

**SINGLE PROVIDER SOLID WASTE and RECYCLING COLLECTION,
TRANSPORTATION AND DISPOSAL AGREEMENT**

This SINGLE-PROVIDER SOLID WASTE and RECYCLING COLLECTION, TRANSPORTATION AND DISPOSAL AGREEMENT (this "Agreement") is made and entered into this the 11TH day of February, 2017, by and between the Town of Dewey Beach, hereinafter referred to as the "Town", and Waste Industries of Delaware, LLC hereinafter referred to as "WI"

RECITALS

A. The Town desires to have a single-service provider for residential collection of solid waste and recycling.

B. Pursuant to the enactment of Ordinance No. ____ (the "Ordinance"), subject to the limited exceptions set forth therein, the Town requires that residential trash and recycling collection services be rendered by a single town-wide trash collection service provider.

C. Subject to the provisions of this Agreement, the Town has selected WI to serve as the single provider of residential trash and recycling services in Town as a result of a competitive bid process.

D. WI has in place the requisite business and liability insurance and performance bonding agreements to cover the five-year duration of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements set forth herein, and subject to the terms and conditions stated, the parties hereby agree as follows:

1. Term: This Agreement shall be binding on all parties on the date hereof, with Services (defined below) beginning on May 1, 2017 and extending through May 1, 2022 (the "Term"). The term shall automatically renew for one three (3) year period unless either party provides written notice of their intent not to renew the Contract.

2. Services.

a) Types of Services and Exceptions. The Town hereby grants to WI the exclusive right for the collection and transportation of residential solid waste and recyclable materials in the Town of Dewey Beach from the point of pickup, including both single family and multi-family residential units, to a solid waste disposal site or materials facility in WI's discretion, which disposal site has been permitted in accordance with applicable laws, rules and regulations for disposal of solid waste (the "Services"). Without limiting the foregoing, the Services will include the following:

Services to be Provided:

1. Residential Curbside Trash and Recycling;
2. Front End Trash and Recycling collection for multi-family housing;

3. Yard Waste and other Special Pickups; and
4. Valet Service with respect to those residences selecting and paying for such service; provided that In Season rentals will be required to select Valet Service. Valet Service is defined as a single-source provider picks up trash and recycling containers and returns these containers to their original location. That location must be readily accessible.

b) Exceptions to service requirements:

1. Those residences with existing service agreements that are not terminable;
2. Mixed use properties that share a dumpster with a commercial establishment;
3. Commercial establishments; and
4. Exceptions may be authorized by the discretion of the Town Manager for long-term vacancies or similar situations where service will not be required.

c) WI acknowledges that, to its knowledge, all streets in Dewey Beach are currently passable. However, in the event of unforeseen circumstances, WI is not required to provide collection to any street that is not safely passable by WI's equipment. WI shall notify the Town of the limitations and impassability of WI's equipment on such streets so items for collection can be relocated and placed where practicable for collection. WI will not be responsible for any pre-existing damage on roadways or surfaces within the Town.

d) Service Agreements. WI shall establish a service agreement, whether written or oral, with property owners or their representatives at the rates set forth on Schedule A, subject to adjustment as permitted herein. Upon 30 days' advance notice from the property owner or their representative to WI, property owners may suspend service during the Out of Season months for a period of not less than 30 days with no charge from WI. If they contract only for summer season service, no further notice is required to end out-of-season service.

3.Types of Waste; Title to Waste.

- a) Notwithstanding anything to the contrary herein, WI shall only be responsible for the collection, transportation and disposal of Acceptable Waste and only such Acceptable Waste as is disposed of in a 95 gallon, WI-provided, residential roll-out cart or WI provided dumpster or roll-off container. Acceptable Waste collected by WI hereunder shall be delivered to the Delaware Solid Waste Authority ("DSWA"). WI's duty to collect solid waste will be limited to those acceptable by the DSWA (Information is available at www.DSWA.com under "Acceptable Waste") and shall not include any Unacceptable Waste. "Unacceptable Waste" shall include, without limitation, any Hazardous Waste defined by federal, State or local laws or regulations: tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical, toxic or hazardous waste or any other waste that is not commonly denominated as Municipal Solid Waste (MSW) under DSWA requirements. WI shall not be in breach of this Agreement for failure to pick up and/or dispose of waste other than Acceptable Waste or

waste not placed in the WI-provided container and placed at the designated location.

- b) Bulk items such as gas grills or couches, as examples, can be picked up through special advance arrangement with WI.
 - c) Recyclables collected by WI hereunder shall be delivered to the DSWA at one of their recycling centers. WI's duty to collect recyclables will be limited to those acceptable by the DSWA. Recyclables are all solid waste defined by the DSWA as "recyclable" and eligible for single stream recycling.
 - d) Yard Waste collected by WI hereunder shall be disposed of as provided by DSWA requirements.
4. Equipment: All equipment utilized is to be reliable and presentable during the performance of this Agreement, including backup equipment. All equipment shall be maintained, by WI, in a safe condition throughout the Term. In the event any WI-provided containers are damaged due to the negligence or willful misconduct of the property owner, repair or replacement will be charged to the property owner.
5. Schedule. WI shall operate on a schedule to ensure timely service. Service hours will be between 8:00 a.m. and 4:00 p.m. Service days for waste collection during the months of May through September ("In Season") will be two times per week on Mondays and Fridays and for recycling will be one time per week on Monday including Memorial Day, July 4th and Labor Day if such holidays fall on a Monday or Friday. Service days for waste during the months of October through April ("Out of Season") will be one time per week on Mondays and for recycling will be biweekly on Mondays. WI and/or the Town may request scheduling changes during the term of this Agreement, such requested changes must be mutually agreeable to both parties. Services will not be provided on New Year's Day, Christmas Day, Thanksgiving Day or any day that the DSWA is closed due to unforeseen and unusual circumstances.
6. Billing. WI will bill the property owners or their representative monthly in advance for Services provided both In Season and Out of Season. WI will notify the Town of any property owners or their representative who is classified as non-pay and will provide the Town not less than 30 days notice prior to termination of service. Following such period, WI may cease providing Services to the delinquent property owner until such time as payment is current.
7. Rates; Rates shall be set forth in Exhibit A incorporated by reference and made a part hereof on a per unit basis, subject to adjustment as set forth below (the "Service Fee").
8. Adjustments:
- a) Allowable cost based fee increase: WI will be entitled to adjust the fees based on a documented increase in disposal rates (Tipping Fees) as determined by the DWSA occurring any time after July 1, 2017. Conversely, any decrease in such fees after such date will adjust the rates downward accordingly. The increase or decrease based

on the disposal cost will be \$0.08 per unit per year for once per week service and \$0.16 for two times per week service based on a \$1.00 per ton per year increase or decrease in the tipping fee each year by the DWSA.

- b) Starting in Year 3, beginning on May 1, 2020 and for all subsequent years of this agreement WI may request an increase or decrease in the Service Fees to reflect the annual adjustment from the prior year using Table 1 of the Consumer Price Index for All Urban Consumers (CPI-U): U.S. Town Average, by expenditure category and commodity and service group, Water and Sewer and Trash Collection Services (2) Garbage and Trash Collection, such request not to be unreasonably denied. The maximum allowable percentage increase or decrease in any one year shall be 3%.
 - c) The Service Fee may be adjusted more often than annually if such adjustment arises out of changes in WI's costs related to provision of the Services over which WI has no control, including by way of example, but not limitation, recycling, material processing fees, and governmental regulations. With respect to adjustments pursuant to this Section 8(c), documentation will be provided and any adjustment must be agreed to by both parties in writing, not to be unreasonably refused.
9. Representations of WI: WI currently has, and will maintain throughout the term, all permits and licenses required by law for the provision of the Services, and will provide the Services in accordance in all material respects with applicable laws. WI will comply with all Federal and State requirements concerning fair employment and concerning the treatment of all employees without regard or discrimination by reason of race, color, religion, sex, national origin or physical disability.
10. Point of Contact: All dealings, contacts, etc. between WI and the Town shall be directed by WI to the Town Manager or his designee. The Town will direct all interaction related to this Agreement to the General Manager or his designee.
11. Local Presence: WI will provide a local telephone number to its office for the use of the Town and its property owners or their representatives to communicate with WI if the need arises during normal business hours of 8:00 a.m. to 5:00 p.m. Monday through Friday (other than holidays).
12. Notification of Property Owners: Upon signing of this Agreement the Town shall communicate the new service arrangements to the property owners. WI will then send out a welcome letter to property owners of record (using a Town provided address list with directions on how to enroll, days of service, holiday schedule, procedures and the pricing in this Agreement). In addition, excluding schedule changes listed in Section 5, as and when approved by the Town, WI will notify the property owners or their representative with respect to any changes in service day or other similar information due to a change by either WI or the Town. Both the Town and the WI shall appoint a transition coordinator to work through any and all customer issues related to the transition to the new service.
13. Breach; Termination: If either party reasonably concludes that the other is in material breach of this Agreement, such party shall so notify the other party in writing, including a detailed description thereof. The party alleged to be in breach shall be allowed up to thirty (30) days after notice by the other party in which to make necessary adjustments to remedy said

deficiencies or to take action to remedy any deficiencies that require longer than thirty (30) days to cure. In the event the breaching party fails to correct (or take action to correct) such deficiencies within thirty (30) days after written notice of the deficiencies or breach, then the other party may terminate this Agreement. Neither party shall be liable to the other for any special, consequential or punitive damages.

14. Performance Bond: WI will supply the Town with a Performance Bond in the amount of \$100,000, which performance bond will be available to the Town in the event WI is determined to be in breach of this Agreement, the Town has suffered measurable damage, and WI has not otherwise satisfied its liabilities and obligations hereunder. The parties acknowledge that the Performance Bond is not intended to cap WI's liabilities and obligations. In the event of a conflict between the terms of the Performance Bond and this Agreement, the terms of the Performance Bond shall govern.

15. Service Standards: WI will keep a log of all service complaints, whether received directly from property owners or their representatives or indirectly through the Town, which log will be available for review by the Town. In the event the Town receives any service complaints, they will promptly be forwarded to WI for resolution. With respect to complaints for missed pick-ups, WI will resolve such complaint no later than the next business day. With respect to complaints for fluid leakage or spilled trash caused by WI, such complaints will be resolved on the same day if notified by 11:00 a.m. or by the next business day if notified after 11:00 a.m. In the event of in excess of three (3) consecutive misses with respect to a single property owner, WI will be deemed to be in breach of this Agreement and the remedies set forth in Section 13 shall be available to the Town; provided, however, that during the cure period set forth in Section 13, the parties agree to meet and work together in good faith to resolve the service issues prior to termination. For purposes of clarification, a pickup will not be deemed as "missed" if it is reasonably verifiable that the property owner or its representative did not place his or her cart at curbside by 7:00 a.m. on the service day, the cart contained waste other than Acceptable Waste or the property owner was on "stop service" due to non-payment.

16. Indemnification: WI agrees to indemnify and hold the Town harmless from and against any and all claims, liabilities, demands and causes of action arising out of WI's negligence in performance of the Services or arising out of WI's failure to comply with the provisions of this Agreement. To the extent allowed by law, the Town will indemnify and hold WI harmless from and against any and all claims, liabilities, demands and causes of action arising out of the Town's negligence or arising out of the Town's failure to comply with the provisions of this Agreement. The Town assumes no liability to property owners for any damages they may incur for actions taken or not taken by WI in provision of the Services, nor does the Town assume any responsibility to WI for Unacceptable Waste disposed of by property owners or their guests or losses due to nonpayment by customers. The Town will cooperate with WI to address such issues with the property owners or their representative.

17. Force Majeure: WI shall not be liable for failure to perform under this Agreement if that failure arises out of causes beyond the control and without the fault or negligence of WI. Such causes may include but not be limited to acts of the government in its sovereign or contracted capacity, fires, floods, strikes, epidemics, quarantine restriction, freight

embargoes, unusually severe weather making safe passage on the roadways in the service area substantially impossible, and states of emergency called by the State; but in every case the failure to perform must be beyond the reasonable control and without fault or negligence of WI. The Town of Dewey Beach shall not be liable for any breach or failure to perform arising from a duty to comply with an order issued by a court of competent jurisdiction.

18. Assignment: Neither party may assign this Agreement, nor the rights hereunder, without prior written approval of the other, which approval will not be unreasonably withheld.

19. Insurance: WI shall be required to carry general liability insurance, workers compensation insurance and motor vehicle insurance as required by State laws as outlined below:

<u>Coverage</u>	<u>Minimum Limits of Liability</u>
Workers Compensation	Statutory
Employer Liability	\$100,000/\$500,000
General Liability	
Bodily Injury	\$500,000 each occurrence
Property Damage	\$100,000 aggregate
Automobile Liability	
Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Excess Umbrella Coverage	\$10,000,000 each occurrence

Certificates of insurance shall be provided to the Town by WI effective for the coming year with the above coverages and the Town shall be listed as an additional insured (other than with respect to Workers Compensation and Employer Liability).

20. Mediation. Any disputes between the parties hereto with respect to this Agreement or the Services provided hereunder, which the parties cannot resolve between themselves using good faith shall be referred to a court certified Mediator of the Superior Court of the State of DE. The parties shall share the costs of the mediation.

21. Validity. If a provision of this Agreement is declared invalid, such a finding shall not invalidate the remainder of this Agreement.

22. Amendments All amendments to this Agreement must be made in writing and signed by both parties.

23. Venue and Jurisdiction. Should a lawsuit be necessary to enforce the provisions of this Agreement, the parties agree that jurisdiction and venue are waived and suit shall be brought in the Superior Court of the State of DE in the County of Sussex.

24. Notice. All notices and other communications hereunder will be in writing and may be given by personal delivery, nationally recognized express courier, registered or certified mail (return receipt requested), or email or facsimile (receipt confirmed). Such notice will be deemed effective when received if it is given by personal delivery, nationally recognized express courier, or facsimile, and will be effective three (3) days after mailing by registered or certified mail, so long as it is actually received within five (5) days (and, if not so received within five (5) days, is

effective when actually received) by the parties at the following addresses (or at such other address for a party as will be specified by like notice):

If to WI, to:

Bryan Kastor- General Manager
28471 John J. Williams Hwy.
Millsboro, DE 19966

Email:
Fax:

If to the Town, to:

Town Manager
105 Rodney Avenue
Dewey Beach, DE 19971

Email:
Fax:

25. Entire Agreement. This Agreement constitutes the entire understanding between the parties, and cancels and supersedes all prior negotiations, understandings and agreements, oral or written, relating to the provision of the services described herein. It is agreed that the WI's bid opened October 6, 2016, as modified during negotiations, together with the advertisement for bids/proposals, the terms and conditions set forth in the Request for Proposal, the WI's Performance Bond, and insurance certificates as appropriate, are incorporated herein, attached to and made a part of this Agreement. In the event of a conflict between this Agreement and any such documents, this Agreement shall control.

26. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Signature page follows.

IN WITNESS WHEREOF, the Town of Dewey Beach and Waste Industries of Delaware, LLC, have executed this Single Provider Solid Waste and Recycling Collection, Transportation and Disposal Agreement as of the date first set forth above.

The Town of Dewey Beach, DE

Waste Industries of Delaware, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

<u>Residential Trash and Recycling Service</u>	<u>May 1st to October 31st, per month</u>	<u>October 31st to May 1st, per month</u>
(One) 95 Gallon Trash, (One) 95 Gallon Recycling	2x week trash, 1x week recycling \$27.32 per residence	1x week trash, bi-weekly recycling \$23.32 per residence
Multi-unit residences may request as many trash and recycling containers as reasonably determined to meet their needs, with the total amount not required to equal the number of residences. (One) 95 Gallon Trash, (One) 95 Gallon Recycling	\$27.32	\$23.32
Valet Service	\$15.00 extra, per residence	\$10.00 extra, per residence
Extra Cans (applies to cans in addition to the standard service levels in and out of season)	\$16.00 each per residence for garbage; \$4.00 each per residence for recycle	\$11.00 each per residence for garbage; \$3.75 each per residence for recycle
Trash Dumpsters- Each 2 cubic yards 4 cubic yards 6 cubic yards 8 cubic yards	2x per week \$205.00 \$275.00 \$357.00 \$445.00	1x per week \$105.00 \$165.00 \$214.00 \$267.00
Recycling Dumpsters- Each 4 cubic yards 6 cubic yards 8 cubic yards	1x per week \$110.00 \$110.00 \$110.00	Bi-weekly \$75.00 \$75.00 \$75.00
Yard waste cost per bag for first bag in a single pick-up	\$10.00 for first bag	
Yard waste cost per bag for more than one bag in a single pick-up	\$2.50 for each addition bag after the first	
Roll offs for bulk solid waste	\$60.00 delivery \$185.00 haul \$85.00 per ton disposed	

	\$60.00 delivery
	\$200.00 haul
Roll offs for yard waste	\$40.00 per ton disposed