D A

April 11, 2005 - 5:30 P.M. - Council Chambers - City Hall - City of Dover
*Public comments are welcomed on any item and will be permitted at appropriate times.
When possible, please notify the City Clerk (736-7008 or e-mail at Jgreen@dover.de.us)
should you wish to be recognized.*

AGENDA ADDITIONS/DELETIONS

1. Differential Disposal Fee Agreement - Delaware Solid Waste Authority
2. Adjournment by 6:00 P.M.

/jg

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THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

ACTION FORM

PROCEEDING: Utility Committee	AGENDA ITEM: 4/11/05 – 1
DEPARTMENT OF ORIGIN: Public Works	DATE SUBMITTED: 1-25-05
PREPARED BY: Scott D. Koenig, P.E. , Director of Public Works	
SUBJECT: Differential Disposal Fee Agreement – Delaware Solid Waste Authority	
REFERENCE: N/A	
RELATED PROJECT: N/A	
APPROVALS: City Manager, Finance Director	
EXHIBITS: Exhibit A – Current Differential Disposal Fee Agreement; Exhibit B – Proposed Differential Disposal Fee Agreement	
EXPENDITURE REQUIRED: \$1,287,350 EST. (FY-2006) AMOUNT BUDGETED: \$ N/A	
FUNDING SOURCE (Dept./Page in CIP & Budget): Sanitation Division Budget; page 332 of the 2005 Annual Operating Budget (Line item # 110-1800-555.30-31); FY-2005 Line item budget is \$1,133,000	
TIMETABLE: Execute agreement prior to June 30, 2005	
RECOMMENDED ACTION: Authorize the City Manager to execute the proposed Differential Disposal Fee Agreement with the Delaware Solid Waste Authority (DSWA) to provide municipal solid waste disposal services for the City of Dover from July 1, 2005 thru June 30, 2010 at the rates set forth in the agreement.	

BACKGROUND AND ANALYSIS

On August 31, 2001, the City of Dover entered into a formal agreement known as the Differential Disposal Fee Agreement, with the Delaware Solid Waste Authority. This agreement set the disposal rate for municipal solid waste at \$58.50 per ton and bulk or dry waste rate at \$40.00 per ton. The current agreement expires on June 30, 2005. The bulk/dry waste rate of \$40.00 per ton has yielded the following savings:

FY-2002:	1,252.60	\$ 23,271.77	(6 months)
FY-2003:	3,290.38	\$ 62,469.88	(12 months)
FY-2004:	3,053.78	\$ 55,755.34	(12 months)
FY-2005	1,647.41	\$ 30,477.09	(6 months)

In addition, the annual rebate associated with the current agreement has yielded the following savings:

FY-2002:	\$ 171,447.90	(Received on 08-14-2002)
FY-2003:	\$ 159,555.70	(Received on 08-15-2003)
FY-2004:	\$ 175,582.80	(Received on 08-13-2004)

Estimated Impact:

The proposed agreement covers the period from July 1, 2005 thru June 30, 2010 and sets the solid waste rate at \$61.50 per ton and the bulk or dry waste rate at \$42.00 per ton (maximum) for the duration of the agreement. Based on the current solid waste tonnage projections in the amount of 21,900 tons (19,500 tons of municipal solid waste and 2,400 tons of dry waste) for FY-2006 which begins July 1, 2005, the Department of Public Works anticipates an impact on the sanitation budget in the amount of \$62,666.50 (increase). This impact is the result of the \$3.00 per ton increase on municipal solid waste plus the \$2.00 per ton increase on the dry waste component of the tonnage. The projected increase assumes that we will be receiving a 1% discount for early payment as has been traditionally applied to the City of Dover account. This increase in the expenses does not change the projection of the Delaware Solid Waste Authority rebate which will remain at \$10.00 per ton for municipal solid waste.

To the best of our knowledge, the proposed agreement does not address any of the proposed recycling legislation other than the continuance of the Recycle Delaware Program (drop off locations). In FY-2005, the user fee of \$58.50 per ton includes Environmental Surcharges of \$6.65/Ton for Recycling Programs and \$0.19/Ton for the Household Hazardous Waste Collection Program.

Exhibit A

City of Dover
DSWA Contract **RECEIVED**

DIFFERENTIAL DISPOSAL FEE AGREEMENT

SEP 17 20

DSWA

THIS AGREEMENT, entered into by and between the Delaware Solid Waste Authority ("Authority") and City of Dover ("Customer"), made this 31 of August, 2001.

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

WHEREAS, the Authority receives solid waste and dry waste at its facilities from various customers who collect and/or transport solid waste and dry 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 and all Customer's specified dry 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 8 hereafter, deliver to Authority 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. Customer shall, subject to the exceptions set forth in Paragraph 8 hereafter, deliver to any of Authority's designated solid waste facilities, all dry waste generated in the geographic area of

the State of Delaware located south of the Chesapeake and Delaware Canal, which is collected and/or transported by Customer during the term of this Agreement. Customer shall be entitled, but not required, to deliver to Authority designated solid waste facilities, dry waste generated in the geographic area of the State of Delaware located north of the Chesapeake and Delaware Canal, and pay the rate as set forth in Paragraph 4 below. Customer shall also be entitled, but not required, to deliver dry waste to Authority's Northern Solid Waste Facility located at Cherry Island in Delaware, and pay the rate for solid waste subject to rebate as set forth in Paragraph 3 below.

3. Customer shall pay to the Authority a base rate of Fifty-Eight Dollars and Fifty Cents (\$58.50) for each ton of solid waste delivered to the Authority, subject to the rebates hereinafter set forth.

4. Customer shall pay to the Authority a rate of Forty Dollars (\$40.00) for each ton of dry waste delivered to the Authority at Authority designated solid waste facilities, which shall include at a minimum, the Central Solid Waste Facility located at Sandtown in Delaware and the Southern Solid Waste Facility located at Jones Crossroads in Delaware, but which shall not include the Northern Solid Waste Facility located at Cherry Island in Delaware. In the event the Authority establishes its user fee for disposal of dry waste above Forty Dollars (\$40.00) per ton, at the designated facilities, Customer shall be entitled to the Forty Dollar (\$40.00) per ton rate at the designated facilities for and during the term of this Agreement. In the event the Authority establishes a user fee for disposal of dry waste below Forty Dollars (\$40.00) per ton at any time during the term of this Agreement at the designated facilities, Customer shall be entitled to such lower rate while such lower rate is in effect. Dry waste shall be as defined in the Regulations of

the Delaware Solid Waste Authority and shall be delivered to the Authority designated facilities in separated loads free of any commingled municipal solid waste.

5. The term of this Agreement shall be from its effective date to June 30, 2005.

6. A rebate of Ten Dollars (\$10.00) shall be paid by the Authority to Customer for each ton of solid waste delivered to Authority facilities, other than the Northern Solid Waste Facility located at Cherry Island in Delaware, and for which the base rate disposal fee of Fifty Eight Dollars and Fifty Cents (\$58.50) per ton has been paid to the Authority. A rebate of Thirteen Dollars and Fifty Cents (\$13.50) shall be paid by the Authority to Customer for each ton of solid waste or dry waste delivered to Authority's Northern Solid Waste Facility located at Cherry Island in Delaware and for which the base rate disposal fee of Fifty-Eight Dollars and Fifty Cents (\$58.50) per ton has been paid to the Authority. The rebate shall be paid for the following periods in which solid waste has been delivered:

(a) July 1, 2001 to June 30, 2002

(b) July 1, 2002 to June 30, 2003

(c) July 1, 2003 to June 30, 2004

(d) July 1, 2004 to June 30, 2005

7. The rebates set forth in Paragraph 6 above shall be paid to Customer by Authority within forty-five (45) days after the end of the applicable period or after full payment has been made to the Authority by Customer, whichever is later, for the solid waste delivered by Customer during the applicable periods set forth in Paragraph 6 above.

8. For purposes of this Agreement the solid waste and dry waste required to be delivered to Authority facilities under Paragraphs 1 and 2 above shall not include:

(a) source separated recyclable materials,

- (b) special solid waste as defined by the Authority,
- (c) industrial process solid waste as defined by the Authority,
- (d) agricultural waste generated on a farm,
- (e) tires, and
- (f) non-hazardous waste resulting from emergency clean-up actions.

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

9. 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 and procedures;

(b) fails to deliver the solid waste or dry 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 or dry 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 the timely delivery to Authority facilities of sufficient amounts of acceptable alternative or replacement solid waste or dry waste generated in the State of Delaware, and not subject to the requirements of Paragraphs 1 and 2 above, to account for the short fall in tonnage and user fee loss experienced by the Authority as a result of the failure; 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.

10. It shall be a condition of default and cause for termination if the Authority fails to make payments to Customer as required under this Agreement, provided that the default is not cured by Authority within (30) days of written notification by Customer to the Authority of the default.

11. Customer and Authority shall be relieved of responsibility for performance under this Agreement 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.

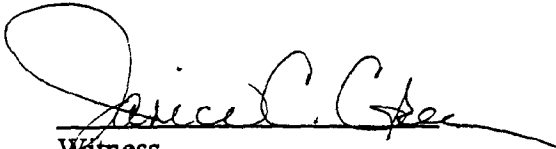
12. This Agreement shall inure to the benefit of and be binding on Customer, its successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, contractors and sub-contractors, and all other entities, existing or newly formed, controlled directly or indirectly by Customer 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 or dry waste generated in the State of Delaware.

13. 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, or in the U.S. District Court for the District of Delaware.

14. 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 Differential Disposal Fee Agreement with the Authority which is in effect at the time of execution of this Agreement, and execution of this Agreement takes place before July 1, 2001, that prior agreement shall remain in effect through June 30, 2001, after which date this


Agreement shall supersede it. Otherwise this Agreement shall supersede the prior Differential Disposal Fee Agreement and apply as of the date of execution of this Agreement. The effective date of this Agreement if executed prior to July 11, 2001 shall be July 11, 2001, otherwise the effective date shall be the date inserted on the first page of this Agreement. The rate paid pursuant to Paragraph 4 and the rebate allowed pursuant to Paragraph 6 shall apply to the period from July 1, 2001 or the date of execution of this Agreement, whichever is later.

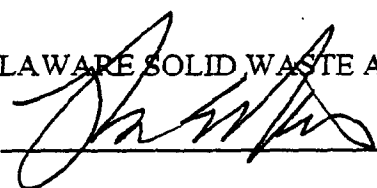
IN WITNESS WHEREOF, the Authority and Customer have entered this Agreement.


Witness

CUSTOMER
By: 

Attest: 


Witness

DELAWARE SOLID WASTE AUTHORITY
By: 

DIFFERENTIAL DISPOSAL FEE AGREEMENT

THIS AGREEMENT, entered into by and between the Delaware Solid Waste Authority ("Authority") and _____ ("Customer"), made this _____, of _____, 2004.5

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

WHEREAS, the Authority receives solid waste and dry waste at its facilities from various customers who collect and/or transport solid waste and dry 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 and all Customer's specified dry 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 8 hereafter, deliver to Authority facilities all solid waste generated in the State of Delaware which is collected and/or transported by Customer during the term of this Agreement.

CITY OF DOVER
Account: 3206

2. Customer shall, subject to the exceptions set forth in Paragraph 8 hereafter, deliver to any of Authority's designated solid waste facilities, all dry waste generated in the geographic area of the State of Delaware located south of the Chesapeake and Delaware Canal, which is collected and/or transported by Customer during the term of this Agreement. Customer shall be entitled, but not required, to deliver to Authority designated solid waste facilities, dry waste generated in the geographic area of the State of Delaware located north of the Chesapeake and Delaware Canal, and pay the rate as set forth in Paragraph 4 below. Customer shall also be entitled, but not required, to deliver dry waste to Authority's Northern Solid Waste Facility located at Cherry Island in Delaware, and pay the rate for solid waste subject to rebate as set forth in Paragraph 3 below.

3. Customer shall pay to the Authority a base rate of Sixty One Dollars and Fifty Cents (\$61.50) for each ton of solid waste delivered to the Authority, subject to the rebates hereinafter set forth.

4. Customer shall pay to the Authority a rate of Forty Two Dollars (\$42.00) for each ton of dry waste delivered to the Authority at Authority designated solid waste facilities, which shall include at a minimum, the Central Solid Waste Facility located at Sandtown in Delaware and the Southern Solid Waste Facility located at Jones Crossroads in Delaware, but which shall not include the Northern Solid Waste Facility located at Cherry Island in Delaware. In the event the Authority establishes its user fee for disposal of dry waste above Forty Two Dollars (\$42.00) per ton, at the designated facilities, Customer shall be entitled to the Forty Two Dollar (\$42.00) per ton rate at the designated facilities for and during the term of this Agreement. In the event the Authority establishes a user fee for disposal of dry waste below Forty Two Dollars (\$42.00) per ton at any time during the term of this Agreement at the designated facilities, Customer shall be

entitled to such lower rate while such lower rate is in effect. Dry waste shall be as defined in the Regulations of the Delaware Solid Waste Authority and shall be delivered to the Authority designated facilities in separated loads free of any commingled municipal solid waste.

5. The term of this Agreement shall be from July 1, 2005 or the execution date of this Agreement thereafter to June 30, 2010.

6. A rebate of Ten Dollars (\$10.00) shall be paid by the Authority to Customer for each ton of solid waste delivered to Authority facilities, other than the Northern Solid Waste Facility located at Cherry Island in Delaware, and for which the base rate disposal fee of Sixty One Dollars and Fifty Cents (\$61.50) per ton has been paid to the Authority. A rebate of Thirteen Dollars and Fifty Cents (\$13.50) shall be paid by the Authority to Customer for each ton of solid waste or dry waste delivered to Authority's Northern Solid Waste Facility located at Cherry Island in Delaware and for which the base rate disposal fee of Sixty One Dollars and Fifty Cents (\$61.50) per ton has been paid to the Authority. The rebate shall be paid for the following periods in which solid waste has been delivered:

- (a) July 1, 2005 to June 30, 2006
- (b) July 1, 2006 to June 30, 2007
- (c) July 1, 2007 to June 30, 2008
- (d) July 1, 2008 to June 30, 2009
- (e) July 1, 2009 to June 30, 2010

7. The rebates set forth in Paragraph 6 above shall be paid to Customer by Authority within forty-five (45) days after the end of the applicable period or after full payment has been made to the Authority by Customer, whichever is later, for the solid waste delivered by Customer during the applicable periods set forth in Paragraph 6 above.

8. For purposes of this Agreement the solid waste and dry waste required to be delivered to Authority facilities under Paragraphs 1 and 2 above shall not include:

- (a) source separated recyclable materials including any materials collected under curbside recycling programs,
- (b) special solid waste as defined by the Authority,
- (c) industrial process 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, and
- (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.

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

9. 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 and procedures;
- (b) fails to deliver the solid waste or dry 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 or dry 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 the timely delivery to Authority facilities of sufficient amounts of acceptable alternative or replacement solid waste or dry waste generated in the State of Delaware, and not subject to the requirements of Paragraphs 1 and 2 above, to account for the short fall in tonnage and user fee loss experienced by the Authority as a result of the failure; 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.

10. It shall be a condition of default and cause for termination if the Authority fails to make payments to Customer as required under this Agreement, provided that the default is not cured by Authority within (30) days of written notification by Customer to the Authority of the default.

It shall be a cause for termination if the Authority during the term of this Agreement engages in the curbside collection of municipal solid waste, excluding recyclable materials

11. Customer and Authority shall be relieved of responsibility for performance under this Agreement 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.

12. 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 or dry waste generated in the State of Delaware.

13. 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, or in the U.S. District Court for the District of Delaware.

14. 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 Differential 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 Agreement.

CUSTOMER

By: _____

Witness

DELAWARE SOLID WASTE AUTHORITY

By: _____

Witness

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