

**FIRST AMENDED AND RESTATED  
EXCLUSIVE SINGLE FAMILY DWELLING WASTE FRANCHISE AGREEMENT  
BETWEEN  
THE CITY OF FERNLEY  
AND  
TRASHPROS, LLC**

This First Amended and Restated Exclusive Single Family Dwelling Waste Franchise Agreement, made and entered into this 5<sup>th</sup> day of August, 2009, by and between the CITY OF FERNLEY, a political subdivision of the State of Nevada, (hereinafter referred to as "City") and TRASHPROS, LLC, a Nevada limited liability company, (hereinafter referred to as "Franchisee").

**WITNESSETH:**

**WHEREAS**, NRS 268.081 authorizes a City to displace or limit competition in the area of collection and disposal of garbage and other waste; and

**WHEREAS**, NRS 268.083 authorizes a City to grant an exclusive franchise to any person to provide garbage and waste collection and disposal services within the boundaries of a City;

**WHEREAS**, Franchisee has represented and warranted to City that it has the experience, responsibility, and qualifications to provide residents in the City, the collection and safe transport to permanent disposal facilities of Single Family Dwelling waste generated by the residents of the City;

**WHEREAS**, City declares its intention of maintaining reasonable rates for reliable, proven collection, transportation and disposal of garbage and recyclable material within the City;

**WHEREAS**, City's existing exclusive franchise agreement for the operation of a garbage and refuse collection and disposal service terminates on January 3, 2009;

**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;

**WHEREAS**, City and Franchisee previously entered into an Exclusive Single Family Dwelling Waste Franchise Agreement on the 3<sup>rd</sup> day of December, 2008, and effective on the 4<sup>th</sup> day of January, 2009 (hereinafter referred to as "Agreement"); and

**WHEREAS**, City and Franchisee desire to amend and restate the Agreement.

**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, and pursuant to ARTICLE 11.04, AMENDMENT of the

Agreement, it is agreed that the aforesaid Agreement, dated on the 3<sup>rd</sup> day of December, 2008, and effective on the 4<sup>th</sup> day of January, 2009, is hereby amended and restated as follows:

## 1 – DEFINITIONS

As used in this Agreement, the following definitions apply:

**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, source separated 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 Single Family Dwelling Waste.** The term "single family dwelling waste" means waste produced by residents owning or having control over a single family dwelling located on a property within the City of Fernley.

**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 is Trashpros, LLC., which is the entity awarded an exclusive single family dwelling waste franchise according to the terms of this agreement.

**1.09 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.

**1.10 Single Family Dwelling.** The term "single family dwelling" means a building or dwelling designed or used for single-family occupancy and where no business is conducted (other than a licensed home occupation business), and includes a mobile home, modular home, and multi-unit attached occupancies consisting of four units or less which includes, but is not limited to, duplexes, apartments, condominiums, or other attached occupancies consisting of four units or less.

**1.11 Customer.** The term "customer" means the occupant or owner of a single family dwelling unit that is paying the invoices for services and is current on their account. Franchisee, at its discretion, may invoice for its services either the occupant and/or owner of a dwelling; however regardless of who is invoiced as the "customer," the owner of the real property for which service is provided is ultimately responsible for the service provided.

**1.12 Senior Resident.** "Senior Resident" means any resident and customer 62 years of age or older as documented by a governmental identification.

**1.13 Holidays.** Franchisee shall not be required to collect single family dwelling customers on the following holidays; New Years Day, Independence Day, Thanksgiving and Christmas. Collection shall occur the following day, for the entire week following the holiday.

**1.14 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.

**1.15 Multiple Family Dwelling.** The term "Multiple Family Dwelling" refers any premises on which there are five or more attached dwelling units which are grouped together under the management of one person and which do not require separate individual collection of solid waste.

## **2 - GRANT OF EXCLUSIVE GARBAGE FRANCHISE**

**2.01 Grant of Exclusive Franchise.** Subject to the terms of this Agreement, the City does hereby grant to Franchisee, and Franchisee does hereby accept, the exclusive duty, right and privilege of collecting, removing, transporting and disposing or otherwise handling all single family dwelling waste, generated, deposited and accumulated from single family dwelling establishments within the City, including any area hereinafter annexed by the City.

The term "exclusive" as used herein means that the City has exercised its authority under NRS 268.081 to displace and limit all competition so that Franchisee shall be the sole provider of collection, transport and disposal services for single family dwelling waste under this Agreement and under City ordinances as may be adopted in the future.

Except as provided in section 2.02 below, all single family dwelling activities within the City shall be required to utilize the collection container services provided by Franchisee for the collection and disposal of garbage.

**2.02 Exclusivity.** This franchise is exclusive in nature, and neither the City nor its residents shall make or enter into any other agreement or arrangement for the collection, transport, removal, or disposal of single family dwelling waste from within said City boundaries during the term of this Agreement.

**2.03 Enforcement of Exclusivity of Franchise.** All single family dwellings located on two (2) acres or less in the City shall be required by City to utilize the collection and container services of Franchisee provided for herein.

- A. To the extent permitted by law, the City and/or Franchisee shall prohibit any person from providing the same or similar service for the collection, hauling and disposing of single family dwelling waste within the City that is in violation of the terms of this exclusive franchise Agreement.
- B. Franchisee and City will observe and follow City Code and/or Ordinances relating to solid waste.

**2.04 Term.** This exclusive franchise shall commence upon the effective date hereof, January 4, 2009, and continue in full force and effect for a period of ten (10) years. This exclusive franchise shall automatically extend for two (2) additional five (5) year terms, unless either party notifies the other in writing at least twelve (12) months prior to expiration of the then current term of its intent not to extend this agreement.

**2.05 Title to Solid Waste Stream.** The title to the single family dwelling waste stream (excluding Hazardous Wastes) and the property rights associated therewith for the collection and disposal of single family dwelling 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 single family dwelling customers in containers 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 a weekly, 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. To this end:

- A. Franchisee shall diligently exercise supervision and training of its personnel so that the public coming into contact with such personnel shall be treated decently and courteously at all times.
- B. Franchisee shall provide an office and telephone number within City of Fernley wherein customers can transact business with Franchisee, during regular and posted office hours, which shall be not less than eight hours per day between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The office shall accept and administer all requests for service initiations, terminations, and modifications, including special services and complaints.
- C. Franchisee shall maintain a computer log of all oral and written service complaints registered with Franchisee from customers. Franchisee shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints.
- D. Franchisee shall annually survey its single family dwelling customers, preferably by an independent outside consultant, to determine the level of satisfaction of customers with the service provided by Franchisee. The results of that survey shall be included in the annual report to the City Manager and/or City Council described in subsection F hereof, or sooner as requested by the City.
- E. Franchisee shall maintain and actively pursue public information programs such as the "snapshot program," to encourage customer compliance with Federal, State, and local laws and ordinances. Franchisee shall support any City public information programs that shall be designed, with input from Franchisee, to promote public adherence to Franchisee's and City's policies.
- F. Franchisee shall report annually to the City Manager or City Council, as requested by the City, regarding compliance with its responsibilities under this section.
- G. Beginning in the spring of 2010, Franchisee shall provide annually to each single family dwelling customer that is current on their account, a voucher allowing the customer to dispose of a load of no more than three yards of garbage during a designated thirty (30) day period each year at the transfer station owned or operated by Franchisee.
- H. Franchisee shall provide services to the City of Fernley of a value not to exceed \$7,500 annually for City Events or Code Enforcements, not part of the standard trash service provided for in Section 5.09 below.

**3.04 Approved Landfill.** Franchisee shall be required to deposit all solid waste collected pursuant to this Franchise Agreement at an approved landfill site. 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 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 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 to be utilized by Franchisee prior to utilizing the landfill(s) during the term of this Agreement. City shall approve such request in a timely manner and shall not unreasonably withhold their approval.

**3.05 Transfer Station.** Franchisee shall be required to utilize an approved transfer station within a ten (10) mile radius of the Fernley City Hall. Nothing in this Agreement shall prohibit Franchisee from direct hauling solid waste to an approved landfill.

The transfer station shall provide for the temporary collection and compaction of solid waste so that an economical method of transportation of solid waste to an approved landfill is utilized by Franchisee.

For purposes of this Franchise Agreement, an approved transfer station is one holding a valid permit for the temporary storage of municipal solid waste in accordance with all applicable federal and/or local laws and regulations.

It shall be the sole responsibility of Franchisee to provide for a transfer station meeting the requirements of this Agreement. Franchisee may comply with this requirement by operating its own transfer station or by entering into an agreement with the operator of a transfer station which meets the requirements of this Agreement.

Franchisee shall make available for use at the Franchisee's Transfer Station and Fernley City Hall, a program for the separation at the source of recyclable material from other solid waste originating from the single family dwelling premises and public buildings where services for the collection of solid waste are provided. Franchisee will offer drop site recycling at no charge to City of Franchisee's single family dwelling customers. Recyclables will be collected and source separated at the Franchisee's Transfer Station and Fernley City Hall and will include paper and metal products only. The drop site locations at Franchisee's Transfer Station and Fernley City Hall will be operational not later than December 1, 2009.

Upon approval of this Agreement, Franchisee shall make commercially reasonable efforts to locate and develop a waste transfer station meeting State and City regulations, within the city limits of Fernley. Franchisee shall have eighteen (18) months from the effective date of this Agreement (January 4, 2009) to show substantial progress toward the location and development of such a transfer station. In the event that substantial progress has been made, Franchisee shall have an additional six (6)

months to complete and begin operating the transfer station within the city limits of Fernley. The above timelines are exclusive of any administrative or judicial appeal period applicable to the land use permitting process required for the initial construction or operation of the Transfer Station or the final disposition of any such appeal if filed.

City agrees to provide timely review and consideration of applications in relation to locating and building a transfer station where the City has jurisdiction to review and consider. The City agrees to cooperate with other governmental agencies as may be necessary to secure all land use entitlements for the Transfer Station.

#### **4 - FRANCHISE FEE**

**4.01 Franchise Fee.** Franchisee, its successors and assigns, shall pay to City, in quarterly installments on the 15<sup>th</sup> 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 (10%) 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 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 Franchise shall remit amounts due the City or the City shall process refund of franchise fees, depending upon the results of the agreed upon procedures report.

## **5 - GARBAGE COLLECTION RATES AND PROCEDURES**

**5.01 Establishing Rates for Collection.** The rates for collection are outlined in Exhibit A.

**5.02 Rates Adjustment by Cost Of Living Index.** The Rates to be charged by Franchisee to subscribers as established by the City as of the effective date of this Agreement are set out in Exhibit "A" and incorporated herein by reference. When any changes occur to the rate structure, Franchisee will forward an updated Exhibit "A" to the City Manager.

The rates in effect as of the effective date of this Agreement, and all rates established by the City hereafter shall be subject to annual increases based upon the percentage of change in the Consumer Price Index, All Urban Consumers, U.S. City Average- Item: Garbage and Trash Collection (1983=100) ("CPI") as published by the Bureau of Labor Statistics, Washington, D.C.

The first adjustment shall be made effective as of January 1, 2010, and shall be based upon the CPI increase for the period November, 2008 to November, 2009, and rates shall be adjusted in the same manner annually thereafter. Rates adjusted in accordance with the CPI shall not be greater than six percent (6%) nor less than zero percent (0%) in any one year regardless of the percentage change in the CPI. If the percentage change is less than zero percent (0%), Franchisee shall not be required to reduce rates.

Notwithstanding the method of establishing rates described above, Franchisee shall have the right to request an adjustment to rates where unforeseen or extraordinary circumstances resulting from governmental regulatory changes or significantly higher costs of operation that could not be reasonably anticipated. The adjustment to rates shall be within the sole discretion of City Council.

**5.03 Scope of Single Family Dwelling Rates.** For single family dwelling services, Franchisee shall be entitled to collect the rate as outlined in Exhibit A based upon the following criteria:

- A. The charge for collection of single family dwelling waste shall be on a weekly basis and shall include one "designated container" The designated container shall be provided by Franchisee to each owner or person having control of any single family dwelling unit within the City. The designated container provided by the Franchisee shall be a durable plastic container of approximately ninety-six (96) gallons in capacity (for "Standard Service"), or approximately sixty-five (65) gallons in capacity (for "Mini Service"), which are watertight, fitted with a lid, and equipped with wheels for easy handling. The designated container remains the property of the Franchisee.

For each additional designated container for garbage, an additional rate shall be charged by the franchise holder. The Mini Service will begin December 1, 2009 and will be available to the first one hundred (100) customers who make a request to Franchisee for the Mini Service. Franchisee and City will reevaluate the Mini Service program after June 30, 2010 in order to assess additional demand and possible expansion of the Mini Service to additional customers.

- B. The rate for single family dwelling Standard Service includes, in addition to the designated 96 Gallon container, seven extra bags or trash cans per week, not to exceed 32 gallons and that do not exceed 50 pounds each. Additional bundles of brush trimmings may be put out in place of bags or cans, but must not exceed 50 pounds each, exceed four feet in length or be more than one cubic yard. The rate of single family dwelling Mini Service includes the designated 65 gallon container with no additional bags, cans or bundles.
- C. When requested by the customer, the franchise holder shall provide additional containers or more frequent collections on an on-call basis. The rate for such additional containers or collections shall be set out in Exhibit A.
- D. Senior citizens that are both residents and customers as defined in this agreement shall be entitled to a 25% discount rate off the basic single family dwelling service outlined in Exhibit A.
- E. The single family dwelling rate charged by the franchise holder shall require that the designated container be placed behind the curb or on the edge of the alley or the designated location by 6:00 a.m. on the regular collection day. The Franchisee does not guarantee that service will be provided at exactly the same time on each service day, as unforeseen circumstances may cause an interruption in service; however, every effort will be made to provide consistency in single family dwelling service. The franchise holder shall be entitled to collect an additional charge based on a per 32 gal bag, trash can or bundle basis for any additional containers of garbage, rubbish or waste matter which would be in addition to the regular single family dwelling service as set forth in Exhibit A.
- F. Rollout service will be provided at no charge to any resident who is handicapped and cannot bring their container to the curb for pickup service, as determined by Franchisee, providing no other resident living at the household is not handicapped. Such customers' containers must be located in an easily accessible area, as Franchisee will not be responsible for entering a customer's garage, gate, locked area or other structure.
- G. Multiple family dwelling buildings, as included under this agreement, shall be charged for each container or service as outlined in Exhibit A.
- H. It is the responsibility of each customer to provide access to and from the designated container to allow regular collection service of the designated container in

accordance with the Franchisee's normal method of operation. The Franchisee will not be required to service the container where there is a lack of proper access, and no credit will be provided.

- I. The Franchisee may charge a reasonable fee to a customer when a customer requests that Franchisee clean their designated container. The customer shall be responsible for the replacement cost of a designated container that is lost or damaged if the Residential Franchisee can prove the customer did cause its loss or damage.

**5.05 Rates for New Areas.** As of the effective date hereof, the current rate structure covers the existing city limits of the City. The rates of single family dwelling areas which are annexed into the City and are subject to mandatory service under this agreement are the same rates as outlined in Exhibit A. However, Franchisee shall have the option of requesting to City Council an increased rate based upon potential hardship of providing service to a newly annexed single family dwelling area. The adjustment to rates shall be within the sole discretion of City Council.

**5.06 Unlawful Accumulations.** In any area of the City where a rate has been established, the designated City employee or City Code Enforcement Officer, upon application of either the franchise holder or any owner requesting service, shall have the power and authority to determine whether the service requested by an individual is adequate to prevent the unlawful accumulation of garbage or to prevent a health hazard or nuisance.

The Franchisee, at the request of the City, a complainant, or at their own discretion shall maintain a "Snap Shot" program whereby drivers are able to document inadequate service levels by the use of a digital camera. The primary purpose of the program is to ensure that customers have adequate service for their needs and that unlawful accumulations of solid waste do not occur. Rates for extra waste beyond basic single family dwelling service are set out in Exhibit A.

#### **5.07 Service**

A. **Mandatory Service.** The rates for collection and disposal of single family dwelling waste as set forth herein have been established upon the condition that mandatory single family dwelling garbage service will be in effect for the entire area within the boundaries of City and for the entire period that a rate is in effect. Upon approval of this Agreement, the City will adopt the appropriate ordinance or ordinances mandating of its residents single family dwelling waste service in accordance with the terms of this Agreement.

The Franchisee may be allowed to discontinue service to a customer if that customer has met all City's requirements for exemption from mandatory service.

B. **Non-mandatory Service.** The rates for collection and disposal of single family dwelling waste as set forth herein have been established upon the condition single

family waste service will be in effect for the entire area within the boundaries of City and for the entire period that a rate is in effect. The City has adopted the appropriate ordinance or ordinances mandating that single family dwelling waste service for parcels over 2 acres be provided only by Franchisee in accordance with the terms of this Agreement.

**5.08 Collection Procedures.** Franchisee shall be responsible for collection procedures in accordance with all federal, state, and local laws. Franchisee shall bill quarterly in advance on or about January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, October 1<sup>st</sup>. Customers shall pay for services within 10 days of the date of the Franchisee's Invoice. Franchisee may, in its discretion and as otherwise legally permitted, impose a service charge on all past due amounts accruing from the date of the invoice. In the event that a customer fails to pay for services for 90 days, Franchisee shall have the right to discontinue service until such time as payment is received.

**5.09 Service to City Facilities.** Franchisee agrees to collect and dispose of all refuse, not including sewage sludge, at all buildings, parks and other facilities owned by City which are open to the public and operating under normal conditions at a rate that is 25% less than Franchisee's standard rate for such service, as set out in Exhibit A. This reduced rate service provided by Franchisee shall apply to the disposal of City generated solid waste including waste resulting from natural disasters on City properties, and any special community event operated or sponsored by City. This discount specifically does not apply to any third party or contracted businesses. The cost of providing this service at the reduced rate shall be considered as a reasonable cost of operation for purposes of determining collection rates under paragraph 5.01 hereof.

**5.10 Service in Time of Emergency.** Franchisee agrees to the rate schedule as attached in Exhibit A under "Emergency Rates" for use requested by the City. Emergency Rates shall apply when a Federal, State, County, or City Emergency has been declared.

## **6 - SURETY**

**6.01 Surety.** Franchisee shall forthwith furnish to City a bond running to City in the penal sum of \$75,000 on the condition that said Franchisee shall well and truly observe, fulfill and perform each and every term and condition of this Agreement. Said bond shall be filed with the City Clerk.

## **7 - INDEMNITY AND HOLD HARMLESS AGREEMENT**

**7.01 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.

**7.02 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.

**7.03 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.

## **8 - LIABILITY INSURANCE**

**8.01 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 \$3,000,000 combined single limit per occurrence and 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.

Franchisee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## **9 - TRANSFER, ASSIGNMENT AND SUBCONTRACTS**

**9.01 Franchisee's Right to Assign.** Franchisee reserves the right to assign or transfer its rights hereunder, provided that in such event, Franchisee shall file with the City Clerk written notice of any contemplated sale, transfer, assignment, or lease of such franchise or any part thereof, or of any other rights or privileges granted hereby, 30 days before such sale, transfer, assignment or lease is to become effective. No such sale, transfer, or assignment or lease of such franchise, or any part hereof, shall be effective until and unless approved by the City, which consent and approval shall not be unreasonably delayed or withheld. Notwithstanding the foregoing, Franchisee shall have the right, without seeking or obtaining approval or authority from the City, to assign or transfer this Agreement to any affiliate of Franchisee or its parent corporation.

**9.02 Subcontracts.** Franchisee shall have the right to enter into subcontracts for the collection and disposal services required by this Agreement, provided that Franchisee shall remain responsible to City for the complete performance of all terms and conditions of this Agreement by such subcontractors. The term "subcontract" does not include any operations conducted under this Agreement by affiliated companies with Franchisee, including all companies owned or controlled by Franchisee's parent corporation.

All subcontracts require the prior approval of the City, which approval the City agrees will be timely and shall not be unreasonably withheld. All subcontractors shall be required to fully perform all terms and conditions of this Franchise Agreement and the City Codes pertaining to garbage and collection services, and subcontractors shall be required to collect at the rates established by City.

## **10 - DEFAULT; FORCE MAJEURE; CHANGE IN LAW**

**10.01 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 15 days after receipt of written notice of such default, breach or deficiency from the City. If any such default is of such nature that it cannot be completely cured within 15 days as determined by the City Manager, then unless Franchisee shall commence such cure within 15 days after notice of such default given by City and shall thereafter diligently and in good faith proceed and continue to cure such default and shall succeed in curing such default within 45 days or a reasonable period of time as may be determined by City Council, the City may, at its option, terminate this Agreement. Notwithstanding, the City Council may terminate this Agreement after notice and 15 days after receipt of notice by the Franchisee where the Franchisee fails to materially perform the collection of single family dwelling waste or deposit of waste at approved landfill provisions of this agreement.

**10.02 Force Majeure.** The performance of this Agreement may be discontinued or temporarily suspended in the event of circumstances beyond the City's or Franchisee's control, whether or not foreseeable, including, without limitation Force Majeure. Franchisee shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Franchisee's performance is prevented or delayed by circumstances beyond the City's or Franchisee's control, whether or not foreseeable, including, without limitation, Force Majeure. For purposes of this Agreement, the term "Force Majeure" means acts of God, landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, acts of the public enemy, wars, blockades, acts of terrorism, public riots, explosions, and governmental restraint.

**10.03 Changes in Law.** In the event that new or amended local, state or federal laws, rulings or regulations are enacted after the effective date of this Agreement and have the effect of preventing or precluding compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such new or amended local, state or federal laws or regulations, and the parties shall enter into an amendment of this Agreement that reflects the extent to which the provisions hereof have been so modified or suspended. Nothing in this Agreement shall prohibit Franchisee from obtaining or seeking to obtain modification, reversal or repeal of such law, ruling or regulation or restrict Franchisee's right to legally contest the validity of such law, ruling or regulation. Franchisee shall not be considered in breach of this Agreement during such time as Franchisee is contesting or appealing any notice of violation, ordinance, rule, regulation, ruling or law.

## **11 - MISCELLANEOUS PROVISIONS**

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

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

**11.03 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.

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

**11.05 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.

**11.06 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:  
Trashpros, LLC  
Attention: Todd Alexander  
P.O. Box 680  
Fernley, NV 89408

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.

**11.07 Dispute Resolution.** In the event of any dispute, claim, question or disagreement arising from or relating to the parties' obligations hereunder or arising out of this Agreement or the breach thereof, the parties shall first attempt resolution through mutual discussion.

In the event that the parties are unable to reach a resolution, either party may initiate a civil action in the Third Judicial District Court for the State of Nevada for the purpose of



enforcing the terms of this Agreement. It is the intent of the parties that the obligations contemplated in the agreement herein will not be interrupted by the dispute but will continue to move forward until the dispute can be resolved.

In Witness whereof, the 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:   
LEROY GOODMAN  
MAYOR, CITY OF FERNLEY

ATTEST:   
By:   
LENA SHUMWAY  
CITY CLERK, CITY OF FERNLEY

TRASHPROS, LLC, a Nevada Limited Liability Company

By:   
TODD ALEXANDER  
OWNER

# Exhibit "A"

## Garbage Collection Rates for City of Fernley-Incorporated City Limits Only Effective January 4, 2009 thru January 3, 2010

Franchise Fee 8% inclusive in rates

### Residential Collection Rate Schedule

#### Single Family - Residential Service

1-96 Gallon Roll Cart Plus 7 Extra Tied Bags, Cans or Tied Bundles

1-65 Gal Roll Cart Mini Service - No Extras-100 Custs Only- Effective 12-1-2009

Additional 96 Gallon

Extra Tied Bags, Cans or Tied Bundles Beyond Basic Service-Price Each

Size Limit for Tied Bags, Cans or Tied Bundles not to exceed  
32 gallons or 50 lbs each

Per Month - Per Resident	
Regular	Senior
\$ 21.96	\$ 16.47
\$ 19.96	\$ 14.97
\$ 8.16	\$ 6.12
\$ 3.09	\$ 2.32

Bulk Waste Pick Up - Per Cubic Yard

\$21.62	\$16.22
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#### Large Volume Service

Size	1 x week	2 x week	3 x week	4 x week	5 x week
96 Gallon	\$ 21.96	\$ 43.92	\$ 65.88	\$ 87.84	\$ 109.80
300 Gallon	\$ 100.00	\$ 200.00	\$ 300.00	\$ 400.00	\$ 500.00

#### Temporary Containers and Drop Boxes for Residential Service

Size	Per Pick Up
300 Gallon	\$ 100.00

#### City Owned Facilities

Size	1 x week	2 x week	3 x week	4 x week	5 x week
96 Gallon	\$ 16.47	\$ 32.94	\$ 49.41	\$ 65.88	\$ 82.35
300 Gallon	\$ 75.00	\$ 150.00	\$ 225.00	\$ 300.00	\$ 375.00

#### City Owned Facilities - On Call Services

Size	Per Pick Up
300 Gallon	\$ 75.00
14 yard	\$ 170.25
20 yard	\$ 243.27
30 yard	\$ 340.58

#### Emergency Rates

Size	Per Pick Up
300 Gallon	\$ 90.00
14 yard	\$ 204.30
20 yard	\$ 291.92
30 yard	\$ 408.69