

ORDINANCE NO. 979

AN ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE FOR THE TERM OF FIVE (5) YEARS, TOGETHER WITH TWO CONTIGENT RENEWAL OPTIONS, TO HERBERT H. FRYAR, D/B/A FRYAR SANITATION, FOR THE PURPOSE OF PROVIDING FOR THE COLLECTION OF REFUSE, TRASH, GARBAGE AND OFFAL WITHIN THE CORPORATE LIMITS OF THE CITY OF EUREKA SPRINGS, ARKANSAS.

BE IT ORDAINED BY THE CITY COUNCIL OF EUREKA SPRINGS, ARKANSAS THAT THE EXCLUSIVE FRANCHISE HEREINAFTER SET FORTH BE GRANTED TO HERBERT H. FRYAR, D/B/A FRYAR SANITATION, AND THAT THE MUTUAL AGREEMENT INCIDENTAL THERETO BE RATIFIED.

EXCLUSIVE FRANCHISE AND AGREEMENT

An Exclusive Franchise granted to Herbert H. Fryar, d/b/a Fryar Sanitation, hereinafter called the "FRANCHISEE," by the City of Eureka Springs, Arkansas, hereinafter called the "FRANCHISING AUTHORITY," and a Mutual Agreement entered into by the FRANCHISEE and the FRANCHISING AUTHORITY, both on this 22nd day of March, 1975.

WITNESSETH:

WHEREAS, the FRANCHISING AUTHORITY is desirous of having all of the refuse, trash, garbage and offal within the corporate limits of the City of Eureka Springs, Arkansas regularly collected and lawfully disposed of, and

WHEREAS, the FRANCHISEE is desirous of being granted an exclusive franchise to collect and lawfully dispose of such refuse, trash, garbage and offal, and

WHEREAS, the FRANCHISEE holds title to a proper parcel of real property where such refuse, trash, garbage and offal can be lawfully disposed of, and

WHEREAS, the FRANCHISEE submitted the only acceptable bid to the FRANCHISING AUTHORITY for such collection and disposal of said refuse, trash, garbage and offal,

NOW, THEREFORE, for mutual consideration, the FRANCHISING AUTHORITY and the FRANCHISEE agree as follows:

SECTION 1. The FRANCHISEE will furnish, at no cost to the FRANCHISING AUTHORITY the following:

a. Real property suitable for the disposal of refuse, trash, garbage and offal which has been approved for such function and purpose by the Department of Pollution Control and Ecology of the State of Arkansas.

b. A sufficient and adequate number of covered trucks with licensed drivers and collectors to collect and dispose of all refuse, trash, garbage and offal within the corporate limits of the City of Eureka Springs, Arkansas.

c. Maintenance and operation of such trucks and services of drivers and collectors.

d. Workmen's Compensation and Unemployment Insurance in accordance with the laws of Arkansas.

e. A Five Thousand and no/100 (\$5,000.00) Dollars signature performance bond, payable to the City of Eureka Springs, Arkansas, guaranteeing good and faithful performance of the duties of the FRANCHISEE set forth herein.

f. Collection and disposal of all refuse, trash, garbage and offal from all containers in all municipal parks, springs, buildings, facilities, offices and garages, as often as is necessary to preclude the overflowing of such containers, provided that this provision shall not be construed to include public hospitals and public schools.

g. Evidence of adequate and sufficient liability insurance coverage in force.

SECTION 2. FRANCHISEE will collect and dispose of refuse, trash, garbage and offal at private residences and places of business charging for such services under the following schedule of charges:

a. Special collection and disposal on a "call" basis, for a minimum charge of Three and no/100 (\$3.00) Dollars and a maximum charge of Fifty and no/100 (\$50.00) Dollars, for bulky, heavy and/or loose articles, the charge being contingent on the bulk and weight of the article (s) and the manpower and man-hours required to so collect and dispose the same.

b. One (1) day per week service for residences with one (1) occupant for Two and no/100 (\$2.00) Dollars per month.

c. One (1) day per week service for residences with two (2) or more occupants for Three and no/100 (\$3.00) Dollars per month.

d. One (1) day per week service for apartment houses for Two and no/100 (\$2.00) per month per apartment.

e. Three (3) days per week service for hotels, motels, rooming houses and boarding houses for the monthly charge of Fifteen and no/100 (\$15.00) Dollars from November 1 through April 20, and for the monthly charge of Twenty-Five and no/100 (\$25.00) Dollars from May 1 through October 31.

f. Service up to seven (7) days each week, where required, for restaurants and cafes, for the monthly charge of Twenty-Five and no/100 (\$25.00) Dollars from November 1 through April 30, and for the monthly charge of Fifty and no/100 (\$50.00) Dollars from May 1 through October 31.

g. Three (3) days per week service for Twenty and no/100 (\$20.00) Dollars per month charge for garages, automobile repair shops, service stations and grocery stores.

h. Two (2) days per week service for the monthly charge of Ten and no/100 (\$10.00) Dollars per thirty (30) gallon container for gift shops, antique shops, artisan and craftsman shops, studios, galleries, and retail shops and stores not otherwise provided for.

i. One (1) day per week service for the monthly charge of Ten and no/100 (\$10.00) Dollars per thirty (30) gallon container for government facilities, except those of the City of Eureka Springs, Arkansas and those public facilities otherwise provided for.

j. Two (2) days per week service for the monthly charge of Twenty-Five and no/100 (\$25.00) Dollars for hospitals, clinics and nursing homes.

k. Five (5) days per week service for the monthly charge of Fifty and no/100 (\$50.00) Dollars for schools.

SECTION 3. The FRANCHISEE will review annually with the FRANCHISING AUTHORITY the schedule of charges heretofore set forth and make only such changes as are approved by the FRANCHISING AUTHORITY pursuant to said review.

SECTION 4. The FRANCHISEE will pay Three (3%) Per Centum of his gross revenue collections to the FRANCHISING AUTHORITY on the 15th day of each month that this exclusive franchise is in effect, and the FRANCHISEE will be solely responsible for all such revenue collections and will maintain a true, accurate and unabridged accounting of the same which may be inspected, reviewed and audited by the FRANCHISING AUTHORITY at any time.

SECTION 5. The FRANCHISEE may, without the prior consent of the FRANCHISING AUTHORITY, subcontract any portion of the heretofore stated services, provided that the FRANCHISEE will remain solely responsible for performance, claims and damages under this agreement and exclusive franchise.

SECTION 6. The FRANCHISEE will not assign its rights nor delegate its duties under this exclusive franchise and agreement to any third party without the prior consent of the FRANCHISING AUTHORITY expressed through a duly passed, approved and published amendment to this exclusive franchise and agreement.

SECTION 7. The FRANCHISEE will hold the FRANCHISING AUTHORITY blameless and harmless from all claims for damages to person and/or property arising out of the performance of this exclusive franchise and agreement by the FRANCHISEE.

SECTION 8. The FRANCHISEE will comply with all Statutes of the State of Arkansas, Ordinances of the City of Eureka Springs, and Regulations of the Departments of Health and Pollution Control and Ecology of the State of Arkansas, and the health officers of the Counties of Carroll and Madison, Arkansas.

SECTION 9. The FRANCHISING AUTHORITY may, through the discretion of the City Council of Eureka Springs, Arkansas, declare this exclusive franchise and agreement to be null and void and recover under the performance bond heretofore provided for, should the FRANCHISEE fail to perform any of the services or to fulfill any of the duties of the FRANCHISEE heretofore set forth, natural and unavoidable catastrophes excepted.

SECTION 10. The FRANCHISING AUTHORITY will issue business licenses and permits for the collection and disposal of refuse, trash, garbage and offal without the assessment of any fee to the

FRANCHISEE during the term of this exclusive franchise and agreement, and will not issue any competitive license or permit during the term of such franchise and agreement.

SECTION 11. This exclusive franchise is granted by the FRANCHISING AUTHORITY to the FRANCHISEE for a term of five years, commencing on the 1st day of July, 1975, and terminating on the 1st day of July, 1980.

SECTION 12. For and in consideration of One and no/100 (\$1.00) Dollar paid in hand, the FRANCHISING AUTHORITY hereby grants the FRANCHISEE an option to negotiate with the FRANCHISING AUTHORITY for a similar exclusive franchise and agreement to become effective on the 1st day of July, 1980, provided that the FRANCHISEE exercises such option within ninety (90) to one hundred twenty (120) days prior to the termination of the exclusive franchise herein granted.

SECTION 13. For and in consideration of One and no/100 Dollar (\$1.00) paid in hand, the FRANCHISING AUTHORITY hereby grants the FRANCHISEE an option to negotiate with the FRANCHISING AUTHORITY for a similar exclusive franchise and agreement to become effective on the 1st day of July, 1985, provided the FRANCHISING AUTHORITY grants the FRANCHISEE the second exclusive franchise referred to in the immediately preceding Section, and further provided that the FRANCHISEE exercises such option within ninety (90) to one hundred twenty (120) days prior to the termination of such second exclusive franchise.

IN WITNESS WHEREOF, the FRANCHISEE has executed this exclusive franchise and agreement, and the FRANCHISING AUTHORITY, by its proper officials, has executed such franchise and agreement, this 22nd day of March, 1975.

CITY OF EUREKA SPRINGS, ARKANSAS,
FRANCHISING AUTHORITY

BY W. A. Hill
W. A. HILL, MAYOR

ATTEST: June I. Moncravie
JUNE I. MONCRAVIE,
CLERK - TREASURER

(SEAL)

Herbert H. Fryar
HERBERT H. FRYAR, D/B/A FRYAR
SANITATION, FRANCHISEE

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PASSED AND APPROVED by the City Council of Eureka Springs,
Arkansas, on this 22nd day of March, 1975.

W. A. Hill
W. A. HILL, MAYOR

ATTEST:

June Moncravie
JUNE MONCRAVIE,
CLERK - TREASURER