

Clerk



**Robert C. Edwards**  
Mayor

**Susie Walters**  
Mayor Pro Tem

**Cliff Ogburn**  
TOWN Manager

**Town of Nags Head**  
Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**M. Renée Cahoon**  
Commissioner

**John Ratzenberger**  
Commissioner

**Marvin Demers**  
Commissioner

NORTH CAROLINA  
DARE COUNTY

PURCHASE ORDER # N/A

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

  
(BUYER *initials*)

THIS CONTRACT is made and entered into this the 1<sup>st</sup> day of November 2015, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the SELLER") party of the first part and Bay Disposal, Inc. d/b/a Outer Banks Hauling, 2224 Springfield Avenue, Norfolk, VA 23523 (hereinafter referred to as "BUYER"), party of the second part.

1. MATERIAL TO BE SOLD AND AGREED CHARGES

BUYER hereby agrees as follows:

**BUYER will pay SELLER \$10.00 per ton for the recycle material the SELLER delivers to BUYER at 8546 Caratoke Hwy, Powells Point, NC 27966 . BUYER will review the average value per ton for recycle material on a quarterly basis. Any fluctuation (one way or the other) in the average value per ton for recycle material of 25% or more will increase (or decrease) the amount to be paid to the SELLER in the amount of \$2.50 per ton as stated in letter from BUYER dated October 19, 2015 see attached.**

2. TERM OF CONTRACT

The term of this CONTRACT is from February 1, 2016 to December 1, 2018. Either party may nonetheless cancel this CONTRACT on thirty (30) days written notice to the other party by certified mail or personal delivery.

3. PAYMENT TO SELLER

The BUYER agrees to pay SELLER per ton for the recycle material the SELLER delivers to the BUYER. Price specified for the Recycle material in accordance with this contract. Unless otherwise specified, the Seller shall submit an itemized monthly invoice to the BUYER within the first week of each following month provided that BUYER provides the recycle material tonnage report to the SELLER. Payment must be processed promptly upon receipt and approval by the BUYER of the monthly invoice within 30 days.

4. INDEPENDENT CONTRACTOR

Both the SELLER and the BUYER agree that the BUYER shall act as an independent contractor and shall not represent itself as an agent or employee of the SELLER for any purpose in the performance of the BUYER'S duties under this contract. Accordingly, the BUYER shall be responsible for payment of all Federal, State and local taxes arising out of the BUYER'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 its obligations under this CONTRACT, the BUYER is acting as an independent contractor and shall perform its obligations under this CONTRACT in accordance with currently approved methods and practice in the BUYER'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

5. INSURANCE AND INDEMNITY

The BUYER shall indemnify and save harmless the SELLER, 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 SELLER or which the SELLER 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 BUYER shall be fully responsible to the SELLER for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the BUYER is for the acts and omissions of persons directly employed by it.

In addition, the BUYER 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 BUYER is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the BUYER 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 its obligations under this CONTRACT.

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

The BUYER upon request by the SELLER shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the SELLER verifying the existence of any insurance coverage required by the SELLER prior to execution of this contract. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

6. HEALTH AND SAFETY

The BUYER shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The BUYER 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.

7. NON-DISCRIMINATION IN EMPLOYMENT

The BUYER shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The BUYER 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 BUYER 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 SELLER, and the BUYER may be declared ineligible for further contracts.

8. E-VERIFICATION OF EMPLOYEES

The BUYER 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 BUYER or subcontractor employs less than 25 employees; or
- (2) The BUYER 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.

9. 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.

10. OTHER PROVISIONS

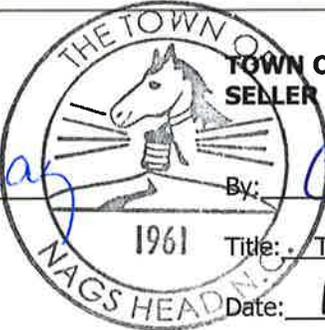
This Contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

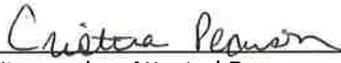
11. CONTRACT DOCUMENTS/AMENDMENTS

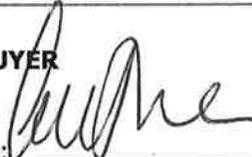
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents,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

12. SIGNATURES

Both the SELLER and the CONTRACTOR agree to the above contract.

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

 TOWN OF NAGS HEAD  
 SELLER  
 By:   
 Title: Town Manager  
 Date: 11/9/15

  
 Witnessed or Attested By: \_\_\_\_\_  
 Corporate Seal: \_\_\_\_\_

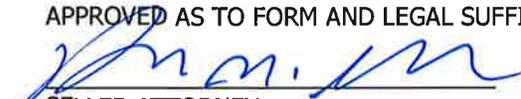
BUYER  
 By: 

Printed Name: EMMETT MOORE  
 Title: PRESIDENT  
 Date: 11/2/15

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

  
 Deputy Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

  
 SELLER ATTORNEY



October 19, 2015

Town of Nags Head  
2200 Lark Avenue  
Nags Head, NC 27959  
ATTN: Ralph Barile

Dear Mr. Barile,

As a follow up to our ongoing conversations regarding Bay Disposal & Recycling giving the Town of Nags Head a rebate for the recyclables delivered to our facility in Currituck, I thought it would be beneficial to both of us to establish some criteria on how we would pay you for the material going forward.

Bay Disposal & Recycling currently processes just under 3,000 tons per month at our recycling facility in Hampton. The blended rate for the material we sell currently stands at \$136.00 per ton. The processing cost associated with the tons we process is right at \$90.00 per ton. The handling and transportation cost associated with getting your material to Hampton is close to \$25.00 per ton. Obviously, when you add the handling, trucking and processing costs together you get to a cost of \$115.00 per ton leaving \$21.00 per ton for us to share.

Bay Disposal & Recycling has agreed to pay you \$10.00 per ton for the material you deliver and will continue to honor that commitment. However, going forward I think it's fair with everyone to establish a guideline on how the \$10.00 will be adjusted as the markets fluctuate. We will review the average value per ton on a quarterly basis. Any fluctuation (one way or the other) of 25% or more will increase (or decrease) the amount paid to the Town of Nags Head by \$2.50.

Hopefully, you will find this a fair solution and one that both of us can work off of going forward. Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink that reads "James Schaubach". The signature is written in a cursive style with a long, sweeping underline.

James Schaubach  
Vice President