

CITY OF HAILEY
RESOLUTION NO. 2023-134

**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, Compostable Materials 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 pursuant to Resolution 2021-045 and 2022-103, copies of which are on file at Hailey City Hall.

WHEREAS, the City of Hailey and Obras, LLC D/B/A Clear Creek Disposal, Inc. have agreed to the modified terms and conditions of the Agreement for Professional Services outlined in Section 5.c.i, 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,

DATED this 23rd day of October, 2023

CITY OF HAILEY

By: 
Martha Burke, Mayor

ATTEST:


Mary Cone, City Clerk



FRANCHISE AGREEMENT

(Residential & Commercial Solid Waste and Recyclable Materials Collection)

This Franchise Agreement ("Agreement") is made and entered into this ____ day of October, 2023, 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. Martha Burke 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 and Contractor have had a long, uninterrupted and mutually beneficial contractual relationship, established by Franchise Ordinance No. 1103, and prior Franchise Agreements, and amendments thereto, all adopted pursuant to Idaho Law, as to procedure and substance. Hailey has not requested proposals from other potentially qualified contractors to provide personal services to collect, haul and dispose of residential solid waste, compostable materials and recyclable materials within the city limits of Hailey, Idaho, but instead, upon a finding by the mayor, that in the interest of public safety, necessary protection of the public health, welfare and property the provisions of chapter 28, title 67, Idaho Code shall not apply to adoption of the Franchise Ordinance, or this agreement pertaining to solid waste collection, and therefore entered into negotiations for same with Contractor and after doing so Hailey has awarded, contemporaneously herewith an exclusive ten (10) year franchise, with a five (5) year renewal term, to Contractor to provide personal services to collect, haul and dispose of residential solid waste, compostable materials and recyclable materials within the city limits of Hailey, Idaho, which exclusive franchise is revocable by either party, upon sixty-days written notice, in the event the parties, to their mutual satisfaction, have not entered into one or more amended Franchise Agreements one-year from the effective date hereof.
- D. Hailey and Contractor are desirous of an expansion of services, to include compostable materials, corrugated cardboard, collection and hauling, to enhance make more efficient recycling services, specifically in reference to central drop-off location(s), negotiations toward which are proceeding in good faith, but not having been completed as to the particulars of services to be provided or fees therefore, however the parties are in full agreement that their mutual best interests, and the best interest of the rate paying customers hereunder to provide continuous uninterrupted solid waste collection and hauling services.
- E. Hailey and the Contractor each desire to maintain the status quo, to avoid damage to either party and the rate paying citizens served thereby with regard to current services, as specified in the Franchise Agreements in place on the date of adoption hereof, with the expectation of putting in place certain enhanced services at the central recycling drop off locations, the cost and fees for such enhanced services are reflected in the fee schedules, to be adopted by resolution contemporaneously herewith.
- F. Subject to the terms and conditions set forth herein and Hailey Ordinance No. 1282, the parties hereto are desirous of entering into an exclusive ten (10) year franchise agreement, with a five (5) year renewal term, to provide personal services to collect, haul and dispose of residential, commercial and construction solid waste and recyclable materials within the

city limits of Hailey, Idaho, which agreement shall be revocable by either party, upon sixty-days written notice, in the event the parties, to their mutual satisfaction, have not entered into one or more amended Franchise Agreements one-year from the effective date hereof.

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 residential collection using bins and carts, and for commercial solid waste collection using bins, carts and dumpsters, which fee is based on sizes and number of pick-ups, which may include rent and Idaho Sales Tax.
- b. A Fee for recyclable materials collection, which is collected in unlimited quantities in bins issued by contractor to customers, or any other suitable container, herein defined as the "Recyclable Materials Fee".
- c. A Fee for corrugated cardboard materials collection in bins issued by contractor to customers, herein defined as the "Corrugated Cardboard Fee".
- d. A Fee for compostable materials collection, collected in bins issued by contractor to customers, herein defined as the "Compostable Materials Fee".
- e. A Fee for glass materials collection which is collected from a central collection site using roll-off bins, herein defined as the Glass Site Collection Fee".
- f. A Fee for corrugated cardboard materials collection which is collected from a central collection site using a compactor, herein defined as the Compactor Site Collection Fee.
- g. A Fee for compostable materials collection which is collected from a central collection site using bins, herein defined as the Compostable Site Collection Fee.
- h. A Fee for management of the site(s) identified in e., f. and g. above, herein defined as the Materials Collection Site Management Fee.
- i. A Franchise Fee equal to six percent (6%) of Fees 1.a. through 1.e to defray the specified Franchise Fees set forth in paragraph 5(B) of this Agreement;
- j. A Billing 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 Fees 1.a. through 1.e

"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.

"Compostable Materials" means food and yard waste capable of breaking down into carbon dioxide, water and inorganic compounds and biomass within approximately one hundred twenty days.

"Corrugated Cardboard" means dry, clean corrugated cardboard material accepted for curbside

pick-up by the Blaine County Recycling Center.

"Glass Collection Site" means an area identified by the City of Hailey to house a roll-off container to be used for drop off of glass bottles, jars and other glass materials accepted by the Blaine County Recycling Center.

"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 items accepted for curbside pick-up by the Blaine County Recycling Center, excluding corrugated cardboard, compostable materials and glass.

"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.

1. **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, which agreement shall be revocable by either party, upon sixty-days written notice, in the event the parties, to their mutual satisfaction, have not entered into one or more amended Franchise Agreements one-year from the effective date hereof.

2. **Term.** The term of *this* Agreement shall begin May 12, 2021, and shall end at midnight, May 12, 2031, unless earlier revoked under the terms hereof.

3. **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, compostable 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.

2. Residential Corrugated Cardboard, Glass and Compostable Materials Collection. The parties each hereby commit to continuing to negotiation in good faith toward an agreement for enhanced collection of Corrugate Cardboard, and Glass which could include curbside pickup of same, and that does now include, as contemplated in the rate structure adopted contemporaneously herewith enhanced services at central recycling drop off sites consisting of compaction equipment, containers and frequency of collection and clean-up; and new services for collection of Compostable Materials in standardized compostable bins.
3. Weekly Commercial Solid Waste and Recycling 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 "x" 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.
4. 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 and all July 4th related festival activity, the Summer's End 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.

5. Collection of Solid Waste, Recyclable Materials, Compostable Materials and Corrugated Cardboard Materials shall occur to the extent possible at or about the same time and on designated collection days between 7:00 a.m. and 6:00 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 weekday. 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 6x8 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.
6. Seasonal Waste, Corrugated Cardboard and Glass. The Contractor shall provide, 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 two Saturdays in the spring and two Saturdays in the fall during the term of this Agreement. The location and dates shall be specified by Hailey and Contractor by administrative agreement. The Contractor shall provide, at no charge to Hailey or Residential Customers, collection, hauling and disposal of holiday trees in January during the term of this Agreement at a location specified by Hailey. The Contractor shall provide receptacle(s) (as agreed by the parties from time to time by administrative agreement) for glass disposal, at location(s) to be determined. All glass

receptacles shall be emptied at a frequency to prevent overflow of glass from the roll-off dumpster or receptacle. All glass disposal receptacles shall not have an open top and shall be designed to minimize broken glass and safety hazards, such as the glass disposal opening being limited to a small size. All pickup sites shall be within or adjacent to the city limits of the City of Hailey.

7. Disposal The Contractor shall haul and dispose, in accordance with applicable federal, state and local laws, all legally acceptable Solid Waste, Glass, Compostable Materials, Corrugated Cardboard 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 truces, associated with the disposal of Solid Waste or Recyclable Material& collected from Hailey.
8. 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 composting, recycling and waste reduction.
9. Customer Inquiries. The Contractor shall respond to the following customer requests about:
 - i. Information regarding service options and procedures.
 - ii. Missed collections.
 - iii. Late set outs.
 - 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.
10. 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 a.m. to 5:00 p.m. of each weekday, except when holidays fall on weekdays.
11. 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.
12. Bi-Annual Report. The Contractor shall submit to Hailey a bi-annual report on the first business day following November 1 and May 1, 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, Compostable Materials 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 Fee 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.

Fees adopted by resolution or ordinances shall be effective the first of the month following the effective date of this Agreement and within 60 days of the effective date of any amendment to this Agreement. 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 Fees received for the Solid Waste, Compostable Materials, Corrugated Cardboard, Glass and Recyclable Materials collection services provided by the Contractor under this Agreement, less an amount equal to seven percent (7%) of all 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 six percent (6%) of all Fees collected, which sum shall be retained by Hailey as a franchise fee. Hailey shall begin the payment of the Fees collected, less thirteen percent (13%), as described herein, to Contractor on or before the last day of July, 2021, and continuing every month thereafter during and beyond the original term and renewed term, if any, of *this* Agreement for those Fees which were billed and collected pursuant to this Agreement.
 - i. Hold-Back Proviso. Maximum monthly payments from the City to the Contractor shall not exceed one hundred and sixty-two thousand and five hundred dollars. (\$162,500) (hereinafter the "base sum"). The parties recognize the many variables with the Contractor's rate structure, set after negotiations with the City insisting on higher fees for larger cart sizes with the intention of motivating customers to move to smaller, less costly carts. To assure excessive revenue does not become a windfall to the contractor, should monthly collections, less collection and franchise fees, exceed one hundred and sixty-two thousand and five hundred dollars (\$162,500), that base sum shall be paid to the contractor, and funds in excess thereof shall be deposited in an interest bearing account, held in trust by the City, to benefit the rate payers in future rate resetting, including those contemplated, under negotiation, new services, but not including new growth. A full accounting of this Hold-Back Trust Account shall be reported to contractor on a monthly

basis, and considered as part of the ongoing negotiations hereunder.

- d. Collection. If a Residential Customer is delinquent in payment to the City for Solid Waste, composting 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.
- f. Mutual Duty of the Parties. Recognizing that this agreement is designed to require ongoing monitoring of fiscal fairness to the parties, and environmentally effective provision of services, , the parties agree to not less than annual review of the rate structure to verify ongoing costs and receipts as a good faith method of ultimately entering into any Amended Franchise Agreement and cost structure for any desired new and enhanced services for collecting, recycling, composting and/or disposing of residential or commercial solid waste generated within the City of Hailey, and any appropriate amendments to the schedule of the Approved Fees which the Contractor will be authorized to assess for any such new or revised services.

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	\$5,000,000
Property Damage	\$5,000,000

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

Minimum Limits

Bodily Injury	\$5,000,000
Property Damage	\$5,000,000

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	\$5,000,000
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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 the laws of the State of Idaho.

- A. 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.
- B. Notification. Such insurance shall provide at least thirty (30) days written notice to Hailey before such policy is suspended, canceled, amended or terminated.
- C. 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, Compostable Materials 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. Equipment shall be secured within 60 days of adoption of this Agreement and amendment to this Agreement.
- 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 Compostable Materials collected (measured in

tons) (d) the amount of Corrugate Cardboard collected (measured in tons); the amount of Recyclable Materials collected (measured in tons), (e) the fees charged for conversion of containers, (f) the rentals charged for containers, (g) 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 (h) tipping fees or charges for the disposal of Solid Waste and Recyclable Materials.

11. Default and Termination. 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.

- A. 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.
- B. 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.
- C. 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.
- D. Failure Amend Reflecting New/Enhanced Services. The parties recognize the either party, upon sixty (60) days written notice may revoke this agreement, and the Franchise Ordinance upon which is based, upon sixty-days written notice, in the event the parties, to their mutual satisfaction, have not entered into one or more amended Franchise Agreements one-year from the effective date hereof.

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, duty and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste, Compostable Materials and Recyclable Materials, as described in paragraph two (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, Compostable Materials 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, Compostable Materials 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 and Composting 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(c) 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(c) of this Agreement shall be amended. Contractor shall report annually to the City changes in bin sizes requested by customers. An annual rate review based on bin sizes shall be conducted and considered by the City.

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.

- E. 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.
- F. 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.
- G. 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.
- H. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.
- I. 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.
- J. 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.
- K. 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.
- L. Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.
- M. 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.
- N. 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 83340

CONTRACTOR:

OBRAS, LLC., 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.

- O. 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.
- P. 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: Martha Burke
Martha Burke

ATTEST:

Mary Cone
Mary Cone, City Clerk



CONTRACTOR- OBRAS, L.L.C.

By: Mike Goitiandia
Mike Goitiandia, Managing Member

AGENDA ITEM SUMMARY

DATE: 10/23/23 DEPARTMENT: Administration DEPT. HEAD SIGNATURE: LH

SUBJECT: Public Hearing and consideration of Resolution 2023-~~131~~¹³⁴, a resolution establishing a rate increase with Clear Creek Disposal for commercial and residential solid waste/curbside recycle rates based on several key inflationary factors. Residential and Commercial rate increases is proposed at 2.85%.

AUTHORITY: ☐ ID Code _____ ☐ IAR _____ ☐ City Ordinance/Code Ord. 1282; Resolutions 21-044, 21-045, 22-103

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

As permitted under the governing documents, Clear Creek Disposal is requesting a commercial and residential solid waste/curbside recycle rate increase based on several key inflationary factors:

- \$2 per hour on average increase in labor costs
- \$0.18 increase in fuel costs
- \$72/ton to \$75/ton increase in tipping fees at Milner Butte Landfill

The city-adopted rates include recycling within the base fee.

Attachments to this report:

- 1) Letter from Clear Creek Disposal requesting rate increase and supporting documentation
- 2) Ordinance No. 1282 Franchise Agreement (background only, no changes proposed)
- 3) Resolution 2023-~~131~~¹³⁴ (Resolution establishing new rates)

Background

After months of negotiation and discussion, the City adopted a new Franchise Agreement with Clear Creek Disposal on May 10, 2021 (**Ord. No. 1282**). The Franchise Agreement grants use of city streets and rights of way exclusively to Clear Creek Disposal for a ten (10) year term. The Franchise Agreement creates definitions, creates a grant of franchise and makes solid waste services mandatory within city limits; outlines rights and obligations of the City; duties of residential and commercial customers; annexation provisions. Much discussion took place regarding curbside recycling. The 2021 Franchise Agreement Ordinance provides for continued work to occur in the first year to complete the effort toward development of more recycling programs. See the Recycling section of this report for further updates on this topic.

The City also adopted two resolutions related to the above. **Resolutions 2021-045 and 2022-103** outline the terms of the Franchise Agreement. **Resolution 2021-044** establishes rates for the various types of garbage service outlined in the Franchise Agreement. Both resolutions are attached to this report.

Resolutions 2021-045 and 2022-103: terms of the Franchise Agreement. These resolutions stipulate a list of approved fees, duties and responsibilities of the contractor and the city, franchise fees, data collection. Hailey's responsibilities include billing of customers (included in the municipal utility bill) and payment to Clear Creek. Section 5.c stipulates that Hailey remit fees collected to the contractor on a monthly basis, less 7% retained for billing services and 6% for the exclusive franchise fee. See discussion of Hold-back provision further in this report.

Resolutions 2021-045 and 2022-103 stipulate that the new fees shall be effective within 60 days of any amendment to this agreement.

Request by Clear Creek.

The attached letter dated September 6, 2023, outlines Clear Creeks request for the rate increase. In a nutshell, the rate increase is based on inflationary factors:

- \$2 per hour on average increase in labor costs
- \$0.18 increase in fuel costs
- \$72/ton to \$75/ton increase in tipping fees at Milner Butte Landfill

Staff concurs that inflation is affecting all aspects of service provision in the current economy.

Resolutions 2021-044 and 2022-116. Rates were established in Resolutions 22-144 and modified in Resolution 2022-116, with the rate table shown in the attachment. At the time of adoption, Council wished to encourage migration to smaller carts. Therefore, the rate for smaller carts was pushed lower than initially recommended by Clear Creek, and the rates for medium and larger carts pushed higher. Additionally, the charge for switching cart size was waived for the initial six (6) months to encourage cart migration to small carts. While there was a period of migration of 30 smaller carts in the initial month, these numbers dropped to approx. 5 per month, which was fully offset by similar increases in cart size in the same month. Staff and Clear Creek have concluded that the rate incentives were largely ineffective. While the City retains a goal of encouraging households to move towards smaller carts, in 2022 the council found that the rate increase should be consistent across residential cart size, for simplicity and future tracking of rates and costs.

The attached documents outline how Clear Creek arrived at the rate increase. Staff have reviewed these numbers and are comfortable with the methodology. Clear Creek has proposed that the rate for residential and commercial customers be increased by **2.85%**.

In summary, staff concurs that the rate increase is reasonable given the cost factors outlined by Clear Creek and inflationary issues throughout the economy.

Hold Back Proviso Trust Account

(See Public Hearing _____ for proposed Resolution 2023-_____ and amendment.)

As outlined in the Background section of this report, Section 5.c of Resolution 22-103 stipulates that Hailey remit fees collected to the contractor on a monthly basis, less 7% retained for billing services and 6% for the exclusive franchise fee. Section 5.c(i) outlines a Hold-back provision under which monthly payments to Clear Creek may not exceed \$158,000, with excess collections being held in an interest-bearing trust account ...*"to benefit the ratepayers in future rate resetting, including those contemplated, under negotiation, new services."*¹ Staff concurs with Clear Creek that the intent of the Hold-back provision was for new and expanded services, generally related to recycling and NOT for new growth. Clear Creek has been servicing new customers over the last year and absorbing the costs: a total of 46 new residential and 13 new commercial customers since June 1, 2022-present. Adoption of higher rates requires the "ceiling" be increased on this Hold Back Trust Account. Staff and Clear Creek concur that a new maximum monthly payment of \$162,500 is reasonable based on staff review of the contract revenues. Staff concurs that the applicant should be re-imbursed now from this Hold Back Trust Account for costs associated with new growth absorbed during the contract year in the amount of \$126,813, and that Council approve staff to reimburse for the remainder of the period (June

¹ Hailey Resolution 2021-045, Section 5.c(i)

1, 2023, through September 30, 2023) until the new rates are in effect in the amount of \$28,262 for a total of \$155,075.

Regarding the purpose of the Hold Back Proviso, staff questions the effectiveness of this clause, and the fairness of it overall to the rate payers. Staff will bring back a more thorough discussion of this matter in an upcoming meeting.

New Recycling Services Progress Report

Progress has been made over the last two years to explore expanded recycling opportunities in Hailey. This includes:

- 1) **Successful installation of the new Carboard Compactor.** The new compactor was installed by Clear Creek on 2/01/2022. Contamination rate has significantly dropped with the new equipment. The installation of cameras has allowed staff and/or Clear Creek to contact violators (those leaving other than carboard at the site), educate those who cannot figure out the equipment and leave their carboard outside of the compactor and other violations. Clear Creek checks the compactor site daily during the week and on weekends as needed.
- 2) **Regional Sustainability planning, recycling and waste reduction.** Hailey has allocated significant staff participation in the regional sustainability effort, which includes staff assistance and participation in the development of the Circular Economy Task Force goals. This Task Force, which includes Hailey, other jurisdictions, Clear Creek, Winn and other stake holders, has established regional goals for recycling and waste reduction. This will be incorporated into a Regional Sustainability Plan currently underway. The council heard two presentations at the October 10, 2023, Council meeting: an update on future-looking recovery/recycling efforts planned for the Milner Butte landfill and an update on a Blaine County Recycling analysis currently underway. The strongest, most successful recycling efforts will result from this regional collaboration, and staff does not recommend that Hailey embark on any significant changes to our curbside recycling program until the regional effort is completed.

Staff recommends that we continue to participate in the regional sustainability effort and re-examine curbside recycling opportunities after a regional plan is developed. If a new curbside program is launched, trucks to service the program are over a year out on order. The launch of the community compostable recycling sites will also provide essential information as community interest in reduction of compostable waste.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

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	___ Finance	___ Licensing	<u>X</u> Administrator
___ Library	___ Community Development	___ P&Z Commission	___ Building
___ Police	___ Fire Department	___ Engineer	___ W/WW
___ Streets	___ Parks	___ Public Works	___ Mayor

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

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- 1) Conduct public hearing, and Motion to adopt Resolution 2023-___, a resolution establishing a rate increase with Clear Creek Disposal for commercial and residential solid waste/curbside recycle rates.

-- ACTION OF THE CITY COUNCIL:

Date 10/23 - council approved

City Clerk 3/1/24 - emailed M. Gortiahdia to sign document.

-- FOLLOW-UP:

*Ord./Res./Agrmt./Order Originals: Record

Copies (all info.):

Instrument # _____

*Additional/Exceptional Originals to: _____

Copies (AIS only)