

**NORTH CAROLINA
DARE COUNTY**

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT entered into this the 3rd day of April 2024 by and between the Town of Nags Head and Tidewater Fibre Corporation (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 of Nags Head, by Ordinance duly enacted, has authorized the Town Manager to enter into this Agreement on behalf of the Town with Tidewater Fibre Corporation for an exclusive franchise for the collection and processing of recyclable materials from residential units in the Town.
- II. The franchise granted by the adoption of the Ordinance shall be subject to the following rights of the Town, but this enumeration shall not be exclusive or impair the right of the Board of Commissioners to insert in such franchise any provision 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 the franchise throughout the entire period thereof.
 - 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 Board of Commissioners to be conducive to the safety, welfare, and accommodation of the public.
- III. Definitions: For the purposes of this 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.

Effective Date. The date the franchise becomes effective in accordance with the franchise ordinance and the rules and procedures of the Town and this Agreement.

Franchise Ordinance. The document, which grants a franchise pursuant to Article II, Chapter 30 of the Nags Head Town Code of Ordinances.

Franchise Agreement. The document executed by the Town and the Grantee pursuant to the authority of the Franchise Ordinance.

Franchise Area.

- a. The geographic area for which the franchise is granted under the authority of Chapter 30.
- b. If not otherwise specifically stated in the franchise ordinance, the franchise area shall be the entire geographic area within the Town as it is now, or may in the future, be constituted.

Franchisee. A person who is granted a franchise or that person's lawful successors, transferees or assigns.

Grantor. The Town of Nags Head.

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

Reasonable Notice.

- a. Written notice addressed to the Town or grantee at the location as the parties have designated in the franchise agreement at the address to which notice shall be transmitted to it, which notice shall be sent 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, 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 Nags Head Streets.

Eligible Dwelling Units. All single family, two family and multi-family dwelling units serviced by roll-off carts and presently being served by the Town's residential solid waste collection service and all future such units which may be constructed in Nags Head.

Participating Customers. All single family, two family and multi-family residential customers presently being served by Nags Head Public Services Department and Solid Waste Division who contract with franchisee for the subscription type voluntary curbside recycling program outlined in the franchise.

Recyclable Materials 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 of Nags Head.

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

- IV. Terms of a Franchise. It is intended that the franchise be for a term of three years, beginning on or around May 1, 2024 and ending three years from the date of agreement execution. At the end of the initial term, the town may renew the contract for an additional period of time to be agreed upon by the parties.
- V. Scope of Services. The selected franchisee will provide personnel, equipment, materials, and other appurtenances, as may be required, to:
 - A. Provide residential curbside collection, on a weekly basis, to include commingled recyclable materials within Nags Head's corporate limits. Collection will occur on Mondays utilizing the existing 96-gallon blue 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.

- 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.
- C. Make monthly reports to Nags Head detailing weight and constituents of materials collected, methods of processing and/or final disposal, and participation rates of subscribers.
- D. Notify the town Public Services department each service day whenever there is an issue servicing carts or when there are recycling cart capacity issues (i.e., overflow of recycling containers).
- E. Perform account management of subscribers including service billing and collecting (accounts payable/accounts receivable) from participating customers, and keeping and maintaining other financial records, including independent audits. The franchisee shall collect all recyclable materials. The parties may agree to add other items as the market for recyclable materials allows. The franchisee will be responsible for preparing and distributing information to participating customers 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 including any recycling processing costs or disposal charges for contamination, defined as items not included in the list of recyclable materials. Excluding contamination, 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 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 collection container 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 the Town of Nags Head.

- F. The Town of Nags Head Public Services 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.
- H. 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.
- 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 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 determining an acceptable method of collection and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

VII. Miscellaneous Provisions.

- A. The franchisee shall furnish all labor, equipment, and supervision necessary to accomplish its full and satisfactory performance of the service. 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.
- C. Franchisee as Independent Contractor. Nothing in this franchise ordinance may be construed to create the relationship of employer and employee between the franchisee or provider's employees or agents and the town. The franchisee and any sub-contractor employed by the franchisee with the town's consent 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 and any sub-contractor employed by the franchisee with the town's consent shall abide by all applicable local, state, and federal laws and regulations pertaining to the activities carried on under this contract and to its employees and equipment used to fulfill the terms of the service. The franchisee shall take all actions necessary to ensure that any approved 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 contract 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. 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 bin 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 participating customer complains to the franchisee that a 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 will be receiving curbside recycling services under this contract 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 the 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:
- 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 program, to the extent 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 contract in which the franchisee/contractor 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/contractor as part of the public information program required by this contract 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 required under this Ordinance, 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 \$19.85 for the first cart per month at each participating location, exclusive of any subsidies offered by the town. Participants may subscribe for additional carts to be serviced at a cost of \$14.90 per 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 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. The initial fee will not change for two years. There will be a 7.5% escalation rate about the initial fee beginning in the third year of the agreement.
- B. A request for rate adjustment may be made at the end of the initial three-year term executed by both parties. 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.
- C. If a rate adjustment is sought pursuant to this Ordinance, the Town Administrator or Commissioners 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 Nags Head with the concurrence of the franchisee. The franchisee shall be entitled to recover the reasonable costs of the audit through the franchisee's rates.
- D. 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 agree to:
 - i. Adjust the compensation or compensation structure of the Agreement;
 - ii. Add or remove recyclables from the collection program; or
 - 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 contract 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 filing bankruptcy or failing to maintain insurance required by this ordinance, may result in immediate termination of the franchise without notice by Nags Head, except that either party may terminate the franchise agreement upon 120 days written notice to the other and to all subscribers.

XIV. Insurance Requirements.

During the term of this franchise, franchisee/contractor shall maintain in full force and effect the following insurance, naming Nags Head as an additional insured. Certificates of insurance shall be submitted to Nags Head within 10 days of the enactment of the Franchise Ordinance and prior to commencing operation under this 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 Nags Head, its employees, attorneys and agents from any claims, damages, losses, and liabilities resulting from the work performed under the provisions of the franchise ordinance and this agreement.

XVI. Modification of this Agreement.

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

All written notices required by the Ordinance and this 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.

Andy Garman, Town Manager

Authorized Agent, TFC Recycling

ATTEST:

ATTEST:

Carolyn F. Morris, Town Clerk

Secretary

(SEAL)