

Resolution No. R-24-2024
Adopted: December 18, 2024

A Resolution of the Mayor and Town Council of Kensington Authorizing a Contract with Ecology Services Refuse & Recycling, LLC, for the term of one-year, beginning March 1, 2025, and for three additional one-year options, to provide weekly residential, curbside, food waste collection within the Town subject to review by the Town Attorney.

Whereas, Article VI, “Powers of the Council”, Section 601, “General Powers”, of the Town Charter authorizes the Mayor and Council to take action as it may deem necessary for the good government of the Town; for the protection and preservation of property, rights, and privileges; for the preservation of peace and good order; for securing person and property from violation, danger, or destruction; and for the protection and promotion of the health, safety, and welfare of the residents and visitors of the Town; and

Whereas, Article VI, “Powers of the Council”, Section 602, “Specific Powers”, Subsection 19, “Garbage”, of the Town Charter authorizes the Mayor and Council to require waste and hazardous waste materials to be removed to designated points in an organized manner; and

Whereas, Ecology Services Refuse & Recycling, LLC, provided the Town with a proposal for weekly, curbside, Food Waste collection within the Town at a rate of \$8.07, per unit, per month; and

Whereas, pursuant to Chapter II, “Government and Administration”, Article 4, “Purchasing and Contracts”, Section 2-402, “Bidding Requirements”, of the Town Code, all purchases exceeding \$10,000 shall be approved by the Town Council; and

Whereas, in accordance with Section 2-404 of the Town Code, the Mayor and Council may, by an extra-majority vote, (defined as one more than a majority of those present and voting) authorize the bypassing of any or all bid procedure steps in cases which, in the Council’s judgment, warrant such action; and

Whereas, the Mayor and Town Council have determined that it is in the public interest to authorize the Town Manager to accept the Contract proposal (Exhibit A) for a ten-month term, with the option of three additional one-year terms on substantially the terms and conditions set out in the attached contract.

Now, Therefore, Be It Resolved by the Mayor and Council of the Town of Kensington that a contract in substantially the form attached to accept the Contract proposal from Ecology Services Refuse & Recycling, LLC, for weekly, curbside, residential Food Waste collection

beginning March 1, 2025, through December 31, 2025, at a rate of \$8.07, per unit, per month, with options for up to three additional one-year terms, where the Contract Price for the additional option years will be the prior year's unit pricing, plus the twelve-month Consumer Pricing Index – All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria area for the November prior to the new one-year term.

Adopted by the Town Council this 18th day of December, 2024.

Effective the 1st day of March, 2025.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: Susan C. Engels
Susan C. Engels, Clerk – Treasurer

Tracey C. Furman
Tracey C. Furman, Mayor

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the Town Council in public meeting assembled on the 18th day of December, 2024.

By: Susan C. Engels
Susan C. Engels, Clerk – Treasurer

EXHIBIT A

TOWN OF KENSINGTON, MARYLAND CONTRACT FOR FOOD WASTE COLLECTION WITH ECOLOGY SERVICES REFUSE & RECYCLING, LLC

THIS AGREEMENT is made and effective this _____ day of _____, 2024, by and between the Town of Kensington (hereinafter referred to as the “Town”) and Ecology Services Refuse & Recycling, LLC, a Maryland corporation, located at 9135 Guilford Road, Suite 200, Columbia, MD 21046, (hereinafter referred to as “Contractor”).

WHEREAS, the Town wishes to obtain Food Waste collection and disposal services for the Town; and

WHEREAS, the Contractor has provided a proposal to provide said services.

NOW, THEREFORE, the parties hereto agree as follows:

I. SCOPE OF WORK

The work required of the Contractor will be performed in coordination with the Town and the Town Manager, who will supervise and inspect the work. The Contractor shall supply all labor, equipment, and certain materials necessary to provide complete and satisfactory food waste collection and disposal services. The Town will provide and distribute the 13-gallon food waste bins to be used by residents for the collection program. The Contractor is responsible for collection and delivery of the food waste to the Maryland Bioenergy Center, located in Jessup, Maryland. The Contractor shall collect and properly dispose of the Town’s residential food waste, listed in Exhibit A, consisting of all food waste (fruits, vegetables, meats, dairy, and breads), cooked foods, and packaged foods.

The Town represents and warrants that it shall provide food waste items that are compliant with the Maryland Bioenergy Center. The Contractor shall be responsible for notifying the resident directly by placing a Town provided sticker on the 13-gallon bin, if the items in the food waste bin do not meet collection specifications by the Maryland Bioenergy Center. If a specific resident continually fails to comply with the collection requirements, the Contractor shall notify the Town Manager.

The work to be performed by the Contractor shall also be to provide once weekly residential food waste collection of approximately 574 residential dwellings within the corporate boundaries of the Town of Kensington, Maryland, as is more particularly set out in the Specifications and Work Requirements. The Town Manager shall be responsible for notifying the Contractor if the number of residential dwelling units changes during the term of the Contract.

The sequence of collection by street and routing of vehicles shall follow the current trash, brush, and recycling collections by the Contractor. The sequence of collection may be revised periodically by the Town Manager, as necessary.

II. CONTRACT TERM

This Agreement shall be for a term of ten (10) months (the "Term") commencing on March 1, 2025, and terminating on December 31, 2025. This Agreement shall renew at the Town's option for up to an additional three (3) consecutive one-year terms.

III. DATES AND TIME OF WORK

The Contractor shall collect all food waste materials between the hours of 7:00 AM to 4:00 PM, on the designated collection day, which shall be _____, excluding holidays specified by in the Contract.

IV. CONTRACT PRICE

The Contract Price for the initial term is reflected in the Contractor's Proposal, EXHIBIT B, in which the unit pricing will be \$8.07 per household, per month. If a neighboring jurisdiction (Town of Chevy Chase View or Town of Garrett Park) joins the food waste collection program during the initial term, the unit pricing will be \$5.29 per household, per month. If a neighboring jurisdiction joins the food waste collection program during a subsequent year, the unit pricing will be the baseline unit price, \$5.29, plus an increase based on the twelve-month CPI-U, as outlined below.

The Contract Price for the additional option years will be the prior year's unit pricing, plus the twelve-month Consumer Pricing Index – All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria area for the November prior to the new one-year term.

The Contractor waives any requirement that the Town pay any fuel surcharges or environmental impact fees, provided however, that to the extent that the tipping fees associated with the Maryland Bioenergy Center imposes or increases costs for disposal, the parties will discuss increases in the contract price in good faith and reach a mutually agreeable adjustment as result of such increases.

V. CAPACITY TO PERFORM

The Contractor represents that all equipment and personnel necessary for providing the described services and items will be available as needed to provide the service requested. The Contractor shall perform all specified work using properly trained and skilled individuals supervised and directly employed by the Contractor. Materials and equipment furnished by the Contractor shall conform in strength, quality of materials, appearance, and workmanship to that which is usually provided by a commercial Contractor in this trade.

VI. STATUS OF CONTRACTOR

The Contractor shall perform the services described herein as an independent Contractor and not as an employee of the Town.

VII. INSURANCE AND INDEMNIFICATION

The Contractor shall provide proof of compliance with State law as to workers' compensation and unemployment insurance, and of adequate comprehensive general liability insurance (bodily injury - \$1,000,000.00 for each occurrence/\$2,000,000.00 aggregate; property damage - \$500,000.00 for each occurrence/aggregate) and automobile fleet insurance (\$1,000,000.00 for each occurrence/aggregate; property damage - \$500,000.00 for each occurrence/aggregate). The Contractor shall name the Town as an additional insured through an additional insured endorsement on said policies of insurance, with exception of the workers' compensation and unemployment insurance, and shall provide Certificate of Insurance and the additional insured endorsement before starting work under this Agreement.

Provision of any insurance required herein does not relieve Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded, or for which the Contractor may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

The Contractor agrees to indemnify, defend, and save the Town harmless from and against any and all liability which the Town may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by the Contractor's breach of this Agreement or caused by any negligent act, negligent omission or willful misconduct of the Contractor or its employees, which occurs in the performance of this Agreement, provided that the Contractor's indemnification obligations will not apply to occurrences involving Excluded Materials. Without waiving its common law and other immunities or provisions §5-301 et seq. of the Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, the Town agrees to indemnify, defend and save the Contractor harmless from and against any and all liability which the Contractor may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by the Town's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Town or its employees, agents or contractors in the performance of this Agreement.

VIII. LICENSES, APPLICABLE LAWS

The Contractor will be responsible for obtaining any and all licenses pertaining to performance of work under the Contract. All services and materials provided by the Contractors shall conform to all applicable laws and regulations.

IX. MATERIALS AND STANDARD OF WORK

All work performed, and material provided, pursuant to this Contract shall be in conformance with standards adopted by the federal government, State of Maryland and Montgomery County and will be appropriate for existing conditions. All work shall be performed in a neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor at the Contractor's expense, notwithstanding that such deficiencies have been previously accepted or were due to no fault of the Contractor.

X. ACCURATE INFORMATION

The Contractor certifies that all information provided in response to the invitation to bid or in response to other requests for information is true and correct. Any false or misleading information is grounds for the Town to terminate this Contract.

XI. PERIODIC AND FINAL INSPECTION

The Town will make periodic inspections of the work through the Town Manager to ensure that all Contract requirements have been met.

XII. TERMINATION FOR DEFAULT

Failure of the Contractor to deliver work, supplies, materials, or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with Contract documents shall constitute a breach of Contract. In such event, the Town may give notice to the Contractor to cease work until the cause for such order has been eliminated. Should the Contractor fail to correct such default within five business days after receipt of notification, the Town may terminate any such Contract. This provision shall not limit the Town in exercising any other rights or remedies it may have. Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events.

XIII. TERMINATION FOR CONVENIENCE

The performance of work or delivery of services may be terminated in whole or in part at any time upon thirty (30) days written notice when the Town determines that such termination is in its best interest. The Town will be liable for labor, materials, goods and services furnished prior to the effective date of such termination.

XIV. NOTICES

To Town of Kensington:

Matthew J. Hoffman
Town Manager

3710 Mitchell Street
Kensington MD 20895

To Contractor:

Peter F. Osborne
Managing Member
Ecology Services Refuse & Recycling, LLC
9135 Guilford Road, Suite 200
Columbia MD 21046

XV. ERRORS IN SPECIFICATIONS

The Contractor shall take no advantage of any error or omission in the specifications. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

XVI. GOVERNING LAW

This Contract is executed in the State of Maryland and shall be governed by Maryland law, without reference to its conflict of laws provisions. The Contractor, by executing this Contract, consents to the jurisdiction of the Maryland state courts with respect to any dispute arising out of this Contract. A party's remedies hereunder are not exclusive and are in addition to any other remedies at law or equity. A party shall not be deemed to waive any remedy available to it or any right under this Agreement, at law or in equity, by virtue of any act or forbearance in enforcing such rights or remedies.

XVII. INTERPRETATION

Any questions concerning conditions and specifications shall be directed in writing to the Town Manager. No interpretation shall be considered binding unless provided in writing by the Town Manager. By execution of this Contract, the Contractor certifies that it understands the terms and specifications.

XVIII. ATTORNEY'S FEES AND COSTS

The prevailing party shall be entitled to attorney's fees and costs incurred in any actions or claims brought to enforce this Contract, or for damages thereunder.

XIX. SUCCESSORS AND ASSIGNS/ASSIGNMENT

This Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. In any event, the Contractor shall not assign any right or obligation under this Contract without the Town's express written consent which may be withheld in the Town's sole

discretion. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

XX. CONTRACT DOCUMENTS

The Contract documents include this Agreement and the following:

Proposal for Food Waste Collection Services – January 22, 2024

Affidavits

Sequence of Collection

Certificate of Insurance

XXI. RESTORATION OF PROPERTY

The Contractor, at its own expense, will restore or replace any property displaced or damaged as a result of work performed under this contract, to the satisfaction of the Town.

XXII: OTHER PAYMENTS; EXPENSES

The Town will not be responsible for any cost or expenses of operation of any kind associated with Contractor's provision of services pursuant to this Agreement, except as set out herein. Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of his obligations under this Agreement, except as set out herein.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Contractor, as an independent contractor of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Contractor is deemed not to be an independent contractor by any local, state or federal government agency, Contractor agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys fees incurred thereby.

XXIII. SUBCONTRACTING

The Contractor may not subcontract any other work required under this Agreement without the consent of the Town. If the Contractor wishes to subcontract any of the said work, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. The Contractor is not relieved of primary responsibility for full and complete performance

of any work identified to the subcontractor. There shall be no contractual relationship between the Town and the subcontractor.

XXIV. CONSTRUCTION AND LEGAL EFFECT

This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

XXV. RELIEF

The Contractor recognizes the substantial and immediate harm that a breach or threatened breach of this Agreement will impose upon the Town, and further recognizes that in such event monetary damages may be available to the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, Contractor consents to the Town's entitlement to seek preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing the Contractor from further breaching any of its obligations set forth herein. Nothing herein shall be construed as prohibiting the Town from pursuing other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from the Contractor.

XXVI. NO WAIVER

The failure of the Town or Contractor, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under this Agreement.

XXVII. SEVERABILITY

If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

XXVIII. SET-OFF

In the event that Contractor shall owe an obligation of any type whatsoever to the Town at any time during the term hereof or after termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed by the Contractor against any compensation due the Contractor from the Town.

XXIV. ENTIRE AGREEMENT

This Contract, including Exhibit A attached hereto, constitutes the entire agreement between the Town and the Contractor. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision.

IN WITNESS WHEREOF, we have now hereunto set our hands and seals this

_____ day of _____, 2024.

WITNESS: **TOWN OF KENSINGTON**

Susan Engels, Clerk-Treasurer

By: _____
Matthew J Hoffman, Town Manager

WITNESS: **ECOLOGY SERVICES REFUSE & RECYCLING, LLC**

By: _____
Peter F. Osborne
Title: Managing Member

Approved as to form and legal sufficiency

Suellen M. Ferguson,
Attorney for the Town of Kensington