

## SCHEDULE C

### **MUNICIPAL WASTE MANAGEMENT AGREEMENT**

This Agreement (the "Municipal Agreement") made and entered into this 2<sup>nd</sup> day of December, 2008, by and between The Town of Southern Shores, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina ("Municipality"), and Dare County, a political subdivision organized and existing pursuant to the laws of the State of North Carolina ("Dare County").

### **RECITALS**

It is hereby ascertained, determined and declared by the parties that:

A. Dare County is a member of the Albemarle Regional Solid Waste Management Authority, a regional solid waste management authority organized and existing pursuant to the laws of the State of North Carolina (the "Authority").

B. The Authority has entered into a Waste Supply and Disposal Agreement dated October 1, 2008 (the "Authority Agreement") with Republic Services of North Carolina, LLC d/b/a East Carolina Environmental ("Republic") relating to the disposal of the Authority's Waste and any Waste generated by municipalities with whom members of the Authority have contracted in the East Carolina Environmental Landfill in Bertie County, North Carolina (the "Facility").

C. The Authority Agreement requires that Members use their best efforts to enter into waste management agreements with municipalities within their geographic jurisdictions, and prohibits use of the Authority's Transfer Stations by any municipality that has not entered into such agreements, at Republic's discretion.

D. Municipality desires to contractually commit its Waste to Dare County, thereby assuring access to a Transfer Station and assuring the availability of disposal space for Municipality's Waste in the Facility pursuant to the terms of the Authority Agreement.

E. Dare County desires to contract with Municipality for the purpose of including Municipality's Waste in the aggregate amount delivered by the Authority to the Facility for disposal under the terms of the Authority Agreement.

F. The parties desire to terminate the prior Municipality Waste Management Agreement between Dare County and Municipality dated April 5, 1994 ("Prior Municipality Agreement") at the time this Municipal Agreement becomes effective.

G. The payments called for in this Agreement do not include or apply to maintenance and capital costs associated with the operation of a Transfer Station.

NOW, THEREFORE, in consideration of the terms, conditions and covenants expressed herein the parties agree as follows:

1. Definitions. Unless otherwise defined herein, the capitalized terms in this Municipal Agreement shall have the same definition as specified in the Authority Agreement.

2. Purposes. The purposes of this Municipal Agreement are those set forth in the Recitals above and made a part hereof.

3. Duties and Responsibilities.

3.1 Waste Commitment. Municipality agrees to commit all Waste, excluding, at the sole option of the Municipality, Recyclable Materials, which Waste is generated or collected by it or its contractors within Municipality's geographic jurisdiction, to Dare County, for delivery to a Transfer Station or to the Facility in accordance with the terms and conditions of the Authority Agreement. For the Term of this Municipal Agreement, Municipality agrees that it will continue to provide for residential and commercial Solid Waste collection within its boundaries. In the event Municipality allows by franchise, contract or otherwise, the collection of Solid Waste within its boundaries by a third party, Municipality shall require such third party to dispose of all

Solid Waste as that term is defined in the Authority Agreement, at a Transfer Station or at the Facility in accordance with the terms and conditions of the Authority Agreement.

3.2 Waste Disposal. Dare County agrees to include Municipality's Waste with Dare County's Waste for disposal in accordance with the terms and conditions of the Authority Agreement.

3.3 Cooperation with Dare County. Municipality hereby agrees to cooperate with Dare County and to take all steps necessary to fulfill the parties' obligations hereunder concerning delivery and disposal of Municipality's Waste, including, but not limited to, adopting and implementing a solid waste management plan to the extent this requirement is not satisfied by the existing Dare County and Authority plans as amended from time to time, adopting flow control and franchise ordinances requiring all Waste within the Municipality to be delivered to a Transfer Station for disposal by Republic or directly to the Facility, and requesting that DENR include Municipality with Dare County as a designated geographic area, to the extent allowed by law and consistent with the Constitutions of North Carolina and the United States of America, in order to obligate all such Waste to be delivered to a Transfer Station for disposal by Republic or directly to the Facility. Specifically, Municipality shall, by March 1, 2009, adopt a franchise ordinance approved by Republic that requires all Waste in Municipality's geographical jurisdiction to be delivered to a Transfer Station for disposal by Republic or directly to the Facility and requires all waste collectors and transporters of all Waste in Municipality's geographical jurisdiction to obtain a license to collect and transport Waste within Municipality's geographical jurisdiction. Municipality may satisfy its obligation to adopt a franchise ordinance by adopting or agreeing to be subject to the franchise ordinance adopted by Dare County pursuant to Dare County's Municipality Agreement with the Authority. The parties authorize

Republic and the Authority as third party beneficiaries of this Municipality Agreement to enforce the provisions of this Municipality Agreement as against either or both of the parties to this Municipality Agreement and waste collectors and transporters of all Waste in Dare County's geographical jurisdiction.

4. Manner of Appointing Necessary Personnel. Municipality and Dare County shall each appoint the necessary personnel for performing their respective obligations under this Municipal Agreement.

As long as at least one municipality within Dare County is a party to this Municipal Agreement, then the Dare County alternate to the Authority Board shall be nominated by the municipal parties subject to the approval of and appointment by the Dare County Board of Commissioners. The alternate board member shall serve at the pleasure of the Dare County Board of Commissioners. As the County alternate member of the Authority Board, the alternate shall have the same rights and privileges as all other Authority members as set out in the Resolution Establishing Regional Solid Waste Management Authority.

If the party municipalities do not nominate an individual within sixty (60) days after a vacancy occurs in the alternate board member appointment, the County shall appoint a resident of one of the party municipalities as the alternate member for the regular term or remaining portion thereof. The County shall act upon the nomination within forty-five (45) days of receiving written notice of nominee's identity from the party municipalities. If the County does not act upon said nomination within the forty-five (45) days, the nominee shall be automatically accepted.

5. Method of Financing and Payment. The undertaking which is the subject of this Municipal Agreement shall be financed by annual appropriations of the Municipality based upon

the actual Solid Waste tonnage of the Municipality multiplied by the charges for Waste from Region 3 that are set pursuant to the Authority Agreement. Dare County, or its assignee for billing and collecting, will bill Municipality in advance on the first (1<sup>st</sup>) day of the month, with payment due by the tenth (10<sup>th</sup>) of that month, for a portion of Municipality's Solid Waste, but in no event shall the amount of such bill exceed the actual tonnage delivered by Municipality. It is the express intention and agreement of the parties that Municipality shall under no circumstances be required to pay in any month, including winter months, for more Solid Waste than it actually delivers.

Fifteen (15) days following the end of each calendar quarter, Dare County or its assignee shall provide the Municipality with a written reconciliation for the preceding calendar quarter showing the total tonnage of Solid Waste accepted from each Municipality. Dare County or its assignee shall include with the reconciliation an invoice, which the Municipality shall pay by the tenth (10<sup>th</sup>) of the following month, for an amount equal to the difference between the Minimum Payment and the amount which the Municipality owes based upon the number of tons of Solid Waste received by Dare County from each Municipality times the applicable tipping fee for the Region.

Dare County agrees that in the event of termination of this Agreement, it will not tax properties within the jurisdiction of the Municipality for the transfer, transport, and disposal of Solid Waste, the minimum payment as defined in this Agreement, or levy any special assessment related to Solid Waste as defined in the Authority Agreement, commencing with the fiscal year following the year of termination of this Agreement.

6. Ownership of Real Property. All real property involved in the undertaking which is the subject of this Municipal Agreement shall be owned, leased or under contract by Republic,

the County or the Authority. There will be no joint ownership of real property pursuant to this Municipal Agreement.

7. Term.

A. This Municipality Agreement shall be effective when both of the following occur:

(i) this Municipality Agreement is approved and executed by the respective governing bodies of Municipality and Dare County and delivered to the respective parties; and (ii) The Authority Agreement becomes effective on the Effective Date pursuant to Section 1.6 of the Authority Agreement. At the time this Municipality Agreement becomes effective, the Prior Municipality Agreement terminates.

B. This Municipal Agreement shall terminate on the expiration of the Term of the Authority Agreement, provided, however, if the Authority Agreement is terminated not due to a breach by Republic or if the Authority no longer exists, and Dare County continues to deliver its Waste to Republic, Municipality shall continue to deliver its Waste to the County, provided a new Republic-Municipal Agreement has been executed by the applicable parties within one hundred twenty (120) days of the date the Authority ceases to exist or the Republic-Authority Agreement is terminated for any reason. During the period of negotiations, the parties shall deliver their Waste to the County or Republic and pay the tipping fee last in effect prior to the termination of the Republic-Authority Agreement or upon the cessation of the Authority. In the event a new agreement has not been executed by the parties within one hundred twenty (120) days, the parties shall have the option of entering into an agreement or agreements with other public or private entities for waste disposal.

8. Similar Services. Municipality shall not establish or operate a solid waste management facility within its geographic jurisdiction offering the same or similar services as

those provided by Republic in the Authority Agreement; provided, however, that nothing herein shall prevent Municipality from implementing waste recycling and reduction programs.

9. Ratification. Municipality hereby ratifies and affirms the Authority Agreement. Municipality hereby also agrees to provide the Authority with all Waste generated within Municipality's geographic jurisdiction. Municipality hereby authorizes the Authority, on behalf of Municipality, to provide written consent to modify or amend the Authority Agreement at any such times as the Authority and Republic, in their discretion, seek to modify or amend the Authority Agreement.

10. Amendment. This Municipal Agreement may not be modified or amended except by subsequent written modification or amendment approved and authorized by Republic and each of the parties.

11. Severability. If any of the provisions of this Municipal Agreement are held, for any reason, to be unconstitutional, unenforceable, invalid, or illegal in any respect, such decision shall not affect or impair any of the remaining provisions of this Municipal Agreement, and the parties shall, to the extent they deem to be necessary and appropriate, take such actions as are necessary to correct any such unconstitutional, unenforceable, invalid, or illegal provision. It is hereby declared to be the intent of the parties that this Municipal Agreement would have been approved and executed had such unconstitutional, unenforceable, invalid or illegal provision been excluded therefrom.

12. Entire Agreement. This Municipality Agreement and the Authority Agreement (and any agreements referenced in Section 1.6 of the Authority Agreement) contain the entire agreement between the parties, and cancels and supersedes all prior negotiations, representations, understandings or agreements, either written or oral, between the parties with respect to the

subject matter hereof, with the exception of the Authority Agreement. Any statement, oral or written, made by any party or agent of any party that is not contained in this Municipal Agreement and the Authority Agreement shall not be valid or binding.

13. Benefit and Dispute Resolution. With the consent of the Authority and Dare County, either Republic or the Municipality may deal directly with each other in carrying out the terms of this Municipality Agreement. It is the express intention of the parties that Republic and the Municipality attempt to resolve issues or disputes by dealing through the Authority and the County, and only after either party has exhausted all reasonable efforts to address and resolve such issues or disputes directly with the Authority and Dare County, shall either party pursue any right or remedy against each other. The parties hereto acknowledge and agree that Republic and the Authority are third party beneficiaries of the terms and provisions contained in this Municipality Agreement.

14. Covenant of Further Assurances. The Municipality agrees that from and after the date of execution hereof, it will, upon the request of Dare County, execute and deliver such other documents and instruments and take such other actions as may reasonably be required to carry out the purpose and intent of this Municipal Agreement.

15. Assignment. No assignment, delegation, transfer or novation of this Municipal Agreement or any part thereof shall be made or permitted by the Municipality unless approved in writing by Republic and Dare County.

16. Governing Law. This Municipal Agreement shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina and Pitt County, North Carolina and the United States District Court for the Eastern District of North Carolina shall be



the sole and exclusive jurisdiction for the resolution of any disputes that relate to or arise under this Municipality Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Municipal Agreement on the date first above written, the same having been approved by the respective governing bodies of both the Municipality and Dare County.

[Signatures on following page]



TOWN OF SOUTHERN SHORES

BY: \_\_\_\_\_

*[Handwritten Signature]*  
Mayor

ATTEST

*[Handwritten Signature]*  
Clerk

This instrument has been pre-audited in the matter required by the Local Government Budget and Fiscal Control Act.

By: *[Handwritten Signature]*  
Municipal Finance Officer

DARE COUNTY

BY: \_\_\_\_\_  
Chairman  
County Commissioners

ATTEST

\_\_\_\_\_  
Clerk

This instrument has been pre-audited in the matter required by the Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_  
County Finance Officer

## SCHEDULE D

### **Fuel Surcharge Calculation:**

Per paragraph 6.3 of the Waste Supply and Disposal Agreement, the per ton Transportation and Transfer Station Operation Fees set forth in paragraph 6.1 of the Agreement shall increase or decrease by one-half of the Fuel Surcharge. The Fuel Surcharge is calculated as follows:

***One percent (1%) for every eight cent (\$.08) increase in the price of diesel fuel above or below the original contract base fuel price of \$1.26 per gallon.***

The Fuel Surcharge calculations shall be made and become effective the first Monday of each month based upon the United States Department of Energy, Energy Information Administration, Weekly Retail On-Highway Diesel Prices, Average All Types, Lower Atlantic Region, Monday's Price (or the next business day if Monday is a Federal holiday). This information is available at:

[http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp#graph\\_buttons](http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp#graph_buttons)

The Disposal Fees and Disposal Tax set forth in Section 6.2 are not subject to Fuel Surcharge adjustments.

### **Fuel Surcharge calculation example:**

*Fuel assumptions for example:*

- Contract base fuel cost = \$1.26 per gallon
- Actual fuel cost = \$3.000 per gallon

### **Fuel Surcharge calculation:**

- Actual fuel cost at \$3.000 per gallon less contract base fuel cost at \$1.26 per gallon = \$1.74 additional fuel cost
- $(\$1.74 \div \$0.08) \times 1\% = 21.7\%$  increase (to the tenth of a percent, not rounded (i.e., 21.79% = 21.7%; and 21.71% = 21.7%))
- $21.7\% \times$  Transportation and Transfer Station Operation Fee = **Fuel Surcharge**  $\div 2 =$  Authority's share of Fuel Surcharge (see below).

<b><i>Authority Regions</i></b>	<b><i>Disposal Fee</i></b>	<b><i>Transportation and Transfer Station Operation Fee</i></b>	<b><i>Total Fee</i></b>	<b><i>Authority's Share of Fuel Surcharge</i></b>	<b><i>Fee Per Ton with Fuel Surcharge</i></b>
1	\$40.15 +	\$16.16 =	\$56.31 +	\$1.75 = (21.7% x \$16.16 ÷ 2)	\$58.06
2	\$40.15 +	\$20.85 =	\$61.00 +	\$2.26 = (21.7% x \$20.85 ÷ 2)	\$63.26
3	\$40.15 +	\$22.35 =	\$62.50 +	\$2.42 = (21.7% x \$22.35 ÷ 2)	\$64.92



# **SCHEDULE F**

