

AGENDA ITEM SUMMARY

DATE: 04/09/2012

DEPARTMENT: Admin

DEPT. HEAD SIGNATURE: Heather Dawson

SUBJECT

Public hearing on Rubbish Franchise Ordinance.

AUTHORITY: ID Code IAR _____ City Ordinance No. 840

BACKGROUND:

The proposed franchise ordinance has been published for 30 days in advance of the hearing as required by law.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Budget Line Item # 100-00-34004 and 100-00-32237 Annual Line Item Amount \$72,000 in each

Hailey's franchise fee is intended to cover Hailey's costs for 1) street maintenance caused by the use of heavy trash trucks on streets and for enforcement of exclusive franchise ordinance (6%), and 2) billing costs for the City to handle all rubbish billing for customers with water/wastewater accounts in Hailey (6%). An additional 1% fee has been added to this latter category to cover the cost of city staff producing or contracting for the production and distribution of information and outreach to promote recycling.

Through this combination fee structure, Hailey would collect 13% of total rubbish billed, or approximately \$155,000 per year.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

City Attorney Clerk / Treasurer Engineer Sustainability
 P & Z Commission Parks & Lands Board Public Works Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct public hearing, deliberate, make motion to adopt ordinance as proposed (or amended) and authorize waiver of three readings, read once by title only in order to institute new ordinance to avoid a period with expired ordinance.

FOLLOW UP NOTES:

HAILEY ORDINANCE NO. 1103

AN ORDINANCE OF THE CITY OF HAILEY, BLAINE COUNTY, IDAHO, GRANTING OBRAS LLC, D.B.A. CLEAR CREEK DISPOSAL, A FIVE YEAR FRANCHISE WITH AN ADDITIONAL THREE YEAR RENEWAL TERM TO COLLECT SOLID WASTE AND RECYCLABLE MATERIALS IN THE CITY OF HAILEY, IDAHO; PROVIDING FOR DEFINITIONS; PROVIDING FOR MANDATORY SOLID WASTE COLLECTION; ESTABLISHING THE RIGHTS AND OBLIGATIONS OF THE FRANCHISEE AND THE CITY OF HAILEY; ESTABLISHING THE METHODS OF COLLECTION OF SOLID WASTE AND RECYCLABLE MATERIALS; PROVIDING FOR SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FOR ANNEXED PROPERTIES; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Hailey City Council finds that it is in the best interests of the citizens of Hailey to adopt a comprehensive solid waste and recycling programs for residential and commercial properties within the City of Hailey;

WHEREAS, the Hailey City Council finds that it is in the best interests of the citizens of Hailey to grant a franchise for residential customers and a franchise to commercial customers within the City of Hailey to provide such services; and

WHEREAS, the Hailey City Council has accepted a bid by Obras LLC, d.b.a. Clear Creek Disposal to be the franchisee to perform the solid waste and recycling services for both residential and commercial properties within the City of Hailey, subject to the terms and conditions of franchise agreements and this Ordinance.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HAILEY, BLAINE COUNTY, IDAHO:

Section 1. DEFINITIONS

For the purposes of this ordinance, the following capitalized terms have the meanings set forth herein:

A. "Commercial Customer(s)" shall 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, and those owners of new or remodeled construction sites and /or their agents.

B. "Franchise Agreements" shall mean those agreements executed by Franchisee and the City of Hailey for residential and commercial Solid Waste and Recyclable Materials collection for the term of the Franchise granted hereunder, and as subsequently amended.

C. "Franchisee" shall mean Obras LLC, an Idaho limited liability company, d.b.a. Clear Creek Disposal.

D. "Hazardous Materials" shall mean 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.

E. "Multi-Family Residential Complex" shall mean a building or property containing two (2) or more dwelling units and includes duplexes, apartments, townhomes and condominiums.

F. "Recyclable Materials" shall mean products or substances designated by Hailey and the Blaine County Resource Recovery Center, including but not necessarily limited to paper, cardboard, aluminum, tin cans, glass, motor oil, plastic, newspaper and magazines, excluding food waste.

G. "Residential Customer(s)" shall mean those owner(s) and/or occupant(s) of single family residences and Multi-Family Residential Complexes consisting of four or less dwelling units.

H. "Self-Hauling" shall mean the collection, hauling and disposal of Solid Waste, Recyclable Materials, Hazardous Materials or medical waste by generator or generator's agent of

the Solid Waste, Recyclable Materials, Hazardous Materials or medical waste in the generator's or generator agent's container and vehicle directly to the transfer station or a landfill; provided, the generator's agent is not in the business of collecting, hauling and disposing of Solid Waste or Recyclable Materials.

I. "Solid Waste" shall mean any garbage, refuse or other discarded material generated by Residential and Commercial Customers that are not or cannot be recycled or diverted from the landfill.

Section 2. GRANT OF FRANCHISE

Pursuant to Idaho Code §50-329, the City of Hailey hereby grants to the Franchisee the authority, right, privilege and exclusive franchise for a term of five (5) years, with an additional three (3) year renewal term, beginning April 11, 2012, to engage in the business of collecting, transporting, processing and disposing of Solid Waste and separated Recyclable Materials kept or accumulated and placed for collection by all Residential and Commercial Customers within the corporate limits of Hailey, Idaho, and to perform all of the work described in the Franchise Agreements; provided, however, this authority, right, privilege and exclusive franchise does not extend to the Self-Hauling of Solid Waste, Recyclable Materials, Hazardous Materials or medical waste. It shall be unlawful for any person or legal entity to engage in the business of Solid Waste and Recyclable Materials collection and transportation over and upon the public right-of-ways within the City of Hailey, except as otherwise provided herein.

Section 3. MANDATORY SOLID WASTE COLLECTION

No Residential or Commercial Customer shall be permitted to refuse to accept the Solid Waste collection and Recyclable Materials services to be provided by the Franchisee in accordance with the Franchise Agreements. Residential and Commercial Customers shall not be

exempt from the payment of a mandatory weekly minimum charge established for Solid Waste and Recyclable Materials collection services in accordance with this Ordinance and the Franchise Agreements. Multi-Family Residential Complexes consisting of five or more dwelling units shall use container(s) provided by the Franchisee in excess of the 95 gallon roll carts, while Multi-Family Residential Complexes of four or less dwelling units may use 32, 68 or 95 gallon roll carts for each dwelling unit.

Section 4. RIGHTS AND OBLIGATIONS OF THE FRANCHISEE AND CITY

A. The Franchisee shall have the right and privilege to use the streets, alleys and other public right-of-ways within the City of Hailey, and to collect Solid Waste and Recyclable Materials, in accordance with this Ordinance and the Franchise Agreements.

B. The Franchisee shall collect all Solid Waste and Recyclable Materials from Residential and Commercial Customers within the City of Hailey.

C. The City of Hailey is responsible for maintaining the streets, its alleys and its public ways in a passable condition. If such streets, alleys and public ways are not passable, then the Franchisee shall be excused from not making a proper timely pickup of the Solid Waste and Recyclable Materials.

D. The Franchisee shall make pickups only if the Solid Waste and Recyclable Materials are placed within the public right-of-way at the edge of any pavement adjacent to a curb, in alleys or in a convenient location, on designated days as established by the Franchise Agreements.

E. The City of Hailey shall charge all Residential and Commercial Customers located within the City of Hailey standard weekly rates for collection and transportation of Solid Waste and Recyclable Materials. The City of Hailey shall also charge standard rates for extra

pickups of Solid Waste and Recyclable Materials and other services. The standard rates shall be established by resolution, filed with the City Clerk. All charges for Solid Waste and Recyclable Materials collection shall be due and payable to the Hailey City Clerk on or before the twenty-fifth of each month for which the service was rendered, and upon failure to pay within the time as prescribed herein, each Residential or Commercial Customer shall pay, in addition to the amount due, the sum of fifty cents, and interest on the delinquent amount at the rate of twelve percent (12%) per year. Upon collection, the fee and interest on the delinquent amount shall be remitted to the Franchisee. In addition to the above, the City shall be entitled to disconnect the municipal water service where the property or premises is served by municipal water and such valve shall not be opened or placed back into service until all delinquent charges and fees have been paid in full.

F. The Franchisee shall comply with all ordinances of the City of Hailey and all laws of the State of Idaho, and shall follow strictly a procedure of operation as to be sanitary. Franchisee shall replace all containers upright where found with lids on them. Containers and lids shall not be placed or thrown on the streets, alleys or adjoining property. The Franchisee shall not permit containers to be thrown from its truck to the pavement or parkway, nor in any other way permit damage to occur by rough or improper handling thereof. The Franchisee shall not permit Solid Waste or Recyclable Materials to be spilled during collection and shall be responsible for cleaning up and removing such spillage.

G. Franchisee and its agents and employees, shall not enter enclosed structures, such as garages, enclosed porches, sheds, buildings or otherwise for the purpose of collecting Solid Waste and Recyclable Materials.

H. Unless otherwise provided in this Ordinance, the specific duties and obligations of the City of Hailey and Franchisee are more particularly described in the Franchise Agreements.

Section 5. DUTIES AND OBLIGATIONS OF RESIDENTIAL AND COMMERCIAL CUSTOMERS

A. Residential and Commercial Customers shall place all containers for collection of Solid Waste and Recyclable Materials within the public right-of-way at the edge of any pavement adjacent to a curb, in alleys or in a convenient location, while still allowing public access on the public right-of-ways. The containers shall be placed adjacent to the Residential or Commercial Customer's property or premises on designated days as established by the Franchise Agreements. The containers for Solid Waste and Recyclable Materials must be clearly visible to the Franchisee from the street or alley from which collection is made.

B. Residential and Commercial Customers shall not permit any Solid Waste and Recyclable Materials to be deposited or left in the public right-of-way or on private property, where the deposit of the Solid Waste or Recyclable Materials was caused by the Residential or Commercial Customer, or caused other than by the Franchisee's mishandling or spilling of Solid Waste and/or Recyclable Materials. The Residential and Commercial Customer shall be responsible for cleaning up and removing such deposit of Solid Waste or Recyclable Materials.

C. The Residential and Commercial Customers shall not place or permit to be placed any Hazardous Material in any container placed for collection of Solid Waste or Recyclable Materials by Franchisee.

D. Residential and Commercial Customers shall place containers for Solid Waste or Recyclable Materials for collection no later than 7:00 o'clock a.m. on the designated day of collection, but no sooner than the evening before the designated day of collection. Following

collection by Franchise, the Residential and Commercial Customers shall remove the containers from the public right-of-way as soon as possible on the same day of collection.

E. No container used in the collection of Solid Waste or Recyclable Materials shall be loaded beyond its volume or weight capacity, or in such a manner to be unstable or likely to cause damage or create litter.

Section 6. ANNEXATIONS

In the event the City of Hailey annexes additional territory during the term of this Ordinance, the Franchisee 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 Section 2 of this Ordinance, 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 Franchisee 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, as described in Section 2 of this Ordinance.

Section 7. SEVERABILITY

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 8. REPEALER

Hailey Ordinance Nos. 459, 628, 656, 840, 866 and 1053 are hereby repealed in their entirety and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 9. PENALTY

Any person, firm or other legal entity violating any provision of Sections 2 and 5 of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300.00) or imprisonment in the county jail for a period not to exceed six (6) months, or both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Section 10. EFFECTIVE DATE

Except as otherwise provided herein, this Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law. The rates adopted under Section 4(E) of this Ordinance for Solid Waste and Recyclable Materials collection services shall be effective beginning May 1, 2012; the rates in effect on the effective date of this Ordinance shall continue in effect through midnight, April 30, 2012.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ___ DAY OF APRIL, 2012.

Fritz X. Haemmerle, Mayor

Attest: _____
Mary Cone, City Clerk

Publish Idaho Mountain Express April 11, 2012

AGENDA ITEM SUMMARY

DATE: 04/09/2012 DEPARTMENT: Admin DEPT. HEAD SIGNATURE: Heather Dawson

SUBJECT

Adoption of Rubbish Franchise Agreements and resolution

AUTHORITY: ID Code IAR _____ City Ordinance

BACKGROUND:

Consideration of rubbish franchise agreements, residential and commercial, as previously reviewed and revised.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

City Attorney ___ Clerk / Treasurer ___ Engineer Sustainability
___ P & Z Commission ___ Parks & Lands Board ___ Public Works ___ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct public hearing, deliberate, make motion to approve the agreements as proposed (or amended), with effective date of April 11, 2012 and motion to approve the resolutions and to authorize the mayor to sign.

FOLLOW UP NOTES:

**CITY OF HAILEY
RESOLUTION NO. 2012-20**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF FRANCHISE AGREEMENT WITH OBRAS,
LLC D/B/A CLEAR CREEK DISPOSAL, INC., FOR COMMERCIAL SOLID WASTE
AND RECYCLABLE MATERIAL COLLECTION**

WHEREAS, the City of Hailey desires to enter into an agreement with Obras, Llc D/B/A Clear Creek Disposal, Inc. under which Obras, Llc D/B/A Clear Creek Disposal, Inc. will perform and be responsible for Commercial Solid Waste And Recyclable Material Collection for the City of Hailey.

WHEREAS, the City of Hailey and Obras, Llc D/B/A Clear Creek Disposal, Inc. have agreed to the terms and conditions of the Agreement for Professional Services, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Commercial Franchise Agreement between the City of Hailey and Obras, Llc D/B/A Clear Creek Disposal, Inc. and that the Mayor is authorized to execute the attached Agreement.

Passed this 9th day of APRIL, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

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 OBRAS, L.L.C., an Idaho limited liability company d/b/a Clear Creek Disposal, Inc., 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. Mike Goitiandia is the duly acting managing member of the 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. 1103, 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:

"Approved Fees" as used herein shall mean and refer to the total fees and charges which Hailey has approved by resolution or ordinance, and which shall be assessed by the Contractor for services rendered pursuant to this Agreement. The Approved Fees include the following components:

a. A fee for solid waste and recyclable materials collection, herein defined as the "Base Fee;"

b. A fee equal to six percent (6%) of the Base Fee (or 5.31% of the Approved Fee) to defray the specified Franchise Fee set forth in paragraph 6 of this Agreement;

c. A fee to defray amounts payable by the Contractor to Hailey for billing services pursuant to paragraph 5(B) of this Agreement, in the amount of seven percent (7%) of the Base Fee (or 6.19% of the Approved Fee).

“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) 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 4th of July festivities, the Northern Rockies Folk Festival and the Trailing of the Sheep Festival. For the 4th 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 4th 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 3rd 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 for the weekly Solid Waste and Recyclable Materials collection services

provided by the Contractor, in the amount of the Approved Fees established for such services by resolution or ordinance duly adopted by Hailey. Hailey shall also be responsible for billing all customers covered by this Agreement for extra pick-ups of Solid Waste and Recyclable Materials provided by the Contractor in the amount of the Approved Fees established for such services by resolution or ordinance duly adopted by Hailey.

The Approved Fees adopted by resolution or ordinances 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 Approved Fees received for the Solid Waste and Recyclable Materials collection services provided by the Contractor under this Agreement, less an amount equal to 6.19% of all Approved Fees 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 5.31% of all Approved Fees collected, which sum shall be retained by Hailey as a franchise fee. Hailey shall begin the payment of the Approved Fees collected, less 11.5%, 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 Approved Fees which were billed and collected pursuant to 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 a franchise fee, the Contractor shall pay Hailey, or Hailey shall retain, as provided for in paragraph 5(C) of this Agreement, an amount equal to 5.31% of all Approved Fees collected by Hailey pursuant to this Agreement.

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 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: Obras, L.L.C., d/b/a Clear Creek Disposal, Inc.
 P.O. Box 130
 Ketchum, Idaho 83340

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 _____
Mike Goitianda, its Managing Member

**CITY OF HAILEY
RESOLUTION NO. 2012-21**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF FRANCHISE AGREEMENT WITH OBRAS,
LLC D/B/A CLEAR CREEK DISPOSAL, INC., FOR RESIDENTIAL SOLID WASTE
AND RECYCLABLE MATERIAL COLLECTION**

WHEREAS, the City of Hailey desires to enter into an agreement with Obras, Llc D/B/A Clear Creek Disposal, Inc. under which Obras, Llc D/B/A Clear Creek Disposal, Inc. will perform and be responsible for Residential Solid Waste And Recyclable Material Collection for the City of Hailey.

WHEREAS, the City of Hailey and Obras, Llc D/B/A Clear Creek Disposal, Inc. have agreed to the terms and conditions of the Agreement for Professional Services, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Residential Franchise Agreement between the City of Hailey and Obras, Llc D/B/A Clear Creek Disposal, Inc. and that the Mayor is authorized to execute the attached Agreement,

Passed this 9th day of APRIL, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

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 OBRAS, L.L.C., an Idaho limited liability company d/b/a Clear Creek Disposal, Inc., 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. Mike Goitiandia is the duly acting Managing Member of the 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. 1103, 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:

"Approved Fees" as used herein shall mean and refer to the total fees and charges which Hailey has approved by resolution or ordinance, and which shall be assessed by the Contractor for services rendered pursuant to this Agreement. The Approved Fees include the following components:

a. A fee for solid waste and recyclable materials collection, herein defined as the "Base Fee;"

b. A fee equal to six percent (6%) of the Base Fee (or 5.31% of the Approved Fees) to defray the specified Franchise Fees set forth in paragraph 5(B) of this Agreement;

c. A fee to defray amounts payable by the Contractor to Hailey for billing services pursuant to paragraph 5(B) of this Agreement, in the amount of seven percent (7%) of the Base Fee (or 6.19% of the Approved Fees).

“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 recyclable bins. Contractor shall distribute one roll cart in the size requested by the Residential Customer and up to two recyclable 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) 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 3rd 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.

AGENDA ITEM SUMMARY

DATE: 4/9/2012

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Proposed ordinance amending Hailey's Annexation Procedures Ordinance (Title 14 of the Municipal Code)

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Hailey was presented with a preliminary initiative petition to amend our Annexation Ordinance. The proposed language essentially requires an annexation applicant to post security for improvements and annexation fees. I was directed to draft an ordinance adopting the suggested ordinance. In an attempt to improve the language, I revised the language but the language maintains the purpose of the proposed initiative.

At the March 5, 2012, council meeting, I was asked to draft language to require a fiscal analysis unless the property was 10 or fewer lots, in which case the council would have the authority but would not necessarily be required to mandate a fiscal study. Suggested language is found in Section 14.01.090(B). Please note that I also added language at the end of the security language which requires security to be posted before the effective date of an annexation ordinance.

At the March 19, 2012, council meeting, I was asked to incorporate language into the draft which required a subdivision application at the time of the annexation application and addressed water rights. The latest language is shown in bold print. In section 14.01.090(D), please note that the language is essentially the same as the language found in Idaho Code § 67-6537.

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:

Conduct a public hearing, discuss the proposed amendment and make any suggested revisions and corrections. If appropriate, make a motion to adopt the ordinance and authorize the mayor to conduct the first reading of the ordinance.

FOLLOW-UP REMARKS:

Hailey Ordinance No. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING CHAPTER 14.01 OF THE HAILEY MUNICIPAL CODE, ENTITLED ANNEXATION PROCEDURES, BY AMENDING SECTION 14.01.040 TO REQUIRE CONCURRENT SUBDIVISION AND ANNEXATION APPLICATIONS; AMENDING SECTION 14.01.050 TO REQUIRE A DESCRIPTION OF WATER RIGHTS APPURTENANT TO THE PROPERTY TO BE ANNEXED; AMENDING SECTION 14.01.090 TO GENERALLY REQUIRE A FISCAL ANALYSIS FOR ANNEXATION OF PROPERTY, TO AUTHORIZE THE POSTING OF SECURITY FOR IMPROVEMENTS, ANNEXATION FEES AND CONTRIBUTIONS AND TO REQUIRE APPURTENANT SURFACE WATER RIGHTS TO BE USED AS THE PRIMARY SOURCE OF IRRIGATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and the City Council of the City of Hailey desire to authorize the City to require concurrent subdivision and annexation applications, a description of water rights appurtenant to the be real property to be annexed, a fiscal study for annexed property, security for improvements and for annexation fees and contributions required for any annexation, and the use of surface water appurtenant to the land to be annexed as the primary water source; and

WHEREAS, the Mayor and the City Council of the City of Hailey believe it is appropriate to amend Chapter 14.01 of the Hailey Municipal Code to authorize concurrent subdivision and annexation applications, require a description of water rights appurtenant to the be real property to be annexed, require a fiscal study for annexed property, require security for improvements and for annexation fees and contributions required for any annexation, and establish the use of surface water appurtenant to the land to be annexed as the primary water source.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 14.01.040 of the Hailey Municipal Code is hereby amended by the addition of the underlined language and the deletion of the stricken language, as follows:

14.01.040 CONCURRENT ZONING CLASSIFICATION. The City shall concurrently with the application for annexation consider ~~an applications for~~ one or more zoning classifications and a subdivision plat consistent with the requirements (including notice provisions) and standards of Article XIV of the Hailey Zoning Ordinance, Hailey Ordinance No. 532, as amended, and the Hailey Subdivision Ordinance, Hailey Ordinance No. 821, as amended. The City shall not consider any other application by the applicant on the subject property under the City's zoning or subdivision ordinance unless and until the application for annexation has been approved and an annexation ordinance has been adopted and published in accordance with state law.

Section 2. Section 14.01.050 of the Hailey Municipal Code is hereby amended by the addition of the underlined language, as follows:

14.01.050 SUBMITTAL REQUIREMENTS. Except as otherwise provided, the application shall include or attach at least the following:

- A. Application fees established by ordinance.
- B. A statement of the size of the property in square footage and acres.
- C. A description of the proposed project, including the approximate a) number and size of proposed lots, b) length and location of the proposed water and sewer mains, c) length and location of proposed streets and alleys, and d) length and location of the proposed sidewalks.
- D. A schematic design of the entire project showing the proposed uses, density, streets, alleys, easements, and proposed size and location of open spaces and parks.
- E. A statement describing how the proposed project complies with specific goals and policies of the Hailey Comprehensive Plan.
- F. A statement describing how the proposed project is compatible with adjacent neighborhood(s).
- G. A statement describing how the applicable natural resources (e.g., water courses, springs, streams, wildlife and access to public lands) and natural hazards (e.g., avalanche, floodplains and floodways) are incorporated into proposed project and/or mitigated.
- H. A statement describing what contributions and/or dedications the applicant is willing to make as part of the proposed annexation.
- I. A description of how the proposed annexation will protect Hailey's established or proposed wellhead protection zones.
- J. A detailed description of how the annexation will impact the existing municipal infrastructure and services (e.g., water, sewer, streets, library, police, fire and parks).
- K. A statement of who will maintain the streets, alleys, parks and utilities (privately and publicly owned utilities) and how the maintenance of the streets, alleys, parks and utilities (privately and publicly owned utilities) will be funded.
- L. A phasing plan showing the proposed dates of construction and completion of phased construction for infrastructure, streets, alleys, utilities and all other development. In the case of a phased project, items C and D above may be omitted for future phases; however provisions shall be made within an annexation agreement for submittal of plans and payment of fees for future phases.
- M. Unless the Administrator determines, in the Administrator's sole and absolute discretion, one or more of the following studies are not warranted based on the size, scope and impact of a proposed annexation, the following studies shall be submitted:

- a) Traffic study showing impact on adjacent streets and streets that would serve the proposed project.
- b) Floodplain study (if applicable).
- c) Avalanche study (if applicable).
- d) Wetland study (if applicable).
- e) Wildlife study.
- f) A Level I environmental study showing the presence of any hazardous waste.
- g) Contour map depicting 15% and 25% slope lines measured at two foot (2') intervals.

N. A list of names and mailing addresses of all property owners within 300' of the external boundaries of the proposed annexation and the names and mailing addresses of all easement holders within the proposed annexation.

O. A fiscal impact analysis or an updated fiscal impact analysis in accordance with Section 14.01.090(B). The analysis may be submitted at the time of the application for annexation, or when the application is reviewed by the Hailey City Council ("Council") as set forth in Section 14.01.090.

P. A description of all water rights, including all surface and ground water rights, appurtenant to the real property subject of the annexation. The description of all water rights shall include a description of all the elements of the water rights, including but not limited to the source, quantity, priority date, point of diversion, purpose and period of use, place of use, and any provisions or conditions attached to the water right. The applicant shall attach all decrees, licenses and permits describing the water rights to the application for annexation.

Section 3. Section 14.01.090 of the Hailey Municipal Code is hereby amended by the addition of the underlined language and by the deletion of the stricken language, as follows:

14.01.090 COUNCIL REVIEW.

A. Conduct and Notice of Council Hearing. Upon receipt of the Commission's findings of fact and conclusions of law, the Council shall schedule a public hearing to review the application for annexation. Notice of the public hearing shall be conducted in the same manner as the notice for a Commission hearing pursuant to Section 14.01.070 of this Chapter. The Council shall have the right to request further information deemed necessary by the Council at any time during the proceedings.

B. Fiscal Impact. To assist the Council in the determination whether an annexation will have any negative fiscal impact, the Council ~~may, in its sole and absolute discretion, shall, except as otherwise provided herein,~~ require the applicant for annexation, at the applicant's sole expense, to submit a fiscal analysis or an updated fiscal analysis by a qualified and independent person or firm acceptable by the Council and in a format acceptable by the Council, to determine the proposed annexation's impact and to recommend the base amount of annexation fees. The Council may, in its sole and absolute discretion, require the applicant for annexation of real property of ten (10) or fewer lots based on the base density of the zoning district(s) adopted

for the annexed property, at the applicant's sole expense, to submit a fiscal analysis or an updated fiscal analysis by a qualified and independent person or firm acceptable by the Council and in a format acceptable by the Council, to determine the proposed annexation's impact and to recommend the base amount of annexation fees. The Council retains the right to require further monetary or non-monetary contributions for any annexation.. The applicant has the right to seek the City's approval of such a fiscal impact study at any point in the annexation process.

C. Findings. During the public hearing process of the application for annexation, the Council shall make its own findings of fact and conclusions of law to determine:

- 1) whether the proposed application will be harmonious and in accordance with the goals and policies of applicable components of the Hailey Comprehensive Plan,
- 2) whether the proposed annexation would be in the best interests of the citizens of Hailey, and
- 3) to the extent possible, whether the proposed annexation will have a negative fiscal impact upon the existing citizens of Hailey at the time of an annexation and in the future.

If the Council finds general compliance with the Hailey Comprehensive Plan, the Council shall then consider the application for a zoning classification and consider any and all factors it deems, in its sole and absolute discretion, important to determine whether an application for annexation shall be granted or denied. If the Commission made negative findings related to the Comprehensive Plan under Section 14.01.080 and therefore did not make a recommendation on zoning classification for the property sought to be annexed, but the Council subsequently made favorable findings related to the Comprehensive Plan and wishes to proceed with the annexation, the Council shall remand the proceedings to the Commission for its recommendation on zoning classification.

D. Decision. The Council has the sole and absolute discretionary right to approve, approve with conditions or deny an application for annexation. In addition, the Council is authorized to require, as a condition of approval, that the applicant and the City enter into an annexation agreement providing for the terms and conditions of an approved annexation. The Council may also require the applicant, as a condition of approval, to construct certain improvements, including but not limited to private and/or public utilities, facilities, recreational or other amenities and landscaping, and to pay such annexation fees or other monetary or non-monetary contributions as the Council deems necessary to protect the health, safety and general welfare of the citizens of Hailey. In the event the fees and/or contributions are not paid at the time of annexation approval, the Council shall require the applicant to provide security in the form of a performance bond, irrevocable letter of credit or cash equivalent acceptable to Hailey for one-hundred and fifty percent (150%) of the bona fide estimate of the cost of the improvements and one-hundred percent (100%) of the fees and/or contributions within thirty (30) days of the date when the Council approves the application but before the effective date of any annexation ordinance. Furthermore, the Council may, consistent with Idaho Code § 67-6537, require the applicant, as a condition to approval, to use all surface water appurtenant to the real property to be annexed as the primary water source for irrigation of the real property to be annexed.

In the event a subsequent development proposal materially differs from the development shown in approved annexation, the annexation agreement shall provide that the proposed development may be denied, that the applicant shall be responsible for any increased annexation fees and/or that the property may be deannexed. There shall be no right of an appeal by an applicant or by an affected party from an adverse recommendation by the Commission or from an adverse decision of the Council on an annexation application. If the Council elects to approve the application for annexation with or without conditions, the Council shall also establish the appropriate zoning district(s) for the annexed property in accordance with the procedures set forth in Article XIV of the Hailey Zoning Ordinance.

Section 4. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 5. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 6. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS _____ DAY OF APRIL, 2012.

Fritz X. Haemmerle, Mayor

Attest:

Mary Cone, City Clerk