

**AN ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE
TO BAY DISPOSAL INC. d/b/a OUTER BANKS HAULING
FOR THE COLLECTION OF RECYCLING MATERIALS
FROM RESIDENTIAL UNITS IN THE TOWN OF NAGS HEAD
AND DISPOSAL OF SAME BY DELIVERY TO RECYCLING CENTERS OR
BUY-BACK FACILITIES**

WHEREAS, the Town of Nags Head (NAGS HEAD), North Carolina has the responsibility to provide for the health and welfare of its citizens; and

WHEREAS, the Town Board of Commissioners recognizes the responsibility Nags Head has to safeguard our naturally unique Outer Banks environment; and

WHEREAS, recycling has proven effective in the reduction of solid waste placed in landfills; and

WHEREAS, NAGS HEAD has offered a recycle drop-off center for many years to our citizens and visitors and recently expanded its recycling service to include certain commercial establishments from which certain recyclables are collected for reuse; and

WHEREAS, in response to requests from citizens for a residential curbside recycling program, the Board of Commissioners has determined that it is in the best interest of the Town, its citizens and visitors to grant an exclusive franchise to BAY DISPOSAL INC. d/b/a OUTER BANKS HAULING, to provide for the satisfactory, efficient collection, removal and disposal of solid waste recyclable materials in a manner that encourages use by all;

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of Nags Head, North Carolina that Chapter 30 of the Code of Ordinances be amended by adding a new Article II to read as follows:

Article II. Franchises

Section 30-20. Intent and Purpose

- (a) NAGS HEAD, pursuant to applicable State Law, is authorized to grant an exclusive franchise for the operation of a public enterprise including solid waste collection and disposal systems, which includes the collection and disposal of recyclable materials.
- (b) The Board of Commissioners finds that NAGS HEAD has the responsibility to provide for the health and welfare of its citizens and recognizes the responsibility of the Town to safeguard the naturally unique Outer Banks environment; that recycling has proven effective in the reduction of solid waste placed in landfills, and the Town has received requests from citizens to establish a curbside recycling program.
- (c) The Board further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers for a curbside recycling program that are vested in the Town or the persons the Town designates.
- (d) It is the intent of this Chapter to ensure that the local franchise operator for the collection of recyclable materials from residential units provides the best possible service to the residents of the Town and any franchise issued pursuant to this Chapter shall be deemed to include these findings as an integral part thereof.

Section 30-21. Short Title

- (a) This Chapter shall be known and may be cited as Chapter 154 and shall become a part of the Ordinances of the Town.

- (b) This chapter shall take effect and be enforced from and after its adoption.
- (c) All Ordinances or parts of the Town of Nags Head Code that conflict with the provisions of this Chapter are hereby repealed.

Section 30-22. Conditions of Curb Side Recycling Franchise

- (a) The franchise granted by the adoption of this Ordinance shall be subject to the following rights of the Town, but this enumeration shall not be exclusive or impair the right of the Council to insert in such franchise any provision within the power of the Town:
 - (1) To repeal the same for misuse, non-use or failure to comply with the provisions thereof;
 - (2) To require proper and adequate service and maintenance thereof at the highest practicable standard of efficiency;
 - (3) To establish reasonable standards of service, quality of products and prevent unjust discrimination in service or rates;
 - (4) To require continual and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;
 - (5) To use, control and regulate the use of its streets, alleys, bridges and public places and the space above and beneath them;
 - (6) To impose such other regulations as may be determined by the Council to be conducive to the safety, welfare and accommodation of the public.

Section 30-23. Definitions

- (a) For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (b) 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.

Franchise Ordinance. The document which grants a franchise pursuant to this Ordinance.

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

Franchise Area.

- (1) The geographic area for which a franchise is granted under the authority of this Chapter.
- (2) 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.

Grantee. 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.

- (1) Written notice addressed to the Town or grantee at the location as the parties have designated in the franchise agreement as 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.
- (2) 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 or which elects to subscribe to the curbside recycling service provided by a grantee.

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 grantee.

Curbside Collection Site. A space within two feet of the paved portion of Nags Head streets.

Eligible Dwelling Units. All single family, two family and multiple 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 grantee/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.

Section 30-24. Unlawful to Operate Without Franchise.

It shall be unlawful for any person to operate a residential curbside recycling service in the Town without a franchise.

Section 30-25. Exclusive Franchise.

The franchise granted pursuant to this Ordinance is exclusive.

Section 30-26. Terms of a Franchise.

This franchise shall become effective on the 2nd day of September, 2011 and it shall terminate on the 1st day of September, 2014.

Section 30-27. Scope of Services

The franchisee shall provide the personnel, equipment, materials and other such appurtenances as may be required to:

- (a) Provide, manage, and supply 90 to 98-gallon roll-type recycling containers with attached and fitted lids and wheels to all contracted residential customers. Each of the containers will be imprinted with a standard recycling logo. All containers and lids shall remain the property of the franchisee.
 - (1) Commercial establishments. The Scope of Services does not include commercial establishments in Nags Head; however, nothing in the Scope of Services, or the intended franchise, shall prohibit the franchisee from seeking out and establishing a professional relationship for recycling services with commercial establishments.
- (b) On a weekly basis, collect commingled recyclable materials within the corporate limits of Nags Head on the same day as regular refuse collection or as determined by the Town Administrator, including, but not limited to, old newsprint, clear and colored glass, aluminum beverage containers, tin cans, steel cans, bi-metal cans, #1 and #2 plastics, magazines, phonebooks, corrugated cardboard, pressboard, paperboard and junk mail from the contractual customers. Holiday collections will be coordinated with the Town Administrator.
 - (1) The franchisee will be responsible for all recyclables collected in accordance with this Ordinance. No more than 5% by weight of all recyclable materials are to be land filled and/or incinerated without the express, written permission of the Town Administrator.
- (c) Transport collected recyclable materials to a materials recovery facility or any recyclable materials handling and disposition facility other than an incinerator or a landfill.
- (d) Make monthly reports to the Town Administrator detailing weight and constituents of materials collected and their processing or final disposal.
- (e) Be responsible for removing carts from Nags Head streets to participating dwelling units prior to emergency situations.
- (f) Be responsible for tracking service location of carts.
- (g) Manage cart capacity issues and ensure that adequate capacity is provided to each customer.
- (h) Be solely responsible for stolen carts.

Section 30-28. Recyclable Materials Collected.

- (a) The franchise granted by this Ordinance requires curbside collection of recyclable materials, management of roll type recycling containers, transport of materials, brokering, sale and disposal of selected recyclable materials from each of the participating residential housing units; uninterrupted service; billing and collecting (accounts payable/accounts receivable); for such services from participating customers, and keeping and maintaining such other financial records, including independent audits, that may be identified in this Ordinance, in accordance with generally accepted accounting principals, and subject to the inspection and review of the Town of Nags Head. The grantee shall be required to supply all labor, equipment and other materials necessary to collect, manage and divert recyclable materials from regional landfills.
- (b) 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.
- (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. All carts must be removed by residents from the curbside collection area within twenty-four (24) hours of collection.
- (f) Collect recyclable materials on the same day as regular refuse collection within the Town of Nags Head or as determined by the Town Administrator, by a pre-arranged routed schedule, for the participating customers. Routes shall begin no earlier than 6:00 a.m. unless authorized by the Town Administrator. The franchisee shall provide to Nags Head a complete list and map of schedules and dates for each curbside collection area.
- (g) 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.

Section 30-29. 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 bin 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.

Section 30-30. 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.

Section 30-31. 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; and
- (c) A summary of all materials, delineated by weight and by component, 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.
- (d) 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:
 - (1) Total weight of materials recycled and land filled/incinerated over the previous year disaggregated by individual constituent such as aluminum beverage container, #1 plastic, old newsprint, etc.;
 - (2) Average annual participation rate aggregated from monthly data;
 - (3) Efforts undertaken by the franchisee/contractor as part of the public information program required by this contract and the observed effects of this program;
 - (4) 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.

- (e) 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.

Section 30-32. Disposition of Recyclable Materials.

The franchisee shall be responsible for all recyclables collected in accordance with this ordinance. No more than 5% by weight of all recyclable materials are to be landfilled and/or incinerated without the express, written permission of the Town Administrator.

Section 30-33. 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 \$7.82 per container, per residence, 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.

Section 30-34. Rate Review and Adjustment.

- (a) A request for rate adjustment may be made annually on the anniversary date of the execution of the franchise agreement by both parties. Rate adjustment applications shall be filed by the franchisee thirty (30) days prior to the anniversary date 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 30 days from date of approval in order for the franchisee to give all clients a minimum 30 day notice of the approved rate adjustment.
- (b) 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.

Section 30-35. 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.

Section 30-36. 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 franchise agreement. (Ordinance being enacted.)

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Worker's Compensation	Statutory
Employer's Liability	\$ 500,000
Bodily Injury Liability Except Automobile	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage Liability Except Automobile	\$1,000,000 each occurrence \$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

Section 30-37. 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 this franchise ordinance and agreement.

Section 30-38. Miscellaneous Provisions.

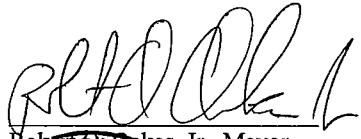
- (a) Franchisee shall furnish all labor, equipment and supervision necessary to accomplish its full and satisfactory performance of the franchise. Franchisee shall use only personnel qualified to perform the work assigned and shall see that all work is performed in an efficient and workmanlike manner 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 may be construed to create the relationship of employer and employee between franchisee or franchisee's employees or agents and Nags Head. Franchisee and any sub-contractor employed by franchisee with Nags Head's consent shall comply with all minimum wage standards, worker's compensation, unemployment compensation and all other laws federal, state and local pertinent to its employees. Franchisee and any sub-contractor employed by franchisee with Nags Head'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 this franchise. 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.* Franchisee shall maintain all trucks and equipment used in the performance of this contract in a reasonable clean condition and free of unpleasant odors by spray washing, disinfecting and steam cleaning.
- (e) *Designated Contact Person.* Franchisee agrees to assign qualified personnel to be in charge of the service provided for by this franchise and agrees to provide the names of the personnel to the Town Administrator.

- (f) *Continuous Service Required.* Franchisee agrees that in the event of equipment breakdown, strike or other occurrence which would delay or prevent timely performance of its obligations under the franchise 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 under this franchise may be temporarily suspended in the event that performance is prevented by a cause or causes beyond the control of 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 Nags Head business, Nags Head reserves the right, at no cost to Nags Head, to notify franchisee to suspend collections until the emergency conditions have ended.
- (i) *Inspection.* All services performed by franchisee under this franchise shall be subject to the inspection and approval of the Nags Head Town manager or the Town Administrator. When the Town determines that franchisee's performance is unsatisfactory, franchisee shall immediately commence action necessary to remedy the problem.
- (j) *Franchisee to Supply All Licenses.* 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 franchisee's performance of this franchise.
- (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/contractor for this franchise, shall be paid by the franchisee.
- (l) *Modification.* There may be no modification of this franchise, 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.

Section 30-39. Authority to Execute Franchise Agreement.

Upon the enactment of this ordinance, the Nags Head Town Manager is authorized to enter into a Franchise Agreement with Bay Disposal Inc. d/b/a Outer Banks Hauling, containing the terms as set out in this Ordinance.

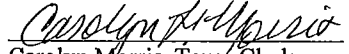
This ordinance, entitled AN ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO BAY DISPOSAL INC. d/b/a OUTER BANKS HAULING FOR THE COLLECTION OF RECYCLING MATERIALS FROM RESIDENTIAL UNITS IN THE TOWN OF NAGS HEAD AND DISPOSAL OF SAME BY DELIVERY TO RECYCLING CENTERS OR BUY-BACK FACILITIES shall be in full force and effect from and after the 6th day of April, 2011. Adopted and approved by the Board of Commissioners of the Town of Nags Head at their regular meeting held on the 6th day of April, 2011, by a vote of 4 in favor, 0 opposed, and 1 absent.



Robert Oakes, Jr., Mayor
Town of Nags Head



ATTEST:


Carolyn Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney