

CONTRACT RENEWAL

THIS CONTRACT RENEWAL (the “Contract”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Bay Disposal, LLC, a Virginia limited liability company (“BD”); and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the “Town”) (BD and the Town may be referred to individually as a “Party and collectively as the “Parties”):

WITNESSETH:

WHEREAS, the Town and BD entered into a contract dated August 18, 2020 pursuant to which BD has been collecting and removing recycling materials from the Town (the “Original Contract”);

WHEREAS, the Original Contract allows for the contract to be renewed for one year periods;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Services Generally.**

(a) BD shall collect and remove recycling materials from all residential, commercial, business, municipal, and governmental premises within the corporate limits of the Town of Southern Shores, North Carolina, subject to the terms and conditions set forth in this Contract. BD shall acquire title to the recycling material that it collects pursuant to this Contract when BD takes possession of such material by loading it into its truck. The consideration paid by the Town to BD pursuant to this Contract is for BD (i) to collect and remove the recycling materials from the Town ; and (ii) perform such other services as are set forth in this Contract (collectively the “Services”).

(b)

(i) (A) BD shall deliver all non-contaminated recyclable materials (defined below) to RDS of Virginia, LLC, a Virginia limited liability company, with principal offices located at 623 N Witchduck Rd, Suite 108, Virginia Beach, Virginia (“RDS”), so long as RDS shall “recycle” such materials by placing them into the recycling stream, or, if RDS is not available to receive and recycle the recyclable materials, to some other recycling facility that will recycle the materials by placing them into the recycling stream, if available. If such a recycling facility is available, but BD will incur more than 10% additional cost per ton of materials to use such recycling facility, then BD shall provide the Town with sufficient information and an opportunity to decide if the Town desires for BD to use the proposed recycling facility at an additional cost per unit per month to the Town. If the cost for BD to dispose of recyclable materials decreases by more than 10% per ton, then BD shall adjust the base rate charged to the Town accordingly and make the Town aware of the change.

(B) BD shall provide the Town with at least 30-days written notice of any proposed increase in the costs to BD for the disposal of recyclable materials in a manner consistent with this Contract for which BD expects to request an increase in the base rate charged to the Town. The Town shall not be required to accept any proposed increase in the base rate.

(ii) If no recycling facility is available, as set forth in the above Section 1(b)(i), then BD may deliver the non-contaminated recycling materials to a duly permitted waste-to-energy facility, such as the Wheelabrator facility.

(iii) BD shall not dispose of any non-contaminated recyclable materials in a landfill.

(iv) For the purposes of this Contract:

(1) “Non-contaminated recycling materials” shall mean recycling materials that are sufficiently free from contamination so as to be accepted for recycling by RDS or such other recycling facility to whom BD is delivering the said materials.

(c) BD shall furnish all personnel, labor, equipment and supervision necessary to fulfill its duties under this Contract. BD shall use only personnel qualified to perform its duties under this Contract and shall see that all work is performed in an efficient and workmanlike manner. BD shall require each employee to be courteous at all times, to work quietly and shall not allow the use of loud or profane language. BD shall require each employee to work in a

diligent manner. BD shall immediately investigate any notice of employee misbehavior and take prompt and appropriate action. Any official or employee of BD who is under the influence of alcohol or drugs or demands pay from any resident of the Town for services rendered, or verbally or physically abuses any resident of a dwelling unit or an employee or agent of the Town, shall be immediately removed from work under this Contract and shall provide no other service to the Town.

(d) BD shall be responsible for payment of any and all fees, costs, or taxes imposed on the disposal of recycling materials that are collected by BD from the Town pursuant to this Contract. BD shall be entitled to retain any payments received for recycling materials collected pursuant to this Contract from RDS or such other entity to whom BD may deliver the recycling materials pursuant to the terms of this Contract.

2. **Term.** The term of the Contract shall commence when executed and shall continue until midnight on June 30, 2022. Thereafter, the term of this Contract may be renewed by mutual agreement of the parties for consecutive additional one (1) year periods.

**3. Scheduling of Recycling Collection and Bulk Pickup.**

(a) During the term of this Contract, collection and removal of all recycling materials shall be made between the hours of 3:00 a.m. and 6:00 p.m. on Wednesday, year-round. If any collection day falls on a legal holiday, then such collection shall be made the next business working day. Legal holidays for the purpose of this Contract are Memorial Day, Independence Day, Labor Day, New Year's Day, Thanksgiving Day, and Christmas Day. BD will advise the Town at least four weeks in advance that collection will not occur on a day observed as a legal holiday and on which date collection will occur. The Town Manager and Public Works Director shall be notified immediately in the event that scheduled collection cannot be met due to mechanical or other unforeseen delays. BD agrees that in the event of equipment breakdown, strike or any other occurrence which would delay or prevent timely performance of its obligations under this Contract, that it shall take all actions reasonably necessary, including but not limited to, replacement of equipment and personnel in order to assure restoration of normal service within twenty-four (24) hours from the time of occurrence.

(b) BD will perform bulk item pickup on behalf of the Town twice per year, once in the Spring and once in the Fall. Exact dates of bulk item pickup are to be scheduled with input from Town officials at a minimum of one month ahead of schedule so that the Town has adequate time to notify residents of the impending event. Items included in bulk item pickup are furniture, mattresses, appliances that do NOT contain CFCs, exercise equipment, hot tub covers, and yard and vegetative debris bagged in clear or brown paper bags. Items not included in bulk item pickup include recycling materials, basketball goal posts, televisions, construction and demolition debris including paint, gasoline, oil and other chemicals, tires, soil, rocks, concrete, and tree stumps. BD will make every attempt to complete large item pickup in one business day,

but may return to complete it on a second day immediately following the first scheduled day if it is not possible to complete the event in one day due to volume. The Town will post rules and regulations instructing residents and business owners on what is eligible for bulk item pickup.

4. **Consideration.** The consideration to be paid by the Town for the Services, other than the bulk item pickup services, provided by BD under this contract, shall be: (a) **\$5.21** per month per residential or commercial unit/location located within the Town's corporate boundaries; plus (b) **\$80.80** per ton of recyclable material collected. The consideration to be paid by the Town for each of bulk item pickup conducted pursuant to Section 3(b) shall be \$3,500 per bulk item pickup conducted throughout the Town. The cost of the bulk pickup will be revaluated based on tonnage from the two collections made in 2018-2019, and the compensation to be paid by the Town for each bulk item pickup conducted after the execution of this Contract may be altered by agreement of the parties, provided however, the price for each bulk item pickup shall not exceed \$10,258. The foregoing pricing is based on 2,395 total estimated units/locations that are providing recycle materials within the Town's corporate boundaries to be collected by BD. Either party may request that a unit/location count be performed at any time during the term of this Contract and if such revised unit/location count reflects more or fewer units, all billing for the following fiscal year shall be adjusted to apply the new total number of units/locations. BD shall invoice the Town on a monthly basis for the Services provided during the prior month. Once the Town approves each such invoice, it shall pay said invoice.

**5. Recycling Receptacles.**

(a) Residential, heavy duty, two-wheeled 95 gallon lidded recycling receptacles shall be provided by BD to residents of the Town upon request for a flat fee of \$90.00 per receptacle. BD will provide a list of property owners who have purchased receptacles to the Town upon request, including street address, name and date of purchase, and quantity of cans purchased. Extra recycling receptacles may be purchased at a cost of \$90.00 each.

(b) Any recycling receptacles provided by BD to residents under this Contract will become the property of the residents who purchase the receptacles.

(c) All recycling will be placed in proper receptacles owned by the property owners with lids securely closed and placed in the right-of-way adjacent to the premises of the owner or occupant, at the edge or curb of the street at a reasonably accessible location for collection.

(d) BD will not be required to dispose of non-recycling materials except during times of bulk item pickup.

(e) The Town shall publish rules and regulations governing the manner in which owners or occupants of residences and businesses within the Town shall store and place recycling for pickup pursuant to this Contract.

(f) Recycling receptacles shall not be thrown or handled in a rough or careless manner during collection, but shall be used and handled with care, usual wear and tear excepted, and BD shall be liable for negligent and unnecessary damages caused to such receptacles.

(g) Where receptacles containers are rusted or otherwise so badly damaged as to be unsanitary or unsafe for handling, or not placed properly for pickup, a warning notice shall be given to the owner or occupant of the premises by the attaching of an appropriate notice to the receptacle, and that if correction of the said condition is not made within seven (7) days by the owner or occupant, then the container and the contents will not be picked up; *provided, however*, if the container is so badly damaged so as to be too unsafe to be serviced, said warning notice may be provided and then the container may be omitted from pick up until such unsafe condition is corrected.

**6. Office Hours; Complaints; Refusal or Failure to Collect:**

(a) BD shall maintain an office at which a responsible person can be reached by telephone during regular working hours of 8:00 a.m. to 4:30 p.m. to answer questions about recycling pick-up service with personnel sufficient to receive and handle complaints and to receive communication from the Town Manager or Public Works Director. BD shall supply an emergency telephone number for use in the event of after-hour emergencies.

(b) In the event of a complaint to BD that a receptacle has not been collected or has been missed, it shall be the duty of BD to address such complaints. BD shall then take whatever steps may be necessary to remedy the complaint and steps to remedy the complaint must be taken on or before 9:30a.m. on the next business day after the complaint has been received. BD will maintain a complaint log form, and a copy of this completed form and corrective actions taken will be submitted to the Town upon request. BD office personnel answering the phone will receive call and record appropriate information from each resident (name, date, phone number, address, time, comments). The person taking the message will immediately contact the driver and receive the driver's input. BD's Operations Manager will also be notified by the office, and he or she will either return the phone call or go to the site of the complaint and address the complaint the same service day.

(c) When service is refused at any eligible dwelling unit, information shall be provided to that dwelling unit by BD describing the reasons for the refusal, included as provide in Section 5(g), and the appropriate remedial action which must be taken in order to have the bin collected in the future. BD 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. BD 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.

**7. Weighing Material; Records; Scales.**

(a) BD shall be responsible for operating and maintaining in good condition its truck scales and associated equipment.

(b) BD shall maintain accurate weigh scales records for the purposes of determining the total weight of recycling material leaving the Town and shall keep detailed daily records of the same. BD shall provide a copy of this record each month to Town for billing purposes and shall provide a copy of this record to the RDS or such other entity to whom BD is delivering recycling materials pursuant to this Contract.

#### **8. Trucks, Routes, and Dumpsters.**

(a) BD shall make the recycling collection in enclosed trucks or vehicles. The vehicles shall be in good working order, shall be cleaned regularly in accordance with any applicable Health Department regulations (at sites suitable, appropriate and approved for cleaning said trucks or vehicles), shall have a presentable appearance, and shall be marked with recycling signage for identification purposes.

(b) Collection routes within the Town may include private streets which may be too narrow for a side loading vehicle to collect and empty recycling receptacles. In addition, the available turning radius may not accommodate standard collection vehicles. BD shall collect recyclables from the said private streets as part of the Services provided pursuant to this Contract. BD 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.

(c) Collection routes may also include locations that currently receive garbage collection services via dumpster due to neighborhood configuration. BD shall collect recyclables from the residences identified in this paragraph as part of the Services provided pursuant to this Contract. BD 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.

#### **9. Compliance with Laws, Spillage.**

(a) BD shall remove and dispose of all recycling materials pursuant to this Contract only in such manner as is permitted and authorized by law, and shall comply with all rules, regulations, and laws applicable to the collection and removal of recycling materials.

(b) BD is responsible for picking up and removing any materials that have blown out or dropped from trucks or the collection receptacles for any reason, even if a return trip is required. 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.

10. **Public Information Program.** BD 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 BD and all proposed activities, brochures, mailings, advertisements, etc. shall be approved by the Town prior to use. BD will deliver brochures or such other information on residential curbside recycling, which is produced by the Town on request by the Town.

11. **Change in Service Area and Equipment.**

(a) Should the current boundaries of the Town change during the term of this Contract, then this Contract shall be adjusted accordingly to reflect any increase or decrease in the residential, commercial, and business premises receiving recycling collection services under this Contract.

(b) Changes to the type, size, and amount of recycling receptacles, the type of frequency of service, and corresponding adjustments to the rates, may be made by mutual written agreement of the Parties. This Contract shall continue in effect for the term provided herein and shall apply to changes of and new service units or locations within the area in which BD provides the collection services under this Contract.

12. **Independent Contractor and Indemnity.**

(a) BD shall be deemed an independent contractor and shall assume all liability and responsibility for any and all damages to persons and/or property resulting from the performance of its duties under this Contract.

(b) To the extent allowed by applicable law, BD shall indemnify, defend and hold harmless the Town and its officers, employees, and agents from and against all liability, claims, suits, losses, damages, costs and demands on account of any personal injury, including death of any person, or property damage, sustained by any person or entity, arising out of or connected with the performance by BD of its duties under this Contract where such injury, death or damage is caused in whole or in part or alleged to have been caused, in whole or in part, by the negligent acts or omissions of BD or its officers, employees, agents or subcontractors.

13. **Insurance.** BD shall carry the following insurance which shall be with a reputable company duly licensed to do business in North Carolina:

(a) Workmen's Compensation of all employees who may be involved in any way in the performance of this Contract or in the Services in connection therewith.

(b) Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit.

(c) Vehicle fleet liability (business automobile coverage) in the amount of \$1,000,000.00 combines single limit.

14. **Breach and Termination.**

(a) If, during the term of this Contract, either Party shall be in breach of any provision of this Contract, the other Party may suspend or terminate its performance hereunder until such breach has been corrected; provided, however, that no such suspension or termination shall occur unless and until the complaining Party has given written notice of such breach to the other Party and the other Party has failed to cure such breach within at least ten (10) days thereafter. In the event any such breach remains uncured for a period of ten (10) days following the provision of such notice, the complaining Party may then suspend or terminate this Agreement by giving the other Party written notice of such suspension or termination; which shall become effective upon receipt of such notice. Any such suspension shall cease when the breach which led to such suspension is cured and the complaining Party is provided with evidence of such cure.

(b) Either Party may voluntarily terminate this Contract by providing 60-days' notice in writing to the other Party. If either Party desires to terminate this Contract due to costs or pricing, that Party must request in writing to the other Party that negotiations occur regarding costs and pricing. Upon the failure of negotiations to reach a resolution satisfying both Parties or upon the expiration of fifteen (15) days or such other amount of time agreed upon by the Parties from the date of the request, the Party desiring to terminate may terminate the Contract upon 30-days written notice to the other Party.

15. **Binding Effect.** This Contract shall be binding upon the Parties hereto, their successors and assigns. This Contract may not be assigned by BD without prior written approval of the Town.

16. **Force Majeure.** Neither Party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental order, fires, severe weather events, and acts of God and such failure shall not constitute a default under this Contract.

17. **Amendment and Restatement of Existing Contract.** This Contract shall amend and restate the Existing Contract in its entirety; thus, upon the execution of this Contract, the terms and conditions of this Contract shall govern and replace the Existing Contract in its entirety.

18. **E-Verification.** BD 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:



(a) BD or subcontractor employs less than 25 employees who are employed for 9 months or more during a 12-consecutive-month period; or

(1) BD 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.

19. **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.

20. **Miscellaneous.**

(a) This document constitutes the entire contract between the Parties and may only be modified by a written mutual agreement signed by the Parties.

(b) 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.

(c) This Contract shall not become effective, nor should it be considered binding, until it has been preaudited as evidenced by the finance officer's signature on the preaudit certificate.

SIGNATURE PAGE TO FOLLOW

Both the Town of Southern Shores and Bay Disposal, LLC agree to the above contract.

Bay Disposal, LLC, a Virginia limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Town of Southern Shores, a North Carolina municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

\_\_\_\_\_

Finance Officer