

**NORTH CAROLINA
DARE COUNTY**

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is entered into this the 15TH day of March 2021 by and between the Town of Nags Head and Tidewater Fibre Corp. (d/b/a TFC Recycling) for the right to operate an exclusive franchise for the collection and processing of recycling materials from residential units in the Town. The parties, for and in consideration of the mutual promises and obligations set forth herein, do agree as follows:

- I. The Town, by Ordinance duly enacted, has authorized the Town Manager to enter into this Agreement on behalf of the Town with Tidewater Fibre Corp., d/b/a TFC Recycling, for an exclusive franchise for the collection and processing of recyclable materials from Eligible Dwelling Units in the Town.

- II. This Franchise Agreement shall be subject to the following rights of the Town, but this enumeration shall not be exclusive or impair the right of the Town to include any other provisions in this Franchise Agreement as long as such other provisions are within the power of the Town:
 - A. To repeal the same for misuse, non-use, or failure to comply with the provisions thereof.

 - B. To require proper and adequate service and maintenance thereof at the highest practicable standard of efficiency.

 - C. To establish reasonable standards of service, quality of products and prevent unjust discrimination in service or rates.

 - D. To require continual and uninterrupted service to the public in accordance with the terms of this Franchise Agreement throughout the Term of this Franchise Agreement.

 - E. To use, control and regulate the use of its streets, alleys, bridges and public places and the space above and beneath them.

 - F. To impose such other regulations as may be determined by the Town to be conducive to the safety, welfare, and accommodation of the public.

III. Definitions: For the purposes of this Franchise Agreement, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

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Franchise Ordinance. Article II, Chapter 30 of the Town Code of Ordinances.

Franchise Agreement. This agreement.

Franchise Area. Except as otherwise provided in the Franchise Ordinance, the franchise area shall be the entire geographic area within the Town as it is now, or may be in the future, constituted.

Franchisee. Tidewater Fibre Corp. (d/b/a TFC Recycling).

Person. Any corporation, partnership, proprietorship, individual, organization, company, governmental entity, or any natural person.

Reasonable Notice.

- a. Written notice addressed to the Town or franchisee and sent to the location as the parties have designated in or provided pursuant to this Franchise Agreement by certified mail and postmarked not less than seven (7) business days prior to that date on which the party giving the notice shall commence any action which requires the giving of notice.
- b. In computing the seven (7) days, holidays recognized by the Town shall be excluded.

Resident. Any person residing in the Town.

Right-of-Way. Each of the following of which have been, or are hereafter dedicated, to the public and maintained by any public authority or by others and located within the Town, including without limitation, the surface and space within, above and below any real property in which the Town has an interest in law or equity, whether held in fee, or other estate or interest, or as trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swell, river, tunnel, viaduct, bridge, park, or any place, area, easements, rights-of-way in similar public property and areas, or real property owned by or under the control of the Town.

Subscriber. Any person who elects to subscribe to the curbside recycling service provided by the franchisee.

Town. The Town of Nags Head, North Carolina as it is now, or may in the future, be constituted.

Town Administrator. A person designated by the Town Manager to represent the Town in all business with the franchisee.

Curbside Collection Site. A space within four feet of the paved portion of Town

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streets or rights-of way.

Eligible Dwelling Units. All single family, two family and multi-family dwelling units serviced by recycling carts and being served by or eligible to be served by the Town's residential solid waste collection service prior to the execution of this Franchise Agreement and all future such units which may be constructed in Nags Head.

Recyclable Materials Cart or Recycling Cart. A 90-to-98-gallon roll-out type container, including a lid and wheels, with a standard recycling logo, and be of a color approved by the Town.

Schedule of Collection. A schedule for the collection of recyclables approved by the Town Administrator.

- IV. Terms of a Franchise Agreement. The term of this Franchise Agreement shall beginning on or around May 1, 2021 and end three years from the date the Franchise Agreement is executed. At the end of the initial term, the Town may renew this Franchise Agreement for an additional period of time to be agreed upon by the parties. The parties agree that recycling collection and processing services provided under this Franchise Agreement shall commence no sooner than May 1, 2021 and only then after a minimum of 440 subscribers have contracted for the services to be provided by franchisee.
- V. Scope of Services. The franchisee shall, and shall provide all personnel, equipment, materials, and other appurtenances, as may be required, to:
- A. Provide residential curbside collection of recyclable materials, on a weekly basis, to include commingled recyclable materials within franchise area. Collection will occur on Mondays utilizing the recycling carts. Recyclable materials may include, but not be limited to, old newsprint, clear and colored glass, aluminum beverage containers, tin cans, steel cans, bi-metal cans, plastic bottles, tubs, jugs, and jars, magazines, phonebooks, corrugated cardboard, pressboard, paperboard, and mail from the contractual customers. This list of recyclable materials may be subject to change based upon the market for recyclable materials.
 - B. Transport collected recyclable materials to a materials recovery facility or any recyclable materials handling and disposition facility other than an incinerator or a landfill (except as otherwise provided in Section VI. A).
 - C. Make monthly reports to the Town detailing weight and constituents of materials collected, methods of processing and/or final disposal, and participation rates of subscribers.
 - D. Notify the Town Public Works department each service day whenever there is an issue servicing recycling carts or when there are recycling cart capacity issues (i.e., overflow of recycling carts).

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- E. Perform account management of subscribers including service billing and collecting (accounts payable/accounts receivable) from subscribers, and keeping and maintaining other financial records, including independent audits. The franchisee shall collect all recyclable materials placed in recycling carts provided by subscribers. The parties may agree to add other items to the list of accepted recyclables as the market for recyclable materials allows. The franchisee will be responsible for preparing and distributing information to subscribers describing the change and how to comply therewith.

VI. Additional Required Services.

- A. The franchisee will be responsible for all recyclables collected in accordance with this Franchise Agreement including any recycling processing costs or disposal charges for contamination, defined as items not included in the list of recyclable materials. Excluding contamination and notwithstanding the provisions of Section V.B., no more than 10% by weight of all recyclable materials are to be landfilled and/or incinerated without the express written permission of the Town Manager.
- B. The franchisee shall coordinate with the Town when subscribers need recycling carts. The Town will handle the sale and distribution of recycling carts.
- C. The franchisee is responsible for picking up and removing any materials that have blown out or dropped from trucks or the recycling carts or other collection containers due to any reason, even if a return trip is required.
- D. All trucks used for collection will be properly marked with recycling signage for identification purposes.
- E. The franchisee 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 franchisee shall require each employee to work in a diligent manner. The franchisee shall immediately investigate any notice of employee misbehavior and take prompt and appropriate action. Any official or employee of franchisee 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 or within the Town.
- F. The Town of Nags Head Public Works Department shall be notified each service day when recycling collection is complete.
- G. From May 1 to September 30, routes shall begin no earlier than 3 am and finish no later than 12 noon unless authorized by the Town. From October 1 to April 30, routes shall begin no earlier than 5 am and finish no later than 1 pm unless authorized by the Town. The franchisee shall provide to the Town a complete list and map of subscribers.

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- H. Leaks and spills shall be handled by the franchisee and at the franchisee's cost 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.
- I. Holiday collections will be coordinated with the Town.
- J. Collection Impediments:
 - 1. 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 Town requires these streets to be included in the franchisee's proposal for residential curbside recycling services. The franchisee will be responsible for offering recyclable services pursuant to this Franchise Agreement to residents within these areas and 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.
 - 2. Residences Served by Dumpsters. The collection routes also include residences that currently receive garbage collection services via dumpster due to neighborhood configuration. These residences, too, shall be included in the franchisee's proposal for residential curbside recycling services. The franchisee will be responsible for offering recyclable services pursuant to this Franchise Agreement to residents within these areas and determining an acceptable method of collection and arranging for any special accommodations that may be necessary to collect recyclables in these areas. Except as context may require otherwise, the provisions of this Franchise Agreement applicable to recycling carts shall also apply to any dumpsters used to collect recyclable materials.

VII. Miscellaneous Provisions.

- A. The franchisee shall furnish at its own cost all labor, equipment, and supervision necessary to accomplish its full and satisfactory performance of the services under this Franchise Agreement. The franchisee shall use only personnel qualified to perform the work assigned and shall see that all work is performed in an efficient and workmanlike manner and in compliance with Federal and State OSHA standards.
- B. EEO. Franchisee shall not discriminate against any employee or applicant for employment because of sex, race, religion, color, creed, handicap, national origin, or ancestry. Franchisee shall post conspicuously a notice of its Equal Employment Opportunity Policy.

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- C. **Franchisee as Independent Contractor.** Nothing in this Franchise Agreement may be construed to create the relationship of employer and employee between the franchisee or the franchisee's employees or agents and the Town. The franchisee and any sub-contractor employed by the franchisee shall comply with all minimum wage standards, worker's compensation, unemployment compensation and all other federal, state, and local laws pertinent to its employees. The franchisee, any sub-contractor employed by the franchisee, and the franchisee's employees and equipment, shall all abide by or comply with all applicable local, state, and federal laws and regulations pertaining to the activities carried on under this Franchise Agreement. The franchisee shall take all actions necessary to ensure that any sub-contractor complies with all the requirements of this paragraph.
- D. **Franchisee's Equipment.** The franchisee shall maintain all trucks and equipment used in the performance of this Franchise Agreement in a reasonable clean condition.
- E. **Designated Contact Person.** The franchisee agrees to assign qualified personnel to oversee the service provided and agrees to provide the names of the personnel to the Town.
- F. **Continuous Service Required.** The franchisee agrees that in the event of equipment breakdown, strike, or other occurrence which would delay or prevent timely performance of its obligations, it shall immediately take action necessary, including, but not limited to, replacement of equipment and personnel in order to assure prompt restoration of regular services and in any case before the next regular collection date.
- G. **Excuse of Performance.** Subject to the provisions of Section VII. F., the performance of any obligation related to the service may be temporarily suspended in the event that performance is prevented by a cause or causes beyond the control of the franchisee and shall be resumed as soon as possible. Such causes shall include, but not be limited to; acts of God, acts of war, riot, fire, explosion, accident, hurricane, and flood.
- H. **In the event of flood or hurricane or other natural disaster which interrupts the Town's business,** the Town reserves the right, at no cost to the Town, to notify the franchisee to suspend collections until the emergency condition has ended.
- I. **Inspection.** All services performed by the franchisee shall be subject to the inspection and approval of the Town. When the Town determines that franchisee's performance is unsatisfactory, the franchisee shall immediately commence action necessary to remedy the problem.
- J. **Franchisee to Supply All Licenses.** The franchisee shall, at its own expense, purchase and keep in force all business licenses and other licenses and permits required by federal, state, or local law, ordinances, and regulations pertinent to the franchisee's service.

- K. **Environmental Considerations.** Any costs associated with violations of the law including, but not limited to, remediation, clean-up costs, fines, administrative or civil penalties or charges, and third party claims imposed by any regulatory agency or by any third party as a result of the noncompliance with federal, state or local environmental laws and regulations or nuisance statutes by the franchisee or by sub-contractors, consultants, sub-consultants, or any other persons, corporations or legal entities retained by the franchisee for this service, shall be paid by the franchisee.

VIII. Refusal to Collect.

- A. When service is refused at any eligible dwelling unit, information shall be provided to that dwelling unit, by the franchisee, describing the reasons for the refusal and the appropriate remedial action, which must be taken in order to have the recycling cart collected in the future. The franchisee shall also contact the Town Administrator by the end of the day of any recyclable materials, which were refused, and the reasons for the refusal. This notice may be by fax, electronic mail, or other written communication. The franchisee may telephone the Town Administrator and follow the oral notice by written communication provided the oral and written notices are made on the same day as the refusal.
- B. When a subscriber complains to the franchisee that a recycling cart has not been collected or has been missed, it shall be the duty of the franchisee to respond to any and all complaints received and take whatever steps may be necessary to remedy the complaint. The franchisee shall remedy the complaint on or before 9:30 a.m. on the next business day after the complaint has been received.

IX. Public Information Program.

It will be the responsibility of the franchisee to design and implement a program for the purpose of informing those who may receive recycling services under this Franchise Agreement 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 franchisee and all proposed activities, brochures, mailings, advertisements, etc. shall be approved by the Town Administrator prior to use. All actions taken and all materials prepared as a part of this public information program will be submitted to the Town Administrator for approval prior to implementation or use. The franchisee will deliver brochures or such other information on residential curbside recycling or the franchise, which is produced by Nags Head on request by the Town.

- X. **Reporting Requirements.** The franchisee shall be required to supply the Town Administrator with monthly reports on or before the 5th day of the following month which include:

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- A. A listing by street address of the residences, which have been refused curbside recycling services by the franchisee at least one time within the past month and the reasons for that refusal.
- B. A summary of all recyclable materials collected 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 Franchise Agreement, to include a summary of all materials, delineated by weight, which were collected 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 Administrator.
- C. In addition, the franchisee will submit an annual report to the Town Administrator each year within 90 days after the anniversary date of the Franchise Agreement in which the franchisee will summarize:
 - i. Total weight of materials recycled, and land filled/incinerated over the previous year.
 - ii. Average annual participation rate aggregated from monthly data.
 - iii. Efforts undertaken by the franchisee as part of the public information program required by this Franchise Agreement and the observed effects of this program.
 - iv. Suggestions from the franchisee, based on the previous year's 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.
- D. Any other reporting as deemed necessary by the Town Administrator 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.

XI. Payment for Services.

- A. As compensation for performing the services under this Franchise Agreement, the franchisee shall be authorized to collect from subscribers' reasonable fees set by Nags Head and collected from subscribers in accordance with the duly adopted fee schedule for the Town. The initial fee schedule shall be in the amount of \$14 for the first recycling cart per month at each participating location, exclusive of any subsidies offered by the Town. Participants may subscribe for additional recycling carts to be serviced at a cost of \$8 per recycling cart per month.
- B. All revenues received by the franchisee from the sale of recyclable materials collected by the franchisee and all fees received by the franchisee from

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subscribers for services provided hereunder shall become the property of the franchisee.

- C. Nags Head shall not be responsible for the payment of any federal, state, or local taxes due as a result of compensation received by the franchisee pursuant to this franchise and the franchise agreement.

XII. Rate Review and Adjustment.

- A. A request for rate adjustment may be made at each anniversary date of the initial three-year term executed by both parties. The rate increase will be based on the percentage change in the most recently available data from the Bureau of Labor Statistics, Garbage and Trash Index, prior to the request. The rate shall not increase more than 5% in any contract year and no more 10% over the life of the initial term. Rate adjustment applications shall be filed by the franchisee ninety (90) days prior to the end of the term to provide adequate time for consideration by the Board of Commissioners. Rate adjustments may be sought for all reasonable grounds. If approved by Nags Head Board of Commissioners in an open meeting, a rate adjustment shall not be effective until at least 60 days from date of approval in order for the franchisee to give all clients a minimum 60 day notice of the approved rate adjustment.
- B. If a rate adjustment is sought by the franchisee, the Town may require the franchisee to provide a financial audit for the previous year of operations. The audit shall be completed according to generally accepted accounting principles and shall be at no cost to the Town. The auditor shall be chosen by the Town with the concurrence of the franchisee, which concurrence shall not be unreasonably withheld, conditioned, or delayed. The franchisee shall be entitled to recover the reasonable costs of the audit through the franchisee's rates.
- C. In the event of changes in market conditions for recyclable materials including, but not limited to, any significant increase or decrease in the value of recyclables; a change in commercially reasonable market availability for a processed recyclable; changes in market specifications affecting the value of specific recyclables; changes in law including, but not limited to, regulations establishing a deposit system on beverage containers; acts of a foreign government; or other events beyond the reasonable control of either party that makes the marketing of a recyclable or recyclables commercially impractical or creates a windfall for the Contractor, the parties may, by mutual agreement and only after the Ordinance is amended, which amendment is not guaranteed, agree to:
 - i. Adjust the compensation or compensation structure under this Franchise Agreement;
 - ii. Add or remove recyclables from the collection program; or

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iii. Authorize the Contractor to dispose of recyclables.

No amendments to the Agreement under this section are allowed without the mutual consent of both parties executed in writing by a duly authorized representative of each of the parties. In the event the parties are unable to reach an agreement, the Franchise Agreement shall remain in full force.

XIII. Termination of Franchise.

Violation by the franchisee of any local, state, or federal law or any term or provision of this Franchise Agreement or the filing of bankruptcy by the franchisee, may result in immediate termination of the Franchise Agreement by Nags Head without the provision of any prior notice. Either party may terminate this Franchise Agreement upon 120 days written notice to the other and to all subscribers.

XIV. Insurance Requirements.

During the term of this Franchise Agreement, the franchisee shall 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 execution of this Franchise Agreement and prior to commencing operation under this Franchise Agreement.

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

XV. General Indemnity.

The franchisee shall hold harmless and indemnify the Town, its employees, attorneys

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and agents from any claims, damages, losses, and liabilities resulting from the work performed under the provisions of the franchise ordinance and this Franchise Agreement.

XVI. Modification of this Agreement.

There may be no modification of this Franchise Agreement except in writing, approved by Town and the franchisee. The franchisee may not subcontract with any entity or assign its rights under this Franchise Agreement without the express consent of the Town.


All written notices required by the this Franchise Agreement shall be sent as follows:

The Town of Nags Head
Town Manager
P. O. Box 99
Nags Head, NC 27959

Tidewater Fibre Corporation
d/b/a TFC Recycling
Authorized Agent: Paul Stacharczyk
Senior Vice President/Chief Operating Officer
1958 Diamond Hill Road
Chesapeake, Virginia 23324

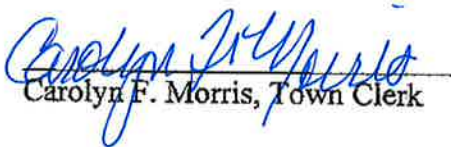
IN WITNESS THEREOF, the Parties have executed this Agreement, the day and year first above written.

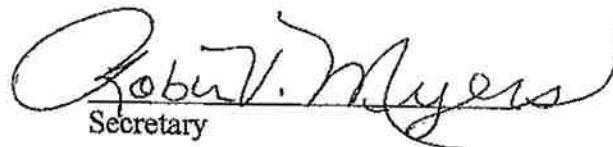

Greg Sparks, Interim Town Manager
3/18/2021


Paul Stacharczyk, SVP/COO
Authorized Agent, TFC Recycling
3/18/21

ATTEST:

ATTEST:


Carolyn F. Morris, Town Clerk


Secretary

