

INSTRUCTIONS

This application for WASTE HAULER PERMIT form must be completed and submitted to the City Clerk's office. Incomplete applications will not be processed. Applications for new Waste Hauler Permits are accepted any time during the year. Only applications bearing live signatures will be processed: faxed or e-mailed applications will not be accepted. In addition to this Application form, the following items must be submitted to be considered for a Waste Hauler Permit.

1. A signed copy of "Non-exclusive ("Open") Franchise Agreement"
2. Evidence of Insurance for the current Permit year for each waste hauling vehicle
3. Copy of the Waste Services license should be enclosed with the application. Pro-rated fees are not authorized.
4. Fees totaling \$2,500.00 per the "Non-exclusive ("Open") Franchise Agreement" (\$1,500.00 annual processing fee plus \$1,000.00 annual Community Clean-up fee).
5. Proof of insurance as outlined in Section 7.01 of Non-Exclusive Franchise Agreement
6. Agreement with landfill and /or transfer station
7. Proof of Worker's Compensation Insurance as outlined in section 7.01 of the Non-Exclusive Franchise Agreement.

**NON-EXCLUSIVE ("OPEN") FRANCHISE AGREEMENT BETWEEN
THE CITY OF FERNLEY
AND**

This Agreement, made and entered into this _____ day of _____, 2008, by and between the CITY OF FERNLEY, a political subdivision of the State of Nevada, (hereinafter referred to as "City") and _____, (hereinafter referred to as "Franchisee").

WITNESSETH:

WHEREAS, NRS 268.083 authorizes a City to adopt a regulatory scheme for providing waste collection and disposal services within the boundaries of a City through issuance of a franchise;

WHEREAS, Franchisee has represented and warranted to City that it has the experience, responsibility, and qualifications to provide for the collection and safe transport to permanent disposal facilities of solid waste generated by the commercial and industrial businesses within the City;

WHEREAS, City desires to have an open franchise system for solid waste collection for commercial entities;

WHEREAS, City and Franchisee have agreed to enter into a franchise agreement and wish to set out the terms and conditions of that agreement in writing.

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained and for other valuable consideration, the receipt of which is hereby specifically acknowledged, the parties hereto do agree as follows:

1 – DEFINITIONS

As used in this Franchise Agreement, the following definitions apply:

1.01 Effective Date. The effective date of a non-exclusive franchise agreement shall be the date upon approval by City Council and proper execution of the non-exclusive franchise agreement by both parties.

1.02 Solid Waste All putrescible and nonputrescible materials in solid or semisolid form that have been discarded or abandoned by their owner, including domestic or household waste resulting from the ordinary domestic use or occupation of a house, flat, apartment, unit, boarding house, hostel or guesthouse; garbage, rubbish such as paper, cardboard, automobiles, cans, wood, glass, bedding, crockery and similar materials, junk vehicles and parts, ashes or incinerator residue, street refuse, dead animals, construction or demolition waste, commercial or industrial waste, garbage, sewage waste, commingled recyclables and other refuse which includes discarded materials

that have no useful physical, chemical or biological properties after serving their original purpose and that cannot be reused or recycled for the same or other purposes. The term "solid waste" does not include hazardous waste.

1.03 Garbage. The term "garbage" means:

Putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking, and sale and serving of food and beverage.

This includes, but is not limited to:

1. Offal, swill, kitchen and table waste, and other organic animal and vegetable waste;
2. Bottles, cans, cups, plates, utensils, containers, and/or covering of any construction or material that has been in intimate contact with food, confection and/or beverage; and
3. Any component used in the preparation or manufacture of matter intended for animal or human consumption, and;
4. Such matter and/or materials listed in (1) through (3) above that have been discarded without first being sanitized.
5. Infectious Waste as defined by the Nevada State Health Division.

The mixing, addition, or commingling of garbage with rubbish, trash, or other waste matter renders the entire resulting mixture as garbage and requires the mixture to be handled as garbage.

1.04 Residential Solid Waste. The term "residential solid waste" means solid waste produced by residents owning or having control over a single family dwelling.

1.05 Putrescible Waste. The term "putrescible" means wastes that are capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors, gasses and similar objectionable conditions. Food wastes, offal, and dead animals are examples of putrescible waste.

1.06 Refuse. The term "refuse" refers generally to all forms of discarded solid waste, including garbage, rubbish and waste matter.

1.07 Recyclable Material has the meaning ascribed to it in NRS 444A.013 and means solid waste that can be processed and returned to the economic mainstream in the form of raw materials or products, as determined by regulations adopted by the Nevada State Environmental Commission and the Nevada State Division of Health.

1.08 Franchisee as used in this agreement, any person who has contracted with the City for collection, transportation and disposal of solid waste.

1.09 Permittee. The same as Franchisee.

1.10 Transfer Station: A collection site where solid waste and recyclables may be taken by persons and deposited into designated containers as provided for in this

Chapter.

1.11 Hazardous Waste. The term “hazardous waste” means any waste or combination of wastes, including solids, semisolids, liquids or contained gases which:

(A) Because of its quantity or concentration or its physical, chemical or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness; or

(2) Pose a substantial hazard or potential hazard to human health, public safety or the environment when it is given improper treatment, storage, transportation, disposal or other management;

(B) Is identified as hazardous waste by the Nevada Department of Conservation and Natural Resources as a result of studies undertaken for the purpose of identifying hazardous wastes; and

(C) Includes, among other wastes, toxins, corrosives, flammable materials, irritants, strong sensitizers and materials which generate pressure by decomposition, heat or otherwise.

1.12 Single Family Dwelling. The term “single family dwelling” means a building or dwelling designed and used for single family occupancy and where no business is conducted (other than a licensed home occupation business) and includes single-family residences, multiple dwelling buildings consisting of four units or less, including but not limited to, duplexes, apartments, condominiums, cooperatives, mobile homes, trailer parks and any other multiple residential dwelling consisting of four units or less located on a property within the City of Fernley.

1.13 City of Fernley or City. The term “City of Fernley” or “City” refers to the incorporated boundaries of the City of Fernley, County of Lyon, State of Nevada as may be modified.

2 - GRANT OF OPEN SOLID WASTE FRANCHISE

2.01 Grant of Open Solid Waste Franchise. Subject to the terms of this Agreement, the City does hereby grant to Franchisee, and Franchisee does hereby accept, the duty, right and privilege of collecting, removing, transporting and disposing or otherwise handling solid waste from non-single family dwelling establishments within the City, including any area hereinafter annexed by the City.

2.02 Exclusivity. This open solid waste franchise is not exclusive in nature, and is open to an entity who qualifies under the terms of this agreement and City Code.

2.03 Enforcement of Open Solid Waste Franchise. All non-single family dwelling establishments shall be required by the City to utilize the collection solid waste services of a licensed and permitted Franchisee.

2.04 Term. This non-exclusive franchise shall commence upon the effective date

hereof, and continue in full force and effect for a period of one year.

2.05 Title to Solid Waste Stream. The title to the solid waste stream and the property rights associated therewith for the collection and disposal solid waste under this Agreement shall be the sole property of Franchisee. For purposes of this Agreement, the transfer of title occurs at the time that the waste is deposited by the customer in container(s) and left at the collection point for collection by Franchisee.

3 - OBLIGATIONS OF FRANCHISE HOLDER

3.01 Equipment. Franchisee shall at its cost and expense, furnish a sufficient number of trucks and other equipment, including all drivers and workers required for the service, operation, and maintenance of said trucks and other equipment for the purposes of providing for the services contracted for, unless otherwise provided for, and satisfactory solid waste collection and disposal service in the areas covered hereby.

3.02 Sanitary Operation. Franchisee shall at all times exercise diligence in the supervision of its personnel to the end that care is taken to deposit all solid waste inside collection vehicles, leaving no garbage or other waste matter upon any street, alley, walkway or other public place within the City, or upon any private property used for the collection of garbage and other waste matter. Collection vehicles shall be safe, adequate and clean, constructed in such a manner to be covered so as to prevent the spilling, dripping or blowing of any contents from the vehicle. Franchisee's collection equipment shall be modern, up-to-date, maintained in good repair, and reasonably water tight. The exterior of the equipment shall be kept clean, presentable and cleaned of any debris and/or litter after dumping.

3.03 Public Relations and Customer Service. The City and Franchisee acknowledge and agree that the Franchisee shall at all times in the performance of its duties and responsibilities under this Agreement, maintain good relations with the public and shall promptly respond to customer issues.

3.04 Approved Landfill and/or Transfer Station. Franchisee shall be required to deposit all solid waste collected pursuant to this Franchise Agreement at an approved landfill site and/or transfer station. For purposes of this Franchise Agreement, an approved landfill site is one holding a valid permit to permanently deposit municipal solid waste in accordance with all applicable laws and regulations of the United States and/or the State of Nevada, including the Nevada Environmental Commission and the Nevada State Health Division.

It shall be the sole responsibility of Franchisee to provide for the permanent deposit of non-single family dwelling waste collected pursuant to this Agreement, in accordance with all applicable Federal, State and Local laws and regulations. Franchisee shall comply with this requirement by operating its own landfill or by entering into an agreement with the operator of a landfill and/ or transfer station that meets the requirements of this Agreement. As part of this contract, Franchisee shall submit to the

City a request for approval of the selected landfill or landfills and/or transfer station to be utilized by Franchisee prior to utilizing the landfill(s) and/or transfer station during the term of this Agreement. City shall approve such request in a timely manner and shall not unreasonably withhold their approval.

3.05 General.

(A) Each permittee shall:

1. Provide waste receptacles or bins of sufficient capacity and quantity so as to contain all refuse generated by an account;
2. Be responsible for the collection and disposal of overflow refuse around receptacles. Following the collection of refuse or the emptying of waste receptacles, the area where the refuse was placed for collection shall be left free of refuse, litter, liquid waste and other debris;
3. Provide bulky item collection service for each account. The permittee is responsible for the removal and proper disposal of all bulky items placed for collection for each account it services. The permittees shall remove such items within forty-eight hours of servicing an account or receiving a request for collection from the account or from the City. Each permittee shall maintain a log of such requests for bulky item collection and make such log available for inspection by the City.
4. Pay an annual application processing fee of \$1500.00.
5. Pay an annual Community Clean-up fee of \$1000.00 (One thousand dollars) for the cleanup of abandoned or dumped waste or for use by the City for abatement procedures.

(B) All permittees providing solid waste collection services shall comply with the American with Disabilities Act (42 U.S.C. 12101 et seq.) as it may be amended from time to time.

(C) Nothing in this section shall excuse compliance with any other Municipal Code section nor any other applicable law or regulation.

4 - FRANCHISE FEE

4.01 Franchise Fee. Franchisee, its successors and assigns, shall pay to City, in quarterly installments on the 15th of the month following each calendar quarter during the term hereof, in an amount equal to eight (8%) percent of the "gross revenues" collected by Franchisee under this Agreement. If a franchise fee is received by the City after the due date, a late fee of ten percent per month of the delinquent amount will be assessed to the Franchisee.

4.02 Definition of "Gross Revenue". The term "gross revenue" as used in this Agreement includes all money, cash, receipts, property, or other things of value collected by Franchisee from both non single family dwelling and commercial customers who use the service of Franchisee under this Agreement.

4.03 Record Keeping. During the life of this Agreement, Franchisee shall keep full, true, and correct books, records, and accounts, establishing the identity and number of customers served by it, and the amount of its gross monthly revenues which said books, records, and accounts shall at all times be open to inspection by the duly authorized representatives of City during regular business hours. Further, Franchisee shall furnish to City monthly a statement of all of its gross revenues attested as being correct by a representative of Franchisee duly authorized to do so.

4.04 Audit Requirement. Franchisee shall be required to submit to certain "agreed upon procedures" performed by City staff or a qualified independent person or firm to verify gross revenues as defined in this Agreement and the associated franchise fees payable or paid to the City. The verification and review to be conducted shall be limited to an analysis of Franchisee's revenue and shall not include any analysis or review of Franchisee's expenses or costs associated with performance under the terms of this Agreement. The Franchisee shall reimburse the City for the cost of conducting the agreed upon procedures in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7500.00). The City will not require the agreed upon procedures more often than every three (3) calendar years, with the procedure generally covering a three (3) year period. Following completion of the agreed upon procedures, the Franchisee will be provided a copy of the report of the procedures performed, the results and summary of amount due to City or to be refunded to Franchisee. Franchisee shall have thirty (30) days following receipt of the report to appeal the results of the report to the City Council. Following expiration of any appeal period, either the Franchisee shall remit amounts due the City or the City shall process a refund of franchise fees, depending upon the results of the agreed upon procedures report.

City shall have the right, at any time, to audit and otherwise review any Franchisee's records with regard to Franchisee's revenues generated from activities conducted pursuant to this Agreement.

5 - WASTE COLLECTION RATES AND PROCEDURES

5.01 Establishing Rates for Collection. The rates for collection shall be established between Franchisee and the customer.

6 - INDEMNITY AND HOLD HARMLESS AGREEMENT

6.01 General Indemnity. Franchisee, its assigns or successors, shall protect, indemnify, defend, and hold harmless the City, its officers, officials, employees, and agents from and against any and all claims for damages, liability, loss, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with to the extent caused by, or arising from or in connection with the breach of any representations, covenants or warranties of the Franchisee set forth in this Agreement, or any negligent actions or omissions or willful misconduct of the Franchisee, except for any such loss or damage to the extent caused by the sole negligence or willful misconduct of the City, its officers, officials, employees and agents.

6.02 Environmental Indemnity. Further, Franchisee shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all claims for actual damage, natural resources damages, remediation and removal costs, and losses of every kind and description, arising out of or resulting from any cleanup, removal, remedial, or other plan, concerning the release of any hazardous substance or hazardous waste, as hazardous substance and hazardous waste shall be defined by state and federal laws, as amended from time to time. This indemnity shall not apply with respect to any hazardous waste or hazardous substance generated by the City or its residents or business and delivered by City to Franchisee. The foregoing indemnity is for the exclusive benefit of the City and parties indemnified, and in no event shall such indemnity inure to the benefit of any third party.

6.03 Notice. Franchisee shall have no obligation to indemnify or defend hereunder unless the City provides written notice to Franchisee upon the City being served a written complaint giving rise to Franchisee's obligation to indemnify hereunder within fifteen (15) days or within ninety (90) days if the City files an answer in response to the Complaint.

7 - LIABILITY INSURANCE

7.01 Coverage. Franchisee shall guarantee that in the exercise of duties under the franchise, every reasonable and proper precaution to avoid damage or injury to persons or property shall be used and that the franchisee shall at all times and under all circumstances indemnify and hold harmless the City of Fernley, the Fernley City Council, the Mayor, and the employees of the City for any and all liability from each and all such damage, injury, loss or expenses caused or occasioned by reason of any act, or failure to act of the Franchisee, its officers, agents, and employees. The Franchisee further agrees that if the City is sued by any person or business of any kind to recover damages for injury to any person or property on account of actions during performance of duties under the franchise, the Franchisee, its successors and assigns, shall defend all such suits and pay all judgments courts may enter in such suits.

Franchisee shall be required to provide and maintain in full force and effect Commercial General (and Auto) Liability Insurance on an occurrence form, with insurers licensed in the State of Nevada with a current A.M. Best rating of no less than A: VII.

Limits of liability shall be at least \$1,000,000 combined single limit per occurrence and \$2,000,000.00 aggregate.

Any deductibles and self-insured retentions over \$5,000 must be approved by the City.

The City, its officers, employees, agents, and volunteers shall be named as additional insured. The Franchisee's insurance shall be primary as respects the City as it relates to the performance of this agreement. Failure to comply with reporting or other provisions of the policy shall not affect coverage provided to the City. Coverage shall

apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability; and shall be endorsed to state that coverage will not be voided, suspended, cancelled or reduced except after 30 days prior written notice, certified mail, return receipt requested has been given to the City. Franchisee shall furnish the City with certificates and original endorsements effecting coverage required by this clause. Endorsements must be signed by a person authorized by that insurer to bind coverage on its behalf.

Pursuant to NRS Chapters 616A through 616D, Franchisee shall provide Workers' Compensation insurance to statutory limits and employer's liability of at least \$1,000,000.

8 - DEFAULT; FORCE MAJEURE; CHANGE IN LAW

8.01 Default. In the event of any material failure or refusal of Franchisee to comply with any obligation or duty imposed on Franchisee under this Agreement, the parties shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. In the event the parties are unable to agree, and the City may declare an event of default hereunder; and in the event of such default Franchisee shall cure such default within 30 days after receipt of written notice of such default, breach or deficiency from the City.

(A) Grounds for default or revocation of a permit shall include, but are not limited to, the following:

1. Failure to comply with any of the provisions of this Agreement;
2. Failure to pay in a timely manner any fees imposed by the City;
3. Intentional misstatement of tonnage and origins of refuse collected or transported;
4. Violation of local, State or Federal law in any way related to the collection, transportation or disposal of any waste.

9 - MISCELLANEOUS PROVISIONS

9.01 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective successors and permitted assigns.

9.02 Independent Contractor. Franchisee is an independent contractor and shall not be deemed an employee of the City.

9.03 Additional Fees. Franchisee shall pay, in the same manner as any other business, a City business license, real and personal property taxes, building permit fees, and other such fees.

9.04 Amendment. This Agreement, including any term or provision hereof, may be amended only by an instrument in writing and signed by the parties hereto.

9.05 Saving Clause and Entirety. If any non-material provision of this Franchise

Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

9.06 Notices. All notices required or permitted to be given under this Franchise Agreement shall be in writing and shall be personally delivered or sent by telecopier or US certified mail, postage prepaid, return receipt requested, addressed as follows:

To Franchisee:

To City:
City Manager
City of Fernley
595 Silver Lace Blvd.
Fernley, NV 89408

Or to such other address as either party may from time to time designate by notice to the other given in accordance with this paragraph. Notice shall be deemed effective on the date personally served or sent by telecopier or, if mailed, three (3) business days from the date such notice is deposited in the US mail.

In Witness Whereof, he parties have executed this Agreement effective the day and year first above written.

CITY OF FERNLEY,
a Political Subdivision
of the State of Nevada
By: _____
Todd Cutler, Mayor, City of Fernley

FRANCHISEE,
By: _____
Title: _____

ATTEST:
By: _____
Lena Shumway, Fernley City Clerk