

FRANCHISE AGREEMENT
(Commercial Solid Waste and Recyclable Materials Collection)

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

RECITALS

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

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

C. Hailey has requested proposals from qualified contractors to provide commercial solid waste collection and recycling services 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 commercial solid waste collection and recycling services within the city limits of Hailey, Idaho. 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 the commercial solid waste collection and recycling services within the city limits of Hailey, Idaho.

D. Subject to the terms and conditions set forth herein and Hailey Ordinance No. _____, the parties hereto are desirous of entering into an exclusive five (5) year franchise agreement, with a three (3) year renewal term, with Contractor to provide the commercial solid waste collection and recycling services 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 terms have the meanings set forth herein:

“Commercial customer(s)” mean those owners and/or occupants of commercial, light industrial, industrial, governmental and institutional uses, schools, all other businesses, and multi-family residential complexes consisting of five or more dwelling units.

“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.

“Multi-family residential complex” means a building or property containing two (2) or more dwelling units and includes duplexes, apartments, townhomes and condominiums.

“Recyclable materials” means 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, oil, plastic, newspaper and magazines, excluding food waste.

“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.

2. Exclusive Agreement. Hailey hereby grants exclusively to Contractor the authority and privilege to engage in the business of collecting, transporting, processing 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 waste or medical waste.

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. The Contractor shall provide on a weekly basis collection of solid waste in approximately 32, 68 or 95 gallon roll carts, or other containers and collection of recyclable materials in standardized recyclable bins or other containers. Contractor shall distribute one or more containers in the size requested by the commercial customer. Containers and dumpsters used to collect recyclable material shall be clearly marked with clear, international signage and standardized color schemes to denote what recyclable commodity is collected within the container. Receptacles for clean wood waste, diverted from the landfill, shall be provided in a range of sizes, for example from 1.5 yards to 30 yards. The containers shall remain the property of the Contractor. The following recyclable materials shall be collected by the Contractor on a weekly basis: cardboard, clean wood waste, glass, plastic, aluminum, tin, oil, paper, and newspaper. Types and collection methods of recyclable materials shall meet 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, including potential changes to the types of acceptable recyclable materials and collection methods (for example: if the Blaine County Resource Recovery Center switches to a single or dual stream recycling process). 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 the following 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 collecting commercial solid waste and recyclable materials must provide, at no charge to the City of Hailey, garbage pickup services and recyclable material hauling services for the 4th of July festivities, the Northern Rockies Folk Festival and the Trailing of the Sheep Festival.

3. Disposal. The Contractor shall haul, 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. 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.

5. 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.

6. 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 detailed billing on all construction projects that indicate the amount, type, and cost associated with diverting or recycling of all recyclable or diverted materials as well as solid waste, in a clear and easy to understand format, which Hailey will mail to construction customers.

7. 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 material 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 material collection shall be made on the public streets, alley and rights-of-way in Hailey in a manner causing the least delay and inconvenience to the public.

B. Billing. Hailey shall be responsible for billing all customers covered by this Agreement a standard monthly rate for the weekly solid waste and recyclable materials collection services provided by the Contractor in an amount established by resolution or ordinance duly adopted by Hailey. Hailey shall also be responsible for billing all customers covered by this Agreement for extra pickups of solid waste and recyclable materials provided by the Contractor in an amount established by resolution or ordinance duly adopted by Hailey. The fees adopted by resolution or ordinance shall be effective May 1, 2012. In the event Hailey and Contractor develop additional incentive recycling programs that would result in a reduction of solid waste collection, the Contractor may seek a change in the fee schedule adopted by Hailey before the incentive recycling program is adopted. Hailey shall maintain adequate records of billings, collections and outstanding accounts, and shall furnish Contractor with such records upon reasonable request. Hailey shall furnish Contractor timely information about new commercial customers.

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

D. Collection. If a customer is delinquent in payment to the City for one month of solid waste and recycling services, Hailey will notify the customer in the customer's bill that the customer is delinquent and the amount to be paid. If a customer is delinquent in payment to the City for two consecutive months of solid waste and recycling services, Hailey will notify the customer that there must be payment of the full delinquent amount and absent payment of the full delinquent amount, Hailey will terminate the customer's water service. If the customer is delinquent for three consecutive months of solid waste and recycling services, 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

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. 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 and dispose of the solid waste and recycling 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 material 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 City Council 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 16(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, the City may terminate this Agreement immediately without further notice. The Contractor shall be given a Notice of Termination in accordance with paragraph 16(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 1 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, as described in paragraph 1 of this Agreement

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 waste 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 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 waste and relating to the collection and transportation of solid waste.

16. Miscellaneous Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACTOR:

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

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

Contractor's business entity, regardless whether it is a corporation, limited liability company or other legal entity, without the prior written consent of Hailey.

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

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

CITY OF HAILEY

By _____
Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

CONTRACTOR

By _____
_____, its president