

AGENDA ITEM SUMMARY

DATE: 4/2/2012 DEPARTMENT: Legal DEPT. HEAD SIGNATURE: \_\_\_\_\_

SUBJECT:

Friedman Memorial Airport Authority ("FMAA") Meeting

AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I just reviewed the FMAA agenda and packet for the FMAA meeting scheduled for April 3, 2012. I am attaching the agenda and the meeting brief. Under Unfinished Business, there will be a report by the Airport Manager about the April 2 Renton meeting. The agenda shows that the FMAA will discuss/direct after the report. I would expect the Manager to simply report on the meeting and, if appropriate, then hold a later discussion with a potential action at a subsequent meeting. I did not see anything else on the agenda, the meeting brief or any attachment which I feel should be discussed during the City Council meeting. If you want access to the entire FMAA packet, please go to [www.flyfma.com](http://www.flyfma.com) and click onto FMAA Meetings & Agendas.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Review and discuss the agenda and meeting brief. If appropriate, direct FMAA representatives on action to be taken at the next FMAA meeting.

FOLLOW-UP REMARKS:

**NOTICE OF A REGULAR MEETING  
OF  
THE FRIEDMAN MEMORIAL AIRPORT AUTHORITY**

*PLEASE TAKE NOTICE that a regular meeting of the Friedman Memorial Airport Authority shall be held Tuesday, April 3, 2012 at 5:30 p.m. at the old Blaine County Courthouse Meeting Room, Hailey, Idaho. The proposed agenda for the meeting is as follows:*

**AGENDA  
April 3, 2012**

- |              |   |  |                |
|--------------|---|--|----------------|
| <b>I.</b>    | <b>APPROVE AGENDA</b>   |  |                |
| <b>II.</b>   | <b>PUBLIC COMMENT (10 Minutes Allotted)</b>   |  |                |
| <b>III.</b>  | <b>UNFINISHED BUSINESS</b>  |  |                |
|              | A. Airport Solutions  |  |                |
|              | 1. Chairman Report  |  | DISCUSSION     |
|              | 2. Blaine County Report   |  | DISCUSSION     |
|              | 3. City of Hailey Report  |  | DISCUSSION     |
|              | 4. Airport Manager Report   |  | DISCUSS/DIRECT |
|              | 5. Existing Site  |  | DISCUSS/DIRECT |
|              | 6. Replacement Airport  |  | DISCUSS/DIRECT |
|              | 7. Retain/Improve/Develop Air Service   |  | DISCUSS/DIRECT |
| <b>IV.</b>   | <b>NEW BUSINESS</b>   |  |                |
|              | A. FY '12 Budget Discussion   |  | DISCUSS/DIRECT |
|              | B. FY '12 Idaho State Grant – Sun-2012 – Attachment #1  |  | ACTION         |
|              | C. Mead & Hunt Program Management Team Update   |  | ACTION         |
|              | D. Gifts, Refreshments & News Retail Concession   |  | ACTION         |
| <b>V.</b>    | <b>APPROVE FRIEDMAN MEMORIAL AIRPORT AUTHORITY MEETING MINUTES OF:</b>                        |  |                |
|              | A. February 9, 2012 Regular Meeting – Attachment #2   |  | ACTION         |
|              | B. March 6, 2012 Regular Meeting – Attachment #3  |  | ACTION         |
| <b>VI.</b>   | <b>AIRPORT STAFF BRIEF</b>  |  |                |
|              | A. Noise Complaints   |  |                |
|              | B. Parking Lot Update   |  |                |
|              | C. Profit & Loss, ATCT Traffic Operations Count<br>and Enplanement Data – Attachments #4 - #7 |  |                |
|              | D. Review Correspondence – Attachment #8  |  |                |
|              | E. Fly Sun Valley Alliance Update – Attachments #9, #10                                       |  |                |
|              | F. Airport Weather Interruptions  |  |                |
| <b>VII.</b>  | <b>PUBLIC COMMENT</b>   |  |                |
| <b>VIII.</b> | <b>ADJOURNMENT</b>  |  |                |

FRIEDMAN MEMORIAL AIRPORT AUTHORITY MEETINGS ARE OPEN TO ALL INTERESTED PARTIES. SHOULD YOU DESIRE TO ATTEND A BOARD MEETING AND NEED A REASONABLE ACCOMMODATION TO DO SO, PLEASE CONTACT THE AIRPORT MANAGER'S OFFICE AT LEAST ONE WEEK IN ADVANCE BY CALLING 781-4956 OR WRITING TO P.O. BOX 929, HAILEY, IDAHO 83333.

### III. UNFINISHED BUSINESS

#### A. Airport Solutions

##### 1. Chairman Report

This item is on the agenda to permit a Chairman report if appropriate.

BOARD ACTION: 1. Discussion

##### 2. Blaine County Report

This item is on the agenda to permit a County report if appropriate.

BOARD ACTION: 1. Discussion

##### 3. City of Hailey Report

This item is on the agenda to permit a City report if appropriate.

BOARD ACTION: 1. Discussion

##### 4. Airport Manager Report

- a. During the March Board meeting, the Board revisited a request from Enterprise Rent-a-Car and the upcoming expiration of the existing auto rental concession agreements. After a lengthy discussion and after weighing all the options, the Board determined it would be appropriate to offer a one-year extension to the existing rental car agencies.

As requested, Staff has contacted both Avis and Hertz and they have accepted the offer for the one-year extension. Airport legal counsel has drafted the lease amendments and they have been forward to Avis and Overland West dba Hertz for execution. Staff anticipates the receipt of the executed Amendments prior to the April meeting.

BOARD ACTION: 1. Discussion

- b. A meeting with the FAA to begin discussing guidance received from the Board during the February Regular Board meeting has been established April 2<sup>nd</sup> in Renton. A verbal report will be available at the meeting.

BOARD ACTION: 1. Discuss/Direct

##### 5. Existing Site

A meeting with the FAA to begin discussing guidance received from the Board during the February Regular Board meeting has been established April 2<sup>nd</sup> in

Renton. A verbal report will be available at the meeting.

BOARD ACTION: 1. Discuss/Direct

#### **6. Replacement Airport**

A meeting with the FAA to begin discussing guidance received from the Board during the February Regular Board meeting has been established April 2<sup>nd</sup> in Renton. A verbal report will be available at the meeting.

BOARD ACTION: 1. Discuss/Direct

#### **7. Retain/Improve/Develop Air Service**

The Board will recall that in the February Board meeting, Ms. Trina Froehlich, Mead & Hunt, gave the Board a presentation regarding the status of the development of the Draft Passenger Demand Analysis. One of the aspects of the analysis was the "leakage factor", the loss of Blaine County air travelers to other facilities in the region. This item is back on the agenda so that the Board can discuss the Improvement, Development and Retention of local resident use of FMA. Mead & Hunt is preparing a Scope of Service for the development of a plan for the Board to implement in pursuit of this goal.

BOARD ACTION: 1. Discuss/Direct

### **IV. NEW BUSINESS**

#### **A. FY '12 Budget Discussion**

The FY '12 budget process began last spring and was completed when the budget was adopted by the Board during the August, 2012 Board meeting. Since the budget process was complete prior to receiving the August 22, 2012 letter from the FAA suspending the EIS, no one could have predicted the impact the letter would have moving forward.

In FY '12, the Board budgeted for \$3,140,000 in AIP revenue and \$3,305,000 in AIP related expenditures. Obviously, since the EIS has been suspended, AIP related expenditures are not taking place on anticipated study work and at an anticipated pace. Subsequently, AIP revenue is not flowing in to match expenditures. Simply stated, EIS work is not being conducted and therefore related and anticipated expenditures and reimbursement is not taking place as well.

The Board also anticipated non-AIP-related expenditures. Categories or line items that the Board prepared for expenditure included the following areas: Project formulation, program manager, financial, public outreach, current site redevelopment master plan, legal and general. The Board budgeted \$410,000 in non-AIP eligible expenditures. These line items are in fact funding the public process and information gathering process that has taken place since the FY began. With almost half the year in the books, more than half of the budget related to non-AIP related Airport

Solutions spending remains. The Board is in a good position to complete the year and not exhaust flexibility with regard to budget.

What is not known at this time is what movement related to improvements at the existing site or related to the ultimate solution, a replacement airport, will be revealed during discussions with the FAA or as the Safety Management System review is completed.

The information provided above is based on reports thru the end of March but before financials for the month of March can be closed, so the data will change before the close out reports are finalized. The information is complete enough to give the Board a good litmus test of preliminary mid-year budget vs. actual expenditure. Airport Staff will update the Board again during the May Board meeting and at that time will include operational expenditure and revenue data for Board information and use.

BOARD ACTION: 1. Discuss/Direct

**B. FY '12 Idaho State Grant – SUN-2012 – Attachment #1**

Attachment #1 is a copy of the 2012 Idaho Airport Aid Program Grant Offer and Resolution for Board review and action. The Grant Offer will be applied to the following airport projects that have already been completed:

**Ford F-350 Truck & Plow:** Much of the SUN AOA require snow removal equipment suited for operating in smaller, critical areas such as in the immediate vicinity of airfield lighting and signage. A replacement truck and plow for the Airport's existing, 2001 truck and plow (171,000 miles) is necessary at this time to maintain the viable operational status of the airfield and safety of general aviation, commercial aviation and the flying public.

**Total Project: \$32,717.37**

**Back up Power Generator Acquisition:** Back up power for the Hailey ATCT is essential to maintaining Tower operational service in the event of a significant power outage in Blaine County. The County has been advised by Idaho Power that periodic power outages are not unlikely until such time as a major infrastructure upgrade can be implemented in the County. ATCT service is integral to the safety of general aviation, commercial aviation and the flying public in Blaine County.

**Total Project: \$15,727.80**

**Combined Project Total: \$48,445.17**

BOARD ACTION: 1. Ratify Idaho Transportation Department Grant Agreement and the Authority Resolution for IAAP Program Number: LNS8SUN/Project Number SUN-2012

### **C. Mead & Hunt Program Management Team Update**

Tom Schnetzer has decided to leave Mead & Hunt. Tom was Mead & Hunt's face and voice in this community for many years. While Staff is sure the Board is sorry to see Tom leave, the reality of the situation is that the Board has selected Mead & Hunt based on the organization's qualifications. Based on the Program Manager Request for Qualification process and subsequent agreements, the Board has the ability to approve or disapprove the individual (key person) that would continue with Tom's responsibilities. Tom's title with Mead & Hunt was Vice President, National Practice Leader – Aviation Planning. Mead & Hunt has agreed to offer Mr. Andy Platz to continue with the Mead & Hunt obligation (key person) that belonged to Tom. Andy's title is President and Group Leader – Aviation Services. Tom, Andy and Matt Dubie met with Staff, Chairman Bowman and Vice Chairman Burke on February 16<sup>th</sup>. At the time the 16<sup>th</sup> meeting took place not all members of the Mead & Hunt team had knowledge of Tom's departure. Staff was very adamant that the entire Program Management team remain together. Since that meeting, Staff has been informed that T-O Engineers and Aviation have both been briefed on Tom's departure and that the relationships between each organization continue. Staff believes that Andy Platz is a good fit for this community and recommends that the Board approve him as a principle to continue Tom's work.

**BOARD ACTION:** 1. Approve/Disapprove Mr. Platz to continue in role established by agreement as a (key Person) replacement for Mr. Schnetzer

### **D. Gifts, Refreshments & News Retail Concession**

The lease agreement between FMA and J. Alyson News-Gifts-Refreshments, the Airport's retail concessionaire expires on March 31. Unfortunately, the LLC under which J. Alyson is organized is also being dissolved. This particular circumstance was unforeseen and regrettable, however beyond the purview of FMA. One of the two principles in J. Alyson, LLC has submitted a request to continue operating a similar retail concession under a reorganized LLC. Staff believes it would be in the best interest of the continuity of the passenger terminal services environment to allow this new entity to enter into a one year retail concession agreement with FMAA, including a one year extension, contingent on successfully meeting pre-determined goals and objectives as agreed upon by the lessee and lessor.

**BOARD ACTION:** 1. Action

## **V. APPROVE FRIEDMAN MEMORIAL AIRPORT AUTHORITY MEETING MINUTES OF:**

### **A. February 9, 2012 Regular Meeting – Attachment #2**

**BOARD ACTION:** 1. Action

**B. March 6, 2012 Regular Meeting – Attachment #3**

BOARD ACTION: 1. Action

**VI. AIRPORT STAFF BRIEF**

**A. Noise Complaints:**

LOCATION	DATE	TIME	AIRCRAFT TYPE	INCIDENT DESCRIPTION	ACTION TAKEN
Chantrelle	2/29	11:59 pm	Turbo Prop	Late arrival	This was a late air carrier arrival due to a delay in SLC as a result of a passenger becoming ill on an aircraft as it was about to depart. Ops Chief notified caller
Chantrelle	3/1	12:33 am	Turbo Prop	Late arrival	This was an air carrier aircraft delayed in SLC due to snow. Ops Chief notified caller.
Hailey	3/4	8:45 am	Prop	Acrft departed north over Hailey. Loud.	Acrft operation was appropriate. Caller notified.
Chantrelle	3/11	5:08 pm	Misc Jets	Caller complained that Jet departure traffic had been quite heavy for last 2 hours and he was concerned about noise and the volume of fuel being dispersed over Bellevue. Wants every other flight to depart over Hailey. Stated that people don't call the Noise Abatement line because airport staff doesn't care.	Ops Chief made several attempts to contact the caller and left msgs. None were returned.
Chantrelle	3/14	12:00 am	Turbo Prop	Caller wanted to know about what he believed was a jet departure at midnight.	This was in fact a turbo-prop LifeFlight departure. Ops Chief contacted caller and explained.
Hailey	3/14	12:00 am	Turbo Prop	Caller thought this was a late jet departure.	Same as above.

LOCATION	DATE	TIME	AIRCRAFT TYPE	INCIDENT DESCRIPTION	ACTION TAKEN
Chantrelle	3/21	6:04 pm	Jet	Low approach	Research revealed that the aircraft approached on a fixed approach (RNAV-W) and was appropriate. Factors likely contributing to low appearance was low cloud cover. Caller notified.

**B. Parking Lot Update**

**The Car Park Gross/Net Revenues**

	FY 2010 Gross	FY 2010 Net	FY 2011 Gross	FY 2011 Net	FY 2012 Gross	FY 2012 Net
February	\$16,878.62	\$8,075.03	\$16,701.72	\$7,511.38	\$16,508.00	\$7,073.97

**C. Profit & Loss, ATCT Traffic Operations Count and Enplanement Data - Attachments #4 - #7**

Attachment #4 is Friedman Memorial Airport Profit & Loss through January 2012.  
Attachment #5 is air traffic control tower traffic operations data for February 2012.  
Attachment #6 is 2001 - 2012 air traffic control operations data comparison by month.  
Attachment #7 is 2008 - 2012 enplanement data including non-revenue passengers.  
The following revenue and expense analysis is provided for Board information and review:

January 2011/201		
Total Non-Federal Revenue	January, 2012	\$196,449.38
Total Non-Federal Revenue	January, 2011	\$199,411.37
Total Non-Federal Revenue	FY '12 thru January	\$660,213.85
Total Non-Federal Revenue	FY '11 thru January	\$640,409.15
Total Non-Federal Expenses	January, 2012	\$180,500.86
Total Non-Federal Expenses	January, 2011	\$170,212.30
Total Non-Federal Expenses	FY '12 thru January	\$742,895.42
Total Non-Federal Expenses	FY '11 thru January	\$733,850.34
*Net Income to include Federal Programs	FY '12 thru January	\$-206,551.20
*Net Income to include Federal Programs	FY '11 thru January	\$-340,705.16
*Difference in net income is related to federal transactions.		

**D. Review Correspondence - Attachment #8**

Attachment #8 is information included for Board review.

**E. Fly Sun Valley Alliance Update – Attachments #9, #10**

Attachment #9 is the February 13, 2012 Fly Sun Valley Alliance Meeting Minutes.  
Attachment #10 is the March 12, 2012 Fly Sun Valley Alliance Meeting Agenda.

**F. Airport Weather Interruptions for March, 2012**

<b>Airline</b>	<b>Flight Cancellations</b>	<b>Flight Diversions</b>
Horizon Air **	4 (wx)	26
SkyWest	10	18

Wx: Weather            Mech: Mechanical  
Horizon Air suspended SUN service March 25. Service will resume June 3 to Seattle  
and June 22 to Los Angeles.

**VII. PUBLIC COMMENT**

**VIII. ADJOURNMENT**



AGENDA ITEM SUMMARY

DATE: 04/02/2012 DEPARTMENT: Tree Committee/Admin DEPT. HEAD SIGNATURE: HD

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SUBJECT:

Discussion of Rubbish Franchise Agreements

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AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

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BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The Rubbish Franchise Ordinance has been published for public hearing on April 9, 2012. If adopted, the new ordinance would go into effect upon publication on Wednesday, April 11, 2012. The current franchise ordinance and agreements expire April 10, 2012.

We deemed it prudent to hold a preliminary discussion of the franchise agreements on April 2, to give the attorneys time to implement or clarify any issues that might be discussed. One issue to be discussed is the effective date of the new rates. If the new rates go into effect on April 11, a proration of charges may cause confusion or errors. A solution is to set a clause in the agreement that allowing the current rates to expire at the end of April.

Another issue for discussion is the franchise fee. A question has been posed by hauler if the franchise fee should be net of rates or in addition to rates. Questions about the rate structure were asked by companies during the bidding process. Below is the detailed requirements of what was expected in the rate proposals in Section 8 of the RFP. The City Administrator's written answer to haulers about the rate structure follows. Finally, attached, is the rate structure as submitted by the hauler in the bid. In that language the bidder clearly spelled out in the Residential Rates that "**all charges include City of Hailey fees and sales tax.**" In the commercial rate proposal the hauler states the bid rate as "**Monthly charge is all inclusive with Rent, Service, City Fees and Sales Tax.**"

*From RFP:* As a qualification, the following content is required in each respondent's proposal:

8. **Respondents must identify all costs and incentives associated with their proposal including any fees or monthly charges that are included and/or waived. Describe any discounts which may be included for certain customer groups or any incentives which may be applied for conservation efforts.**

*Excerpt from Administrator's February 29, 2012 written correspondence to all potential bidders:*

"The rate that Hailey bills is in the TOTAL column, then we subtract 12% from that amount to collect our 6% franchise fee and our current 6% billing fee. We don't break out the total into rent or service; we only receive the TOTAL billing number from Clear Creek Disposal.

Attached for your convenience is the last month's complete billing, with billing addresses, so you can see directly how the rates are applied."

The draft Franchise Agreements are included in full, also attached.

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FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Comments: Adding the franchise fee to the rates proposed would increase the proposed rates for customers by 13%, making the proposed middle-sized can (68 gallons) only \$2.77 less expensive than the current large can (95 gallons). The large can cost would increase to \$28.16, which is \$4.24 more per month than the current large can rate. The small can (32 gallons) would be \$11.58, which is only .22 cents less than the current small can size.

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

<input type="checkbox"/>	City Administrator	<input type="checkbox"/>	Library	<input type="checkbox"/>	Benefits Committee
<input type="checkbox"/>	City Attorney	<input type="checkbox"/>	Mayor	<input type="checkbox"/>	Streets
<input type="checkbox"/>	City Clerk	<input type="checkbox"/>	Planning	<input type="checkbox"/>	Treasurer
<input type="checkbox"/>	Building	<input type="checkbox"/>	Police	<input type="checkbox"/>	_____
<input type="checkbox"/>	Engineer	<input type="checkbox"/>	Public Works, Parks	<input type="checkbox"/>	_____
<input type="checkbox"/>	Fire Dept.	<input type="checkbox"/>	P & Z Commission	<input type="checkbox"/>	_____

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Discus agreements, give direction to city attorney to amend or clarify agreement language per discussion. The agreements will then be returned to the city council on April 9, 2012 for further public hearing and potential adoption.

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agrmt./Order Originals: Record  
Copies (all info.):  
Instrument # \_\_\_\_\_

\*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (AIS only)

# Residential Rates

- \*Service includes 1 roll-cart for garbage plus up to 2-18 gallon bins (blue bins) for recycling.
- \*No delivery fee for delivery of carts and/or bins.
- \*All charges include City of Hailey fees and sales tax.
- \*Minimum Service in the City of Hailey includes one time per week.
- \*All garbage must fit inside of cart or extra bag charges apply.
- \*There is no limit on amount of properly sorted recyclables.

Regular Residential Service		
Cart Size	Description of Service	Monthly Fee
32 Gallon Cart	Emptied One Time Per Week	\$10.25
68 Gallon Cart	Emptied One Time Per Week	\$18.72
95 Gallon Cart	Emptied One Time Per Week	\$24.92

Additional Services		
Cart Size	Description of Service	Per Time Charge
32 Gallon Cart	Cart not out on time-same day go back	\$4.00
68 Gallon Cart	Cart not out on time-same day go back	\$5.00
95 Gallon Cart	Cart not out on time-same day go back	\$6.00
32 Gallon Cart	Extra empty (additional/off day)	\$13.56
68 Gallon Cart	Extra empty (additional/off day)	\$13.56
95 Gallon Cart	Extra empty (additional/off day)	\$13.56
32 Gallon Cart	Non returned/Damaged Cart	\$77.80
68 Gallon Cart	Non returned/Damaged Cart	\$89.10
95 Gallon Cart	Non returned/Damaged Cart	\$100.40
Cart Cleaning	Includes pick-up/cleaning/return	\$32.60
Extra Bins	In excess of two each additional bin	\$20.67
Bin	Non returned/Damaged bin	\$20.67
Extra Bag/outside cart	32 Gallon equivalent	\$4.75

**Important Note:**

Carts and Bins are owned by Clear Creek Disposal, and are registered to the property address. In the event that a resident moves or sells a house, the cart(s) and bin(s) should remain with the property. Arrangements should be made prior to vacating the property to avoid unnecessary costs.



# Commercial Rates

**Monthly Charge is all inclusive with Rent, Service, City Fees and Sales Tax**

\*Dumpster Final - No additional charge if done on regular pick-up schedule

\*On Call Charges are for empties to dumpsters in addition to weekly service

\*City of Hailey minimum allowable service: one time per week

\*Monthly Charges are for garbage inside the dumpster. Garbage that does not fit inside dumpster is subject to extra yardage charges estimated by the driver.

\*Extra yardage: \$11 per yard

Delivery Fees (per trip)	
Carts (any size)	\$10.00
Dumpsters (any size)	\$25.00

Size	Service Frequency	Monthly Charge
32 Cart	1 Time Per Week	\$10.25
32 Cart	2 Times Per Week	\$20.50
32 Cart	3 Times Per Week	\$30.75
32 Cart	4 Times Per Week	\$41.00
32 Cart	5 Times Per Week	\$51.25
32 Cart	On Call	\$13.56

Size	Service Frequency	Monthly Charge
68 Cart	1 Time Per Week	\$18.72
68 Cart	2 Times Per Week	\$37.44
68 Cart	3 Times Per Week	\$56.16
68 Cart	4 Times Per Week	\$74.88
68 Cart	5 Times Per Week	\$93.60
68 Cart	On Call	\$13.56

Size	Service Frequency	Monthly Charge
95 Cart	1 Time Per Week	\$24.92
95 Cart	2 Times Per Week	\$49.84
95 Cart	3 Times Per Week	\$74.76
95 Cart	4 Times Per Week	\$99.68
95 Cart	5 Times Per Week	\$124.60
95 Cart	On Call	\$13.56



# Commercial Rates

Size	Service Frequency	Monthly Charge
1.5 cubic yard	1 Time Per Week	\$54.42
1.5 cubic yard	2 Times Per Week	\$107.81
1.5 cubic yard	3 Times Per Week	\$161.21
1.5 cubic yard	4 Times Per Week	\$214.60
1.5 cubic yard	5 Times Per Week	\$267.99
1.5 cubic yard	6 Times Per Week	\$321.38
1.5 cubic yard	On Call Each Empty	\$18.54

Size	Service Frequency	Monthly Charge
3 cubic yard	1 Time Per Week	\$106.46
3 cubic yard	2 Times Per Week	\$208.16
3 cubic yard	3 Times Per Week	\$309.86
3 cubic yard	4 Times Per Week	\$411.56
3 cubic yard	5 Times Per Week	\$513.26
3 cubic yard	6 Times Per Week	\$614.96
3 cubic yard	On Call Each Empty	\$34.71

Size	Service Frequency	Monthly Charge
4 cubic yard	1 Time Per Week	\$143.93
4 cubic yard	2 Times Per Week	\$279.53
4 cubic yard	3 Times Per Week	\$415.13
4 cubic yard	4 Times Per Week	\$550.73
4 cubic yard	5 Times Per Week	\$686.33
4 cubic yard	6 Times Per Week	\$821.93
4 cubic yard	On Call Each Empty	\$48.26



## Commercial Rates

Size	Service Frequency	Monthly Charge
6 cubic yard	1 Time Per Week	\$215.30
6 cubic yard	2 Times Per Week	\$418.70
6 cubic yard	3 Times Per Week	\$622.10
6 cubic yard	4 Times Per Week	\$825.50
6 cubic yard	5 Times Per Week	\$1,028.90
6 cubic yard	6 Times Per Week	\$1,232.30
6 cubic yard	On Call Each Empty	\$71.79

Size	Service Frequency	Monthly Charge
8 cubic yard	1 Time Per Week	\$285.48
8 cubic yard	2 Times Per Week	\$556.68
8 cubic yard	3 Times Per Week	\$827.88
8 cubic yard	4 Times Per Week	\$1,099.08
8 cubic yard	5 Times Per Week	\$1,370.28
8 cubic yard	6 Times Per Week	\$1,641.48
8 cubic yard	On Call Each Empty	94.13



**FRANCHISE AGREEMENT**  
**(Residential Solid Waste and Recyclable Materials Collection)**

This Franchise Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of April, 2012, by and between the CITY OF HAILEY, a municipal corporation ("Hailey") and \_\_\_\_\_, an Idaho corporation ("Contractor").

RECITALS

A. Hailey is a municipal corporation and political subdivision of the State of Idaho, and has authority to enter into this Agreement. Fritz X. Haemmerle is the duly elected and acting Mayor of Hailey. The Hailey City Council has authorized the Mayor to execute this Agreement.

B. Contractor is a duly organized and acting corporation in the State of Idaho. \_\_\_\_\_ is the duly acting president of Contractor and has the authority to enter into this Agreement.

C. Hailey has requested proposals from qualified contractors to provide personal services to collect, haul and dispose of residential solid waste and recyclable materials within the city limits of Hailey, Idaho. A copy of the Request for Proposals ("RFP") is attached hereto as **Exhibit "A."** Contractor has submitted a proposal to provide such services. After evaluating the submitted proposals, Hailey has awarded an exclusive five (5) year franchise, with a (3) year renewal term, to Contractor to provide personal services to collect, haul and dispose of residential solid waste and recyclable materials within the city limits of Hailey, Idaho.

D. Subject to the terms and conditions set forth herein and Hailey Ordinance No. \_\_\_\_\_, the parties hereto are desirous of entering into an exclusive five (5) year franchise agreement, with a three (3) year renewal term, with Contractor to provide personal services to collect, haul and dispose of residential solid waste and recyclable materials within the city limits of Hailey, Idaho.

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

1. Definitions. For the purposes of this Agreement, the following capitalized terms have the meanings set forth herein:

"Hazardous Materials" means any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State of Idaho to be "hazardous" as that term is defined by or pursuant to federal or state law.

"Recyclable Materials" means glass, plastic, aluminum, tin, motor oil, paper, newspaper and magazines.

“Residential Customer(s)” mean those owner(s) and/or occupant(s) of single family residences and multi-family residential complexes consisting of four or less dwelling units (including apartments, townhomes and condominiums).

“Self-Hauling” means the collection, hauling and disposal of Solid Waste by generator or generator’s agent of the Solid Waste in the generator’s or generator agent’s container and vehicle directly to the transfer station or a landfill.

“Solid Waste” means any garbage, refuse or other discarded material generated by Residential Customers that are not or cannot be recycled or diverted from the landfill, excluding Hazardous Materials.

2. Exclusive Agreement. Hailey hereby grants exclusively to Contractor the authority and privilege to engage in the business of collecting, hauling and disposing of Solid Waste and Recyclable Materials kept or accumulated and placed for collection by all Residential Customers within the corporate limits of Hailey, Idaho, and to perform all of the work described in this Agreement; provided, however, this exclusive authority and privilege does not extend to the Self-Hauling of Solid Waste or Recyclable Materials, Hazardous Materials or medical waste. Hailey reserves the right to grant a non-exclusive franchise or enter into a hauling agreement with a contractor during the term of this Agreement if and when food waste recycling is commercially feasible in Blaine County and reserves the right to grant a non-exclusive franchise or enter into a hauling agreement with a contractor for materials other than Recyclable Materials.

3. Term. The term of this Agreement shall begin April 11, 2012, and shall end at midnight, April 10, 2017. The Contractor shall have the option to renew this Agreement for one additional three (3) year period; provided, however, that the right to renew is conditioned on the following:

a. Contractor notifies Hailey in writing of Contractor's intention to renew the Agreement not less than one hundred twenty (120) days nor more than one hundred eighty (180) days prior to the scheduled expiration date of the initial term of this Agreement;

b. Contractor is not in material default and has substantially complied with all the terms and conditions of this Agreement or any other agreement with Hailey;

c. Contractor agrees to the rights and obligations of this Agreement; and

d. Contractor has not, without the written consent of Hailey, assigned or attempted to assign this Agreement or otherwise transferred Contractor's rights under this Agreement.

4. Duties and Responsibilities of Contractor.

A. General Duties. Contractor is responsible for furnishing skill, labor, services, vehicles, containers, equipment, materials and supplies in accordance with the services specified in this Agreement.

B. Scope of Services.

1. Weekly Residential Solid Waste and Recyclable Materials

Collection. The Contractor shall provide on a weekly basis curbside collection of Solid Waste in approximately 32, 68 or 95 gallon roll carts and curbside collection of Recyclable Materials in standardized recycle bins. Contractor shall distribute one roll cart in the size requested by the Residential Customer and up to two recycle bins to each Residential Customer. The roll carts and recyclable bins shall remain the property of the Contractor. Types of and disposal methods for Recyclable Materials shall conform with the standards established by the Southern Idaho Solid Waste District and by Blaine County through its solid waste collection center programs at the Ohio Gulch Transfer Station and Resource Recovery Center. Collection of Solid Waste and Recyclable Materials shall occur to the extent possible at or about the same time and on designated collection days between 7:00 o'clock a.m. and 6:00 o'clock p.m., unless special events or circumstances (e.g., weather or large-scale construction projects) dictate different hours of collection. A designated collection day shall occur on a weekday approved by Hailey; provided, however, the Contractor shall not provide collection services on certain holidays (i.e., New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) falling on a designated collection day. Should any of the above mentioned holidays occur on a designated collection day, collection shall occur on the following week day. The Contractor shall be responsible to notify the public about any change in a designated collection day caused by the occurrence of a holiday by taking out a 6" x 8" ad in the weekly newspaper just before the holiday. The Contractor shall have the right to amend the designated collection date and routes so long as customer service is not otherwise affected; provided, however, the Contractor shall obtain approval from Hailey thirty (30) days before the change and the Contractor shall provide written notice to affected Residential Customers a minimum of two (2) weeks prior to the change.

2. Yard Waste and Cardboard Pickup.

The Contractor shall provide, at no charge to Hailey or Residential Customers, a single-point collection, hauling and disposal of yard waste, such as grass clippings, leaves, branches, clean wood and similar products, for one Saturday in the spring and one Saturday in the fall during the term of this Agreement. The location and dates shall be specified by Hailey. The Contractor shall provide, at no charge to Hailey or Residential Customers, collection, hauling and disposal of holiday trees in early-mid January during the term of this Agreement at a location specified by Hailey. The Contractor shall provide, at no charge to Hailey or Residential Customers, collection, hauling and disposal of cardboard at the Park and Ride lot and one other location determined by Hailey during the term of this Agreement. The Contractor shall provide a total of eight 6 yard dumpsters at the Park and Ride lot and the other location, which shall be emptied weekly. All pickup sites shall be within or adjacent to the city limits of the City of Hailey.

3. Disposal.

The Contractor shall haul and dispose, in accordance with applicable federal, state and local laws, all legally acceptable Solid Waste and Recyclable Materials collected within Hailey in accordance with this Agreement to the Southern Idaho Solid Waste Transfer Station at Ohio Gulch or to such other transfer station, landfill or recycling facility designated by the Blaine County Board of County Commissioners. To the greatest extent possible, all Recyclable Materials and items described in paragraph 4(B)(2), above, shall be

disposed for recycling. The Contractor shall be responsible for the payment of all charges, including disposal fees, charges and taxes, associated with the disposal of Solid Waste or Recyclable Materials collected from Hailey.

4. Public Information. The Contractor shall coordinate with Hailey to provide city staff and/or a 3<sup>rd</sup> party contractor with information and to help with dissemination of education and outreach materials in an effective and efficient manner to help promote recycling and waste reduction.

5. Customer Inquiries. The Contractor shall respond to the following customer requests about:

- i. Information regarding service options and procedures.
- ii. Missed collections.
- iii. Late setouts.
- iv. Extra pickups.
- v. Start-up or termination of service.
- vi. Delivery and return of containers and bins.
- vii. Conversion of containers.
- viii. Billing and payment inquiries.

6. Local Office. The Contractor shall maintain a local office in Blaine County with telephone service and such staff as needed to respond to customer contacts, including service requests, orders for missed collections, orders for additional collections and requests for conversion of containers. Office hours shall be 8:00 o'clock a.m. to 5:00 o'clock p.m. of each weekday, except when holidays fall on weekdays.

7. Extra Pickups. The Contractor shall document all extra pickups and additional services provided to Residential Customers and shall furnish Hailey written documentation on a timely basis throughout a month of the extra pickups in addition to the weekly collection of Solid Waste and Recyclable Materials, so that these charges can be made on the current billings.

8. Annual Report. The Contractor shall submit to Hailey an annual report on April 1 or the first business day following April 1 in the first, second, third, fourth and fifth anniversaries of this Agreement, setting forth a) the amount of Solid Waste collected for the weekly collection service (measured in tons), b) the amount of Solid Waste collected for extra pickups (measured in tons), c) the amount of Recyclable Materials collected (measured in tons), d) the fees charged for conversion of containers, e) the rentals charged for containers, f) the frequency and type of container conversions, differentiating between container conversions for Recyclable Materials and Solid Waste and the number of conversions that result in an increase or decrease in size and g) tipping fees or charges for the disposal of Solid Waste and Recyclable Materials.

5. Duties and Responsibilities of Hailey.

A. Right of Access. Hailey shall grant to the Contractor, during the term of this Agreement, the right and privilege of ingress and egress, to cross all public streets, alley and rights-of-way in Hailey. Any Solid Waste or Recyclable Materials collection shall be made on the public streets, alley and rights-of-way in Hailey in a manner causing the least delay and inconvenience to the public.

B. Billing. Hailey shall be responsible for billing all customers covered by this Agreement a standard monthly rate for the weekly Solid Waste and Recyclable Materials collection services provided by the Contractor in an amount established by resolution or ordinance duly adopted by Hailey. Hailey shall also be responsible for billing all customers covered by this Agreement for extra pickups of Solid Waste and Recyclable Materials provided by the Contractor in an amount established by resolution or ordinance duly adopted by Hailey. The fees adopted by resolution or ordinance shall be effective May 1, 2012. Hailey shall maintain adequate records of billings, collections and outstanding accounts, and shall furnish Contractor with such records upon reasonable request. Hailey shall furnish Contractor timely information about new Residential Customers.

C. Payment to Contractor. Hailey shall remit to the Contractor all monthly fees billed and received for the Solid Waste and Recyclable Materials collection services provided by the Contractor under this Agreement, less an amount equal to 7% of all monthly fees and charges collected, which sum shall be retained by Hailey as consideration for performance of the monthly billing services provided for herein and for educational outreach, and less an amount equal to 6% of all monthly fees and charges collected, which sum shall be retained by Hailey as a franchise fee. Hailey shall begin the payment of the monthly fees less 13%, as described herein, to Contractor on or before the last day of May, 2012, and continuing every month thereafter during and beyond the original term and renewed term, if any, of this Agreement for those collected fees that were billed in accordance with the rates established by resolution or ordinance under paragraph 5(B) of this Agreement.

D. Collection. If a Residential Customer is delinquent in payment to the City for Solid Waste and recycling services, Hailey will follow the procedures for notification and termination of water service described in § 13.04.150(D) of the Hailey Municipal Code, as amended. If there is termination of the Residential Customer's water service under the applicable procedure, Hailey will notify the Contractor to discontinue garbage service. Hailey shall make good faith efforts to collect on any delinquent account.

E. Agreement Not to Compete. Except as otherwise provided herein, upon execution of this Agreement and before the expiration or earlier termination of this Agreement, Hailey agrees not to compete with the Contractor or provide the services to be provided by Contractor under this Agreement.

6. Franchise Fee. As set forth in paragraph 5(C) of this Agreement, Contractor shall pay Hailey and Hailey shall retain 6% of the gross revenue collected by Hailey as a franchise fee.

7. Security. The Contractor shall provide and maintain during the term of this Agreement security in the form of a performance bond, irrevocable letter of credit or cash equivalent ("Security") for the use and benefit of Hailey and in a form acceptable to Hailey. The Security shall cover Contractor's failure to faithfully perform all of the provisions of this Agreement. The Security shall contain appropriate recitations that it is issued pursuant to this Agreement and that it shall be construed to meet all requirements of this Agreement. The performance bond or irrevocable letter of credit shall be issued by a surety company or a financial institution authorized to do business in the State of Idaho, acceptable to Hailey and in the amount of \$100,000.00. The Contractor shall submit the Security to the City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

8. Insurance.

A. Required Insurance. During the term of this Agreement, the Contractor shall keep in full force and effect at its sole expense the following insurance with the following limits on an occurrence basis:

1. Comprehensive General Liability and Property Damage Insurance:

Minimum Limits

Bodily Injury	\$2,000,000
Property Damage	\$2,000,000

2. Automobile Liability (owned, non-owned and hired).

Minimum Limits

Bodily Injury	\$2,000,000
Property Damage	\$2,000,000

3. Employer's Liability Insurance covering each employee in the execution of the work to the extent such employee is not covered by worker's compensation.

Minimum Limits

Per Accident	\$2,000,000
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4. The Contractor shall secure and maintain at least the statutory amounts of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho.

B. Additional Insured. The Contractor's certificates of insurance shall name Hailey, its officials, employees and agents as additional named insured and shall be endorsed to specify that such policies cover the liability assumed by Contractor under this Agreement.

C. Notification. Such insurance shall provide at least thirty (30) days written notice to Hailey before such policy is suspended, canceled, amended or terminated.

D. Proof of Insurance. On or before execution of this Agreement, the Contractor shall provide evidence of acceptable insurance at limits listed above to City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

9. Equipment and Personnel.

A. Equipment. The Contractor shall furnish during the term of this Agreement a sufficient quantity and quality of vehicles and equipment to collect, haul and dispose of Solid Waste and Recyclable Materials as provided herein. The vehicles shall a) be clean and uniformly painted, b) be equipped with warning devices, c) prevent littering, d) be sealed to prevent leakage, e) lawfully registered and f) be in good and safe running order. All roll carts and recycling bins shall be sealed, equipped with close fitting covers and in good operable condition.

B. Personnel. The Contractor shall employ during the term of this Agreement a sufficient number of skilled, trained and competent personnel to collect and dispose of the Solid Waste and Recyclable Materials collected under this Agreement, and a sufficient number of managerial and office personnel to provide the necessary services described in this Agreement. The Contractor acknowledges and agrees to follow fair labor and nondiscrimination practices in accordance with state and federal laws. The Contractor also agrees to require that its employees and agents act in respectful manner while providing the public services described in this Agreement.

10. Data Collection. During the term of this Agreement, the Contractor shall upon request by Hailey provide to Hailey written documentation showing a) the amount of Solid Waste collected for the weekly collection service (measured in tons), b) the amount of Solid Waste collected for extra pickups (measured in tons), c) the amount of Recyclable Materials collected (measured in tons), d) the fees charged for conversion of containers, e) the rentals charged for containers, f) the frequency and type of container conversions, differentiating between container conversions for Recyclable Materials and Solid Waste and the number of conversions that result in an increase or decrease in size, and g) tipping fees or charges for the disposal of Solid Waste and Recyclable Materials.

11. Default and Termination.

A. Termination for Cause. Hailey may terminate this Agreement for cause if the Contractor fails to perform or defaults on any of the duties or responsibilities set forth in this Agreement.

B. Corrective Action. If Hailey finds that the Contractor has failed to perform or defaulted on any or all of the duties or responsibilities set forth in this Agreement, Hailey shall provide the Contractor a written "Notice of Intent to Terminate" the Agreement in accordance with paragraph 17(M) of this Agreement. The "Notice of Intent to Terminate" shall describe with sufficient detail the Contractor's failure to perform and/or default. The Contractor shall have a period of thirty (30) days from the receipt or delivery of the Notice of Intent to Terminate the Agreement to correct the failure to perform or default. If the Contractor fails to

correct the failure to perform and/or default within thirty (30) days, Hailey may terminate this Agreement immediately without further notice. The Contractor shall be given a Notice of Termination in accordance with paragraph 17(M) of this Agreement.

C. Bond Payment. In the event of termination of this Agreement caused by the default(s) of the Contractor, the surety providing the performance bond, if applicable, shall undertake or cause to be undertaken the work required to be performed pursuant to this Agreement for remainder of the term of this Agreement.

D. Emergency Provision. The parties recognize that the public health, safety and welfare may be endangered by any disruption of the solid waste collection system. Therefore, the parties agree in the event solid waste collection is interrupted for more than ninety six (96) hours, Hailey shall have the authority and be entitled to declare a public emergency, and shall have the right to take temporary possession of the Contractor's equipment and facilities for the purpose of continuing the service that the Contractor has agreed to provide, in which case Hailey shall notify the Contractor and schedule a hearing at least twenty four (24) hours before taking temporary possession of the Contractor's equipment and facilities. Hailey shall have the right to retain possession of the Contractor's equipment and facilities until the Contractor can demonstrate to the reasonable satisfaction of Hailey that the service required under this Agreement can be resumed. During any period that Hailey has temporarily assumed the obligations of the Contractor, Hailey shall be entitled to all revenue, less payment to Contractor for a reasonable rental for the facilities, equipment and other property used by Hailey in the performance of the services required under this Agreement.

12. Indemnification. The Contractor and its employees are independent contractors and are not, under this Agreement, employees or agents of Hailey. The Contractor covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any act or omission on the part of the Contractor, its agents, employees, assigns or anyone subcontracting with the Contractor, related to the collection, hauling or disposal of Solid Waste and Recyclable Materials as provided under this Agreement or the provision of any service or duty under this Agreement.

13. Annexation. In the event Hailey annexes additional territory during the term of this Agreement, the Contractor shall have the exclusive authority and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste and Recyclable Materials, as described in paragraph 2 of this Agreement, in the annexed territory for the remainder of the term of this Agreement, unless the additional territory annexed by Hailey is served by another solid waste and/or recycling company, in which case the Contractor shall have the non-exclusive authority and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste and Recyclable Materials.

14. Ownership of Solid Waste. Title to Solid Waste and Recyclable Materials shall pass to the Contractor when placed in Contractor's collection vehicles and removed by Contractor from a container. By virtue of this Agreement, Hailey shall never have title to the Solid Waste or Recyclable Materials collected under the terms of this Agreement. In accordance with Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, title to all

Hazardous Materials and otherwise prohibited waste remains with the generator. Nothing provided herein limits any recourse the Contractor or Hailey may have against any generator for disposal of any Hazardous Material or prohibited waste.

15. Compliance with Laws. The Contractor shall comply with all applicable federal, state and local statutes, laws, rules, regulations and ordinances, including the Federal Occupational Safety and Health Act of 1970, as amended, and including statutes, laws, rules, regulations and ordinances, as they now exist or may hereafter be amended, relating to Hazardous Materials and relating to the collection and transportation of Solid Waste.

16. Recycling Revisions. In the event Blaine County or the Southern Idaho Solid Waste District elects to convert to a single or dual stream recycling process or additional incentive recycling programs involving Recyclable Materials are established, Hailey shall notify Contractor of any proposed revision, in which case the Contractor may, within thirty (30) days of such notice, seek a change in the fee schedule adopted pursuant to paragraph 5(B) of this Agreement. Upon receipt of the proposed fee schedule, Hailey, in its sole discretion, may or may not approve. If approved, the resolution or ordinance described in paragraph 5(B) of this Agreement shall be amended.

17. Miscellaneous Provisions.

A. Paragraph headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

B. Provisions Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

C. Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

D. Attorney's Fees. In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding.

E. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

F. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

G. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.

H. Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

I. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

J. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.

L. Savings Clause. If any of the provisions of this Agreement shall be held to be unenforceable or unconstitutional, the remaining provisions shall nevertheless be enforceable.

M. Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service, or by leaving a copy of such notice or demand at the address hereinafter set forth, whereupon service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, airmail if the address is outside the state in which the same is mailed, postage prepaid, with return receipt requested, addressed as follows:

HAILEY:                      City of Hailey  
                                      c/o City Clerk  
                                      115 South Main Street  
                                      Suite H  
                                      Hailey, Idaho 83333

CONTRACTOR:

In case of service by mail, it shall be deemed complete on the day of actual delivery as shown on the addressee's registry of certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

N. Assignment. The parties agree that this Agreement shall not be assigned, in whole or in part, to any other person or entity without the prior written consent of Hailey, in the sole discretion of Hailey. The parties also agree that the Contractor is prohibited from

conveying, in any manner, directly or indirectly, any majority or controlling interest in the Contractor's business entity, regardless whether it is a corporation, limited liability company or other legal entity, without the prior written consent of Hailey.

O. Force Majeure. Neither party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by the Contractor, whether now existing or hereafter created.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement on the day and year first above written.

CITY OF HAILEY

By \_\_\_\_\_  
Fritz X. Haemmerle, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk

CONTRACTOR

By \_\_\_\_\_  
\_\_\_\_\_, its president

**FRANCHISE AGREEMENT**  
**(Commercial Solid Waste and Recyclable Materials Collection)**

This Franchise Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of April, 2012, by and between the CITY OF HAILEY, a municipal corporation ("Hailey") and \_\_\_\_\_, an Idaho corporation ("Contractor").

RECITALS

A. The Hailey is a municipal corporation and political subdivision of the State of Idaho, and has authority to enter into this Agreement. Fritz X. Haemmerle is the duly elected and acting Mayor of Hailey. The Hailey City Council has authorized the Mayor to execute this Agreement.

B. Contractor is a duly organized and acting corporation in the State of Idaho. \_\_\_\_\_ is the duly acting president of Contractor and has the authority to enter into this Agreement.

C. Hailey has requested proposals from qualified contractors to provide personal services to collect, haul and dispose of commercial solid waste and recyclable materials within the city limits of Hailey, Idaho. A copy of the Request for Proposals ("RFP") is attached hereto as **Exhibit "A."** Contractor has submitted a proposal to provide such services. After evaluating the submitted proposals, Hailey has awarded an exclusive five (5) year franchise to Contractor, with a three (3) year renewal term, to provide personal services to collect, haul and dispose of commercial solid waste and recyclable materials within the city limits of Hailey, Idaho.

D. Subject to the terms and conditions set forth herein and Hailey Ordinance No. \_\_\_\_, the parties hereto are desirous of entering into an exclusive five (5) year franchise agreement, with a three (3) year renewal term, with Contractor to provide personal services to collect, haul and dispose of commercial solid waste and recyclable materials within the city limits of Hailey, Idaho.

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

1. Definitions. For the purposes of this Agreement, the following capitalized terms have the meanings set forth herein:

"Commercial Customer(s)" mean those owners and/or occupants of commercial, light industrial, industrial, governmental and institutional uses, schools, all other businesses, and multi-family residential complexes consisting of five or more dwelling units (including apartments, townhomes and condominiums), and those owners of new or remodeled construction sites and/or their agents.

“Hazardous Materials” means any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State of Idaho to be “hazardous” as that term is defined by or pursuant to federal or state law.

“Recyclable Materials” means cardboard, glass, plastic, aluminum, tin, motor oil, paper, newspaper and magazines.

“Self-Hauling” means the collection, hauling and disposal of Solid Waste by generator or generator’s agent of the Solid Waste in the generator’s or generator agent’s container and vehicle directly to the transfer station or a landfill.

“Solid Waste” means any garbage, refuse or other discarded material generated by Commercial Customers that are not or cannot be recycled or diverted from the landfill, excluding Hazardous Materials.

2. Exclusive Agreement. Hailey hereby grants exclusively to Contractor the authority and privilege to engage in the business of collecting, hauling and disposing of Solid Waste and Recyclable Materials kept or accumulated and placed for collection by all Commercial Customers within the corporate limits of Hailey, Idaho, and to perform all of the work described in this Agreement; provided, however, this exclusive authority and privilege does not extend to the Self-Hauling of Solid Waste or Recyclable Materials, Hazardous Materials or medical waste. Hailey reserves the right to grant a non-exclusive franchise or enter into a hauling agreement with a contractor during the term of this Agreement if and when food waste recycling is commercially feasible in Blaine County and reserves the right to grant a non-exclusive franchise or enter into a hauling agreement with a contractor for materials other than Recyclable Materials.

3. Term. The term of this Agreement shall begin April 11, 2012, and shall end at midnight, April 10, 2017. The Contractor shall have the option to renew this Agreement for one additional three (3) year period; provided however, that the right to renew is conditioned on the following:

a. Contractor notifies Hailey in writing of Contractor's intention to renew the Agreement not less than one hundred twenty (120) days nor more than one hundred eighty (180) days prior to the scheduled expiration date of the initial term of this Agreement;

b. Contractor is not in material default and has substantially complied with all the terms and conditions of this Agreement or any other agreement with Hailey;

c. Contractor agrees to the rights and obligations of this Agreement; and

d. Contractor has not, without the written consent of Hailey, assigned or attempted to assign this Agreement or otherwise transferred Contractor's rights under this Agreement.

4. Duties and Responsibilities of Contractor.

A. General Duties. Contractor is responsible for furnishing skill, labor, services, vehicles, containers, equipment, materials and supplies in accordance with the services specified in this Agreement.

B. Scope of Services.

1. Weekly Commercial Solid Waste and Recyclable Materials Collection. Except as otherwise provided herein, the Contractor shall provide, on a weekly basis, collection of Solid Waste and Recyclable Materials in sizes ranging from approximately 32 gallon roll carts to 30 cubic yard roll off containers, or other standardized containers. If requested by a Commercial Customer in need of temporary Solid Waste services, such as an event or a construction project, Solid Waste and clean wood waste shall be picked up on an on-call basis. Contractor shall distribute one or more containers in the size requested by the Commercial Customer. Containers and dumpsters used to collect Recyclable Materials shall be clearly marked with clear, international signage and standardized color schemes to denote what Recyclable Material is collected within the container. Receptacles for clean wood waste and cardboard shall be provided in a range of sizes to be selected by the Commercial Customer. The containers shall remain the property of the Contractor. Types of and disposal methods for Recyclable Materials shall conform with the standards established by the Southern Idaho Solid Waste District and by Blaine County through its solid waste collection center programs at the Ohio Gulch Transfer Station and Resource Recovery Center. Collection of Solid Waste and Recyclable Materials shall occur to the extent possible at or about the same time and on designated collection days between 7:00 o'clock a.m. and 6:00 o'clock p.m., unless special events or circumstances (*e.g.*, weather or large-scale construction projects) dictate different hours of collection. A designated collection day shall occur on a weekday approved by Hailey; provided, however, the Contractor shall not provide collection services on certain holidays (*i.e.*, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) falling on a designated collection day. Should any of the above mentioned holidays occur on a designated collection day, collection shall occur on the following week day. The Contractor shall be responsible to notify the public about any change in a designated collection day caused by the occurrence of a holiday by taking out a 6" x 8" ad in the weekly newspapers just before the holiday. The Contractor shall have the right to amend the designated collection date and routes so long as customer service is not otherwise affected; provided, however, the Contractor shall obtain approval from Hailey thirty (30) days before the change and the Contractor shall provide written notice to affected Commercial Customers a minimum of two (2) weeks prior to the change.

2. Hailey Festivals. The Contractor shall provide, at no charge to Hailey, Solid Waste and Recyclable Materials collection, hauling and disposal services for the 4<sup>th</sup> of July festivities, the Northern Rockies Folk Festival and the Trailing of the Sheep Festival. For the 4<sup>th</sup> of July festivities, the Contractor shall provide a 6 yard dumpster and fourteen 95 gallon recycling containers for plastic, glass and aluminum/tin at the rodeo grounds during the term of this Agreement and two 3 yard dumpsters at locations within Hailey designated by Hailey on July 3. For the Northern Rockies Folk Festival, the Contractor shall provide a 6 yard dumpster, twelve 95 gallon recycling containers for plastic, glass and aluminum/tin at locations designated by Hailey or the sponsor of the Northern Rockies Folk Festival, before noon on the day of the

first concert. For the Trailing of the Sheep Festival, the Contractor shall provide two 1.5 yard dumpsters and six 95 gallon recycling containers for plastic, glass and aluminum/tin at locations designated by Hailey or the sponsor of the Trailing of the Sheep Festival for one day (Roberta McKercher Park event) and one 1.5 yard dumpster and three 95 gallon recycling containers for plastic, glass and aluminum/tin at locations designated by Hailey or the sponsor of the Trailing of the Sheep Festival for two days (dog trials) on the day before the events. Immediately before the 4<sup>th</sup> of July Rodeo, the Northern Rockies Folk Festival and the Trailing of the Sheep Festival, the Contractor shall provide, at no charge to Hailey, one 3 yard dumpster and three 95 gallon recycling containers for plastic, glass and aluminum/tin at the public camp site at Lion's Park, which shall be emptied and removed after each event. All other dumpsters and containers shall be emptied before 10:00 a.m. on the following day during any event and removed before noon on the day following the completion of the event.

3. Disposal. The Contractor shall haul and dispose, in accordance with applicable federal, state and local laws, all legally acceptable Solid Waste and Recyclable Material collected within Hailey in accordance with this Agreement to the Southern Idaho Solid Waste Transfer Station at Ohio Gulch or to such other transfer station, landfill or recycling facility designated by the Blaine County Board of County Commissioners. To the greatest extent possible, all Recyclable Materials and items described in paragraph 4(B)(2), above, shall be disposed for recycling. The Contractor shall be responsible for the payment of all charges, including disposal fees, charges and taxes, associated with the disposal of Solid Waste or Recyclable Materials collected from Hailey.

4. Public Information. The Contractor shall coordinate with Hailey to provide city staff and/or a 3<sup>rd</sup> party contractor with information and to help with dissemination of education and outreach materials in an effective and efficient manner to help promote recycling and waste reduction.

5. Customer Inquiries. The Contractor shall respond to the following customer requests about:

- i. Information regarding service options and procedures.
- ii. Missed collections.
- iii. Late setouts.
- iv. Extra pickups.
- v. Start-up or termination of service.
- vi. Delivery and return of containers and bins.
- vii. Conversion of containers.
- viii. Billing and payment inquiries.

6. Local Office. The Contractor shall maintain a local office in Blaine County with telephone service and such staff as needed to respond to customer contacts, including service requests, orders for missed collections, orders for additional collections and requests for conversion of containers. Office hours shall be 8:00 o'clock a.m. to 5:00 o'clock p.m. of each weekday, except when holidays fall on weekdays.

7. Extra Pickups. The Contractor shall document all extra pickups and additional services provided to Commercial Customers and shall furnish Hailey written documentation on a timely basis throughout a month of the extra pickups in addition to the weekly collection of Solid Waste and Recyclable Materials, so that these charges can be made on the current billings. The Contractor must provide to Hailey detailed billing on all construction projects that indicate the amount, type, and charges associated with the Recyclable Materials, clean wood waste and Solid Waste. All fees associated with these activities shall be provided to the City in a clear and easy-to-understand format, which will be mailed to Commercial Customers operating construction projects.

8. Annual Report. The Contractor shall submit to Hailey an annual report on April 1 or the first business day following April 1 in the first, second, third, fourth and fifth anniversaries of this Agreement, setting forth a) the amount of Solid Waste collected for the weekly collection service (measured in tons), b) the amount of Solid Waste collected for extra pickups (measured in tons), c) the amount of Recyclable Materials collected (measured in tons), d) the fees charged for conversion of containers, e) the rentals charged for containers, f) the frequency and type of container conversions, differentiating between container conversions for Recyclable Materials and Solid Waste and the number of conversions that result in an increase or decrease in size and g) tipping fees or charges for the disposal of Solid Waste and Recyclable Materials.

5. Duties and Responsibilities of Hailey.

A. Right of Access. Hailey shall grant to the Contractor, during the term of this Agreement, the right and privilege of ingress and egress, to cross all public streets, alley and rights-of-way in Hailey. Any Solid Waste or Recyclable Materials collection shall be made on the public streets, alley and rights-of-way in Hailey in a manner causing the least delay and inconvenience to the public.

B. Billing. Hailey shall be responsible for billing all customers covered by this Agreement a standard monthly rate for the weekly Solid Waste and Recyclable Materials collection services provided by the Contractor in an amount established by resolution or ordinance duly adopted by Hailey. Hailey shall also be responsible for billing all customers covered by this Agreement for extra pickups of Solid Waste and Recyclable Materials provided by the Contractor in an amount established by resolution or ordinance duly adopted by Hailey. The fees adopted by resolution or ordinance shall be effective May 1, 2012. Hailey shall maintain adequate records of billings, collections and outstanding accounts, and shall furnish Contractor with such records upon reasonable request. Hailey shall furnish Contractor timely information about new Commercial Customers.

C. Payment to Contractor. Hailey shall remit to the Contractor all monthly fees billed and received for the Solid Waste and Recyclable Materials collection services provided by the Contractor under this Agreement, less an amount equal to 7% of all monthly fees and charges collected, which sum shall be retained by Hailey as consideration for performance of the monthly billing services provided for herein and for educational outreach, and less an amount equal to 6% of all monthly fees and charges collected, which sum shall be retained by Hailey as

a franchise fee. Hailey shall begin the payment of the monthly fees less 13%, as described herein, to Contractor on or before the last day of May, 2012, and continuing every month thereafter during and beyond the original term and renewed term, if any, of this Agreement for those collected fees that were billed in accordance with the rates established by resolution or ordinance under paragraph 5(B) of this Agreement.

D. Collection. If a Commercial Customer is delinquent in payment to the City for Solid Waste and recycling services, Hailey will follow the procedures for notification and termination of water service described in § 13.04.150(D) of the Hailey Municipal Code, as amended. If there is termination of the Commercial Customer's water service under the applicable procedure, Hailey will notify the Contractor to discontinue garbage service. Hailey shall make good faith efforts to collect on any delinquent account.

E. Agreement Not to Compete. Upon execution of this Agreement and before the expiration or earlier termination of this Agreement, Hailey agrees not to compete with the Contractor or provide the services to be provided by Contractor under this Agreement.

6. Franchise Fee. As set forth in paragraph 5(C) of this Agreement, Contractor shall pay Hailey and Hailey shall retain 6% of the gross revenue collected by Hailey as a franchise fee.

7. Security. The Contractor shall provide and maintain during the term of this Agreement security in the form of a performance bond, irrevocable letter of credit or cash equivalent ("Security") for the use and benefit of Hailey and in a form acceptable to Hailey. The Security shall cover Contractor's failure to faithfully perform all of the provisions of this Agreement. The Security shall contain appropriate recitations that it is issued pursuant to this Agreement and that it shall be construed to meet all requirements of this Agreement. The performance bond or irrevocable letter of credit shall be issued by a surety company or a financial institution authorized to do business in the State of Idaho, acceptable to Hailey and in the amount of \$100,000.00. The Contractor shall submit the Security to the City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

8. Insurance.

A. Required Insurance. During the term of this Agreement, the Contractor shall keep in full force and effect at its sole expense the following insurance with the following limits on an occurrence basis:

1. Comprehensive General Liability and Property Damage Insurance:  
Minimum Limits  
Bodily Injury \$2,000,000  
Property Damage \$2,000,000
2. Automobile Liability (owned, non-owned and hired).  
Minimum Limits  
Bodily Injury \$2,000,000  
Property Damage \$2,000,000

3. Employer's Liability Insurance covering each employee in the execution of the work to the extent such employee is not covered by worker's compensation.

Minimum Limits

Per Accident

\$2,000,000

4. The Contractor shall secure and maintain at least the statutory amounts of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho.

B. Additional Insured. The Contractor's certificates of insurance shall name Hailey, its officials, employees and agents as additional named insured and shall be endorsed to specify that such policies cover the liability assumed by Contractor under this Agreement.

C. Notification. Such insurance shall provide at least thirty (30) days written notice to Hailey before such policy is suspended, canceled, amended or terminated.

D. Proof of Insurance. On or before the execution of this Agreement, the Contractor shall provide evidence of acceptable insurance at limits listed above to City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

9. Equipment and Personnel.

A. Equipment. The Contractor shall furnish during the term of this Agreement a sufficient quantity and quality of vehicles and equipment to collect and dispose of Solid Waste and Recyclable Materials as provided herein. The vehicles shall a) be clean and uniformly painted, b) be equipped with warning devices, c) prevent littering, d) be sealed to prevent leakage, e) lawfully registered and f) be in good and safe running order. All containers shall be sealed, equipped with close fitting covers and in good operable condition.

B. Personnel. The Contractor shall employ during the term of this Agreement a sufficient number of skilled, trained and competent personnel to collect, haul and dispose of the Solid Waste and recyclable Materials collected under this Agreement, and a sufficient number of managerial and office personnel to provide the necessary services described in this Agreement. The Contractor acknowledges and agrees to follow fair labor and nondiscrimination practices in accordance with state and federal laws. The Contractor also agrees to require that its employees and agents act in respectful manner while providing the public services described in this Agreement.

10. Data Collection. During the term of this Agreement, the Contractor shall upon request by Hailey provide to Hailey written documentation showing a) the amount of Solid Waste collected for the weekly collection service (measured in tons), b) the amount of Solid Waste collected for extra pickups (measured in tons), c) the amount of Recyclable Materials collected (measured in tons), d) the fees charged for conversion of containers, e) the rentals charged for containers, f) the frequency and type of container conversions, differentiating between container conversions for Recyclable Materials and Solid Waste and the number of

conversions that result in an increase or decrease in size, and g) tipping fees or charges for the disposal of Solid Waste and Recyclable Materials.

11. Default and Termination.

A. Termination for Cause. Hailey may terminate this Agreement for cause if the Contractor fails to perform or defaults on any of the duties or responsibilities set forth in this Agreement.

B. Corrective Action. If Hailey finds that the Contractor has failed to perform or defaulted on any or all of the duties or responsibilities set forth in this Agreement, Hailey shall provide the Contractor a written "Notice of Intent to Terminate" the Agreement in accordance with paragraph 17(M) of this Agreement. The "Notice of Intent to Terminate" shall describe with sufficient detail the Contractor's failure to perform and/or default. The Contractor shall have a period of thirty (30) days from the receipt or delivery of the Notice of Intent to Terminate the Agreement to correct the failure to perform or default. If the Contractor fails to correct the failure to perform and/or default within thirty (30) days, Hailey may terminate this Agreement immediately without further notice. The Contractor shall be given a Notice of Termination in accordance with paragraph 17(M) of this Agreement.

C. Bond Payment. In the event of termination of this Agreement caused by the default(s) of the Contractor, the surety providing the performance bond shall undertake or cause to be undertaken the work required to be performed pursuant to this Agreement for remainder of the term of this Agreement.

D. Emergency Provision. The parties recognize that the public health, safety and welfare may be endangered by any disruption of the solid waste collection system. Therefore, the parties agree in the event solid waste collection is interrupted for more than ninety six (96) hours, Hailey shall have the authority and be entitled to declare a public emergency, and shall have the right to take temporary possession of the Contractor's equipment and facilities for the purpose of continuing the service that the Contractor has agreed to provide, in which case Hailey shall notify the Contractor and schedule a hearing at least twenty four (24) hours before taking temporary possession of the Contractor's equipment and facilities. Hailey shall have the right to retain possession of the Contractor's equipment and facilities until the Contractor can demonstrate to the reasonable satisfaction of Hailey that the service required under this Agreement can be resumed. During any period that Hailey has temporarily assumed the obligations of the Contractor, Hailey shall be entitled to all revenue, less payment to Contractor for a reasonable rental for the facilities, equipment and other property used by Hailey in the performance of the services required under this Agreement.

12. Indemnification. The Contractor and its employees are independent contractors and are not, under this Agreement, employees or agents of Hailey. The Contractor covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any act or omission on the part of the Contractor, its agents, employees, assigns or anyone subcontracting with the Contractor,

related to the collection, hauling or disposal of Solid Waste and Recyclable Materials as provided under this Agreement or the provision of any service or duty under this Agreement.

13. Annexation. In the event Hailey annexes additional territory during the term of this Agreement, the Contractor shall have the exclusive authority and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste and Recyclable Materials, as described in paragraph 2 of this Agreement, in the annexed territory for the remainder of the term of this Agreement, unless the additional territory annexed by Hailey is served by another solid waste and/or recycling company, in which case the Contractor shall have the non-exclusive authority and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste and Recyclable Materials.

14. Ownership of Solid Waste. Title to Solid Waste and Recyclable Materials shall pass to the Contractor when placed in Contractor's collection vehicles and removed by Contractor from a container. By virtue of this Agreement, Hailey shall never have title to the Solid Waste or Recyclable Materials collected under the terms of this Agreement. In accordance with Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, title to all Hazardous Materials and otherwise prohibited waste remains with the generator. Nothing provided herein limits any recourse the Contractor or Hailey may have against any generator for disposal of any Hazardous Material or prohibited waste.

15. Compliance with Laws. The Contractor shall comply with all applicable federal, state and local statutes, laws, rules, regulations and ordinances, including the Federal Occupational Safety and Health Act of 1970, as amended, and including statutes, laws, rules, regulations and ordinances, as they now exist or may hereafter be amended, relating to Hazardous Materials and relating to the collection and transportation of Solid Waste.

16. Recycling Revisions. In the event Blaine County or the Southern Idaho Solid Waste District elects to convert to a single or dual stream recycling process or additional incentive recycling programs involving Recyclable Materials are established, Hailey shall notify Contractor of any proposed revision, in which case the Contractor may, within thirty (30) days of such notice, seek a change in the fee schedule adopted pursuant to paragraph 5(B) of this Agreement. Upon receipt of the proposed fee schedule, Hailey, in its sole discretion, may or may not approve. If approved, the resolution or ordinance described in paragraph 5(B) of this Agreement shall be amended.

17. Miscellaneous Provisions.

A. Paragraph headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

B. Provisions Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

C. Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

D. Attorney's Fees. In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding.

E. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

F. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

G. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.

H. Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

I. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

J. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.

L. Savings Clause. If any of the provisions of this Agreement shall be held to be unenforceable or unconstitutional, the remaining provisions shall nevertheless be enforceable.

M. Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service, or by leaving a copy of such notice or demand at the address hereinafter set forth, whereupon service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, airmail if the address is outside the state in which the same is mailed, postage prepaid, with return receipt requested, addressed as follows:

HAILEY: City of Hailey  
c/o City Clerk  
115 South Main Street  
Suite H  
Hailey, Idaho 83333

CONTRACTOR:

In case of service by mail, it shall be deemed complete on the day of actual delivery as shown on the addressee's registry of certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

N. Assignment. The parties agree that this Agreement shall not be assigned, in whole or in part, to any other person or entity without the prior written consent of Hailey, in the sole discretion of Hailey. The parties also agree that the Contractor is prohibited from conveying, in any manner, directly or indirectly, any majority or controlling interest in the Contractor's business entity, regardless whether it is a corporation, limited liability company or other legal entity, without the prior written consent of Hailey.

O. Force Majeure. Neither party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by the Contractor, whether now existing or hereafter created.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement on the day and year first above written.

CITY OF HAILEY

By \_\_\_\_\_  
Fritz X. Haemmerle, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk

CONTRACTOR

By \_\_\_\_\_  
\_\_\_\_\_, its president

**AGENDA ITEM SUMMARY**

**DATE:** 04/02/2012    **DEPARTMENT:** Admin    **DEPT. HEAD SIGNATURE:** HD

**SUBJECT:**

Revised Capital Improvements Plan

**AUTHORITY:**  ID Code \_\_\_\_\_     IAR \_\_\_\_\_     City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

After receiving the results of the 2012 Hailey Community Survey and discussing them in our annual Strategic Planning Session of March 12, 2012, we have revised the Capital Improvement Plan to reflect the new priorities. The attached narrative and spreadsheets are presented for discussion and information.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:**

The \$42 million capital needs reflected do not include Water and Wastewater elements. This plan indicates that Hailey should be spending an average of \$2 million per year to maintain and improve our infrastructure and keep pace with growth.

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library             | <input type="checkbox"/> Benefits Committee |
| <input type="checkbox"/> City Attorney      | <input type="checkbox"/> Mayor               | <input type="checkbox"/> Streets            |
| <input type="checkbox"/> City Clerk         | <input type="checkbox"/> Planning            | <input type="checkbox"/> Treasurer          |
| <input type="checkbox"/> Building           | <input type="checkbox"/> Police              | _____                                       |
| <input type="checkbox"/> Engineer           | <input type="checkbox"/> Public Works, Parks | _____                                       |
| <input type="checkbox"/> Fire Dept.         | <input type="checkbox"/> P & Z Commission    | _____                                       |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Discuss and understand plan, identify any amendments council would like to see. This plan is being used as the basis for the new Development Impact Fee study being done by Rich Caplan, as well as the Quigley Annexation cost/benefit analyses.

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agrmt./Order Originals: Record  
Copies (all info.): \_\_\_\_\_  
Instrument # \_\_\_\_\_

\*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (AIS only)

## **City of Hailey Capital Improvements Planning**

### **Previous Plans**

In the past decade the City of Hailey utilized consultants to assist in the development of city-wide capital improvements planning and financial studies tied to land use development and growth. The process entailed that each city department assess its budget and capital needs, including projects, capital improvements and vehicle or equipment deemed to be a priority over the course of a five year period. The lists were then reviewed, prioritized and utilized as the basis of several studies. The production of these studies was tied to key milestones:

**November 2001 – Annexation Fees Study** by Tischler & Associates, Inc.

Utilized in decisions pertaining to annexation of Airport West Subdivision and other annexations considered by the City of Hailey from 2002 through 2005.

**September 2002 – Prototype Land Use Fiscal Impact Analyses** by Tischler & Associates, Inc.

Fiscal Impact Analyses which showed that five of six residential land-use prototypes and all four nonresidential prototypes generate annual net deficits. Only residential development on lots greater than ½ acre in size generate sufficient property tax to offset the costs of municipal services.

**January 2003 – Revenue Strategies and Recommendations** by Tischler & Associates, Inc.

A revenue enhancement strategies report designed to provide City of Hailey with options to diversify its revenue sources beyond property taxes, as a means for providing acceptable levels of services in a climate where municipal services operate at a deficit to their costs. Key strategies adopted by the City of Hailey following this report included the implementation of a Local Option Tax with both occupancy tax and alcohol beverage tax components, and the implementation of Development Impact Fees.

**November 2005 – Annexation Fees Study** by Management Partners, Inc.

Utilized in decisions pertaining to annexation of Old Cutters Subdivision.

**March 2007 – Capital Improvements Plan and Development Impact Fees Study** by TischlerBice

This study was begun in early 2006 with similar assumptions as were made in the Management Partners Study just completed regarding capital needs, growth, and benchmarks. Completed a year later, this study is the basis for Hailey's first five years of Development Impact Fees and was adopted as a portion of the Hailey Comprehensive Plan.

**April 2012 – Capital Improvements Plan and Development Impact Fees Study** by Rich Caplan.

These studies are required to be updated, with new assumptions, no less than every 5 years.

**April 2012 – Quigley Annexation Fees Study** by Rich Caplan.

Predicated upon the results of the 2012 Capital Improvements Plan and Development Impact Fees Study, this study addresses a cost/benefit analyses of the Quigley Annexation application.

**CIP and Operating Budget Structure** A key element in Hailey's approach to meeting its capital needs is tied to Hailey's budget structure and fund structure. During Fiscal Year 2008-2009, Hailey separated a single "General Fund" into two components:

1. General Operating Fund - resources sufficient to meet the 2009 operating budget at 115% (a 15% fund balance reserve for operations was created). We have in the years since increased our operating reserve to 17% above budget.

2. Capital Fund - The funds that were split off from Operations were placed in a separated Capital Fund, and included all annexation fees received since 2001, as well as the surplus above the amount moved to operations.

**Capital Expense History** – After establishing a separate capital fund, Hailey was better able to leverage those restricted funds into matching funds for grants, thereby increasing our capacity for capital improvements.

**Between 2009 and 2012**, Hailey leveraged \$3 million capital dollars into \$15 million in projects through a G/O bond and grants:

\$7 million downtown recreational park with reconstructed rodeo arena, expanded skate park, indoor ice skating facility, and interpretive/visitor center;

\$6 million street reconstruction project to transform a 2.5 mile collector street in a pedestrian/bicycle friendly complete street

\$1.3 million reconstruction of a downtown 3-block area for economic development

\$ .7 million EPA Community Climate Challenge to reduce carbon emissions city-wide

New park (Fox Demonstration Garden) and park amenities (RV Dump Station and McKercher restrooms).

**In the 20 years prior to 2009**, Hailey completed many capital improvements from its combined “general fund”, listed below. Hailey’s net capital assets at the end of FY 2011 totaled \$23 million compared to the \$15.8 million in capital assets held at the end of 2004, when cities first began reporting capital assets.

Financial software and file server upgrades (3 complete system upgrades)

Sidewalk, drainage, and drywell improvements

Keefer Park addition to city park system

Restrooms at Hop Porter Park

Toe of the Hill Trail, Fox Acres bike path, and other connecting paths and trails

Main Street Renovation to add sidewalk, curb, gutter, trees, tree grates, irrigation system, street lamps, benches and trash receptacles.

Traffic signals on Main Street at four intersections: Bullion, Airport West, Fox Acres Rd, Countryside Boulevard. A fourth traffic signal at McKercher Blvd was installed by developers.

Acquisition of the Fox/Brown building for Hailey Public Library and City Hall

Construction of City Shop in Airport West Subdivision

Acquisition and construction of Municipal Parking Lot at Bullion and River Streets

Purchase of rolling stock, including 3 fire trucks, 3 street sweepers, 5 plow trucks, 2 graders, 2 snowblowers, 13 police cars, and several semi-trucks and service vehicles.

Additionally, Hailey's Capital Improvements have included **Water and Wastewater System Components:**

\$1.8 million water meter installation project (EPA grant).

\$7 million wastewater treatment plant construction

\$ 2.4 million water storage tank

Looping and connecting water transmission lines at north end of city and between southwest Hailey and Woodside, adding pressure stabilization stations to system

Addition of several lift stations, a well, 3 vacuum trucks, graders, backhoes, and service vehicles.

**Current 2012 Capital Plan** The priorities within the capital plan spreadsheets have been tied to the Community Survey results and the ensuing annual Strategic Planning Session with mayor, council, boards, commissions, and staff.

All the costs shown in the 2012 CIP column are currently budgeted. In May we will begin penciling refinements to the 2013 budget. We may need to increase our capital budgets before we increase operational budgets. We anticipate that after the 2012 budget is fully spent, we will still have approximately \$1 million to leverage as match for new grants and identify other mechanisms to achieve our goals, some of which may come from operational budget reserves.

The bottom part of the spreadsheet details operational deficiencies other than staffing deficiencies. These figures are above what is currently budgeted and spent each year. For example, we currently budget and spend \$10,000 per year on computer/phone/software replacements and upgrades to meet current technologies and create efficiencies. We need \$60,000 year for that, so we have shown the \$50,000 difference in the bottom portion of the spreadsheet.

Each capital need is broken down into three categories showing what percent of each project is tied to growth (thus Development Impact Fee eligible), service level improvement, and service level maintenance (an indicator of underfunding in our ongoing capital maintenance program).

In 2012 we will spend all the Development Impact Fees collected under the first five-year plan. The DIF study currently being produced will begin with FY 2013, and consider the improvements done through 2012 as a portion of our current level-of-service under the DIF study. This is consistent with how TischlerBise structured the previous DIF study.

Elements which had previously been identified as priorities are still within the plan, but project well beyond 5 years, because of slowed growth projections compared to the financial planning climate of 5 years ago.