



**Ben Cahoon**  
Mayor

**Susie Walters**  
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Town Manager

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**M. Renée Cahoon**  
Commissioner

**J. Webb Fuller**  
Commissioner

**Michael Siers**  
Commissioner

NORTH CAROLINA  
DARE COUNTY

SERVICE CONTRACT  
PURCHASE ORDER # \_\_\_\_\_

**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/  
CORRESPONDING PURCHASE ORDER**

\_\_\_\_\_  
(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 5<sup>th</sup> day of February 2019 by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and Bay Disposal, LLC., 2224 Springfield Avenue, Norfolk, VA 23523 (hereinafter referred to as "CONTRACTOR"), party of the second part.

Section 1. SERVICES TO BE PROVIDED AND AGREED CHARGES

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

The CONTRACTOR shall, during the applicable service periods identified in this CONTRACT: on each Monday and Friday, provide Curbside Recycle pick up service to each residential address in the Blue Route that is identified in Attachment A-Service Area Map; (the Blue Route is further described on page 3 of the RFP (defined below); and at least once per week, provide recycle pick up services to such other properties as are identified in Section 2 of this CONTRACT. The TOWN will purchase and service all recycling containers.

Total contract price is \$ 195,160.00 (One hundred ninety five thousand one hundred sixty dollars and no cents) per collection year (with each collection year running from May 1 through December 1 of the applicable calendar year). Price is in accordance with Attachment B-Bid Sheet, Bid option No. 3 Blue Route (Seasonal), dated January 3, 2019.

**Cost per Tons Delivered to CONTRACTOR by the TOWN:**

Any recyclable materials that the TOWN brings/delivers to CONTRACTOR will be accepted and billed to the TOWN for the cost of \$70.00 per ton. The cost charged per ton shall not be modified for the TERM of this CONTRACT unless agreed upon in writing by the parties. The cost charged per ton is the full amount that may be charged per ton and no other fees may be added unless agreed upon in writing by the parties.

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this CONTRACT will commence no later than May 1, 2019. The CONTRACT completion date shall be December 1, 2022.

If CONTRACTOR fails to complete SERVICES under this CONTRACT by May 1, 2019, and by the weekly dates proscribed in this CONTRACT, the TOWN will be damaged thereby, and because the amount of the TOWN's damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the amount of such damages shall be \$500.00 as liquidated damages for every day's delay in completing the SERVICES after the prescribed dates; and the CONTRACTOR hereby agrees that said sum shall be deducted from monies due the CONTRACTOR under the contract or, if no money is due the CONTRACTOR hereby agrees to pay to the TOWN as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay computed aforesaid.

## Section 2. DESCRIPTION OF SERVICES

CONTRACTOR shall provide the personnel, equipment, materials, and other related appurtenances as may be required to:

1. Collect recyclable materials from the Blue Route and transport the materials to a materials recovery facility or any recyclable materials handling and disposition facility other than an incinerator or a landfill twice per week (each Monday and Friday) from May 1 through September 30.
2. Recyclables collected once per week from May 1 through September 30, at the following Town-owned buildings: Town Hall, Fire Station 16, and Fire Station 21.
3. Recyclables collected from two Town-owned parks (Barnes Street and Little Bridge) once a week from May 1 through September 30, with each park requiring at least two recycling containers.
4. Recyclables collected from 30 Town-owned public beach and sound accesses once a week from May 1 through November 30, with at least two recycling containers at each access.
5. Make monthly reports as described below in REPORTING REQUIREMENTS from May 1 through September 30 detailing weight of materials collected and their processing or final disposal.
6. Report cart capacity issues in a timely and reasonable manner to the TOWN from May 1 through September 30 on the Blue Route and at the required Town facilities.

### **Recyclable Materials Collected**

- A. The CONTRACTOR shall collect all recyclable materials from those areas identified in this CONTRACT and shall supply all labor, equipment and other materials necessary to collect, manage and divert said recyclable materials from regional landfills.
- B. The CONTRACTOR is responsible for picking up and removing any materials that have blown out or dropped from trucks or the collection container due to any reason, even if a return trip is required.

- C. All trucks used for collection will be properly marked with recycling signage for identification purposes.
- D. The CONTRACTOR shall require each employee to be courteous at all times, to work quietly and shall not allow the use of loud or profane language. The CONTRACTOR shall require each employee to work in a diligent manner. The CONTRACTOR shall immediately investigate any notice of employee misbehavior and take prompt and appropriate action. Any official or employee of CONTRACTOR who is under the influence of alcohol or drugs or demands pay from the residents of a dwelling unit for services rendered, or verbally or physically abuses any resident of a dwelling unit, shall be immediately removed from work and shall provide no other service to the Town of Nags Head.
- E. Routes shall begin no earlier than 3 am from May 1 through September 30 and no earlier than 5 am from October 1 through April 30 unless otherwise authorized by the TOWN. The CONTRACTOR shall provide to the TOWN a complete list and map of schedules and dates for each curbside collection area.
- F. Leaks and spills shall be handled quickly and appropriately based on the type and amount and according to State and Federal spill response guidelines. Equipment shall be well maintained so as not to allow liquid or solid waste to leak or blow out of the collection equipment.

#### **Collection Impediments**

- A. Private Streets  
The collection routes include private streets, which do not meet TOWN standards and thus may be too narrow for a side loading vehicle to collect and empty recycling carts. In addition, the available turning radius may not accommodate standard collection vehicles. The CONTRACTOR shall provide SERVICES to the said private streets as part of the residential curbside recycling services provided pursuant to this CONTRACT. The CONTRACTOR will be responsible for determining an acceptable method of collection for these private streets and arranging for any special accommodations that may be necessary to collect recyclables in these areas.
- B. Residences Served by Dumpsters  
The collection routes also include residences that currently receive garbage collection services via dumpster due to neighborhood configuration. The CONTRACTOR shall provide SERVICES to the residences identified in this paragraph as part of the curbside recycling services provided pursuant to this CONTRACT. The CONTRACTOR will be responsible for determining an acceptable method of collection and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

#### **Refusal to Collect**

- A. When service is refused at any eligible dwelling unit, information shall be provided to that dwelling unit by the CONTRACTOR describing the reasons for the refusal and the appropriate remedial action which must be taken in order to have the bin collected in the future. The CONTRACTOR shall also contact the TOWN by the end of the day when services have been refused and provide the TOWN the reasons for the refusal. This notice may be by fax, electronic mail or other written

communication. The CONTRACTOR may telephone the TOWN and follow the oral notice with written communication provided the oral and written notices are made on the same day as the refusal.

- B. In the event of a complaint to the CONTRACTOR that a bin has not been collected or has been missed, it shall be the duty of the CONTRACTOR to respond to any and all complaints received. The CONTRACTOR shall then take whatever steps may be necessary to remedy the complaint and steps to remedy the complaint must be taken on or before 9:30 a.m. on the next business day after the complaint has been received.

### **Public Information Program**

The CONTRACTOR shall design and implement a program for the purpose of informing those who will be receiving curbside recycling services concerning the proper method for preparing recyclable materials, use of the recycling container, role of curbside recycling, date and time of program initiation. This program will include distribution of informational brochures to eligible dwelling units. The cost for this program shall be borne by the CONTRACTOR and all proposed activities, brochures, mailings, advertisements, etc. shall be approved by the TOWN prior to use. All actions taken and all materials prepared as a part of the public information program will be submitted to the TOWN for approval prior to implementation or use. The CONTRACTOR will deliver brochures or such other information on residential curbside recycling, which is produced by the TOWN on request by the TOWN.

### **Reporting Requirements**

The CONTRACTOR shall supply the TOWN with monthly reports on or before the 5<sup>th</sup> day of the following month which include:

- A. A listing by street address of the residences, which have been refused curbside recycling services by the CONTRACTOR at least one time within the past month and the reasons for that refusal. This shall be in addition to the refusal notice requirements listed above in "Refusal to Collect."
- B. A summary of all recyclable materials collected within the past month at the curbside reported on a weight basis and delineated as to the various types of individual recyclable constituents, which are being collected as part of this CONTRACT, to the extent reportable.
- C. A summary of all materials, delineated by weight, which were collected within the past month at the curbside, but which were land filled and/or incinerated. Loads that are not delivered to a materials recovery facility due to mechanical failure, contamination, etc. should be reported immediately to the TOWN.
- D. In addition, the CONTRACTOR will submit an annual report to the TOWN each year within 90 days after the anniversary date of this CONTRACT in which the CONTRACTOR will summarize:
  - 1. Total weight of materials recycled and land filled/incinerated over the previous year;
  - 2. Average annual collection rate aggregated from monthly data;

3. Efforts undertaken by the CONTRACTOR as part of the public information program required by this CONTRACT and the observed effects of this program;
4. Suggestions from the CONTRACTOR, based on the previous years' experience, for modifications to the current curbside recycling program which may increase recycling, increase convenience to residents served by the program, or decrease program costs.
5. Any other reporting as deemed necessary by the TOWN to aid in its own reporting to local, state or federal agencies or for analysis of the effect on the waste stream and/or the effectiveness and efficiency of the overall program.

### **Disposition of Recyclable Materials**

The CONTRACTOR shall be responsible for all recyclables collected in accordance with this CONTRACT. No more than 10% by weight of all collected recyclable materials is to be land filled and/or incinerated without the express, written permission from the TOWN.

### **Miscellaneous**

- A. The provisions of the TOWN's Residential Curbside Recycling Service Request for Proposals (the "RFP") with a submission deadline of January 4, 2019, are hereby incorporated into this CONTRACT by reference, with the CONTRACTOR being referred to as the Provider in the RFP.
- B. Notwithstanding the provisions of the RFP to the contrary; (1) to the extent service dates or terms differ between the RFP and this CONTRACT, the service dates and terms provided in this CONTRACT shall control; and (2) the SERVICES shall not be provided pursuant to a Franchise Agreement.

### **Section 3. TERM OF CONTRACT**

The term of this CONTRACT for SERVICES is from May 1, 2019 until December 1, 2022 ("TERM"). At the close of the initial term, the CONTRACT may be extended at the option of the TOWN and with agreement of the CONTRACTOR. Either party may nonetheless cancel this CONTRACT on thirty (30) days written notice to the other party by certified mail or personal delivery. This CONTRACT is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

Notwithstanding provisions of this Section 3 to the contrary, the following shall survive the termination of this CONTRACT: any provision in Section 1 regarding liquidated damages; the provisions of Section 6 regarding indemnity; and the provisions of Section 10.

### **Section 4. PAYMENT TO CONTRACTOR**

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this CONTRACT. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN by the end of the month in which SERVICES are completed. The

TOWN agrees to make payments to the CONTRACTOR within 30 days of receipt and approval by the TOWN of an accurate invoice and the required monthly reports.

All revenues received by the CONTRACTOR from the sale of recyclable materials collected by the CONTRACTOR shall become the property of the CONTRACTOR.

The TOWN shall not be responsible for the payment of any federal, state or local taxes due as a result of compensation received by the CONTRACTOR pursuant to this CONTRACT or any future agreement between the TOWN and the CONTRACTOR.

Actual pricing for future Fiscal Years is to be negotiated annually, and such negotiations shall be dictated by the terms and conditions of this CONTRACT with a Contract Change Order. Changes in the cost of service must respect the TOWN 's budget cycle and must be planned to correspond with TOWN 's Fiscal Year. In general, the TOWN expects that costs for future Fiscal Years shall increase or decrease as determined by a mutually agreed upon inflation factor. The TOWN shall not accept pricing methods that allow for fuel surcharge. If the TOWN and the CONTRACTOR cannot agree on future pricing, either party may terminate this CONTRACT upon the provision of at least thirty (30) days advanced notice, and CONTRACTOR shall continue to provide SERVICES under this CONTRACT at the previous price during the said thirty (30) day period.

#### Section 5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this CONTRACT. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this CONTRACT, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

#### Section 6. INSURANCE AND INDEMNITY

The CONTRACTOR shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of its obligations under the terms of this CONTRACT.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is

excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents during the performance of SERVICES.

The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

The CONTRACTOR shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the TOWN within the periods identified in the following paragraph. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

During the term of this CONTRACT, CONTRACTOR shall also maintain in full force and effect the following insurance, naming the TOWN as an additional insured. Certificates of insurance shall be submitted to the TOWN within 10 days of the enactment of this CONTRACT and prior to commencing operation under this CONTRACT.

Coverage	Liability Limits
Worker's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability Except Automobile	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage Liability Except Automobile	\$1,000,000 each occurrence \$1,000,000 aggregate
Automobile Bodily Injury	\$1,000,000 each person
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

#### Section 7. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

#### Section 8. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the

CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further contracts.

Section 9. E-VERIFICATION OF EMPLOYEES

The CONTRACTOR represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this CONTRACT, that either:

- (1) The CONTRACTOR or subcontractor employs less than 25 employees who are employed for 9 months or more during a 12-consecutive period; or
- (2) The CONTRACTOR or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25 (5), to verify the work authorization of each employee.

Section 10. GOVERNING LAW

This CONTRACT shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this CONTRACT shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina, and the parties hereby submit to venue in and the personal jurisdiction of the said Courts.

Section 11. IRAN DIVESTMENT ACT CERTIFICATION

CONTRACTOR certifies that CONTRACTOR is not listed on the list of persons who engage in investment activities in Iran, which list is created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58 of the Iran Divestment Act.

Section 12. OTHER PROVISIONS

This CONTRACT is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

Section 13. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire CONTRACT between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this CONTRACT and any attached documents, the CONTRACT language will prevail.

Section 14. SEVERABILITY

The provisions of this CONTRACT are separate and divisible. In the event that any provision of this CONTRACT shall be held invalid, the remaining provisions shall be construed and shall be valid as if the invalid provisions were not a part of this CONTRACT.

**SIGNATURES ON THE FOLLOWING PAGE(S)**



Section 15. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above CONTRACT.

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**TOWN OF NAGS HEAD**

\_\_\_\_\_  
Witnessed or Attested By:

By: \_\_\_\_\_

Title: Town Manager

Date: \_\_\_\_\_

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**CONTRACTOR**

\_\_\_\_\_  
Witnessed or Attested By:

Corporate Seal:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

\_\_\_\_\_  
Finance Officer

**DELETE THE FOLLOWING SIGNATURE IF NO SIGNIFICANT CHANGE TO CONTRACT LANGUAGE.  
APPROVED AS TO FORM AND LEGAL SUFFICIENCY.**

\_\_\_\_\_  
TOWN ATTORNEY