

ORDINANCE NO. 21-1228

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO GRANTING A FRANCHISE FOR SOLID WASTE COLLECTION AND DISPOSAL TO OBRAS, LLC; PROVIDING DEFINITIONS AND AUTHORITY; APPROVING A FRANCHISE AGREEMENT; PROVIDING FOR ACCEPTANCE BY FRANCHISEE; PROVIDING SPECIFIC AND GENERAL CONDITIONS; ESTABLISHING LIMITATIONS; PROVIDING FOR FORFEITURE; PROVIDING A SAVINGS CLAUSE; PROVIDING THAT ALL ORDINANCES AND RESOLUTIONS IN CONFLICT ARE REPEALED AND RESCINDED; AND PROVIDING FOR AN EFFECTIVE DATE.

- A. The City has the powers to promote the general welfare (I.C. §50-302), preserve the public health (I.C. §50-304), and provide for solid waste disposal by franchise (I.C. §50-344).
- B. Ketchum Municipal Code Title 8, Chapter 4 provides for and regulates solid waste collection and disposal within the City, including service by franchise agreement.
- C. For the past ten years, Clear Creek has operated and provided solid waste collection and disposal services within the City pursuant to Ordinance No. 1086 and accompanying Waste Collection Services Agreement, dated May 2, 2011.
- D. The parties desire to continue the franchise and update the terms and provision of solid waste collection and disposal services.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM, IDAHO:

Section 1 - Definitions: All terms herein this ordinance and accompanying agreement shall be defined as those definitions which are presently codified in the Ketchum Municipal Code, which definitions are incorporated herein by reference.

Section 2 - Authority for Franchise: This Franchise Ordinance is an exercise of the City's authority to grant a franchise pursuant to Idaho Code §50-344, §50-329 and pursuant to its authority and regulation as is set forth in Ketchum Municipal Code Title 8, Chapter 4.

Section 3 - Grant and Term of Franchise: The City of Ketchum does hereby grant to Obras, LLC, dba Clear Creek Disposal, a franchise of scope and description as set forth under the Franchise Agreement attached as Exhibit A and hereby incorporated.

Section 4 - Acceptance: Obras, LLC, shall file a written acceptance of the franchise with the City Clerk within ten days after the date of this ordinance. This franchise shall go into effect only when the acceptance has been filed and when evidence of general comprehensive liability insurance provided shall have been filed and approved.

Section 5 - Specific Conditions: The specific conditions of this franchise are set forth in that certain Franchise Agreement as attached as Exhibit A.

Section 6- General Conditions: The City of Ketchum reserves the right to enforce reasonable regulations as prescribed by Ketchum Municipal Code Title 8, Chapter 4 over the activities and the grant of this franchise.

Section 7 - Limitation on Franchise: No privilege or exemption is granted or conferred by this franchise except those specifically prescribed in this ordinance. Any privilege claimed under the franchise in any street, alley, or other public place shall be subordinate to any lawful occupancy of any such street, alley, or other public place by grantor or by any other public agency, and to prior lawful occupancy of any such street, alley, or other public place by any other entity or person.

Section 8 - Forfeiture: The franchise may be forfeited, at the option of the City of Ketchum, upon failure or refusal by Franchisee to observe the terms and conditions set forth in this ordinance or prescribed in the Franchise Agreement. Forfeiture may be exercised by written notice to Franchisee of failure to observe the terms and conditions of this ordinance, followed by grantee's refusal to eliminate or correct the failure or violation within 30 days. In the event of any failure of violation, the City may sue in its own name in the manner provided by law for the forfeiture of the franchise without the necessity of resorting to procedures in quo warranto. The exercise of the remedy of forfeiture shall not preclude exercise of any other right or remedy given to grantor by law, whether exercised concurrently or subsequently.

Section 9 - Effect of Invalidity: The franchise is granted pursuant to the laws of the State of Idaho relating to the granting of such rights and privileges by the City of Ketchum. If any article, section, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional, the invalidity shall not affect the validity of the ordinance or any of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required of grantee.

Section 12: All ordinances, resolutions, orders or parts thereof in conflict herewith are hereby repealed, rescinded and annulled.

Section 13: This ordinance, in accordance with the provisions of Idaho Code § 50-329, was approved for the first reading more than 30 days prior to its approval, been published in the *Western* official newspaper on the ____ day of _____, 2021, and shall take effect after its passage and publication.

PASSED BY the CITY COUNCIL of Ketchum, Idaho, on this ____ day of _____ 2021.

APPROVED BY the Mayor of the City of Ketchum, Idaho, this ____ day of _____ 2021.

APPROVED:

Neil Bradshaw
Mayor

ATTEST:

Tara Fenwick, City Clerk

**FRANCHISE AGREEMENT TO PERFORM
SOLID WASTE COLLECTION AND DISPOSAL SERVICES**

PARTIES:

City of Ketchum	CITY	PO Box 2315 Ketchum, ID 83340
Obras, LLC dba Clear Creek Disposal	CLEAR CREEK or FRANCHISEE	PO Box 130 Ketchum, ID 83340

THIS FRANCHISE AGREEMENT (“Agreement”), is made and entered effective to _____, 2021 between City of Ketchum, a municipal corporation of the State of Idaho (“City”), and Obras, LLC dba Clear Creek Disposal, an Idaho limited liability company (“Clear Creek” or “Franchisee”), for the purpose of providing solid waste collection and disposal service within the City of Ketchum.

RECITALS

- A. The City has the powers to promote the general welfare (I.C. §50-302), preserve the public health (I.C. §50-304), and provide for solid waste disposal by franchise (I.C. §50-344).
- B. Ketchum Municipal Code Title 8, Chapter 4 provides for and regulates solid waste collection and disposal within the City, including service by franchise agreement.
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- D. The parties desire to continue the franchise for an additional ten years and update the terms and provision of solid waste collection and disposal services.

1. GENERAL TERMS

11 Definitions. For the purposes of this Agreement, all terms, phrases and words shall have the meaning given herein. Other terms, phrases and words used but not defined below shall have the meaning given in Ketchum Municipal Code 8.04.020 or other applicable sections of Ketchum Municipal Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

BIN: A container used to separate and set out recyclable materials for collection by Franchisee.

COLLECTION: The picking up and dumping of any and all sizes of containers without respect to the volume of material actually in the container. Thus, a one cubic yard container picked up and dumped once constitutes one cubic yard collected and, likewise, an eight cubic yard container picked up and dumped once constitutes eight cubic yards collected.

COMMERCIAL UNIT: All premises or locations, public or private, requiring solid waste collection within the corporate limits of the City which are not a Residential Unit, provided, however, that where there is less than three (3) separate single-family dwelling residential units mixed with light industrial or commercial units such units shall be considered a Commercial Unit. Commercial Unit does not include premises or locations owned by the State or Federal government unless the State or Federal government requests that the services be provided to such premises or locations.

COMPACTOR(S): A mechanical unit(s) that forces material into a dumpster under pressure to increase the density of the material. The compaction unit is stationary with the dumpster removed for disposal.

CONTAINER: A leak proof object with a lid, smaller than one cubic yard, designed to hold solid waste and recyclables.

DISPOSAL SITE: For acceptable waste and recyclable material, the Blaine County Transfer Station in Ohio Gulch or any other such approved transfer station, landfill or recycling facility designated by the Blaine County Board of County Commissioners.

DUMPSTER: A painted metal, leak proof device with a lid, one cubic yard or larger, designed to hold solid waste or recyclables.

HAZARDOUS WASTE: Waste which is defined in Idaho Code §39-4403.

ITEMS EXCLUDED FROM CITY COLLECTION: Solid waste including bulky waste, dirt or earth debris from construction or lawn renovation, stable matter, rocks, stones, automobile bodies and parts, dead animals or animal carcasses, construction debris and sewage that are excluded from Franchisee's obligation to collect solid waste. The City does not require Franchisee to collect or transport hazardous materials; however, the City is not responsible for determining when customers have left hazardous materials for collection or transportation. The items excluded from City collection must be collected and transported over and upon the public ways within the City by the owner or occupant of the premises. The Franchisee may provide for a special collection of these excluded items if requested by the owner or occupant at a negotiated rate and billed by the Franchisee.

PRODUCER: The owner or occupant of a Commercial Unit who generates solid waste or recyclable materials.

RECYCLABLE MATERIALS: Products or substances designated by the City and/or the Southern Idaho Solid Waste District as capable of being reprocessed into consumer or usable materials, including but not limited to paper, newsprint, magazines, aluminum, tin, cardboard, metal or plastic, which have been segregated from other solid waste for collection.

REFUSE: All putrescible and non-putrescible solid or liquid wastes, except sewage, whether combustible or non-combustible and whether required to be segregated pursuant to the solid waste disposal regulations of the City's designated landfill, including garbage and rubbish.

RESIDENTIAL UNIT: All structures and shelters occupied by a person or group of persons or household within the corporate limits of the City. A residential unit shall be deemed occupied when water, wastewater, or electrical services are being supplied. A condominium dwelling, consisting of three (3) or more continuous or separate single-family dwelling units, shall be treated as a residential unit, except that each single-family dwelling within any such residential unit may be billed separately as a residential unit, or a rate negotiated by a condominium association and the Franchisee. Each separate rental unit, in the case of a multi-family dwelling, shall be considered a residential unit and billed separately.

RUBBISH: All waste and refuse such as newspapers, magazines, wrapping and other paper products, packing cases and materials such as straw, shavings, excelsior, sawdust, and discarded clothing, metals, food containers, bottles, broken glass, ashes, lawn and tree trimming, cuttings, weeds and leaves.

SERVICE AREA: The incorporated areas of the City of Ketchum, including all property owned by the City.

SEWAGE: Water-carried wastes from residences, commercial or industrial establishments, business buildings and other premises, containing polluted matter subject to treatment at the sewage treatment plant.

SOLID RESIDENTIAL WASTE: Ashes, garbage, recyclable materials, refuse or rubbish that is placed in a Cart provided by the Franchisee and yard waste that is properly bundled or sacked and that is associated with and generated by a Residential Unit. Solid Residential Waste does not include Items Excluded from City Collection, as defined. herein.

SOLID WASTE: All materials included within the definition of Solid Waste in Idaho Code § 39-7403, excluding Hazardous Waste.

TRASH: Solid matter of animal, vegetable, metal or other materials discarded for landfilling, including bulky waste. construction and demolition waste, dead animals weighing ten (10) pounds or less, and stable matter. Excludes materials which have been properly set aside for recycling, hazardous materials, medical waste. and dead animals weighing over ten (10) pounds.

YARD WASTE: Includes tree trunks, large limbs, tree trimmings, shrubs, brush, grass and lawn clippings. weeds and leaves that are properly sacked or bundles. Tree trunks and large limbs shall not exceed three (3) feet in length and forty (40) pounds in weight per securely bound bundle. Shrubs and brush must be bundled not to exceed three (3) feet in

length and not exceed forty (40) pounds per bundle and securely tied. Grass and lawn clippings, weeds and leaves must be properly sacked in tear resistant sacks and weigh less than forty (40) pounds per sack.

12 Grant of Non-Exclusive Franchise.

The City grants to Clear Creek, and to its successors and assigns, a non-exclusive franchise to engage in the business of collecting, transporting, processing and disposing of solid waste kept or accumulated and placed for collection by residential or commercial units within the corporate limits of the City.

The franchise granted pursuant to this Agreement shall be non-exclusive and shall not preclude the City from granting other or further franchises or permits. The franchise granted shall not preclude the City from using any public way or affect its jurisdiction over them or any part of them, or limit the full power of the City to make such changes, as the City shall reasonably deem necessary, including but not limited to, the dedication, establishment, maintenance, and improvement of all new public ways.

13 Term. The term of this Agreement shall be for ten years, beginning October 1, 2021 and ending at midnight on September 30, 2031. This Agreement may be extended for an additional ten-year term subject to terms and conditions mutually agreed upon in writing between the parties. Any further extension or renewal shall be by written amendment or further written agreement between the parties.

14 Annexation. In the event that the City annexes additional areas of the County during the term of the Agreement, the existing County's Franchisee shall retain exclusive right to collect solid waste within the newly annexed area for a period of up to one (1) year after the annexation takes effect. Provided, however, if the annexation occurs prior to any development occurring in the area or in an area in which no service has previously been provided by County's Franchisee or there is no County Franchisee, exclusive right under this Agreement to collect solid waste shall be extended to Franchisee upon the effective date of annexation.

15 Default.

A. Default and Cure. If Franchisee violates or fails to comply with any material provision of this Franchise, the City shall give written notice to Franchisee of the alleged non-compliance of the Franchise. Franchisee shall have thirty (30) days or such lesser time if reasonably deemed an emergency by the City, from the date of notice of non-compliance to cure such alleged default.

B. Termination for Default. If such default continues beyond the applicable dates agreed to for such cure, the City shall provide Franchisee written notice by certified mail that all rights conferred under this Agreement and the Ordinance granting such Franchise may be revoked or terminated by the City Council at a hearing on the matter. Franchisee shall be entitled to not less than five (5) days' prior notice of the date, time and place of the hearing. The City may elect, in lieu of the above and without prejudice to

any of its other legal rights and remedies, to obtain an order from the district court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and recover damages and costs incurred by the City by reason of Franchisee's failure to comply.

16 Liquidated Damages. In view of the difficulty of ascertaining a loss which the City will suffer by reason of breach in the performance of the requirements stated in this Agreement, the City may assess liquidated damages in the amount of One Thousand Dollars (\$1,000) per day for discontinuance of collection and transportation service on any route for more than seventy-two (72) hours beyond the scheduled day, after written notice, for any reason, except for causes beyond the control of Franchisee and except for situations covered herein this Agreement.

2. DUTIES OF THE FRANCHISEE.

21 FRANCHISEE ASSURANCES. Franchisee is an independent contractor and all payments to workers and subcontractors are the responsibility of Franchisee. In no event is the City a guarantor of any claim or demand or judgment against Franchisee for wages or other payments.

22 SCOPE OF SERVICES.

A. Residential Service.

1. *Mandatory Collection.* No property owner of a Residential Unit within the City shall be permitted to refuse to accept the Solid Residential Waste collection and transportation service, including Recyclable Materials, provided by the Franchisee. and the failure of any property owner to receive such service shall not exempt such property owner from payment of charges. No property owner of such Residential Unit within the City shall be permitted to use any other hauler that has not been given a Residential Franchise by the City.

2. *Unlimited Weekly Collection.* Residential service shall consist of weekly collection of unlimited trash and Recyclable Materials properly set out by the customer in approved containers on the designated collection day. All Solid Residential Waste shall be placed in cans or carts, and Yard Waste shall be transferred to the Blaine County landfill or other City-approved location. All Recyclable Materials and other Solid Residential Waste, placed in the applicable containers, or properly sacked or bundled, shall be placed on the sidewalk, street or alley edge for pickup on certain days to be established by Franchisee and approved by the City. If, for any reason (such as overweight, not properly sacked or bundled, contaminated Recyclable Materials, etc.) the contents of a container are not picked up, Franchisee shall attach a tag to the container explaining the reason therefor, and shall maintain a log or record of such refusals.

3. *Recycling Service.* Franchisee shall collect Recyclable Materials that are properly segregated from other solid waste according to the specifications and procedures established by the Blaine County Recycle Center separately from trash, on the same day

and at the same location, whether curbside, alley, or carry-out, in Franchisee supplied bins. Franchisee shall distribute one bin to each customer with residential service. Bins shall remain the property of the Franchisee. Franchisee shall transport all such segregated Recyclable Materials to a City-approved recycling center to facilitate the reprocessing of such materials into consumer materials.

4. *Availability of Service.* Franchisee shall not refuse to provide residential service to any customer who complies with the terms of this Agreement and all relevant statutes, ordinances, and regulations. Franchisee may refuse to provide residential service to any customer who fails to follow proper setout procedures and to use approved containers, or to any customer whose account is delinquent for a period of three (3) consecutive months, unless otherwise directed by the Ketchum City Administrator.

B. Commercial Service.

1. *Voluntary Service.* Commercial service shall be voluntary. Commercial service within the service area shall be provided solely by the City's Franchisee. Franchisee shall collect and transport all Solid Waste from all Commercial Units where the owners of such units choose to use the collection and transportation system, provided such Solid Waste is put in receptacles approved by Franchisee and placed in locations on private property acceptable to Franchisee or placed in locations within the public way approved by the City. An owner may transport Solid Waste which such person produces directly to an authorized Disposal Site. The Solid Waste produced by the tenant, licensee, occupant or person other than the owner of the leased, occupied or licensed premises may be considered produced by the owner; provided, however, that owners or groups of owners may not join for the purpose of commercially transporting Solid Waste from properties of differing ownership.

2. *Trash Collection.* Commercial service shall consist of trash collection in customer-owned or Franchisee-supplied containers or dumpsters.

3. *Recycling Service.* All Recyclable Materials may be segregated from other Solid Waste by placing said Recyclable Materials into separate containers. Franchisee shall transport all such segregated Recyclable Materials to the Disposal Site or a City approved recycling center to facilitate the reprocessing of said materials into consumer materials.

C. **Service Enhancements.** The parties have discussed potential service enhancements, including, but not limited to, enhanced recycling services and diversion of organic waste for potential composting. City may, once per calendar year, notice to Clear Creek and provide for incorporation of one such type of service enhancement into this Scope of Services with accompanying reasonable adjustment to rates and fees.

23 SPECIAL COLLECTION. The Franchisee may provide for the special collection from Commercial and Residential Units of Items Excluded from City Collection, if requested and paid for by the customer. Franchisee shall be responsible for obtaining appropriate disposal facilities for any waste Franchisee hauls which is not accepted at the Blaine County Landfill.

24 ROUTES AND COLLECTION SERVICES.

A. **Routes and Times of Collection.** Franchisee shall conduct a City-wide collection of Solid Waste, including Recyclable Materials, at least once each calendar week, or more often if requested and paid for by the customer, on a Monday through Friday basis, except for any Saturday commercial collections which may be negotiated and agreed to by the commercial customer and the Franchisee. For purposes of such collections, Franchisee may divide the City into collection districts, or routes, and provide for different days of collection in each of the districts. Such collection of districts, or routes, shall be approved by the City Council. Upon approval of the proposed routes by the City Council, Franchisee shall prepare route books for each district as soon as possible, which shall indicate the address of each service. Franchisee shall keep route books up to date at all times. Franchisee shall give reasonable notice to the general public as to the days and times for collection in each district. No changes in collection schedules shall be made without reasonable notice thereof to the customers serviced by Franchisee.

B. **Extension of Service.** In the event the City annexes additional areas during the term of the Franchise, Franchisee's right to collect Solid Waste, including Recyclable Materials, within the City shall extend to any part of the newly annexed areas. Franchisee shall hire additional personnel and obtain additional equipment to service said new areas when required and necessary.

C. **Regular Collections.** Regular collections shall be made at the times so scheduled; provided, however, that no regular or other collection shall be made upon any Sunday excepting collections of Solid Residential Waste that Franchisee should have collected but failed to collect at a regularly scheduled time.

D. **Time of Collections.** Franchisee shall make no collections in residential areas, or at schools, churches, shopping areas or commercial areas adjacent to residential areas, prior to [6:00 or 7:00 a.m.], or after 9:00 p.m. The City Council shall have authority to change the time of collection as required by the needs of the public and the Franchisee.

25 PERSONNEL AND EQUIPMENT. Franchisee shall furnish, during the period of this Agreement, a sufficient number of persons, trucks and equipment to collect and dispose of solid waste contracted for collection in the City. Said equipment shall be maintained and operated in a clean and sanitary condition at the expense of the Franchisee.

A. **Personnel Requirements.** All necessary personnel shall be furnished by Franchisee. All people engaged by Franchisee and coming into contact with members of the public must perform their work in a workmanlike and industrious manner.

B. **Equipment.**

1. *Scope of Equipment.* Franchisee shall provide sufficient serviceable and well maintained vehicles, equipment and devices, whether new or used, appropriate to the geographic size and population density of the City and complimentary to the levels of

service set forth herein and/or as may be subsequently determined by the City Council to assure complete, regular collection, transportation and removal from the City of all Solid Waste under the conditions as defined in this Agreement.

2. *Quantity of Equipment; Inventory.* For service requirements, Franchisee must have a minimum of two (2) twenty-five cubic yard automated compactor truck units and have at least one (1) stand-by unit for emergencies caused by breakdowns or unforeseen additional solid waste. The quantity of equipment to be provided by Franchisee may be amended from time to time by the City Council in order to protect the health, safety and welfare of its citizens. Franchisee shall maintain an inventory of equipment, showing each vehicle (type, capacity, approximate age) used in performing the Agreement. Franchisee may change equipment from time to time and shall revise the inventory accordingly. Franchisee shall maintain a vehicular fleet which will at all times be adequate to perform the responsibilities of this Agreement.

3. *Vehicle Specifications.* Franchisee shall furnish specially designed vehicles with watertight metal bodies and suitable covers of approved type for the collection and hauling of solid waste. The equipment shall be clean, uniformly painted and clearly marked for its volume capacity and identified for use pursuant to this Agreement and equipped with warning devices, subject to review and approval by the City. All vehicles will be licensed, in good running order, lighted and safety inspected for highway operations, as required by State law. The City shall not assume or bear any liability for any safety inspection or review of the Franchisee's equipment and vehicles provided for under this Agreement.

4. *Age/Condition of Collection Equipment.* Throughout the term of this Agreement, no collection equipment shall be over ten (10) years old. Collection equipment less than ten (10) years old shall be kept in good operating condition or be replaced.

5. *Equipment Garaging and Maintenance.* Franchisee shall maintain heated garaging for all collection equipment and maintenance facilities for all collection equipment in a condition and within Blaine County acceptable to the City Council insofar as zoning, traffic, home parking and nuisance considerations are concerned. Franchisee shall institute a complete and comprehensive system of preventative maintenance on all vehicles. Trucks shall be repainted if appearance warrants, and as may be directed by the City Council.

6. *Litter; Noise.* Franchisee shall not litter any premises or public property in making collections of Solid Waste; however, if in spite of normal precautions against spillage, litter is made on any premises or public property, Franchisee shall immediately remove the same and clean up the area of spillage. Franchisee's personnel shall make all collections in a quiet and orderly manner and shall refrain from making unnecessary disturbances and noise. Franchisee shall utilize equipment available to minimize noise and shall incorporate noise control features in equipment used by collectors as may be directed by the City Council.

7. *Inspection and Sanitation Requirements.* Franchisee shall annually provide City with a certification of Franchisee's collection vehicles, including compliance with federal regulations and standards, as may be amended from time to time. In addition, Franchisee's collection vehicles shall be operated in full compliance with Idaho Code. Vehicles shall be thoroughly washed and disinfected inside the collection body, and the outside of each vehicle shall be cleaned and washed on a weekly basis.

C. Containers.

1. *Container Service.* Franchisee shall have approved crates, carts and detachable or stationary compactor containers available for all Residential and Commercial Units on a rental basis. The carts and containers shall have plastic or metal lids, where warranted for bear proofing. Franchisee shall be responsible for the general repair, appearance and upkeep of all such carts and containers.

2. *Dumpster or Container Enclosures.* Franchisee shall review all commercial and industrial proposed dumpster or container enclosures or screenings within five (5) business days of receiving a proposal from the City's Planning and Zoning Department and provide the City with input on the type and location of the enclosure and how it will facilitate solid waste collection. All dumpster or containers shall be returned to the enclosure and Franchisee shall immediately notify the City if the dumpster or container is not within the enclosure at the time of pickup or if Franchisee, for some reason beyond its control, is unable to replace the dumpster or container within the enclosure.

26 COLLECTION PROCEDURES.

A. **Accessibility.** This Agreement shall grant to the Franchisee the right of ingress and egress, to cross all public streets, alleys and rights-of-way in the City. Collections shall be made on the streets and rights-of-way of the City in a manner of least delay and inconvenience to the public. Franchisee shall use backways and alleys where operationally feasible. It shall be unlawful for any person to deny reasonable access to the Franchisee to collect waste from any Residential Unit or Commercial Unit.

B. **Responsibilities of Collection Personnel.** Franchisee shall hire competent and skilled workers. Collection personnel shall follow the traveled portion of streets, alleys and roadways, or the regular walks for pedestrians while on private property, and shall take care in loading of such waste so that none of the material to be collected is left upon the private property or the streets, alleys or roadways. Collection personnel shall return the containers with all properly prepared and legal contents removed and replace lids thereon. Franchisee shall not place in any street or alley, in carrying out this Agreement, any obstructions to traffic.

C. **Hazardous Materials.** Franchisee shall not be required to collect and transport hazardous materials. If such materials are collected, disposal shall take place only under supervision or as required by an appropriate public health official. Franchisee shall not knowingly dispose of hazardous materials at the Blaine County Landfill, without appropriate notice to and approval by the City and compliance with all federal, state and local laws and regulations.

D. Disposal Site. Franchisee shall haul all legally acceptable solid waste collected in the service area to the Blaine County Landfill or the City's designated disposal site, or an approved recycling facility. Upon request, Franchisee's driver shall fully disclose the contents of the vehicle to the County landfill personnel.

27 CUSTOMER SERVICE.

A. Local Office. Franchisee shall establish and maintain its main office within Blaine County and shall keep said office open for business from 8:00 a.m. to 5:00 p.m., of each and every day except Saturdays, Sundays and other recognized State holidays.

B. Operation of Office. Franchisee shall keep and maintain in its local office at all times during the hours it is required to be open, competent personnel who shall have the authority to represent Franchisee in its relations with City and with the public. Franchisee shall obtain and keep in said office sufficient listed telephones and personnel to courteously, quickly and expeditiously receive and answer all telephone and other calls to said office. Additionally, Franchisee shall provide a telephone message recorder for after-hours calls. A daily log of service requests received and the disposition thereof shall be kept by Franchisee and open to inspection by the City. Franchisee shall provide local management satisfactory to the City,

C. Missed Collections. Franchisee shall collect and remove from any and all Residential Units and Commercial Units, within twenty-four (24) hours, and no later, after notice, demand or request, any and all Solid Waste which Franchisee shall have failed to collect and remove as required by these specifications at the regularly scheduled time.

D. Printed Information. Franchisee shall supply City with printed information containing information regarding: (i) amounts of Solid Waste that will be collected; (ii) complaint procedures; (iii) rates; (iv) regulations; and (v) days of collection,

28 CUSTOMER RATES AND BILLING SERVICES.

A. Customer Rates. Franchisee shall establish monthly rates for collection and transportation of Solid Waste, which rates are set forth in Exhibit A attached hereto and incorporated herein by reference. Said rates are to be reasonable to allow for a fair profit to Franchisee for its investment and services. Said rates are to be filed with the City Clerk. If such rates are ever increased, said Franchisee shall so file the new rates with the City Clerk a minimum of thirty (30) days prior to the effective date of increase, The City has the privilege to request Franchisee to review the reasonableness of customer rates established by Franchisee, including any proposed increases in such rates, and shall approve or disapprove such increase based upon the above standard of fair profit to the franchisee.

B. Service Data. Franchisee shall enter and maintain all residential and commercial service data, including but not limited to type of service, size and type of container, if rented, and frequency of collection.

C. **Billing.** Franchisee shall bill all customers according to the type of service provided as follows:

1. Residential: Quarterly in advance
2. Commercial: Monthly in arrears

D. **Collection of Payments.** Franchisee shall collect payments from customers according to the rates authorized.

E. **Billing Disputes.** Franchisee shall follow its credit and collection policies to resolve all billing disputes related to commercial and residential billing.

F. **Notification to City of Delinquent Accounts.** Franchisee shall notify City on at least a quarterly basis of delinquent customer accounts for which the Franchisee has been unable to collect for a period of thirty (30) days.

29 FRANCHISE FEE.

A. **Authorization to Collect.** City authorizes Franchisee to collect a franchise fee from residential and commercial customers with solid waste service. This fee shall be regarded as the consideration paid by Franchisee to the City for the Franchise to provide solid waste service in the service area.

B. **Payment by Franchisee.** Franchisee shall pay City a franchise fee of six percent (6%). Said franchise fee shall be calculated based on gross receipts collected in the service area. Payment shall be made at least quarterly, but may be made more frequently at the option of Franchisee.

C. **Quarterly Accounting Statement.** Franchisee shall prepare a quarterly statement using Generally Accepted Accounting Principles including but not limited to: the number of customers served; the number of services provided during the previous quarter; and gross revenues collected for services provided in the service area during the previous quarter.

D. **Payment Procedures.** Franchisee shall submit quarterly accounting statements and payment of the Franchise Fee in person to the office of the City Clerk no later than the fifteenth (15th) of the month following each calendar quarter.

E. **Additional Fee.** As further and additional compensation, Franchisee shall remove all garbage and miscellaneous refuse from the following City buildings and offices: City Hall, Police Department, Fire Department, Street Department, Water and Sewer Department, and Parks Department. Franchisee further agrees to remove upon request of the Street Department all scrap metal, and to assist the City in the waste removal for Wagon Days and City special events free of charge. In the event City grants another franchise, City agrees to set up a schedule that will rotate the obligations set forth in this section among the Franchisees equally.

210 DATA COLLECTION AND REPORTING. Franchisee shall submit not later than October 1 of each year during the term of this Agreement to the City an annual report

regarding the Franchise operations, which shall include the following: (i) number of customers and their addresses or names of businesses; (ii) sizes and locations of dumpsters being used; (iii) frequency of pickups; (iv) quarterly total of tonnage; (v) number of delinquent accounts and methods of collection; (iv) number of complaints received regarding service and the resolution of those complaints; and (vii) accidents or problems encountered in providing the Franchise service.

211 FAIR LABOR PRACTICES. Franchisee agrees that it has adopted and will maintain and enforce a policy of fair labor and nondiscrimination in accordance with applicable federal and state laws including but not limited to the Fair Labor Standards Act ("FLSA") and Americans With Disabilities Act ("ADA"), as such laws may be amended from time to time, and shall be responsible for the public conduct of all personnel when acting within the scope of their employment.

212 INSURANCE.

A. Required Insurance Levels. During the term of this Agreement, Franchisee shall maintain in full force and effect at its sole expense the following insurance, with limits on an occurrence basis no less than those shown below:

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

B. All Operations. The insurance requirements shall cover all services provided by Franchisee including but not limited to all Solid Waste collection and trash receptacle emptying and maintenance.

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

D. Notification. Each policy of insurance shall contain an endorsement stating that such policy shall not be altered or canceled by the insurance company or Franchisee without thirty (30) days written notice of such intended alteration or cancellation to the City.

E. Worker's Compensation. Franchisee 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. Franchisee shall certify that it is aware of the provisions of the labor laws of the State of Idaho requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of such laws, and Franchisee will comply with such provisions before commencing the performance of collection and transportation services.

F. Proof of Insurance. Franchisee shall provide and maintain evidence of acceptable insurance at limits listed above and supply such to the City Clerk in order for this Franchise to become effective. Insurance shall be placed with carriers admitted to write insurance in Idaho.

213 FRANCHISE LIABILITY AND INDEMNIFICATION. Franchisee and its employees are independent contractors and are not, under this Agreement, the employees or agents of City. It is expressly understood and agreed by and between Franchisee and City that Franchisee shall save the City harmless from, and defend the City from all loss or damages sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, caused by acts or omissions of Franchisee in operation or maintenance of Franchisee's property or its collection and transportation of Solid Waste service or any other actions of Franchisee in the City. City shall notify, in writing, Franchisee within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against the City caused by any of the aforesaid acts or omissions on the part of Franchisee. Franchisee shall thereupon have the duty to appear and defend any such suit or action on behalf of the City, without cost or expense to the City.

214 LETTER OF CREDIT. Franchisee shall deliver a letter of credit from a sound financial institution in favor of the City in a form approved by the City Council in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) conditioned upon the premise that Franchisee shall observe and faithfully perform the conditions and provisions of this Agreement and the Ordinance granting such Franchise.

A. Failure to Comply. Franchisee and City agree that the City may cancel this Agreement at any time on written notice and without any further obligation to Franchisee should Franchisee fail to maintain and keep in full force and effect such letter of credit as herein required.

B. Assignment. City reserves the right to increase the amount upon any assignment or transfer of the rights or responsibilities under this Agreement.

215 OWNERSHIP. Title to solid waste shall pass to Franchisee when placed in Franchisee's collection vehicle, removed by Franchisee from a container or removed by Franchisee from customer's premises, whichever occurs last. Title to trash shall pass to County at the time of disposal at the Blaine County Landfill. Title to recyclable materials shall pass to recycling processor upon payment to Franchisee for materials delivered. 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 Franchisee or City may have against any generator for disposal of any hazardous or prohibited waste.

216 COMPLIANCE WITH REGULATIONS.

A. Health and Welfare Regulations. Franchisee shall comply with all applicable federal laws, rules and regulations, the statutes of the State of Idaho, the regulations and ordinances of Blaine County and the City, including but not limited to: Ketchum Municipal Code Chapter 8.04; the regulations and standards of the Solid Waste Division of the Idaho Department of Health and Welfare. and South Central District Health; and all rules and regulations. including federal regulations, relating to hazardous waste, covering the collection and transportation of solid waste as those statutes. ordinances. and regulations now exist or may hereafter be amended.

B. Safety Regulations. Franchisee shall comply with the Federal Occupational Safety and Health Act of 1970 ("OSHA") and all other applicable federal, state, County and city health and safety laws, ordinances, rules and regulations.

C. Guarantee. Franchisee guarantees City that it will provide all services, programs or activities under this Agreement in accordance with all applicable federal, state and local statutes, regulations and requirements. Further, Franchisee agrees to indemnify and defend City for any loss, expense or damage of any type experienced by City as a result of Franchisee's violation of the guarantees given in this section.

3. DUTIES OF THE CITY.

3.1 REVIEW OF FRANCHISEE PERFORMANCE AND COMPLIANCE. City shall be responsible for review of Franchisee performance and compliance. provided that such review shall in no way relieve Franchisee of any supervision, performance, or obligation required by this Agreement.

3.2 INSPECTION OF RECORDS. Upon reasonable advance notice, City shall have the right to inspect and audit the records of Franchisee necessary for the enforcement of this Agreement and the Ordinance granting the Franchise, and verification of the accuracy of franchise fee payments, at any time during normal business hours; provided. however, that City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of Franchisee. Franchisee records subject to such inspection include, but are not limited to, financial records, customer records. accounting records and other reasonable information pertaining to the Franchise.

3.3 EMERGENCY DECLARATION. In recognition that the public health, safety and welfare may be endangered by any failure of the Solid Waste collection, transportation and removal system, the City shall be entitled and have the authority to declare a public emergency, provided collection and transportation shall be interrupted for more than ninety-six (96) hours, and shall have the right to take temporary possession of the facilities and equipment of Franchisee for the purpose of continuing the service which Franchisee has agreed to provide in order to preserve and protect the public health and safety. The City shall notify Franchisee and schedule a hearing

at least twenty-four (24) hours before taking temporary possession of Franchisee's equipment and facilities. The City shall have the right to retain possession of said facilities and equipment until Franchisee can demonstrate to the reasonable satisfaction of the City that Franchisee can resume service. During any period in which the City has temporarily assumed the obligations of Franchisee, the City shall be entitled to all revenue. The City shall pay to Franchisee reasonable rental for the facilities and equipment, and other property used by the City in the performance of the franchise.

3.4 ENFORCEMENT OF DELINQUENT ACCOUNTS. Upon Franchisee's notification to the City of delinquent accounts, the City may take all action necessary to collect such unpaid charges in the manner provided by law or levy a special assessment against the premises for failure to pay charges and delinquency charges fixed by the franchisee, in the same manner provided by law for the foreclosure and collection of other city special assessments.

4. MISCELLANEOUS PROVISIONS.

4.1 INDEPENDENT CONTRACTOR. It is expressly understood and agreed that Franchisee and any of its employees, agents, or approved subcontractors shall perform all work and service described herein as an independent contractor and not as an officer, agent, servant or employee of the City. Franchisee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same. Franchisee shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and approved subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between the City and Franchisee.

4.2 NON-ASSIGNMENT. Franchisee shall not assign, transfer, sublet, convey, or otherwise dispose of this franchise or the rights, title or interest in or to the same or any part thereof without the prior written consent on the City, which consent the City may withhold for any or no reason. There shall be no subcontracting without the express written consent of the City. In the event of an authorized assignment or subcontract, the assignee or subcontractor shall acknowledge in writing its assumption of all appropriate duties hereunder and agree to be bound by the terms hereof.

4.3 SUCCESSORS AND ASSIGNS. All of the terms, covenants and agreements contained herein shall be binding upon and shall inure to the benefit of permitted successors and assigns of the respective parties hereto.

4.4 NOTICES. Notices required or contemplated under this Agreement shall be in writing and shall be deemed received when mailed by certified mail, postage paid, return receipt requested, or express mail, to the respective parties at the following addresses:

CITY:
City Clerk
P.O. Box 2315
Ketchum, ID 83340

FRANCHISEE:
Clear Creek Disposal
P.O. Box 130
Ketchum, ID 83340

Any change of address for either party shall be immediately made known to the other party in writing as above provided.

4.5 ALTERATION OF TERMS. No amendment, alteration, extension, or modification of this Agreement shall be effective unless made in writing and duly executed by the parties.

4.6 SAVINGS AND SEVERABILITY CLAUSE. If any section, paragraph, sentence or provision hereof, or the application thereof to any particular circumstance shall ever be held invalid or unenforceable by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

4.7 IDAHO LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho and ordinances of the City of Ketchum. No term or omission of language in this Agreement shall be construed to amend or waive any provision of the regulations or ordinances of the City of Ketchum. The venue for any claim, litigation, or cause of action between the parties hereto shall be in the Fifth Judicial District of the State of Idaho in and for Blaine County.

4.8 PERFORMANCE. The failure of a party hereto to insist upon strict performance or observation of the Agreement shall not be a waiver of any breach or of any terms or conditions of the Agreement by any other party.

4.9 ATTORNEYS FEES. In the event of litigation relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.

4.10 AUTHORITY TO EXECUTE. Each of the persons executing this Agreement represent and warrant that he has the lawful authority and authorization from their respective entities to execute this Agreement.

4.11 EFFECTIVE DATE. This Agreement shall be in full force and effect upon its execution by all parties hereto.

DATED this _____ day of _____, 2021.

City of Ketchum

Neil Bradshaw, Mayor

ATTEST:

City Clerk

Obras, LLC dba Clear Creek Disposal

, Managing Member

STATE OF IDAHO)
 :ss
County of Blaine)

On this ____ day of _____, 2021, before me, a notary public, personally appeared Mike Goitiandia, know or identified to me to be the Managing Member of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Notary Public for Idaho
My Commission Expires: _____