

AGENDA ITEM SUMMARY

DATE: 3/22/2010

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: \_\_\_\_\_

SUBJECT:

Second Amendments to Franchise Agreements (Solid Waste Collection)

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing proposed amendments to Solid Waste Franchise Agreements for residential and commercial accounts. These amendments extend the term of the franchises by two years, which is consistent with Ordinance No. 1053, and allow security in the form of performance bonds, letters of credit and cash equivalents.

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:

Make a motion to approve the Second Amendments to Franchise Agreements (residential and commercial solid waste collection) and authorize the Council President to sign.

FOLLOW-UP REMARKS:

## SECOND AMENDMENT TO FRANCHISE AGREEMENT

### (Commercial Solid Waste and Recyclable Materials Collection)

THIS SECOND AMENDMENT TO FRANCHISE AGREEMENT (Commercial Solid Waste and Recyclable Materials Collection) ("**Second Amendment**") is made effective the \_\_\_\_\_ day of March, 2010, by and between the CITY OF HAILEY, IDAHO, a municipal corporation ("**Hailey**"), and OBRAS, L.L.C., an Idaho limited liability company d/b/a Clear Creek Disposal, Inc. ("**Contractor**"), as follows:

#### RECITALS

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

B. Contractor is a duly organized and acting limited liability company in the State of Idaho. Mike Goitiandi is the duly appointed and acting Managing Member of Contractor and has the authority to enter into this Third Amendment.

C. Hailey entered into a Franchise Agreement (Commercial Solid Waste and Recyclable Materials Collection) ("**Agreement**") with Wood River Rubbish, Inc., an Idaho corporation, on April 11, 2003.

D. Wood River Rubbish, Inc. and Contractor entered into an Assignment and Assumption of Contract on January 26, 2004, that generally assigned the contract rights of the Agreement from Wood River Rubbish, Inc. to Contractor.

E. On January 28, 2004, Hailey and Contractor amended the Agreement by entering into the First Amendment to Franchise Agreement (Commercial Solid Waste and Recyclable Materials Collection) ("**First Amendment**").

F. The Agreement provides for a five (5) year term with a two (2) year extension. The Contractor elected to exercise the two (2) year extension. With the two (2) year extension, the term of the Agreement shall terminate on midnight, April 10, 2010. Hailey has adopted Ordinance No. 1053 which allows for an additional two (2) year extension of the residential franchise granted to the Contractor.

G. Paragraph 7 of the Agreement provides for the posting of a performance bond as security to perform all of the provisions of the Agreement. The City Attorney recommends that security may also include a letter of credit or cash equivalent.

H. Subject to the terms and conditions set forth herein and Ordinance No. 1053, the parties desire to amend the Agreement by extending the Contractor's franchise for an additional two (2) years to provide commercial solid waste collection and recycling services within the city

limits of Hailey, Idaho, and by allowing security to be posted in the form of a performance bond, irrevocable letter of credit or cash equivalent..

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agreement and the First Amendment are hereby amended as follows:

1. Paragraph 3 of the Agreement is amended to extend the term of the Agreement for an additional two (2) years, with the end of the term on midnight, April 10, 2012.

2. Paragraph 7 of the Agreement is hereby deleted in its entirety and replaced with the following language:

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 \$75,000.00. The Contractor shall submit the Security to the City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

3. Except as amended hereby, the terms and conditions set forth in the Agreement and the First Amendment shall remain in full force and effect; provided, however, that in the event of any conflict between the terms and conditions of this Second Amendment and the terms and conditions of the Agreement and the First Amendment, the terms and conditions of this Second Amendment shall prevail.

Dated the day and year first set forth above.

CONTRACTOR

\_\_\_\_\_  
By Mike Goitiandia, its Managing Member

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: \_\_\_\_\_  
Mary Cone, City Clerk

By: \_\_\_\_\_  
Fritz X. Haemmerle, Council President

## SECOND AMENDMENT TO FRANCHISE AGREEMENT

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By Mike Goitiandia, its Managing Member

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: \_\_\_\_\_  
Mary Cone, City Clerk

By: \_\_\_\_\_  
Fritz X. Haemmerle, Council President

