

ORDINANCE NO. 960

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, GRANTING TO OBRAS, L.L.C., A TEN (10) YEAR NON-EXCLUSIVE FRANCHISE TO COLLECT AND TRANSPORT SOLID RESIDENTIAL WASTE WITHIN THE CITY OF KETCHUM; PROVIDING DEFINITIONS; PROVIDING POWERS OF THE CITY; PROVIDING TERM OF FRANCHISE; REQUIRING A FRANCHISE FEE; PROVIDING OFFICE LOCATION AND COMPLAINT PROCEDURES; PROVIDING FOR ROUTES AND COLLECTION SERVICES; PROVIDING FOR MANDATORY COLLECTION OF RECYCLABLE MATERIALS AND OTHER SOLID WASTE; PROVIDING PERSONNEL AND EQUIPMENT REQUIREMENTS; PROVIDING AN EMERGENCY PROVISION; PROVIDING FOR COMPENSATION; PROVIDING CASH DEPOSIT OR LETTER OF CREDIT REQUIREMENTS; PROVIDING INSURANCE REQUIREMENTS; PROVIDING FOR LIQUIDATED DAMAGES; PROVIDING FRANCHISEE LIABILITY AND INDEMNITY REQUIREMENTS; PROVIDING FOR INSPECTION OF RECORDS; PROVIDING FOR REVOCATION FOR CAUSE; REQUIRING SAFETY REGULATION COMPLIANCE; REQUIRING WRITTEN ACCEPTANCE; RESTRICTING SALE OR ASSIGNMENT OF FRANCHISE; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF CITY OF KETCHUM ORDINANCE NUMBER 960, OBRAS, L.L.C., HAS APPLIED FOR AND SEEKS A FRANCHISE FROM THE CITY OF KETCHUM AUTHORIZING OBRAS, L.L.C. TO COLLECT AND TRANSPORT SOLID RESIDENTIAL WASTE PRODUCED, KEPT AND/OR ACCUMULATED IN THE CITY OF KETCHUM; AND

WHEREAS, THE KETCHUM CITY COUNCIL HAS FOUND AND DETERMINED THAT THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE CITY OF KETCHUM WILL BE PRESERVED AND PROMOTED BY THE GRANTING OF SUCH A FRANCHISE, SUBJECT TO AND IN ACCORDANCE WITH APPLICABLE LAWS AND ORDINANCES;

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

SECTION 1. PURPOSE. The public ways of the City of Ketchum serve a variety of municipal purposes providing for the public health, safety and welfare. Obras, L.L.C. is hereby permitted non-exclusive authority to engage in the business of Solid Residential Waste collection and transportation for hire, over and upon the public ways within the City of Ketchum, Idaho, in a manner and form prescribed by the terms and conditions contained herein.

SECTION 2. DEFINITIONS. For the purpose of this Ordinance and franchise, the following terms, phrases and words shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

(a) Ashes: Ashes is defined as the residue from the burning of wood, coal, coke or other combustible materials.

(b) Garbage: Garbage is defined to include all animal and vegetable refuse from kitchens and other places where food is prepared, all offal from fish, meat and vegetable markets, and all organic substances unfit for food and subject to decay, specifically excluding dead animals.

(c) **Recyclable Materials:** Recyclable Materials are defined as those materials as determined by the operator of the Southern Idaho Solid Waste Transfer Station and segregated from other waste according to the specifications and procedures established by the Southern Idaho Solid Waste Transfer Station.

(d) **Refuse:** Refuse is defined as all putrescible and nonputrescible solid or liquid wastes, except Sewage, whether combustible or noncombustible and whether required to be segregated pursuant to the solid waste disposal regulations of the City's designated landfill, including Garbage and Rubbish.

(e) **Rubbish:** Rubbish is defined to include 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 trimmings, cuttings, weeds and leaves.

(f) **Yard Waste:** Yard waste is defined to include tree trunks, large limbs, tree trimmings shrubs, brush, grass and lawn clippings, weeds and leaves that are properly sacked or bundled. Tree trunks, and large limbs shall not exceed (3) feet in length and (40) pounds in weight per securely bound bundle. Shrubs and brush must be bundled not to exceed three feet in length and not exceed 40 pounds per bundle and be securely tied. Grass and lawn clippings, weeds and leaves must be properly sacked in tear resistant sacks and weight less than 40 pounds per sack.

(g) **Sewage:** Sewage is defined as wastes from residences, commercial or industrial establishments, business buildings and other premises, containing polluted matter subject to treatment at the sewage treatment plant.

(h) **Stable Matter:** Stable matter is defined as all manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

(i) **Bulky Waste:** Bulk Waste is defined as stoves, refrigerators, water tanks, washing machines, furniture and other similar materials, other than construction debris, dead animals and hazardous materials.

(j) **Construction Debris:** Construction Debris is defined as waste building materials resulting from a construction, remodeling, repair or demolition operation, such as, but not limited to, mortar, plaster, scrap lumber and wood shavings.

(k) **Hazardous Materials:** Hazardous Materials are defined as any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State to be "hazardous" as that term is defined by or pursuant to Federal or State law.

(l) **Solid Residential Waste:** Solid waste is defined to include the items as defined in (a) through (e) 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.

(m) **Items excluded from City collection:** The phrase "items excluded from City collection" shall include the defined items set forth in (h) through (k) and dirt or earth debris from construction or lawn renovation, rocks and stones, automobile bodies and parts. 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 negotiate rate and billed by the Franchisee.

(n) Carts: A receptacle, provided by Franchisee, with approximate capacities of (95) gallons, (65) gallons, or (32) gallons, constructed in such a shape as to permit automatic lifting by solid waste collection equipment, and having a tight fitting lid capable of preventing entrance into the container by insects. The weight of a cart and its contents shall not exceed one hundred twenty-seven (127) pounds, (85) pounds, and (40) pounds.

(o) City: The City of Ketchum, Idaho.

(p) Crate: A receptacle, provided by Franchisee, with a capacity of approximately fourteen (14) gallons, constructed in such a shape and of adequate strength as to permit lifting. The purpose of the crate is for segregation of recyclable materials from other solid waste for collection.

(q) Residential Franchise: The authorization provided by this Ordinance, which authorizes the Franchisee to engage in the business of Solid Residential Waste collection and transportation for hire over and upon the public ways within the City.

(r) Franchisee: Obras L.L.C., the person to whom a franchise, as hereinabove defined, is granted by the City Council under this Ordinance, and the lawful agent, successor, transferee or assignee of said person, subject to such conditions as may be prescribed by the City.

(s) Person: Any individual, firm, partnership, corporation, organization, association or other legal entity.

(t) Public Way: The surface of, and the space above, any public street, avenue, highway, freeway, bridge, alley, court, boulevard, parkway, way, lane, drive, circle or other public rights-of-way.

(u) Resident or Owner: Every person, including lessees and occupants, in possession, charge custody or control of any Residential Unit, where solid waste is created or accumulated.

(v) Residential Unit: Residential Unit is defined as all single family, duplexes, triplexes, and rooming houses or apartments occupied by a person or group of persons comprising not more than three families within the corporate limits of the City. A residential unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether single or multi-level construction, 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 condominium association and the Franchisee. Each separate rental unit, in the case of a multi-family dwelling shall be considered as a residential unit and billed separately.

SECTION 3. GRANT OF NON-EXCLUSIVE FRANCHISE.

(a) There is hereby granted to Obras, L.L.C., an Idaho limited liability company, a ten (10) year non-exclusive franchise to engage in the business of Solid Residential Waste collection and transportation for hire, over and upon the public ways within the present and future corporate limits of the City of Ketchum, Idaho, for the residents of the City of Ketchum.

(b) The franchise granted pursuant to this Ordinance shall be non-exclusive and shall not preclude the City from granting other or further franchises or permits or 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.

SECTION 4. POWERS OF THE CITY: The exercise of privileges herein granted shall be subject at all times to all of the powers of the City and all regulatory ordinances and resolutions adopted pursuant thereto. Provided however, the City retains the right to modify this agreement to include any provision granted by Franchisee to another jurisdiction in Idaho, that is deemed by the City to be of public benefit. The City agrees to allow the Franchisee to amend the rate structure for all supported costs related to the requested provision.

SECTION 5. TERM OF FRANCHISE: The Franchise herein and hereby made to said Franchisee is granted for, and limited in time to, a period of ten (10) years from October 1, 2005 through and including September 30, 2015.

SECTION 6. FRANCHISE FEE. As compensation for the non-exclusive franchise to engage in the business of solid waste collection and transportation for hire, over and upon the public way within the City, Franchisee shall pay City a fee of 6% of the collected charges. In addition to the 6% fee, the Franchisee shall assist the City in the waste removal for Wagon Days and the Christmas tree program free of charge.

SECTION 7. OFFICE LOCATION AND COMPLAINT PROCEDURES.

(a) Franchisee to establish office: Franchisee shall be required to maintain its main office within the fifteen (15) miles of the Ketchum City limits 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 said 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, within twenty-four (24) hours; and no later, after notice, demand or request, any and all Solid Residential 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 amounts of Solid Residential Waste, which will be collected, complaint procedures, rates, regulations, and days of collection.

SECTION 8. ROUTES AND COLLECTION SERVICES.

(a) Routes and times of collection. Franchisee shall conduct a City-wide collection of Solid Residential 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. 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 that the City annexes additional areas during the term of the franchise, Franchisee's right to collect Solid Residential 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 which 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 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 Franchisee.

SECTION 9. COLLECTION.

(a) Mandatory collection. No property owner of a Residential Unit as defined in 2(v) 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. Should the City select more than one Franchisee, the City shall establish districts for each Franchisee. Existing Franchisee's shall be given a minimum of one year of operations after the effective date of the new Residential Franchise to properly plan and dispose of unneeded equipment and personnel. Selected Franchisees shall collect all Solid Residential Waste, including Recyclable Materials, from a Residential Unit within their assigned district as follows:

(i) All Recyclable Materials as defined in Section 2(c) that are properly segregated from other solid waste according to the specifications and procedures established by the Southern Idaho Solid Waste Transfer Station. Franchisee shall transport all such segregated recyclable materials to the Blaine County recycling center to facilitate the reprocessing of said materials into consumer materials.

(ii) All other Solid Residential Waste shall be placed in Carts and Yard Waste shall be transferred to the Blaine County Landfill or other City approved location.

(iii) 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 Material, 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.

(b) Items Excluded from City Collections: Franchisee shall collect and transport all excluded items from City collection for Residential Units within the City where such Residential Units choose to use the Franchisee, provided such Items Excluded from City Collections are 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.

SECTION 10. PERSONNEL AND EQUIPMENT:

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

(b) Scope of equipment. Franchisee shall provide sufficient serviceable and well maintained vehicles, equipment and devices 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 Residential Waste under the conditions as defined herein.

(c) Quantity of equipment. 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, thereby requiring a change in the quantity of equipment to be provided by Franchisee.

(d) Type of collection vehicles and safety devices. All collection equipment shall incorporate noise control features throughout the entire unit. All equipment used by Franchisee for the collection and transporting of the Solid Residential Waste shall be of the "compactor" truck type and shall be so constructed and maintained as to prevent leakage, spillage, or overflow. Trucks shall not be loaded in excess of the manufacturer's recommendations. All trucks and equipment shall be clearly identified by the firm name and local telephone number affixed thereto. Collection trucks shall be equipped with such safety devices and warning lights as shall be required by State law.

(e) Age/condition of collection equipment. Throughout the term of the franchise, 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 and used only as a stand-by unit for emergencies caused by breakdowns or unforeseen additional solid waste.

(f) 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 directed by the City Council.

(g) 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, a 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.

(h) Inspection and sanitation requirements. Franchisee shall annually provide City with a certification of inspection of Franchisee's collection vehicles and said vehicles compliance with the standards set forth in § 396.17 of the Code of Federal Regulations and Appendix G thereof, as said standards may be amended. In addition, Franchisee's collection vehicles shall be operated in full compliance with the Idaho Vehicle Code. Vehicles shall be thoroughly washed and disinfected inside the collection body weekly and the outside of each vehicle shall be cleaned and washed weekly.

(i) Container service. Franchisee shall have approved crates, carts and detachable or stationary compactor containers available for Residential 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.

SECTION 11. EMERGENCY PROVISION. In recognition that the public health, safety and welfare may be endangered by any failure of the Solid Residential 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.

SECTION 12. COMPENSATION. Franchisee shall establish monthly rates for collection and transportation of Solid Residential Waste. 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 said rates are ever increased, said Franchisee shall so file the new rates with the City Clerk thirty (30) days previous to the effective date of increase. The City has the right to request Franchisee to review the reasonableness of said rates and shall approve or disapprove said increase based upon the above standard of fair profit to Franchisee.

Charges for collection and transportation of Solid Residential Waste, including recyclable materials, for all Residential Units shall be billed by the City and carried on the quarterly City utility bill and the same shall be paid to the City with the water and sewer bills. If any portion of the water, sewer, and solid waste bill is not paid when due, said charges shall become delinquent and in addition to the amount due, a delinquency charge of ten percent (10%) of the outstanding amount shall be assessed. All delinquent charges of fees not paid within thirty (30) days of the date when first due shall be imposed as a lien against and upon the property or premises against which such charge or fee is levied or assessed, and the City Clerk shall, at the time of certifying the City taxes, certify such delinquencies together with all penalties to the Tax Collector of Blaine County, and will be collectable as other taxes. In addition to the above, the City shall disconnect the municipal water service line where such property or premises is served by municipal water and such valve shall not be opened or placed back into service until all delinquent charges and fees have been paid in full. Prior to termination of municipal water service, the owner shall be given the opportunity to have a due process hearing before the City Council. All delinquency and penalty charges shall become the property of the City to cover the cost of collection and filing.

The City shall turn over to Franchisee the amount received for Solid Residential Waste collection and transportation applicable to Solid Residential Waste collection and transportation, except for the 6% franchisee fee. The amounts collected by the City for Solid Residential Waste collection service, excepting the franchise fee of 6%, are to be turned over to Franchisee at the end of each month for moneys collected from customers during that month. The City is responsible to initiate discontinuation of municipal water service where applicable and to place liens on property of delinquent customers, but the City is not obligated to reimburse Franchisee for delinquent accounts until the City has received payment from the delinquent customer.

The City shall charge the Franchisee a billing fee of seventy-five cents (\$.75) per quarterly for each Residential Unit to cover the cost of the City billing. This fee shall be charged and billed to the Franchisee at each City billing. Franchisee shall remit such billing within 10 days of receipt.

Charges for collection of excluded items billed to Residential Units shall be billed by the Franchisee and 6% of such charges shall be remitted to the City. The Franchise fee shall be remitted to the City within 15 days of month end in which the charges are billed.

SECTION 13. CASH DEPOSIT OR LETTER OF CREDIT. Franchisee shall deliver cash, or a letter of credit from a sound financial institution in favor of the City in a form approved by the City Council, or a combination of both cash and a letter of credit, in the amount of Seventy Five Thousand Dollars (\$75,000), conditioned upon the premises that such Franchisee shall observe and faithfully perform the conditions and provisions of this Ordinance and the franchise. Any cash amount received by the City shall be placed in an interest-bearing account, whereupon, conditioned upon faithful performance of this Ordinance and the terms of the franchise, the principal and interest shall be delivered to Franchisee upon the end of the term of the franchise.

SECTION 14. INSURANCE REQUIREMENTS.

(a) Insurance requirements. Throughout the term of the franchise, Franchisee shall maintain public liability insurance in the amount of one million dollars (\$1,000,000) per person, and one million dollars (\$1,000,000) per accident. In addition, Franchisee shall maintain public liability insurance for property damage in the amount of one million dollars (\$1,000,000). The City shall be named as an additional insured. Each policy shall contain an endorsement stating that said policy shall not be altered or canceled by the insurance company or Franchisee without thirty days (30) written notice of such intended alteration or cancellation to the City

(b) All operations. The insurance requirements stated in Subsection 14(a) shall cover all services provided by Franchisee including, but not limited to all solid waste collection and trash receptacle emptying and maintenance.

(c) Workers' compensation. Franchisee shall certify that it is aware of the provisions of the Labor Code 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 that Code, and Franchisee will comply with such provisions before commencing the performance of collection and transportation services.

SECTION 15. 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 Ordinance, the City may assess the following liquidated damages:

(a) 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 by Section 10 herein entitled "Emergency Provision", liquidated damages may be assessed by the City in the amount of one thousand dollars (\$1,000) per day.

(b) For each complaint of failure to make collection from Complainant's container in accordance with the prescribed schedule of "collections", when correction of such complaint is not made within twenty-four (24) hours, the City shall withhold from money due Franchisee the sum of ten dollars (\$10) per service. Complaints of this nature will be referred in writing to Franchisee, who shall remedy the faulty condition within twenty-four (24) hours after receipt of such notice.

SECTION 16. FRANCHISEE LIABILITY-INDEMNIFICATION. It is expressly understood and agreed by and between the Franchisee and the City that the 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 the Franchisee in operation or maintenance of Franchisee's property or its collection and transportation of Solid Residential Waste service or any other actions of Franchisee in the City. The 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 the 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.

SECTION 17. INSPECTION OF RECORDS. Upon reasonable advance notice, the City shall have the right to inspect and audit the records of Franchisee necessary for the enforcement of the franchise and verification of the accuracy of franchise fee payments at any time during normal business hours, provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of Franchisee. Such documents shall include, but are not limited to, financial records, customer records, accounting records, and other reasonable information pertaining to the franchise.

SECTION 18. REVOCATION FOR CAUSE.

(a) 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 days (30) 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) If such default continues beyond the applicable dates agreed to for such cure, the City shall give Franchisee written notice that all rights conferred under this Ordinance and the franchise may be revoked or terminated by the 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 any 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.

SECTION 19. SAFETY REGULATION COMPLIANCE. Franchisee shall comply with and conform to all safety regulations promulgated by the United States, State of Idaho or City of Ketchum, or any regulatory body having jurisdiction thereof.

SECTION 20. WRITTEN ACCEPTANCE. Franchisee shall within five (5) days after the passage and publication of this Ordinance, file with the City Clerk its acceptance of this franchise in writing signed by its proper officers and attested by its corporate seal, together with the certificates of insurance required by Section 14, herein.

SECTION 21. SALE OR ASSIGNMENT OF FRANCHISE. This franchise shall not be sold, assigned or otherwise alienated without the express consent of the City, and no dealings with an assignee on the part of the City to require the performance of any act or payment of any compensation by the assignee shall be deemed to operate as such consent.

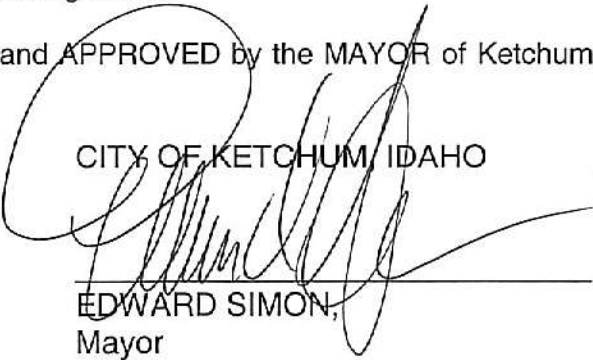
Section 22. Publication Costs. Franchisee shall assume the cost of legal publication of this franchise, since such publication is required by law.

SECTION 23. 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.

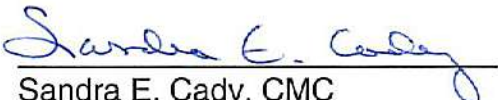
SECTION 24. REPEALER CLAUSE. All ordinances of the City or parts thereof, which are in conflict with this ordinance, are hereby repealed.

SECTION 25. EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

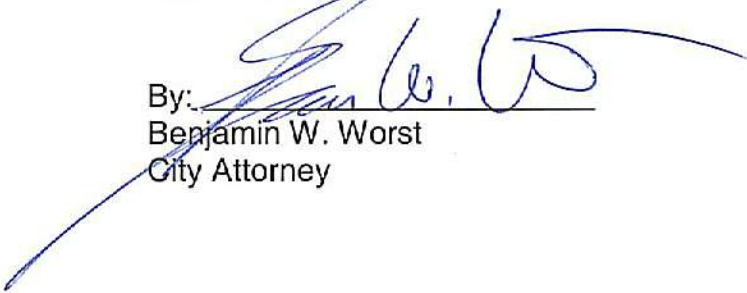
PASSED by the CITY COUNCIL and APPROVED by the MAYOR of Ketchum, Idaho on this 26th day of August, 2005.

CITY OF KETCHUM, IDAHO

EDWARD SIMON,
Mayor

ATTEST:


Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:

By: 
Benjamin W. Worst
City Attorney

Publish: Idaho Mountain Express
August 3, 2005
August 31, 2005





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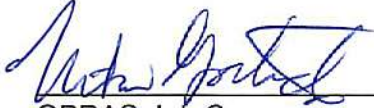


ACCEPTANCE

OBRAS, L.L.C. as Franchisee accepts the franchise set forth in the above Ordinance and agrees to abide by the terms and conditions thereof.

DATED this 26th day of August 2005.

FRANCHISEE:




OBRAS, L.L.C.
By: Mike Goitandia, its Managing Member

State of Idaho)
) ss.
County of Blaine)

On this 26th day of August, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared MIKE GOITANDIA, known to me or proved to me upon satisfactory evidence to be the Managing Member of Obras, L.L.C. an Idaho limited liability company, and whose name he subscribed to the within instrument in his capacity as the Managing Member of Obras, L.L.C., and acknowledged to me that he executed the same.

WITNESS my hand and official seal.




Notary Public for Idaho
Residing at Ketchum, ID.
Commission expires 3-27-09

