

TOWN OF WATERFORD

Municipal Solid Waste and Recycling Contract

Advanced Disposal Services Solid Waste Midwest, LLC

Exclusive Solid Waste and Recycling collection and disposal contract made between the Town of Waterford, WI and Advanced Disposal Services Solid Waste Midwest, LLC.

TOWN OF WATERFORD

EXCLUSIVE SOLID WASTE & RECYCLABLES COLLECTION & DISPOSAL CONTRACT

THIS CONTRACT ("Contract") is made and entered into this 31st day of December, 2014, by and between the Town of Waterford, Wisconsin (hereinafter called "Town") and Advanced Disposal Services Solid Waste Midwest, LLC, a Wisconsin limited liability company (hereinafter called "Contractor"). Onyx Waste Services Midwest Inc is made a party to this contract only to signify its consent that Advanced Disposal Services Solid Waste Midwest LLC(Contractor) will, after December 31st, 2014, supply services to the Town.

WITNESSETH:

WHEREAS, the Town recognizes that it is desirable that provisions be made for the regular and efficient collection of Solid Waste and Recyclables within the legal boundary limits of the Town; and,

WHEREAS, the Town desires that an independent contractor be utilized to perform Solid Waste and Recyclables collection services within the legal boundary limits of the Town and further desires to enter into a contract granting the Contractor the exclusive right to collect Solid Waste and Recyclables within the Town limits; and,

WHEREAS, the Town has in place now a contract for the collection of Solid Waste and Recyclables with Onyx Waste Services Midwest, Inc. terminates on December 31st, 2014; and,

WHEREAS, all parties, i.e., the Town of Waterford(Town), Advanced Disposal Services Solid Waste Midwest, LLC(Contractor) and Onyx Waste Services Midwest, Inc(Onyx) all agree that Contractor shall, after said December 31st, 2014 date, provide solid waste and recycling services to the Town of Waterford and to its residents..

NOW, THEREFORE, in consideration of the premises set forth herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the Town hereby grants to Contractor and Contractor hereby accepts from Town, the exclusive right and obligation to collect and dispose of residential Solid Waste and Recyclables accumulating in the normal course within the legal boundary limits of the Town during the term hereof and subject to the following limitations and conditions set forth herein.

1. **Definitions:** The following terms and definitions shall apply in the interpretation of this Contract:

A. **“Contractor”** shall mean Advanced Disposal Services Solid Waste Midwest, LLC, a Wisconsin limited liability company.

B. **“Household Unit”** shall mean all single-family and up to four-family residential dwelling units within the Town, such that a single family dwelling shall be counted as one Household Unit, a two family dwelling shall be counted as two Household Units and so on. Multifamily Dwelling units, businesses and industries shall not be included in this contract.

C. **“Bulky Waste”** shall mean items that are great are not manageable by one person, or weigh more than fifty (50) pounds. These items include, but are not limited to, couches, furniture, mattresses, appliances, etc.

D. **“Multi-Family Dwelling”** shall mean a residential dwelling unit consisting of five or more residential dwelling units.

E. **“Recyclables”** shall mean single stream recycled materials limited to plastics (1-7), aseptic packaging, glass, cardboard, mixed papers, newspaper, steel, bi-metal, tin and aluminum cans. Household Units shall dispose of all Recyclables in containers not to exceed thirty-two (32) gallons in size and marked “RECYCLABLES” and not weigh more than fifty (50) pounds, placed in seventeen (17) gallon bins, or clear, plastic bags to identify Recyclables.

F. **“Solid Waste”** shall mean municipal solid waste materials generated in the normal and ordinary course by Household Units within the Town. The term “Solid Waste” specifically excludes special waste, hazardous waste or other types of materials which require special handling and disposal. Household Units shall dispose of all solid waste in containers not to exceed thirty-two (32) gallons in size and not weigh more than fifty (50) pounds..

G. **“Town”** shall mean the Town of Waterford, a Wisconsin municipality.

2. **Term:** The term of this Contract shall be eight (8) years commencing January 1st, 2015 (the “Commencement Date”) and expiring December 31st, 2022 (the “Initial Expiration Date”). This Contract shall be automatically renewed for an additional term of one (1) year unless either party provides the other party with written notice via Certified Mail, of its intent not to renew at least ninety (90) days, but no sooner than one hundred twenty (180) days, prior to the Initial Expiration Date.

3. **Exclusivity:** The Town hereby grants to Contractor the exclusive right, and Contractor hereby accepts the obligation, to collect, transport and dispose of all Solid Waste and Recyclables generated by Household Units within the legal boundary limits of the Town as its legal limits may be modified from time to time by annexation during the term of this Contract (collectively the “Collection Services”). No other private or public refuse collector shall be permitted by the Town to provide Collection Services to Household Units

within the legal boundary limits of the Town during the term of this Contract. The Town shall take all actions necessary to enforce this provision. Contractor shall, at its own expense, furnish personnel and equipment sufficient to accomplish the work herein described. Contractor shall establish and maintain collection routes in an efficient manner.

4. **Solid Waste and Recyclables Collection:** All Solid Waste and Recyclables subject to collection by Contractor hereunder shall be placed at roadside or curbside by the Household Unit. On collection day, Household Units shall provide unobstructed access to the Solid Waste and Recyclables containers. Contractor shall be responsible for and shall clean up any materials spilled by Contractor in the course of its collection. The Household Unit shall be responsible for and shall clean up any materials spilled not as a result of Contractor's collection.

Contractor shall provide the following additional services at no additional cost:

- a. Containers located at the Town Dropoff Center, for yard waste, bulk waste, appliances and recyclables.
- b. Containers at the Town Hall and Public Works (4yd for Solid Waste and 2yd for Recyclables)
- c. Jensen Park (2yd for Solid Waste)

5. **Equipment and Time of Pickup:** Solid Waste collection shall occur between 6:00 a.m. and 7:00 p.m., once every week. Recyclables collection shall occur on the same day as Solid Waste collection once every other week. Contractor's equipment shall be clearly marked with Contractor's name and shall be utilized in a manner specified by the manufacturer of such equipment to minimize or to prevent the blowing or scattering of any materials onto the public streets or properties adjacent thereto. Any collections that have to be cancelled due to inclement weather will be collected on the following business day.

6. **Disposal of Solid Waste:** Contractor shall deliver all Solid Waste collected hereunder to the Contractor's disposal site of its choice. Fees for disposal are included in the rates set forth in Article 8. In the event the cost of disposal at such facility increases or the facility is not available for disposal, or the Town designates a different facility, then any increase in costs hereunder shall be the responsibility of the Town, and will be passed on as incurred.

7. **Disposition of Recyclables:** Contractor shall deliver all Recyclables collected hereunder to the facility of Contractor's choosing for processing. All proceeds from the sale of the Recyclables, if any, shall remain with Contractor.

8. **Rates:** The monthly rates for collection and disposal of Solid Waste, and the collection and processing of Recyclables provided by Contractor hereunder shall be as follows:

\$11.85/Month/Household Unit

9. **Rate Adjustments:** The rates set forth herein are locked through December 31st, 2016, but shall be increased annually on each anniversary of the Commencement Date, beginning January 1st, 2017, by a percentage equal to 100% of the annual change in the Consumer Price Index ("CPI") Midwest – All Items, as promulgated by the United States Bureau of Labor Statistics, but not to exceed 4%. The rates paid shall further be adjusted due to changes in local, state, or federal law or regulation, governmental imposition of taxes, fees or surcharges, immediately upon effective date of change. The rates set forth shall further be increased on a pro-rata basis to reflect any increased costs actually incurred by Contractor due to any unavoidable change or interpretation in law, rule or regulation, which increases shall be evidenced by documentation provided by Contractor to the Town upon request. Contractor may petition the Town for any other rate adjustments from time to time on the basis of unusual changes in its costs of doing business. In such event, Contractor shall submit a written request for such rate adjustment, which request shall not be unreasonably denied and shall be effective from the date of Contractor's request to the Town.

The rates set forth herein are for collection services for materials generated in the normal and ordinary course. If an event results in Solid Waste being generated in excess of the normal and ordinary course, then the Contractor and Town will negotiate in good faith the rates applicable to the additional collection and disposal of such excess.

10. **Payment to Contractor:** Contractor shall submit invoices directly to the Town on a monthly basis for its services rendered hereunder based on the number of Household Units within the Town. As of the commencement of this Contract, the number of Household Units within the Town is approximately 2533, subject to verification by Contractor (the "Household Unit Count"). Thereafter, the Household Unit Count shall be audited from time to time by the Contractor and/or Town, accounting for any new or removed Household Units. In the event of any dispute regarding the Household Unit Count, a physical unit count of the number of Household Units within the Town shall govern. The Town shall pay Contractor the full amount invoiced, regardless of the amount actually collected by Town from the Household Units, within 30 days of the date of the invoice.

11. **Service Issues:** The Contractor will answer complaints or questions from the public concerning service issues. As such, Contractor shall provide a manned telephone answering service from 7:30 a.m. until

5:00 p.m. Monday through Friday, excluding holidays, for the purpose of receiving complaints and other calls regarding Collection Services provided by Contractor. The Contractor shall act upon all reasonable and valid complaints within forty-eight (48) hours of receipt of the complaint by Contractor.

12. **Licenses and Taxes:** The Contractor shall obtain and keep current all licenses and permits required by applicable law prior to the Commencement Date for the performance of the services contemplated herein. Any increases in the costs of such licenses and permits, or the cost of any newly required license or permit during the course of this Contract will be the responsibility of the Town and will be billed by Contractor as incurred.

13. **Indemnification and Insurance:** The Contractor shall indemnify and save harmless the Town, its agents, servants and employees, from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, including reasonable attorney's fees to the extent caused by the negligence or willful misconduct of Contractor. Contractor shall carry the following types and minimum limits of insurance:

Bodily Injury	\$1,000,000
Accidental Death	\$1,000,000 per person per accident
Property Damage	\$1,000,000

Such policies may not be canceled without thirty (30) days written notice to the Town and shall name the Town as an additional insured, evidence of which shall be provided in the form of insurance certificates to the Town within fifteen (15) days after execution of this Contract.

14. **Independent Contractor:** Contractor is in all respects an independent contractor and is in no respect an agent, servant, or employee of the Town.

15. **Legal Holidays:** The following legal holidays shall be observed by the Contractor ("Holiday"): New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. During a week with a holiday, if the normally-scheduled collection day falls on or after the Holiday, the Contractor shall provide Collection Services on the next day, including Saturday. For example, for the week of Memorial Day, if collection day is Wednesday, the contractor shall provide Collection Services on Thursday.

16. **Force Majeure:** If, and to the extent Contractor is precluded from performing its duties and obligations under this Contract as the result of an Act of God, authority of laws, riots, labor strikes, lockouts or other causes beyond its control (a "Force Majeure Event"), Contractor shall be excused to the extent that its performance continues to be precluded by such acts and shall not be considered in default.

17. **Amendments:** This Contract constitutes the entire agreement of the parties regarding the subject matter hereof and may be amended or modified only by written agreement signed by both parties.

18. **Notices:** All notices or other communication to be given hereunder shall be in writing and shall be deemed given when mailed by United States Certified Mail, addressed to:

If to the Town:

Town of Waterford
415 N Milwaukee St
Waterford, WI 53185
Attn: Town Clerk

If to the Contractor:

Advanced Disposal Services Solid Waste Midwest, LLC
Attn: Municipal Market Manager
W144S6350 College Court
Muskego, WI 53150

19. **Default:** If either party breaches this Contract or defaults in the performance of any of the covenants or conditions contained herein for thirty (30) days after the other party has given the party breaching or defaulting written notice of such breach or default, unless a longer period of time is required to cure such breach or default and the party breaching or defaulting shall have commenced to cure such breach or default within said period and pursues diligently to the completion thereof, any nonbreaching or defaulting party may: (i) terminate this Contract as of any date which said other party may select provided it is at least ninety (90) days after the thirty (30) days in which the defaulting party has to cure or commence curing the breach or default; or (ii) pursue any other right or remedy to which it may be entitled through binding arbitration as provided herein. No remedy is intended to be exclusive of any other remedy but each and every such remedy shall be cumulative. Specifically excluded from both parties' right to any damages is incidental, consequential, indirect or punitive damages.

20. **Dispute Resolution.** The parties agree to participate in good faith to resolve any dispute, claim or controversy ("Disputes") arising out of or relating to this Contract. If the Dispute is not resolved by negotiation within a reasonably short time period, the matter will be submitted to the American Arbitration Association ("AAA"), or its successor, for mediation. The parties agree to participate in mediation in good faith, and shall share equally in its costs. If the Dispute is not resolved through mediation, the parties agree that it shall be submitted to AAA, or its successor, for final and binding arbitration. The arbitration shall be

administered by AAA pursuant to its Comprehensive Arbitration Rules and Procedures and shall apply the Rules of Commercial Arbitration. The party that does not prevail shall pay all costs of arbitration.

21. **Attorney's Fees:** In the event that either party find it necessary to commence an action against the other party to enforce any provisions of this Contract or because of a breach by the other party of any of the terms hereof, the prevailing party shall be entitled to recover from the other party, its reasonable attorney's fees, paralegal fees and other costs incurred in connection therewith, at both trial and appellate levels, including bankruptcy proceedings and the right to such reasonable attorney's fees, paralegal fees and costs shall be deemed to have accrued from the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

22. **Language notwithstanding:** Irrespective of any language stated in this Contract or any amendment or extension of the same, Contractor is obligated to perform such additional services, if any, currently performed by Onyx and provided to the Town and/or its constituents even though not expressly enumerated in the paragraphs above.

23. **Miscellaneous:**

a. **Applicable Law.** This Agreement is to be construed according to the statutes and laws of the State of Wisconsin.

b. **Severability.** If any term, covenant, condition or provision of this Contract shall be construed to be illegal, invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and the illegal, invalid or unenforceable term, covenant, condition or provision shall be deemed stricken and deleted herefrom to the same extent and effect as if never incorporated herein, but all other terms, covenants, conditions or provisions of this Contract shall continue in full force and effect.

c. **Reports.** At the Town's request, Contractor shall prepare periodic reports consisting of a summation of the amount of materials collected pursuant to this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the day and year first above written.

**Town of Waterford, WI
A Municipal Corporation**

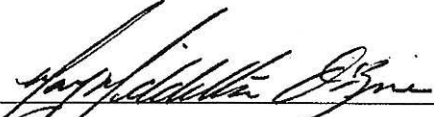
By 
Its TOWN CHAIRMAN

ATTEST:




Town Clerk

Advanced Disposal Services Solid Waste Midwest, LLC

By 
Its CHIEF MARKETING OFFICER

Onyx Waste Services Midwest, Inc.

By 
Its Chief Marketing Officer