

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 ***

3
4 NEVADA RECYCLING AND
5 SALVAGE, LTD, a Nevada Limited
6 Liability Company; AMCB, LLC, a
7 Nevada Limited Liability Company d/b/a
8 RUBBISH RUNNERS,

9 Appellants,

10 vs.

11 RENO DISPOSAL COMPANY, INC, a
12 Nevada Corporation doing business as
13 WASTE MANAGEMENT; REFUSE,
14 INC., a Nevada Corporation; WASTE
15 MANAGEMENT OF NEVADA, INC., a
16 Nevada Corporation,

17 Respondents.

Supreme Court Case No.:71467

District Court Case No.: CV15-00497

18 **JOINT APPENDIX**

19 **VOLUME 4**

20 JA000621-JA000856

21
22 Stephanie Rice, Esq.
23 Rich Salvatore, Esq.
24 Del Hardy, Esq.
25 Winter Street Law Group
26 96 & 98 Winter St.
27 Reno, NV 89503
28 (775)786-5800
Attorneys for Appellant

Mark Simons, Esq.
Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp and Low
71 Washington Street
Reno, NV 89503
(775)329-3151
Attorney for Respondent

VOLUME ALPHABETICAL INDEX

ITEM DESCRIPTION	BATE STAMP	VOLUME
ACCEPTANCE OF SERVICE OF SUMMONS AND SECOND AMENDED COMPLAINT	JA003732 - JA003733	19
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM FOR DAN REASER, ESQ.	JA001109- JA001121	6
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM ON DAN R. REASER, ESQ.	JA004624- JA004626	23
AFFIDAVIT OF SERVICE OF THE SUBPOENA FOR SPIKE DUQUE	JA001674- JA001682	9
AFFIDAVIT OF SERVICE OF THE SUBPOENA ON JONATHAN SHIPMAN, ESQ.	JA004758- JA004760	23
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000183- JA000186	1
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000187- JA000190	1
ANSWER TO SECOND AMENDED COMPLAINT	JA004113- JA004137	21
ANSWER TO VERIFIED FIRST AMENDED COMPLAINT	JA000883- JA000906	5
CONFIRMING ORDER OF 02/11/2016 RECOMMENDATION	JA005417- JA005418	27
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004639- JA004695	23
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004696- JA004699	23
DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA001700- JA001969	9-10
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	JA000720- JA000856	4
DEFENDANT'S MOTION TO STAY DISCOVERY	JA001122- JA001127	6
DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AND CONSIDER	JA000996- JA001006	5

MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION		
DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	JA000931- JA000995	5
DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000621- JA000684	4
DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002615- JA002922	13-14
DEFENDANTS' MOTION FOR A PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA004706- JA004757	23
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA002923- JA002977	14
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005306- JA005319	26
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005092- JA005144	25
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000487- JA000498	3
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY	JA001160- JA001168	6
DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003508- JA003525	18
DEFENDANTS' REPLY TO OPPOSITION TO SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004152- JA004609	21-23
DEPOSITION TRANSCRIPT OF ANNE MARIE CAREY 02/24/2016	JA002091- JA002144	10
DEPOSITION TRANSCRIPT OF CHRIS BIELSER 02/24/2016	JA002145- JA002175	11
DEPOSITION TRANSCRIPT OF DAVE AIAZZI 12/29/2015	JA001458- JA001670	8

DEPOSITION TRANSCRIPT OF GARY DUHON 05/25/2016	JA003068- JA003240	16
DEPOSITION TRANSCRIPT OF GREG MARTINELLI 12/29/2015	JA001295- JA001457	7
DEPOSITION TRANSCRIPT OF JOSEPH CASSIN 05/25/2016	JA002986- JA003067	15
ERRATA TO DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002978- JA002985	15
JOINT CASE APPEAL STATEMENT	JA005344- JA005357	26
JOINT NOTICE OF APPEAL	JA005333- JA005343	26
MINUTES ORAL ARGUMENTS – JULY 29, 2015	JA000583	3
MINUTES – HEARING IN RE: DEFENDANTS' MOTION FOR PROTECTIVE ORDER 08/02/2016	JA005164	25
MINUTES – ORAL ARGUMENTS IN RE: DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT – AUGUST 18, 2016	JA005176	26
MINUTES STATUS HEARING – JANUARY 29,2016	JA001699	9
MOTION FOR ENTRY OF FINAL JUDGMENT	JA005358- JA005366	26
MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005268- JA005274	26
MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA000857- JA000882	5
MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000388- JA000414	2
MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000480- JA000486	3
NON- PARTY CASTAWAY TRASH HAULING, INC.'S MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001172- JA001205	6
NOTICE OF ENTRY OF ORDER	JA000703- JA000719	4

NOTICE OF ENTRY OF ORDER	JA001277- JA001284	6
NOTICE OF ENTRY OF ORDER	JA002209- JA002216	11
NOTICE OF ENTRY OF ORDER	JA002231- JA002249	11
NOTICE OF ENTRY OF ORDER	JA003531- JA003535	18
NOTICE OF ENTRY OF ORDER	JA005168- JA005175	26
NOTICE OF ENTRY OF ORDER	JA005295- JA005305	26
NOTICE OF ENTRY OF ORDER	JA005400- JA005407	27
NOTICE OF ENTRY OF ORDER	JA005410- JA005416	27
NOTICE OF NRCP 30(B)(6) DEPOSITION OF RENO DISPOSAL COMPANY, INC.	JA002354- JA002357	11
OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000611- JA000618	3
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	JA000907- JA000930	5
OPPOSITION TO MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000415- JA000458	3
OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001206- JA001270	6
OPPOSITION TO MOTION TO STAY DISCOVERY	JA001128- JA001159	6
OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002358- JA002543	12
ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA005165- JA005167	26
ORDER DISMISSING WITHOUT PREJUDICE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DEFENDANTS' MOTION TO STAY DISCOVERY IS DENIED	JA001271- JA001276	6
ORDER DENYING PLAINTIFF'S MOTION FOR AMENDED SCHEDULED ORDER	JA005408- JA005409	27

ORDER FINAL JUDGMENT RENDERED IN FAVOR OF DEFENDANTS	JA005397- JA005399	26
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE DAMAGES & LIABILITY	JA005289- JA005294	26
ORDER GRANTING PLAINTIFF'S REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER TO MOTION TO DISMISS	JA000619- JA000620	3
ORDER DENYING MOTION FOR PROTECTIVE ORDER	JA002203- JA002208	11
ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA003528- JA003530	18
ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REPLY	JA000506- JA000508	3
ORDER - SET MOTION TO DISMISS FOR ORAL ARGUMENT -	JA000509- JA000511	3
ORDER TO SET ORAL ARGUMENTS	JA004700- JA004702	23
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT, IN PART, AND DENYING, IN PART	JA000691- JA000702	4
PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002250- JA002353	11
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA001980- JA002090	10
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003241- JA003507	17-18
PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA003734- JA004112	19-20
PLAINTIFFS' JOINT OPPOSITION TO WASTE MANAGEMENT OF NEVADA, INC'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004610- JA004623	23
PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND	JA004955- JA005051	25

MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER		
PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA004857- JA004954	24
PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA004761- JA004856	24
PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL COMPANY AND REFUSE INC.'S MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES; AND PLAINTIFFS' PROPOSED ORDER	JA005275- JA005288	26
PLAINTIFFS' OPPOSITION TO ENTRY OF FINAL JUDGMENT	JA005367- JA005396	26
PLAINTIFFS' REPLY TO MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005067- JA005082	25
PLAINTIFFS' REPLY TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005052- JA005066	25
PROOF OF SERVICE	JA000385- JA000387	2
RECOMMENDATION FOR ORDER	JA001970- JA001979	10
REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA002176- JA002199	11
REPLY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000459- JA000474	3
REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001285- JA001291	6

REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005320- JA005330	26
REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA001010- JA001101	5-6
REPLY TO OPPOSITION TO MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY	JA000499- JA000503	3
REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002544- JA002612	13
REPLY TO RESPONSE TO OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000685- JA000688	4
REQUEST FOR SUBMISSION	JA004149- JA004151	21
REQUEST FOR SUBMISSION FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004636- JA004638	23
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER	JA002200- JA002202	11
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA005083- JA005085	25
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	JA001007- JA001009	5
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003526- JA003527	18
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO STAY DISCOVERY	JA001169- JA001171	6
REQUEST FOR SUBMISSION OF DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004633- JA004635	23
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000477- JA000479	3
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000475- JA000476	3

AND OPPOSITION TO MOTION TO DISMISS VERIFIED COMPLAINT		
REQUEST FOR SUBMISSION OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001292- JA001294	6
REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002613- JA002614	13
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005090- JA005091	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005331- JA005332	26
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005088 JA005089	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005086- JA005087	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000504- JA000505	3
REQUEST FOR SUBMISSION OF PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER, DEFENDANTS' RESPONSE TO OBJECTION TO PROPOSED ORDER AND REPLY TO RESPONSE TO OBJECTION TO DEFENDANTS' PROPOSED ORDER	JA000689- JA000690	4
REQUEST FOR SUBMISSION OF PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004147- JA004148	21
REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER ON MOTION TO DISMISS	JA000584- JA000610	3
SECOND AMENDED COMPLAINT	JA003536- JA003729	18-19

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER	JA002217- JA002230	11
SUBPOENA - JONATHAN SHIPMAN	JA004703- JA004705	23
SUBPOENA - SPIKE DUQUE	JA001671- JA001673	9
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA001102- JA001108	6
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA004627- JA004632	23
SUMMONS	JA003730- JA003731	19
TRANSCRIPT HEARING – AUGUST 2, 2016	JA005145- JA005163	25
TRANSCRIPT ORAL ARGUMENTS – AUGUST 18, 2016	JA005177- JA005267	26
TRANSCRIPT ORAL ARGUMENTS – JULY 29, 2015	JA000512- JA000582	3
TRANSCRIPT STATUS HEARING – JANUARY 29, 2016	JA001683- JA001698	9
VERIFIED COMPLAINT	JA000001- JA000182	1
VERIFIED FIRST AMENDED COMPLAINT	JA000191- JA000384	2
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004138- JA004140	21
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004141- JA004146	21

ORIGINAL

FILED

2015 SEP -4 AM 11:23

JACQUELINE BRYANT
CLERK OF THE COURT
BY: ADG
DEPUTY

3790

Mark G. Simons, Esq., NSB No. 5132
Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rbsllaw.com
shernandez@rbsllaw.com

Attorneys for Defendant Waste Management of Nevada

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE,
LTD., a Nevada Limited Liability
Company; and AMCB, LLC, a Nevada
Limited Liability Company dba RUBBISH
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation dba WASTE
MANAGEMENT; REFUSE, INC., a
Nevada Corporation; ABC
CORPORATIONS, I*-X; BLACK AND
WHITE COMPANIES, I-X; and JOHN
DOES I-X, inclusive,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFFS' OBJECTION
TO DEFENDANTS' PROPOSED ORDER**

Reno Disposal Company, Inc. ("Reno Disposal") and Refuse, Inc. ("Refuse")
(collectively, the "Defendants"), by and through their undersigned counsel of record,
Mark G. Simons, and Scott Hernandez, hereby respond to Plaintiffs Nevada Recycling

CV15-00497
NEV RECYCLING ET AL VS RENO 9 Pages
District Court
Washoe County
09/04/2015 11:23 AM
3880

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

JA000621

1 and Salvage, Ltd. and AMCB, LLC dba Rubbish Runners'(collectively, "Plaintiffs")
2 Objection to the Defendants' Proposed Order (the "Objection").

3 **I. INTRODUCTION**

4 The Court issued an order from the benching, granting in part Defendants'
5 Motion to Dismiss Verified Amended Complaint at hearing on July 29, 2015. At the end
6 of the hearing, the Defendants' were asked to prepare the order. After receiving a
7 transcript of the July 29, 2015 hearing (the "Transcript"), the Defendants' prepared a
8 proposed order and met and conferred with the Plaintiffs to address any issues or
9 disputes regarding the language of the proposed order. Unfortunately, before the meet
10 and confer process could be completed, the Plaintiffs filed a request to have their own
11 proposed order adopted by the Court without Defendants' consent or approval.

12 Throughout the meet and confer process (and in the Objection, as well), the
13 Plaintiffs failed to address any specific objections. Instead, the Defendants are
14 accused of trying to include "findings of fact and conclusions of law" and "arguments of
15 counsel" in their proposed order. Further, the Plaintiffs argue that it is not counsel's
16 responsibility to clarify the Court's ruling. Since the Plaintiffs fail to lodge specific
17 objections, the Defendants must address these general objections to their proposed
18 order.¹

19 **I. LEGAL DISCUSSION**

20 The above-entitled case turns in large part upon the interpretation of the
21 Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable
22 Materials Agreement between Waste Management and the City of Reno (the
23 "Franchise Agreement"), which is attached and expressly incorporated into the
24 Plaintiffs' Verified First Amended Complaint. Indeed, an interpretation of the Franchise
25 Agreement affects nearly all of the Plaintiffs' claims for relief. Accordingly, what the
26

27 ¹ Plaintiffs note a typographical error in the Defendants' proposed order submitted to the Court
28 on August 31, 2015. The error has been corrected and the Defendants' revised proposed order
is attached hereto as Exhibit "1."

1 Plaintiffs refer to as "findings of fact" or "arguments of counsel" are rulings on discrete
2 issues that are now law of the case. Furthermore, the Plaintiffs' argument that clarifying
3 the Court's order inappropriate is not well taken; the Plaintiffs' also seek to clarify the
4 Court's ruling. These arguments are addressed in turn.

5 **A. The Court's Rulings on the Motion to Dismiss Are Now Law of the**
6 **Case; Accordingly, These Rulings Should Be Reflected in the Court's**
7 **Order.**

8 Contract interpretation is a question of law, and not fact. See Galardi v. Naples
9 Polaris, LLC, 129 Nev. Adv. Op. 33, 301 P.3d 364, 366 (2013) (holding that "contract
10 interpretation presents a question of law" absent "ambiguity or other factual
11 complexities" (internal quotations omitted)). Thus, although this Court is required to
12 accept all factual allegations as true on a motion to dismiss, Buzz Stew, LLC v. City of
13 N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008), it is permitted and
14 empowered to dispose of questions of law on a motion to dismiss. See Kiefe v. Metro.
15 Life Ins. Co., 797 F.Supp.2d 1072, 1075 (D. Nev. 2011). Accordingly, because
16 "contract interpretation is an issue of law for the court," it "may be decided on a motion
17 to dismiss." Id. at 1075 (applying Nevada law to interpret FRCP 12(b)(6), NRCP
18 12(b)(5)'s federal counterpart);² see also Allied Capital Corp. v. GC-Sun Holdings, L.P.,
19 910 A.2d 1020, 1030 (Del. Ch. 2006) (holding that "a motion to dismiss is a proper
20 framework for determining the meaning of contract language").

21 Because the interpretation of an unambiguous contract is a question of law, and
22 because the Court held that the operative provisions of the Franchise Agreement were
23 unambiguous, no further evidence is needed to interpret and/or enforce those terms.
24 "An unambiguous contract is construed from the language of the document."
25 Chwialkowski v. Sachs, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992); see also Davis v.

26 ² "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive
27 authority, because the Nevada Rules of Civil Procedure are based in large part upon their
28 federal counterparts.'" Exec. Mgmt. Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872,
876 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772,
776 (1990)).

1 Beling, 128 Nev. Adv. Op. 28, 278 P.3d 501, 515 (2012) (holding that "the initial focus is
2 on whether the language of the contract is clear and unambiguous; if it is, the contract
3 will be enforced as written").

4 Furthermore, a ruling on a motion to dismiss constitutes law of the case.³ See
5 PDK Labs Inc. v. Ashcroft, 338 F.Supp.2d 1, 6 (D.D.C. 2004) ("A previous motion to
6 dismiss, granted or denied, may also affect the disposition of a later motion for
7 summary judgment.").⁴ Under the law-of-the-case doctrine as currently applied in
8 Nevada, when the issue has been addressed and decided "**explicitly or by necessary**
9 **implication**", the Court's prior determination of an issue of law controls and is
10 dispositive. Recontrust Co. v. Zhang, 130 Nev. Adv. Op. 1, 317 P.3d 814, 818 (2014)
11 (emphasis added).

12 The Court made several key rulings in its order from the bench. For example,
13 the Court ruled that the paragraph 3.2 A of the Franchise Agreement and the definitions
14 of several key terms were unambiguous. See Exhibit 3 (Transcript), p. 62:2-63:20.
15 Similarly, the Court also ruled that the Plaintiffs were only limited third-party
16 beneficiaries under the Franchise Agreement. See id. at p. 65:9-66:10. While only a
17 couple of examples, these and other rulings are now law of the case and will govern the
18 balance of the proceedings in the matter.

19 In the Objection, the Plaintiffs argue that the proposed language regarding the
20 Defendant's position in its Motion to Dismiss is "not appropriate." See Objection, p. 1-
21

22 ³ See also Equal Rights Ctr. V. Equity Residential, 798 F.Supp.2d 707, 720 (D. Md. 2011)
23 (holding that "a court's holding on a motion to dismiss may affect the disposition of a later motion
24 for summary judgment"); Roman v. Korson, 918 F. Supp. 1108, 1112 (W.D. Mich. 1995) (holding
25 that a ruling on a motion to dismiss "serve[d] as the law of the case" on a subsequent motion for
26 summary judgment).

27 ⁴ Nevada Supreme Court authority notes that the law-of-the-case doctrine applies to District
28 Court rulings. See Recontrust Co. v. Zhang, 130 Nev. Adv. Op. 1, 317 P.3d 814, 817 (2014)
("The law-of-the-case doctrine refers to a family of rules embodying the general concept that a
court involved in later phases of a lawsuit should not re-open questions decided (i.e. established
as law of the case) by that court or a higher one in an earlier phase." (internal quotations
omitted)(emphasis added)).

1 25-2:10. It must be noted that the proposed language comes directly from the
2 Transcript. See Exhibit 3 (Transcript), p. 4:4-23. The Plaintiffs also imply that their
3 own arguments should be included in the final order; however, the Plaintiffs never
4 proposed such language in prior drafts of the order. Ultimately, the Plaintiffs fail to
5 explain what is inappropriate about reciting directly from the *Transcript*. Instead, their
6 arguments are vague and conclusory.

7 There is no reasonable objection to including the Court's rulings in the proposed
8 order. Indeed, the only reason to not include such rulings in the Court order would be
9 to obscure the record going forward which would require the parties to litigate the
10 language of the Transcript in the future. This would be wasteful. Good practice and
11 judicial economy demand that rulings which are law of the case should be included in
12 the Court's ultimate signed order.⁵ Thus, the Court should sign and adopt the
13 Defendants' proposed order.

14 **B. The Ultimate Order Should Clarify Any Omissions or Ambiguities in**
15 **the Hearing Transcript**

16 Surprisingly, the Plaintiffs appear to argue that it is not counsel's role to use a
17 proposed order to clarify the Court's order from the bench. This argument ignores the
18 fact that this is precisely what the Plaintiffs sought to accomplish in crafting the original
19 joint-proposed order. On August 13, 2015, counsel for Plaintiffs voiced concern with
20 the accuracy of the Court's order from the bench, stating:

21 While your proposed Order does accurately reflect what the
22 Judge Ordered from the bench, I think the Court mis-spoke
23 with respect to including "Exempted Facility Materials" in that
24 sentence because that statement is not true with respect to
25 Exempted Facility Materials. I propose that we jointly ask
the Court to correct this statement sua sponte to omit the
language "Exempted Facility Materials" and obviously omit

26 ⁵ See, e.g., *In Re Herrmann*, 100 Nev. 1, 20-21, n.16, 677 P.2d 594, 606-607, n. 16 (1984)
27 discussing that the purpose of NRCP 52 is to "clarify matters" for a "better understanding of the
28 basis of the decision of the trial court" and to "amplify[] and expand[] the lower court's findings." As such, the Nevada Rules of Civil Procedure and the Nevada Supreme Court indicate that
rulings by the District Court which explain the Court's decision are preferred over simple orders
merely granting or denying relief.

1 that language from the proposed order that we ultimately
2 submit as well. There is no pre-existing contract language
3 with respect to Exempted Facility Materials and that
4 language is contrary to the Franchise Agreement. I think it
5 was just a mistake and I believe it can be easily
6 corrected.

7 See Exhibit 4 (Email from S. Rice to M. Simons (Aug. 13, 2015)) (emphasis added). In
8 the next round of redline edits, counsel for Defendants invited the Plaintiffs to propose
9 language to clarify the Court's order. See Affidavit of Scott L. Hernandez, ¶ 5, as
10 **Exhibit 2**. Similarly, the parties decided to clarify an error in the Transcript which
11 erroneously stated that the Court ruled that "[w]e're converting this to a motion for
12 summary judgment," which is inaccurate. See Transcript, p. 26:5-6. Indeed, the parties
13 mutually agreed to add the following language to the proposed order:

14 The transcript of the hearing on the Motion erroneously
15 quotes the Court as saying, "We're converting this to a
16 motion for summary judgment." See Transcript of
17 Proceedings, Oral Arguments (July 29, 2015), p. 26:5-6.
18 This quotation is inaccurate. The Court confirms that the
19 Motion was not converted into a motion for summary
20 judgment and the Motion decided under the standard set
21 forth in NRCP 12(b)(5) and related case law.

22 See Exhibit 4 (Plaintiffs' Proposed Redline), p. 4-5, n. 4.

23 In sum, the Plaintiffs' assertion that the proposed order should not clarify the
24 Court's order from the bench is without merit. Clarification is precisely what the parties
25 set out to do, before the Plaintiffs took unilateral action to submit an order without the
26 Defendants' approval. Accordingly, the Plaintiffs' objection should be disregarded on
27 this basis.

28 II. CONCLUSION

The Plaintiffs' objections to the Defendants' proposed order are without merit
and lack any real specificity. The Plaintiffs' argument that the Defendant's proposed
order contains "finding of fact" or "arguments of counsel" is without merit. The Court
made several rulings at the July 29, 2015 hearing that are now law of the case.
Accordingly, these rulings should be included in the Court's signed order. Further, the

1 Plaintiffs' assertion that counsel should not clarify the record is not supportable. The
2 parties have already reached an agreement as to corrections for certain errors in the
3 Transcript. Accordingly, the Court should disregard the Objection and sign and issue
4 the Defendants' proposed order.

5 **AFFIRMATION:** The undersigned does hereby affirm that this document does
6 not contain the social security number of any person.

7 DATED this 4th day of September, 2015.

8 ROBISON, BELAUSTEGUI, SHARP & LOW
9 A Professional Corporation
10 71 Washington Street
11 Reno, Nevada 89503

12 
13 MARK G. SIMONS
14 SCOTT L. HERNANDEZ
15 Attorneys for Defendant Waste Management

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the **DEFENDANTS' RESPONSE TO PLAINTIFFS' OBJECTION TO**
5 **DEFENDANTS' PROPOSED ORDER** on all parties to this action by the method(s)
6 indicated below:

- 7 ☒ by placing an original or true copy thereof in a sealed envelope, with
8 sufficient postage affixed thereto, in the United States mail at Reno,
9 Nevada, addressed to:
10 ☒ by using the Court's CM/ECF Electronic Notification System addressed to:
11 _____ by personal delivery/hand delivery addressed to:
12 _____ by facsimile (fax) addressed to:
13 _____ by Federal Express/UPS or other overnight delivery addressed to:

14 Del Hardy, Esq.
15 Stephanie Rice, Esq.
16 HARDY LAW GROUP
17 96 and 98 Winter Street
18 Reno, NV 89503
19 Attorneys for Plaintiffs

20 DATED: 18 day of September, 2015.

21 
22 Employee of Robison, Belaustegui, Sharp & Low
23
24
25
26
27
28

J:\WPData\MCS 3253P 001 (Waste Management)\P-Certificate of Service.rpd

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>No. Pages</u>
-1-	proposed Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, In Part, And Denying, In Part	-12-
-2-	Affidavit of Scott Hernandez	-2-
-3-	<i>relevant</i> Transcript pages of Oral Arguments of July 29, 2015	-9-
-4-	Email string with opposing party regarding redline proposed order	-28-

CV15-00497 DC-0590009719-009
NEW RECYCLING ET AL VS RENO 13 PAPER
District Court
Nashoe County
09/04/2015 11:23AM
3880
v.111.2012

EXHIBIT 1

EXHIBIT 1

1 3025

2
3
4
5
6
7 IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9 NEVADA RECYCLING AND SALVAGE, LTD., a
10 Nevada Limited Liability Company; and AMCB,
11 LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

12 Plaintiffs,

13 vs.

14 RENO DISPOSAL COMPANY, INC., a Nevada
15 Corporation dba WASTE MANAGEMENT;
16 REFUSE, INC., a Nevada Corporation; ABC
17 CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

18 Defendants.

19
20 ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED
21 AMENDED COMPLAINT, IN PART, AND DENYING, IN PART

22 This matter came on for hearing on July 29, 2015, on the Motion to Dismiss
23 Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal
24 Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc.
25 ("Refuse") (collectively referred to as the "Defendants" unless otherwise specified).
26 Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison,
27 Belaustegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq.
28 and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.
9

10 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
11 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
12 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
13 required under NRCP 9(b) ("Motion"). The Defendants argue that the Plaintiffs' claims
14 are premised on an incorrect reading of the "Commercial Franchise Agreement,"¹
15 arguing that Waste Management has an exclusive Franchise for hauling Solid Waste
16 and Approved Recyclable Materials, nothing that the Plaintiff may haul waste materials
17 which are expressly excluded from the Commercial Franchise Agreement.
18

19 The Defendants argue that the Plaintiffs have failed to state a claim for
20 defamation, defamation per se, that the Amended Complaint contains no defamatory
21 statements, that the breach of contract claim fails, that the Plaintiffs lack standing as
22 third-party beneficiaries, that the Plaintiffs have no standing as to the franchise claim,
23 that the Plaintiffs have no standing as to the Eco Center claims. Defendants' claim the
24 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
25 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
26

27
28 ¹ As used herein, the term "Commercial Franchise Agreement" refers to the Exclusive Service
Area Franchise Agreement Commercial Solid Waste and Recyclable Materials Agreement
between Waste Management and the City of Reno, which is attached to the Amended
Complaint as Exhibit 3 and is expressly incorporated therein by reference. See Amended

1 Unfair Trade Practices Act ("UTPA") does not apply in this case, and that the Plaintiffs
2 failed to state a claim for fraud or to allege justifiable reliance.

3 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
4 Defendants filed their reply in support of the Motion on May 19, 2015.²

5
6 The Court has considered the allegations set forth in the Amended Complaint,
7 the "Agreements"³ incorporated by reference therein, the Defendants' Motion, the
8 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
9 such briefing, and the arguments of the parties at the time of the hearing. In rendering
10 its decision, the Court has accepted the factual allegations in the Amended Complaint
11 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
12 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴

13
14 Good cause appearing, the Court finds that the Motion shall be GRANTED, in part, and
15 DENIED, in part, for the following reasons and upon the following grounds:

16 1. The Defendants have filed the Motion to dismiss the Amended Complaint
17 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
18 motions to dismiss for failure to state a claim upon which relief can be granted.

19
20 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must

21
22 Complaint, ¶19.

23 ² The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015.
24 The Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in
25 support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to
26 strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the
27 Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers
28 the Defendants' reply in support of the Motion in the instant ruling and order.

³ As used herein, the term "Agreements" refers both to the Commercial Franchise Agreement
and the Disposal Agreement for Solid Waste and Recyclable Materials between Refuse and the
City of Reno (the "Disposal Agreement"). The Disposal Agreement is attached to the Amended
Complaint as Exhibit 4 and is incorporated therein by reference. See Amended Complaint, ¶50.

⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're
converting this to a motion for summary judgment." See Transcript of Proceedings, Oral
Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate. The Court confirms that the
Motion was not converted into a motion for summary judgment and the Motion decided under

1 treat all factual allegations as true and draw all reasonable inferences in favor of the
2 nonmoving party, in this case, the Plaintiffs.

3 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
4 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.

5 4. Dismissal is appropriate when the allegations are insufficient to establish
6 the elements for the claim for relief.

7
8 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
9 **(CLAIMS 1 AND 2).**

10 5. The elements of a defamation claim are as follows: a false and
11 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
12 publication to a third person; fault amounting to at least negligence; and actual or
13 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459,
14 462(1993). A statement is not defamatory if it is absolutely true or substantially true.
15 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).
16

17 6. Here, Plaintiffs allege that Waste Management employees made false
18 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
19 following:

- 20 a. "We [Waste Management] are only the haulers that's allowed in Sparks
21 and Reno."
22 b. "Any other provider that goes in there, there will be fines."
23 c. "We [Waste Management] have an agreement with the city and we are
24 the only trash hauler that is allowed in either of those cities [Reno and
25 Sparks]."

26 See Amended Complaint, ¶34.

27 7. Plaintiffs allege that Waste Management employee, Cheryl Gilletti,
28 made intentional misrepresentations in an email to one of Plaintiffs' customers (the

the standard set forth in NRCP 12(b)(5) and related case law.

1 "Gilletti Email"), which read as follows:

2 " . . . At this time Waste Management is the assigned hauler for the City
3 of Reno.

4 Solid Waste: Every business generating solid waste in the City of Reno is
5 required to subscribe to Reno Disposal Company for the collection,
6 transportation and disposal of all of franchised solid waste material
7 generated by the business, except for business to which the City of Reno
8 has specifically granted in writing an exemption. . . .

9 Recyclable Material. No business may allow or retain any service provider
10 other than Reno Disposal Company to collect, pick up, transport or deliver
11 Approved Recyclable Materials in the City of Reno in violation of the
12 exclusive commercial franchise agreement or the Reno Municipal Code."

13 See Amended Complaint, ¶ 34.

14 8. Under the Commercial Franchise Agreement, it is clear that Waste
15 Management's franchise to collect and haul waste and recyclables is nearly exclusive.
16 Section 3.2 A of the Commercial Franchise Agreement includes the exclusive right to
17 Collect, transport, and deliver Collection Materials in the Reno area. Section 3.2 A is
18 intended to be broadly interpreted.

19 9. Under the Commercial Franchise Agreement, "Collection Materials" are
20 defined as "all Solid Waste and Approved Recyclable Materials [including nearly all
21 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
22 to certain exemptions. See Commercial Franchise Agreement, p. 3.

23 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
24 Management is entitled to charge fees for customers' noncompliance with the
25 Commercial Franchise Agreement.

26 11. The few exemptions to the Commercial Franchise Agreement are narrow,
27 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
28 Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility

1 Materials delivered to Exempted Facilities." See Commercial Franchise Agreement,
2 §3.2 A.

3 12. The term "Exempted Drop Box Materials" applies to temporary services
4 for the collection of certain wastes in approved Drop Boxes, excluding services that
5 would "replace, limit or reduce" any services provided by Waste Management. See
6 Commercial Franchise Agreement, p. 6-7.

7 13. "Exempted Hauler Account Materials" apply to defined existing contracts
8 between listed service providers and identified customers with approval from the City of
9 Reno and excluding services involving "Garbage."

10 14. The term "Excluded Recyclable Materials" generally permits market rate
11 purchasers of Recyclable Materials to collect them from generators of such materials.
12 The definition of Excluded Recyclable Materials makes clear that it excludes "such
13 materials collected and transported as a service" See Commercial Franchise
14 Agreement, p. 5.

15 15. A plain interpretation of the unambiguous language in the passages
16 above, shows that the Commercial Franchise Agreement was explicitly designed to
17 create a practical monopoly for the Collection of Solid Waste and Approved Recyclable
18 Materials within the City of Reno in favor of Waste Management.

19 16. While it is not literally true that Waste Management is the "only hauler that
20 is allowed in Reno and Sparks," this statement is substantially true according to the
21 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
22 statements allegedly made by Waste Management employees, set forth in Paragraph
23 34 of the Amended Complaint cannot be defamatory.

24 ...
25
26
27
28

1 17. The second statement set forth in Paragraph 34 of the Amended
2 Complaint ("Any other provider that goes in there, there will be fines") is also
3 substantially true. The Commercial Franchise Agreement vests Waste Management
4 with the authority to assess fines for customer noncompliance and such noncompliance
5 includes the use of services which violate the Commercial Franchise Agreement.
6

7 18. The Gilletti Email poses even less of a problem. In her email, Gilletti
8 states that Waste Management has the exclusive right to handle "all of the franchised
9 Solid Waste materials generated by the business" and that "no service provider" other
10 than Waste Management may handle "Approved Recyclable Materials." See
11 Commercial Franchise Agreement, ¶ 44. These statements are literally true. Under the
12 Commercial Franchise Agreement, Waste Management has the right to handle
13 "franchised" waste by definition and is the only "service provider" that may handle
14 Approved Recyclable Materials.
15

16 19. The Excluded Recyclable Materials exception, while encompassing some
17 Approved Recyclable Materials, does not include materials handled as "a service".
18

19 20. The statements set forth in Paragraphs 34 and 44 of the Amended
20 Complaint, cannot constitute defamation.

21 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for
22 defamation and defamation per se is GRANTED.

23 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
24 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
25 **(CLAIMS 3 AND 4).**

26 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
27 charging customers lower rates than those specified in the Commercial Franchise
28 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service

1 commercial customers with 96-gallon tote service.

2 23. Plaintiffs based their claim on their purported status as third-party
3 beneficiaries to both the Commercial Franchise Agreement and the Disposal
4 Agreement.
5

6 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
7 as to their ability to handle exempt and excluded materials under Sections 3.2 D and
8 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
9 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities
10 under the Agreements are expressly limited. The Third-Party Beneficiary Provisions
11 apply only to the exempted entities' rights to collect and handle exempted materials.
12

13 25. The Plaintiffs' argument that they have general third-party beneficiary
14 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
15 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
16 benefit them.

17 26. Given the exclusionary nature of the Agreements themselves, the
18 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
19 (1975) is inapposite as in Williams, the Court employed a third-party beneficiary theory
20 only to address the scope of duty owed to Mrs. Williams when her husband was
21 electrocuted working on a billboard in a negligence case.
22

23 27. Under the plain language limitations of the Plaintiff's third-party beneficiary
24 status in the Third-Party Beneficiary Provisions, not all breaches of the Agreements
25 constitute a breach actionable by the Plaintiffs. To be a third-party beneficiary, the
26 Plaintiffs must allege that any violations of the Agreements interfered in some way with
27 their rights to handle exempted materials.
28

1 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
2 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
3 Beneficiary Provision.

4 29. Plaintiffs have alleged that the price adjustment of Exempted Drop Box
5 Materials, which Plaintiffs claim they are entitled to compete for, but are expressly
6 limited by the Commercial Franchise Agreement to temporary Drop Box services which
7 cannot, "replace, limit or reduce" services provided by Waste Management. This would
8 seem to imply that Plaintiffs were not intended to actually compete with Waste
9 Management for these services.
10

11 30. There's some question as to what affect Waste Management's alleged
12 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
13 provide exempted services but, given the language of the Commercial Franchise
14 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
15 complained of actions interfered with their rights to handle exempted materials.
16

17 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
18 breach of contract and for breach of the implied covenant of good faith and fair dealing
19 is GRANTED.
20

21 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
22 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

23 32. The Plaintiffs also assert claims based upon alleged price fixing and
24 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
25 alleged deviations from the price schedule in the Commercial Franchise Agreement and
26 the Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
27 consolidated franchise.
28

1 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
2 does not apply where the conduct is expressly authorized by local government. See
3 NRS 598A.040(3)(b).

4 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
5 the Commercial Franchise Agreement, which amounts to a substantial interference with
6 the Plaintiffs' own ability to continue to haul excepted materials.

7 35. Accordingly, the Plaintiffs' UTPA claim as to price fixing must be
8 dismissed. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price
9 fixing in violation of the UTPA is GRANTED.

10 36. As for the Plaintiffs' UTPA claim based upon the Defendants' alleged
11 collusion with Castaway, these allegations are subject to the heightened pleading
12 requirements of NRCP 9(b).

13 37. As for the collusion claims, the Plaintiffs have successfully pleaded the
14 who, what, when, where, and how of such activities, so as to survive a motion to
15 dismiss.

16 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
17 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
18 trade or commerce in the State of Nevada or a consolidation of business interests
19 which would result in a monopolization or substantially lessen competition or be in
20 restraint of trade. Plaintiffs have alleged such action on the part of Waste
21 Management.

22 39. Defendants are correct that actions which are sanctioned by a
23 municipality are exempted from the unfair trade practices liability. See NRS
24 598A.040(3)(b). However, as alleged in the Amended Complaint, the City of Reno
25

1 originally intended to grant franchises to two separate entities, not one. As alleged,
2 Waste Management's action to further consolidate service in the Reno area by
3 acquiring Castaway would not be subject to approval by the City of Reno and,
4 therefore, results in a violation of the UTPA.
5

6 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
7 have alleged the general time frame during which they believe Waste Management's
8 collusion with Castaway occurred and have stated specifically that Castaway's
9 representatives made statements to the City of Reno regarding their intentions as to the
10 proposed franchise agreement without divulging the planned acquisition.
11

12 41. This was a close call, but given the pleading standards that this Court
13 must apply on a motion to dismiss, the Defendants' Motion to dismiss the UTPA claims
14 relating to unfair trade practices as to the collusion with Castaway in pursuit of an
15 unlawful monopoly is DENIED.

16 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,**
17 **FRAUDULENT MISREPRESENTATION (CLAIM 6).**

18 42. The Court agrees with the Defendants that the claim of fraud alleged by
19 the Plaintiff in the Amended Complaint lacks specificity.

20 43. There are no allegations of an intent to defraud and Plaintiffs have not
21 shown the requisite element of reliance.
22

23 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
24 is GRANTED.

25 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT**
26 **INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

27 45. As to the Plaintiffs' injunctive and declaratory relief claims, this Court has
28 previously found that injunctive relief and declaratory relief was inappropriate, because

1 monetary damages are sufficient to compensate the Plaintiffs for any perceived
2 damages. The Court reaffirms that ruling.⁵

3 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
4 permanent injunction and declaratory relief is GRANTED.

5 **ORDER**

6
7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants'
8 Motion is GRANTED, in part, and DENIED, in part, as follows:

9 1. The Defendants' Motion is Granted as to Plaintiffs' claims for defamation,
10 defamation per se, breach of contract/third party beneficiary, breach of the implied
11 covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent
12 misrepresentation, preliminary and permanent injunction, and declaratory relief. These
13 claims are DISMISSED with prejudice;

14
15 2. The Defendants' Motion is GRANTED, in part, as to the Plaintiffs' claim
16 for unfair trade practices/conspiracy to restrain trade as they relate to price fixing. This
17 claim is DISMISSED with prejudice; and

18
19 3. The Defendants' Motion is Denied, in part, as to the Plaintiffs' claim for
20 unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as
21 it relates to alleged collusion with Castaway.

22 IT IS SO ORDERED.

23 DATED this ____ day of _____, 2015.

24
25
26 DISTRICT COURT JUDGE

27
28
Robison, Belazestegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

5 Injunctive relief is a remedy not a cause of action.

CV16-00407 DC-0950069719-810
NEW RECYCLING ET AL VS RENO 3 Pages
District Court 05/04/2016 11:23 AM
Washoe County
v111.1010

EXHIBIT 2

EXHIBIT 2

1 AFFIDAVIT OF SCOTT L. HERNANDEZ IN SUPPORT OF
2 DEFENDANTS' RESPONSE TO PLAINTIFFS' OBJECTION
3 TO DEFENDANTS' PROPOSED ORDER

4 STATE OF NEVADA }
5 COUNTY OF WASHOE }ss.

6 I, SCOTT L. HERNANDEZ, being duly sworn, depose and state under penalty of
7 perjury the following:

8 1. I am an attorney licensed in the state of Nevada and am one of the
9 counsel representing Defendants Reno Disposal Company, Inc. and Refuse, Inc. in this
10 matter.

11 2. I have personal knowledge of the facts set forth in this affidavit, and if I am
12 called as a witness, I would and could testify competently as to each fact set forth
13 herein.

14 3. Attached hereto as Exhibit "3" is a true and correct copy of the July 29,
15 2015 Transcript of Proceedings, Oral Arguments in this matter.

16 4. Attached hereto as Exhibit "4" is a true and correct copy of a chain of
17 email correspondence between counsel in this matter, which was transmitted from
18 August 11, 2015 to August 14, 2015, as well as an attachment, as maintained by my
19 office in the ordinary course of business.

20 5. On August 13, 2015, counsel for Plaintiffs voiced concern with the
21 accuracy of the Court's order from the bench, stating:

22 While your proposed Order does accurately reflect what the
23 Judge Ordered from the bench, I think the Court mis-spoke
24 with respect to including "Exempted Facility Materials" in that
25 sentence because that statement is not true with respect to
26 Exempted Facility Materials. I propose that we jointly ask
27 the Court to correct this statement sua sponte to omit the
28 language "Exempted Facility Materials" and obviously omit
 that language from the proposed order that we ultimately
 submit as well. There is no pre-existing contract language
 with respect to Exempted Facility Materials and that
 language is contrary to the Franchise Agreement. I think it
 was just a mistake and I believe it can be easily
 corrected.

1 In the next round of redline edits, I invited the Plaintiffs to propose language to clarify
2 the Court's order, stating: "[p]lease suggest some language for a footnote that can be
3 added to clarify the record in the same manner as the earlier footnote that clarifies that
4 the motion was not converted to an MSJ."

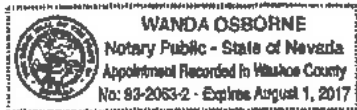
5 FURTHER AFFIANT SAYETH NAUGHT.

6 Dated this 3rd day of September, 2015.

7
8 SCOTT L. HERNANDEZ, ESQ.
9

10 Subscribed and sworn to me
11 on this 3rd day of September, 2015
12 by Scott L. Hernandez, Esq.

13
14 Wanda Osborne
15 NOTARY PUBLIC



CV15-00497 DC-0990008719-811
NEW RECYCLING ET AL VS KENO 10 Pages
District Court 09/04/2015 11:23 AM
Wayne County
V111 A07P

EXHIBIT 3

EXHIBIT 3

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 NEVADA RECYCLING, et al.,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CV15-00497
)	
14 RENO DISPOSAL, et al.,)	Department 7
)	
15 Defendants.)	
)	

16

17
18 TRANSCRIPT OF PROCEEDINGS
19 ORAL ARGUMENTS
20 July 29, 2015
21 1:45 p.m.
22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 sufficient notice pursuant to NRCP 8 A, that the plaintiffs
2 failed to plead fraud with such specificity as required
3 pursuant to NRCP 9 B.

4 The defendants argue that the plaintiffs' claims
5 are premised on an incorrect reading of a commercial
6 franchise agreement, arguing that the Reno Disposal has an
7 exclusive franchise for hauling solid waste, that Reno
8 Disposal has an exclusive franchise for hauling approved
9 recyclable materials, noting that the plaintiff may haul
10 waste materials, which are expressly excluded from the
11 franchise agreement.

12 Defendants argue that the plaintiffs have failed
13 to state a claim for defamation, defamation per se, that the
14 complaint contains no defamatory statements, that the breach
15 of contract claim fails, that the plaintiffs lack standing as
16 third party beneficiaries, that the plaintiffs have no
17 standing as to the franchise claim, that the plaintiffs have
18 no standing as to the eco center claims.

19 Defendants claim the plaintiffs have failed to
20 state a claim as to unfair trade practices, arguing that the
21 UTPA does not apply in this case. That the plaintiffs have
22 failed to state a claim for fraud or to allege justifiable
23 reliance.

24 The plaintiffs filed their opposition on May 7th,

1 2015, the defendants filed their reply on May 19th and we've
2 set this for a hearing on the motion. Mr. Simons, your
3 motion.

4 MR. SIMONS: Thank you, your Honor. May I use the
5 podium?

6 THE COURT: Certainly.

7 MR. SIMONS: I know the Court has had a long, long
8 criminal calendar this morning. I will take an opportunity
9 to revisit why we're here.

10 THE COURT: Our batteries are charged.

11 MR. SIMONS: What's that?

12 THE COURT: Our batteries are charged. Take your
13 time.

14 MR. SIMONS: All right. If you recall, we've
15 already been here before on a motion for injunction and
16 restraining order asserting the claim that the plaintiffs
17 will sustain injury and harm. At the conclusion of the
18 hearing, the Court determined there was insufficient evidence
19 to support any claim or any right to injunctive relief. That
20 then brought the motion to dismiss and why we're here.

21 At the time we dealt with the context of why we're
22 here, this is a very unique type of setting, which is a
23 franchise agreement. Franchise agreements are agreements
24 that are allowed by statute where a municipality or

1 So I guess we would need to determine whether or
2 not we're going to convert this motion into a motion for
3 summary judgment or if the information is not going to be
4 considered.

5 THE COURT: We're converting this to a motion for
6 summary judgment.

7 MS. RICE: Okay. With respect to one of counsel's
8 last statements that it's been admitted that this franchise
9 agreement contract is not ambiguous, that's not an accurate
10 statement. I can tell you from plaintiffs' perspective,
11 plaintiffs have never admitted or made any such statement.
12 In fact, from the start, plaintiffs --

13 THE COURT: Are you saying it's ambiguous?

14 MS. RICE: It's very ambiguous.

15 THE COURT: In what respects?

16 MS. RICE: The first respect, the first major
17 ambiguity is the definition of excluded recyclable materials,
18 which has been extensively discussed. By the very terms of
19 that provision, excluded recyclable materials are defined as
20 approved recyclable materials, as long as they are separated
21 by the generator from all other materials, and contain not
22 less than 90 percent of those approved recyclable materials
23 and they need to be sold by the generator to a buyer.

24 The next statement in that section states they

1 Municipal Code.

2 In looking at the agreement itself, the franchise
3 agreement, it is clear that Waste Management's franchise to
4 collect and haul waste and recyclables is nearly completely
5 exclusive. It includes the right to collect, transport and
6 deliver collection materials in the Reno area. That's found
7 in franchise agreement 3.2 A.

8 That clause is intended to be broadly interpreted
9 and includes within the definition of collected materials,
10 quote, all solid waste, bracket, including nearly all paper,
11 glass, aluminum, plastic materials, close bracket, close
12 quote, generated by commercial customers subject to certain
13 exemptions. That's found on page three of the agreement.

14 This agreement provides that Waste Management is
15 entitled to charge fees for customers' noncompliance with the
16 agreement. That's found in section 3.2 B. The few
17 exemptions to the franchise are narrow. They are for, open
18 quote, excluded materials, excluded recyclable materials,
19 exempted drop box materials, exempted hauler account
20 materials and exempted facility materials delivered to
21 exempted facilities, close quote. And that's in section 3.2
22 A.

23 The term exempted drop box materials applies to
24 temporary services for the collection of certain wastes in

1 approved drop boxes, excluding services that would, quote,
2 replace, limit or reduce, close quote, any services provided
3 by Waste Management. That's found in the agreement on pages
4 six and seven.

5 Open quote, exempted hauler account materials,
6 close quote, and, quote, exempted facility materials, close
7 quote, apply to defined existing contracts between listed
8 services providers and identified customers with approval
9 from the city and excluding services involving garbage. The
10 term, open quote, excludable recyclable materials, close
11 quote, generally permits market rate purchasers of recyclable
12 materials to collect them from generators of such materials.
13 The definition makes clear that it excludes, open quote, such
14 materials collected and transported as a service, close
15 quote. That's found on page five of the agreement.

16 A plain interpretation of the unambiguous passages
17 above shows that the franchise agreement was explicitly
18 designed to create a practical monopoly on solid waste and
19 recyclable collection in the Reno, Sparks areas in favor of
20 Waste Management.

21 While it is not literally true that Waste
22 Management is the, quote, only hauler that is allowed in Reno
23 and Sparks, close quote, that statement is substantially
24 true. As such, the first and third statements by Waste

1 claim for defamation and defamation per se is granted.

2 Breach of contract, breach implied covenant of
3 good faith and fair dealing. Plaintiffs allege that Waste
4 Management breached the franchise disposal agreements, by;
5 one, charging customers lower rates than those specified in
6 the agreement; two, failing to diligently construct the eco
7 center; and three, refusing to service commercial customers
8 with 96-gallon tote service.

9 Plaintiffs based their claim on their status as
10 third party beneficiaries to the franchise and disposal
11 agreements. The franchise agreement does provide the
12 plaintiff with third party beneficiary rights as to their
13 ability to handle exempt material under sections 3.2 D and
14 4.4 L.

15 However, the rights of the exempted entities under
16 each section are limited. Each section applies only to the
17 exempted entities' rights to collect and handle exempted
18 materials. Plaintiffs' argument that they have general third
19 party beneficiary standing under Hample versus Hansen, might
20 also be tenable if they can show a clear promissory intent
21 that the franchise agreement was meant to benefit them.

22 Although this is not unlikely given the
23 exclusionary nature of the agreements themselves, plaintiffs'
24 reliance on Williams versus City of North Las Vegas is

1 inaccurate as that case employed a third party beneficiary
2 theory only to address the scope of duty owed to
3 Mrs. Williams when her husband was electrocuted working on a
4 billboard down in Las Vegas in a negligence case.

5 Now, under the plain language, limitations of the
6 plaintiffs' third party beneficiary status in the agreements
7 themselves, not all breaches constitutes a breach against the
8 plaintiffs. The plaintiffs must demonstrate that the
9 violations interfered in some way with their rights to handle
10 exempted materials.

11 The construction of an eco center plainly has no
12 bearing on those rights. It's also not clear how Waste
13 Management's failure to follow the rate schedule as to
14 franchised materials affects plaintiffs' rights to handle
15 exempted materials.

16 Plaintiffs allege that the price adjustment of the
17 drop box materials, which plaintiffs claim they are entitled
18 to compete for, but drop box services are expressly limited
19 by the agreement to temporary services, which cannot, quote,
20 replace, limit or reduce, close quote, services provided by
21 Waste Management.

22 This would seem to imply that plaintiffs were not
23 intended to actually compete with Waste Management for these
24 services. There's some question as to what affect Waste

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on July 29, 2015, at the hour of 1:45
8 p.m., and took verbatim stenotype notes of the proceedings
9 had upon the oral arguments in the matter of NEVADA
10 RECYCLING, et al., Plaintiffs, vs. RENO DISPOSAL, et al.,
11 Defendants, Case No. CV15-00497, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 71, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 31st day of July 2015.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

CV15-00487 DC-090069718-012
NEW RECYCLING ET AL VS RENO 29 Pages
District Court 08/04/2015 11:23 AM
Washoe County v.1.1.1.2015

EXHIBIT 4

EXHIBIT 4

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Friday, August 14, 2015 10:03 AM
To: Mark Simons
Cc: Jodi Alhasan; Mr. Del Hardy
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Absolutely. Attached is a redlined version with track changes. Please let me know your thoughts with respect to "Exempted Facility Materials" in paragraph 13. I honestly think it is problematic either way, but it definitely does not make sense within the context of the sentence the Judge made when putting his ruling on the record.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 14, 2015, at 9:24 AM, Mark Simons <MSimons@rbsllaw.com> wrote:

Do you have a readline version for comparison?

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Thursday, August 13, 2015 5:17 PM
To: Mark Simons
Cc: Jodi Alhasan; Mr. Del Hardy
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Mr. Simons,

Attached is the proposed Order with my proposed changes. Aside from taking out the initial one-sided commentary, the majority of the changes I made just change some of the language to read exactly as the Judge ordered that I pulled directly from the transcript without deviation. I

am not trying to editorialize, I am just trying to use the exact language that the Judge used as opposed to a synonym or editorial language.

One additional change I made that is substantive is with respect to paragraph 13. While your proposed Order does accurately reflect what the Judge Ordered from the bench, I think the Court mis-spoke with respect to including "Exempted Facility Materials" in that sentence because that statement is not true with respect to Exempted Facility Materials. I propose that we jointly ask the Court to correct this statement sua sponte to omit the language "Exempted Facility Materials" and obviously omit that language from the proposed order that we ultimately submit as well. There is no pre-existing contract language with respect to Exempted Facility Materials and that language is contrary to the Franchise Agreement. I think it was just a mistake and I believe it can be easily corrected. But I would prefer that we ask the Judge to correct it now than have to have it be the subject of an Appeal. Please let me know your thoughts.

Thanks,

Stephanie
Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 12, 2015, at 9:54 AM, Mark Simons <MSimons@rbsllaw.com> wrote:

No problem.

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Tuesday, August 11, 2015 4:55 PM
To: Jodi Alhasan
Cc: Mr. Del Hardy; Mark Simons
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Thank you Jodi. I will try and get our comments over to you by the end of the week at the latest (seeing as how the draft proposed order is you sent is 13 pages long it may take us a day or two to be able to get to it).

Thanks,

Stephanie

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 11, 2015, at 3:51 PM, Jodi Alhasan
<JAlhasan@rbsllaw.com> wrote:

Counsel –

Pursuant to Mr. Simons' instruction, attached please find the draft Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Part, and Denying in Part, for your review and comment.

Please do not hesitate to contact this office if you have any questions or comments.

Thank you,

Jodi Alhasan,
Assistant to Mark G. Simons, Esq.
and Therese M. Shanks, Esq.
Robison, Belfautegui, Sharp & Low
71 Washington St.
Reno, NV 89503
Phone: (775) 329-3151
Fax: (775) 329-7941

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

<P-Ord Grant Def Mtn Dismiss.doc>

1 3025

2

3

4

5

6

7

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

8

IN AND FOR THE COUNTY OF WASHOE

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

NEVADA RECYCLING AND SALVAGE, LTD., a
Nevada Limited Liability Company; and AMCB,
LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation dba WASTE MANAGEMENT;
REFUSE, INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED AMENDED
COMPLAINT, IN PART, AND DENYING, IN PART**

This matter came on for hearing on July 29, 2015, on the Motion to Dismiss
Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal
Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc.
("Refuse") (collectively referred to as the "Defendants" unless otherwise specified).
Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison,
Belaustegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq.
and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada

Robison, Belaustegui,
Sharp & Low
77 Washington St.
Reno, NV 89501
(775) 329-3151

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.

9
10 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
11 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
12 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
13 required under NRCP 9(b) ("Motion").

14
15 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
16 Defendants filed their reply in support of the Motion on May 19, 2015.³ Change
17 Footnote Numbering

18
19 The Court has considered the allegations set forth in the Amended Complaint,
20 the Agreements incorporated by reference therein, the Defendants' Motion, the
21 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
22 such briefing, and the arguments of the parties at the time of the hearing. In rendering
23 its decision, the Court has accepted the factual allegations in the Amended Complaint

24
25
26 ³ The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May
27 22, 2015. The Defendants opposed the motion to strike on June 11, 2015. The
28 Plaintiffs' filed a reply in support of the motion to strike on June 15, 2015. The Court
denied the Plaintiffs' motion to strike in its order dated July 2, 2015, citing excusable
neglect and a lack of prejudice to the Plaintiffs. The Court hereby reaffirms its order on
the Plaintiffs' motion to strike and considers the Defendants' reply in support of the
Motion in the instant ruling and order.

Rules 8/13/2015 4:16 PM

Deleted:
With regard to the specific claims, Defendants
With regard to the specific claims, Defendants
Defendants argue that the Plaintiffs have failed
to state a claim for defamation and defamation
per se, asserting that the Amended Complaint
contains no defamatory statements (claims 1
and 2). The Defendants also argue that the
breach of contract claims fail (claims 3 and 4)
because the Plaintiffs lack standing as third-
party beneficiaries to the Agreements.
Accordingly, the Defendants state that the
Plaintiffs have no standing to assert claims for
alleged breach of Agreement relating to any
alleged non-performance relating to
construction of the "Eco Center" and/or incorrect
pricing and/or billing. The Defendants also
assert the Plaintiffs failed to state a claim for
unfair trade practices, arguing that Nevada's
Unfair Trade Practices Act ("UTPA") does not
apply in this case (claim 5). The Defendants
also argue that the Plaintiffs have failed to state
a claim for fraud and failed to allege the
necessary element of justifiable reliance (claim
6). The Defendants finally argue that Plaintiffs'
claim for injunctive relief (claim 7) is not a
recognized claim and is instead a remedy,
which remedy the Court has previously denied
was necessary during the pendency of the

Rules 8/13/2015 4:16 PM

Deleted: With regard to the specific claims,
Defendants argue that the Plaintiffs have failed
to state a claim for defamation and defamation
per se, asserting that the Amended Complaint
contains no defamatory statements (claims 1
and 2). The Defendants also argue that the
breach of contract claims fail (claims 3 and 4)
because the Plaintiffs lack standing as third-
party beneficiaries to the Agreements.
Accordingly, the Defendants state that the
Plaintiffs have no standing to assert claims for
alleged breach of Agreement relating to any
alleged non-performance relating to
construction of the "Eco Center" and/or incorrect
pricing and/or billing. The Defendants also
assert the Plaintiffs failed to state a claim for
unfair trade practices, arguing that Nevada's
Unfair Trade Practices Act ("UTPA") does not
apply in this case (claim 5). The Defendants
also argue that the Plaintiffs have failed to state
a claim for fraud and failed to allege the
necessary element of justifiable reliance (claim
6). The Defendants finally argue that Plaintiffs'
claim for injunctive relief (claim 7) is not a
recognized claim and is instead a remedy,
which remedy the Court has previously denied
was necessary during the pendency of the
litigation.

1 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
2 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴

3 Change Footnote Numbering

4 Good cause appearing, the Court finds that the Motion shall be GRANTED, in
5 part, and DENIED, in part, for the following reasons and upon the following grounds:
6

7 1. The Defendants have filed the Motion to dismiss the Amended Complaint
8 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
9 motions to dismiss for failure to state a claim upon which relief can be granted.

10 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must
11 treat all factual allegations as true and draw all reasonable inferences in favor of the
12 nonmoving party, in this case, the Plaintiffs.

13 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
14 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.

15 4. Dismissal is appropriate when the allegations are insufficient to establish
16 the elements for the claim for relief.

17 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
18 **(CLAIMS 1 AND 2).**

19 5. The elements of a defamation claim are as follows: a false and
20 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
21 publication to a third person; fault amounting to at least negligence; and actual or
22 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459.

23
24
25
26
27 ⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying,
28 "We're converting this to a motion for summary judgment." See Transcript of
Proceedings, Oral Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate.
The Court confirms that the Motion was not converted into a motion for summary
judgment and the Motion decided under the standard set forth in NRCP 12(b)(5) and

Revised 8/13/2015 4:21 PM

Deleted: In light of the allegations in the
Plaintiff's Amended Complaint, the
unambiguous language of the Agreement
incorporated by reference therein, and good

Revised 8/13/2015 4:22 PM

Formatted: Indent: Left: 0", First line: 0".
Line spacing: double

Revised 8/13/2015 4:22 PM

Deleted: (b)(2)

1 462(1993). A statement is not defamatory if it is absolutely true or substantially true.

2 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

3 6. Here, Plaintiffs allege that Waste Management employees made false
4 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
5 following:

- 6
- 7 a. "We [Waste Management] are only the haulers that's allowed in Sparks
8 and Reno."
 - 9 b. "Any other provider that goes in there, there will be fines."
 - 10 c. "We [Waste Management] have an agreement with the city and we are the
11 only trash hauler that is allowed in either of those cities [Reno and
12 Sparks]."

12 See Amended Complaint, ¶ 34.

13 7. Plaintiffs allege that Waste Management employee, Cherdyn Gilletti,
14 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
15 "Gilletti Email"), which read as follows:

16 " . . . At this time Waste Management is the assigned hauler for the City of
17 Reno.

18
19 Solid Waste: Every business generating solid waste in the City of Reno is
20 required to subscribe to Reno Disposal Company for the collection,
21 transportation and disposal of all of franchised solid waste material
22 generated by the business, except for business to which the City of Reno
23 has specifically granted in writing an exemption. . . .

24 Recyclable Material: No business may allow or retain any service provider
25 other than Reno Disposal Company to collect, pick up, transport or deliver
26 Approved Recyclable Materials in the City of Reno in violation of the
27 exclusive commercial franchise agreement or the Reno Municipal Code."

28 See Amended Complaint, ¶ 34.

8. Under the Commercial Franchise Agreement, it is clear that Waste
Management's franchise to collect and haul waste and recyclables is nearly exclusive.

ROBERT L. HADAMCZAK
SHARP & LEE
21 Westwood Dr.
Reno, NV 89505
(775) 796-3151

related case law.

1 It includes the right to collect, transport, and deliver Collection Materials in the Reno
2 area. Section 3.2 A is intended to be broadly interpreted.

3 9. Under the Commercial Franchise Agreement, "Collection Materials" are
4 defined as "all Solid Waste and Approved Recyclable Materials (including nearly all
5 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
6 to certain exemptions. See Commercial Franchise Agreement, p. 3.

7 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
8 Management is entitled to charge fees for customers' noncompliance with the
9 Commercial Franchise Agreement.

10 11. The few exemptions to the Commercial Franchise Agreement are narrow,
11 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
12 Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility Materials
13 delivered to Exempted Facilities." See Commercial Franchise Agreement, §3.2 A.

14 12. The term "Exempted Drop Box Materials" applies to temporary services for
15 the collection of certain wastes in approved Drop Boxes, excluding services that would
16 "replace, limit or reduce" any services provided by Waste Management. See
17 Commercial Franchise Agreement, p. 6-7.

18 13. "Exempted Hauler Account Materials" apply to defined existing contracts
19 between listed service providers and identified customers with approval from the City of
20 Reno and excluding services involving "Garbage."

21 14. The term "Excluded Recyclable Materials" generally permits market rate
22 purchasers of Recyclable Materials to collect them from generators of such materials.
23 The definition of Excluded Recyclable Materials makes clear that it excludes "such
24 materials collected and transported as a service . . ." See Commercial Franchise
25 Agreement, p. 5.
26
27
28

Robson, Berman &
Stacy & Lom
73 Washington St
Reno, NV 89401
(775) 379-2151

Richie 8/13/2015 4:22 PM

Deleted: Under Section 3.2 A of the
Commercial Franchise Agreement, Waste
Management has the exclusive right to collect,
transport and deliver Collection Materials within
the City of Reno

Richie 8/19/2015 4:22 PM

Comment [1]: Respectfully, I think the Court
mis-spoke with respect to including "Exempted
Facility Materials" in this sentence because this
statement is not true with respect to Exempted
Facility Materials. I propose that we jointly ask the
Court to correct this statement and delete the
language "Exempted Facility Materials" and
obviously edit that language from the proposed
order as well.

Richie 8/19/2015 4:24 PM

Deleted: and "Exempted Facility Materials"

Richie 8/13/2015 4:24 PM

Deleted:

Richie 8/13/2015 4:26 PM

Deleted: as that term is identified in the
Commercial Franchise Agreement. See
Commercial Franchise Agreement, p. 7-8.

1 15. A plain interpretation of these unambiguous passages above, shows that
2 the Commercial Franchise Agreement was explicitly designed to create a practical
3 monopoly on Solid Waste and Collection of Approved Recyclable Materials within the
4 City of Reno in favor of Waste Management.

5 16. While it is not literally true that Waste Management is the "only hauler that
6 is allowed in Reno and Sparks," this statement is substantially true according to the
7 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
8 statements allegedly made by Waste Management employees, set forth in Paragraph
9 34 of the Amended Complaint cannot be defamatory.

10 17. The second statement set forth in Paragraph 34 of the Amended
11 Complaint ("Any other provider that goes in there, there will be fines") is also
12 substantially true. The Commercial Franchise Agreement vests Waste Management
13 with the authority to assess fines for customer noncompliance and such noncompliance
14 includes the use of services which violate the Commercial Franchise Agreement.

15 18. In her email, Gilelli states that Waste Management has the exclusive right
16 to handle "all of the franchised Solid Waste materials generated by the business" and
17 that "no service provider" other than Waste Management may handle "Approved
18 Recyclable Materials." See Commercial Franchise Agreement, ¶ 44. These statements
19 are literally true. Under the Commercial Franchise Agreement, Waste Management has
20 the right to handle "franchised" waste by definition and is the only "service provider" that
21 may handle Approved Recyclable Materials.

22 19. The Excluded Recyclable Materials exception, while encompassing some
23 Approved Recyclable Materials, does not include materials handled as "a service".

24 20. As such, those statements cannot constitute defamation.

25 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for

26
27
28
2010060685
7: Washington St
Reno, NV 89505
(775) 222-1121

Reno 8/12/2015 4:25 PM

Deleted: defined terms, described in the
foregoing paragraphs, establishes

Reno 8/13/2015 4:29 PM

Deleted: for the Collection of

Reno 9/13/2015 4:40 PM

Deleted: The Gilelli Email poses even less of
a problem.

Reno 8/12/2015 4:31 PM

Deleted: specifically

Reno 8/13/2015 4:31 PM

Deleted: The alleged defamatory statements
set forth in Paragraphs 34 and 44 of the
Amended Complaint cannot constitute
defamation as they are either literally true or
substantially true under the plain language of
the Commercial Franchise Agreement

1 defamation and defamation per se is GRANTED.

2 B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH
3 OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
4 (CLAIMS 3 AND 4).

5 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
6 charging customers lower rates than those specified in the Commercial Franchise
7 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
8 commercial customers with 96-gallon tote service.

9 23. Plaintiffs based their claim on their purported status as third-party
10 beneficiaries to both the Commercial Franchise Agreement and the Disposal
11 Agreement.

12 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
13 as to their ability to handle exempt and excluded materials under Sections 3.2 D and 4.4
14 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
15 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities under
16 the Agreements are expressly limited. The Third-Party Beneficiary Provisions apply
17 only to the exempted entities' rights to collect and handle exempted materials.

18 25. The Plaintiffs' argument that they have general third-party beneficiary
19 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
20 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
21 benefit them.

22 26. Given the exclusionary nature of the Agreements themselves, the
23 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
24 (1975) is inapposite as, in Williams, the Court employed a third-party beneficiary theory
25 only to address the scope of duty owed to Mrs. Williams when her husband was
26 electrocuted working on a billboard in a negligence case.

27
28
Robinson, Belknap, &
Shoup & Law
71 Washington St.
Reno, NV 89501
(775) 329-1151

Richie 8/13/2015 4:32 PM

Deleted: , which they cannot

Richie 8/13/2015 4:32 PM

Deleted: also

Richie 8/13/2015 4:32 PM

Deleted:

Richie 8/13/2015 4:32 PM

Deleted: 1

Richie 8/13/2015 4:32 PM

Deleted: which is a negligence case.

1 27. Under the plain language of the Third-Party Beneficiary Provisions, not all
2 breaches of the Agreements constitute a breach actionable by the Plaintiffs. To be a
3 third-party beneficiary, the Plaintiffs must allege that any violations interfered in some
4 way with their rights to handle exempted materials.

5 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
6 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
7 Beneficiary Provision.

8 29. Plaintiffs have alleged that the price adjustment of drop box materials,
9 which Plaintiffs claim they are entitled to compete for, but are expressly limited by the
10 agreement to temporary drop box services which cannot, "replace, limit or reduce"
11 services provided by Waste Management. This would seem to imply that Plaintiffs were
12 not intended to actually compete with Waste Management for these services.

13 30. There's some question as to what affect Waste Management's alleged
14 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
15 provide exempted services but, given the language of the Commercial Franchise
16 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
17 complained of actions interfered with their rights to handle exempted materials.

18 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
19 breach of contract and for breach of the implied covenant of good faith and fair dealing
20 is GRANTED.

21 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
22 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

23 32. The Plaintiffs also assert claims based upon alleged price fixing and
24 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
25 deviations from the price schedule in the Commercial Franchise Agreement and the
26
27
28

Andres, John, Esq.
Shay & Low
7 Washington St.
Albany, NY 12202
(755) 222-1131

Revised 8/13/2015 4:53 PM
Deleted: limitation described in the

Revised 8/13/2015 4:53 PM
Deleted: breaches

Revised 8/13/2015 4:53 PM
Deleted: the

Revised 8/13/2015 4:53 PM
Deleted: Waste Management's alleged failure
to follow the rate schedule set forth in the
Commercial Franchise Agreement also does
not affect the Plaintiffs' rights to handle
exempted materials and has no bearing on
those rights set forth in the Third-Party
Beneficiary Provision. The Plaintiffs base the
Defendants' alleged breach of the rate schedule
upon an alleged price adjustment for Drop Box
Materials, for which the Plaintiffs claim they are
entitled to compete. However, Exempted Drop
Box Services are expressly limited by the
Commercial Franchise Agreement to temporary
services, which cannot

Revised 8/13/2015 4:53 PM
Deleted: See Commercial Franchise
Agreement, p. 6.

Revised 8/13/2015 4:53 PM

Deleted: language implies I

Revised 8/13/2015 4:53 PM

Deleted: the

Revised 8/13/2015 4:53 PM

Deleted: assert

Revised 8/13/2015 4:53 PM
Deleted: These claims are based upon the
Defendants' alleged

1 Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
2 consolidated franchise,

3 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
4 does not apply where the conduct is expressly authorized by local government. See
5 NRS 598A.040(3)(b).
6

7 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
8 the Commercial Franchise Agreement, which amounts to a substantial interference with
9 the Plaintiffs' own ability to continue to haul excepted materials.

10 35. Accordingly, the Plaintiffs' claim as to price fixing must be dismissed.
11 Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price fixing is
12 GRANTED.
13

14 36. As for the Plaintiffs' UTPA claim based upon the Defendants' alleged
15 collusion with Castaway, these allegations are subject to the heightened pleading
16 requirements of NRCP 9(b).

17 37. Here, the Plaintiffs have successfully pleaded the who, what, when,
18 where, and how of such activities. ,
19

20 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
21 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
22 trade or commerce in the State of Nevada or a consolidation of business interests which
23 would result in a monopolization or substantially lessen competition or be in restraint of
24 trade. Plaintiffs have alleged such action on the part of Waste Management.

25 39. Defendants are correct that actions which are sanctioned by a municipality
26 are exempted from the unfair trade practices liability. See NRS 598A.040(3)(b).
27 However, as alleged in the Amended Complaint, the City of Reno originally intended to
28 grant franchises to two separate entities, not one. And an action to further consolidate

Printed: 10/13/2015 4:38 PM
Sharp & Lee
71 Washington St
Reno, NV 89501
(775) 325-5111

Refile 8/13/2015 4:38 PM

Deleted: geographic

Refile 8/13/2015 4:38 PM

Deleted: of the Reno area

Refile 8/13/2015 4:38 PM

Deleted: As stated, the

Refile 8/13/2015 4:38 PM

Deleted: UTPA

Refile 8/13/2015 4:38 PM

Deleted: in violation of the UTPA

Refile 8/13/2015 4:38 PM

Deleted: As for these collusion claims

Refile 8/13/2015 4:38 PM

Deleted: The Plaintiffs alleged the collusion
claims with the requisite specificity so as to
survive a motion to dismiss.

Refile 8/13/2015 4:38 PM

Deleted: sole legal basis for their UTPA claim
is set forth in

Refile 8/13/2015 4:40 PM

Deleted: which

Refile 8/13/2015 4:40 PM

Deleted: those

Refile 8/13/2015 4:41 PM

Deleted: The Amended Complaint sufficiently
alleges such an action on the part of Waste
Management.

Refile 8/13/2015 4:41 PM

Deleted: and which must be accepted as true
at this stage.

Refile 8/13/2015 4:42 PM

Deleted: Moreover, pursuant to the Plaintiffs'
allegations, the consolidation of Castaway's
franchise with Waste Management's franchised
service in the Reno area was not subject to
approval by the City of Reno.

1 service in the Reno area beyond that would not be subject to approval by the City of
2 Reno.

3 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
4 have alleged the general time frame during which they believe Waste Management's
5 collusion with Castaway occurred and have stated specifically that Castaway's
6 representatives made statements to the City of Reno regarding their intentions as to the
7 proposed franchise agreement without divulging the planned acquisition.

8 41. Given the pleading standards that this Court must apply on a motion to
9 dismiss, the Defendants' Motion to dismiss the claims relating to unfair trade practices
10 as to the collusion with Castaway in pursuit of an unlawful monopoly is DENIED.

11
12 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,
13 FRAUDULENT MISREPRESENTATION (CLAIM 6).**

14 42. The Court agrees with the Defendants that the claim of fraud alleged by
15 the Plaintiff Jacks specificity.

16 43. There are no allegations of an intent to defraud and Plaintiffs have not
17 shown the requisite element of reliance.

18 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
19 is GRANTED.

20
21 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT
22 INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

23 45. As to the Plaintiffs' injunctive relief claims, this Court has previously found
24 that injunctive relief and declaratory relief was inappropriate, because monetary
25 damages are sufficient to compensate the Plaintiffs for any perceived damages. The
26 Court reaffirms that ruling.

27 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
28 permanent injunction and declaratory relief is GRANTED.

Kathleen Belcher-Hopai,
Shirley A. Lee,
7, Washington St.
Reno, NV 89503
(775) 329-7151

Richie 8/13/2015 4:43 PM

Deleted: The Plaintiffs' allegations do

Richie 8/13/2015 4:45 PM

Deleted: Therefore, while this was a close call,

Richie 8/13/2015 4:45 PM

Deleted: the UTPA claim relating to Waste

Management's alleged

Richie 8/13/2015 4:46 PM

Deleted: in the Amended Complaint

Richie 8/13/2015 4:46 PM

Deleted: the

Richie 8/13/2015 4:46 PM

Deleted: required by NRCP 8(b)

Richie 8/13/2015 4:46 PM

Deleted: The Amended Complaint contains no

allegations of

Richie 8/13/2015 4:47 PM

Deleted: and declaratory

Richie 8/13/2015 4:48 PM

Comment [2]: The Judge asked that this be

included specifically as a footnote, "injunctive relief

is a remedy and not a cause of action."

Richie 8/13/2015 4:47 PM

Deleted: this

Richie 8/13/2015 4:48 PM

Deleted:

Richie 8/13/2015 4:48 PM

Deleted: 7

Richie 8/13/2015 4:49 PM

Deleted: Therefore, the

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

1. As to Plaintiffs' claims for defamation, defamation per se, breach of contract/third party beneficiary, breach of the implied covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent misrepresentation, preliminary and permanent injunction, and declaratory relief, Defendants' Motion to Dismiss is GRANTED.

2. As to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as they relate to price fixing, Defendants' Motion to Dismiss is GRANTED as to that part, and.

3. As to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as it relates to collusion with Castaway, Defendants' Motion to Dismiss is DENIED.

IT IS SO ORDERED.

DATED this ____ day of August, 2015.

DISTRICT COURT JUDGE

Submitted by:
Robison, Belauslegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

Del Hardy, Esq.
Stephanie Rice, Esq.
Attorneys for Plaintiffs

Mark G. Simon
Scott L. Hernandez
Attorneys for Defendants
Approved as to Form and Content:
Hardy Law Group
96 and 98 Winter Street
Reno, NV 89503

Robison, Belauslegui,
Sharp & Low
15 Washington St
Reno, NV 89503
(775) 325-3151

Riche 8/13/2015 4:49 PM

Formatted: Centred

Riche 8/13/2015 4:49 PM

Deleted:

Riche 8/13/2015 4:49 PM

Deleted: The Defendants' Motion is GRANTED

Riche 8/13/2015 4:50 PM

Deleted: These claims are DISMISSED with prejudice;

Further 8/13/2015 4:50 PM

Deleted: The Defendants' Motion is GRANTED, in part, as

Riche 8/13/2015 4:51 PM

Deleted: This claim is DISMISSED with prejudice; and

Further 8/13/2015 4:51 PM

Deleted: The Defendants' Motion is DENIED, in part, as

Riche 8/13/2015 4:51 PM

Deleted: changed

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Friday, August 14, 2015 10:03 AM
To: Mark Simons
Cc: Jodi Alhasan; Mr. Del Hardy
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Absolutely. Attached is a redlined version with track changes. Please let me know your thoughts with respect to "Exempted Facility Materials" in paragraph 13. I honestly think it is problematic either way, but it definitely does not make sense within the context of the sentence the Judge made when putting his ruling on the record.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 14, 2015, at 9:24 AM, Mark Simons <MSimons@rbsllaw.com> wrote:

Do you have a readline version for comparison?

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Thursday, August 13, 2015 5:17 PM
To: Mark Simons
Cc: Jodi Alhasan; Mr. Del Hardy
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Mr. Simons,

Attached is the proposed Order with my proposed changes. Aside from taking out the initial one-sided commentary, the majority of the changes I made just change some of the language to read exactly as the Judge ordered that I pulled directly from the transcript without deviation. I

am not trying to editorialize, I am just trying to use the exact language that the Judge used as opposed to a synonym or editorial language.

One additional change I made that is substantive is with respect to paragraph 13. While your proposed Order does accurately reflect what the Judge Ordered from the bench, I think the Court mis-spoke with respect to including "Exempted Facility Materials" in that sentence because that statement is not true with respect to Exempted Facility Materials. I propose that we jointly ask the Court to correct this statement sua sponte to omit the language "Exempted Facility Materials" and obviously omit that language from the proposed order that we ultimately submit as well. There is no pre-existing contract language with respect to Exempted Facility Materials and that language is contrary to the Franchise Agreement. I think it was just a mistake and I believe it can be easily corrected. But I would prefer that we ask the Judge to correct it now than have to have it be the subject of an Appeal. Please let me know your thoughts.

Thanks,

Stephanie
Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 12, 2015, at 9:54 AM, Mark Simons <MSimons@rbsllaw.com> wrote:

No problem.

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Tuesday, August 11, 2015 4:55 PM
To: Jodi Alhasan
Cc: Mr. Del Hardy; Mark Simons
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Thank you Jodi. I will try and get our comments over to you by the end of the week at the latest (seeing as how the draft proposed order is you sent is 13 pages long it may take us a day or two to be able to get to it).

Thanks,

Stephanie

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 11, 2015, at 3:51 PM, Jodi Alhasan
<JAlhasan@rbsllaw.com> wrote:

Counsel –

Pursuant to Mr. Simons' instruction, attached please find the draft
Order Granting Defendants' Motion to Dismiss Verified Amended
Complaint, in Part, and Denying in Part, for your review and comment.

Please do not hesitate to contact this office if you have any questions or
comments.

Thank you,

Jodi Alhasan,
Assistant to Mark G. Simons, Esq.
and Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington St.
Reno, NV 89503
Phone: (775) 329-3151
Fax: (775) 329-7941

CONFIDENTIALITY: This email (including attachments) is intended
solely for the use of the individual to whom it is addressed and may
contain information that is privileged, confidential, or otherwise exempt
from disclosure under applicable law. If you are not the intended
recipient, please do not read, copy, or re-transmit this communication. If
you are the intended recipient, this communication may only be copied or
transmitted with the consent of the sender. If you have received this
email in error, please contact the sender immediately by return email and
delete the original message and any attachments from your
system. Thank you in advance for your cooperation and assistance.

<P-Ord Grant Def Mtn Dismiss.doc>

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD., a Nevada Limited Liability Company; and AMCB, LLC, a Nevada Limited Liability Company dba RUBBISH RUNNERS, CASE NO.: CV15-00497
DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada Corporation dba WASTE MANAGEMENT; REFUSE, INC., a Nevada Corporation; ABC CORPORATIONS, I-X; BLACK AND WHITE COMPANIES, I-X; and JOHN DOES I-X, inclusive,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED AMENDED COMPLAINT IN PART AND DENYING, IN PART

This matter came on for hearing on July 29, 2015, on the Motion to Dismiss Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc. ("Refuse") (collectively referred to as the "Defendants" unless otherwise specified). Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison, Belauslegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq. and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.

9 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
10 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
11 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
12 required under NRCP 9(b) ("Motion").

13 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
14 Defendants filed their reply in support of the Motion on May 19, 2015.³ ~~Change~~
15 Footnote Numbering

16 The Court has considered the allegations set forth in the Amended Complaint,
17 the Agreements incorporated by reference therein, the Defendants' Motion, the
18 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
19 such briefing, and the arguments of the parties at the time of the hearing. In rendering
20 its decision, the Court has accepted the factual allegations in the Amended Complaint

21 ³ The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May
22 22, 2015. The Defendants opposed the motion to strike on June 11, 2015. The
23 Plaintiffs' filed a reply in support of the motion to strike on June 15, 2015. The Court
24 denied the Plaintiffs' motion to strike in its order dated July 2, 2015, citing excusable
25 neglect and a lack of prejudice to the Plaintiffs. The Court hereby reaffirms its order on
26 the Plaintiffs' motion to strike and considers the Defendants' reply in support of the
27 Motion in the instant ruling and order.
28

Rebecca B. Mahoney,
Shay & Law
77 Washington St.
Rye, NY 10583
(914) 329-3151

FILED 2/12/2015 4:15 PM

Deleted:

With regard to the specific claims, Defendants
With regard to the specific claims, Defendants
Defendants argue that the Plaintiffs have failed
to state a claim for defamation and defamation
per se, asserting that the Amended Complaint
contains no defamatory statements (claims 1
and 2). The Defendants also argue that the
breach of contract claims fail (claims 3 and 4)
because the Plaintiffs lack standing as third-
party beneficiaries to the Agreements.
Accordingly, the Defendants state that the
Plaintiffs have no standing to assert claims for
alleged breach of Agreement relating to any
alleged non-performance relating to
construction of the "Eco Center" and/or incorrect
pricing and/or billing. The Defendants also
assert the Plaintiffs failed to state a claim for
unfair trade practices, arguing that Nevada's
Unfair Trade Practices Act ("UTPA") does not
apply in this case (claim 5). The Defendants
also argue that the Plaintiffs have failed to state
a claim for fraud and failed to allege the
necessary element of justifiable reliance (claim
6). The Defendants finally argue that Plaintiffs'
claim for injunctive relief (claim 7) is not a
recognized claim and is instead a remedy,
which remedy the Court has previously denied
was necessary during the pendency of the
litigation.

FILED 8/1/2015 4:15 PM

Deleted: With regard to the specific claims,
Defendants argue that the Plaintiffs have failed
to state a claim for defamation and defamation
per se, asserting that the Amended Complaint
contains no defamatory statements (claims 1
and 2). The Defendants also argue that the
breach of contract claims fail (claims 3 and 4)
because the Plaintiffs lack standing as third-
party beneficiaries to the Agreements.
Accordingly, the Defendants state that the
Plaintiffs have no standing to assert claims for
alleged breach of Agreement relating to any
alleged non-performance relating to
construction of the "Eco Center" and/or incorrect
pricing and/or billing. The Defendants also
assert the Plaintiffs failed to state a claim for
unfair trade practices, arguing that Nevada's
Unfair Trade Practices Act ("UTPA") does not
apply in this case (claim 5). The Defendants
also argue that the Plaintiffs have failed to state
a claim for fraud and failed to allege the
necessary element of justifiable reliance (claim
6). The Defendants finally argue that Plaintiffs'
claim for injunctive relief (claim 7) is not a
recognized claim and is instead a remedy,
which remedy the Court has previously denied
was necessary during the pendency of the
litigation.

1 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
2 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴

3 Change Footnote Numbering

4
5 Good cause appearing, the Court finds that the Motion shall be GRANTED, in
6 part, and DENIED, in part, for the following reasons and upon the following grounds:

7 1. The Defendants have filed the Motion to dismiss the Amended Complaint
8 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
9 motions to dismiss for failure to state a claim upon which relief can be granted.

10 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must
11 treat all factual allegations as true and draw all reasonable inferences in favor of the
12 nonmoving party, in this case, the Plaintiffs.

13 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
14 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.

15 4. Dismissal is appropriate when the allegations are insufficient to establish
16 the elements for the claim for relief.

17
18 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
19 **(CLAIMS 1 AND 2).**

20
21 5. The elements of a defamation claim are as follows: a false and
22 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
23 publication to a third person; fault amounting to at least negligence; and actual or
24 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459,
25

26
27 ⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying,
28 "We're converting this to a motion for summary judgment." See Transcript of
Proceedings, Oral Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate.
The Court confirms that the Motion was not converted into a motion for summary
judgment and the Motion decided under the standard set forth in NRCP 12(b)(5) and

Reinert, Reinert &
Sharp & Lee
2115 Washington St.
Reno, NV 89501
(775) 229-3151

Re: Inv. 8/13/2015 4:21:44

Deleted: ...in light of the allegations in the
Plaintiff's Amended Complaint, the
unambiguous language of the Agreement is
incorporated by reference therein, and good

Re: Inv. 8/13/2015 4:22:17

Formatted: Indent Left: 0", First line: 0",
Line spacing: double

Re: Inv. 8/13/2015 4:22:17

Deleted: ...in light of the allegations in the
Plaintiff's Amended Complaint, the
unambiguous language of the Agreement is
incorporated by reference therein, and good

1 462(1993). A statement is not defamatory if it is absolutely true or substantially true.

2 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

3 6. Here, Plaintiffs allege that Waste Management employees made false
4 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
5 following:

- 6
- 7 a. "We [Waste Management] are only the haulers that's allowed in Sparks
 - 8 and Reno."
 - 9 b. "Any other provider that goes in there, there will be fines."
 - 10 c. "We [Waste Management] have an agreement with the city and we are the
 - 11 only trash hauler that is allowed in either of those cities (Reno and Sparks)."

12 See Amended Complaint, ¶ 34.

13 7. Plaintiffs allege that Waste Management employee, Cheryl Gilletti,
14 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
15 "Gilletti Email"), which read as follows:

16 " . . . At this time Waste Management is the assigned hauler for the City of
17 Reno.

18
19 Solid Waste: Every business generating solid waste in the City of Reno is
20 required to subscribe to Reno Disposal Company for the collection,
21 transportation and disposal of all of franchised solid waste material
22 generated by the business, except for business to which the City of Reno
23 has specifically granted in writing an exemption. . . .

24 Recyclable Material. No business may allow or retain any service provider
25 other than Reno Disposal Company to collect, pick up, transport or deliver
26 Approved Recyclable Materials in the City of Reno in violation of the
27 exclusive commercial franchise agreement or the Reno Municipal Code."

28 See Amended Complaint, ¶ 34.

8. Under the Commercial Franchise Agreement, it is clear that Waste
Management's franchise to collect and haul waste and recyclables is nearly exclusive.

related case law.

Roberto Delacruz,
Shane de Luna
7. Washington St
Reno, NV 89502
(775) 326-3171

1 It includes the right to collect, transport, and deliver Collection Materials in the Reno
2 area. Section 3.2 A is intended to be broadly interpreted.

3 9. Under the Commercial Franchise Agreement, "Collection Materials" are
4 defined as "all Solid Waste and Approved Recyclable Materials (including nearly all
5 paper, glass, aluminum, plastic materials)" generated by commercial customers subject
6 to certain exemptions. See Commercial Franchise Agreement, p. 3.

7
8 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
9 Management is entitled to charge fees for customers' noncompliance with the
10 Commercial Franchise Agreement.

11 11. The few exemptions to the Commercial Franchise Agreement are narrow,
12 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
13 Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility Materials
14 delivered to Exempted Facilities." See Commercial Franchise Agreement, §3.2 A.

15 12. The term "Exempted Drop Box Materials" applies to temporary services for
16 the collection of certain wastes in approved Drop Boxes, excluding services that would
17 "replace, limit or reduce" any services provided by Waste Management. See
18 Commercial Franchise Agreement, p. 6-7.

19 13. "Exempted Hauler Account Materials" apply to defined existing contracts
20 between listed service providers and identified customers with approval from the City of
21 Reno and excluding services involving "Garbage".

22 14. The term "Excluded Recyclable Materials" generally permits market rate
23 purchasers of Recyclable Materials to collect them from generators of such materials.
24 The definition of Excluded Recyclable Materials makes clear that it excludes "such
25 materials collected and transported as a service . . ." See Commercial Franchise
26 Agreement, p. 5.
27
28

Robbie Delaney
Shay & Lee
71 Washington St.
Reno, NV 89401
(775) 325-1141

Reno 8/13/2015 4:22 PM

Deleted: Under Section 3.2 A. of the
Commercial Franchise Agreement, Waste
Management has the exclusive right to collect,
transport and deliver Collection Materials within
the City of Reno.

Reno 8/13/2015 4:25 PM

Comment [1]: Respectfully, I think the Court
mis-spoke with respect to including "Exempted
Facility Materials" in this sentence because this
statement is not true with respect to Exempted
Facility Materials. I propose that we jointly ask the
Court to correct this statement as soon as possible
language "Exempted Facility Materials" and
obviously omit that language from the proposed
order as well.

Reno 8/13/2015 4:24 PM

Deleted: and "Exempted Facility Materials"

Reno 8/13/2015 4:28 PM

Deleted:

Reno 8/13/2015 4:28 PM

Deleted: as that term is identified in the
Commercial Franchise Agreement. See
Commercial Franchise Agreement, p. 7-8

1 15. A plain interpretation of these unambiguous passages above, shows that
2 the Commercial Franchise Agreement was explicitly designed to create a practical
3 monopoly on Solid Waste and Collection of Approved Recyclable Materials within the
4 City of Reno in favor of Waste Management.

5
6 16. While it is not literally true that Waste Management is the "only hauler that
7 is allowed in Reno and Sparks," this statement is substantially true according to the
8 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
9 statements allegedly made by Waste Management employees, set forth in Paragraph
10 34 of the Amended Complaint cannot be defamatory.

11
12 17. The second statement set forth in Paragraph 34 of the Amended
13 Complaint ("Any other provider that goes in there, there will be fines") is also
14 substantially true. The Commercial Franchise Agreement vests Waste Management
15 with the authority to assess fines for customer noncompliance and such noncompliance
16 includes the use of services which violate the Commercial Franchise Agreement.

17
18 18. In her email, Gilletti states that Waste Management has the exclusive right
19 to handle "all of the franchised Solid Waste materials generated by the business" and
20 that "no service provider" other than Waste Management may handle "Approved
21 Recyclable Materials." See Commercial Franchise Agreement, ¶ 44. These statements
22 are literally true. Under the Commercial Franchise Agreement, Waste Management has
23 the right to handle "franchised" waste by definition and is the only "service provider" that
24 may handle Approved Recyclable Materials.

25
26 19. The Excluded Recyclable Materials exception, while encompassing some
27 Approved Recyclable Materials, does not include materials handled as "a service".

28 20. As such, those statements cannot constitute defamation.

21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for

Robert R. McGehee
Shirley S. Lee
71 Washington St
Reno, NV 89502
(775) 320-3151

Richie 8/13/2015 4:25 PM

Deleted: defined terms, described in the
foregoing paragraphs, establishes

Richie 8/13/2015 4:25 PM

Deleted: for the Collection of

Richie 8/13/2015 4:30 PM

Deleted: The Gilletti Email poses even less of
a problem.

Richie 8/13/2015 4:31 PM

Deleted: specifically

Richie 8/13/2015 4:31 PM

Deleted: The alleged defamatory statements
set forth in Paragraphs 34 and 44 of the
Amended Complaint cannot constitute
defamation as they are either literally true or
substantially true under the plain language of
the Commercial Franchise Agreement.

1 defamation and defamation per se is GRANTED.

2 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
3 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
4 **(CLAIMS 3 AND 4).**

5 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
6 charging customers lower rates than those specified in the Commercial Franchise
7 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
8 commercial customers with 96-gallon tote service.

9 23. Plaintiffs based their claim on their purported status as third-party
10 beneficiaries to both the Commercial Franchise Agreement and the Disposal
11 Agreement.

12 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
13 as to their ability to handle exempt and excluded materials under Sections 3.2 D and 4.4
14 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
15 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities under
16 the Agreements are expressly limited. The Third-Party Beneficiary Provisions apply
17 only to the exempted entities' rights to collect and handle exempted materials.
18

19 25. The Plaintiffs' argument that they have general third-party beneficiary
20 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
21 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
22 benefit them.
23

24 26. Given the exclusionary nature of the Agreements themselves, the
25 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
26 (1975) is inapposite as, in Williams, the Court employed a third-party beneficiary theory
27 only to address the scope of duty owed to Mrs. Williams when her husband was
28 electrocuted working on a billboard in a negligence case.

Andrew Branstetter
Sharp & Lee
71 Washington St.
Reno, NV 89501
(775) 329-1115

Revised 8/13/2015 4:32 PM
Deleted: which they cannot

Revised 8/13/2015 4:32 PM
Deleted: also

Revised 8/13/2015 4:32 PM
Deleted:

Revised 8/13/2015 4:32 PM
Deleted: i

Revised 8/13/2015 4:32 PM
Deleted: which is a negligence case.

1 27. Under the plain language of the Third-Party Beneficiary Provisions, not all
2 breaches of the Agreements constitute a breach actionable by the Plaintiffs. To be a
3 third-party beneficiary, the Plaintiffs must allege that any violations interfered in some
4 way with their rights to handle exempted materials.

5
6 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
7 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
8 Beneficiary Provision.

9
10 29. Plaintiffs have alleged that the price adjustment of drop box materials,
11 which Plaintiffs claim they are entitled to compete for, but are expressly limited by the
12 agreement to temporary drop box services which cannot "replace, limit or reduce"
13 services provided by Waste Management. This would seem to imply that Plaintiffs were
14 not intended to actually compete with Waste Management for these services.

15
16 30. There's some question as to what effect Waste Management's alleged
17 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
18 provide exempted services but, given the language of the Commercial Franchise
19 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
20 complained of actions interfered with their rights to handle exempted materials.

21
22 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
23 breach of contract and for breach of the Implied covenant of good faith and fair dealing
24 is GRANTED.

25 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE
PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

26
27 32. The Plaintiffs also assert claims based upon alleged price fixing and
28 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
deviations from the price schedule in the Commercial Franchise Agreement and the

Robert D. Amato, Jr.
Attorney at Law
71 Washington St.
Reno, NV 89501
(775) 223-3151

Refile 8/13/2015 4:33 PM
Deleted: limitation described in the

Refile 8/13/2015 4:32 PM
Deleted: breaches

Refile 8/13/2015 4:33 PM
Deleted: the

Refile 8/13/2015 4:35 PM
Deleted: Waste Management's alleged failure
to follow the rate schedule set forth in the
Commercial Franchise Agreement also does
not affect the Plaintiffs' rights to handle
exempted materials and has no bearing on
those rights set forth in the Third-Party
Beneficiary Provision. The Plaintiffs base the
Defendants' alleged breach of the rate schedule
upon an alleged price adjustment for Drop Box
Materials, for which the Plaintiffs claim they are
entitled to compete. However, Exempted Drop
Box Services are expressly limited by the
Commercial Franchise Agreement to temporary
services, which cannot

Refile 8/13/2015 4:35 PM
Deleted: See Commercial Franchise
Agreement, p. 8

Refile 8/13/2015 4:35 PM
Deleted: language implies I

Refile 8/13/2015 4:36 PM
Deleted: the

Refile 8/13/2015 4:37 PM
Deleted: assets

Refile 8/13/2015 4:37 PM
Deleted: These claims are based upon the
Defendants' alleged

1 Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
2 consolidated franchise,

3 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
4 does not apply where the conduct is expressly authorized by local government. See
5 NRS 598A.040(3)(b).
6

7 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
8 the Commercial Franchise Agreement, which amounts to a substantial interference with
9 the Plaintiffs' own ability to continue to haul excepted materials.

10 35. Accordingly, the Plaintiffs' claim as to price fixing must be dismissed.
11 Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price fixing is
12 GRANTED.
13

14 36. As for the Plaintiffs' UTPA claim based upon the Defendants' alleged
15 collusion with Castaway, these allegations are subject to the heightened pleading
16 requirements of NRCP 9(b).

17 37. Here, the Plaintiffs have successfully pleaded the who, what, when,
18 where, and how of such activities.

19 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
20 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
21 trade or commerce in the State of Nevada or a consolidation of business interests which
22 would result in a monopolization or substantially lessen competition or be in restraint of
23 trade. Plaintiffs have alleged such action on the part of Waste Management.
24

25 39. Defendants are correct that actions which are sanctioned by a municipality
26 are exempted from the unfair trade practices liability. See NRS 598A.040(3)(b).
27

28 However, as alleged in the Amended Complaint, the City of Reno originally intended to
grant franchises to two separate entities, not one. And an action to further consolidate

Rich 8/13/2015 4:38 PM

Deleted: geographic

Rich 8/13/2015 4:38 PM

Deleted: of the Reno area

Rich 8/13/2015 4:38 PM

Deleted: As stated, the

Rich 8/13/2015 4:38 PM

Deleted: UTPA

Rich 8/13/2015 4:39 PM

Deleted: in violation of the UTPA

Rich 8/13/2015 4:39 PM

Deleted: As for these collusion claims

Rich 8/13/2015 4:39 PM

Deleted: The Plaintiffs alleged the collusion
claims with the requisite specificity so as to
survive a motion to dismiss.

Rich 8/13/2015 4:39 PM

Deleted: Is a legal basis for their UTPA claim
is set forth in

Rich 8/13/2015 4:41 PM

Deleted: which

Rich 8/13/2015 4:40 PM

Deleted: those

Rich 8/13/2015 4:41 PM

Deleted: The Amended Complaint sufficiently
alleges such an action on the part of Waste
Management

Rich 8/13/2015 4:41 PM

Deleted: and which must be accepted as true
at this stage.

Rich 8/13/2015 4:42 PM

Deleted: Moreover, pursuant to the Plaintiffs'
allegation, the consolidation of Castaway's
franchise with Waste Management's franchised
service in the Reno area was not subject to
approval by the City of Reno

1 service in the Reno area beyond that would not be subject to approval by the City of
2 Reno.

3 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
4 have alleged the general time frame during which they believe Waste Management's
5 collusion with Castaway occurred and have stated specifically that Castaway's
6 representatives made statements to the City of Reno regarding their intentions as to the
7 proposed franchise agreement without divulging the planned acquisition.

8
9 41. Given the pleading standards that this Court must apply on a motion to
10 dismiss, the Defendants' Motion to dismiss the claims relating to unfair trade practices
11 as to the collusion with Castaway in pursuit of an unlawful monopoly is DENIED.

12
13 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,
14 FRAUDULENT MISREPRESENTATION (CLAIM 6).**

15 42. The Court agrees with the Defendants that the claim of fraud alleged by
16 the Plaintiff lacks specificity.

17 43. There are no allegations of an intent to defraud and Plaintiffs have not
18 shown the requisite element of reliance.

19 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
20 is GRANTED.

21
22 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT
23 INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

24 45. As to the Plaintiffs' injunctive relief claims, this Court has previously found
25 that injunctive relief and declaratory relief was inappropriate, because monetary
26 damages are sufficient to compensate the Plaintiffs for any perceived damages. The
27 Court reaffirms that ruling.

28 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
permanent injunction and declaratory relief is GRANTED.

Rebecca B. Williams
Shane & Lane
21 Westington at
Reno, NV 89503
(775) 729 7111

Reno 8/13/2015 4:43 PM

Deleted: The Plaintiffs' allegations do

Reno 8/13/2015 4:45 PM

Deleted: Therefore, while this was a close call,

Reno 8/13/2015 4:45 PM

Deleted: the UTPA claim relating to Waste
Management's alleged

Reno 8/13/2015 4:46 PM

Deleted: in the Amended Complaint

Reno 8/13/2015 4:46 PM

Deleted: the

Reno 8/13/2015 4:46 PM

Deleted: required by NRCP 9(b)

Reno 8/13/2015 4:46 PM

Deleted: The Amended Complaint contains no
allegations of

Reno 8/13/2015 4:47 PM

Deleted: and declaratory

Reno 8/13/2015 4:48 PM

Comment [3]: The Judge asked that this be
included specifically as a footnote, "injunctive relief
is a remedy and not a cause of action."

Reno 8/13/2015 4:47 PM

Deleted: the

Reno 8/13/2015 4:48 PM

Deleted:

Reno 8/13/2015 4:48 PM

Deleted:

Reno 8/13/2015 4:49 PM

Deleted: Therefore, the

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

1. As to Plaintiffs' claims for defamation, defamation per se, breach of contract/third party beneficiary, breach of the implied covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent misrepresentation, preliminary and permanent injunction, and declaratory relief, Defendants' Motion to Dismiss is GRANTED;

2. As to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as they relate to price fixing, Defendants' Motion to Dismiss is GRANTED as to that part... and,

3. As to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as it relates to collusion with Castaway, Defendants' Motion to Dismiss is DENIED.

IT IS SO ORDERED.

DATED this ____ day of August, 2015.

DISTRICT COURT JUDGE

Submitted by:
Robison, Belaustegui, Sharp & Low
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

Del Hardy, Esq.
Stephanie Rios, Esq.
Attorneys for Plaintiffs

Mark G. Simon
Scott L. Hernandez
Attorneys for Defendants
Approved as to Form and Content:
Hardy Law Group
96 and 98 Winter Street
Reno, NV 89503

Robison, Belaustegui,
Sharp & Low
71 Washington St
Reno, NV 89503
(775) 326-5151

Refile: 8/13/2015 4:40 PM
Formatted: Copied
Refile: 8/13/2015 4:40 PM
Deleted:

Refile: 8/13/2015 4:40 PM
Deleted: The Defendants' Motion is GRANTED

Refile: 8/13/2015 4:50 PM
Deleted: These claims are DISMISSED with prejudice.
Refile: 8/13/2015 4:50 PM
Deleted: The Defendants' Motion is GRANTED, in part, as

Refile: 8/13/2015 4:51 PM
Deleted: This claim is DISMISSED with prejudice; and
Refile: 8/13/2015 4:51 PM
Deleted: The Defendants' Motion is DENIED, in part, as
Refile: 8/13/2015 4:51 PM
Deleted: alleged

1 CODE: 3795
2 DEL HARDY, ESQ. (1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHITE COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

REPLY TO RESPONSE TO OBJECTION TO DEFENDANTS' PROPOSED ORDER

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ. and DEL HARDY, ESQ.,
of HARDY LAW GROUP, by and on behalf of Plaintiffs' NEVADA RECYCLING AND SALVAGE,
LTD. ("NRS") and AMCB, LLC dba RUBBISH RUNNERS ("RR") and Objects to the Proposed
Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Part, and
Denying, in Part, submitted by Defendants on August 31, 2015.

In Defendants' Response to Objection to Defendants' Proposed Order, Defendants
assert, "what Plaintiffs refer to as 'findings of fact' or 'arguments of counsel' are rulings on
discrete issues that are now [the] law of the case." Response to Objection, 2, 28-3:2.

However, in Defendants' [Proposed] Order, they include the following,

1 *The Defendants argue* that the Plaintiffs' claims are premised on an
2 incorrect reading of the "Commercial Franchise Agreement," arguing that
3 Waste Management has an exclusive Franchise for hauling Solid Waste and
4 Approved Recyclable Materials, nothing that the Plaintiff may haul waste
5 materials which are expressly excluded from the Commercial Franchise
6 Agreement.

7 [Emphasis Added]. See, Defendants' [Proposed] Order, 2:14-19. This statement does not
8 constitute "the law of the case." This statement is simply arguments of counsel.

9 In addition, Defendants also represent to this Court that "the Plaintiffs appear to argue
10 that it is not counsel's role to use a proposed order to clarify the Court's Order from the bench.
11 This argument ignores the fact that this is precisely what the Plaintiffs sought to accomplish in
12 crafting the original joint-proposed order." See, Response to Objection, 5:16-19.

13 However, the difference between the language not present in the transcript that
14 Defendants' have attempted to insert into their [Proposed] Order to this Court is different than
15 what Plaintiffs' counsel proposed to do which was to, "ask the Judge to correct it," not simply
16 correct it on our own accord by way of the [Proposed] Order. See, Exhibit 4, attached to
17 Defendants' Response to Objection. In fact, even if it was corrected in the [Proposed] Order,
18 the transcribed record of the hearing, which will still be available for future reference as
19 needed, would still include the mistake, which poses additional issues. It is Plaintiffs' position
20 that with respect to that minor error, that this Court can correct that sua sponte or upon joint
21 request by the parties.

22 Again, asking this Court to correct something that appears to simply be a minor
23 speaking mistake by using the wrong term is significantly different then counsel unilaterally
24 attempting to change the language by way of a [Proposed] Order.

25 Despite Defendants' citation to the cases citing the Federal Rules of Civil Procedure and
26 cases from other jurisdictions, we have authorities right here in Nevada that are directly on
27 point to the arguments set forth herein as well as in Plaintiffs' Objection to Defendants'
28 [Proposed] Order in that, NRCP 52 explicitly provides that "Findings of fact and conclusions
of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion
except as provided in subdivision (c) of this rule." [Emphasis Added]. Due to the fact that

1 Defendants' Motion is based on NRCP Rule 12(b)(5), as set forth in NRCP 52, findings of fact
2 and conclusions of law are unnecessary and don't appear to have been requested by the Court
3 and certainly not with Defendants' own commentary and/or supplementary language inserted.

4 In conclusion, Plaintiffs again respectfully request that this Court use and enter
5 Plaintiffs' [Proposed] Order Granting Defendants' Motion to Dismiss Verified Amended
6 Complaint, in Part, and Denying, in Part, which is directly based on the transcript of the hearing
7 held on this matter, is in compliance with the Nevada Rules of Civil Procedure and submitted to
8 this Court on August 28, 2015.

9 Respectfully submitted this 29 day of September, 2015.



STEPHANIE RICE, ESQ. (SBN 11627)
DEL. HARDY, ESQ. (SBN 1172)
HARDY LAW GROUP
Attorneys for Plaintiffs

Hardy Law Group.com
Attorneys at Law

94 & 96 Weber Street, P.O. Box 497541
Salt Lake City, UT 84149-7541
www.HardyLawGroup.com

Northwestphone (773) 751-4004
Fax (773) 352-2553 • Fax (773) 352-4432

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

Facsimile (FAX): and/or Email:

Messenger Service

Electronically filed

**Mark Simons, Esq.
Scott Hernandez, Esq.
Robison, Belaustegue, Sharp and Lowe
71 Washington Street
Reno, Nevada 89503**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

AN EMPLOYEE OF

AN EMPLOYEE OF HARDY LAW GROUP

1 CODE: 3860
2 DEL HARDY, ESQ. (SBN 1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorney for Plaintiff

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHITE COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

REQUEST FOR SUBMISSION

IT IS HEREBY REQUESTED that Plaintiffs' Objection to Defendants' Proposed Order filed
herein on September 2, 2015 and Defendants' Response to Objection to Proposed Order, filed
herein on September 4, 2015, and the Reply to Response to Objection to Defendants' Proposed
Order filed herein on September 9, 2015, be submitted to this Court for Decision.

DATED this 9th day of September 2015.

DEL HARDY, ESQ. (SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
HARDY LAW GROUP
Attorneys for Plaintiffs

Hardy Law Group, LLC
Attorneys at Law
96 & 98 Winter Street, Reno, Nevada 89503
www.HardyLawGroup.com
Tel (775) 325-2203 • Fax (775) 325-4332

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **REQUEST FOR SUBMISSION** on all parties to this action by:

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

Personal Delivery

Facsimile (FAX): and/or Email: gary@duhonlawltd.com

Federal Express or other overnight delivery

Messenger Service

Certified Mail with Return Receipt Requested

Electronically filed

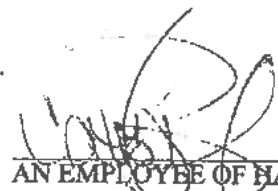
addressed as follows:

Mark Simons, Esq.
Scott Hernandez, Esq.
Robison, Belaustegue, Sharp and Lowe
71 Washington Street
Reno, Nevad 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 9th day of September 2015.


AN EMPLOYEE OF HARDY LAW GROUP

1
2
3
4
5
6
7 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 NEVADA RECYCLING AND SALVAGE, LTD., a
10 Nevada Limited Liability Company; and AMCB,
11 LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

12 Plaintiffs,

13 vs.

14 RENO DISPOSAL COMPANY, INC., a Nevada
15 Corporation dba WASTE MANAGEMENT;
16 REFUSE, INC., a Nevada Corporation; ABC
17 CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

18 Defendants.

19
20 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED**
AMENDED COMPLAINT, IN PART, AND DENYING, IN PART

21 This matter came on for hearing on July 29, 2015, on the Motion to Dismiss
22 Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal
23 Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc.
24 ("Refuse") (collectively referred to as the "Defendants" unless otherwise specified).
25 Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison,
26 Belaustegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq.
27 and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada
28

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.

9
10 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
11 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
12 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
13 required under NRCP 9(b) ("Motion"). The Defendants argue that the Plaintiffs' claims
14 are premised on an incorrect reading of the "Commercial Franchise Agreement,"¹
15 arguing that Waste Management has an exclusive Franchise for hauling Solid Waste
16 and Approved Recyclable Materials, nothing that the Plaintiff may haul waste materials
17 which are expressly excluded from the Commercial Franchise Agreement.

18
19 The Defendants argue that the Plaintiffs have failed to state a claim for
20 defamation, defamation per se, that the Amended Complaint contains no defamatory
21 statements, that the breach of contract claim fails, that the Plaintiffs lack standing as
22 third-party beneficiaries, that the Plaintiffs have no standing as to the franchise claim,
23 that the Plaintiffs have no standing as to the Eco Center claims. Defendants' claim the
24 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
25 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
26

27
28 ¹ As used herein, the term "Commercial Franchise Agreement" refers to the Exclusive Service
Area Franchise Agreement Commercial Solid Waste and Recyclable Materials Agreement
between Waste Management and the City of Reno, which is attached to the Amended
Complaint as Exhibit 3 and is expressly incorporated therein by reference. See Amended

1 Unfair Trade Practices Act ("UTPA") does not apply in this case, and that the Plaintiffs
2 failed to state a claim for fraud or to allege justifiable reliance.

3 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
4 Defendants filed their reply in support of the Motion on May 19, 2015.² Change
5 Footnote Numbering
6

7 The Court has considered the allegations set forth in the Amended Complaint,
8 the "Agreements"³ incorporated by reference therein, the Defendants' Motion, the
9 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
10 such briefing, and the arguments of the parties at the time of the hearing. In rendering
11 its decision, the Court has accepted the factual allegations in the Amended Complaint
12 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
13 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴
14 Good cause appearing, the Court finds that the Motion shall be GRANTED, in part, and
15 DENIED, in part, for the following reasons and upon the following grounds:
16

17 1. The Defendants have filed the Motion to dismiss the Amended Complaint
18 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
19 motions to dismiss for failure to state a claim upon which relief can be granted.
20

21
22 Complaint, ¶19.

23 ² The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015.
24 The Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in
25 support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to
26 strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the
27 Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers
28 the Defendants' reply in support of the Motion in the instant ruling and order.

³ As used herein, the term "Agreements" refers both to the Commercial Franchise Agreement
and the Disposal Agreement for Solid Waste and Recyclable Materials between Refuse and the
City of Reno (the "Disposal Agreement"). The Disposal Agreement is attached to the Amended
Complaint as Exhibit 4 and is incorporated therein by reference. See Amended Complaint, ¶50.

⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're
converting this to a motion for summary judgment." See Transcript of Proceedings, Oral
Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate. The Court confirms that the
Motion was not converted into a motion for summary judgment and the Motion decided under

1 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must
2 treat all factual allegations as true and draw all reasonable inferences in favor of the
3 nonmoving party, in this case, the Plaintiffs.

4 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
5 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.
6

7 4. Dismissal is appropriate when the allegations are insufficient to establish
8 the elements for the claim for relief.

9 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
10 **(CLAIMS 1 AND 2).**

11 5. The elements of a defamation claim are as follows: a false and
12 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
13 publication to a third person; fault amounting to at least negligence; and actual or
14 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459,
15 462(1993). A statement is not defamatory if it is absolutely true or substantially true.
16 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).
17

18 6. Here, Plaintiffs allege that Waste Management employees made false
19 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
20 following:

- 21 a. "We [Waste Management] are only the haulers that's allowed in Sparks
22 and Reno."
23 b. "Any other provider that goes in there, there will be fines."
24 c. "We [Waste Management] have an agreement with the city and we are
25 the only trash hauler that is allowed in either of those cities [Reno and
26 Sparks]."

27 See Amended Complaint, ¶ 34.

28 7. Plaintiffs allege that Waste Management employee, Cherolyn Gilletti,
 the standard set forth in NRCP 12(b)(5) and related case law.

1 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
2 "Gilletti Email"), which read as follows:

3 " At this time Waste Management is the assigned hauler for the City
4 of Reno.

5 Solid Waste: Every business generating solid waste in the City of Reno is
6 required to subscribe to Reno Disposal Company for the collection,
7 transportation and disposal of all of franchised solid waste material
8 generated by the business, except for business to which the City of Reno
has specifically granted in writing an exemption. . . .

9 Recyclable Material. No business may allow or retain any service provider
10 other than Reno Disposal Company to collect, pick up, transport or deliver
11 Approved Recyclable Materials in the City of Reno in violation of the
exclusive commercial franchise agreement or the Reno Municipal Code."

12 See Amended Complaint, ¶ 34.

13 8. Under the Commercial Franchise Agreement, it is clear that Waste
14 Management's franchise to collect and haul waste and recyclables is nearly exclusive.
15 Section 3.2 A of the Commercial Franchise Agreement includes the exclusive right to
16 Collect, transport, and deliver Collection Materials in the Reno area. Section 3.2 A is
17 intended to be broadly interpreted.

18 9. Under the Commercial Franchise Agreement, "Collection Materials" are
19 defined as "all Solid Waste and Approved Recyclable Materials [including nearly all
20 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
21 to certain exemptions. See Commercial Franchise Agreement, p. 3.

22 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
23 Management is entitled to charge fees for customers' noncompliance with the
24 Commercial Franchise Agreement.

25 11. The few exemptions to the Commercial Franchise Agreement are narrow,
26 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
27 Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility
28

1 Materials delivered to Exempted Facilities." See Commercial Franchise Agreement,
2 §3.2 A.

3 12. The term "Exempted Drop Box Materials" applies to temporary services
4 for the collection of certain wastes in approved Drop Boxes, excluding services that
5 would "replace, limit or reduce" any services provided by Waste Management. See
6 Commercial Franchise Agreement, p. 6-7.

7 13. "Exempted Hauler Account Materials" apply to defined existing contracts
8 between listed service providers and identified customers with approval from the City of
9 Reno and excluding services involving "Garbage."

10 14. The term "Excluded Recyclable Materials" generally permits market rate
11 purchasers of Recyclable Materials to collect them from generators of such materials.
12 The definition of Excluded Recyclable Materials makes clear that it excludes "such
13 materials collected and transported as a service" See Commercial Franchise
14 Agreement, p. 5.

15 15. A plain interpretation of the unambiguous language in the passages
16 above, shows that the Commercial Franchise Agreement was explicitly designed to
17 create a practical monopoly for the Collection of Solid Waste and Approved Recyclable
18 Materials within the City of Reno in favor of Waste Management.

19 16. While it is not literally true that Waste Management is the "only hauler that
20 is allowed in Reno and Sparks," this statement is substantially true according to the
21 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
22 statements allegedly made by Waste Management employees, set forth in Paragraph
23 34 of the Amended Complaint cannot be defamatory.

24 17. The second statement set forth in Paragraph 34 of the Amended
25 Complaint ("Any other provider that goes in there, there will be fines") is also
26
27
28

1 substantially true. The Commercial Franchise Agreement vests Waste Management
2 with the authority to assess fines for customer noncompliance and such noncompliance
3 includes the use of services which violate the Commercial Franchise Agreement.
4

5 18. The Gilletti Email poses even less of a problem. In her email, Gilletti
6 states that Waste Management has the exclusive right to handle "all of the franchised
7 Solid Waste materials generated by the business" and that "no service provider" other
8 than Waste Management may handle "Approved Recyclable Materials." See
9 Commercial Franchise Agreement, ¶ 44. These statements are literally true. Under the
10 Commercial Franchise Agreement, Waste Management has the right to handle
11 "franchised" waste by definition and is the only "service provider" that may handle
12 Approved Recyclable Materials.
13

14 19. The Excluded Recyclable Materials exception, while encompassing some
15 Approved Recyclable Materials, does not include materials handled as "a service".
16

17 20. The statements set forth in Paragraphs 34 and 44 of the Amended
18 Complaint, cannot constitute defamation.
19

20 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for
21 defamation and defamation per se is GRANTED.
22

23 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
24 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
25 **(CLAIMS 3 AND 4).**

26 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
27 charging customers lower rates than those specified in the Commercial Franchise
28 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
commercial customers with 96-gallon tote service.

23. Plaintiffs based their claim on their purported status as third-party
beneficiaries to both the Commercial Franchise Agreement and the Disposal

1 Agreement.

2 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
3 as to their ability to handle exempt and excluded materials under Sections 3.2 D and
4 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
5 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities
6 under the Agreements are expressly limited. The Third-Party Beneficiary Provisions
7 apply only to the exempted entities' rights to collect and handle exempted materials.
8

9 25. The Plaintiffs' argument that they have general third-party beneficiary
10 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
11 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
12 benefit them.
13

14 26. Given the exclusionary nature of the Agreements themselves, the
15 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
16 (1975) is inapposite as in Williams, the Court employed a third-party beneficiary theory
17 only to address the scope of duty owed to Mrs. Williams when her husband was
18 electrocuted working on a billboard in a negligence case.
19

20 27. Under the plain language limitations of the Plaintiff's third-party beneficiary
21 status in the Third-Party Beneficiary Provisions, not all breaches of the Agreements
22 constitute a breach actionable by the Plaintiffs. To be a third-party beneficiary, the
23 Plaintiffs must allege that any violations of the Agreements interfered in some way with
24 their rights to handle exempted materials.
25

26 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
27 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
28 Beneficiary Provision.

29. Plaintiffs have alleged that the price adjustment of Exempted Drop Box

1 Materials, which Plaintiffs claim they are entitled to compete for, but are expressly
2 limited by the Commercial Franchise Agreement to temporary Drop Box services which
3 cannot, "replace, limit or reduce" services provided by Waste Management. This would
4 seem to imply that Plaintiffs were not intended to actually compete with Waste
5 Management for these services.
6

7 30. There's some question as to what affect Waste Management's alleged
8 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
9 provide exempted services but, given the language of the Commercial Franchise
10 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
11 complained of actions interfered with their rights to handle exempted materials.
12

13 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
14 breach of contract and for breach of the implied covenant of good faith and fair dealing
15 is GRANTED.

16 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
17 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

18 32. The Plaintiffs also assert claims based upon alleged price fixing and
19 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
20 alleged deviations from the price schedule in the Commercial Franchise Agreement and
21 the Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
22 consolidated franchise.
23

24 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
25 does not apply where the conduct is expressly authorized by local government. See
26 NRS 598A.040(3)(b).
27

28 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
the Commercial Franchise Agreement, which amounts to a substantial interference with

1 the Plaintiffs' own ability to continue to haul excepted materials.

2 35. Accordingly, the Plaintiffs' UTPA claim as to price fixing must be
3 dismissed. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price
4 fixing in violation of the UTPA is GRANTED.

5 36. As for the Plaintiffs' UTPA claim based upon the Defendants' alleged
6 collusion with Castaway, these allegations are subject to the heightened pleading
7 requirements of NRCP 9(b).

8 37. As for the collusion claims, the Plaintiffs have successfully pleaded the
9 who, what, when, where, and how of such activities, so as to survive a motion to
10 dismiss.

11 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
12 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
13 trade or commerce in the State of Nevada or a consolidation of business interests
14 which would result in a monopolization or substantially lessen competition or be in
15 restraint of trade. Plaintiffs have alleged such action on the part of Waste
16 Management.

17 39. Defendants are correct that actions which are sanctioned by a
18 municipality are exempted from the unfair trade practices liability. See NRS
19 598A.040(3)(b). However, as alleged in the Amended Complaint, the City of Reno
20 originally intended to grant franchises to two separate entities, not one. As alleged,
21 Waste Management's action to further consolidate service in the Reno area by
22 acquiring Castaway would not be subject to approval by the City of Reno and,
23 therefore, results in a violation of the UTPA.

24
25
26
27
28 ///

1 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
2 have alleged the general time frame during which they believe Waste Management's
3 collusion with Castaway occurred and have stated specifically that Castaway's
4 representatives made statements to the City of Reno regarding their intentions as to the
5 proposed franchise agreement without divulging the planned acquisition.
6

7 41. This was a close call, but given the pleading standards that this Court
8 must apply on a motion to dismiss, the Defendants' Motion to dismiss the UTPA claims
9 relating to unfair trade practices as to the collusion with Castaway in pursuit of an
10 unlawful monopoly is DENIED.

11 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,**
12 **FRAUDULENT MISREPRESENTATION (CLAIM 6).**

13 42. The Court agrees with the Defendants that the claim of fraud alleged by
14 the Plaintiff in the Amended Complaint lacks specificity.

15 43. There are no allegations of an intent to defraud and Plaintiffs have not
16 shown the requisite element of reliance.
17

18 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
19 is GRANTED.

20 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT**
21 **INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

22 45. As to the Plaintiffs' injunctive and declaratory relief claims, this Court has
23 previously found that injunctive relief and declaratory relief was inappropriate, because
24 monetary damages are sufficient to compensate the Plaintiffs for any perceived
25 damages. The Court reaffirms that ruling.⁵
26

27 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
28 permanent injunction and declaratory relief is GRANTED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

1. The Defendants' Motion is Granted as to Plaintiffs' claims for defamation, defamation per se, breach of contract/third party beneficiary, breach of the implied covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent misrepresentation, preliminary and permanent injunction, and declaratory relief. These claims are DISMISSED with prejudice;

2. The Defendants' Motion is GRANTED, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as they relate to price fixing. This claim is DISMISSED with prejudice; and

3. The Defendants' Motion is Denied, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as it relates to alleged collusion with Castaway.

IT IS SO ORDERED.

DATED this 15 day of SEPTEMBER, 2015.


DISTRICT COURT JUDGE

Robison, Belustegui,
Sharp & Low
71 Washington St
Reno, NV 89503
(775) 329-3151

5 Injunctive relief is a remedy not a cause of action.

1 **2540**
Mark G. Simons, Esq., NSB No. 5132
2 Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
3 71 Washington Street
Reno, Nevada 89503
4 Telephone: (775) 329-3151
Facsimile: (775) 329-7169
5 Email: msimons@rbsllaw.com
shernandez@rbsllaw.com

6 *Attorneys for Defendants*

7 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9
10 NEVADA RECYCLING AND
SALVAGE, LTD., a Nevada Limited
11 Liability Company; and AMCB, LLC,
a Nevada Limited Liability Company
12 dba RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

13 Plaintiffs,

14 vs.

15 RENO DISPOSAL COMPANY,
INC., a Nevada Corporation dba
16 WASTE MANAGEMENT; REFUSE,
INC., a Nevada Corporation; ABC
17 CORPORATIONS, I*-X; BLACK
AND WHITE COMPANIES, I-X; and
18 JOHN DOES I-X, inclusive,

19 Defendants.

20 _____
21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order Granting Defendants' Motion to Dismiss
23 Verified Amended Complaint, in Part, and Denying, In Part was entered by the
24 Honorable Patrick Flanagan on the 15th day of September, 2015 in the above-entitled
25 matter. A copy of the Order is attached hereto as **Exhibit 1**.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION: The undersigned do hereby affirm that the preceding document
does not contain the social security number of any person.

DATED this 15th day of September, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503


MARK G. SIMONS
SCOTT L. HERNANDEZ
Attorneys for Defendants

J:\WPData\WGSS\30538.001 (Waste Management)\P-NEO(3).wpd

Robison, Belaustegui,
Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 329-3151

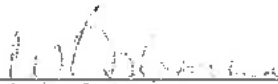
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **NOTICE OF ENTRY OF ORDER** on all parties to this action by the method(s) indicated below:

- ☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:
- ☒ by using the Court's CM/ECF Electronic Notification System addressed to:
- ☐ by personal delivery/hand delivery addressed to:
- ☐ by facsimile (fax) addressed to:
- ☐ by Federal Express/UPS or other overnight delivery addressed to:

Del Hardy, Esq.
Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503
Attorneys for Plaintiffs

DATED: 18 day of September, 2015.



J:\WPData\MGS\30536.001 (Waste Management)\P-NEC(3).wpd

EXHIBIT LIST

1			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
3	1	Order	-12-
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

Robison, Belaustegui,
Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 329-3151

FILED
Electronically
2015-09-15 03:58:52 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5142685

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD., a
Nevada Limited Liability Company; and AMCB,
LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation dba WASTE MANAGEMENT;
REFUSE, INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED
AMENDED COMPLAINT, IN PART, AND DENYING, IN PART**

This matter came on for hearing on July 29, 2015, on the Motion to Dismiss
Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal
Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc.
("Refuse") (collectively referred to as the "Defendants" unless otherwise specified).
Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison,
Belaustegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq.
and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.
9

10 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
11 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
12 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
13 required under NRCP 9(b) ("Motion"). The Defendants argue that the Plaintiffs' claims
14 are premised on an incorrect reading of the "Commercial Franchise Agreement,"¹
15 arguing that Waste Management has an exclusive Franchise for hauling Solid Waste
16 and Approved Recyclable Materials, nothing that the Plaintiff may haul waste materials
17 which are expressly excluded from the Commercial Franchise Agreement.
18

19 The Defendants argue that the Plaintiffs have failed to state a claim for
20 defamation, defamation per se, that the Amended Complaint contains no defamatory
21 statements, that the breach of contract claim fails, that the Plaintiffs lack standing as
22 third-party beneficiaries, that the Plaintiffs have no standing as to the franchise claim,
23 that the Plaintiffs have no standing as to the Eco Center claims. Defendants' claim the
24 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
25
26

27
28 ¹ As used herein, the term "Commercial Franchise Agreement" refers to the Exclusive Service
Area Franchise Agreement Commercial Solid Waste and Recyclable Materials Agreement
between Waste Management and the City of Reno, which is attached to the Amended
Complaint as Exhibit 3 and is expressly incorporated therein by reference. See Amended

1 Unfair Trade Practices Act ("UTPA") does not apply in this case, and that the Plaintiffs
2 failed to state a claim for fraud or to allege justifiable reliance.

3 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
4 Defendants filed their reply in support of the Motion on May 19, 2015.² Change
5 Footnote Numbering

6 The Court has considered the allegations set forth in the Amended Complaint,
7 the "Agreements"³ incorporated by reference therein, the Defendants' Motion, the
8 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
9 such briefing, and the arguments of the parties at the time of the hearing. In rendering
10 its decision, the Court has accepted the factual allegations in the Amended Complaint
11 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
12 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴
13 Good cause appearing, the Court finds that the Motion shall be GRANTED, in part, and
14 DENIED, in part, for the following reasons and upon the following grounds:
15

16 1. The Defendants have filed the Motion to dismiss the Amended Complaint
17 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
18 motions to dismiss for failure to state a claim upon which relief can be granted.
19

20
21 Complaint, ¶19.

22 ² The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015.
23 The Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in
24 support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to
25 strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the
26 Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers
27 the Defendants' reply in support of the Motion in the instant ruling and order.

28 ³ As used herein, the term "Agreements" refers both to the Commercial Franchise Agreement
and the Disposal Agreement for Solid Waste and Recyclable Materials between Refuse and the
City of Reno (the "Disposal Agreement"). The Disposal Agreement is attached to the Amended
Complaint as Exhibit 4 and is incorporated therein by reference. See Amended Complaint, ¶150.

⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're
converting this to a motion for summary judgment." See Transcript of Proceedings, Oral
Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate. The Court confirms that the
Motion was not converted into a motion for summary judgment and the Motion decided under

1 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must
2 treat all factual allegations as true and draw all reasonable inferences in favor of the
3 nonmoving party, in this case, the Plaintiffs.

4 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
5 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.
6

7 4. Dismissal is appropriate when the allegations are insufficient to establish
8 the elements for the claim for relief.

9 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
10 **(CLAIMS 1 AND 2).**

11 5. The elements of a defamation claim are as follows: a false and
12 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
13 publication to a third person; fault amounting to at least negligence; and actual or
14 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459,
15 462(1993). A statement is not defamatory if it is absolutely true or substantially true.
16 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).
17

18 6. Here, Plaintiffs allege that Waste Management employees made false
19 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
20 following:

- 21 a. "We [Waste Management] are only the haulers that's allowed in Sparks
22 and Reno."
23 b. "Any other provider that goes in there, there will be fines."
24 c. "We [Waste Management] have an agreement with the city and we are
25 the only trash hauler that is allowed in either of those cities [Reno and
26 Sparks]."

27 See Amended Complaint, ¶ 34.

28 7. Plaintiffs allege that Waste Management employee, Cheroiyn Gilletti,
the standard set forth in NRCP 12(b)(5) and related case law.

1 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
2 "Gilletti Email"), which read as follows:

3 " . . . At this time Waste Management is the assigned hauler for the City
4 of Reno.

5 Solid Waste: Every business generating solid waste in the City of Reno is
6 required to subscribe to Reno Disposal Company for the collection,
7 transportation and disposal of all of franchised solid waste material
8 generated by the business, except for business to which the City of Reno
9 has specifically granted in writing an exemption. . . .

10 Recyclable Material. No business may allow or retain any service provider
11 other than Reno Disposal Company to collect, pick up, transport or deliver
12 Approved Recyclable Materials in the City of Reno in violation of the
13 exclusive commercial franchise agreement or the Reno Municipal Code."

14 See Amended Complaint, ¶ 34.

15 8. Under the Commercial Franchise Agreement, it is clear that Waste
16 Management's franchise to collect and haul waste and recyclables is nearly exclusive.
17 Section 3.2 A of the Commercial Franchise Agreement includes the exclusive right to
18 Collect, transport, and deliver Collection Materials in the Reno area. Section 3.2 A is
19 intended to be broadly interpreted.

20 9. Under the Commercial Franchise Agreement, "Collection Materials" are
21 defined as "all Solid Waste and Approved Recyclable Materials [including nearly all
22 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
23 to certain exemptions. See Commercial Franchise Agreement, p. 3.

24 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
25 Management is entitled to charge fees for customers' noncompliance with the
26 Commercial Franchise Agreement.

27 11. The few exemptions to the Commercial Franchise Agreement are narrow,
28 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility

1 Materials delivered to Exempted Facilities." See Commercial Franchise Agreement,
2 §3.2 A.

3 12. The term "Exempted Drop Box Materials" applies to temporary services
4 for the collection of certain wastes in approved Drop Boxes, excluding services that
5 would "replace, limit or reduce" any services provided by Waste Management. See
6 Commercial Franchise Agreement, p. 6-7.

7 13. "Exempted Hauler Account Materials" apply to defined existing contracts
8 between listed service providers and identified customers with approval from the City of
9 Reno and excluding services involving "Garbage."

10 14. The term "Excluded Recyclable Materials" generally permits market rate
11 purchasers of Recyclable Materials to collect them from generators of such materials.
12 The definition of Excluded Recyclable Materials makes clear that it excludes "such
13 materials collected and transported as a service" See Commercial Franchise
14 Agreement, p. 5.

15 15. A plain interpretation of the unambiguous language in the passages
16 above, shows that the Commercial Franchise Agreement was explicitly designed to
17 create a practical monopoly for the Collection of Solid Waste and Approved Recyclable
18 Materials within the City of Reno in favor of Waste Management.

19 16. While it is not literally true that Waste Management is the "only hauler that
20 is allowed in Reno and Sparks," this statement is substantially true according to the
21 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
22 statements allegedly made by Waste Management employees, set forth in Paragraph
23 34 of the Amended Complaint cannot be defamatory.

24 17. The second statement set forth in Paragraph 34 of the Amended
25 Complaint ("Any other provider that goes in there, there will be fines") is also
26
27
28

1 substantially true. The Commercial Franchise Agreement vests Waste Management
2 with the authority to assess fines for customer noncompliance and such noncompliance
3 includes the use of services which violate the Commercial Franchise Agreement.

4 18. The Gilletti Email poses even less of a problem. In her email, Gilletti
5 states that Waste Management has the exclusive right to handle "all of the franchised
6 Solid Waste materials generated by the business" and that "no service provider" other
7 than Waste Management may handle "Approved Recyclable Materials." See
8 Commercial Franchise Agreement, ¶ 44. These statements are literally true. Under the
9 Commercial Franchise Agreement, Waste Management has the right to handle
10 "franchised" waste by definition and is the only "service provider" that may handle
11 Approved Recyclable Materials.
12

13 19. The Excluded Recyclable Materials exception, while encompassing some
14 Approved Recyclable Materials, does not include materials handled as "a service".
15

16 20. The statements set forth in Paragraphs 34 and 44 of the Amended
17 Complaint, cannot constitute defamation.
18

19 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for
20 defamation and defamation per se is GRANTED.

21 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
22 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
23 **(CLAIMS 3 AND 4).**

24 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
25 charging customers lower rates than those specified in the Commercial Franchise
26 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
27 commercial customers with 96-gallon tote service.

28 23. Plaintiffs based their claim on their purported status as third-party
beneficiaries to both the Commercial Franchise Agreement and the Disposal

1 Agreement.

2 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
3 as to their ability to handle exempt and excluded materials under Sections 3.2 D and
4 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
5 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities
6 under the Agreements are expressly limited. The Third-Party Beneficiary Provisions
7 apply only to the exempted entities' rights to collect and handle exempted materials.
8

9 25. The Plaintiffs' argument that they have general third-party beneficiary
10 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
11 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
12 benefit them.
13

14 26. Given the exclusionary nature of the Agreements themselves, the
15 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
16 (1975) is inapposite as in Williams, the Court employed a third-party beneficiary theory
17 only to address the scope of duty owed to Mrs. Williams when her husband was
18 electrocuted working on a billboard in a negligence case.
19

20 27. Under the plain language limitations of the Plaintiff's third-party beneficiary
21 status in the Third-Party Beneficiary Provisions, not all breaches of the Agreements
22 constitute a breach actionable by the Plaintiffs. To be a third-party beneficiary, the
23 Plaintiffs must allege that any violations of the Agreements interfered in some way with
24 their rights to handle exempted materials.
25

26 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
27 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
28 Beneficiary Provision.

29 Plaintiffs have alleged that the price adjustment of Exempted Drop Box

1 Materials, which Plaintiffs claim they are entitled to compete for, but are expressly
2 limited by the Commercial Franchise Agreement to temporary Drop Box services which
3 cannot, "replace, limit or reduce" services provided by Waste Management. This would
4 seem to imply that Plaintiffs were not intended to actually compete with Waste
5 Management for these services.
6

7 30. There's some question as to what affect Waste Management's alleged
8 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
9 provide exempted services but, given the language of the Commercial Franchise
10 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
11 complained of actions interfered with their rights to handle exempted materials.
12

13 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
14 breach of contract and for breach of the implied covenant of good faith and fair dealing
15 is GRANTED.

16 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
17 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

18 32. The Plaintiffs also assert claims based upon alleged price fixing and
19 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
20 alleged deviations from the price schedule in the Commercial Franchise Agreement and
21 the Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
22 consolidated franchise.
23

24 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
25 does not apply where the conduct is expressly authorized by local government. See
26 NRS 598A.040(3)(b).
27

28 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
the Commercial Franchise Agreement, which amounts to a substantial interference with

1 the Plaintiffs' own ability to continue to haul excepted materials.

2 35. Accordingly, the Plaintiffs' UTPA claim as to price fixing must be
3 dismissed. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price
4 fixing in violation of the UTPA is GRANTED.

5 36. As for the Plaintiffs' UTPA claim based upon the Defendants' alleged
6 collusion with Castaway, these allegations are subject to the heightened pleading
7 requirements of NRCP 9(b).

8 37. As for the collusion claims, the Plaintiffs have successfully pleaded the
9 who, what, when, where, and how of such activities, so as to survive a motion to
10 dismiss.

11 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
12 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
13 trade or commerce in the State of Nevada or a consolidation of business interests
14 which would result in a monopolization or substantially lessen competition or be in
15 restraint of trade. Plaintiffs have alleged such action on the part of Waste
16 Management.

17 39. Defendants are correct that actions which are sanctioned by a
18 municipality are exempted from the unfair trade practices liability. See NRS
19 598A.040(3)(b). However, as alleged in the Amended Complaint, the City of Reno
20 originally intended to grant franchises to two separate entities, not one. As alleged,
21 Waste Management's action to further consolidate service in the Reno area by
22 acquiring Castaway would not be subject to approval by the City of Reno and,
23 therefore, results in a violation of the UTPA.

24
25
26
27
28 ///

Robison, Belustoga,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

1 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
2 have alleged the general time frame during which they believe Waste Management's
3 collusion with Castaway occurred and have stated specifically that Castaway's
4 representatives made statements to the City of Reno regarding their intentions as to the
5 proposed franchise agreement without divulging the planned acquisition.
6

7 41. This was a close call, but given the pleading standards that this Court
8 must apply on a motion to dismiss, the Defendants' Motion to dismiss the UTPA claims
9 relating to unfair trade practices as to the collusion with Castaway in pursuit of an
10 unlawful monopoly is DENIED.

11 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,**
12 **FRAUDULENT MISREPRESENTATION (CLAIM 6).**

13 42. The Court agrees with the Defendants that the claim of fraud alleged by
14 the Plaintiff in the Amended Complaint lacks specificity.

15 43. There are no allegations of an intent to defraud and Plaintiffs have not
16 shown the requisite element of reliance.
17

18 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
19 is GRANTED.

20 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT**
21 **INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

22 45. As to the Plaintiffs' injunctive and declaratory relief claims, this Court has
23 previously found that injunctive relief and declaratory relief was inappropriate, because
24 monetary damages are sufficient to compensate the Plaintiffs for any perceived
25 damages. The Court reaffirms that ruling.⁵
26

27 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
28 permanent injunction and declaratory relief is GRANTED.

1 **ORDER**

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants'
3 Motion is GRANTED, in part, and DENIED, in part, as follows:

4 1. The Defendants' Motion is Granted as to Plaintiffs' claims for defamation,
5 defamation per se, breach of contract/third party beneficiary, breach of the implied
6 covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent
7 misrepresentation, preliminary and permanent injunction, and declaratory relief. These
8 claims are DISMISSED with prejudice;
9

10 2. The Defendants' Motion is GRANTED, in part, as to the Plaintiffs' claim
11 for unfair trade practices/conspiracy to restrain trade as they relate to price fixing. This
12 claim is DISMISSED with prejudice; and
13

14 3. The Defendants' Motion is Denied, in part, as to the Plaintiffs' claim for
15 unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as
16 it relates to alleged collusion with Castaway.
17

18 IT IS SO ORDERED.

19 DATED this 15 day of SEPTEMBER, 2015.

20 
21 DISTRICT COURT JUDGE
22
23
24
25
26
27
28

Robison, Belamnegui,
Sharp & Low
73 Washington St.
Reno, NV 89503
(775) 329-3151

5 Injunctive relief is a remedy not a cause of action.

1 Mark G. Simons, Esq., NSB No. 5132
2 Scott L. Hernandez, Esq., NSB No. 13147
3 ROBISON, BELAUSTEGUI, SHARP & LOW
4 71 Washington Street
5 Reno, Nevada 89503
6 Telephone: (775) 329-3151
7 Facsimile: (775) 329-7169
8 Email: msimons@rbsllaw.com
9 shernandez@rbsllaw.com

10 *Attorneys for Defendant Waste Management of Nevada*

11 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 NEVADA RECYCLING AND SALVAGE,
14 LTD., a Nevada Limited Liability
15 Company; and AMCB, LLC, a Nevada
16 Limited Liability Company dba RUBBISH
17 RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

18 Plaintiffs,

19 vs.

20 RENO DISPOSAL COMPANY, INC., a
21 Nevada Corporation dba WASTE
22 MANAGEMENT; REFUSE, INC., a
23 Nevada Corporation; ABC
24 CORPORATIONS, I-X; BLACK AND
25 WHITE COMPANIES, I-X; and JOHN
26 DOES I-X, inclusive,

27 Defendants.

28 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants Reno Disposal Company, Inc., dba Waste Management ("Reno Disposal") and Refuse, Inc. (collectively, the "Defendants"), hereby move this Court for an order granting summary judgment on the remaining claim in this action. This motion is made pursuant to NRCP 56 and is based upon the attached memorandum of points

1 and authorities and exhibits, the Affidavit of Greg Martinelli and the pleadings and
2 papers on file herein.

3 DATED this 24th day of September, 2015.

4 ROBISON, BELAUSTEGUI, SHARP & LOW
5 A Professional Corporation
6 71 Washington Street
7 Reno, Nevada 89503

8 
9 MARK G. SIMONS
10 SCOTT L. HERNANDEZ
11 Attorneys for Defendants Waste Management

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. BACKGROUND AND PROCEDURAL HISTORY.**

14 This instant dispute arises from two franchise agreements entitled Exclusive
15 Service Area Franchise Agreement – Commercial Solid Waste and Recyclable
16 Materials ("Commercial Franchise Agreement(s)"). See Verified First Amended
17 Complaint ("Amended Complaint" or "Amd. Comp."), ¶¶19-20. These agreements
18 granted exclusive franchises for the collection of Solid Waste and Approved Recyclable
19 Materials¹ within the City of Reno (the "City"), to two separate "Contractors" each
20 servicing a different geographic area in Reno defined as the "Exclusive Service Area."
21 *Id.* at ¶18 & Exh. 3, pp. 1, 5.

22 One franchise agreement was executed by the City and Reno Disposal, and the
23 other was executed by the City and Castaway Trash Hauling ("Castaway"). *Id.* at ¶¶19-
24 20. However, Castaway later assigned the rights under its own franchise agreement to
25 Reno Disposal, thereby giving Reno Disposal an exclusive franchise for commercial
26 waste disposal for the entire City of Reno. *Id.* at ¶¶91-92.

27 ¹ All capitalized defined terms that are not defined within this memorandum are defined
28 as set forth in Reno Disposal's Commercial Franchise Agreement, attached to and
incorporated into the Amended Complaint as Exhibit 3.

1 The Plaintiffs filed the Amended Complaint seeking relief asserting malfeasance
2 allegedly perpetrated by the Defendants arising out of Reno Disposal's franchise
3 agreement. The Defendants moved to dismiss the Amended Complaint as to all claims
4 for relief. The Court granted the Defendants' motion with prejudice as to all claims for
5 relief except for the Plaintiffs' claim for unfair trade practices/conspiracy to restrain
6 trade. See Exhibit 1, Order Granting Defendants' Motion to Dismiss Verified Amended
7 Complaint, in Part, and Denying, in Part ("Order on Motion to Dismiss"), p. 12.²

8 As for the Plaintiffs' unfair trade practices claim, the Court noted that Plaintiffs'
9 claim was based upon two different theories of recovery under NRS 598.060 of
10 Nevada's Uniform Trade Practices Act ("UTPA"). Exh. 1, at ¶32. Specifically, the Court
11 found that the claim was based upon: "[1] alleged deviations from the price schedule in
12 the Commercial Franchise Agreement and [2] the Defendants' alleged collusion with
13 Castaway Trash Hauling ("Castaway") to obtain a consolidated franchise." Id. The
14 Court dismissed the price fixing theory with prejudice. Id. at p. 12. However, the
15 motion to dismiss was denied as to the collusion theory. Id.

16 In its Order on the Motion to Dismiss, the Court framed Plaintiffs' sole remaining
17 claim as follows:

18 NRS 598A.060(1)(e) and (f), specifically prohibit actions
19 which result in a monopolization of trade or commerce in the
20 State of Nevada or a consolidation of business interests
21 which would result in a monopolization or substantially
22 lessen competition or be in restraint of trade. Plaintiffs have
23 alleged such action on the part of Waste Management.

24 Defendants are correct that actions which are sanctioned by
25 a municipality are exempted from the unfair trade practices
26 liability. See NRS 598A.040(3)(b). However, as alleged in
27 the Amended Complaint, the City of Reno originally intended
28 to grant franchises to two separate entities, not one. As
alleged, Waste Management's action to further consolidate
service in the Reno area by acquiring Castaway would not
be subject to approval by the City of Reno and, therefore,
results in a violation of the UTPA.

² See also **Exhibit 2**, Affidavit of Greg Martinelli ("Martinelli Aff.") at ¶4.

1 See Exh. 1, ¶¶38-39. Stated another way, the Plaintiffs' claim is that Reno Disposal did
2 not have a protected and/or excepted right to assume Castaway's Commercial
3 Franchise Agreement.

4 As described in detail below, there is no genuine issue of material fact that (1)
5 Castaway's assignment of its Commercial Franchise Agreement to Reno Disposal was
6 a vested contract right and exempt from any UTPA claims, and (2) the assignment was
7 also expressly approved by the City of Reno. Accordingly, summary judgment should
8 be granted on the Plaintiffs' remaining claim for relief as Reno Disposal's acquisition of
9 Castaway's Commercial Franchise Agreement does not implicate the UTPA or create
10 any liability on behalf of Reno Disposal.

11 **II. LEGAL DISCUSSION.**

12 **A. Standard of Review.**

13 Under NRCP 56, summary judgment is appropriate when there are no genuine
14 issues of material fact. See Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026,
15 1031 (2005). In such a situation, a moving party is entitled to judgment as a matter of
16 law. Id.; see also Torres v. Farmers Ins. Exch., 106 Nev. 340, 345, 793 P.2d 839, 842
17 (1990) ("[T]he moving party must establish the foundational facts necessary to
18 determine the issue" in their favor.). As discussed herein, because there are no issues
19 of fact, the Defendants are entitled to summary judgment as a matter of law.

20 **B. Summary Judgment in Defendants' Favor Is Proper on the Plaintiffs'**
21 **Remaining Claim for Unfair Trade Practices.**

22 **1. The Commercial Franchise Agreements Are Exempt from**
23 **UTPA.**

24 Under NRS 268.081, incorporated cities can "displace or limit competition" for
25 the "[c]ollection and disposal of garbage and other waste." Reno is an incorporated
26 city. See Exhibit 3, The Charter of the City of Reno, §1.020, Chap. 622, Art. 1, 1971
27 Nev. Stat. p. 1962.³ Pursuant to its power as an incorporated city, the City of Reno

28 ³ See also Exh. 2 at ¶5.

1 enacted ordinances permitting exclusive franchise agreements for the collection and
2 disposal of Solid Waste and Approved Recyclable Materials (also known as "Collection
3 Materials"). See RMC 5.90.005, et seq.

4 The City of Reno's franchise agreements must be contained in "a written
5 agreement" and must be approved and executed by both the City Council and the
6 waste disposal contractor. RMC 5.90.050. It is undisputed that the Reno City Council
7 approved the written franchise agreements with both Reno Disposal and Castaway.
8 Verified Amd. Complaint, ¶¶19-20, Exh. 3 (Reno Disposal's franchise agreement);
9 **Exhibit 4**⁴ attached hereto (Castaway's franchise agreement). It is also undisputed in
10 this action that both Reno Disposal's and Castaway's franchise agreements are valid.

11 As noted above, the Plaintiffs' sole remaining claim for relief is a claim of alleged
12 collusion between Reno Disposal and Castaway to allow Reno Disposal to acquire
13 Castaway's franchise rights. Plaintiffs' then claim Reno Disposal's acquisition of
14 Castaway's franchise rights allegedly violated the UTPA because the City was unaware
15 of Reno Disposal's consolidation of the waste hauling franchises in the City. Plaintiffs'
16 claim fails as a matter of law for a number of reasons.

17 Of paramount importance in resolving the remaining claim asserted by Plaintiffs,
18 and as the Court previously noted, the UTPA does not apply to "[c]onduct which is
19 expressly authorized, regulated or approved by: (a) A statute of this State or the United
20 States; [or] (b) An ordinance of any city or county of this State . . ." NRS 598A.040(3).
21 Accordingly, if Reno Disposal's conduct in acquiring Castaway's franchise rights was
22 conducted pursuant to a statute or ordinance, then Reno Disposal's conduct is exempt
23 from the UTPA.

24 In the present case, NRS 268.081, NRS 268.083, RMC 5.90.020 and RMC
25 5.90.030(b), all expressly authorize the City of Reno to enter into contracts for municipal
26 services to the exclusion of competition. NRS 268.081(3) states that a City may grant
27

28 ⁴ See also Exh. 2 at ¶6.

1 "displace or limit competition" in the field of "[c]ollection and disposal of garbage and
2 other waste". NRS 268.083 provides that a City may adopt ordinances for an exclusive
3 franchise for waste collection and/or "[g]rant an exclusive franchise . . .to any person to
4 provide those services within the boundaries of the city."

5 In conformance with the foregoing statutes, Reno ordinances expressly provide
6 that the City may enter into waste collection franchise agreements. See RMC 5.90.020
7 ("An Agreement for the Collection of Residential or Commercial Collection Materials will
8 only be granted as provided in this article."). Reno Municipal Code 5.90.030(b) then
9 states: "Contractors, and their respective . . . assigns, shall have the exclusive
10 privilege of providing 'Collection Services of Collection Materials' subject to the
11 limitations of any applicable Agreement, and city, state and federal law." (emphasis
12 added).

13 Therefore, under Nevada's statutory scheme, the City of Reno may enter into
14 contracts for exclusive franchises in the field of waste management. Reno ordinances
15 also provide that such written contracts for exclusive services allow for the express
16 assignment of those exclusive franchise rights by a Contractor to another party.

17 In the present case, the City of Reno provided both Reno Disposal and
18 Castaway with an exclusive franchise right to service a particular area of Reno. These
19 franchise agreements contained the express contractual right to transfer the franchise
20 rights to each other and/or to any third-party who could qualify as an assignee.
21 Accordingly, pursuant to well-established law, the assignment clauses contained in both
22 Reno Disposal's and Castaway's franchise agreements were expressly authorized and
23 approved by Nevada statute, Reno ordinance and the City of Reno. Therefore, when
24 Reno Disposal acquired Castaway's franchise rights via assignment, Reno Disposal's
25 actions were, by definition, exempt from prosecution and/or liability under the UTPA.

26 ///

27 ///

1 2. **The Assignment of Castaway's Franchise Rights Was**
2 **Sanctioned and Approved of by the City Under the Express**
3 **Terms of the Commercial Franchise Agreements.**

4 As referenced above, Castaway's Commercial Franchise Agreement was
5 expressly assignable to Reno Disposal. Section 11.7 of Castaway's Commercial
6 Franchise Agreement sets forth the procedure by which agreement is assignable to
7 Reno Disposal as another Contractor. Castaway's Commercial Franchise Agreement
8 contemplates and allowed two kinds of assignments: (1) an assignment to a "Permitted
9 Transferee," which requires no City approval because the assignee has been pre-
10 approved, and (2) an assignment that requires approval by the City to a party who can
11 satisfy the restrictions imposed under the Assignee Qualifications.

12 a. Castaway Properly Assigned Its Own Commercial Franchise
13 Agreement to Reno Disposal as a Permitted Transferee.

14 Reno Disposal was pre-approved as an assignee under Castaway's franchise
15 agreement. Therefore, the City had already authorized such assignment as a contract
16 right vested to both Reno Disposal and Castaway. Specifically, a "Contractor shall not
17 make an Assignment of this Agreement to any other person or entity without the prior
18 written consent of the City . . ." "[e]xcept for Assignments to a Permitted Transferee
19" See Commercial Franchise Agreements, §11.7 B (emphasis added). A
20 "Permitted Transferee" is defined as "a service provider under another" franchise
21 agreement.⁵ See Commercial Franchise Agreements, p. 9 (emphasis added).

22 Therefore, under the express terms of the Commercial Franchise Agreements,

23 ⁵ The fact that a Permitted Transferee is "a service provider under another" agreement
24 makes it abundantly clear that a Permitted Transferee is one who is a service provider
25 under "another" franchise agreement. The word "another" is defined as "being one
26 more in addition to one or more of the same kind." See ANOTHER, Merriam-Webster
27 Dictionary, <http://www.merriam-webster.com/dictionary/another> (last visited Sept. 18,
28 2015). See Exhibit 5. See also Martinelli Aff., at ¶17.

29 Accordingly, a Permitted Transferee, such as Reno Disposal, is an entity who has
30 already entered into the same franchise agreement as Castaway. Compare Exh. 4
31 hereto (Castaway Commercial Franchise Agreement) with Amd. Comp., ¶¶19-20, Exh.
32 3 (Reno Disposal Commercial Franchise Agreement).

1 Reno Disposal is a Permitted Transferee under Castaway's Commercial Franchise
2 Agreement, and vice-versa. Accordingly, Castaway's assignment of its Commercial
3 Franchise Agreement to Reno Disposal was expressly contemplated in both its own
4 Commercial Franchise Agreement as well as Reno Disposal's Commercial Franchise
5 Agreement.

6 The City's prior approval of this automatic assignment between Reno Disposal
7 and Castaway as "Permitted Assignees" was effective without prior written consent
8 being obtained from the City because the City had already pre-approved Castaway's
9 assignment to Reno Disposal. Therefore, Reno Disposal's acquisition of Castaway's
10 franchise rights were preapproved by the City and contained in a written contract that
11 complied with Nevada statutes and Reno ordinances.

12 On August 12, 2013, Reno Disposal notified the City that it was "acquiring the
13 assets of Castaway Trash Hauling and assuming all rights and obligations under their
14 commercial franchise agreement as provided in 11.7." See Exhibit 6⁶ (Letter from G.
15 Martinelli to A. Clinger (Aug. 12, 2013)). Because Reno Disposal's contract right to
16 obtain the assignment of Castaway's franchise was already approved and authorized
17 by the City, such action was expressly exempted from any UTPA liability. See NRS
18 598A.040(3) (UTPA "does not apply to . . . Conduct which is expressly authorized . . . or
19 approved by . . . A statute of this State; [or] An ordinance of any city . . . of this State . . .
20 ."). Thus, as a matter of law, Plaintiffs' claim fails and summary judgment must be
21 entered in Defendants' favor as requested.

22 b. The City Expressly Consented to Reno Disposal's
23 Qualifications and Expressly Approved the Assignment.

24 In addition to Reno Disposal's automatic contract right to obtain the assignment
25 of Castaway's franchise, Reno Disposal could have obtained the assignment if it also
26 qualified as an approved assignee. See Commercial Franchise Agreements, §11.7 C
27

28 ⁶ See also Martinelli Aff., at ¶8.

1 (non-automatic assignments to third-parties who sought assignment as a qualified
2 contractor required the consent of the City). This specific type of assignment does
3 need City approval. The City also granted and approved the assignment to Reno
4 Disposal as a qualified assignee—even though such formal consent was not required
5 by the terms of Castaway's franchise agreement.

6 Specifically, on October 3, 2013, counsel for Reno Disposal submitted a notice
7 to the City that Reno Disposal was acquiring Castaway's franchise rights via
8 assignment. See Exhibit 7⁷ (Letter from G. Duhon to City of Reno (Oct. 3, 2013)).
9 Reno Disposal's notice advised that Reno Disposal was moving forward with the
10 assignment as a Permitted Assignee under section 11.7 B., which provision again did
11 not need the City's approval for the assignment.⁸

12 The City responded in writing on October 4, 2013, stating that the "City has
13 reviewed the letter and the contractual requirements of the Agreement, and has
14 **determined [Reno Disposal] meets the Assignee Qualifications set forth in**
15 **Section 11.7C. Accordingly, the City hereby consents to the assignment."** Exhibit
16 ⁸ (Letter from J. Geddes to S. Duque (Oct. 4, 2013)) (emphasis added). Again, even
17 though the City did not need to approve the assignment to Reno Disposal under the
18 Permitted Transferee provisions in 11.7 B, the City nonetheless also approved and
19 consented to the assignment of Castaway's franchise rights to Reno Disposal pursuant
20

21 ⁷ See also Martinelli Aff., at ¶9.

22 ⁸ Id. Reno Disposal's notice stated, in part: "In accordance with Section 11.7 (B) of the
23 Franchise Agreement, a formal written instrument of [the] assignment was executed
24 providing for the assignment by Castaway to [Reno Disposal] of Castaway's rights as
25 Contractor under the Franchise Agreement and for [Reno Disposal]'s assumption and
26 acceptance as Contractor of all the terms and conditions of the Franchise Agreement .
27 . . ."). Additionally, the notice clearly stated that Reno Disposal was a "Permitted
28 Transferee" because it was "another" Contractor under another franchise agreement.
Id.

⁹ See also Martinelli Aff., at ¶10.

1 to the provisions of 11.7 C.

2 As the undisputed facts demonstrate, Reno Disposal was both pre-approved to
3 obtain the assignment of Castaway's franchise rights as a "Permitted Transferee" and
4 was, in fact, actually approved by the City to receive the assignment as a qualified
5 Contractor. Under either scenario analyzed by this Court, Reno Disposal's actions are
6 exempt from UTPA liability. See 598A.040(3) Therefore, summary judgment must be
7 granted in Reno Disposal's favor as requested.

8 **III. CONCLUSION.**

9 There is no genuine issue of material fact and summary judgment must be
10 entered as a matter of law. The City is vested with the authority to enter into contracts
11 establishing franchises for waste collection under State statute and Reno ordinance.
12 The City entered into such franchise agreements with Reno Disposal and Castaway.
13 Pursuant to these valid contracts, the City pre-approved Reno Disposal as a Permitted
14 Transferee to obtain the assignment of Castaway's franchise rights. Moreover, while
15 the City's approval of the assignment to Reno Disposal was unnecessary, the City
16 reviewed and approved Reno Disposal's acquisition of Castaway's rights and
17 obligations under Castaway's Commercial Franchise Agreement. Because all
18 contractual prerequisites under the Commercial Franchise Agreements were satisfied,
19 Castaway's assignment to Reno Disposal complies with the express terms of the
20 franchise agreements and, therefore, constitutes a transaction exempt from UTPA
21 liability. Thus, the Plaintiffs' remaining claim is untenable, and Plaintiffs' UTPA claim is
22 barred by NRS 598A.040(3) as a matter of law. Therefore, summary judgment should
23 be granted, as requested.

24 ///

25 ///

26 ///

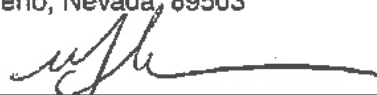
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 24th day of September, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada, 89503



MARK G. SIMONS
SCOTT L. HERNANDEZ
Attorneys for Defendants Waste Management

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on all parties to this action by the method(s) indicated below:

☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

Del Hardy, Esq.

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 24th day of September, 2015.



EXHIBIT LIST

	NO.	DESCRIPTION	PAGES
1			
2			
3	1	Order	12
4	2	Affidavit of Greg Martinelli	2
5	3	The Charter of the City of Reno	23
6	4	Exclusive Service Area Franchise Agreement Commercial Solid Waste And Recyclable Material	70
7	5	Merriam-Webster's Definition	5
8	6	Waste Management correspondence to the Reno City Manager, dated 08/12/13	1
9			
10	7	Attorney Gary Duhon correspondence to the City of Reno, dated 10/03/13	2
11			
12	8	City of Reno correspondence to Spike Duque re: Castaway Trash Hauling, dated 10/04/13	1
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

Robison, Belostegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD., a
Nevada Limited Liability Company; and AMCB,
LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation dba WASTE MANAGEMENT;
REFUSE, INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK AND WHITE
COMPANIES, I-X; and JOHN DOES I-X, inclusive,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED
AMENDED COMPLAINT, IN PART, AND DENYING, IN PART**

This matter came on for hearing on July 29, 2015, on the Motion to Dismiss
Verified Amended Complaint (the "Motion") filed by Defendants Reno Disposal
Company, Inc. dba Waste Management ("Waste Management") and Refuse, Inc.
("Refuse") (collectively referred to as the "Defendants" unless otherwise specified).
Mark G. Simons, Esq. and Scott Hernandez, Esq. of the law firm of Robison,
Belaustegui, Sharp & Low appeared on behalf of Defendants. Stephanie Rice, Esq.
and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada

1 Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR")
2 (collectively the "Plaintiffs" unless otherwise specified).

3 Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
4 March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se,
5 (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good
6 faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud,
7 fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and
8 permanent injunction and declaratory relief.

9
10 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to
11 NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide
12 sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as
13 required under NRCP 9(b) ("Motion"). The Defendants argue that the Plaintiffs' claims
14 are premised on an incorrect reading of the "Commercial Franchise Agreement,"
15 arguing that Waste Management has an exclusive Franchise for hauling Solid Waste
16 and Approved Recyclable Materials, nothing that the Plaintiff may haul waste materials
17 which are expressly excluded from the Commercial Franchise Agreement.

18
19 The Defendants argue that the Plaintiffs have failed to state a claim for
20 defamation, defamation per se, that the Amended Complaint contains no defamatory
21 statements, that the breach of contract claim fails, that the Plaintiffs lack standing as
22 third-party beneficiaries, that the Plaintiffs have no standing as to the franchise claim,
23 that the Plaintiffs have no standing as to the Eco Center claims. Defendants' claim the
24 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
25 Plaintiffs have failed to state a claim as to unfair trade practices, arguing that Nevada's
26

27
28 ¹ As used herein, the term "Commercial Franchise Agreement" refers to the Exclusive Service
Area Franchise Agreement Commercial Solid Waste and Recyclable Materials Agreement
between Waste Management and the City of Reno, which is attached to the Amended
Complaint as Exhibit 3 and is expressly incorporated therein by reference. See Amended

1 Unfair Trade Practices Act ("UTPA") does not apply in this case, and that the Plaintiffs
2 failed to state a claim for fraud or to allege justifiable reliance.

3 The Plaintiffs filed their opposition to the Motion on May 7, 2015. The
4 Defendants filed their reply in support of the Motion on May 19, 2015.² Change
5 Footnote Numbering

6 The Court has considered the allegations set forth in the Amended Complaint,
7 the "Agreements"³ incorporated by reference therein, the Defendants' Motion, the
8 Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with
9 such briefing, and the arguments of the parties at the time of the hearing. In rendering
10 its decision, the Court has accepted the factual allegations in the Amended Complaint
11 as true and construed the pleadings in the light most favorable to Plaintiffs. The Court
12 treated the Motion as a motion to dismiss and not as a motion for summary judgment.⁴
13 Good cause appearing, the Court finds that the Motion shall be GRANTED, in part, and
14 DENIED, in part, for the following reasons and upon the following grounds:

15 1. The Defendants have filed the Motion to dismiss the Amended Complaint
16 pursuant to NRCP 12(b), which governs motions to dismiss. NRCP 12(b)(5) governs
17 motions to dismiss for failure to state a claim upon which relief can be granted.
18
19
20
21

22 Complaint, ¶19.

23 ² The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015.
24 The Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in
25 support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to
26 strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the
27 Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers
28 the Defendants' reply in support of the Motion in the instant ruling and order.

³ As used herein, the term "Agreements" refers both to the Commercial Franchise Agreement
and the Disposal Agreement for Solid Waste and Recyclable Materials between Refuse and the
City of Reno (the "Disposal Agreement"). The Disposal Agreement is attached to the Amended
Complaint as Exhibit 4 and is incorporated therein by reference. See Amended Complaint, ¶50.

⁴ The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're
converting this to a motion for summary judgment." See Transcript of Proceedings, Oral
Arguments (July 29, 2015), p. 26:5-6. This quotation is inaccurate. The Court confirms that the
Motion was not converted into a motion for summary judgment and the Motion decided under

1 2. When deciding a motion to dismiss under NRCP 12(b)(5), the Court must
2 treat all factual allegations as true and draw all reasonable inferences in favor of the
3 nonmoving party, in this case, the Plaintiffs.

4 3. Nevertheless, a claim should be dismissed if it appears beyond a doubt
5 that the Plaintiff could prove no set of facts, which if true would entitle Plaintiff to relief.
6

7 4. Dismissal is appropriate when the allegations are insufficient to establish
8 the elements for the claim for relief.

9 **A. PLAINTIFFS' CLAIMS FOR DEFAMATION AND DEFAMATION PER SE**
10 **(CLAIMS 1 AND 2).**

11 5. The elements of a defamation claim are as follows: a false and
12 defamatory statement of fact by the defendant concerning the plaintiff; an unprivileged
13 publication to a third person; fault amounting to at least negligence; and actual or
14 presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459,
15 462(1993). A statement is not defamatory if it is absolutely true or substantially true.
16 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).
17

18 6. Here, Plaintiffs allege that Waste Management employees made false
19 statements to "customers and/or prospective customers" of the Plaintiffs, including, the
20 following:

- 21 a. "We [Waste Management] are only the haulers that's allowed in Sparks
22 and Reno."
23 b. "Any other provider that goes in there, there will be fines."
24 c. "We [Waste Management] have an agreement with the city and we are
25 the only trash hauler that is allowed in either of those cities [Reno and
26 Sparks]."

27 See Amended Complaint, ¶ 34.

28 7. Plaintiffs allege that Waste Management employee, Cheryl Gilletti,

the standard set forth in NRCP 12(b)(5) and related case law.

1 made intentional misrepresentations in an email to one of Plaintiffs' customers (the
2 "Gilletti Email"), which read as follows:

3 " . . . At this time Waste Management is the assigned hauler for the City
4 of Reno.

5 Solid Waste: Every business generating solid waste in the City of Reno is
6 required to subscribe to Reno Disposal Company for the collection,
7 transportation and disposal of all of franchised solid waste material
8 generated by the business, except for business to which the City of Reno
9 has specifically granted in writing an exemption. . . .

10 Recyclable Material. No business may allow or retain any service provider
11 other than Reno Disposal Company to collect, pick up, transport or deliver
12 Approved Recyclable Materials in the City of Reno in violation of the
13 exclusive commercial franchise agreement or the Reno Municipal Code."

14 See Amended Complaint, ¶ 34.

15 8. Under the Commercial Franchise Agreement, it is clear that Waste
16 Management's franchise to collect and haul waste and recyclables is nearly exclusive.
17 Section 3.2 A of the Commercial Franchise Agreement includes the exclusive right to
18 Collect, transport, and deliver Collection Materials in the Reno area. Section 3.2 A is
19 intended to be broadly interpreted.

20 9. Under the Commercial Franchise Agreement, "Collection Materials" are
21 defined as "all Solid Waste and Approved Recyclable Materials [including nearly all
22 paper, glass, aluminum, plastic materials]" generated by commercial customers subject
23 to certain exemptions. See Commercial Franchise Agreement, p. 3.

24 10. Under Section 3.2 B of the Commercial Franchise Agreement, Waste
25 Management is entitled to charge fees for customers' noncompliance with the
26 Commercial Franchise Agreement.

27 11. The few exemptions to the Commercial Franchise Agreement are narrow,
28 and are limited to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop
Box Materials, Exempted Hauler Account Materials, and . . . Exempted Facility

1 Materials delivered to Exempted Facilities." See Commercial Franchise Agreement,
2 §3.2 A.

3 12. The term "Exempted Drop Box Materials" applies to temporary services
4 for the collection of certain wastes in approved Drop Boxes, excluding services that
5 would "replace, limit or reduce" any services provided by Waste Management. See
6 Commercial Franchise Agreement, p. 6-7.

7
8 13. "Exempted Hauler Account Materials" apply to defined existing contracts
9 between listed service providers and identified customers with approval from the City of
10 Reno and excluding services involving "Garbage."

11 14. The term "Excluded Recyclable Materials" generally permits market rate
12 purchasers of Recyclable Materials to collect them from generators of such materials.
13 The definition of Excluded Recyclable Materials makes clear that it excludes "such
14 materials collected and transported as a service" See Commercial Franchise
15 Agreement, p. 5.

16
17 15. A plain interpretation of the unambiguous language in the passages
18 above, shows that the Commercial Franchise Agreement was explicitly designed to
19 create a practical monopoly for the Collection of Solid Waste and Approved Recyclable
20 Materials within the City of Reno in favor of Waste Management.

21
22 16. While it is not literally true that Waste Management is the "only hauler that
23 is allowed in Reno and Sparks," this statement is substantially true according to the
24 plain terms of the Commercial Franchise Agreement. Accordingly, the first and third
25 statements allegedly made by Waste Management employees, set forth in Paragraph
26 34 of the Amended Complaint cannot be defamatory.

27
28 17. The second statement set forth in Paragraph 34 of the Amended
Complaint ("Any other provider that goes in there, there will be fines") is also

1 substantially true. The Commercial Franchise Agreement vests Waste Management
2 with the authority to assess fines for customer noncompliance and such noncompliance
3 includes the use of services which violate the Commercial Franchise Agreement.

4 18. The Gilletti Email poses even less of a problem. In her email, Gilletti
5 states that Waste Management has the exclusive right to handle "all of the franchised
6 Solid Waste materials generated by the business" and that "no service provider" other
7 than Waste Management may handle "Approved Recyclable Materials." See
8 Commercial Franchise Agreement, ¶ 44. These statements are literally true. Under the
9 Commercial Franchise Agreement, Waste Management has the right to handle
10 "franchised" waste by definition and is the only "service provider" that may handle
11 Approved Recyclable Materials.
12

13 19. The Excluded Recyclable Materials exception, while encompassing some
14 Approved Recyclable Materials, does not include materials handled as "a service".
15

16 20. The statements set forth in Paragraphs 34 and 44 of the Amended
17 Complaint, cannot constitute defamation.
18

19 21. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for
20 defamation and defamation per se is GRANTED.

21 **B. PLAINTIFFS' CLAIMS FOR BREACH OF CONTRACT AND BREACH**
22 **OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
23 **(CLAIMS 3 AND 4).**

24 22. Plaintiffs allege that Waste Management breached the Agreements by (1)
25 charging customers lower rates than those specified in the Commercial Franchise
26 Agreement, (2) failing to diligently construct the Eco Center, and (3) refusing to service
27 commercial customers with 96-gallon tote service.

28 23. Plaintiffs based their claim on their purported status as third-party
beneficiaries to both the Commercial Franchise Agreement and the Disposal

1 Agreement.

2 24. The Agreements do provide the Plaintiffs with third-party beneficiary rights
3 as to their ability to handle exempt and excluded materials under Sections 3.2 D and
4 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the Disposal
5 Agreement ("Third-Party Beneficiary Provisions"). The rights of exempted entities
6 under the Agreements are expressly limited. The Third-Party Beneficiary Provisions
7 apply only to the exempted entities' rights to collect and handle exempted materials.
8

9 25. The Plaintiffs' argument that they have general third-party beneficiary
10 standing under Hemphill v. Hanson, 77 Nev. 432, 366 P.2d 92 (1961) might be tenable
11 if the Plaintiffs could show a clear promissory intent that the Agreements were meant to
12 benefit them.
13

14 26. Given the exclusionary nature of the Agreements themselves, the
15 Plaintiffs' reliance on Williams v. City of N. Las Vegas, 91 Nev. 622, 541 P.2d 652, 653
16 (1975) is inapposite as in Williams, the Court employed a third-party beneficiary theory
17 only to address the scope of duty owed to Mrs. Williams when her husband was
18 electrocuted working on a billboard in a negligence case.
19

20 27. Under the plain language limitations of the Plaintiff's third-party beneficiary
21 status in the Third-Party Beneficiary Provisions, not all breaches of the Agreements
22 constitute a breach actionable by the Plaintiffs. To be a third-party beneficiary, the
23 Plaintiffs must allege that any violations of the Agreements interfered in some way with
24 their rights to handle exempted materials.
25

26 28. The construction of an Eco Center, pursuant to Section 3.3 A of the
27 Disposal Agreement, plainly has no bearing on those rights set forth in the Third-Party
28 Beneficiary Provision.

29. Plaintiffs have alleged that the price adjustment of Exempted Drop Box

1 Materials, which Plaintiffs claim they are entitled to compete for, but are expressly
2 limited by the Commercial Franchise Agreement to temporary Drop Box services which
3 cannot, "replace, limit or reduce" services provided by Waste Management. This would
4 seem to imply that Plaintiffs were not intended to actually compete with Waste
5 Management for these services.

6
7 30. There's some question as to what affect Waste Management's alleged
8 failure to downgrade customers to a 96-gallon tote might have on Plaintiffs' ability to
9 provide exempted services but, given the language of the Commercial Franchise
10 Agreement, the Court finds that the Plaintiffs can prove no set of facts showing that the
11 complained of actions interfered with their rights to handle exempted materials.

12
13 31. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claims for
14 breach of contract and for breach of the implied covenant of good faith and fair dealing
15 is GRANTED.

16 **C. PLAINTIFFS' CLAIMS FOR UNFAIR TRADE**
17 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE (CLAIM 5).**

18 32. The Plaintiffs also assert claims based upon alleged price fixing and
19 attempts to monopolize trade under NRS 598A.060. Plaintiffs base these claims on
20 alleged deviations from the price schedule in the Commercial Franchise Agreement and
21 the Defendants' alleged collusion with Castaway Trash Hauling ("Castaway") to obtain a
22 consolidated franchise.

23
24 33. The Defendants note that Nevada's Uniform Trade Practices Act ("UTPA")
25 does not apply where the conduct is expressly authorized by local government. See
26 NRS 598A.040(3)(b).

27 34. Plaintiffs have not alleged a deviation from the price schedule set forth in
28 the Commercial Franchise Agreement, which amounts to a substantial interference with

1 the Plaintiffs' own ability to continue to haul excepted materials.

2 35. Accordingly, the Plaintiffs' UTPA claim as to price fixing must be
3 dismissed. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for price
4 fixing in violation of the UTPA is GRANTED.

5 36. As for the Plaintiffs' UTPA claim based upon the Defendants' alleged
6 collusion with Castaway, these allegations are subject to the heightened pleading
7 requirements of NRCP 9(b).

8 37. As for the collusion claims, the Plaintiffs have successfully pleaded the
9 who, what, when, where, and how of such activities, so as to survive a motion to
10 dismiss.

11 38. The Plaintiffs must also have a legal basis for their cause of action. NRS
12 598A.060(1)(e) and (f), specifically prohibit actions which result in a monopolization of
13 trade or commerce in the State of Nevada or a consolidation of business interests
14 which would result in a monopolization or substantially lessen competition or be in
15 restraint of trade. Plaintiffs have alleged such action on the part of Waste
16 Management.

17 39. Defendants are correct that actions which are sanctioned by a
18 municipality are exempted from the unfair trade practices liability. See NRS
19 598A.040(3)(b). However, as alleged in the Amended Complaint, the City of Reno
20 originally intended to grant franchises to two separate entities, not one. As alleged,
21 Waste Management's action to further consolidate service in the Reno area by
22 acquiring Castaway would not be subject to approval by the City of Reno and,
23 therefore, results in a violation of the UTPA.

24 ///
25
26
27
28

1 40. Plaintiffs have stated their claims with the requisite specificity. Plaintiffs
2 have alleged the general time frame during which they believe Waste Management's
3 collusion with Castaway occurred and have stated specifically that Castaway's
4 representatives made statements to the City of Reno regarding their intentions as to the
5 proposed franchise agreement without divulging the planned acquisition.
6

7 41. This was a close call, but given the pleading standards that this Court
8 must apply on a motion to dismiss, the Defendants' Motion to dismiss the UTPA claims
9 relating to unfair trade practices as to the collusion with Castaway in pursuit of an
10 unlawful monopoly is DENIED.

11 **D. PLAINTIFF'S CLAIM FOR FRAUD, FRAUD IN THE INDUCEMENT,**
12 **FRAUDULENT MISREPRESENTATION (CLAIM 6).**

13 42. The Court agrees with the Defendants that the claim of fraud alleged by
14 the Plaintiff in the Amended Complaint lacks specificity.

15 43. There are no allegations of an intent to defraud and Plaintiffs have not
16 shown the requisite element of reliance.

17 44. Therefore, the Defendants' Motion to dismiss the Plaintiffs' claim for fraud
18 is GRANTED.
19

20 **E. PLAINTIFFS' CLAIM FOR PRELIMINARY AND PERMANENT**
21 **INJUNCTION, DECLARATORY RELIEF. (CLAIM 7)**

22 45. As to the Plaintiffs' injunctive and declaratory relief claims, this Court has
23 previously found that injunctive relief and declaratory relief was inappropriate, because
24 monetary damages are sufficient to compensate the Plaintiffs for any perceived
25 damages. The Court reaffirms that ruling.⁵
26

27 46. Defendants' Motion to dismiss the Plaintiffs' claim for preliminary and
28 permanent injunction and declaratory relief is GRANTED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

1. The Defendants' Motion is Granted as to Plaintiffs' claims for defamation, defamation per se, breach of contract/third party beneficiary, breach of the Implied covenant of good faith and fair dealing, fraud, fraud in the inducement, fraudulent misrepresentation, preliminary and permanent injunction, and declaratory relief. These claims are DISMISSED with prejudice;

2. The Defendants' Motion is GRANTED, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as they relate to price fixing. This claim is DISMISSED with prejudice; and

3. The Defendants' Motion is Denied, in part, as to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade under NRS 598A.060(1)(e) and (f) as it relates to alleged collusion with Castaway.

IT IS SO ORDERED.

DATED this 15 day of SEPTEMBER, 2015.


DISTRICT COURT JUDGE

Robison, Belandier,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

5 Injunctive relief is a remedy not a cause of action.

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 2

EXHIBIT 2

**AFFIDAVIT OF GREG MARTINELLI IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

STATE OF NEVADA }
COUNTY OF WASHOE } ss.

I, Greg Martinelli, being duly sworn, depose and state under penalty of perjury
the following:

1. I am the area manager for Reno Disposal Company, Inc., dba Waste Management ("Reno Disposal").
2. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set forth herein.
3. I submit this affidavit in support of Defendants' Motion for Summary Judgment ("Motion"), to which this Affidavit is attached as Exhibit 2.
4. Exhibit 1 to the Motion is a true and correct copy of the Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Part, and Denying, in Part, filed September 15, 2015 in this matter.
5. Exhibit 3 to the Motion is a true and correct copy of the Charter of the City of Reno, Chapter 622, Article 1 1971 Nevada Statutes, pages 1962-1984.
6. Exhibit 4 to the Motion is a true and correct copy of Castaway's Commercial Franchise Agreement.
7. Exhibit 5 to the Motion is a true and correct print out of <http://www.merriam-webster.com/dictionary/another>, as it appeared on September 18, 2015 at 10:37 a.m.
8. Exhibit 6 to the Motion is a true and correct copy of my letter to Andrew Clinger, City Manager, City of Reno, dated August 12, 2013.
9. Exhibit 7 to the Motion is a true and correct copy of Gary Duhon's letter to the City of Reno, dated October 3, 2013.

1 10. Exhibit 8 to the Motion is a true and correct copy of the City of Reno's
2 letter dated October 4, 2013, approving Castaway's assignment to Reno Disposal.

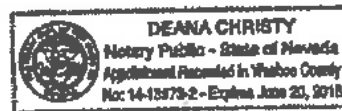
3 FURTHER AFFIANT SAYETH NAUGHT.

4 Dated this 24 day of September, 2015.

5 
6 GREG MARTINELLI

7
8 Subscribed and sworn to me
9 on this 24 day of September, 2015
10 by Greg Martinelli

11 
12 NOTARY PUBLIC



13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
[\\hpcast\\mgt\\00538.001 (waste management)\\p-aff mart\\melli lee m\\doc

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 3

EXHIBIT 3

Senate Bill No. 612—Committee on Federal, State and Local Governments

CHAPTER 662

AN ACT incorporating the City of Reno, in Washoe County, Nevada, and defining the boundaries thereof, under a new charter; and providing other matters properly relating thereto.

[Approved May 6, 1971]

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

SECTION 1. The charter of the City of Reno is as follows. Each section of the charter shall be deemed to be a section of this act for the purpose of any subsequent amendment.

ARTICLE I

Incorporation of City; General Powers; Boundaries;
Wards and Annexations; City Offices

Section 1.010 Preamble: Legislative intent.

1. In order to provide for the orderly government of the City of Reno and the general welfare of its citizens the legislature hereby establishes this charter for the government of the City of Reno. It is expressly declared as the intent of the legislature that all provisions of this charter be liberally construed to carry out the express purposes of the charter and that the specific mention of particular powers shall not be construed as limiting in any way the general powers necessary to carry out the purposes of the charter.

2. Any powers expressly granted by this charter are in addition to any powers granted to a city by the general law of this state. All provisions of Nevada Revised Statutes which are applicable generally to cities (not including, unless otherwise expressly mentioned in this charter, chapter 265, 266 or 267 of NRS) which are not in conflict with the provisions of this charter apply to the City of Reno.

Sec. 1.020 Incorporation of city.

1. All persons who are inhabitants of that portion of the State of Nevada embraced within the limits set forth in section 1.030 shall constitute a political and corporate body by the name of "City of Reno" and by that name they and their successors shall be known in law, have perpetual succession and may sue and be sued in all courts.

2. Whenever used throughout this charter, "city" means the City of Reno.

Sec. 1.030 Description of territory. The territory embraced in the city is that certain land described in the official plat required by NRS 234.250 to be filed with the county recorder and county assessor of Washoe County, as such plat is amended from time to time.

Sec. 1.040 Annexations. The city may annex territory by following the procedure provided for the annexation of cities in those sections of chapter 268 of NRS, as amended from time to time, which apply to counties having a population of less than 200,000.

Sec. 1.050 Wards: Creation; boundaries.

1. The city shall be divided into five wards, which shall be as nearly equal in registered voters as can be conveniently provided. The territory comprising each ward shall be contiguous, except that if any territory of the city which is not contiguous to the remainder of the city does not contain sufficient population to constitute a separate ward, it may be placed in any ward of the city.

2. The boundaries of wards shall be established and changed by ordinance, passed by a vote of at least five-sevenths of the city council. The boundaries of wards shall be changed whenever the number of registered voters at the time of any municipal election in any ward exceeds the number of registered voters in any other ward by more than 15 percent.

3. Ordinances establishing or changing the boundaries of wards shall not be passed or amended until the county clerk of Washoe County certifies that the number of registered voters in each proposed ward will not exceed the number of registered voters in any other ward by more than 15 percent.

Sec. 1.060 Elective offices.

1. The elective officers of the city consist of:

- (a) Seven councilmen.
- (b) One municipal judge.
- (c) A city attorney.

2. Such officers shall be elected as provided by this charter.

Sec. 1.070 Elective offices: Vacancies.

1. A vacancy in the city council or in the office of city attorney or municipal judge shall be filled by a majority vote of the members of the city council, or the remaining members in the case of a vacancy in the city council, within 30 days after the occurrence of such vacancy. The appointee shall have the same qualifications as are required of the elective official.

2. The appointee shall serve the balance of the term of office to which he is appointed and until his successor is duly elected and qualified.

Sec. 1.080 Councilmen not to hold other office.

1. The councilmen, including the mayor, shall not:

(a) Hold any other elective office or employment with Washoe County or the city, except as provided by law or as a member of a board or commission for which no compensation is received.

(b) Be elected or appointed to any office created by or the compensation for which was increased or fixed by the city council until 1 year after the expiration of the term for which such person was elected.

2. Any person holding any office proscribed by subsection 1 shall automatically forfeit his office.

Sec. 1.090 Appointive officers.

1. The city council shall provide for the appointment of a city manager to perform the duties outlined in section 3.020. A vacancy in the office of city manager shall be filled within 6 months.

2. The city council may establish such other appointive offices as it may deem necessary for the operation of the city by designating the position in the salary ordinance. Appointment of such officers shall be

made by the city manager and confirmed by the city council. Such appointive offices may include:

- (a) City controller.
- (b) City engineer.
- (c) Chief of police.
- (d) Fire chief.
- (e) Assistant city manager.
- (f) Director of public works.
- (g) Director of personnel and finance.
- (h) Director of parks, recreation and public properties.
- (i) Director of public safety.
- (j) Chief license inspector.
- (k) Airport manager.
- (l) Building inspector chief.
- (m) Superintendent of recreation.
- (n) Superintendent of parks.
- (o) Traffic engineer.
- (p) Superintendent of sanitation.
- (q) Superintendent of streets.
- (r) Superintendent of sewers.
- (s) Superintendent of city shops.
- (t) Superintendent of sewer plant.

3. A city clerk shall be appointed by the city council.

Sec. 1.100 Appointive officers: Miscellaneous provisions.

1. All appointive officers shall perform such duties as may be designated by the city manager and such other duties as may be directed by the city council.

2. Any employee of the city holding a civil service rating under the city and who is appointed to any position provided for in section 1.090 shall not lose his civil service rating while serving in such position.

3. All appointive officers shall be entitled to all employment benefits to which civil service employees are entitled.

4. The city council may require from all other officers and employees of the city constituted or appointed under this charter, except councilmen, sufficient security for the faithful and honest performance of their respective duties.

Sec. 1.110 Appointive officers: Duties; salary.

1. All appointive officers of the city, except the city manager and the board of health shall perform such duties under the direction of the city manager, as may be designated by the city council.

2. All appointive officers of the city shall receive such salary as may be designated by the city council.

Sec. 1.120 Officers and employees; change in salary.

1. The city council may increase or diminish the salary or compensation of any appointive officer or employee.

2. No act of the city council directly or indirectly increasing the salary or compensation of any elective officer, except as provided in this charter, shall be valid or effective for any purpose.

Sec. 1.130 Oath of office. Every person elected or appointed to fill any office shall subscribe to the official oath as provided by the city council. Every such person shall swear or affirm that he is not under any

direct or indirect obligation to vote for, appoint or elect any person to any office, position or employment in the city government.

ARTICLE II

Legislative Department

Sec. 2.010 City council: Qualifications; election; term of office; salary.

1. The legislative power of the city is vested in a city council consisting of seven councilmen.

2. At the first city council meeting after an election at which a councilman is elected, the city council shall elect one of its members to have the title of mayor and another to have the title of assistant mayor. The mayor and assistant mayor shall serve for terms of 2 years or until removed after hearing for cause by a vote of six-sevenths of the city council.

3. The councilmen shall be:

(a) Bona fide residents of the wards they represent, or if elected at large, of the city, for at least 6 months immediately preceding their election.

(b) Registered voters within the city and taxpayers on real property located within the city.

4. All councilmen shall be voted upon by all registered voters of the city but two councilmen shall be elected at large and one councilman shall be elected from each ward. All councilmen shall serve for terms of 4 years.

5. The councilmen shall receive a salary in an amount fixed by the city council.

Sec. 2.020 City council: Contracts. Members of the city council:

1. May vote on any lease, contract or other agreement which extends beyond their terms of office.

2. Shall not have any interest, directly or indirectly, in any lease, contract or other agreement entered into with the city.

Sec. 2.030 City council: Discipline of members, other persons; subpoena power.

1. The city council may:

(a) Provide for the punishment of any member for disorderly conduct committed in its presence.

(b) Order the attendance of witnesses and the production of all papers relating to any business before the city council.

2. If any person ordered to appear before the city council fails to obey such order:

(a) The city council or any member thereof may apply to the clerk of the district court for a subpoena commanding the attendance of the person before the city council.

(b) Such clerk may issue the subpoena, and any peace officer may serve it.

(c) If the person upon whom the subpoena is served fails to obey it, the court may issue an order to show cause why such person should not be

held in contempt of court and upon hearing of the matter may adjudge such person guilty of contempt and punish him accordingly.

Sec. 2.040 Meetings: Quorum.

1. The city council shall hold regular meetings on the second and fourth Mondays of each month. If such days are legal holidays, the meeting shall be held on the next business day.

2. A majority of all members of the city council constitutes a quorum to do business, but a lesser number may meet and recess from time to time, and compel the attendance of the absent members.

3. Except as otherwise provided by law, all sessions and all proceedings of the city council shall be public.

Sec. 2.050 Meetings: Special.

1. Special meetings may be held on call of the mayor, city manager or by a majority of the city council, by giving a minimum of 6 hours' notice of such special meeting to each member of the city council prior to the meeting.

2. At a special meeting:

(a) No business may be transacted except such as has been stated in the call of the meeting.

(b) No ordinance may be passed except an emergency ordinance, or one specified in section 7.030.

Sec. 2.060 Meetings: Time and place; rules. The city council may:

1. Fix the time and place of its meetings and judge the qualifications and election of its own members.

2. Adopt rules for the government of its members and proceedings.

Sec. 2.070 Oaths and affirmations. The mayor, assistant mayor while acting in the place of the mayor, each councilman and the city clerk may administer oaths and affirmations relating to any business pertaining to the city before the city council or to be considered by the city council.

Sec. 2.080 Powers of city council: Ordinances, resolutions and orders.

1. The city council may make and pass all ordinances, resolutions and orders not repugnant to the Constitution of the United States or the State of Nevada, or to the provisions of Nevada Revised Statutes or of this charter, necessary for the municipal government and the management of the affairs of the city, and for the execution of all the powers vested in the city.

2. When power is conferred upon the city council to do and perform anything, and the manner of exercising such power is not specifically provided for, the city council may provide by ordinance the manner and details necessary for the full exercise of such power.

3. The city council may enforce ordinances by providing penalties not to exceed those established by the legislature for misdemeanors.

4. The city council shall have such powers, not in conflict with the express or implied provisions of this charter, as are conferred generally by statute upon the governing bodies of cities organized under a special charter.

5. The city council shall not pass any ordinance increasing or diminishing the salary of any elective officer during the term for which he is elected or appointed.

Sec. 2.090 Ordinances: Passage by bill; amendments; subject matter; title requirements.

1. No ordinance may be passed except by bill and by a majority vote of the city council. The style of all ordinances shall be as follows: "The City Council of the City of Reno does ordain:".

2. No ordinance shall contain more than one subject, which shall be briefly indicated in the title. Where the subject of the ordinance is not so expressed in the title, the ordinance is void as to the matter not expressed in the title.

3. Any ordinance which amends an existing ordinance shall set out in full the ordinance or sections thereof to be amended, and shall indicate matter to be omitted by enclosing it in brackets and shall indicate new matter by underscoring or by italics.

Sec. 2.100 Ordinances: Enactment procedure; emergency ordinances.

1. All proposed ordinances when first proposed shall be read to the city council by title and referred to a committee for consideration, after which an adequate number of copies of the proposed ordinance shall be filed with the city clerk for public distribution. Except as otherwise provided in subsection 3, notice of such filing shall be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS, as amended from time to time, and published in the city at least 1 week prior to the adoption of the ordinance. The city council shall adopt or reject the ordinance or an amendment thereto, within 30 days from the date of such publication.

2. At the next regular meeting or adjourned meeting of the city council following the proposal of an ordinance and its reference to committee, such committee shall report such ordinance back to the city council. Thereafter, it shall be read as first introduced, or as amended, and thereupon the proposed ordinance shall be finally voted upon or action thereon postponed.

3. In cases of emergency or where the ordinance is of a kind specified in section 7.030, by unanimous consent of the city council, final action may be taken immediately or at a special meeting called for that purpose, and no notice of the filing of the copies of the proposed ordinance with the city clerk need be published.

4. All ordinances shall be signed by the mayor, attested by the city clerk, and shall be published by title, together with the names of the councilmen voting for or against passage, in a newspaper qualified pursuant to the provisions of chapter 238 of NRS, as amended from time to time, and published in the city for at least one publication, before the ordinance shall become effective. The city council may, by majority vote, order the publication of the ordinance in full in lieu of publication by title only.

5. The city clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher.

Sec. 2.110 Uniform codes: Procedure for adoption. An ordinance adopting a uniform building, plumbing, electrical, health, traffic or fire code, or any other uniform code or codes, printed in book or pamphlet form, may adopt such code or codes, or any portion thereof, with such changes as may be necessary to make such code or codes applicable to

conditions in the city, and with such other changes as may be desirable, by reference thereto. Copies of such code or codes, either typewritten or printed, with such changes, if any, shall be filed for use and examination by the public in the office of the clerk at least 1 week prior to the passage of the ordinance adopting such code or codes.

Sec. 2.120 Codification of ordinances; publication of code.

1. The city council may codify and publish a code of its municipal ordinances in the form of a municipal code, which code may, at the election of the city council, have incorporated therein a copy of this charter and such additional data as the city council may prescribe. When such code is published, two copies shall be filed with the librarian at the Nevada state library, and thereafter the code shall be received in all courts of this state as an authorized compilation of the municipal ordinances of the city.

2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the mayor, attestations and other formal parts.

3. The codification shall be adopted by an ordinance and shall not contain any substantive changes, modifications or alterations of existing ordinances; and the only title necessary for the ordinance shall be, "An ordinance for codifying and compiling the general ordinances of the City of Reno."

4. The codification may be amended or extended by ordinance.

Sec. 2.130 Ordinances: Judicial notice. This charter and all ordinances, rules, resolutions or other regulations of the city shall be received as prima facie evidence in all courts without pleading the contents thereof. Such charter, ordinances, rules, resolutions or other regulations may be pleaded by title only and may be proved by introduction of:

1. The original entry thereof on the records of the city council; or

2. A copy of such original entry certified by the city clerk; or

3. A printed copy published or purported to have been published by authority of the city council.

Sec. 2.140 Powers of city council: Public property, buildings.

1. The city council may:

(a) Control the property of the corporation.

(b) Erect and maintain all buildings necessary for the use of the city.

(c) Purchase, receive, hold, sell, lease, convey and dispose of property, wherever situated, for the benefit of the city, improve and protect such property, and do all other things in relation thereto which natural persons might do.

2. No lease, where the term is for more than 1 year or where the rental exceeds \$150 per month, or sale of real property belonging to the city may be made until after such lease or sale has been appraised by three disinterested appraisers who are residents and taxpayers within the city. Such appraisal must be at the actual market or rental value of the property. Such property shall not be sold or leased for less than 75 percent of such appraised value. However, any property belonging to the city may be sold to the United States of America, the State of Nevada or any political subdivision thereof at a nominal consideration whenever the public interest requires such a sale.

3. The city council may not, except as otherwise specifically provided

by this charter or any other law, mortgage, hypothecate or pledge any property of the city for any purpose.

Sec. 2.150 Powers of city council: Lease of public property.

1. The city council may lease any municipal property, or portion thereof, to any person or association for the purpose of providing services to the public or the city.

2. Such leased property shall not be used for the direct operation of any industrial or profit-making project not incidental to the public benefit.

Sec. 2.160 Powers of city council: Eminent domain. The city council may condemn property for the public use in the manner prescribed by chapter 37 of NRS, as amended from time to time.

Sec. 2.170 Powers of city council: Licensing, regulation and prohibition of businesses, trades and professions.

1. The city council may:

(a) Regulate all businesses, trades and professions.

(b) Fix, impose and collect a license tax for revenue upon all businesses, trades and professions.

2. The city council may establish any equitable standard to be used in fixing license taxes required to be collected pursuant to this section.

Sec. 2.180 Powers of city council: Police ordinances.

1. The city council may enact and enforce such local police ordinances as are not in conflict with the general laws of the State of Nevada.

2. Any offense made a misdemeanor by the laws of the State of Nevada shall also be deemed to be a misdemeanor in the city whenever such offense is committed within the city.

Sec. 2.190 Powers of city council: Fire protection; regulation of explosives, inflammable materials; fire codes and regulations. The city council may:

1. Organize, regulate and maintain a fire department and construct and obtain all necessary buildings and equipment.

2. Prescribe the duties of the fire chief.

3. Regulate or prohibit the storage of any explosive, combustible or inflammable material in or transported through the city, and prescribe the distance from any residential or commercial area where it may be kept.

4. Establish, by ordinance, a fire code and other regulations necessary to carry out the purposes of this section.

Sec. 2.200 Powers of city council: Public health; narcotics and dangerous drugs. The city council may:

1. Provide for safeguarding public health in the city.

2. Prohibit and suppress the use, possession, sale or other disposition of any narcotic or dangerous drug as those terms are defined in chapters 453 and 454 of NRS, as amended from time to time.

Sec. 2.210 Powers of city council: Public health; board of health. The city council may:

1. Create a board of health, consisting of not less than three nor more than five persons appointed by the mayor and confirmed by the city council, whose members shall serve for terms of 2 years and shall be:

(a) Physicians in good standing and licensed for more than 1 year to practice in the State of Nevada.

(b) Residents of the State of Nevada.

(c) Bona fide residents and qualified electors of the city for at least 1 year prior to appointment.

2. Provide by ordinance for the enforcement of all regulations and quarantines established by the board of health by imposing adequate penalties for the violation thereof.

3. Provide for the appointment of a health officer and fix his salary.

Sec. 2.220 Powers of city council: Buildings; construction and maintenance regulations; building and safety codes. The city council may:

1. Regulate all matters relating to the construction, maintenance and safety of buildings, structures and property within the city.

2. Adopt any building or safety code necessary to carry out the provisions of this section and establish such fees as may be necessary.

Sec. 2.230 Powers of city council: Zoning and planning.

1. The city council may:

(a) Divide the city into districts and regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within such districts.

(b) Establish and adopt ordinances and regulations relating to the subdivision of land.

2. The city council shall carry out the provisions of subsection 1 in the manner prescribed by chapter 278 of NRS, as amended from time to time.

Sec. 2.240 Powers of city council: Rights-of-way, parks, public buildings and grounds and other public places. The city council may:

1. Acquire for any public purpose, lay out, maintain, alter, improve or vacate all public parks, buildings, grounds, recreation facilities and rights-of-way and prevent the unlawful use thereof.

2. Regulate the use of public parks, buildings, grounds, recreation facilities and rights-of-way and prevent the unlawful use thereof.

3. Require landowners to keep the adjacent streets, sidewalks and public parks, buildings and grounds free from encroachments or obstructions.

4. Regulate and prevent in all public places:

(a) The distribution and exhibition of handbills or signs.

(b) Any practice tending to annoy persons passing in such public places.

(c) Noise of any kind in public places.

(d) Public demonstrations and processions.

5. Prevent riots or any act tending to promote riots in any public place.

Sec. 2.250 Powers of city council: Traffic control. The city council may, by ordinance, regulate:

1. All vehicular, pedestrian and other traffic within the city and provide generally for the public safety on public streets and rights-of-way.

2. The length of time for which vehicles may be parked upon the public streets and publicly owned parking lots.

Sec. 2.260 Powers of city council: Public transportation. The city council may grant an exclusive franchise to any person, firm, association or corporation to operate and maintain a busline in the city. Such franchise may be granted only upon terms which are advantageous to the

city. The city council may extend, prior to the expiration of such franchise, the duration or term of such franchise for such additional period and upon such terms as are deemed advantageous to the city, and fix, prescribe and change the fares to be charged by such franchise holder.

Sec. 2.270 Powers of city council: Parking meters; off-street public parking facilities.

1. The city council may acquire, install, maintain, operate and regulate parking meters at the curbs of the streets or upon publicly owned property made available for public parking. The parking fees to be charged for the use of the parking facilities regulated by parking meters shall be fixed by the city council.

2. Except as otherwise provided by this charter, the city council may acquire property within the city by any lawful means except eminent domain for the purpose of establishing off-street public parking facilities for vehicles. The city council may, after an election is held in conformity with the provisions of chapter 350 of NRS concerning municipal bond elections, as amended from time to time, and the proposal for the issuance of the bonds is approved as therein provided, issue revenue bonds for the purpose of acquiring such property and erecting such improvements thereon as may be proper. The city council may, in such bonds, pledge the on-street parking revenues, the general credit of the city, or both, to secure the payment of the principal and interest thereon.

Sec. 2.280 Powers of city council: Railroads. The city council may:

1. License, regulate or prohibit the location, construction or laying of tracks of any railroad or streetcar in any public right-of-way.
2. Grant franchises to any person or corporation to operate a railroad or streetcar upon public rights-of-way and adjacent property.
3. Declare a nuisance and require the removal of the tracks of any railroad or streetcar in any public right-of-way.
4. Condemn rights-of-way for any public purpose across any railroad right-of-way.
5. Prescribe the length of time any public right-of-way may be obstructed by trains standing thereon.
6. Require railroad companies to fence their tracks and to construct cattle guards and crossings and to keep them in repair.

Sec. 2.290 Powers of city council: Nuisances. The city council may:

1. Determine by ordinance what shall be deemed nuisances.
2. Provide for the abatement, prevention and removal of such nuisances at the expense of the person creating, causing or committing such nuisances.
3. Provide that such expense of removal shall be a lien upon the property upon which the nuisance is located. Such lien shall:
 - (a) Be perfected by filing with the county treasurer a statement by the city clerk of the amount of expenses due and unpaid and describing the property subject to the lien.
 - (b) Be coequal with the latest lien thereon to secure the payment of general taxes.
 - (c) Not be subject to extinguishment by the sale of any property on account of the nonpayment of general taxes.

(d) Be prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes.

4. Provide any other penalty or punishment of persons responsible for such nuisances.

Sec. 2.300 Powers of city council: Animals and poultry. The city council may:

1. Fix, impose and collect an annual license fee on all animals and provide for the capture and disposal of all animals on which the license fee is not paid.

2. Regulate or prohibit the running at large and disposal of all kinds of animals and poultry.

3. Establish a pound, appoint a poundkeeper and prescribe his duties.

4. Prohibit cruelty to animals.

Sec. 2.310 Powers of city council: Sanitary sewer facilities. The city council may:

1. Provide for a sanitary sewer system or any part thereof, and obtain property therefore either within or without the city.

2. Sell any product or byproduct thereof and acquire the appropriate outlets within or without the city and extend the sewerlines thereto.

3. Prescribe regulations concerning the discharge of any industrial waste into the sanitary sewer system of the city.

4. Establish sewer fees and provide for the enforcement and collection thereof.

Sec. 2.320 Powers of city council: Provision of utilities. The city council may:

1. Provide, by contract, franchise or public enterprise, for any utility to be furnished to the city for the residents thereof.

2. Provide for the construction of any facility necessary for the provision of such utilities.

3. Fix the rate to be paid for any utility provided by public enterprise. Any charges due for services, facilities or commodities furnished by any utility owned by the city is a lien upon the property to which the service is rendered and shall be perfected by filing with the county recorder of Washoe County a statement by the city clerk of the amount due and unpaid and describing the property subject to the lien. Each such lien shall:

(a) Be coequal with the latest lien thereon to secure the payment of general taxes.

(b) Not be subject to extinguishment by the sale of any property on account of the nonpayment of general taxes.

(c) Be prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes.

Sec. 2.330 Powers of city council: Cemeteries. The city council may, by any lawful means, acquire, control, maintain, enlarge or abolish cemeteries.

Sec. 2.340 Powers of city council: Municipal band. The city council may maintain and support a municipal band.

Sec. 2.350 Powers of city council: Advertising fund. The city council may appropriate from the general fund a reasonable amount each year to be placed in a fund for advertising and publicity.

ARTICLE III

Executive Department

Sec. 3.010 Mayor: Duties; assistant mayor.

1. The mayor shall:
 - (a) Serve as a member of the city council and preside over its meetings.
 - (b) Have no administrative duties.
 - (c) Be recognized as the head of the city government for all ceremonial purposes.
 - (d) Determine the order of business at meetings pursuant to the rules of the city council.
 - (e) Be entitled to vote and shall vote last on all rollcall votes.
 - (f) Take all proper measures for the preservation of the public peace and order and for the suppression of riots and all forms of public disturbance, for which he is authorized to appoint extra policemen temporarily and without regard to civil service rules and regulations, and to call upon the sheriff of Washoe County, or, if such force is inadequate, to call upon the governor for assistance.
 - (g) Perform such other duties, except administrative duties, as may be prescribed by ordinance or by the provisions of Nevada Revised Statutes which apply to a mayor of a city organized under the provisions of a special charter.
2. The city council shall elect one of its members to be assistant mayor. Such person shall:
 - (a) Hold such office and title, without additional compensation, during the term for which he was elected.
 - (b) Perform the duties of mayor during the absence or disability of the mayor.
 - (c) Act as mayor until the next municipal election if the office of mayor becomes vacant.

Sec. 3.020 City manager: Duties; compensation.

1. The city manager shall be the chief executive and administrative officer of the city government. He shall be responsible to the city council for the proper administration of all affairs of the city. His duties and salary shall be fixed by the city council and he shall be reimbursed for all expenses incurred in the performance of his duties.
2. The city manager may appoint such clerical and administrative assistants as he may deem necessary, subject to the approval of the city council.
3. He may designate an acting city manager to serve in his absence or, if he fails to do so, the city council may appoint an acting city manager.
4. No councilman shall be appointed as city manager during the term for which he was elected, or for 1 year thereafter.

Sec. 3.030 City manager: Removal.

1. The city council may remove the city manager from office in accordance with the procedure contained in this section.
2. The city council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which shall state the reasons

for removal and may suspend the city manager from duty for a period not to exceed 15 days. A copy of the resolution shall be delivered promptly to the city manager.

3. Within 5 days after a copy of the resolution is delivered to the city manager, he may file with the city council a written request for a public hearing. The public hearing shall be held at a city council meeting not earlier than 15 days nor later than 30 days after the request is filed. The city manager may file with the city council a written reply not later than 5 days before the hearing.

4. The city council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members, at any time after 5 days from the date when a copy of the preliminary resolution was delivered to the city manager, if he has not requested a public hearing or at any time after the public hearing if he has requested one.

5. The city manager shall continue to receive his salary until the effective date of the final resolution of removal. The action of the city council in suspending or removing the city manager shall not be subject to review by any agency or court.

Sec. 3.040 City clerk: Duties; qualifications; salary.

1. The city clerk shall:

(a) Keep the corporate seal and all books and papers belonging to the city.

(b) Attend all meetings of the city council and keep an accurate journal of its proceedings, including a record of all ordinances, bylaws and resolutions passed or adopted by it. After approval at each meeting of the city council, the city clerk shall attest the journal after it has been signed by the mayor.

(c) Sign all warrants issued.

(d) Number and sign all licenses issued by the city. All licenses shall be in a form devised by the city clerk and approved by the city council.

(e) Enter upon the journal the result of the vote of the city council upon the passage of ordinances, or of any resolution appropriating money, abolishing licenses, or increasing or decreasing the rates of licenses.

(f) Be the official license collector of the city.

2. The city clerk shall:

(a) Serve for a term of 4 years.

(b) Be a bona fide resident of the city for at least 1 year immediately preceding his appointment.

(c) Be a registered voter and a taxpayer on real property in the city.

(d) Be at least 21 years of age.

3. The city clerk shall be reimbursed for all expenses incurred in the performance of his duties.

Sec. 3.050 City clerk's performance bond. The city clerk shall be liable and accountable on his official bond for the performance of his duties under the provisions of this charter, and the city council may require from him such additional security as may be necessary from time to time.

Sec. 3.060 City attorney: Qualifications; duties; salary.

1. The city attorney shall be a duly licensed member of the State Bar

of Nevada and a resident of the city and taxpayer on real property in the city at the time of his election.

2. The city attorney shall be the legal officer of the city and shall perform such duties as may be designated by ordinance. He shall devote his full time to the duties of the office and shall not engage in the private practice of law.

3. The city attorney shall receive a salary as fixed by resolution of the city council.

4. The city attorney may appoint and remove such assistants as he may require in the discharge of the duties of his office. The council may appropriate such funds as it may deem proper to compensate any such assistants.

Sec. 3.070 Employment of special counsel. The city council may, by six-sevenths vote, employ attorneys to perform any civil duty of the city attorney. Such attorneys are responsible only to the city council, and the city attorney shall have no responsibility or authority concerning the subject matter of such employment.

Sec. 3.080 County assessor to be ex officio city assessor; duties.

1. The county assessor of Washoe County shall be ex officio city assessor of the city. The county assessor shall perform such duties for the city without additional compensation.

2. Upon request of the ex officio city assessor, the city council may appoint and set the salary of a deputy city assessor to perform such duties relative to city assessments as may be deemed necessary.

Sec. 3.090 County treasurer to be ex officio city treasurer; duties.

1. The treasurer of Washoe County shall be ex officio city treasurer and tax receiver of the city. The county treasurer shall perform such duties for the city without additional compensation.

2. The city treasurer shall, with the consent of the city council, appoint the city clerk or other city officer as deputy city treasurer to perform such duties as may be designated by the city council.

3. The city shall compensate Washoe County in the amount of \$1,800 per year for the services rendered by the treasurer of Washoe County under this section.

Sec. 3.100 City engineer: Qualifications; office of record.

1. The city engineer shall:

(a) Have a degree in engineering, or the equivalent thereof, from an accredited college.

(b) Have at least 3 years' practical experience as a civil or municipal engineer immediately preceding his appointment.

(c) Be qualified for registration as a professional engineer under the laws of this state and shall be so registered within 1 year after his appointment.

2. The city engineer's office is hereby designated as an office of record for all maps, plans, plats, profiles, drawings, dedications, final estimates, specifications and contracts which in any way relate to the affairs of the city.

Sec. 3.110 Fire chief: Qualifications. The fire chief shall:

1. Be at least 30 years of age.

2. Have at least 5 continuous years' experience in fire prevention or fire protection work immediately preceding his appointment.

Sec. 3.120 City officers: Duties restricted and altered. The city council may prescribe by ordinance the powers and duties of all city officers, where such powers and duties have not been established by this charter, and may add to, alter or restrict such powers and duties.

Sec. 3.130 City officers: Collection and disposition of moneys.

1. All taxes, fines, forfeitures or other moneys collected or recovered by any officer or person pursuant to the provisions of this charter or of any valid ordinance of the city shall be paid by the officer or person collecting or receiving them to the city clerk, who shall dispose of them in accordance with the ordinances, regulations and procedures established by the city council.

2. The city council may by proper legal action collect all moneys which are due and unpaid to the city or any office thereof, and the city council may pay from the general fund all fees and expenses necessarily incurred by it in connection with the collection of such moneys.

Sec. 3.140 Interference by city council.

1. The mayor or councilmen shall not dictate the appointment, suspension or removal of any city administrative officer or employee appointed by the city manager or his subordinates unless the city council fully and freely discusses the matter with the city manager. No person covered by the rules and regulations of the civil service commission may be appointed, suspended or removed except as provided in such rules and regulations.

2. The city council or its members shall not deal directly with a city official or employee on a matter pertaining to city business but shall deal through the city manager.

Sec. 3.150 Removal of elective officers. If any elective officer is adjudged guilty of nonfeasance, misfeasance or malfeasance in office by any court of competent jurisdiction, the city council may declare the office vacant and fill the vacancy so caused, as provided by law.

ARTICLE IV

Judicial Department

Sec. 4.010 Municipal court. There shall be a municipal court of the city to which the provisions of chapters 5 and 266 of NRS, relating to municipal courts, as amended from time to time, shall apply.

Sec. 4.020 Municipal court: Qualifications of municipal judge; salary.

1. The municipal court shall be presided over by a municipal judge, who shall be:

- (a) Not less than 25 years of age.
 - (b) A citizen of the United States.
 - (c) A resident of the city for a continuous 1-year period immediately preceding his election.
 - (d) A registered voter for a continuous 1-year period immediately preceding his election.
 - (e) An owner of real property in the city for a 1-year period immediately preceding his election.
 - (f) An attorney licensed to practice law in this state.
2. The municipal judge shall not engage in the private practice of law.

3. The salary of the municipal judge shall be fixed by resolution of the city council.

Sec. 4.030 Disposition of fines. All fines and forfeitures for the violation of ordinances shall be paid to the city clerk in the manner to be prescribed by ordinance.

Sec. 4.040 Additional imprisonment to satisfy fine or forfeiture. Whenever a person is sentenced to both fine and imprisonment, or to pay a forfeiture in addition to imprisonment, he shall be confined in the city or county jail, whichever is designated in his sentence of imprisonment, for an additional period of 1 day for each \$4 of the amount until such fine or forfeiture is satisfied. He shall not be imprisoned beyond the maximum sentence for the offense for which he is confined.

Sec. 4.050 Registration plates as evidence of traffic violations. In any proceeding for the violation of the provisions of any ordinance of the city involving a motor vehicle, the registration plate displayed on such vehicle shall be received as prima facie evidence that the registered owner of such vehicle was then operating it. If, at any hearing or proceeding, the registered owner testifies, under oath, that he was not operating the vehicle at the time of the alleged violation of such ordinance and submits himself to an examination as to who, at that time, was operating such motor vehicle and reveals the name of the person, or shows that the vehicle was stolen, then the prima facie evidence arising from the registration plate shall be overcome and renewed and the burden of proof shifted. In any case of violation of a city ordinance in which a motor vehicle is involved it shall be lawful for a police officer to remove the registration plate from such vehicle.

ARTICLE V

Elections

Sec. 5.010 General municipal elections.

1. On the Tuesday after the 1st Monday in June 1975, and at each successive interval of 4 years, there shall be elected by the qualified voters of the city, at a general election to be held for that purpose, councilmen from the second and fourth wards, one councilman at large, a municipal judge and a city attorney, all of whom shall hold office for a term of 4 years and until their successors have been elected and qualified.

2. On the Tuesday after the 1st Monday in June 1977, and at each successive interval of 4 years, there shall be elected by the qualified voters of the city, at a general election to be held for that purpose, councilmen from the first, third and fifth wards and one councilman at large, all of whom shall hold office for a term of 4 years and until their successors have been elected and qualified.

Sec. 5.020 Primary municipal elections; declaration of candidacy.

1. A candidate for any office to be voted for at a municipal election shall file an affidavit of candidacy with the city clerk not less than 30 nor more than 40 days before the day of primary election. The city clerk shall charge and collect from the candidate and the candidate shall pay to the city clerk, at the time of filing the affidavit of candidacy, a filing fee of \$25 for filing an affidavit of candidacy. All filing fees so collected by

the city clerk shall be deposited to the credit of the general fund of the city.

2. If for any general municipal election there are three or more candidates for any office to be filled at such election, a primary election for any such office shall be held on the Tuesday following the 1st Monday in May preceding such general election. If for any general municipal election there are two or less candidates for any office to be filled at such election, their names shall not be placed on the ballot for the primary municipal election but shall be placed on the ballot for the general election.

3. In the primary election, the names of the two candidates for municipal judge, city attorney, or a particular city council seat, as the case may be, who receive the highest number of votes shall be placed on the ballot for the general election.

Sec. 5.030 Applicability of state election laws; elections under city council control.

1. All elections held under this charter shall be governed by the provisions of the election laws of this state, so far as such laws can be made applicable and are not inconsistent herewith.

2. The conduct of all municipal elections shall be under the control of the city council. For the conduct of municipal elections, for the prevention of fraud in such elections, and for the recount of ballots in cases of doubt or fraud, the city council shall adopt by ordinance all regulations which it considers desirable and consistent with law and this charter.

Sec. 5.040 Qualifications, registration of voters.

1. Every person who resides within the city at the time of holding any municipal election, and whose name appears upon the official register of voters in and for the city, is entitled to vote at each municipal election, whether special, primary or general, and for all officers to be voted for and on all questions that may be submitted to the people at any such primary, general or special city elections, except as otherwise provided in this article.

2. Nothing in this charter shall be so construed as to deny or abridge the power of the city council to provide for supplemental registration.

Sec. 5.050 Names on ballots. The full names of all candidates, except those who have withdrawn, died or become ineligible, shall be printed on the official ballots without party designation or symbol. The use of nicknames in conjunction with the candidates' legal names is allowed and the nicknames may be printed on the official ballots. If two or more candidates have the same surname or surnames so similar as to be likely to cause confusion, their residence addresses shall be printed with their names on the ballot.

Sec. 5.060 Ballots for ordinances and charter amendments. An ordinance for charter amendment to be voted on in the city shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: "Shall the above described (ordinance) (amendment) be adopted?" The ballot or voting machine or device shall be so marked as to indicate clearly in what manner the voter may cast his vote, either for or against the ordinance or amendment.

Sec. 5.070 Availability of lists of registered voters. If, for any purpose relating to a municipal election or to candidates or issues involved in such an election, any organization, group or person requests a list of registered voters of the city, the department, office or agency which has custody of the official register of voters shall either permit the organization, group or person to copy the voters' names and addresses from the official register of voters or furnish such a list.

Sec. 5.080 Watchers and challengers. A candidate is entitled upon written application to the election authorities at least 5 days before the election to appoint two persons to represent him as watchers and challengers at each polling place where voters may cast their ballots for him. A person so appointed has all the rights and privileges prescribed by watchers and challengers under the election laws of this state. The watchers and challengers may exercise their rights throughout the voting and until the ballots have been counted.

Sec. 5.090 Voting machines. The city council may provide for the use of mechanical or other devices for voting or counting the votes not inconsistent with law or regulations of the secretary of state.

Sec. 5.100 Election returns; canvass; certificates of election; entry of officers upon duties; tie vote procedure.

1. The election returns from any special, primary or general municipal election shall be filed with the city clerk, who shall immediately place such returns in a safe or vault, and no person shall be permitted to handle, inspect or in any manner interfere with such returns until canvassed by the city council.

2. The city council and city manager shall meet within 5 days after any election and canvass the returns and declare the result. The election returns shall then be sealed and kept by the city clerk for 6 months, and no person shall have access thereto except on order of a court of competent jurisdiction or by order of the city council.

3. The city clerk, under his hand and official seal, shall issue to each person declared to be elected a certificate of election. The officers so elected shall qualify and enter upon the discharge of their respective duties on the 1st Monday in July next following their election.

4. If any election should result in a tie, the city council shall summon the candidates who received the tie vote and determine the tie by lot. The clerk shall then issue to the winner a certificate of election.

Sec. 5.110 Contest of election. A contested election for any municipal office shall be determined according to the law of the state regulating proceedings in contested elections in political subdivisions.

ARTICLE VI

Local Improvements

Sec. 6.010 Local improvement law. The city council, on behalf of the city and in its name, without any election, may from time to time acquire, improve, equip, operate and maintain:

1. Curb and gutter projects;
2. Drainage projects;
3. Off-street parking projects;

4. Overpass projects;
5. Park projects;
6. Sanitary sewer projects;
7. Sidewalk projects;
8. Storm sewer projects;
9. Street projects;
10. Underpass projects;
11. Water projects; and
12. Underground utility and communication lines.

Sec. 6.020 Local improvement law: Collateral powers. The city council on behalf of the city for the purpose of defraying all the costs of acquiring or improving any project authorized by section 6.010, or any portion of the cost thereof not to be defrayed with moneys otherwise available therefor, is vested with the powers granted to municipalities by chapter 271 of NRS, as amended from time to time.

Sec. 6.030 Local improvement law: Assessments on public property. When an assessment is made for any improvement pursuant to sections 6.010 and 6.020 and there is public property located within the district formed and otherwise assessable, the city council may pay all or any part of the cost of such improvement that would be apportionable to such public property from the general fund of the city or from any other proper fund.

ARTICLE VII

Local Bonds and Franchises

Sec. 7.010 Debt limit.

1. The city shall not incur an indebtedness in excess of 15 percent of the total assessed valuation of the taxable property within the boundaries of the city.

2. In determining any debt limitation under this section, there shall not be counted as indebtedness:

(a) Warrants or other securities which are payable upon presentation or demand or within 1 year from the date thereof.

(b) Securities payable from special assessments against benefited property, whether issued pursuant to any general or special law and irrespective of whether such special assessment securities are payable from general ad valorem taxes.

(c) Securities issued pursuant to any general or special law the principal and interest of which are payable solely from revenues of the city derived from other than general ad valorem taxes.

Sec. 7.020 Acquisition, operation of municipal utilities. The city may, in the manner and for the purposes provided in this charter and Nevada Revised Statutes as they apply to cities, grant franchises and acquire in any manner any public utility and hold, manage and operate it, either alone or jointly, with any level of government or instrumentality or subdivision thereof.

Sec. 7.030 Borrowing money.

1. Subject to the limitations imposed by this article, the city may

borrow money for any corporate purpose, including, without limitation any purpose authorized by this charter or by Nevada Revised Statutes for a city, and for such purpose may issue bonds or other securities. The Local Government Securities Law, as amended from time to time, applies to all securities so issued, except for securities issued under section 6.020.

2. The city council shall submit any proposal to borrow money, except an emergency loan as defined and authorized by chapter 354 of NRS, as amended from time to time, and except for any securities issued under section 6.020, but including any securities payable from pledged revenues, to the registered voters of the city in the manner provided by NRS 350.010 to 350.070, inclusive, as amended from time to time.

3. Any property tax levied to pay the principal of or interest on such indebtedness authorized under subsection 2 shall be levied upon all taxable property within the city.

4. Any ordinance pertaining to the sale or issuance of bonds or other securities, including without limitation securities issued under section 6.020, may be adopted in the same manner as is provided for cases of emergency. A declaration by the city council in any ordinance that it is of this kind shall be conclusive in the absence of fraud or gross abuse of discretion.

Sec. 7.040 Franchises.

1. Before granting any franchise the city council shall first adopt a resolution setting forth fully and in detail the applicant for, purpose and character of, terms and time and conditions of the proposed franchise. Such resolution shall be published in full in a newspaper qualified pursuant to the provisions of chapter 238 of NRS, as amended from time to time.

2. On the first regular meeting of the council after the expiration of the period of such publication, the council shall proceed to pass an ordinance for the granting of the franchise; but such franchise shall be granted only on substantially the same terms and conditions as expressed in the resolution as published. Otherwise such ordinance shall be void.

Sec. 7.050 Investment of funds.

1. The city council may, by resolution, direct the city treasurer to invest any part of the funds of the city in obligations of any kind issued by the United States of America.

2. All such funds so invested shall be considered as part of the fund from which it was taken.

Sec. 7.060 Investment of money realized from bond sales.

1. The city council may direct the city treasurer to invest all moneys realized from the sale of bonds issued by the city in bonds or other securities issued by the United States of America until such moneys are actually required for the purposes for which such bonds were issued.

2. All interest received from such investments shall be used only for the payment of principal or interest on the bonds issued by the city.

Sec. 7.070 Refunding bonds.

1. The city council may, by ordinance, refund any municipal bonded indebtedness and issue refunding bonds.

2. The ordinance shall set forth fully and in detail the bonded

indebtedness to be refunded and the terms, amount, maximum rate of interest and time within which redeemable, and on what fund. Such ordinance shall also set forth substantially the form of the refunding bonds to be issued but need not provide for the manner of their sale, or for any other matter, except as specified in this charter.

3. Such ordinance may be passed and adopted in accordance with the provisions of section 2.100 without election. The city council may in a like manner issue bonds in place of or to supply means to meet maturing bonds.

ARTICLE VIII

Revenue

Sec. 8.010 Municipal taxes.

1. The city council shall annually, at the time prescribed by law for levying taxes for state and county purposes, levy a tax not exceeding 1.75 percent upon the assessed value of all real and personal property within the city except as otherwise provided in the Local Government Securities Law and the Consolidated Local Improvements Law, as amended from time to time. The taxes so levied shall be collected at the same time and in the same manner and by the same officers, exercising the same functions, as prescribed in the laws of the State of Nevada for collection of state and county taxes. The revenue laws of the state shall, in every respect not inconsistent with the provisions of this charter, be applicable to the levying, assessing and collecting of the municipal taxes.

2. In the matter of the equalization of assessments, the rights of the city and the inhabitants thereof shall be protected in the same manner and to the same extent by the action of the county board of equalization as are the state and county.

3. All forms and blanks used in levying, assessing and collecting the revenues of the state and counties shall, with such alterations or additions as may be necessary, be used in levying, assessing and collecting the revenues of the city. The city council shall enact all such ordinances as it may deem necessary and not inconsistent with this charter and the laws of the state for the prompt, convenient and economical collecting of the revenue.

Sec. 8.020 Revenue ordinances. The city council shall have full power to pass and enact all ordinances necessary to carry into effect the revenue laws in the city and to enlarge, fix and determine the powers and duties of all officers in relation thereto.

ARTICLE IX

Civil Service

Sec. 9.010 Civil service.

1. There is hereby created a civil service system applicable to and for the purpose of governing the selection and appointment of all employees of the city except elected officials of the city, the city manager, the assistant city manager, the director of public works, the director of

public safety, the director of personnel and finance, the director of parks, recreation and public properties, the secretary of the city manager, the city engineer, the chief of police, the chief of the fire department, the chief deputy in the office of the city clerk, all persons employed in the city health department, in the office of the city attorney, in the office of the civil service commission, the superintendent of parks, the superintendent of recreation, the chief of the building and safety inspector's office, the superintendent of the sanitation department, the city comptroller, the airport manager, the chief license inspector, employees at the Reno municipal airport, the traffic engineer and personnel employed on a part-time basis, or on a temporary basis not contemplated to exceed 6 months during any calendar year.

2. The civil service system shall be administered by a board composed of five persons appointed by the city council, no more than three of whom shall belong to the same political party. Such persons shall:

- (a) Be residents of the city.
- (b) Have no other connection with the city government.
- (c) Hold no elective office.
- (d) Serve for a 3-year term of office.
- (e) Receive compensation as provided by city ordinance.

3. The city council shall provide for such employees as are necessary for the board properly to carry out the duties prescribed herein.

4. The civil service board shall, after public hearing, adopt or amend rules and regulations for the civil service system. Such rules and regulations shall provide for:

- (a) Recruitment, examination, selection and promotion of city employees.
- (b) Position classification.
- (c) Appeal procedures for employee promotion, demotion, disciplinary and removal actions.

Nothing in these rules and regulations shall prevent the city manager, without appeal, from adjusting an employee's salary within his salary range, depending upon the employee's job performance.

5. From time to time, as requested and funded by the city council, the civil service board shall provide miscellaneous personnel services for the city such as, but not limited to, wage survey and position evaluation studies.

ARTICLE X

Miscellaneous Provisions

Sec. 10.010 Severability of provisions. If any portion of this charter is held to be unconstitutional or invalid for any reason by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this charter. The legislature hereby declares that it would have passed the charter and each portion thereof, irrespective of the portion which may be deemed unconstitutional or otherwise invalid.

Sec. 10.020 Effect of enactment of charter.

1. All rights and property of every kind and description which were

vested in the city prior to the enactment of this charter shall be vested in the same municipal corporation on the effective date of this charter. No right or liability, either in favor of or against such corporation existing at the time of becoming incorporated under this charter, and no action or prosecution shall be affected by such change, but it shall stand and progress as if no change had been made.

2. Whenever a different remedy is given by this charter, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this charter, such remedy shall be cumulative to the remedy before provided, and used accordingly.

3. All ordinances and resolutions in effect in the city prior to the effective date of this charter shall, unless in conflict with the provisions of this charter, continue in full force and effect until amended or repealed.

4. The enactment of this charter shall not effect any change in the legal identity of the city.

5. The enactment of this charter shall not be construed to repeal or in any way affect or modify:

- (a) Any special, local or temporary law.
- (b) Any law or ordinance making an appropriation.
- (c) Any ordinance affecting any bond issue or by which any bond issue may have been authorized.
- (d) The running of the statute of limitations in force at the time this charter becomes effective.
- (e) Any bond of any public officer.

Sec. 2. Chapter 102, Statutes of Nevada 1903, at page 184, entitled "An Act to incorporate the Town of Reno, in Washoe County, and defining the boundaries thereof, and to authorize the establishing of a city government therefor, and other matters relating thereto," approved March 16, 1903, and all acts amendatory thereof, are hereby repealed.

Sec. 3. This act shall be effective on July 1, 1973.

Assembly Bill No. 533—Mr. Jacobsen

CHAPTER 663

AN ACT relating to the commission on crime, delinquency and corrections; providing that the commission may administer changes in law enforcement programs and projects; and providing other matters properly relating thereto.

[Approved May 6, 1971]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 216.085 is hereby amended to read as follows:

216.085 1. There is hereby created as an independent agency within the executive department of this state the commission on crimes, delinquency and corrections.

2. The purposes of the commission are:

- (a) To develop a comprehensive statewide plan for the improvement of law enforcement throughout the state;

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 4

EXHIBIT 4

11-07-12
G.S.7
B-3380

**EXCLUSIVE SERVICE AREA FRANCHISE AGREEMENT
COMMERCIAL SOLID WASTE AND
RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 7th day of November, 2012 ("Effective Date"), between the City of Reno, a political subdivision of the State of Nevada, (hereinafter called "City"), and Castaway Trash Hauling, Inc. a Nevada corporation (hereinafter called "Contractor"), with reference to the following facts.

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; and

WHEREAS, Chapter 5.90 of the Reno Municipal Code authorizes the City Council to award an exclusive franchise for collection, hauling and disposal of all Solid Waste and Recyclable Material, as defined herein, within the City; and

WHEREAS, the City of Reno City Council has determined that the public health, safety and welfare of its residents require that certain commercial Solid Waste and Recyclable Material Collection Services (as defined herein) be provided under one or more Commercial Franchise Agreements (as defined herein) by current service providers meeting the Contractor Qualifications (as defined in this Agreement), which Commercial Franchise Agreements provide the exclusive right and obligation to Contractor and other service providers to provide Collection Services in Exclusive Service Areas (as defined herein) in the City.

WHEREAS, Contractor has represented and warranted to City that it has the experience and qualifications to provide the Collection Services;

WHEREAS, City declares its intention of maintaining reasonable rates for reliable, proven collection and transportation of Solid Waste and Recyclable Material in an environmentally sound manner, within the City;

WHEREAS, City and Contractor have agreed to enter into this Agreement to set forth the terms, covenants and conditions relating to the provision of the Collection Services by Contractor.

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 hereby agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings. To the extent of any inconsistency between the definitions of the following terms provided in this Article and the use or definition of those terms that may appear in related City, County, State or Federal laws, ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor.

"Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

"Agreement" means this Agreement between the City and Contractor, including all exhibits and future amendments.

"Applicable Law" means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the collection and disposition of Solid Waste or Recyclable Materials, including those that are in force and effective as of the Effective Date, as well as such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the Effective Date and during the Term of this Agreement.

"Approved Recyclable Materials" means the Recyclable Materials approved for recycling under this Agreement, which are listed on Exhibit A attached hereto and which may be changed from time to time by agreement of Contractor and City, excluding Excluded Recyclable Materials.

"Bin" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, having a capacity less than seven (7) cubic yards and that generally has a tight-fitting, attached lid, and is designed to be dumped mechanically into a front-loading or rear-loading Collection vehicle.

"Bulky Items" means all discarded waste matter that is too large to be placed in a Cart, including appliances not containing chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require special handling due generally to their size, excluding Excluded Materials.

"Cart" means an industry standard, wheeled Container of approximate thirty-five(35), sixty-four (64), and ninety-six (96) gallon capacity provided by Contractor to Customers for Collection of Solid Waste or Recyclables.

"Cart Service" means provision of Collection Services using Carts.

"City Collection Services" means the Collection Services provided by Contractor to City as provided in Section 3.7.

"City Council" means the governing legislative body of the City of Reno.

"Change in Law" means the following events or conditions:

i) Enactment, adoption, promulgation, issuance, modification, or written change or initial public announcement or enforcement in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or

ii) Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Contractor; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

"Change in Scope" is a material change in the type, extent, or level of Collection Services or the Exclusive Service Area.

"Collection" (and "Collect," "Collected and "Collecting") means the pickup and removal by Contractor from Commercial Customers in the Exclusive Service Area of Solid Waste and Approved Recyclable Materials and transportation and delivery of such material to an appropriate Designated Facility for such materials.

"Collection Materials" means all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Collection Services" means the Collection of Collection Materials from Commercial Customers in Contractor's Exclusive Service Area to be provided by Contractor hereunder and more fully described in the Scope of Services, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Commercial Activity" means all activity of a business, commercial, industrial, financial, institutional, governmental or similar nature, including without limitation Multi-Family Complexes. Commercial Activity hereunder is intended to be defined and interpreted broadly to include all activities other than residential activities and uses (other than Multi-Family Complexes).

"Commercial Customers" means all non-residential Customers including businesses, institutions, governmental agencies conducting Commercial Activity in Contractor's Exclusive Service Area, including Multi-Family Complexes.

"Commercial Franchise Agreements" means this Agreement and the other similar agreement between the City and the other franchised service provider for the collection and transportation of Solid Waste and Recyclable Materials from Commercial Customers in exclusive service areas in the City.

"Community Collection Location(s)" means an area in which the Contractor has placed a Compactor or Container in a central location to service multiple businesses at the specific request of the City or certain Commercial Customers, and agreed to by Contractor.

"Compactor," "Compactors," "Compactor Service" means any Bin or other Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method.

"Construction and Demolition Debris" means debris resulting from construction, remodeling, repair, renovation, demolition, excavation, dredging, grubbing and related cleanup of residential, commercial or governmental buildings or other structures and pavement, including without limitation construction materials, rubble, bricks, concrete, other masonry materials, soil, rock, lumber, rebar, paving materials and vegetation, including tree stumps. Materials resulting from landscape maintenance are not Construction and Demolition Debris.

"Consumer Price Index" or "CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average-Item: Garbage and Trash Collection (1982=100) as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index.

"Containers" means Carts, Bins, and Drop Boxes or other containers provided by Contractor and identified on the Scope of Services for use to provide Collection Services.

"Contractor" means the Party Identified as Contractor on page 1 of this Agreement.

"City" means the legal entity known as the City of Reno, Nevada, a political subdivision of the State of Nevada.

"City Representative" means the City Manager, or his/her designee, who may be a City official, employee or an agent of City specifically designated to serve as the City Representative and authorized to act on behalf of the City hereunder.

"Customer" means the persons or entities receiving Collection Services.

"Designated Facility" means the transfer station, disposal facility, material recovery facility, eco-center recycling facility or any similar facility designated by the City in accordance with that certain long-term Solid Waste Transfer and Disposal Agreement entered into by the City, pursuant to which the City has provided for the environmentally safe and sound handling, processing, transfer, transport, recycling and Disposal of all Solid Waste and Approved Recyclable Materials generated within the City, and where Contractor shall be required to deliver all Collection Materials.

"Disposal Agreement" is the agreement defined in Section 4.4 of this Agreement, and all amendments, extensions, renewals and replacements thereof.

"Disposal," "Disposing," "Dispose," or "Disposed" means the final landfill disposal of Solid Waste Collected by Contractor, but does not include other beneficial uses such as alternative daily cover.

"Diverted" means the tonnage or percentage of Collected Collection Materials that are not Disposed.

"Drop Box" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, generally having a capacity equal to or greater than ten (10) cubic yards.

"Effective Date" means the date on which this Agreement is fully executed by the Parties, as reflected on page 1 of this Agreement.

"Excluded Materials" means: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii) materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and codes and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and items Contractor determines to be excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States revenue Code Section 501(c) 3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

"Excluded Recyclable Materials" means either or both i) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Material at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service, and ii) any other Recyclable Materials that are not Approved Recyclable Materials.

"Exclusive Service Area" means the geographic territory within the City in which the Contractor shall have the exclusive right and obligation to conduct Collection Services, as described on Exhibit B attached hereto, as such geographic territory may change from time to time as provided under this Agreement. When used in the plural in this Agreement, the term ("Exclusive Service Areas") refers to all such territory within the City considered collectively, within which exclusive Collection Services are to be provided, either by Contractor pursuant to this Agreement, or by another service provider pursuant to another Commercial Franchise Agreement. All the Exclusive Service Areas in the City are described on Exhibit B attached hereto. The Exclusive Service Areas shall be subject to the boundary adjustment process described in Section 3.12 hereof. In addition, if after the Effective Date land is annexed or otherwise added to the City of which is not then in one of the Exclusive Service Areas ("Annexed Land"),

the Annexed Land shall be added to one or more Exclusive Service Areas as follows. If the Annexed Land is contiguous to the Exclusive Service Area of only one service provider under a Commercial Franchise Agreement, then the Annexed Land shall be added to that service providers Exclusive Service area. If the Annexed Land is contiguous to the Exclusive Service Area of more than one service provider, or if the Annexed Area is not contiguous to the City, the Annexed Area shall be divided and added to the respective Exclusive Service Areas in proportion to the respective Proportionate Share of each service provider and City, Contractor and such other service providers will negotiate in good faith to agree on the allocation of the Annexed Area; provided that if such parties cannot agree within 60 days on the allocation of the Annexed Area, the determination of the City in accordance with this Section shall be final.

"Exempted Drop Box" means an industry standard, open top metal roll-off container (also sometimes referred to as a "lugger" or "dino"), equipped for being mechanically rolled onto a vehicle, for collection and transportation of Solid Waste or Recyclable Materials:

- (i) With a capacity of not less than ten (10) cubic yards;
- (ii) Which is delivered to and left at a Customer's site for deposit therein of Exempted Drop Box Materials, then picked up and transported to a materials processing or disposal facility for emptying; and,
- (iii) Excluding a) Compactors, b) Bins, c) containers or receptacles emptied or serviced by front loader vehicles, d) any vehicle into which the materials are deposited at the time of collection at the collection site and e) any other container, receptacle or vehicle not described in subsections (i) and (ii) in this definition above.

"Exempted Drop Box Materials" means Solid Waste and Approved Recyclable Material collected and transported in an Exempted Drop Box using Exempted Drop Box Services, but excludes;

- (i) Garbage; and,
- (ii) Compacted Solid Waste and compacted Approved Recyclable Materials.

"Exempted Drop Box Services" means the collection and transportation by an Exempted Hauler of Exempted Drop Box Materials, using an Exempted Drop Box, performed as Temporary Service and excluding any collection or transportation that would replace, limit or reduce Permanent Service Collection by Contractor. The provision of Exempted Drop Box Services shall not limit or amend the obligation of Operators or other Commercial Customers to subscribe to Collection Services under Section 3.5 of this Agreement. Examples of Exempted Drop Box Services include (each of which are hereby excluded from the exclusive franchise of Contractor under this Agreement and which may be collected and hauled by Exempted Haulers using Exempted Drop Box Services), in each case by Exempted Haulers using an Exempted Drop Box, i) the collection and transportation of landscaping and related materials generated by landscaping, gardening, pruning, tree trimming and other landscape maintenance service providers ii) the collection and transportation of Exempted Drop Box Materials

generated at special events (but excluding materials which are the subject of Permanent Services at the event location), iii) the collection and transportation of Exempted Drop Box Materials under single occurrence service contracts or arrangements for collection and transportation of Exempted Drop Box Materials and iv) collection and transportation of Exempted Drop Box Materials generated in connection with occasional, irregularly scheduled cleanup and disposal by customers.

"Exempted Facility" means of Nevada Recycling & Salvage, a Nevada limited liability company, and its premises located at 1085 Telegraph Street, Reno, Nevada, or replacement premises thereof ("NRS").

"Exempted Facility Materials" means Collection Materials delivered to and accepted, processed, and recycled or disposed by the Exempted Facility i) in an amount equal to or less than the Exempted Facility Material Limit and ii) excluding Garbage.

"Exempted Facility Materials Limit" for NRS shall be a total annual volume of Exempted Facility Materials from Contractor and the service provider under the other Commercial Franchise Agreement not exceeding One Hundred Twenty Five Thousand 125,000 cubic yards, which limit amount shall be increased annually in proportion to the percentage increase in the GDP. The first annual increase shall occur on January 1, 2014 ("Limit Adjustment Date"). The Exempted Facility Materials Limit shall be increased in proportion to the percentage increase in the GDP over the most recent 12 month period ending on October 1 of the year preceding the Limit Adjustment Date (or the most recently published GDP for a 12 month period ending prior to October 1 of the preceding year). The calculation of the increase shall be provided by the Exempted Facility to the City no later than December 1 of the year preceding the Limit Adjustment Date. For purposes hereof, "GDP" shall mean the Gross Domestic Product for the Reno-Sparks Metropolitan Area, all industries, as published by the U.S. Department of Commerce. The term Exempted Facility Materials Limit as used herein shall mean the Exempted Facility Materials Limit as adjusted by increases in the GDP as determined in accordance with this definition.

"Exempted Haulers" means persons or entities: (i) licensed as of October 24, 2012 by the City and the Washoe County Health District to collect and transport Solid Waste and Recyclable Materials in the City of Reno; and, (ii) actively engaged, as its primary business, in the collection and transportation of Solid Waste and Recyclable Materials in the City of Reno as of October 24, 2012, including Contractor. All Exempted Haulers are listed on Schedule 1 attached hereto.

"Exempted Hauler Account" means a contract or account i) established on or before October 24, 2012 and continuing as of October 24, 2012; ii) under or pursuant to which contract or account an Exempted Hauler has provided collection and transportation of Solid Waste and/or Recyclable Materials from Commercial Activity on a regularly scheduled, recurring basis; iii) to a customer identified on Schedule 1; and iv) approved by the City. All approved Exempted Hauler Accounts of each Exempted Hauler, including the name and address of each customer to which service is provided for each Exempted Hauler Account, is identified on Schedule 1 attached hereto.

"Exempted Hauler Account Material" means Solid Waste and Recyclable Material collected from an identified customer under an Exempted Account and transported by such Exempted Hauler using Exempted Hauler Account Services, but excluding Garbage.

"Exempted Hauler Account Services" means the collection and transportation by an Exempted Hauler of Exempted Hauler Account Materials from an Exempted Hauler Account.

"Extension Term" means one or more extensions of the Term of this Agreement, as provided under Section 3.1(B).

"Food Waste" means all compostable pre-consumer and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and egg shells, and food-soiled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, paper milk cartons or other paper products accepted by the Contractor's selected composting facility or other processing facility and that has been Source Separated and placed in a Container for Recycling. Food Waste shall not include dead animals weighing over 15 pounds, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting or other processing facility. The materials accepted by composting site selected by Contractor may change from time to time and the definition of Food Waste shall change accordingly.

"Franchise Fee" means a uniform fee payable to the City and equal to a percentage of the Gross Receipts collected by Contractor, as established and adjusted by the Reno City Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement.

"Franchise Hauler Terms" means as provided in the Disposal Agreement.

"Garbage" means putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking and sale and serving of food and beverage, excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of Garbage with rubbish, trash or other waste matter, exclusive of Items i) through viii) inclusive under the definition of Excluded Materials, renders the entire resulting mixture as Garbage.

"Green Waste" means Source Separated biodegradable materials including branches (less than three [3] inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants, leaves, pruning's, shrubs, weeds, wood (uncoated and untreated), wood chips, yard trimmings, Christmas trees (placed in Carts/Bins, with no stands, flocking, and/or decorations, and cut into two [2]-foot sections) that has been placed in a Container for Recycling, excluding Excluded Materials.

"Gross Receipts" means the Rate Revenues actually received, including all money, cash, receipts, property or other thing of value collected by Contractor from Customers for the Collection Services described on the Scope of Services, but excluding any revenues, receipts or proceeds from other sources. Gross Receipts does not include proceeds from Special Services or from the sale of Recyclable Materials.

"Hazardous Waste" means hazardous waste as defined in Nevada Revised Statutes 459.430, hazardous substance as defined in Nevada Revised Statute 459.429 and other hazardous or toxic materials as defined under any other local, state or federal law.

"Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

"Multi-Family Complex" means a multiple-unit Residence with five (5) or more units, some of which are attached, which are billed collectively for Collection Services hereunder.

"Operating Standards" means the additional terms and conditions attached to this Agreement as Exhibit C which are made a part hereof and incorporated herein by reference and which shall be applicable to all service providers under all Commercial Franchise Agreements.

"Operative Date" means the date from and after which Contractor shall be responsible to provide Collection Services to Customers in accordance with the terms of this Agreement, which shall be no later than twelve (12) months after the Effective Date. The Operative Date shall be provided in writing by Contractor to City not less than 30 days prior to the estimated Operative Date.

"Party" or "Parties" means City or Contractor individually, or City and Contractor, respectively.

"Permanent Services" means Collection Services that generally or usually occur on a regularly scheduled, recurring basis.

"Permitted Transferee" means i) an Affiliate of Contractor and ii) a service provider under another Commercial Service Agreement.

"Paper Shredder Materials" means paper and similar paper products and the products and residue resulting from shredding thereof collected and shredded by properly licensed service providers providing paper shredding services.

"Proportionate Share" of Contractor is Nineteen and 50/100 percent (19.50%).

"Qualifications" means the Assignee Qualifications, as defined in Section 11.7 of this Agreement.

"Qualified Service Contract" means as provided in Section 3.13 of this Agreement.

"Rate Revenues" means the revenues from the Rates billed to and collected from Customers by Contractor for provision of Collection Services.

"Rates" or "Rate" means the amount each and all Customers shall be charged by Contractor for Collection Services under this Agreement as provided on the Scope of Services and the Transition Rates applicable during the Transition Period, which Rates or Rate may be adjusted from time to time during the Term as provided under this Agreement.

"Recyclable Materials" or "Recyclables" means materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or

Implemented after the Effective Date, Including Source Separated Green Waste and Source Separated Food Waste.

"Recycle", "Recycled", "Recycling" means the process of Collection, sorting, cleansing, treating and reconstituting of Recyclable Materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

"Recycling Container(s)" means Containers shown on the Scope of Services, provided and designated by Contractor for use for Recycling of Recyclable Materials, and identified for Recycling use by labels or signs on the Recycling Container specifying Recycling use, by using Recycling Containers or portions thereof of a different color than Containers used for Collection of Solid Waste, or by other means.

"Recycling Facility" means a fully permitted, Designated Facility at which Recycling occurs of Recyclable Materials.

"Residue" or "Residuals" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as contaminated paper, putrescible waste, and other debris.

"Return on Revenue" means as provided in Section 6.2 hereof.

"Scope of Services" means the Scope of Services attached hereto as Exhibit D, which specifies each category or type of Collection Services, the Rates applicable to the Collection Services, certain other charges and fees which may be charged by Contractor, and certain other terms.

"Self-Haul" or "Self-Hauler" means that any generator of Recyclable Materials from Commercial Activity may itself (for a commercial generator, this means performance of all collection and transportation services by an individual listed on its payroll as an employee), but not by or through an agent, contractor or other third party, collect, transport and deliver those Recyclable Materials generated within the City by that generator only; provided, however, all Self-Haul owners and occupants shall be required to subscribe to Collection Services as provided under this Agreement, unless exempted under Section 3.5 of this Agreement.

"Single-Stream Recycling" means the use of a single Container to collect Source Separated Recyclables on a co-mingled basis.

"Snapshot Program" means a photo documentation program used by Contractor to notify Commercial Customers who are producing Collection Materials in excess of their current service level, which subjects the Customer to additional fees and charges for the collection of the excess material.

"Solid Waste" means all putrescible and nonputrescible waste matter in solid or semi-solid form, including but not limited to rubbish, Garbage, ashes, refuse, and Residue, but excluding Excluded Materials.

"Source Separated" means the separation of any material or category of materials from other materials by the generator at the point or place of generation.

"Source Separated Recyclables" means Approved Recyclable Materials that are separated by the generator thereof from all materials other than Approved Recyclable Materials and properly prepared and placed together in a Recycling Container for Collection.

"Special Services" means various collection and other services to which Contractor is not granted the exclusive right of Collection under this Agreement and of which Contractor is not required to provide Collection under this Agreement, but which services Contractor at its option may offer to its Customers and to others anywhere in the City at rates and charges determined by Contractor.

"Special Waste" includes any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste. As defined for purposes of this Agreement, "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires and vehicle batteries.

"Subsidy Fee" means a uniform fee equal to Contractor's Proportionate Share of the Balancing Payment, as defined under the Exclusive Franchise Agreement for Residential Solid Waste and Recyclable Materials between Contractor and City of approximately even date with this Agreement, as the Balancing Payment may be adjusted from time to time.

"Temporary Service" means Exempted Drop Box Service that is: (i) temporary and not recurring; (ii) provided for a period of 60 days or less; and, (iii) excludes Permanent Services.

"Term" means the period provided in Section 3.1(A), as extended by any Extension Terms under Section 3.1(B).

"Transition Period" means the period commencing on the Effective Date and ending on January 1, 2015.

"Transition Rates" means the Rates applicable during the Transition Period to each commercial customer who is a party to Qualified Service Contract, as more fully provided in Section 3.13 of this Agreement.

"Working Days" means, unless otherwise specified, Monday through Friday, excluding legal holidays.

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Contractor is qualified to transact business in the State of Nevada and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor has taken all actions required by law, its articles of Incorporation, its bylaws or otherwise to authorize the execution of this Agreement. Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Contractor, such that this Agreement shall constitute a valid and binding obligation of Contractor enforceable in full accordance with its terms, except only to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights.

C. NO CONFLICT

Contractor warrants and represents that, to Contractor's knowledge, as of the Effective Date neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

D. INFORMATION SUPPLIED BY CONTRACTOR

To Contractor's knowledge the information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's financial information, is true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

E. CONTRACTOR QUALIFICATIONS

Contractor warrants and represents it has the experience, financial capability and operational capability to perform the Contractor's duties and obligations under this Agreement and meets or exceeds the Contractor Qualifications.

2.2 CONTRACTOR QUALIFICATIONS, ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES

Prior to the Effective Date, City requested collective advice of certain commercial solid waste haulers meeting the Contractor Qualifications and then providing solid waste and related hauling services concerning recommended boundaries for the Exclusive Service Areas. The City established the location and boundaries of each Exclusive Service Area in proportion to each qualified service provider's then existing Proportionate Share of the permanent revenues from hauling services collected by all the qualified service providers in Reno. Contractor and the other qualified service providers participated in the process created by and under the supervision of the City. The recommendations of the service providers were strictly advisory and the City reserved full authority to accept, reject or modify the recommendations, to establish Exclusive Service Area boundaries of the City's choosing, or to continue to operate without Exclusive Service Areas consistent with its obligations under applicable law. Contractor stipulates that it participated in the City's process in good faith, and Contractor hereby warrants that its financial materials, disclosures and representations regarding its Customer base and revenues in the City, as of the dates provided to City, are true, correct and complete.

ARTICLE 3 COLLECTION SERVICES AGREEMENT

3.1 AGREEMENT TERM; EXTENSIONS; PERIODIC REVIEW

A. Term

This Agreement shall be effective during the Term, which shall commence on the Effective Date and shall expire on the date 17 years thereafter on November 7, 2029 ("Expiration Date"), unless extended as provided in Section 3.1 (B) below.

B Extension Terms; Termination

The Initial Term of this Agreement and each Extension Term of this Agreement shall be automatically extended for an additional five (5) year Extension Term unless City or Contractor provides written notice of termination not less than five (5) years prior to the expiration of the initial Term and each Extension Term. Contractor shall be entitled to terminate this Agreement effective anytime during the last 3 years of the initial Term upon not less than twenty four (24) months prior written notice to City.

C Periodic Review by City and Contractor of Collection Services

1. During the 24 month period ("Review Period") commencing on the date five (5) years after the Effective Date ("First Review Period Commencement Date") and on the date of each successive five (5) year anniversary after the First Review Period Commencement Date during the initial Term and all Extension Terms, each of the City or Contractor may initiate, conduct and complete the review of the operation of the Collection Services under this Agreement, in order to i) assess the effectiveness of the Collection Services and ii) identify areas for possible improvement ("Review"). Either City or Contractor may provide written notice to the other ("Review Notice") stating, in reasonable detail, the nature, scope and specific areas for review, but the provision of the Review Notice shall not be a condition

precedent to the Review and Review Notice contents shall not limit the nature, scope or specific areas of the Review.

2. City and Contractor shall during the Review Period cooperate in good faith to conduct the review of the Collection Services. If as a result of the Review either or both the City or Contractor determine improvements to the Collection Services would be beneficial, i) City and Contractor shall cooperatively prepare a written report reflecting the results of the Review, the aspects of the Collection Services suggested for improvement and any amendments to this Agreement necessary to make such improvements ("Report") and ii) Contractor and the City will conduct, in good faith, discussions and negotiations concerning any improvements to the Collection Services, including any related amendments to this Agreement; provided, however, neither City nor Contractor shall be obligated to agree to any changes to the Collection Services or amendments to this Agreement. The Report shall provide, in reasonable detail, the findings of the Review, together with any recommendations for improvements or changes to the Collection Services and related amendments to this Agreement. If the City and Contractor do not agree on all of the contents of the Report or the recommendations, the Report shall include the positions of both City and Contractor. The Review, preparation of the Report and all discussions and negotiations shall be completed on or before the expiration of the Review Period. If Contractor and City agree to changes to the Collection Services or agree to amend this Agreement, the amendment will be executed on or prior to the expiration of the Review Period and the changes to the Collection Services will be implemented as soon as reasonably possible thereafter.

3.2 COLLECTION SERVICES AGREEMENT

A. Services Provided; Exclusive Right and Obligation; Exceptions to Exclusive Right

City hereby grants Contractor, and Contractor shall have throughout the Term of this Agreement, except as provided in Sections 3.2 D and 4.4 L hereof, the exclusive right, privilege, franchise and obligation within the Exclusive Service Area of Contractor to provide Collection Services to Commercial Customers. No person or entity other than Contractor and its subcontractors shall i) collect Collection Materials in Contractor's Exclusive Service Area, ii) transport anywhere in the City Collection Materials Collected in Contractor's Exclusive Service Area, or iii) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility, except as expressly provided under this Agreement. The preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount. Notwithstanding any other provision of this Agreement, the exclusive right of Contractor hereunder shall not apply to Excluded Materials, Excluded Recyclable Materials, Exempted Drop Box Materials, Exempted Hauler Account Materials and subject to and as provided in Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities. Contractor and other service providers may collect and transport Excluded Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials (if Contractor has been approved for Exempted Hauler Accounts under Schedule 1) in the

Exclusive Service Area and elsewhere in the City and may charge fees and charges for services as the service provider may elect. Contractor shall only provide under this Agreement Collection Services to Commercial Customers in Contractor's Exclusive Service Area and in no other areas in the City; provided, however, Contractor may provide Special Services to Commercial Customers or other customers anywhere in the City.

B. Compensation to Contractor; Rates

Contractor shall be entitled to charge and collect the Rates from Customers for Collection Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services. However, Contractor shall be entitled to provide and collect fees and charges for Special Services and other services and to charge fees and charges for Customer noncompliance as provided in Section 3.10 and elsewhere in this Agreement.

C. Uniform Commercial Franchise Agreements

City intends to establish a uniform system for the collection, transport and delivery of Collection Materials generated or accumulated as a result of Commercial Activities under this Agreement and the other Commercial Franchise Agreement. Accordingly, the Parties agree this Agreement is and will remain substantially similar to the other Commercial Franchise Agreement, including without limitation the Collection Services and the Rates. Amendments to any Commercial Franchise Agreement must generally be concurrently agreed to and made to all other Commercial Franchise Agreements unless the subject of the amendment relates to a unique or specific feature of the Exclusive Service Area of a particular service provider or a term that is not material. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, Special Services are not intended to be and likely will not be uniform between the Commercial Franchise Agreements or service providers and each service provider under each Commercial Franchise Agreement shall be entitled to offer and charge for any Special Services in the manner, on the conditions and at the rates decided by each such service provider.

D. Exempted Drop Box Services and Exempted Hauler Account Services

1. Subject to the terms and conditions in this Section 3.2 D, the franchised exclusive right and obligation of Contractor hereunder to provide Collection Services shall not include or apply to i) Exempted Drop Box Materials collected and transported by Exempted Haulers using Exempted Drop Box Services, or ii) Exempted Hauler Account Materials collected and transported by Exempted Haulers using Exempted Hauler Account Services.

2. The right of an Exempted Hauler to provide Exempted Hauler Account Services to each of its Exempted Hauler Accounts shall terminate upon the later of i) one (1) year after the Effective Date and ii) either a) termination of the contract or account with the Exempted Hauler for such Exempted Hauler Account or b) the new subscription by the Exempted Hauler Account customer, by contract or account, to Collection Services by the Contractor. Exempted Hauler Account Services may limit the obligation under Section 3.5 hereof of Exempted Hauler Account customers to subscribe to Collection Services;

provided, however, nothing in this Section 3.2 D shall limit the obligation of a Commercial Customer to subscribe to Collection Services by Contractor of Garbage or cause the termination or limitation of any contract or account with any Commercial Customer of Contractor existing as of October 24, 2012.

3. Each Exempted Hauler shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 3.2 D, the rights of such Exempted Hauler under this Section 3.2 D. This Section 3.2 D shall not be amended in a manner that would terminate, limit or restrict any Exempted Hauler from providing Exempted Drop Box Services or Exempted Hauler Account Services under this Section without the prior written consent of such Exempted Hauler, which may not be unreasonably withheld, conditioned or delayed; provided, however, nothing in this Section 3.2 D shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Drop Box Services and Exempted Hauler Account Services.

4. The rights of an Exempted Hauler under this Section 3.2 D may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary to perform such hauling services and an Exempted Hauler owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Hauler. If the Exempted Hauler shall dissolve or otherwise cease business for a period greater than one (1) year, the rights of the Exempted Hauler under this Section 3.2 D shall terminate.

5. The provision of Exempted Drop Box Services and Exempted Hauler Account Services by the Exempted Haulers is a privilege, not a right. Upon the violation by an Exempted Hauler of the exclusive rights of Contractor under this Agreement, upon thirty (30) days written notice of default by City and the failure of the Exempted Hauler to cure such violation, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the termination of the exemption of such Exempted Hauler under this Section to provide Exempted Drop Box Services and/or Exempted Hauler Account Services.

6. Except as expressly provided herein or in the Disposal Agreement, neither this Agreement nor the Disposal Agreement shall limit or preclude Exempted Drop Box Materials collected and transported using Exempted Drop Box Services or Exempted Hauler Account Materials collected and transported using Exempted Hauler Account Services from being delivered by any Exempted Hauler, including Contractor, to any facility for acceptance, processing, recycling, transfer or disposal, including without limitation facilities other than the Designated Facilities.

3.3 FRANCHISE FEES PAYABLE TO CITY

A. Franchise Fees

Subject to adjustment as provided in Section 3.13 of this Agreement during the Transition Period, Contractor shall pay to the City in monthly installments during the Term a Franchise Fee, based on a percentage of Gross Receipts collected by Contractor, as established and adjusted by the Reno City

Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement. The City Council reserves the right to increase or decrease the Franchise Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Franchise Fee i) the Franchise Fee payable under all other Commercial Franchise Agreements shall be increased to the same extent and ii) the Rates shall concurrently be increased or decreased in the amount of such increase or decrease in the Franchise Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

B. Subsidy Fee

Contractor shall pay the Subsidy Fee to the City in monthly installments during the Term. The City reserves the right to increase or decrease the Subsidy Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Subsidy Fee, then: i) the Subsidy Fee payable under all other Commercial Franchise Agreements shall be increased or decreased to the same extent; ii) If the Subsidy Fee is increased, the Rates shall concurrently be increased in an amount necessary to fully compensate Contractor for the amount of such increase in Subsidy Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the 90 day notice period; and iii) If the Subsidy Fee is decreased, the Rates shall concurrently be decreased in an amount necessary to offset the reduction in cost to Contractor for the amount of such decrease in Subsidy Fee, in which event the decrease in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

C. Payment of Franchise Fees and Subsidy Fee by Contractor to City

The Franchise Fee and Subsidy Fee for each calendar month ("Subject Month") during the Term and any extensions of the Term shall be paid by Contractor on or before the twenty fifth (25th) day of the following calendar month. The Franchise Fee shall be calculated by Contractor on the basis of the Gross Receipts actually received and collected by Contractor during the Subject Month. Contractor shall provide to City along with the monthly payment a statement of the Gross Receipts, Franchise Fee and Subsidy Fee for such payment, attested to by a representative of contractor as being true and correct. Any Franchise Fee or Subsidy Fee not paid by the date due shall bear interest at seven percent (7%) per annum until paid. Contractor's Gross Receipts, the Franchise Fees, the Subsidy Fee and the calculation thereof and all related financial matters shall be subject to audit and inspection by the City under Sections 7.5 and 8.3 below and contractor shall cooperate fully in all such audits and inspections.

D. No Additional Fees or Charges

The Franchise Fee and the Subsidy Fee shall be the only fee or compensation paid by Contractor to City in connection with the Collection Services and this Agreement and no other license, permit, privilege or other fee, tax or charge shall be imposed by City upon Contractor; provided, however, that nothing in this Section shall modify the obligation of Contractor to pay building permit fees and other similar fees.

3.4 PROVISION OF COLLECTION SERVICES

A. General

The services to be provided by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items necessary to perform all Collection Services, and the payment of all related expenses including all transfer and Disposal fees, processing fees for Recyclable Materials, taxes, utility charges, etc. Contractor shall provide Collection Services using standard industry practice for comparable operations, in accordance with the Scope of Services and Operating Standards.

B. Hours of Collection; Collection Frequency

Collection Services under this Agreement may be performed at any time, seven days a week on any day of the calendar year provided, however, that Collection Services performed in or near areas zoned for residential use and which disturbs the residents may be limited, upon request of City, to the hours of 6 AM to 6 PM. Contractor may reasonably elect to extend the hours of Collection Services operation near residential zones for a limited time if necessary to catch up as a result of service disruptions. Collection Services may be provided by Contractor to Customers on any schedule available on the Scope of Services as requested by each Customer; provided, however, Garbage Collection Services shall be provided no less often than weekly.

3.5 OBLIGATION TO PROVIDE COLLECTION SERVICES; MANDATORY SERVICE

Contractor shall make available Collection Services as provided under this Agreement to all Commercial Customers within its Exclusive Service Area during the Term and any extension of the Term and shall be compensated by the Rates. Each and every person, firm, association, corporation, partnership, business, or other entity conducting any Commercial Activity ("Operator") on or from any premises which generates, accumulates or causes the generation or accumulation of Solid Waste within the Exclusive Service Area of Contractor shall subscribe to the Collection Services of Solid Waste as required herein and/or the Reno Municipal Code and as necessary to properly dispose of all Solid Waste generated or accumulated on such premises. It is presumed that every premises in Contractor's Exclusive Service Area on or from which Commercial Activity is conducted generates, produces or accumulates Solid Waste and is required to subscribe to Collection Services under this Agreement. Notwithstanding anything to the contrary In this Section 3.5, Operators receiving as of October 24, 2012 Exempted Hauler Account Services that constitute Permanent Services shall not be required to subscribe to Collection Services from Contractor, other than collection of Garbage, so long as such Operator shall continue to receive the Exempted Hauler Account Services. Any Operator seeking to be exempt from Collection Services of Solid Waste hereunder must obtain an exemption from the City. To obtain the exemption, the Operator must apply to the Washoe County Health District ("WCHD") and obtain written approval of the WCHD confirming a finding that: i) no Solid Waste, or as to Exempted Hauler Accounts no Garbage, is being generated, produced or accumulated on or from the premises upon which the Operator's Commercial Activity is occurring; and ii) the Operator is not hauling, burying or otherwise disposing of Solid Waste or Garbage in violation of this Agreement, the Reno Municipal Code or other Applicable Law. Commercial Customers are encouraged, but are not obligated, to recycle; provided, however, no Commercial

Customer in Contractor's Exclusive Service Area may allow or retain any person or entity other than Contractor to collect, pickup, transport or deliver Approved Recyclable Materials in violation of Contractor's exclusive right under this Agreement. With the approval of the owner of a premises upon which Commercial Activity is being conducted, a tenant or occupant thereof may subscribe for Collection Services, but the owner shall remain responsible for compliance with all requirements of this Agreement and the Reno Municipal Code.

3.6 OWNERSHIP OF COLLECTION MATERIALS

Ownership of all Collection Materials, upon placement in any Container, shall transfer to Contractor and shall become the property of Contractor. Title to and ownership of all Collection Materials shall transfer from Contractor to the Designated Facility upon delivery of the Collection Materials by Contractor to the Designated Facility and acceptance by the Designated Facility of such Collection Materials.

3.7 CITY COLLECTION SERVICES

The Contractor shall provide the City Collection Services to facilities owned by City at no charge as provided and subject to the limitations in this Section. The City Collection Services shall be provided by Contractor to buildings, parks and similar facilities owned by City for Collection Materials generated in the normal and ordinary course of operation of such facility and does not include: i) Collection of any material that requires special handling, equipment or processing, including without limitation Excluded Materials; ii) Collection from businesses operating for-profit on or from City property; iii) Collection of materials resulting from natural disasters; special events; repair, construction or reconstruction of City facilities or from activities of any subcontractor on City property; iv) access to or disposal at any transfer station, material recovery facility or landfill; or v) any other Collection Services or other services relating to materials generated from any use, activity or cause other than the operation of City owned facilities in the normal ordinary course for such facility. Any Collection Services provided by Contractor to City other than the City Collection Services shall be paid for by City at the established Rates. In the event the cost or value of the City Collections Services exceeds \$172,575 at the Rates specified on the Scope of Services, as adjusted for changes in the CPI, the Rates shall be concurrently increased in an amount necessary to pay the full amount of such increase and City and Contractor shall cooperate in good faith to establish such increase in Rates.

3.8 EMERGENCY SERVICES

In the event that Contractor, for any reason whatsoever, fails, refuses, or is unable to perform the collection, transportation, and delivery requirements of this Agreement for a period of more than five (5) consecutive business days, and if as a result thereof, Solid Waste accumulates in the Exclusive Service Area to such an extent, in such a manner, or for such a time that City reasonably finds that such accumulation endangers or menaces the public health, safety, or welfare, then City shall have the right, but not the obligation, upon twenty four (24) hours prior written notice to Contractor, during the period of such emergency to perform, or cause to be performed, such services itself with its own or other

personnel and equipment without liability to Contractor. Contractor shall collect and shall pay to the City all Rate Revenues applicable to the emergency services provided by City under this Section.

3.9 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.10 CUSTOMER NONCOMPLIANCE

Contractor may refuse to provide some or all Collection Services to Customers and may charge fees and charges as provided herein or the Scope of Services in the event a Customer prevents or impedes Collections or otherwise fails to follow the requirements and procedures under this Agreement or Applicable Law, rules and policies, including without limitation, i) damage caused by Customers to Containers, ii) failure to provide appropriate, unobstructed access to Containers or otherwise position Collection Materials or Containers properly or timely, iii) overloading of Containers or failure of Customer to place Collection Materials solely and completely within the appropriate Container, iv) improper preparation, separation or contamination by Customer of Recyclable Materials, v) mixing by Customer of Excluded Materials with Collection Materials or placing Excluded Materials in a Container for Collection Services; vi) excessive weight or improper Collection Materials placed by Customer in Containers, vii) invalid claims by a Customer of damage caused by Contractor to Customer's property, viii) the need of Contractor to open gates or access long driveway or roadways to provide Collection Services and ix) or other failure of a Customer to comply with the requirements under this Agreement or applicable law, rules and policies. Upon occurrence of such event(s), Contractor may refuse to collect such materials or Container and impose charges or fees, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of such noncompliance and Contractor may take other reasonable actions, including without limitation applying the Snapshot Program and charging a "Snapshot Fee," as described on the Scope of Services. Upon notice by Contractor to Customer and City and failure of Customer to remedy such failure, Contractor may discontinue service to the Customer, in which event Contractor may charge an account deactivation fee (for services including, without limitation, pick up of any containers), and Contractor may impose charges and fees for reactivation of any deactivated accounts. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights and remedies of Contractor or the City under Applicable Law.

3.11 ADOPTION BY CITY OF ORDINANCES AND AMENDMENTS

On or before the Effective Date hereof and thereafter during the Term of this Agreement, City shall adopt and thereafter maintain new or amended ordinances reasonably necessary or appropriate to implement and make enforceable and binding the terms and conditions of this Agreement; provided, however, subject to Contractor's rights under this Agreement, City shall have the right and discretion to adopt and amend ordinances or otherwise exercise its regulatory authority relating to the subject matter of this Agreement.

3.12 ADJUSTMENT OF EXCLUSIVE SERVICE AREAS

On or before the date twelve (12) months after the Effective Date ("Adjustment Termination Date"), in the event Contractor or another service provider under another Commercial Franchise Agreement experiences a deficiency of five percent (5%) or more in permanent Rate Revenues compared to the Contractor's or such service provider's Proportionate Share of total Rate Revenues under all Commercial Franchise Agreements, the Contractor or such other service providers may submit a written request for a one-time Exclusive Service Area boundary adjustment review and adjustment (hereinafter "Request") in accordance with the provisions of this Section 3.12.

A. Requests shall be submitted in writing on or before the Adjustment Termination Date to the City Representative and all service providers under other Commercial Franchise Agreements. The Request shall describe with reasonable specificity the basis on which such Exclusive Service Area boundary review and adjustment is sought. Within fifteen (15) days after the Request, the other service providers will submit in reasonable detail a complete record of their Rate Revenues, Customer lists and all other information requested by the requesting party or City and related to the establishment of the Exclusive Service Area boundaries.

B. Within thirty (30) days after the Request, the City, Contractor and all other service providers will meet and discuss cooperatively and in good faith to determine if the actual permanent Rate Revenues generated in each Exclusive Service Area under the Commercial Franchise Agreements are in proportion to the respective Proportionate Share of Contractor and each other service provider, using the same methodology employed in originally establishing the Exclusive Service Areas. In the event the City Representative determines the actual permanent Rate Revenues of Contractor or other service provider is less than ninety five percent (95%) of the estimated permanent Rate Revenues used to initially establish the Exclusive Service Area boundaries for such party, the City, Contractor and other service providers will negotiate cooperatively and in good faith to adjust the Exclusive Service Area boundaries to accurately provide to each of Contractor and the other service providers their respective Proportionate Share of the total actual permanent Rate Revenues. If the City, the Contractor and other service providers cannot agree within thirty (30) days on an appropriate adjustment of the Exclusive Service Area boundaries, the City Representative shall issue in writing within thirty (30) days thereafter his finding ("Finding") of the appropriate adjustment to the Exclusive Service Area boundaries. The Contractor and other service providers shall have thirty (30) days from the issuance of the Finding to appeal the Finding to the Reno City Council. If no appeal is filed with the City Council within such thirty (30) day period, the Finding shall be final and the Exclusive Service Areas will be adjusted as provided in the Finding. The decision by the City Council on appeal under this Section 3.12 shall be final and binding on the Contractor and all other service providers and all such parties hereby waive any right to appeal the decision of the City Council. The failure or refusal of the Contractor or any service provider to participate and cooperate in good faith in the discussion and negotiations required under this Section 3.12 shall not defeat or render invalid the Finding by the City Representative or the decision on appeal to the City council under this Section 3.12, and both shall be binding and enforceable in all respects. In the event an adjustment to the Exclusive Service Area boundaries occurs under this Section 3.12, this

Agreement and other Commercial Franchise Agreements will be amended to reflect such adjustments and the City Representative is expressly delegated the authority to execute such amendments.

3.13 IMPLEMENTATION OF COLLECTION SERVICE AGREEMENTS; TRANSITION; QUALIFIED SERVICE CONTRACTS

Contractor currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in Contractor's Exclusive Service Area and will continue to do so after the Effective Date and until implementation of the Collection Services under this Agreement. Contractor also currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in areas of the City other than Contractor's Exclusive Service Area. Subject to the commencement of collection services to such customers by other service providers under the other Commercial Franchise Agreements, Contractor will cease collection services in the exclusive service areas of the other service provider under the other Commercial Franchise Agreement. Contractor, City and the service provider(s) under the other Commercial Franchise Agreement will cooperate in good faith to implement the orderly and efficient transfer of accounts and transition to and commencement of exclusive franchise Collection Services under the Commercial Franchise Agreements in the City, as more fully provided in this Section 3.13.

A. Collection Services in Contractor's Exclusive Service Area; Qualified Service Contracts

Contractor will commence the implementation of Collection Services as required by this Agreement in Contractor's Exclusive Service Area within One Hundred Twenty days (120) days after the Effective Date and will exercise reasonable diligence to complete the implementation of Collection Services on or before the Operative Date. If Commercial Customers in Contractor's Exclusive Service Area are a party to a "Qualified Service Contract" (as defined below) as of the Effective Date, Contractor will provide Collection Services to such customers i) at the lesser of a) the Rate for such service provided under this Agreement or b) the rate or charge provided in the Qualified Service Contract; provided that the rate or charge shall not be less than seventy five percent (75%) of the Rate under this Agreement for the same or similar service ("Transition Rate") and ii) the length of the term of Collection Services provided at the Transition Rate to such Commercial Customers ("Transition Term") shall be the longer of a) the initial or base term provided in the Qualified Service Contract (without renewal, rollover or other extensions of such term) or b) the period ending January 1, 2015. For purposes hereof, a "Qualified Service Contract" means a binding service contract with a commercial customer for the collection and transportation in the City of Solid Waste or Approved Recyclable Materials, or both, dated on or before October 24, 2012, by any service provider properly licensed to collect and transport such materials in the City, excluding Exempted Hauler Accounts.

B. Collection Services In other Exclusive Service Areas

Upon commencement of collection service to a commercial customer by another service provider in the other exclusive service area under the other Commercial Franchise Agreement, Contractor shall cease collection services to such customer. The service provider(s) under the other Commercial Franchise Agreements i) shall commence collection services under such Commercial Franchise Agreements within

one hundred twenty (120) days after the Effective Date and will exercise reasonable diligence to complete the implementation of such collection services on or before the Operative Date and ii) will charge the Transition Rates to each commercial customer located in the service provider's exclusive service area who is a party to a Qualified Service Contract as provided in Section 3.13 (A) above.

C. Temporary Adjustment of Franchise Fees

City and Contractor acknowledge that the Rates provided on the Scope of Services have been established in an amount sufficient to pay Contractor's cost of Collection Services hereunder and that the Transition Rates applicable to Qualified Service Contracts and Transition Accounts, which will be less than in Rates specified on the Scope of Services, will not provide sufficient Rate Revenue to pay the Franchise Fee. Accordingly, City and Contractor agree that no Franchise Fee will be payable by Contractor to City on Rate Revenues derived from Qualified Service Contracts or Transition Accounts.

D. Transition of Collection Services, General Terms

Each service provider under each Commercial Franchise Agreement will be a third party beneficiary of the terms and conditions of this Section 3.13 and similar provisions under the other Commercial Franchise Agreement. Contractor and the other service providers may exchange, borrow or subcontract for the use of the other's Containers during the Transition Period and the Container identification requirements shall not apply to such Containers during such use.

ARTICLE 4

SCOPE OF SERVICES

4.1 SOLID WASTE COLLECTION SERVICES

Contractor shall provide Collection Services of Solid Waste to Commercial Customers in Contractor's Exclusive Service Area and will provide to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of the Collection Services for Solid Waste shall be offered to Customers by Contractor as provided on the Scope of Services; provided, however, that Collection Services of Garbage shall be provided not less often than Weekly.

4.2 SINGLE STREAM RECYCLING COLLECTION SERVICES

Contractor shall offer Collection Services of Single Stream Recycling for Source Separated Recyclables to Commercial Customers in Contractor's Exclusive Service Area on a subscription basis and will offer to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of Collections Services for Source Separated Recyclables shall be on the request of each Customer. Customers are encouraged to but are not required to subscribe to Collection Services from Contractor of Source Separated Recyclables or other recycling services. Collection Services shall include only Source Separated Recyclables and each

Customer who recycles shall be responsible for separating its Approved Recyclable Material from all other materials, including without limitation Garbage, Excluded Material and Solid Waste other than Approved Recyclable Material, and placing only Approved Recyclable Materials in Recycling Containers provided by Contractor. Recycling Containers shall be used only for Source Separated Recyclables and no other materials of any kind may be placed in Recycling Containers. City, Contractor and other service providers under Commercial Franchise Agreements may agree to change the Recyclable Materials constituting the Approved Recyclable Materials, in which event the Approved Recyclable materials shall change for this Agreement and all other Commercial Franchise Agreements. Contractor may refuse to collect Recyclable Materials not separated and placed for Collection by Customer as required herein and may charge fees or other charges for improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Recyclable Materials placed for Collection which is mixed with more than a de minimis amount of material other than Approved Recyclable Materials.

4.3 FOOD WASTE RECYCLING

The Contractor may at Contractor's election offer Collection Services of Source Separated Food Waste to Commercial Customers within Contractor's Exclusive Service Area, on a subscription basis. If Contractor develops a Source Separated Food Waste Recycling or collection service program, Contractor will have the exclusive right to provide such services in its Exclusive Service Area, at rates to be mutually agreed upon by the Contractor and the City and added to the Scope of Services as an amendment, and Contractor will provide separate Containers suitable for Food Waste as determined appropriate by Contractor for such service. Customers are not required to subscribe to Food Waste Recycling Collection Services. Collection Services of Food Waste shall include only Food Waste and each Customer shall be responsible for properly separating the Food Waste from all other materials, including without limitation other Source Separated Recyclables, Garbage and Excluded Material, and placing the Food Waste only in Recycling Containers designated by Contractor for Food Waste. Recycling Containers designated by Contractor for Food Waste shall be used only for Food Waste and no other materials of any kind may be placed in Recycling Containers designated for Food Waste. Contractor may refuse to collect Food Waste not separated and placed for Collection as required herein and may charge fees or other charges for improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Food Waste placed for Collection which is mixed with more than a de minimis amount of material other than Food Waste.

4.4 DELIVERY OF COLLECTION MATERIALS TO DESIGNATED FACILITIES; DISPOSAL AGREEMENT

Contractor acknowledges that the City has entered into a long term Solid Waste Transfer and Disposal Agreement with Refuse, Inc., a Nevada corporation ("Designated Facility Owner"), to provide the City with an environmentally sound and cost effective solution for the transfer, processing, handling, recycling, and Disposal of certain Solid Waste and Recyclable Materials (the "Disposal Agreement"). Contractor shall deliver all Collection Materials, excluding Exempted Facility Materials delivered at the election of a Franchised Hauler to the Exempted Facility, that Contractor collects within the Exclusive Service Area to a Designated Facility which has been designated by the City pursuant to and in

accordance with the requirements of the Disposal Agreement. Capitalized terms used but not defined in this Section 4.4 have the meaning provided in the Disposal Agreement. Contractor hereby agrees to the "Franchise Hauler Terms" (as defined in the Disposal Agreement), including without limitation the following terms and conditions in this Section 4.4, which terms and conditions are also included in the Disposal Agreement:

A. Delivery of Approved Disposal Materials

Beginning on the Effective Date and throughout the term of this Agreement, subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor will deliver all Approved Disposal Materials collected, handled or transported under the City Franchise Agreements to the Designated Facilities in accordance with the terms and conditions hereof and the Disposal Agreement. Subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor shall deliver i) all Solid Waste to the designated Transfer Station, unless the Designated Facility Owner directs the Solid Waste be delivered to another Designated Facility and ii) all Approved Recyclable Material to the MRF, unless the Designated Facility Owner directs the Approved Recyclable Material be delivered to another Designated Facility. No Approved Disposal Materials shall be delivered to the Disposal Site by Contractor without the prior express approval of the Designated Facility Owner. No person or entity other than the Designated Facility Owner shall be allowed or entitled to accept the Approved Disposal Materials for processing, recycling or disposal except as expressly provided under Section 4.4 L and the Disposal Agreement. Notwithstanding anything in this Section 4.4 (A) to the contrary, i) Contractor shall be entitled to deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste to Disposal facilities other than the Designated Facilities, ii) Disposal facilities other than the Designated Facilities shall be entitled to accept from the Contractor (a) Excluded Materials; (b) Exempted Drop Box Materials; (d) Exempted Hauler Account Materials; (e) Food Waste and (f) Green Waste for processing or recycling and iii) Contractor shall be entitled to deliver to the Exempted Facility, and the Exempted Facility shall be entitled to accept, process, recycle and dispose, Exempted Facility Materials. Except as provided in this Section 4.4 A, Contractor may not, directly or indirectly through other persons or otherwise, perform or conduct any processing, sorting, separating, and/or disposal or other activities regarding the Collection Materials, and it is expressly understood that Contractor's Collection Services hereunder are limited to Collecting the Collection Materials and delivering them to the Designated Facilities; provided, however, nothing in this Agreement or the Disposal Agreement shall be interpreted to prohibit or prevent Contractor from directly or indirectly owning and operating a transfer station, disposal facility, materials recovery facility or similar facility that accepts and to which Contractor may Collect and deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste, for processing or recycling.

B. No Excluded Materials; Screening of Materials

Contractor will deliver only Approved Disposal Materials of the type appropriate for the Designated Facility to which the materials are delivered and otherwise in accordance with the terms of the Disposal Agreement. No Excluded Materials will be delivered to any Designated Facility by Contractor except with

the prior written and informed approval of the Designated Facility Owner. The Contractor will exercise industry standard, reasonable efforts to screen all materials to i) screen and verify only Approved Recyclable Materials are delivered for Recycling and ii) screen and remove all Hazardous Waste and other Excluded Materials from the materials delivered to the Designated Facilities. Except as provided in Section 4.4 F hereof, ownership of Hazardous Waste and other Excluded Materials shall not transfer to the Designated Facility Owner unless the Designated Facility Owner shall expressly and knowingly accept such ownership in writing and the Designated Facility Owner shall not be responsible for any Hazardous Wastes or other Excluded Materials delivered to a Designated Facility in violation of this Agreement.

C. Payment of Rates and Charges by Contractor

The Contractors will pay the Rates (as defined in the Disposal Agreement), as adjusted, and other charges, to the Designated Facility Owner in accordance with the Disposal Agreement.

D. Limited License

Contractor shall have a limited license to enter the Designated Facilities for the sole purpose of unloading Approved Disposal Materials at an area designated, and in the manner directed, by the Designated Facility Owner.

E. Compliance by Contractor

Contractor and its employees, subcontractors, or other agents shall comply with: i) Applicable Law related directly or indirectly to the delivery to and Disposal of materials at the Designated Facilities, including without limitation the ordinances of the City, ii) all rules and regulations of the Designated Facilities of which Contractor has not less than thirty (30) days prior written notice, including without limitation rules relating to safety, acceptance, rejection or revocation of acceptance of materials, hours of operation, measuring and reporting volumes of Approved Disposal Materials delivered to the Designated Facilities and iii) all Franchise Hauler Terms in the Disposal Agreement.

F. Inspection and Rejection of Materials by Designated Facility Owner

The Designated Facility Owner shall have the right to inspect, analyze or test any material delivered by Contractor to any Designated Facility. The Designated Facility Owner shall have the right to reject, refuse or revoke acceptance of any material if, in the reasonable opinion of the Designated Facility Owner, the material or tender of delivery fails to conform to, or Contractor fail to comply with, the terms of the Disposal Agreement, including without limitation as a result of delivery of Excluded Material. In the event the Designated Facility Owner, by notice to Contractor, rejects or within ten (10) business days of receipt revokes acceptance of materials hereunder, the Contractor shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from the Disposal Facilities property or control. If the rejected material is not removed within three (3) days from receipt of notice, the Designated Facility Owner shall have the right and authority to handle and dispose of the rejected material or Excluded Material in any commercially reasonable manner determined by the Designated Facility Owner. The Contractor shall pay and/or reimburse the Designated Facility Owner for any and all costs,

damages and/or fines incurred as a result of or relating to the tender or delivery of the rejected material or Excluded Material or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of the rejected material or Excluded Material. Title to, ownership of and liability for Excluded Material shall transfer to Contractor unless such Excluded Material is rejected or the acceptance of which is timely revoked. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for delivery of Contaminated Recyclable Materials, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

G. Franchise Hauler Noncompliance

The Designated Facility Owner may suspend on prior written notice some or all Disposal Services to Contractor in the event Contractor fails to comply with the requirements applicable to Contractor in this Agreement or the Disposal Agreement or otherwise fails to follow the requirements and procedures under this Agreement, the Disposal Agreement or Applicable Law, rules and policies, including without limitation, i) improper preparation, separation or contamination of Solid Waste or Approved Recyclable Materials, ii) delivery of Excluded Materials to a Designated Facility; or iii) other failure of a Contractor to comply with the requirements under this Agreement or Applicable Law, rules and policies of which the Designated Facility Owner has provided Contractor reasonable prior notice. Upon occurrence of such event(s), the Designated Facility Owner may charge fees and charges as provided in the Disposal Agreement or otherwise approved by City, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of and damages from such noncompliance. Upon notice of such a failure by the Designated Facility Owner to the Contractor and the City and failure of the Contractor to remedy such failure within thirty (30) days, the Designated Facility Owner may suspend Disposal Service to Contractor. The Contractor shall be reinstated on the first business day following the date upon which any such failure has been corrected. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights or remedies of the Designated Facility Owner under this Agreement, the Disposal Agreement or applicable law.

H. Time of Delivery

The Designated Facility Owner shall provide identical access and parity of use to the Transfer Station, the MRF, the Eco-Center, and any alternative facilities designated pursuant to Section 4.4 I for each Franchise Hauler for delivery and unloading of Solid Waste and Approved Recyclable Materials (including incidental residue) at such facilities. Except where either or both the days and hours of operation for such facilities have been changed upon thirty (30) days prior written notice, such facilities shall be open for each and all of the Franchise Haulers every day of the week between the hours of 5:00 AM and 10:00 PM. Subject to compliance with the notice requirements of this Section 4.4 H, operational and delivery hours may be adjusted by the Designated Facility Owner and approved by City. The Designated Facility

Owner shall have the right to adjust the operating hours of the Designated Facilities to the extent reasonably necessary in the event of an emergency.

I. Alternative Facilities

During the Term of this Agreement, the Designated Facility Owner may designate alternative facilities for the receipt, processing, transfer, or disposal of Collection Materials, Green Waste and Food Waste, provided such alternative facilities do not result in an increase in Rates or material increase in costs to Contractor and Contractor will deliver such materials to the alternative facilities as directed by the Designated Facility Owner. If the Designated Facility Owner designates an alternative facility, unless the alternative facility is required to pay the Host Fee to the City, the Designated Facility Owner shall pay or cause to be paid the Host Fee payable under the Disposal Agreement and applicable to any Approved Disposal Materials delivered to the alternative facility. Upon the approval of City, the Designated Facility Owner may cause or allow Disposal Materials to be delivered to the City waste water treatment plant, in which event no Host Fee, tipping fee or other fee will be payable to City for or on such materials. Nothing in this Section 4.4 I shall limit the right of a Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility or the right of the Exempted Facility to accept, process, recycle or dispose of Exempted Materials under Section 4.4 L hereof.

J. Ownership of Disposal Materials

Ownership of all Approved Disposal Materials, upon delivery to and acceptance by a Designated Facility, shall transfer to the owner or operator of the Designated Facility and shall become the property of the Designated Facility Owner.

K. Third Party Beneficiary

The Designated Facility Owner shall be a third party beneficiary of this Agreement with all rights and remedies to enforce the Franchise Hauler Terms and other terms, covenants and conditions under this Agreement.

L. Exemption for Exempted Facility Materials

1. Subject to the Exempted Facility Material Limit and otherwise as provided in this Section 4.4 L, i) the requirement and obligation of the Contractor to deliver all Collection Materials to a Designated Facility shall not include or apply to Exempted Facility Materials delivered by Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials.

2. The Exempted Facility shall file with the City a quarterly report, in form required by the City and certified true, correct and complete by an owner or officer of the Exempted Facility, consistent with the obligations of the Exempted Facility under Section 4.4 L 7 hereof, stating i) the volume of all Solid Waste and Recyclable Materials, including without limitation the type and volume of Exempted Facility

Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials accepted, processed, recycled and disposed during the calendar quarter and ii) such other information the City may require.

3. The Exempted Facility shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 4.4 L, the rights of the Exempted Facility under this Section 4.4 L. Sections 4.4 L and 3.2 D 6 shall not be amended in a manner that would terminate, limit or restrict i) the right of any Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility, or ii) the right of any Exempted Hauler to deliver Exempted Drop Box Materials or Exempted Hauler Account Materials to the Exempted Facility as provided under Section 3.2 D 6 hereof, or iii) the right of the Exempted Facility to accept, process, recycle or dispose of the materials delivered under Sections 4.4 L 3 i) and ii) hereof, without the prior written consent of the Exempted Facility, which the Exempted Facility may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 4.4 L shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Facility Materials.

4. The rights of the Exempted Facility under this Section 4.4 L may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary for the acceptance, processing, recycling and disposal of the Exempted Facility Materials and the Exempted Facility owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Facility. If the Exempted Facility shall dissolve or otherwise cease business for a period equal to or more than one (1) year, the rights of the Exempted Facility under this Section 4.4 L shall terminate.

5. The Exempted Facility shall pay to the City in quarterly installments a host fee equal to two and one-tenth cents (\$0.021) for each cubic yard of all Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Materials that are accepted, processed, recycled or disposed at the Exempted Facility. The host fee payable under this Section shall be increased in proportion to changes in the Host Fee payable by the Designated Facility Owner under the Disposal Agreement.

6. The Exempted Facility shall be in default hereunder if the Exempted Facility shall i) fail to timely pay the host fee or fail to timely file with the City the reports, each as required under this Section 4.4 L, ii) accept, process, recycle or dispose of Exempted Facility Materials totalling in excess of one hundred five percent (105%) of the Exempted Facility Materials Limit for the Exempted Facility, iii) accept, process, recycle or dispose of Exempted Facility Materials more than the Exempted Facility Material Limit on two occasions in any consecutive five (5) year period, or iv) otherwise materially fail to comply with this Section 4.4 L. Upon thirty (30) days written notice of default by City and the failure of the defaulting Exempted Facility to cure such default, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the right to terminate the rights under this Section 4.4 L of the defaulting Exempted Facility.

7. The Exempted Facility will exercise industry standard, reasonable efforts to screen materials received from the Exempted Haulers and the Franchised Haulers to identify Exempted Facility Materials,

Exempted Drop Box Materials, Exempted Hauler Account Materials and other materials in order to i) prepare and file the reports required to be filed with the City under this Section 4.4 L, ii) comply with the Exempted Facility Materials Limit, iii) pay the host fee required under this Section 4.4 L and otherwise comply with the requirements of this Section 4.4 L.

4.5 SPECIAL SERVICES

In addition to and separate from Collection Services, Contractor may voluntarily offer certain "Special Services" within the City; provided, however, Contractor shall not violate the exclusive right of another service provider under any other Commercial Franchise Agreement. Contractor is not required under this Agreement to provide Special Services, but may elect to do so. Examples of such optional Special Services include: i) on-call Bulky Items pick-up or side-yard services for Customers; ii) the lease, sale and maintenance of Compactors; iii) provision of Compactors or Containers placed in Community Collection Locations for use of more than one customer on terms agreed to by Contractor and the collection, transportation and delivery of Collection Materials deposited in such Compactors or Containers; and iv) collection, transportation, delivery or other services related to Excluded Materials, Exempted Drop Box Materials and Excluded Recyclable Materials which have been Source Separated from other Solid Waste. It is anticipated that the additional Special Services (if any) that Contractor may elect to offer and the fees and charges for the Special Services will not be uniform with services or fees or charges offered by service providers under the other Commercial Franchise Agreements. Contractor may provide Special Services in the manner and at rates, fees and charges in an amount determined by Contractor, which shall not be included in the Gross Receipts. Contractor shall, however, maintain in full force and effect throughout the term of this Agreement a current business license from the City as it relates to provision of Special Services.

ARTICLE 5 OPERATIONS

5.1 CUSTOMER INFORMATION AND PUBLIC EDUCATION

Contractor is responsible for the distribution, preparation, reproduction and mailing of educational Information kits for new Customers which describe Contractor's Collection Services, including without limitation information about the various available Containers, Rates, charges, and Single Stream Recycling of Source Separated Recyclables and related Customer responsibilities. Contractor shall distribute the information kits to Customers and shall provide notice to Customers of its commencement of Collection Services under this Agreement at least thirty (30) days prior to the commencement of Collection Services to the Customer.

5.2 CUSTOMER SERVICE

Contractor shall maintain and provide to all Customers a telephone number for Customer service, and shall provide all telephonic services specified in this Section 5.2. Contractor shall install and maintain telephone equipment, and shall have on staff a sufficient number of dedicated service representatives reasonably necessary to handle customer service calls. Such dedicated customer service representatives

shall be available to answer calls from 8 A.M. to 5 P.M., Monday through Friday. Contractor shall also maintain an after-hours telephone message system to record calls received outside Contractor's normal business hours. Contractor shall provide the City a means of contacting a representative of the Contractor on a twenty-four (24) hour basis.

5.3 SERVICE COMPLAINTS

Contractor shall maintain computer records of all oral and written service complaints registered with Contractor from Customers receiving Collection Services ("Complaint Record"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints as provided in Section 5.4 hereof. Contractor shall record the Complaint in the customer file contained in the Contractor's customer database, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. City has the right under this Agreement to inspect the Complaint's made against Contractor upon written request.

5.4 OMBUDSMAN; COMPLAINT RESOLUTION

A. Contractor shall designate and maintain an Ombudsman for the duration of this Agreement. Contractor shall notify the City of the name and title of the person serving as Contractor's Ombudsman. The Ombudsman must be a company official who does not directly or indirectly report to any person who manages the Collection Services, or any Customer account, on a day-by-day basis. On an ongoing basis, Contractor shall immediately notify the City when an Ombudsman is replaced.

B. If, for any reason, a dispute arises between Contractor and a Collection Services customer that is not resolved between Contractor and the Customer to the City's reasonable satisfaction, the City, at its sole option, may i) submit the dispute to the Ombudsman who shall ensure that the matter is formally reviewed, considered, and resolved and/or responded to by the Contractor within seven (7) days or ii) make a determination of the dispute resolution without submitting the Ombudsman. If the Ombudsman shall not resolve the dispute to the City's reasonable satisfaction, the City may make a determination of the dispute resolution. The determination by the City of all Collection Services customer disputes shall be final and binding on Contractor and the customer. This Section 5.4 shall not apply to disputes between Contractor and any customer for customer account obligations or the payment or collection thereof.

C. This Section 5.4, however, does not in any way legally obligate the City to submit a dispute to the Ombudsman as a condition precedent to enforcing its rights hereunder in law or in equity, including the right to seek damages for breach, a decree of specific performance, injunctive relief or any other remedy that would be available to the City in the event of a breach, or threatened breach, of any provision of this Agreement by the Contractor, or any of the Contractor's successors or assigns.

5.5 HAZARDOUS AND OTHER EXCLUDED MATERIALS; CONTAMINATION OF APPROVED RECYCLABLE MATERIALS

A. General

If Contractor determines that waste placed in any Container for Collection or delivered to any facility is Hazardous Waste, Medical and Infectious Waste, or other Excluded Materials, in addition to all other rights available under this Agreement or at law or equity, Contractor shall have the right to refuse to accept such waste and to proceed as provided under his Agreement. Customer shall be contacted by Contractor and requested to arrange proper disposal. If Customer cannot be reached immediately, Contractor staff shall, prior to leaving the premises, leave a tag on the top of the Container indicating the reason for refusing to collect the waste.

B. Ownership of and responsibility for Hazardous Waste or other Excluded Material

Notwithstanding anything in this Agreement to the contrary, ownership of Hazardous Waste and other Excluded Materials shall not transfer to Contractor unless Contractor shall knowingly accept for collection and contract expressly in writing to accept, collect and transport such material. All such material shall remain the property of the Customer placing or attempting to place such material for Collection or disposal, and such Customer shall remain solely responsible for such materials, the proper and legal transportation and disposal thereof, the retrieval of such materials from any location (including without limitation a location to which Contractor may have transported them), and for any and all damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the generation, transportation, handling, cleanup, remediation or disposal of such materials.

C. Contamination of Approved Recyclable Materials

Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for Contaminated Approved Recyclable Materials placed in any Recycling Container, may charge for and disposed of such contaminated materials as Solid Waste, and may refuse to Collect such Contaminated materials.

5.6 PERSONNEL

Contractor shall furnish qualified drivers, mechanical, supervisory, clerical and other personnel as necessary to provide the Collection Services required by this Agreement in a safe and efficient manner and otherwise as provided in the Operating Standards.

5.7 VEHICLES AND EQUIPMENT

Contractor shall procure, maintain and replace a sufficient number of industry standard collection vehicles and other equipment to properly provide the Collection Services. All vehicles used in the performance of Collection Services i) shall be maintained in an operational, clean and sanitary manner to industry standards, ii) shall have appropriate safety markings and lights in accordance with current statutes, rules and regulations, iii) shall not allow liquid wastes to leak from the vehicle, iv) shall be

labeled with signs which clearly indicate the vehicle inventory number and customer service number of Contractor v) shall be painted a uniform color, provided Solid Waste collection vehicles and Recyclable Material collection vehicles may use different paint and color schemes and vi) shall be equipped with properly licensed two-way communication equipment. The Contractor shall maintain a base station or have communication equipment capable of reaching all collection vehicles.

5.8 CONTAINERS

A. Container Requirements and Ownership

The Contractor shall procure, maintain, own and provide to Customers a sufficient quantity of Containers to provide the Collection Services. Without the prior written consent of Contractor, which Contractor may withhold in its sole discretion, Customers shall not provide their own containers and shall use only Containers provided by Contractor for Collection Services; provided, however, Customers may provide Compactors for Collection Services performed by Contractor, which Collection Services may be provided for in the Scope of Services and Rates, provided such Compactors are compatible with Contractor's collection equipment. Contractor shall not be responsible for damage to any Compactors except to the extent caused by the gross negligence or intentional misconduct of Contractor.

Any Container damaged or missing on account of accident, act of nature or the elements, fire, or theft or vandalism by persons other than the Customer such that the Container does not comply with the requirements under this Agreement shall be repaired or replaced by Contractor at Contractor's cost within a reasonable time after request by Customer. Customers shall properly care for Containers provided for Customer's use, shall use reasonable efforts to protect such Containers from graffiti or negligent or intentional misuse, and shall not use such Containers for other than their intended purpose. In the event a Customer damages or requests a replacement Container as a result of Customer's damage, lack of reasonable care or intentional misuse, the Contractor may charge the Customer the reasonable cost of replacement of the Container, including a reasonable pickup and delivery charge. Containers shall be located on the Customer premises in a manner required hereunder and under applicable law, rules and policies and otherwise in a location providing appropriate access to the Container by Contractor and allowing safe and efficient collection by the Contractor. Containers shall not be placed by Contractor or Customer in any City Public Street. Ownership of all Carts and other Containers shall remain with Contractor at all times, except for Compactors provided by Customer.

B. Weight Limits of Containers

Cart weight, including all Collection Materials therein, shall not exceed sixty (60) pounds for the thirty five (35)-gallon size, one hundred-twenty (120) pounds for the sixty four (64)-gallon size and one hundred-eighty (180) pounds for the ninety six (96)-gallon size. No specific weight restrictions apply to Bins or Drop-Boxes, provided, however, the Contractor shall not be required collect, lift or remove any Container i) exceeding the safe working capacity of the collection vehicle as determined by Contractor or ii) which would cause the vehicle carrying the Container to exceed legal road weights.

C. Loading Containers: Access to Containers

All Collection Material must be placed by Customers i) only in Containers provided Contractor, ii) completely within the Containers provided by Contractor, such that the lid or other closure on such Container closes completely and iii) only in Containers designated for the type of Collection Material deposited in such Container. No Collection Materials may be placed for collection by Customer except in a Container provided by Contractor, including without limitation in Customer-supplied or other containers, in bundles or placed outside an appropriate Container. Customer must provide unobstructed, efficient access by Contractor to all Containers in a location approved by Contractor.

5.9 SPILLAGE

Contractor shall exercise reasonable efforts to keep Collection Materials collected by the Contractor completely contained in Containers and collection vehicles. Hoppers and tipplers on all collection vehicles shall be operated in a reasonable manner so as to minimize blowing or spillage of materials. Spillage of materials caused by Contractor shall be promptly cleaned up by the Contractor at Contractor's expense to the extent reasonably possible and necessary. However, it is understood that wind conditions in the Truckee Meadows make it impossible for the Contractor to prevent the blowing of all material. All vehicles used for Collection Services shall carry spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials reasonably sufficient to contain, control and, for minor events, appropriately clean-up any spillage or release of wind-blown materials, litter, or leaks of Contractor vehicle fluids or leachate.

5.10 CONTRACTOR PLANNING ASSISTANCE

The Contractor shall, upon request, make available a reasonable amount of site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the Contractor's Exclusive Service Area, and shall address the ability of Contractor to provide service in the Collection areas. Contractor will not charge for normal and reasonable site planning services. Contractor may charge a reasonable fee for will-serve letters.

5.11 SAFEGUARDING PUBLIC AND PRIVATE FACILITIES

The Contractor shall exercise reasonable efforts to protect public and private improvements, facilities and utilities whether located on public or private property, including street curbs. If such improvements, facilities, utilities or curbs are damaged due to the negligence or intentional misconduct of Contractor, the Contractor shall repair or replace the same. However, Contractor shall not be responsible for damage caused to persons or to public or private property to the extent caused by either or both i) the negligent or intentional acts of a Customer or others and ii) the failure of the Customer property to meet or comply with the requirements of this Agreement and applicable laws, rules and policies, including without limitation the failure of the Container enclosure, approach surface or surrounding area to meet industry standards.

5.12 INCLEMENT WEATHER, CONSTRUCTION AND OTHER SERVICE DISRUPTIONS

When weather, construction or other conditions reasonably prevent or impair Collection Services, Contractor may make reasonable adjustments to the Collection Services, including without limitation postponing Collection until the following regularly scheduled Collection, but shall continue Collection Services to the extent reasonably safe and efficient. No credits or refunds will be provided for missed Collections or other service limitations beyond the reasonable control of contractor. The Contractor shall notify the City of its collection plans and outcomes for each day that severe inclement weather is experienced as soon as practical that same business day.

5.13 VEHICLE DRIVE IN SERVICE

The Contractor shall offer drive-in service, at additional charge, to Customers' property that allows safe access, turn-around space, and clearance for service vehicles. Customers located in an area that does not allow safe access, turn-around or clearance for service vehicles will be provided service if Collection Materials are placed adjacent to the nearest public street or private road that provides safe access in a location approved by Contractor. In the event the Contractor determines a private road or drive cannot be safely negotiated or that providing drive-in service for Customers is impractical due to distance or unsafe conditions, the Contractor will evaluate on-site conditions and make a determination of its preferable approach for providing safe and appropriate service to the Customer. Contractor may require a damage waiver agreement or, upon 30 days prior written notice to the Customer and the City, decline to provide service to Customers where Contractor determines impractical or unsafe.

ARTICLE 6

CUSTOMER RATES

6.1 RATES

A. General Provisions

Contractor shall charge and collect from Customers for Collection Services the Rates provided on the Scope of Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services; provided, however, Contractor shall be entitled to charge other fees and charges for Special Services and other services and may charge other fees and charges for Customer noncompliance as provided in Section 3.10. If a Designated Facility refuses to accept Approved Recyclable Materials, Contractor may collect and deliver such materials for Disposal as Solid Waste and may charge the Rate applicable to Solid Waste for such Collection Services.

6.2 ADJUSTMENT OF RATES

A. CPI Rate Adjustment

i) So long as the Reno Disposal Agreement (as defined below) remains in effect, the Rates, excluding Transition Rates, for all Collection Services provided hereunder shall increase in the amount and at the time of each CPI Adjustment of the rates payable under Section 6.2 A of the Commercial Franchise Agreement between the City and Reno Disposal Company of even date or approximately even

date herewith ("Reno Disposal Agreement"). Contractor shall be a third party beneficiary with the right to enforce the rights of the Reno Disposal Company under Section 6.2 A of the Reno Disposal Agreement, which Section 6.2 A shall not be terminated or amended without the prior written consent of Contractor, which the Contractor may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 6.2 A i) shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials.

ii) In the event the Reno Disposal Agreement shall terminate for any reason, the CPI Adjustment to the Rates under this Section 6.2 A ii) shall apply:

Subject to the terms, conditions and limitations of this Section 6.2 A ii), the Rates, excluding Transition Rates, for all Collection Services shall increase annually during the Term and all Extension Terms in proportion to the percentage increase in the CPI over the preceding year, as provided below ("CPI Adjustment"). Adjustments to the Rates shall be made in units of One Cent (\$0.01) and fractions thereof shall be rounded to the nearest cent.

The first annual CPI Adjustment of the Rates shall occur April 1, 2014 (such date and each anniversary thereof during the Term, an "Adjustment Date"). The Rates shall be increased in proportion to the percentage increase in the CPI over the most recent twelve (12) month period ending on December 31 of the year preceding the Adjustment Date. In determining the CPI increases, Contractor may elect to increase the Rates applicable to particular or specific services or groups of services by more or less than the CPI, so long as the total increase in the Rates for all Collection Services is less than or equal to the increase in the CPI; provided, however, Contractor and City shall cooperate in good faith to determine the exact amount and allocation of such increases. The Contractor's calculations of the CPI Adjustment and the Return on Revenues described below shall be i) based on financial statements of Contractor, ii) certified true, correct and complete by the Contractor Representative and iii) provided to the City no later than March 15 of the year of the Adjustment Date. The adjusted Rates shall take effect on the Adjustment Date and shall apply for the ensuing year. If the CPI is changed or discontinued, it will be replaced by an index that would achieve as closely as possible to the same result as if the CPI had not been changed or discontinued.

The CPI Adjustment to the Rates shall be subject to the following limitations:

- a) The CPI shall not be less than zero percent (0%) or more than six percent (6%); and
- b) Commencing with the Adjustment Date occurring on April 1, 2017, in the event the annual Return on Revenue of Contractor for the three consecutive calendar years immediately preceding the Adjustment Date averages more than eight percent (8%) ("Return on Revenue"), using a three year rolling average, no CPI Adjustment shall apply to the Rates for the year in which such Adjustment Date occurs.

For purposes hereof, "Return on Revenues" shall mean net income divided by gross revenues and expressed as a percentage. Net income is determined by deducting from gross revenues all expenses,

which expenses include federal income taxes. Return on Revenue shall be calculated by Contractor in accordance with generally acceptance accounting principles, consistently applied, and otherwise in a manner substantially similar to the calculation of rate increases used under the Existing RFA (as defined in Section 11.23 hereof). The Rates of both service providers under both of the Commercial Franchise Agreements shall increase in the amount and at the time the Rates of Reno Disposal increase.

B. Other Adjustments to Rates

Because the Rates are Contractor's sole compensation for the Collection Services, the Rates must be sufficient to pay known and unknown costs that may increase over time. Accordingly, City and Contractor agree that, in addition to the CPI Adjustment and the other adjustments under this Section, the Rates shall be increased ("Rate Adjustment") in an amount necessary to compensate Contractor for:

1. Increases in costs or expenses resulting from a Change in Law, Change in Scope of Services or Increase in City Collection Services;
2. Increase in the Franchise Fee, Subsidy Fee or other fees required, initiated or approved by City or another federal, state or local governmental agency;
3. A change in the volume of Solid Waste or Recyclable Materials or other materials collected by Contractor hereunder that causes a material increase to Contractor's costs or expenses or material decrease in Contractor's revenues, including without limitation changes caused by a change to the Exclusive Service Area, changes to the requirement that all Customers in the Exclusive Service Area have mandatory Collection Services as provided under this Agreement and annexation or consolidation of outlying or noncontiguous area in the City included in the Exclusive Service Area;
4. Increase in the fees, expenses or costs to Contractor for the transfer, processing, transportation, recycling, or Disposal of Solid Waste and Recyclable Materials charged by the Designated Facilities under the Disposal Agreement, except to the extent such Increase was already factored into the CPI increase; and
5. Any other circumstance, cause or reason not within the reasonable control of Contractor, including without limitation a Force Majeure event, that causes an increase in costs or reduction in revenue of Contractor, such that the Rates do not fairly compensate Contractor for the Collection Services.

Contractor may initiate a Rate Adjustment under this Section 6.2(B) not more than once annually, beginning no earlier than January 1, 2014. To obtain a Rate Adjustment, Contractor shall prepare and submit to the City a rate adjustment statement setting forth the nature of the event causing the increase in costs and a calculation of the increased costs and the Rate Adjustment necessary to offset such increased costs, together with the Return on Revenue. The City may request any and all documentation and data reasonably necessary to evaluate the Rate Adjustment and shall confirm or deny (with detailed written explanation of the reason for any denial and an alternative Rate Adjustment proposal by City) within ninety (90) days of receipt of the statement from Contractor, which

confirmation shall not be unreasonably withheld, conditioned or delayed. Rate Adjustments shall include an amount sufficient to pay the Increase in costs incurred by Contractor, plus the Return on Revenue. Contractor shall provide written notice of proposed Rate Adjustments to service providers under all other Commercial Franchise Agreements concurrent with submission of the Rate Adjustment proposal to the City.

C. Rate for Outlying or Non-Contiguous Areas

As a result of annexation or consolidation of the City limits occurring after the Effective Date, the Rates may not fairly or accurately reflect the cost of providing Collection Services to Customers in such outlying or non-contiguous areas. In such event, at the City's election, i) the Rates shall be increased to pay the additional cost of providing Collection Services to such areas and otherwise fairly compensate Contractor for providing such Collection Services or ii) a special rate for such areas may be adopted under this Agreement. Contractor may initiate a Rate Adjustment or special rate adoption under this Section using the same procedures provided for Rate Adjustments in Section 6.2 (B) above and the Rate Adjustments under this Section 6.2 shall apply to any special rates established under this Section 6.2 (C).

D. Other Commercial Franchise Agreements

It is the intent of the City to maintain reasonably consistent Rates in the Exclusive Service Areas under all Commercial Franchise Agreements in the City. Therefore, a Rate Adjustment under any Commercial Franchise Agreement shall cause a Rate Adjustment under all other Commercial Franchise Agreements in the amount reasonably necessary to pay the Increase in costs or expenses incurred by the service providers under such other Commercial Franchise Agreements. To obtain such Rate Adjustment, the service provider(s) under the other Commercial Franchise Agreements shall submit a statement for confirmation by City within 90 days after notice of confirmation of the initial Rate Adjustment, which statement shall be submitted and processed in the same manner provided in Section 6.2 (B) above. This Section shall not apply to Special Services under Section 4.5 above.

ARTICLE 7

BILLING; COLLECTION AND PAYMENT

7.1 BILLING AND COLLECTION

Contractor is responsible for billing Customers and collecting Rates Revenues for all Collection Services. Billing for all Collection Services other than Drop Box services shall be in advance. Billing for Drop Box services may be in advance or in arrears, as determined by Contractor. All payments shall be due and payable on the first day of each monthly billing cycle and shall be delinquent if not paid on or before the date thirty (30) days thereafter. Contractor shall be entitled to charge a late fee equal to the greater of Twenty Five Dollars (\$25.00) or ten percent (10%) of the delinquent amount and interest at one and one-half percent (1.5%) per month on all delinquent accounts. Contractor shall be entitled to terminate any delinquent Customer's account after thirty (30) day's written notice. Contractor shall be entitled to charge Customers other fees and charges, including without limitation NSF check charges and

collections costs, and shall be entitled to require a deposit before provision of Collection Services. All Rates, charges, penalties, interest and other amounts due to Contractor for Collection Services shall constitute an obligation of the owner of the property (as shown in the Washoe County Assessor's Office records) to which such services are being provided or upon which is located any Commercial Activity for which such services are being provided. An owner may request that services be provided and billed to a tenant or other occupant of the property, but owner shall not be relieved from the primary obligation to pay all amounts due for such service and Contractor shall have no obligation to first proceed for collection against the tenant or other occupant. Contractor shall be entitled to establish rules, procedures and requirements for Customers subscribing to Collection Services and for collecting any amount payable for the Collection Services, including without limitation the right to collect security deposits and to exercise lien rights. Nothing in this Section shall limit any rights or remedies of Contractor, including without limitation the right to enforce the terms of this Agreement, the Reno Municipal Code relating hereto and its customer service agreements or to collect any all amounts due for Collection Services and other services.

7.2 RECEIPT OF PAYMENT

Contractor shall record all amounts received from Customers into an appropriate accounting account. All payments of Customer billings shall be made by Customer check, money order, cashier's check credit card or autopay; provided no cash shall be accepted.

7.3 MONTHLY PAYMENT OF FRANCHISE FEES AND SUBSIDY FEE

On or before the twenty-fifth (25th) day of each calendar month, Contractor shall prepare and submit a monthly statement to City for the prior month, together with the Franchise Fees and Subsidy Fee payable to City for the prior calendar month. The monthly statement shall include the following information and calculations as supporting documentation for the Franchise Fee and Subsidy Fee payment:

A. Reported Revenues

The amount of Rate Revenues for the month, along with detail describing, at a minimum, the total number of accounts for each applicable monthly charge and the total number of Customers billed for each such amount.

7.4 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS

Contractor shall solely bear all expenses and losses related to collecting or failing to collect bad debt from delinquent Customer accounts

7.5 AUDIT OF BILLINGS AND FINANCIAL REPORTS; REVIEW OF COSTS

City may at its sole discretion select a qualified independent firm to perform an audit of Contractor's records and data directly relevant to matters relating to Contractor's performance of its obligations under this Agreement, as set forth in this Article. Contractor shall, upon request of written notification

by City, permit the audit and inspection of all of such records and data by the firm specified by City. The frequency and timing of the audits shall be determined at City's discretion, but shall not exceed a maximum of two (2) audits during the Base Term and one (1) during any five year extension of the Term. City shall be responsible for payment of all audits during the Base Term of the Agreement and any Extension of the Agreement. City shall provide Contractor thirty (30) days' notice of each audit. City shall determine the scope of any audits based on the general requirements specified below and may elect to conduct either one or both of the following types of audit:

- A. **Audit of Billings.** The auditor shall review the billing practices of Contractor with relation to delivery of Collection Services. The intent of this audit is to use sampling to verify that Customers are receiving the type and level of service for which they are billed.
- B. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and data submitted by Contractor pursuant to Article 8. The purpose of this audit is to verify that Contractor is correctly calculating Rate Revenues, and is properly remitting Franchise Fees and Supplemental Franchise Fees.

ARTICLE 8 RECORD KEEPING, REPORTING AND INSPECTION

B.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records and accounts, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles, including without limitation records of all Rate Revenues, Gross Receipts, Franchise Fees and Subsidy Fees. Such records shall be subject to audit, copy, and inspection by City Representative or designee at any time during normal business hours upon reasonable prior written notice. Contractor shall maintain and preserve all cash, billing and Disposal records for a period of not less than five (5) years following the close of each of Contractor's fiscal years.

B. Collection Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste Collected and delivered under the terms of this Agreement; and (ii) Recyclable Materials, by type, Collected or Disposed;

C. Customer Complaint Record

Contractor shall maintain the customer complaint record pursuant to Article 5.

D. Other Records

Contractor shall maintain all other records required under other Sections of this Agreement.

8.2 ANNUAL AND QUARTERLY REPORTING

A. General

Annual and quarterly reports shall be submitted to the City within forty five (45) days after the end of the reporting period which include:

1. A summary of the prior period's Rate Revenues, Franchise Fees and Subsidy Fee;
2. Account data, including the number of accounts, amount and type of materials deposited in each Designated Facility and customer count by type of service;
3. Amount (in tons) and type of materials Collected and amount delivered to each Designated Facility;
4. Amount and type of materials Diverted;
5. Customer count by type of service

8.3 INSPECTION BY THE CITY

City Representative, or designee(s), shall have the right to observe and review any of Contractor's records, operations, and equipment, relevant to a determination of Contractor's compliance with the requirements of this Agreement pertaining to the provision of Collection Services, and to enter premises during normal business hours for the purposes of such observations, and review at any time upon not less than twenty four (24) hours prior written notice. City Representative shall notify Contractor's representative upon arrival. City Representative will comply with all policies and procedures of Contractor when on Contractor's premises. Contractor may condition any such entry in or upon Contractor's premises, by City Representative or designee(s), on the prior execution of a waiver of any liability of Contractor for any injury or damages suffered by City Representative or designee(s), or their respective heirs and assigns, or others claiming by, through or under them, arising out of or relating to such entry.

ARTICLE 9

INDEMNITY, INSURANCE, PERFORMANCE SECURITY

9.1 INDEMNIFICATION OF THE CITY

Contractor agrees to and shall indemnify, defend and hold harmless City its officers, officials, employees, volunteers, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, damages, loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property) to the extent caused by (i) the failure of Contractor to comply with this Agreement and ii) the performance by Contractor, its officers, agents, employees, and subcontractors of the Collection Services or other obligations of Contractor

hereunder, except in each case to the extent caused by the default, negligence or intentional misconduct of City. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds, and the Contractor shall be liable hereunder to pay only the amount of damages, if any, that exceeds the total amount that all insurance has paid for the damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

9.2 INSURANCE SCOPE AND LIMITS

A. During the Term of this Agreement Contractor shall procure and maintain the following minimum insurance coverage, to the extent available:

1. Commercial General Liability: Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per-occurrence basis.

2. Automobile Liability: Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement.

3. Worker's Compensation: A policy of Worker's Compensation insurance as may be required by the Nevada Revised Statutes.

B. Other Insurance Provisions

1. The insurance policies shall contain, or be endorsed to contain, the following provisions:

a. City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations.

b. Contractor's insurance coverage shall be primary insurance in relation to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer or reduced in scope or amount except after thirty (30) days prior written notice has been given to City.

d. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Contractor for City.

C. **All Coverages.** Each insurance policy required by this Article shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

D. **Verification of Coverage**

Contractor shall furnish City, within thirty (30) days after the Effective Date and upon request of City thereafter, with original certificates evidencing coverage required under this Section 9.2.

E. **Acceptability of Insurers**

All insurance policies required by this Article shall be issued by admitted insurers in good standing with and licensed to do business in the State of Nevada, and possessing a current A.M. Best, Inc. rating of B+ FSC VIII or better.

F. **Subcontractors**

Contractor 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 in this Section.

G. **Liability Coverage Amounts**

Not more often than every five (5) years during the Term, City shall be entitled to increase the amount of liability insurance coverage required under this Section 9.2 if such coverage is below amounts generally accepted for similar services. In that event, City and Contractor will cooperate in good faith to establish the amount of liability insurance coverage generally accepted for similar services and Contractor will provide such liability coverage amounts.

9.3 INSTRUMENT FOR SECURING PERFORMANCE

Not less than thirty (30) days after the Effective Date, Contractor shall file with City an instrument, in form reasonably acceptable to City, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any

and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractor's default under this Agreement.

ARTICLE 10 DEFAULT AND REMEDIES

10.1 DEFAULT BY CONTRACTOR

A. Any of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

1. If Contractor shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless Contractor shall materially cure or remedy such failure within thirty (30) days after written notice by City to Contractor specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such thirty (30) day period, Contractor commences cure or remedy within such 30 day period and diligently prosecutes the same to completion.

2. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, or other similar law, or has an involuntary bankruptcy action filed against it which is not dismissed within 90 days of notice to Contractor; Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property; or Contractor shall make any general assignment for the benefit of Contractor's creditors.

3. Contractor ceases to provide Collection Services as required under this Agreement for a period of five (5) consecutive Working Days or more, for any reason within the reasonable control of Contractor, such cessation poses a material threat to the health, safety and welfare of the public and City shall have provided not less than three (3) Working Days written notice of such default.

10.2 CITY REMEDIES FOR EVENT OF DEFAULT BY CONTRACTOR

A. Upon an uncured Event of Default by Contractor, City shall have the right to:

1. Terminate the Agreement in accordance with Section 10.3.

2. In addition to, or in lieu of termination, exercise all of its remedies in accordance with this Article and any other remedies at law and in equity to which City shall be entitled, including without limitation the right to pursue the performance security under Section 9.3 and make an available claim under any insurance policy.

3. At its discretion waive Contractor's default in full or in part.

10.3 TERMINATION BY CITY

Subject to Dispute Resolution in Section 11.8, City shall only exercise its right to terminate this Agreement through action of the Reno City Council at a regularly scheduled (or special) public meeting of that body. Contractor shall be given reasonable prior notice of such meeting, a written statement of the factual and legal basis of the claimed Event of Default and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting and City shall provide to Contractor copies of all records and information in City's possession or control relating to the Event of Default giving rise to such termination.

10.4 CONTRACTOR REMEDIES; TERMINATION

Contractor shall be entitled to terminate this Agreement or pursue specific performance of this Agreement if City shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless City shall materially cure or remedy such failure within sixty (60) days after written notice by Contractor to City specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such sixty (60) day period, City commences cure or remedy within such 60 day period and diligently prosecutes the same to completion. Contractor shall have the right to terminate this Agreement upon ninety (90) days written notice to City if Applicable Law prohibits, materially limits or makes uneconomical the Collection Services as contemplated in this Agreement. Except as provided in Section 11.8, nothing herein shall limit Contractor's rights and remedies available at law or equity for default by a party under this Agreement.

ARTICLE 11

MISCELLANEOUS AND OTHER AGREEMENTS OF THE PARTIES

11.1 OTHER EXCLUSIVE SERVICE PROGRAMS; RIGHT OF FIRST REFUSAL

In the event City determines that a specific program should be implemented for collection or transportation of Food Waste or Green Waste or for any other Solid Waste or Recyclable Materials, other than as provided in this Agreement, to serve the needs of the public in the City, City will notify Contractor and Contractor and City will discuss and negotiate in good faith to i) develop and implement the program and the franchise fees, rates and other matters related thereto and ii) reach agreement on the terms and conditions of a service agreement relating thereto between the City and Contractor. If Contractor and City are unable to reach agreement on the terms and conditions of the service agreement within 90 days of the City notice, City hereby grants to Contractor the right of first refusal to match and accept a) the terms and conditions of any contract offer by the City to other service providers for such a program ("City Offer") and b) the terms and conditions offered by another service provider to the City that the City is willing to accept relating to such a program ("Third Party Offer"). If the City makes a City Offer or receives a Third Party Offer the City is willing to accept, City shall give Contractor prompt written notice with a copy of thereof. Contractor shall have a period of thirty (30) days to provide written notice to City that Contractor will accept the terms of either the City Offer or the Third Party Offer. If Contractor provides such notice, City and Contractor will enter into a service agreement on the terms and conditions of the offer accepted. If Contractor does not timely provide the acceptance

notice, the City shall be free to contract with another service provider on the same terms and conditions as stated in the City Offer or the Third Party Offer, as applicable. In the event the City does not consummate an agreement with another service provider on the same terms and conditions within 120 days of the expiration of the 30 day notice period, then the right of refusal shall revive and Contractor shall have the same right of first refusal to accept any subsequent changed terms and conditions, City Offer or Third Party Offer.

11.2 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Collection Services as an independent contractor engaged by City and not as an officer or employee of City or as a partner or joint venturer with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Collection Services and all persons performing such services on behalf of Contractor. Neither Contractor nor its officers, employees, subcontractors, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

11.3 FORCE MAJEURE

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, public or private construction activities, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, work stoppages or lockouts, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

11.4 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost (subject to rate adjustment provisions elsewhere in this Agreement), comply with all Applicable Laws, including all permit requirements for Collection Service.

11.5 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

11.6 JURISDICTION AND VENUE

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of Nevada, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in City of Reno.

11.7 ASSIGNMENT

A. Definition

For purposes of this Section 11.7, the term "Assignment" shall include, but not be limited to: (i) a transfer by Contractor to another person or entity of all of Contractor's rights, duties and obligations under this Agreement, including without limitation subcontracting of all or a portion of Contractor's obligations hereunder; (ii) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of Contractor; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of Contractor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

B. City Consent to Assignment; Written Assignment and Assumption

Except for Assignments to a Permitted Transferee and except as provided in this Article or otherwise in this Agreement, Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the assignee shall be deemed suitable and City shall consent to an Assignment if the Assignee meets the Assignee Qualifications (as defined below). A formal written instrument of assignment shall be executed by Contractor and an approved assignee or Permitted Transferee, which shall provide for the assignee's assumption and acceptance of all terms and conditions of this Agreement, including all duties and obligations imposed thereby, and also the assignee's express adoption of the representations of Contractor set forth herein as its own representations. Assignments to Permitted Transferees shall not require the consent of the City.

C. Qualifications of Assignee

A proposed assignee shall be deemed suitable and City shall consent to an Assignment to a proposed assignee upon submission of reasonably satisfactory evidence or support (i) that the proposed assignee has at least five (5) years of Solid Waste and Recyclable Materials collection experience similar to the Collection Services; ii) that the proposed assignee currently or recently conducted Solid Waste and Recyclable Materials collection on a scale reasonably equal to or exceeding the scale of operations

conducted by Contractor under this Agreement; (iii) the proposed assignee conducts its operations in substantial accordance with accepted industry standards (iv) the proposed assignee conducts its Solid Waste and Recyclable Materials management practices in substantial compliance with all applicable Federal, State, and local laws; and (v) the proposed assignee has the reasonable financial capability and other capabilities to perform the obligations of Contractor under this Agreement to industry standards and to otherwise comply with all terms, covenants and conditions of this Agreement applicable to Contractor (collectively, the "Assignee Qualifications").

D. Transition

If City consents to an assignment, Contractor shall cooperate fully with City and subsequent Contractor(s) or subcontractor(s), and shall provide all appropriate assistance to ensure an orderly transition. Such cooperation and assistance shall include, but not be limited to, Contractor providing, to City and the subsequent Contractor(s) or subcontractor(s), all route lists and billing information listing accounts, and using Contractor's reasonable efforts to avoid and minimize any disruption or inconvenience to Customers.

11.8 DISPUTE RESOLUTION

A. Continue Performance

In the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

B. Mediation

Any unresolved dispute arising between the Parties under this Agreement after negotiation in good faith shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. In the absence of judicial jurisdiction to appoint a mediator, mediation will be before a panel composed of a mediator selected by each party and a third mediator selected by the two mediators so selected. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue any right or remedy available at law or equity, except as expressly and specifically limited under this Agreement.

11.9 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry,

physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

11.10 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

11.11 PARTIES IN INTEREST

Except as expressly provided to the contrary herein, nothing in this Agreement, whether express or implied, is intended or shall be deemed to confer any rights on any persons other than City and Contractor and their representatives, successors and permitted assigns.

11.12 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision, nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

11.13 NOTICE

A. Notice Procedures

Except as otherwise specifically provided herein, all notices, demands, requests, proposals, approvals, consents and other communications made in connection with this Agreement shall be in writing and shall be effective when personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to CITY:

City of Reno
Office of the City Manager
P.O. Box 1900
One East First Street
15th Floor
Reno, Nevada 89505
Attention: City Manager

If to Contractor:

Castaway Trash Hauling, Inc.
P.O. Box 51930
Sparks, Nevada 89435
Attention: Spike Duque, President

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section 11.13.

B. Facsimile Notice Procedures

1. Facsimile notice may be substituted for written notice with the following limitations:

a. Facsimile notice shall be considered valid and delivered during standard business hours and days, Monday through Friday, at such time as an authorized representative of the receiving Party acknowledges receipt in writing or by facsimile acknowledgement to the sending party.

b. Written notice, in accordance with Paragraph A, must follow any facsimile notice, in order for the facsimile notice to be considered valid notice hereunder.

2. If above conditions are met, facsimile notice will be considered effective from date and time of transmission as indicated on receiving Party's original copy of the transmission.

3. Facsimile notices must be sent to the following addressees:

If to City: City Manager
Fax number: (775)334-2020

If to Contractor: Spike Duque, President
Fax number: (775) 342-6262

4. The facsimile number to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section 11.13.

11.14 ACTION BY CITY; CITY AND CONTRACTOR REPRESENTATIVE

Subject to the restrictions provided in this Section 11.14, whenever action or approval by City is required under this Agreement, the City Council hereby delegates to the City Representative the authority to act on or approve such matter unless specifically provided otherwise in this Agreement or unless the City Representative determines in his or her sole discretion that such action or approval requires referral to the City Council. The City Representative will have the authority to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to this Agreement, including without limitation approving Rate Adjustments, agreeing with Contractor to change the Approved Recyclable Materials and extensions of time to perform, so long as such actions do not materially change the scope or nature of the Collection Services or the exclusive right and obligation of Contractor to perform the Collection Services. All actions of City Representative are subject to appeal by Contractor to the City Council and Contractor is entitled to rely on all actions of the City Representative. Any alteration, change or modification of or to this Agreement, in order to become effective, will be made in writing and in each instance signed on behalf of each party. Contractor shall, by the Operative Date, designate in writing a responsible official, or duly authorized agent, who shall serve as the representative of Contractor in all

matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his/her authority to bind Contractor. City may rely upon action taken by such designated representative as action of Contractor. Notwithstanding anything to the contrary in this Section 11.14, the City Council shall have the sole authority to take the following actions; i) termination of this Agreement under Section 10.3 of this Agreement, ii) Rate increases in excess of three percent (3%) in excess of the CPI increase and iii) any increase or decrease of the Franchise Fee.

11.15 ENFORCEMENT

Contractor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this Agreement and City ordinances related thereto, including without limitation defending challenges thereto and to prevent violations by third parties thereof (including without limitation the exclusive right and obligation to provide the Collection Services in the Exclusive Service Area). City shall reasonably cooperate in such enforcement; provided, however, City shall not be required to incur third party costs in connection therewith. City will adopt and enforce appropriate ordinances to implement this Agreement and otherwise relating to the collection and transportation of Solid Waste and Recyclable Materials.

11.16 GOOD FAITH

Each Party's interpretation and performance under this Agreement shall be reasonable and consistent with the intent to deal fairly and in good faith with the other Party hereto. Each party's exercise of any discretion hereunder shall be made in good faith and consents and approvals shall not be unreasonably withheld, conditioned or delayed, unless expressly stated to the contrary herein.

11.17 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Contractor and City with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

11.18 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

11.19 INTERPRETATION

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

11.20 MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of both Parties without, in any way, affecting the remainder.

11.21 SEVERABILITY

If any provision of this Agreement is for any reason found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision. All other provisions of this Agreement which are otherwise lawful shall remain in full force and effect, and shall be enforced as if such invalid or unenforceable provision had not been contained herein, and to this end the provisions of this Agreement are hereby declared to be severable.

11.22 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original.

11.23 EXISTING FRANCHISE AGREEMENT

The existing First Amended City of Reno Garbage Franchise Agreement dated August 9, 1994, as amended ("Existing RFA"), will remain in place and effective until the later of i) the Effective Date of this Agreement and ii) the date all of the Disposal Agreement and the other City Franchise Agreements (each as defined in the Disposal Agreement), in form acceptable to Contractor and City, are executed and become effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF RENO

a political subdivision of the State of Nevada.

By DAVID L. NAZZI Date 11-07-12

for Robert A. Cashell, Sr., Mayor

Attest:

By Lynnette R. Jones
Lynnette R. Jones, City Clerk



APPROVED AS TO LEGAL FORM:

By [Signature]
City Attorney's Office

CONTRACTOR

Castaway Trash Hauling, Inc., a Nevada corporation

By: *Spike Dugue*

Title: PRESIDENT

Date: 12-3-12

List of Exhibits:

- | | |
|------------|--|
| Exhibit A | List of Approved Recyclable Materials |
| Exhibit B | Exclusive Service Area of Contractor |
| Exhibit C | Operating Standards |
| Exhibit D | Scope of Services |
| Schedule 1 | List of Exempted Haulers and list of Exempted Hauler Accounts and Customers for each Exempted Hauler |

EXHIBIT A
List of Approved Recyclable Materials

Exhibit B
Exclusive Service Area of Contractor

111312

Exhibit C
Operating Standards

Exhibit D

Scope of Services

The following services are provided by the Contractor:

- 1. Design and construction of the project.
- 2. Construction of the project.
- 3. Construction of the project.
- 4. Construction of the project.
- 5. Construction of the project.
- 6. Construction of the project.
- 7. Construction of the project.
- 8. Construction of the project.
- 9. Construction of the project.
- 10. Construction of the project.

Exhibit D
Scope of Services

The following services are provided by the Contractor:

- 1. Design and construction of the project.
- 2. Construction of the project.
- 3. Construction of the project.
- 4. Construction of the project.
- 5. Construction of the project.
- 6. Construction of the project.
- 7. Construction of the project.
- 8. Construction of the project.
- 9. Construction of the project.
- 10. Construction of the project.

SCHEDULE 1
List of Exempted Haulers and
List of each Exempted Hauler's Exempted Hauler Accounts

Exempted Haulers include:

1. Castaway Trash Hauling, Inc., a Nevada corporation
2. Waste Management of Nevada, Inc., a Nevada corporation, sometimes dba B & L Disposal and RSW Recycling.
3. A Team Trash Hauling, LLC, a Nevada limited liability company
4. Carmen's Cleaning
5. Empire Contractors, Inc., a Nevada corporation and Empire Waste Systems
6. Patrick's Construction Cleanup
7. AMCB, LLC, a Nevada limited liability company, dba Rubbish Runners
8. Trashco
9. Olcese Construction

Exempted Hauler Accounts for Each Exempted Hauler (Provide the Name and Address of the Customer for each Exempted Hauler Account):

1. Castaway Trash Hauling, Inc. (No Exempted Hauler Accounts)
2. Waste Management of Nevada, Inc. (No Exempted Hauler Accounts)

Attach list of Exempted Hauler Accounts for each Exempted Hauler

In the event the Exempted Hauler Accounts for Each Exempted Hauler are not reviewed and approved by the City and listed on this Schedule 1 on the Effective Date of this Agreement, each Exempted Hauler will diligently cooperate in good faith with the City and will within 15 days after request from City provide to the City all information requested by the City and reasonably necessary or appropriate for the City to review, approve and list the Exempted Hauler Accounts on this Schedule 1. The Exempted Hauler Accounts will be approved by the City and listed on this Schedule 1 within 60 days after the Effective Date. Within such 60 day period, the City will obtain the exact legal name of each Exempted Hauler that is an entity or the names of all owners of any Exempted Hauler that is not an entity, along with the dba name for each Exempted Hauler, each of which shall be listed on this Schedule 1. After completion as provided in this paragraph, this Schedule 1 shall be attached to this Agreement and shall become a part hereof.

EXHIBIT A
COMMERCIAL FRANCHISE AGREEMENT
APPROVED RECYCLABLE MATERIALS

1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the CONTRACTOR and the City.

To qualify as Approved Recyclable Materials, all Recyclable Materials must be reasonably clean and otherwise in a condition acceptable to commercial recycling facilities. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) 10% or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for placement of Contaminated Recyclable Materials in a Recycling Container for Collection, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

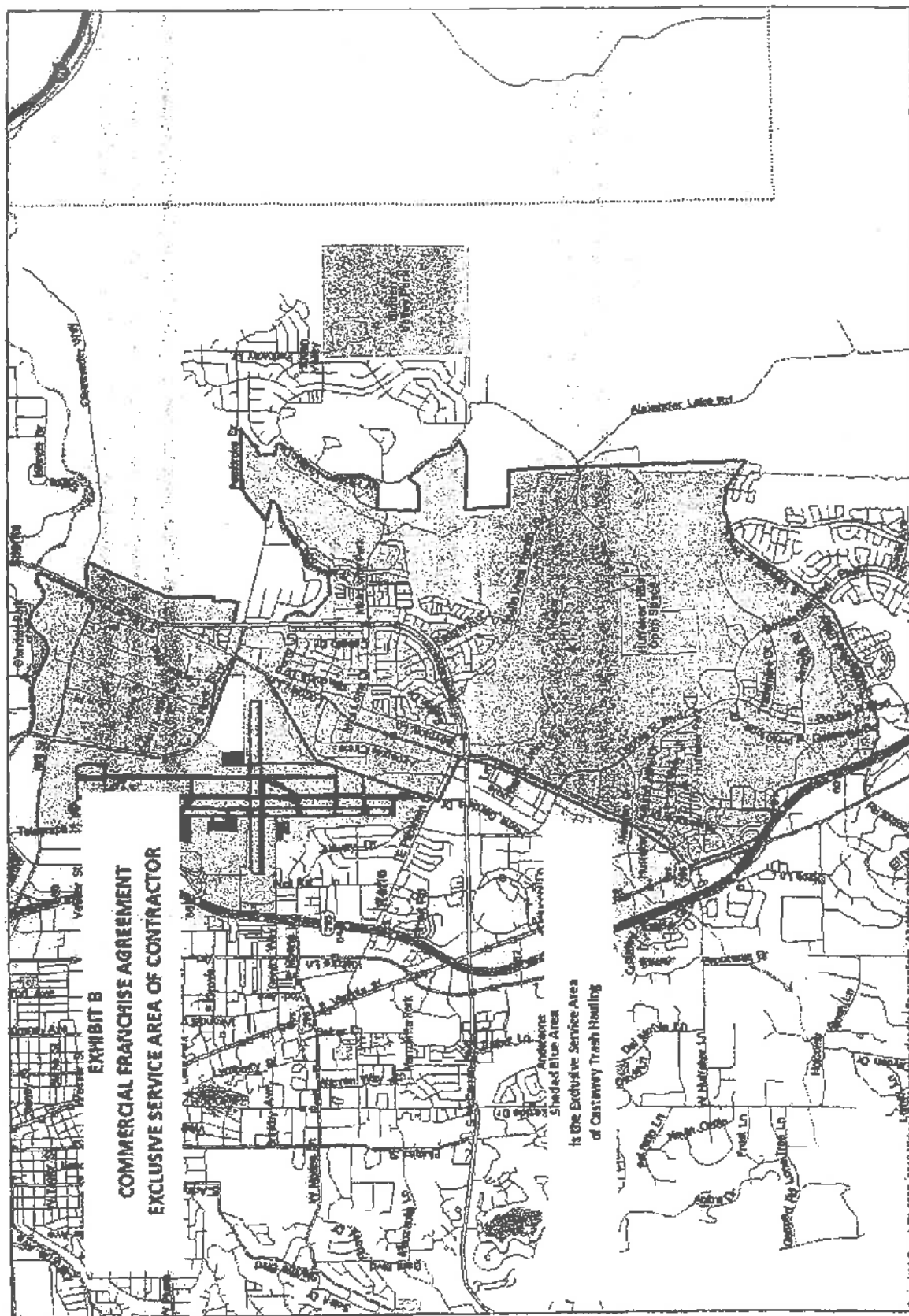


EXHIBIT C
COMMERCIAL FRANCHISE AGREEMENT
OPERATING STANDARDS

1. Contractor Standards

- A. Contractor shall perform the Collection Services in a commercially reasonable manner using industry standard practice for comparable operations.
- B. Color and appearance of collection vehicles, containers, employee uniforms, and public education materials provided by Contractor will be designed to provide a standard representation of the company. If subcontractors are used, a distinct but uniform appearance of the subcontractor's equipment, vehicles, and personnel is required.

2. Vehicles and Equipment

Contractor shall furnish sufficient vehicles and equipment to provide all services required under this Agreement. Contractor's name, phone number, and vehicle identification number shall be visibly displayed on its vehicles in letters and figures. Contractor shall maintain all of its vehicles and equipment in a reasonably safe, clean, painted and operable condition. All Collection vehicles must be registered with the Department of Motor Vehicles of the State of Nevada. Vehicles shall be operated in compliance with all applicable safety and local ordinances. Collection vehicles shall be operated in a manner to minimize or prevent spilling, dripping or blowing of materials from the vehicle.

3. Personnel

A. Employee Conduct

Contractor shall reasonably train and supervise its employees i) to provide professional and courteous service to Customers and to otherwise deal with the public in a professional and cautious manner and ii) to dress in clean uniform shirts with suitable identification.

B. Employee Operational Requirements

Contractor's employees shall i) not place Containers in a manner that blocks any driveway, sidewalk, mailboxes, or street, ii) shall close all gates opened by them in making collections, unless otherwise directed by the customer, and iii) shall exercise reasonable care to perform Collection Services in a reasonably quiet manner.

C. Driver Qualifications

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the Nevada Department of Motor Vehicles. All Collection vehicle drivers shall also complete Contractor's in-house training program, which includes education on the use of Collection vehicles, Collection programs, and route information as well as Customer service practices and safety information.

D. Background Checks

To the extent permitted by Applicable Law, Contractor shall, prior to hiring a driver, request a report or reports from the State of Nevada indicating whether (i) the individual is listed by the State as a sexual predator and (ii) the individual has a felony record of violence with the State. Contractor will not employ an individual as a driver if those reports show that the individual is so listed or has such a record unless the reports are demonstrated to be erroneous. Once each calendar year, Contractor shall request from the Nevada Department of Motor Vehicles a report of violations committed by drivers employed by Contractor and shall take such action, if any, as Contractor deems appropriate based on such report. Contractor may satisfy these requirements with a background check performed by a third-party in the business of providing such background checks. Contractor shall be entitled to rely without further inquiry on the reports obtained from the State of Nevada or such third-party.

E. Employee Safety Training

Contractor shall provide reasonable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection or who are otherwise directly involved in such services. Contractor shall train its employees involved in collection to identify and not to collect excluded waste.

F. No Gratuities

Contractor shall direct its employees not to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection Services under this Agreement. Contractor may permit its employees to accept holiday gifts.

Exhibit D
Commercial Franchise Agreement
Scope of Services

Bin Collection Services

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 132.15	\$ 224.27	\$ 314.46	\$ 406.78	\$ 496.91	\$ 586.91	N/A
3 Cubic Yards	\$ 157.82	\$ 273.79	\$ 399.46	\$ 530.69	\$ 615.30	\$ 729.91	\$ 919.85
4 Cubic Yards	\$ 187.40	\$ 323.13	\$ 462.40	\$ 594.21	\$ 733.67	\$ 868.02	\$ 1,093.52
6 Cubic Yards	\$ 272.32	\$ 480.85	\$ 674.39	\$ 865.29	\$ 1,119.79	\$ 1,374.29	\$ 1,696.50

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 83.21	\$ 158.99	\$ 229.12	\$ 284.75	\$ 347.94	\$ 410.84	N/A
3 Cubic Yards	\$ 110.47	\$ 191.65	\$ 271.92	\$ 350.48	\$ 430.71	\$ 510.94	\$ 643.90
4 Cubic Yards	\$ 131.18	\$ 228.19	\$ 323.68	\$ 415.85	\$ 513.57	\$ 607.61	\$ 831.89
6 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 605.70	\$ 783.85	\$ 982.00	\$ 1,187.55

¹ Dumping and replacing the specified capacity Bin the designated frequency per week. Monthly charge per Bin

Exhibit D
Commercial Franchise Agreement
Scope of Services

Bin Collection Services (Cont.)

**Additional Dump of Container: Solid Waste and Approved
 Recyclable Materials ²**

Bin Capacity	Non-Scheduled Day Rate per Pickup	Scheduled Rate per Pickup
2 Yard	\$ 63.14	\$ 24.00
3 Yard	\$ 78.00	\$ 48.75
4 Yard	\$ 77.13	\$ 47.81
6 Yard	\$ 87.58	\$ 68.00

Other Services and Fees

Service	Rate
Temp Change ³	\$ 28.00
4 Yard Bin Special - Single Service ⁴	\$ 80.58
6 Yard Bin Special - Single Service ⁴	\$ 107.00

² Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

³ Installs to access or service Bin

⁴ Delivery and pick up Bin-single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

Cart Collection Services

Cart Collection Services-Sold Waste

Cart Size	Monthly Rate by Collection Frequency per Week*						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$ 29.83	\$ 41.08	\$ 62.49	\$ 83.32	\$ 104.15	\$ 124.88	\$ 145.81
2 - 35 Gal Carts	\$ 41.08	\$ 83.32	\$ 124.98	\$ 166.84	\$ 208.30	\$ 249.96	\$ 291.62
1 - 64 Gal Cart	\$ 49.33	\$ 89.65	\$ 120.99	\$ 161.32	\$ 201.85	\$ 241.98	\$ 282.31
2 - 64 Gal Carts	\$ 89.65	\$ 161.32	\$ 241.98	\$ 322.84	\$ 403.39	\$ 483.98	\$ 564.62
1 - 96 Gal Cart	\$ 120.99	\$ 241.98	\$ 362.87	\$ 483.96	\$ 604.95	\$ 725.94	\$ 846.93
2 - 96 Gal Carts	\$ 241.98	\$ 483.96	\$ 725.94	\$ 114.29	\$ 142.75	\$ 171.30	\$ 199.85
1 - 96 Gal Cart	\$ 28.56	\$ 57.10	\$ 85.65	\$ 114.29	\$ 142.75	\$ 171.30	\$ 199.85
2 - 96 Gal Carts	\$ 57.10	\$ 114.29	\$ 171.30	\$ 228.40	\$ 285.50	\$ 342.60	\$ 399.70
3 - 96 Gal Carts	\$ 85.65	\$ 171.30	\$ 258.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
4 - 96 Gal Carts	\$ 114.29	\$ 228.40	\$ 342.60	\$ 456.80	\$ 571.00	\$ 685.20	\$ 799.40

Cart Collection Services-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week*						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	\$ 17.48	\$ 34.97	\$ 52.48	\$ 69.95	\$ 87.43	\$ 104.92	\$ 122.41
2 - 96 Gal Carts	\$ 34.97	\$ 69.95	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 96 Gal Carts	\$ 52.48	\$ 104.93	\$ 157.38	\$ 209.84	\$ 262.39	\$ 314.78	\$ 367.22
4 - 96 Gal Carts	\$ 69.95	\$ 139.90	\$ 209.84	\$ 279.79	\$ 348.74	\$ 419.69	\$ 489.63

*Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

13/11/2012

Exhibit D
Commercial Franchise Agreement
Scope of Services

Drop Box and Compactor Collection Services

Garbage and Permanent Collection Services of Approved Recyclable Materials and Solid Waste

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$ 180.18
28 Yard Closed Top	\$ 206.08
30 Yard Closed Top	\$ 302.95
Drop Box Initial Delivery Fee	\$ 75.00

Drop Box Capacity	Rate per Service
14 Yard Open Top	\$ 140.35
28 Yard Open Top	\$ 185.15
30 Yard Open Top	\$ 292.79
Drop Box Initial Delivery Fee	\$ 75.00

Compactor Capacity	Rate per Service
10 Yard	\$ 195.51
12 Yard	\$ 204.61
14 Yard	\$ 273.71
15 Yard	\$ 283.21
16 Yard	\$ 312.82
20 Yard	\$ 391.02
22 Yard	\$ 426.12
24 Yard	\$ 465.22
26 Yard	\$ 488.78
30 Yard	\$ 508.53
40 Yard	\$ 762.94
Delivery charge	\$ 75.00

* Pickup, dumping, and replacing the specified capacity Drop Box - single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$ 75.00	Charge to return to customer location for any other reason not specifically identified in Scope of Services
Container Liner	\$ 14.32	Plastic liner placed inside the Container before material loaded
Demurrage/Inactivity	\$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	\$ 23.00	Rinse of Container with water
Container Steam Cleaning	\$ 132.45	Steam Clean of Container
Safety Cone Replacement	\$ 17.36	Safety cones required when a Container is placed in the street
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property
Swap Shot top	\$ 75.00	Fee for each occurrence of overloading Container such that lid does not completely close
Activation/Re-activation fee	\$ 40.00	Charge to open a new service or reopen a closed service
Big Out charge	\$ 75.00	Fee for each occurrence to remove material lodged in Container
Enclosure/lock fee	\$ 7.50	Fee per month for opening enclosure gates or unlocking Container
Locking container	\$ 17.50	One time charge to install locking mechanism on container
Container Swap	\$ 75.00	Container exchange (Drop Box and Bin)
New Service letter	\$ 35.00	Charge to provide a will-serve letter for new development
Food Waste:		
64 gallon Cart	\$ 20.41	Rate per service for a Food Waste Recycling Cart
3 yard Bin	\$ 137.20	Rate per service for a Food Waste Recycling Bin



THE
JOURNAL OF
THE
ROYAL ANTHROPOLOGICAL INSTITUTE
OF GREAT BRITAIN AND IRELAND
VOLUME 100, PART 1, 2000

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 5

EXHIBIT 5

An Encyclopædia Britannica Company

Join Us On  

Dictionary | Thesaurus | Medical | Scrabble® | Spanish Central

Browse Dictionary | Browse Thesaurus

another



SEARCH >

Get our free apps! iPhone • iPad • Android

Answer 10 questions and
see how your vocabulary ranks »48 SCRABBLE words
with Q and no U » Games |  Word of the Day |  Video |  Blog: Words at Play |  My Faves

Dictionary

'another

adjective an-oth-er | \ə-ˈnə-ther also ə- or ə- |

SAVE POPULARITY

Share   

- : one more in addition
- : some other : different from the first or other one
- : similar or equal to a particular person or thing

Top 10 words to win with in SCRABBLE® »

Full Definition of ANOTHER

- : different or distinct from the one first considered <the same scene viewed from *another* angle>
- : some other <do it *another* time>
- : being one more in addition to one or more of the same kind <have *another* piece of pie>

See another defined for English-language learners »

See another defined for kids »

ADVERTISEMENT



Examples of ANOTHER

- Should we open *another* bottle of wine?
- That's *another* way of saying the same thing.
- We had dinner at *another* one of the city's many Italian restaurants.
- This is yet *another* example of government waste.
- We'll discuss this again on *another* occasion.
- The view is very different when it is seen from *another* angle.

<http://www.merriam-webster.com/dictionary/another>

Word of the Day SEPTEMBER 18, 2015

circumlocution

use of too many words or evasive speech

Get the Word of the Day daily email

Your email address

SUBSCRIBE



Open A New Account

ONLINE

\$7 Online Trades

\$0 Set-Up Fees

Free Education

Free Assistance

Free Research & Trading Tools

Words at Play

12 Words That Secretly
Come from Body PartsWhat are Austerity
Measures?MENC
Millennium Ener...AAPL
Apple IncS&P 500
S&P 500 IndexDOW
Dow Jones Indus...MENC
Millennium Energy Corp\$6.00
As of 09/09/2015 12:00AM ET0.00 (0.00%)
Change

Word Games

Take a 3-minute break and test your skills!

Please bring me *another* cup. This one is chipped.

The city advertises itself as *another* Las Vegas.

Ask The Editor Videos



First Known Use of ANOTHER

12th century

Related to ANOTHER

Synonyms

added, additional, else, farther, fresh, further, [+]more, other

[+] more

another

pronoun

: one more of the same kind : another one

: one that is different : someone or something else

Full Definition of ANOTHER

- 1 : an additional one of the same kind : one more
- 2 : one that is different from the first or present one
- 3 : one of a group of unspecified or indefinite things <in one way or another>

See *another* defined for English-language learners »

Examples of ANOTHER

I've had one drink, but I think I'll have *another*.

One copy of the letter was sent out, and *another* was placed in the files.

This cup is chipped. Could you please bring me *another*?

We had dinner at *another* of the city's many Italian restaurants.

The family seems to move from one city to *another*.

First Known Use of ANOTHER

13th century

Rhymes with ANOTHER

big brother, blood brother, den mother, each other, earth mother, foremother, godmother, grandmother, half brother, housemother, queen mother, soul brother, stepbrother, stepmother

<http://www.merriam-webster.com/dictionary/another>

Name That Thing



True or False?



Spell It



**Do More,
Don't Spend More.**

\$0 Set-Up or Maintenance Fees

Scottrade Open An Account
ACCOUNTS OPENED BY 10/15/15 11:59 PM EDT

Trend Watch



Refugee

Thousands of Syrians look for safety in Europe ...

ANOTHER Defined for Kids

¹another*adjective* an·o·th·er la-ne-thər

Definition of ANOTHER for Kids

- 1 : some other <Choose *another* day to go.>
- 2 : one more <We need *another* cup.>

²another*pronoun*

Definition of ANOTHER for Kids

- 1 : one more <He hit one homer in the first game and *another* in the second.>
- 2 : someone or something different <Complaining is one thing, but finding a solution is *another*.>

Learn More About ANOTHER

Thesaurus: All synonyms and antonyms for "another"

Spanish Central: Spanish translation of "another"

Nglish: Translation of "another" for Spanish speakers

Britannica English: Translation of "another" for Arabic speakers

Browse

ENTRIES FOUND:

another

another-guess

one another

Next Word in the Dictionary: another-guess

Previous Word in the Dictionary: Anastroce

All Words Near: another

ADVERTISEMENT

2005's "Charlie and the Chocolate Factory" was an instant hit for kids and parents alike. The timeless story paired with the oddness of Johnny...

"Charlie and the Chocolate Factory": Then and Now

Sponsored Answers

Seen & Heard

What made you want to look up *another*? Please tell us where you read or heard it (including the quote, if possible).

12 Comments

Sort by Newest

Add a comment...



Joey Tranvik

Trying to find out if "another" has its roots in the greek word "anathon" - which is translated "above" in the Bible - I was wondering if the word "another" could be used as from "another" sphere/location ...

Like · Reply · Sep 5, 2014 9:28pm



Sean Cleary · Chino, California

Can it take an apostrophy?

Like · Reply · Aug 28, 2014 10:49am



David R. Palmer · Highland Park High School, Highland Park, IL

Or even an apostrophe...? Not to fret, I type it that way first about half the time. Just one of the built-in IEDs of English...

Like · Reply · Aug 28, 2014 1:16pm



Amber N. Shinault · North Side High School (Jackson, Tennessee)

I was trying to figure out if another can be a noun.

Like · Reply · Aug 12, 2014 1:51pm



Butch Burel · Works at HAPPILY RETIRED

Ditto on the possessive.

Like · Reply · Dec 1, 2013 1:40pm



Duke McClung · Charlotte, North Carolina

I was trying to find if I could use the contraction "another's" instead of another one's or another person's.

Like · Reply · Aug 30, 2012 10:21pm

Load 7 more comments

Facebook Comments Plugin

View Seen & Heard Highlights from Around the Site >



10 Charming Words for Nasty People

Put-downs with flair

Learn More >



When "Literally" isn't, well, literal

How to use a word that (literally) drives some people nuts.

Watch Now >



Know what this is?

Test your vocab with our fun, fast game

Go Play >



Fear of cats?

Alliurophobia, and 9 other unusual fears

Learn More >

Join Us



Merriam-Webster
on Facebook »



Merriam-Webster
on Twitter »

Bookstore: Digital and Print

Merriam-Webster references for Mobile,
Kindle, print, and more.

[See All »](#)

Other Merriam-Webster Dictionaries

[Spanish Central »](#)

[Learner's ESL Dictionary »](#)

[WordCentral for Kids »](#)

[Visual Dictionary »](#)

[SCRABBLE® Word Finder »](#)

[Webster's Unabridged Dictionary »](#)

[Britannica English - Arabic Translation »](#)

[English - Spanish-English Translation »](#)

[Home](#) • [Help](#) • [About Us](#) • [Shop](#) • [Advertising Info](#) • [Dictionary API](#) • [Privacy Policy](#) • [Terms of Use](#)
[About Our Ads](#) • [Contact Us](#) • [Browser Tools](#) • [The Open Dictionary](#)

© 2015 Merriam-Webster, Incorporated

[Browse the Dictionary](#) • [Browse the Thesaurus](#) • [Browse the Spanish-English Dictionary](#) • [Browse the Medical Dictionary](#)

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 6

EXHIBIT 6



August 12, 2013

Mr. Andrew Clinger
City Manager, City of Reno
P.O. Box 1900
Reno, Nevada 89505

Dear Andrew:

This letter is a follow up to the meeting we held with members of your staff on July 30, 2013, regarding pertinent issues of the franchise agreements.

At that meeting we updated your staff on the roll out. In January 2014, we will begin delivery of carts to the residential customers and will begin collection of recyclables under the new system in February 2014.

With regard to the commercial franchise, it will be rolled and implemented by November 7, 2013. Additionally, Waste Management will be acquiring the assets of Castaway Trash Hauling and assuming all rights and obligations under their commercial franchise agreement as provided in Section 11.7.

Close of escrow will occur on September 30, 2013, and Waste Management and Castaway will be working together over the next several weeks to provide a smooth transition for those commercial customers affected by the acquisition.

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Martinelli". The signature is written in a cursive, flowing style.

Greg Martinelli
Waste Management

CC: Spike Duque
Gary Duhon

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic

EXHIBIT 7

EXHIBIT 7

Law Offices of Gary Duhon, Ltd.

Gary W. Duhon
601 S. Arlington
Reno, Nevada 89509

Gary@Duhonlawltd.com
(775) 250-7970

October 3, 2013

City of Reno
PO Box 1900
Reno, NV 89501
Attn: Jason Geddes
Environmental Services Administrator

Re: Notice of Assignment of Exclusive Service Area Franchise Agreement-Commercial Solid Waste and Recyclable Materials

Dear Mr. Geddes:

Please consider this letter notice to the City of Reno, on behalf of Reno Disposal Company, Inc. ("RDC"), that effective September 30, 2013, Castaway Trash Hauling, Inc. ("Castaway") assigned to RDC all of Castaway's rights under the Exclusive Service Area Franchise Agreement-Commercial Solid Waste and Recyclable Materials, dated November 7, 2012, by and between Castaway and the City of Reno ("City") ("Franchise Agreement"). In accordance with Section 11.7 (B) of the Franchise Agreement, a formal written instrument of such assignment was executed providing for the assignment by Castaway to RDC of Castaway's rights as Contractor under the Franchise Agreement and for RDC's assumption and acceptance as Contractor of all the terms and conditions of the Franchise Agreement, including all duties and obligations imposed on Contractor by the Franchise Agreement, as well as RDC's express adoption of the representations of Contractor set forth in the Franchise Agreement as the representations of RDC.

RDC is a service provider under another Commercial Service Agreement and a Permitted Transferee. Accordingly, under Section 11.7 (B) of the Franchise Agreement, no notice to or approval by the City of the assignment is required under the Franchise Agreement.

Capitalized terms not defined herein shall have the meaning provided in the Franchise Agreement.

Please let me know if you have questions.

Sincerely,

Law Offices of Gary Duhon, Ltd.

A handwritten signature in black ink, appearing to read "GW Duhon", written in a cursive style.

Gary W. Duhon

cc: Greg Martinelli
Marc Empey

FILED
Electronically
2015-09-24 11:03:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5156716 : csulezic


EXHIBIT 8

EXHIBIT 8



DATE: October 4, 2013

TO: Spike Duque, President
Steve Duque, Operations Manager

FROM: Jason Geddes, Environmental Services Administrator 

SUBJECT: Castaway Trash Hauling assignment to Reno Disposal

The City of Reno is in receipt of a letter of notice of assignment in which Castaway Trash Hauling, Inc. (CTH) assigned to Reno Disposal Company, Inc. (RDC) all right's under the Exclusive Service Area Franchise Agreement-Commercial Solid Waste and Recyclable Materials dated November 7, 2012. The letter notes that the assignment became effective on September 30, 2013. The City has reviewed the letter and the contractual requirements of the Agreement, and has determined RDC meets the Assignee Qualifications set forth in Section 11.7C. Accordingly, the City hereby consents to the assignment.

Moreover, in light of the assignment and pursuant to Section 11.14 of the Agreement, the City has determined that CTH may terminate the \$250,000 performance bond required by Section 9.3.

If you have any questions regarding this matter, please contact Jason Geddes at geddesj@reno.gov or 334-3311.

- c. Greg Martinelli, Waste Management
Gary Duhon, Law Office of Gary Duhon
Michelle Trombly, First Independent Bank
Jonathan Shipman, Assistant City Attorney

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

NEVADA RECYCLING AND
SALVAGE, LTD, a Nevada Limited
Liability Company; AMCB, LLC, a
Nevada Limited Liability Company d/b/a
RUBBISH RUNNERS,

Appellants,

VS.

RENO DISPOSAL COMPANY, INC., a Nevada Corporation doing business as **WASTE MANAGEMENT; REFUSE, INC.**, a Nevada Corporation; **WASTE MANAGEMENT OF NEVADA, INC.**, a Nevada Corporation,

Respondents.

Supreme Court Case No.:71467

District Court Case No.: CV15-00497

VOLUME 3

JA000415-JA000620

Stephanie Rice, Esq.
Rich Salvatore, Esq.
Del Hardy, Esq.
Winter Street Law Group
96 & 98 Winter St.
Reno, NV 89503
(775)786-5800
Attorneys for Appellant

Mark Simons, Esq.
Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp and Low
71 Washington Street
Reno, NV 89503
(775)329-3151
Attorney for Respondent

VOLUME ALPHABETICAL INDEX

ITEM DESCRIPTION	BATE STAMP	VOLUME
ACCEPTANCE OF SERVICE OF SUMMONS AND SECOND AMENDED COMPLAINT	JA003732 - JA003733	19
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM FOR DAN REASER, ESQ.	JA001109- JA001121	6
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM ON DAN R. REASER, ESQ.	JA004624- JA004626	23
AFFIDAVIT OF SERVICE OF THE SUBPOENA FOR SPIKE DUQUE	JA001674- JA001682	9
AFFIDAVIT OF SERVICE OF THE SUBPOENA ON JONATHAN SHIPMAN, ESQ.	JA004758- JA004760	23
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000183- JA000186	1
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000187- JA000190	1
ANSWER TO SECOND AMENDED COMPLAINT	JA004113- JA004137	21
ANSWER TO VERIFIED FIRST AMENDED COMPLAINT	JA000883- JA000906	5
CONFIRMING ORDER OF 02/11/2016 RECOMMENDATION	JA005417- JA005418	27
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004639- JA004695	23
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004696- JA004699	23
DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA001700- JA001969	9-10
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	JA000720- JA000856	4
DEFENDANT'S MOTION TO STAY DISCOVERY	JA001122- JA001127	6
DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AND CONSIDER	JA000996- JA001006	5

MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION		
DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	JA000931- JA000995	5
DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000621- JA000684	4
DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002615- JA002922	13-14
DEFENDANTS' MOTION FOR A PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA004706- JA004757	23
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA002923- JA002977	14
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005306- JA005319	26
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005092- JA005144	25
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000487- JA000498	3
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY	JA001160- JA001168	6
DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003508- JA003525	18
DEFENDANTS' REPLY TO OPPOSITION TO SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004152- JA004609	21-23
DEPOSITION TRANSCRIPT OF ANNE MARIE CAREY 02/24/2016	JA002091- JA002144	10
DEPOSITION TRANSCRIPT OF CHRIS BIELSER 02/24/2016	JA002145- JA002175	11
DEPOSITION TRANSCRIPT OF DAVE AIAZZI 12/29/2015	JA001458- JA001670	8

DEPOSITION TRANSCRIPT OF GARY DUHON 05/25/2016	JA003068- JA003240	16
DEPOSITION TRANSCRIPT OF GREG MARTINELLI 12/29/2015	JA001295- JA001457	7
DEPOSITION TRANSCRIPT OF JOSEPH CASSIN 05/25/2016	JA002986- JA003067	15
ERRATA TO DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002978- JA002985	15
JOINT CASE APPEAL STATEMENT	JA005344- JA005357	26
JOINT NOTICE OF APPEAL	JA005333- JA005343	26
MINUTES ORAL ARGUMENTS – JULY 29, 2015	JA000583	3
MINUTES – HEARING IN RE: DEFENDANTS' MOTION FOR PROTECTIVE ORDER 08/02/2016	JA005164	25
MINUTES – ORAL ARGUMENTS IN RE: DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT – AUGUST 18, 2016	JA005176	26
MINUTES STATUS HEARING – JANUARY 29,2016	JA001699	9
MOTION FOR ENTRY OF FINAL JUDGMENT	JA005358- JA005366	26
MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005268- JA005274	26
MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA000857- JA000882	5
MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000388- JA000414	2
MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000480- JA000486	3
NON- PARTY CASTAWAY TRASH HAULING, INC.'S MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001172- JA001205	6
NOTICE OF ENTRY OF ORDER	JA000703- JA000719	4

NOTICE OF ENTRY OF ORDER	JA001277- JA001284	6
NOTICE OF ENTRY OF ORDER	JA002209- JA002216	11
NOTICE OF ENTRY OF ORDER	JA002231- JA002249	11
NOTICE OF ENTRY OF ORDER	JA003531- JA003535	18
NOTICE OF ENTRY OF ORDER	JA005168- JA005175	26
NOTICE OF ENTRY OF ORDER	JA005295- JA005305	26
NOTICE OF ENTRY OF ORDER	JA005400- JA005407	27
NOTICE OF ENTRY OF ORDER	JA005410- JA005416	27
NOTICE OF NRCP 30(B)(6) DEPOSITION OF RENO DISPOSAL COMPANY, INC.	JA002354- JA002357	11
OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000611- JA000618	3
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	JA000907- JA000930	5
OPPOSITION TO MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000415- JA000458	3
OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001206- JA001270	6
OPPOSITION TO MOTION TO STAY DISCOVERY	JA001128- JA001159	6
OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002358- JA002543	12
ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA005165- JA005167	26
ORDER DISMISSING WITHOUT PREJUDICE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DEFENDANTS' MOTION TO STAY DISCOVERY IS DENIED	JA001271- JA001276	6
ORDER DENYING PLAINTIFF'S MOTION FOR AMENDED SCHEDULED ORDER	JA005408- JA005409	27

ORDER FINAL JUDGMENT RENDERED IN FAVOR OF DEFENDANTS	JA005397- JA005399	26
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE DAMAGES & LIABILITY	JA005289- JA005294	26
ORDER GRANTING PLAINTIFF'S REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER TO MOTION TO DISMISS	JA000619- JA000620	3
ORDER DENYING MOTION FOR PROTECTIVE ORDER	JA002203- JA002208	11
ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA003528- JA003530	18
ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REPLY	JA000506- JA000508	3
ORDER - SET MOTION TO DISMISS FOR ORAL ARGUMENT -	JA000509- JA000511	3
ORDER TO SET ORAL ARGUMENTS	JA004700- JA004702	23
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT, IN PART, AND DENYING, IN PART	JA000691- JA000702	4
PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002250- JA002353	11
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA001980- JA002090	10
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003241- JA003507	17-18
PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA003734- JA004112	19-20
PLAINTIFFS' JOINT OPPOSITION TO WASTE MANAGEMENT OF NEVADA, INC'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004610- JA004623	23
PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND	JA004955- JA005051	25

MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER		
PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA004857- JA004954	24
PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA004761- JA004856	24
PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL COMPANY AND REFUSE INC.'S MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES; AND PLAINTIFFS' PROPOSED ORDER	JA005275- JA005288	26
PLAINTIFFS' OPPOSITION TO ENTRY OF FINAL JUDGMENT	JA005367- JA005396	26
PLAINTIFFS' REPLY TO MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005067- JA005082	25
PLAINTIFFS' REPLY TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005052- JA005066	25
PROOF OF SERVICE	JA000385- JA000387	2
RECOMMENDATION FOR ORDER	JA001970- JA001979	10
REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA002176- JA002199	11
REPLY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000459- JA000474	3
REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001285- JA001291	6

REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005320- JA005330	26
REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA001010- JA001101	5-6
REPLY TO OPPOSITION TO MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY	JA000499- JA000503	3
REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002544- JA002612	13
REPLY TO RESPONSE TO OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000685- JA000688	4
REQUEST FOR SUBMISSION	JA004149- JA004151	21
REQUEST FOR SUBMISSION FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004636- JA004638	23
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER	JA002200- JA002202	11
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA005083- JA005085	25
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	JA001007- JA001009	5
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003526- JA003527	18
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO STAY DISCOVERY	JA001169- JA001171	6
REQUEST FOR SUBMISSION OF DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004633- JA004635	23
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000477- JA000479	3
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000475- JA000476	3

AND OPPOSITION TO MOTION TO DISMISS VERIFIED COMPLAINT		
REQUEST FOR SUBMISSION OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001292- JA001294	6
REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002613- JA002614	13
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005090- JA005091	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005331- JA005332	26
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005088 JA005089	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005086- JA005087	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000504- JA000505	3
REQUEST FOR SUBMISSION OF PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER, DEFENDANTS' RESPONSE TO OBJECTION TO PROPOSED ORDER AND REPLY TO RESPONSE TO OBJECTION TO DEFENDANTS' PROPOSED ORDER	JA000689- JA000690	4
REQUEST FOR SUBMISSION OF PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004147- JA004148	21
REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER ON MOTION TO DISMISS SECOND AMENDED COMPLAINT	JA000584- JA000610	3
	JA003536- JA003729	18-19

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER	JA002217- JA002230	11
SUBPOENA - JONATHAN SHIPMAN	JA004703- JA004705	23
SUBPOENA - SPIKE DUQUE	JA001671- JA001673	9
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA001102- JA001108	6
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA004627- JA004632	23
SUMMONS	JA003730- JA003731	19
TRANSCRIPT HEARING – AUGUST 2, 2016	JA005145- JA005163	25
TRANSCRIPT ORAL ARGUMENTS – AUGUST 18, 2016	JA005177- JA005267	26
TRANSCRIPT ORAL ARGUMENTS – JULY 29, 2015	JA000512- JA000582	3
TRANSCRIPT STATUS HEARING – JANUARY 29, 2016	JA001683- JA001698	9
VERIFIED COMPLAINT	JA000001- JA000182	1
VERIFIED FIRST AMENDED COMPLAINT	JA000191- JA000384	2
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004138- JA004140	21
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004141- JA004146	21

1 CODE: 2645
2 DEL HARDY, ESQ.(SBN 1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorneys for Plaintiffs

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 NEVADA RECYCLING AND SALVAGE, LTD, a
13 Nevada Limited Liability Company; and,
14 AMCB, LLC, a Nevada Limited Liability
15 Company doing business as RUBBISH
16 RUNNERS,

17 Plaintiffs,

18 vs.

19 RENO DISPOSAL COMPANY, INC., a Nevada
20 Corporation doing business as WASTE
21 MANAGEMENT; REFUSE, INC., a Nevada
22 Corporation; ABC CORPORATIONS, I through
23 X; BLACK AND WHITE COMPANIES,
24 I through X; and, JOHN DOES I through X,
25 inclusive,

26 Defendants.


CASE NO.: CV15-00497

DEPT. NO.: 7

27 **OPPOSITION TO MOTION TO DISMISS VERIFIED AMENDED COMPLAINT**

28 Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. ("NRS") and AMCB, LLC dba
RUBBISH RUNNERS ("Rubbish Runners"), by and through their undersigned counsel of record,
hereby respectfully oppose Defendants' Motion to Dismiss Verified Amended Complaint. This
Opposition is based upon the following Memorandum of Points and Authorities, the pleadings
and papers on file herein and such other matters this Court may wish to consider.

DATED this 1st day of May, 2015.


STEPHANIE RICE, ESQ.
DEL HARDY, ESQ.
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a case about Waste Management's willful disregard for the terms and conditions
4 of the Reno FRANCHISE and DISPOSAL AGREEMENTS and complete indifference for any notion
5 of fair dealing thereunder. Yes, Waste Management has a Franchise on certain materials.
6 However, Waste Management does not have a Franchise on all materials. In fact, the very
7 language of the FRANCHISE AGREEMENT itself makes it very clear that the FRANCHISE
8 AGREEMENT does not cover certain items stating:

9 **"[T]he exclusive right of contractor [Waste Management] hereunder**
10 **shall not apply to Excluded Materials, Excluded Recyclable Materials,**
11 **Exempted Drop Box Materials, Exempted Hauler Account Materials**
and subject to and as provided in Section 4.4L, Exempted Facility
Materials delivered to Exempted Facilities."

12 [Emphasis Added]. See, p. 14, Section 3.2 A of the Exclusive Service Area Franchise Agreement
13 Commercial Solid Waste and Recyclable Materials, attached to Plaintiffs' Verified Amended
14 Complaint at Exhibit 3 and incorporated therein by reference.

15 **II. LEGAL AUTHORITY**

16 **A. Legal Standard**

17 The standard of review for a dismissal under NRCP 12(b)(5) is rigorous, as the Court
18 must construe the pleadings liberally and draw every fair inference in favor of the nonmoving
19 party. See, *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (internal citations
20 omitted). All factual allegations of the complaint must be accepted as true. *Id.* A complaint will
21 not be dismissed for failure to state a claim *unless it appears beyond a doubt that the*
22 *plaintiff could prove no set of facts which, if accepted, would entitle him or her to relief.*
23 [Emphasis Added]. *Id.*

24 **B. Preliminary Matters**

25 As a preliminary matter, Defendants literally spend more than half of their Motion to
26 Dismiss improperly attempting to *substantively* argue the merits of Plaintiffs' Verified Amended
27

1 Complaint by trying to persuade this Court to accept portions of the FRANCHISE and DISPOSAL
2 AGREEMENTS that benefit Defendants and to reject those set forth in Plaintiffs' Verified
3 Amended Complaint. Defendants spend a great deal of time discussing and arguing about what
4 certain technical terms and definitions mean and should be interpreted as under the
5 FRANCHISE and DISPOSAL AGREEMENTS. However, for purposed of the instant Motion to
6 Dismiss, it really doesn't matter. The standard this Court applies when considering a Motion to
7 Dismiss is to find that everything alleged in Plaintiffs' Verified Amended Complaint, including
8 the technical definitions set forth therein, as true and viewed in light most favorable to
9 Plaintiffs. As such and in the interest of judicial economy, Plaintiffs' will not spend time arguing
10 the merits of Defendants interpretations. These substantive arguments are premature and
11 better suited in a Motion for Summary Judgment once the parties have engaged in discovery to
12 properly argue the merits of this case.

13 As set forth herein, in considering a Motion to Dismiss pursuant to NRCP 12(b)(5), the
14 Court must accept all factual allegations of the pleadings to be true and view those
15 allegations both liberally and in the light most favorable to the non-moving party. [Emphasis
16 Added]. See, *Buzz Stew LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28 (2008). The Court's
17 analysis is limited to the factual allegations contained within the four corners of Plaintiffs'
18 Verified Amended Complaint and all inferences reasonably arising therefrom. Here,
19 Defendants spend virtually the entire Motion to Dismiss attempting to persuade this Court that
20 the factual allegations set forth in Plaintiffs' Verified Amended Complaint are not true, which is
21 completely inappropriate on a Motion to Dismiss.

22 "The test for determining whether the allegations of a complaint are sufficient to assert
23 a claim for relief is whether [they] give fair notice of the nature and basis of a legally sufficient
24 claim and the relief requested," *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846 (1993). A
25 claim can only be dismissed if it is clear "beyond a doubt that the plaintiff could prove no set of
26 facts which, if true, would entitle the plaintiff to relief." *Stubbs v. Strickland*, 129 Nev. Adv. Op.

1 15 (March 14, 2013). The Plaintiff need not correctly identify or label his cause of action so
2 long as the factual allegations support some right to relief. See, *Swartz v. Adams*, 93 Nev, 240
3 (1977) (plaintiff's legal theory need not be correctly identified in the complaint).

4 As such, it is respectfully requested that this Court should strike Defendants arguments
5 as to the accuracy of the factual allegations set forth in Plaintiffs' Verified Amended Complaint
6 because to consider such arguments completely contradicts the legal standard that must be
7 applied when considering a Motion to Dismiss.

8 **C. All Matters Set Forth in Plaintiffs' Verified Amended Complaint have been**
9 **Plead in Accordance with the Requirements of NRCP 8(a)**

10 NRCP 8(a) specifically requires the following:

11 A pleading which sets forth a claim for relief, whether an original claim,
12 counterclaim, cross-claim, or third-party claim, shall contain (1) a **short**
13 **and plain statement of the claim showing that the pleader is entitled**
14 **to relief**, and (2) a **demand for judgment for the relief the pleader**
15 **seeks**. Relief in the alternative or of several different types may be
demanded. Where a claimant seeks damages of more than \$10,000, the
demand shall be for damages "in excess of \$10,000" without further
specification of amount.

16 [Emphasis Added]. Contrary to Defendants' assertions and at the very least, Plaintiffs have set
17 forth a plain statement of the claim and their requested relief for each and every claim brought
18 against Defendants.

19 **D. All Matters Related to Claims of Fraud Set Forth in Plaintiffs' Verified**
20 **Amended Complaint have been Plead in Accordance with the Requirements**
21 **of NRCP 9(b)**

22 With respect to heightened pleading requirements for allegations of fraud, NRCP 9(b)
23 simply requires that, "... the circumstances constituting fraud or mistake shall be stated with
24 particularity. Malice, intent, knowledge, and other condition of mind of a person may be
averred generally."

25 As set forth more fully herein, Plaintiffs have properly complied and satisfied the
26 heightened pleading requirement for fraud as set forth in NRCP 9(b).

1 **III. ARGUMENT**

2 **A. Plaintiffs' Verified Amended Complaint Properly States Claims for**
3 **Defamation and Defamation Per Se**

4 **a. Factual Allegations Supporting Plaintiffs' Claims for Defamation and**
5 **Defamation Per Se which Must be Accepted as True**

6 When considering the instant Motion to Dismiss the claims of Defamation and
7 Defamation Per Se, this Court must accept the following factual allegations, all of which are set
8 forth in Plaintiffs' Verified Amended Complaint, as true (See, *Buzz Stew LLC v. City of North Las*
9 *Vegas*, 124 Nev. 224, 227-28 (2008)):

10 "Section 3.2(a) of the FRANCHISE AGREEMENT provides, 'City hereby
11 grants contractor [WM], and contractor [WM] shall have throughout the
12 term of this agreement, **except as provided in sections 3.2 d and 4.4 L**
13 **hereof**, the exclusive right, privilege, franchise and obligation within
14 the exclusive service area of contractor to provide collection services to
15 commercial customers.' [Emphasis Added]" Verified Amended Complaint,
16 5:21-25.

17 "Section 3.2(D) of the FRANCHISE AGREEMENT reads: 'Subject to the
18 terms and conditions in this Section 3.2 D, **the franchised exclusive right**
19 **and obligation of Contractor hereunder to provide Collection Services**
20 **shall not include or apply to i) Exempted Drop Box Materials collected and**
21 **transported by Exempted Haulers using Exempted Drop Box Services, or ii)**
22 **Exempted Hauler Account Materials collected and transported by**
23 **Exempted Haulers using Exempted Hauler Account Services.'** [Emphasis
24 Added]." Verified Amended Complaint, 5:26-6:1-5.

25 "Plaintiff, RR is a designated 'Exempted Hauler' under the FRANCHISE
26 AGREEMENT. See, Schedule 1, attached to the FRANCHISE AGREEMENT."
27 Verified Amended Complaint, 6:6-6.

28 "Section 4.4(L)(1) of the FRANCHISE AGREEMENT reads: 'Subject to the
Exempted Facility Material limit and otherwise as provided in this
Section 4.4 l, i) the requirement and obligation of the Contractor to
deliver all Collection Materials to a Designated Facility shall not include
or apply to Exempted Facility Materials delivered by Contractor to the
Exempted Facility and accepted by, processed or recycled at or disposed
from the Exempted Facility and ii) this Agreement and the Disposal
Agreement shall not limit or preclude the Exempted Facility from
accepting, processing, recycling or disposing of any Exempted Facility
Materials.'" Verified Amended Complaint, 6:8-15.

"Plaintiff, NRS, is defined in the FRANCHISE AGREEMENT as the 'Exempted
Facility.' See, FRANCHISE AGREEMENT at p. 7." Verified Amended
Complaint, 6:16-17.

"Section 3.2(A) of the FRANCHISE AGREEMENTS specifies the nature of the

1 'FRANCHISE AGREEMENT' as follows:

2 'City hereby grants Contractor, and Contractor shall have throughout the
3 Term of this Agreement, **except as provided in Sections 3.2 D and 4.4 L**
4 **hereof**, the exclusive right, privilege, franchise and obligation within
5 the Exclusive Service Area of Contractor to provide Collection Services to
6 Commercial Customers. No person or entity other than Contractor and
7 its subcontractors shall i) collect Collection Materials in Contractor's
8 Exclusive Service Area, ii) transport anywhere in the City Collection
9 Materials Collected in Contractor's Exclusive Service Area, or iii) deliver
10 any Collection Materials Collected in Contractor's Exclusive Service Area
11 to any Disposal, processing, recycling or similar facility, except as
12 expressly provided under this Agreement. The preceding sentence is
13 intended to be broadly interpreted to preclude, without limitation
14 and except as provided in Sections 3.2 D and 4.4 L hereof, any activity
15 relating to the collection or transportation of Collection Materials from
16 Commercial Activities that is solicited, arranged, brokered, or provided
17 by any person or combination of persons in exchange for the payment,
18 directly or indirectly, of a fee, charge, rebate, discount, commission, or
19 other consideration, in any form or amount. **Notwithstanding any
20 other provision of this Agreement, the exclusive right of Contractor
21 hereunder shall not apply to Excluded Materials, Excluded Recyclable
22 Materials, Exempted Drop Box Materials, Exempted Hauler Account
23 Materials and subject to and as provided in Section 4.4 L, Exempted
24 Facility Material delivered to Exempted Facilities. Contractor and
25 other service providers may collect and transport Excluded
26 Materials, Exempted Drop Box Materials and Exempted Hauler
27 Account Materials (if Contractor has been approved for Exempted
28 Hauler Accounts under Schedule 1) in the Exclusive Service Area and
elsewhere in the City and may charge fees and charges for services as the
service provider may elect. Contractor shall only provide under this
Agreement Collection Services to Commercial Customers in Contractor's
Exclusive Service Area and in no other areas in the City; provided, however,
Contractor may provide Special Services to Commercial Customers or other
customers anywhere in the City.' [Emphasis Added]." Verified Amended
Complaint, 6:18-7:11.**

19 "As set forth in the FRANCHISE AGREEMENT, WM's exclusive rights do not
20 apply to 'Excluded Materials, Excluded Recyclable Materials, Exempted
21 Drop Box Materials, Exempted Hauler Account Materials and as provided in
22 Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities.'
23 *Id.*" Verified Amended Complaint, 7:12-15.

22 "'Excluded Materials' are defined as:

23 (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile,
24 corrosive, biomedical, infectious, biohazardous, and toxic substances or
25 material, including without limitation batteries; (iv) waste that
26 Contractor reasonably believes would, as a result of or upon disposal, be
27 a violation of Federal, State, or local law, regulation or ordinance,
28 including land use restrictions or conditions; (v) waste that in
Contractor's reasonable opinion would present a significant risk to
human health or the environment, cause a nuisance or otherwise create
or expose Contractor or City to potential liability; (vi) electronic waste
determined by Contractor to be Excluded Materials (including without

1 limitation television sets, computers and computer components);(vii)
2 materials collected and processed at rendering facilities;(viii) Special
3 Waste, (ix) incidental amounts of Self-Haul materials which are delivered
4 by an individual directly to a transfer station, recycling facility or
5 Disposal facility in a manner consistent with City ordinances and codes
6 and other applicable laws;(x) Construction and Demolition Debris;(xi)
7 materials which otherwise would constitute Collection Materials that
8 are removed from premises by landscaping, gardening, cleaning service,
9 appliance sale and service company or construction contractors as an
10 incidental part of a gardening, landscaping, tree trimming, cleaning,
11 maintenance, appliance sale or service or construction or similar service
12 offered by that service provider, using its own personnel and
13 equipment, rather than as a hauling service;(xii) Scrap Metals;(xiii)
14 Paper Shredder Materials;(xiv) Bulky Items and items Contractor
15 determines to be excessively bulky or heavy; and (xv) Source Separated
16 Recyclable Materials donated by the generator to any United States
17 revenue Code Section 501(c) 3 or other federally recognized non-profit
18 organization, including charities, youth groups and civic organizations,
19 which materials may be transported from the non-profit organization
20 by Self-Haul or by a third party hauler. See, FRANCHISE AGREEMENT
21 at p. 5." Verified Amended Complaint, 7:16-8:7.

22 " 'Excluded Recyclable Materials' are defined as:

23 '~~either~~ or both i) Approved Recyclable Materials from Commercial
24 Activity that are a) separated by the generator thereof from all other
25 materials and which contain not less than ninety percent (90%)
26 Approved Recyclable Materials and b) sold by the generator thereof
27 directly to a buyer of Recyclable Material at market price, title to
28 which materials transfers to the buyer upon collection or pickup of
such materials, but excluding such materials collected and transported
as a service, and ii) any other Recyclable Materials that are not
Approved Recyclable Materials.' See, FRANCHISE AGREEMENT at p. 5-
6." Verified Amended Complaint, 8:8-14.

"By explicit definition as set forth above and taken directly from the
FRANCHISE AGREEMENT, the definition of 'Excluded Recyclable Materials'
explicitly includes "Approved Recyclable Materials" as long as they are from
commercial activity, separated from non-approved recyclable materials and
contain no less than 90% 'Approved Recyclable Materials' and purchased
by a buyer of recyclable materials. *Id.*" Verified Amended Complaint, 8:15-
19.

" 'Exempted Drop Box Materials' are defined as: 'Solid Waste and
Approved Recyclable Material collected and transported in an Exempted
Drop Box using Exempted Drop Box Services, but excludes; (i) Garbage;
and, (ii) Compacted Solid Waste and compacted Approved Recyclable
Materials.' *Id.* at p. 6." Verified Amended Complaint, 20-23.

" 'Exempted Hauler Account Material' is defined as: 'Solid Waste and
Recyclable Material collected from an identified customer under an
Exempted Account and transported by such Exempted Hauler using
Exempted Hauler Account Services, but excluding Garbage.' *Id.* at p. 7."

1 Verified Amended Complaint, 8:24-9:1.

2 "Despite the above guaranteed rights explicitly granted to Plaintiffs NRS
3 and RR in the FRANCHISE AGREEMENT, WM has intentionally engaged in
4 an unlawful, fraudulent scheme to harm and destroy the business of NRS,
5 RR and their lawful enterprises by allowing and encouraging its agents and
6 employees to make misleading statements to customers and/or prospective
7 customers of Plaintiffs, including but not limited to the following:

8 'We [WM] are the only hauler that's allowed in Sparks and Reno.'

9 'Any other provider that goes in there, there will be fines.'

10 'We [WM] have an agreement with the city and we are the only trash hauler
11 that is allowed in either of those cities [Reno and Sparks].' " Verified
12 Amended Complaint, 9:2-9.

13 "On October 30, 2014, WM employee, Cherolyn Gilletti, intentionally
14 misrepresented the current FRANCHISE AGREEMENT to one of Plaintiffs'
15 customers by writing in an email the following:

16 '.... At this time Waste Management is the assigned hauler for the city
17 of Reno. Please note the following.

18 **Solid Waste:** Every business generating Solid Waste in the City of Reno is
19 required to subscribe to Reno Disposal Company for the collection,
20 transportation and disposal of all of franchised Solid Waste materials
21 generated by the business, except for businesses to which the City of
22 Reno has specifically granted in writing an exemption. ...

23 **Recyclable Material.** No business may allow or retain any service
24 provider other than Reno Disposal Company to collect, pickup,
25 transport or deliver Approved Recyclable Materials in the City of Reno
26 in violation of the exclusive franchise agreement or the Reno Municipal
27 Code.' [Emphasis Added]. See, Exhibit 5 attached hereto." Verified
28 Amended Complaint, 11:11-22.

"All three of those statements are factual misrepresentations." Verified
Amended Complaint, 11:23.

**b. Factual Allegations Supporting Plaintiffs' Claims for Defamation and
Defamation Per Se which Must be Accepted as True**

In support of their request to dismiss Plaintiffs' claims for defamation and defamation
per se, Defendants rely on the case of *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483-84, 851 P.2d
459, 462-63 (1993) which provides:

In order to establish a *prima facie* case of defamation, a plaintiff must prove:
(1) a false and defamatory statement by defendant concerning the plaintiff;
(2) an unprivileged publication to a third person; (3) fault, amounting to at
least negligence; and (4) actual or presumed damages. If the defamation
tends to injure the plaintiff in his or her business or profession, it is deemed

defamation *per se*, and damages will be presumed. (Internal Citations Omitted).

See, Motion to Dismiss Verified Amended Complaint, 14:13-18. Plaintiffs have alleged all elements sufficient to put Defendants on notice. See, Verified Amended Complaint, 13:12-14:26 alleging, ("As alleged herein, WM has and continues to make certain false and defamatory statements regarding Plaintiffs and their ability to lawfully engage in their respective businesses within the CITY. . . The publication of these statements by WM and its agents and/or employees was unprivileged. . . In making these false and defamatory statements WM and its agents and/or employees acted either intentionally or with reckless disregard as to whether or not the statements were true. . . As a result of these false and defamatory statements, plaintiffs have incurred damages in an amount to be proven at trial but which exceeds \$10,000.00. . . The false and defamatory statements made by WM and its agents and/or employees both infer and directly misrepresent that Plaintiffs are illegally engaging in their respective businesses both against the law and in violation of the WM FRANCHISE AGREEMENT, which is not accurate. . . Despite repeated demands to immediately stop making any and all such false and defamatory statements, WM and its agents and/or employees continue to deliberately make these statements to Plaintiffs' respective customers and/or prospective customers, causing direct damage to Plaintiffs in an amount to be proven at trial but which exceeds \$10,000.00. . . WM and its agents and/or employees false statements constitute defamation per se and Plaintiffs are presumed to have incurred damages as a result of these false statements about Plaintiffs respective businesses.")

In their Motion to Dismiss, Defendants argue that the sole reason dismissal of Plaintiffs' claims for defamation and defamation per se is appropriate is due to the failure to satisfy the first element, "a false and defamatory statement by defendant concerning the plaintiff." See, Motion to Dismiss Verified Amended Complaint, 14:20-21; 15:8-9.

111

[illegible][illegible]

5
5
7
8
9
0
1
2
3
4
5
6
7
8
9
0

11

1 within the City . . . Contractor is not required under this Agreement to provide Special
2 Services, but may elect to do so. Examples of such optional Special Services include . . .
3 collection, transportation, delivery or other services related to Excluded Materials,
4 Exempted Drop Box Materials and Excluded Recyclable Materials which have been
5 Source Separated from other Solid Waste." [Emphasis Added]. See, Commercial
6 Franchise Agreement, at Section 4.5, attached and incorporated by reference to the
7 Verified Amended Complaint at Exhibit 3.

8 Accordingly, by the very terms of the FRANCHISE AGREEMENT, services separate
9 from "Collection Services" and outside of the FRANCHISE AGREEMENT, like Excluded
10 Recyclable Materials (defined as separated Approved Recyclable Materials that are sold
11 to a buyer at market rate) and the collection, transportation, delivery or other services
12 related thereto are not exclusive to Waste Management.

13 Therefore, Cheryl Gilletti's email stating, "Recyclable Material. No business may
14 allow or retain any service provider other than Reno Disposal Company to collect,
15 pickup, transport or deliver Approved Recyclable Materials" is a false statement in that
16 collection, transportation and delivery of Excluded Recyclable Materials, which are separated
17 Approved Recyclable Materials sold by the generator to a buyer at market price; and, contrary
18 to Ms. Gilletti's statement, any business may allow or retain Plaintiffs to pickup Approved
19 Recyclable Materials as long as they are separated by the generator thereof and purchased by
20 Plaintiffs at market price. In fact, Defendants concede this point in their Motion to Dismiss
21 stating, "[D]irect sales [of Approved Recyclable Materials] from a Seller directly to a buyer
22 paying market rate is exempt." Motion to Dismiss Verified Amended Complaint, 9:9-10.

23 Defendants also argue, "Ms. Gilletti's email does not concern or reference the Plaintiffs in
24 any fashion. Accordingly, there is no statement directed at the Plaintiffs." Motion to Dismiss
25 Verified Amended Complaint, 16:6-7. However, Defendants fail to provide any legal authority
26 that supports the assertion that the statement must be "directed at the Plaintiffs" in order to be
27
28

1 defamatory. As set forth in *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483-84, 851 P.2d 459, 462-63
2 (1993), upon which Defendants rely, a Plaintiff only needs to prove, or for purposes of a Motion
3 to Dismiss, allege "a false and defamatory statement by defendant concerning the plaintiff."
4 [Emphasis Added]. As such, the statement need only be "related to; connected with; be of
5 interest or importance to; or affect" Plaintiffs. See, "Concerning." Dictionary.com Unabridged.
6 Random House, Inc. 05 May, 2015.

7 As Plaintiffs' allege in their Verified Amended Complaint, Ms. Gilletti's email, and the
8 false statements contained therein, were sent directly to one of Plaintiffs' customers. See,
9 Verified Amended Complaint, 11:11-13. Clearly telling Plaintiffs' customer that no other
10 service provider can pick up Approved Recyclable Materials, when in fact, as long as they are
11 separated and sold at market price, Plaintiffs can purchase, pick up and collect Approved
12 Recyclable Materials from businesses, is directly related to, of interest, importance, concern
13 and affects Plaintiffs.

14 Defendants point out in their Motion that, "Whether a statement is capable of a
15 defamatory construction is a question of law." *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d
16 1223, 1225 (1981); See also, Motion to Dismiss Verified Complaint, 15:8. However, Defendants
17 conveniently fail to further point out to this Court that, "If a statement is susceptible to different
18 constructions, resolution of any ambiguity is a question of fact for the jury." *Branda v. Sanford*,
19 97 Nev. 643, 637 P.2d 1223, 1225-26 (1981). Further, "the truth or falsity of an allegedly
20 defamatory statement is an issue of fact properly left to the jury for resolution." *Fink v. Oshins*,
21 118 Nev. 428, 437, 49 P.3d 640, 646 (2002).

22 At the very least, Plaintiffs have adequately stated claims for Defamation and
23 Defamation Per Se in accordance with NRCP Rule 8(a). As such, with respect to the first and
24 second claims for relief set forth in Plaintiffs' Verified Amended Complaint, Defendants Motion
25 to Dismiss must be denied.¹

26
27 ¹ It should be noted that in concluding their arguments in support of Defendants' Motion to Dismiss Plaintiffs'
28 Defamation and Defamation Per Se claims, Defendants' write, "Defendants are entitled to summary judgment on

1 ii. **The Other Representations Made by Reno Disposal Representatives**
2 **were Both False and Defamatory**

3 With respect to the other defamatory statements alleged in Plaintiffs' Verified Amended
4 Complaint, Defendants rely on the premise that "a statement is not defamatory if it is absolutely
5 or substantially true." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82, 88 (2002);
6 See also, Motion to Dismiss Verified Amended Complaint, 16:23-25. However, the *Pegasus*
7 Court went on to find that "A statement is substantially true if it contains minor inaccuracies
8 that do not amount to falsity 'unless the inaccuracies would have a different effect on the
9 mind of the reader from that which the pleaded truth would have produced.'" [Emphasis
10 Added]. *Id.* at 88 n. 17 (Internal Citation(s) Omitted). However, "Whether a statement is true
11 or false is an issue of fact for the jury." *Williams v. Univ. Med. Ctr. of S. Nevada*, 688 F. Supp. 2d
12 1134, 1146 (D. Nev. 2010), Citing, *Fink v. Oshins*, 118 Nev. 428, 49 P.3d 640, 646 (2002).

13 Plaintiffs have alleged that Waste Management has allowed and encouraged its agents
14 and employees to make false and misleading statements to Plaintiffs' customers and/or
15 prospective customers, including but not limited to the following:

16 "We [WM] are the only hauler that's allowed in Sparks and Reno."

17 "Any other provider that goes in there, there will be fines."

18 "We [WM] have an agreement with the city and we are the only trash hauler
19 that is allowed in either of those cities [Reno and Sparks]."

20 See, Verified Amended Complaint, 9:2-10. The first statement that Waste Management is "the
21 only hauler that's allowed in Sparks and Reno" is an unequivocally false statement. Despite
22 Defendants representations that "The first and third statement are true since Reno Disposal is
23 actually the only franchised hauler under the Commercial Franchise Agreement in the City of
24 Reno and is also the franchise hauler in the City of Sparks," this statement is simply not true.

25
26 these claims because Plaintiffs fail to allege a cognizable claim and the motion must be granted." [Emphasis
27 Added]. Motion to Dismiss Verified Amended Complaint, 17:7-9. However, this is a Motion to Dismiss, not a
28 Motion for Summary judgment. Outside matters do not appear to have been considered in bringing or responding
to this Motion to Dismiss and as such, there should be no reason to treat this as a Motion for Summary judgment.

1 See, Motion to Dismiss Verified Amended Complaint, 16:26-28. This is not a minor inaccuracy.
2 This is a complete inaccuracy that does result in a falsity. Waste Management's
3 agent/employees did not make the statement that Waste Management is the only "franchised
4 hauler" allowed in Sparks and Reno, as Defendants attempt to state. The false statement made
5 to Plaintiffs' customers and/or prospective customers was that Waste Management was "the
6 only hauler allowed in Sparks and Reno." [Emphasis Added].

7 To the contrary and as properly alleged in Plaintiffs' Verified Amended Complaint,
8 Plaintiff, AMCB, LLC dba Rubbish Runners is a hauler that is allowed to do business in Reno and
9 Sparks and is explicitly provided for in the FRANCHISE AGREEMENT. Specifically, the
10 FRANCHISE AGREEMENT provides the following:

11 'Exempted Haulers' means persons or entities: (i) licensed as of October
12 24, 2012 by the City and the Washoe County Health District to collect and
13 transport Solid Waste and Recyclable Materials in the City of Reno;
14 and, (ii) actively engaged, as its primary business, in the collection and
transportation of Solid Waste and Recyclable Materials in the City of
Reno as of October 24, 2012, including Contractor. All Exempted Haulers
are listed on Schedule 1 attached hereto.

15 See, Commercial Franchise Agreement, at p. 7, attached to Verified Amended Complaint at
16 Exhibit 3 and incorporated therein by reference. AMCB, LLC dba Rubbish Runners is listed on
17 Schedule 1 at page 58 of the FRANCHISE AGREEMENT as an Exempted Hauler. As such and as
18 properly plead by Plaintiffs, the statements and representations made by Defendants agents
19 and/or employees to Plaintiffs' customers and/or prospective customers that Waste
20 Management is "the only hauler that's allowed in Sparks and Reno" and that Waste
21 Management has "an agreement with the city and [...] are the only trash hauler that is allowed
22 in either of those cities [Reno and Sparks]," are false.

23 Again, Defendants attempt to briefly argue that these claims for Defamation and
24 Defamation Per Se fail because the statements were not directed at the Plaintiffs. Motion to
25 Dismiss Verified Amended Complaint, 17:6-7. However, as set forth more fully herein, telling
26 Plaintiffs' customers and/or prospective customers that Waste Management is the only hauler
27
28

1 allowed in Reno and Sparks when that is not true is directly related to, of interest, importance,
2 concern and affects Plaintiffs. Obviously if Waste Management, through its agents and/or
3 employees, are making these statements directly to Plaintiffs' customers and/ or prospective
4 customers (as alleged), the direct effect of those false statements is that Plaintiffs are not
5 allowed to provide any hauling services for Plaintiffs' customers and/or prospective customers
6 whatsoever in Reno or Sparks.

7 A statement is defamatory if it "would tend to lower the subject in the estimation of the
8 community, excite derogatory opinions about the subject, and hold the subject up to contempt."
9 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002), citing, *K-Mart*
10 *Corporation*, 109 Nev. at 1191, 866 P.2d at 281-82. Telling Plaintiffs' customers and/or
11 prospective customers that Waste Management is the only entity allowed to haul in Reno or
12 Sparks, clearly harms Plaintiff's reputation in the community and excites derogatory opinions
13 about Plaintiffs that they are somehow breaking the law or doing something they are not
14 allowed to do- which is not the case.

15 Again, "the truth or falsity of an allegedly defamatory statement is an issue of fact
16 properly left to the jury for resolution." *Fink v. Oshins*, 118 Nev. 428, 437, 49 P.3d 640, 646
17 (2002). Plaintiff has more than adequately put Defendants on notice and made claims that,
18 when the allegations that have been plead are taken as true and in the light most favorable to
19 Plaintiffs, entitle Plaintiff to relief. As such, Defendants' Motion to Dismiss must be denied.

20 **B. Plaintiffs' Verified Amended Complaint Properly States Claims for Which**
21 **Relief Can be Granted for Breach of Contract/ Third Party Beneficiary and**
22 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

23 **a. Standing**

24 The question of standing focuses on the party, rather than the issues to be
25 adjudicated. [Emphasis Added]. *Szilagyi v. Testa*, 99 Nev. 834, 673 P.2d 495 (1983).

26 Here, despite the fact that both the FRANCHISE AGREEMENT and DISPOSAL
27 AGREEMENT explicitly state that Plaintiffs are third party beneficiaries to the Agreements,
28

1 Defendants argue that Plaintiffs do not have standing to bring any claims for breach of contract
2 and breach of the implied covenant of good faith and fair dealing. Motion to Dismiss Verified
3 Amended Complaint, 17:10-20.

4 As a preliminary matter of importance, it is important to note that Defendants have
5 again misrepresented the allegations set forth in Plaintiffs' Verified Amended Complaint
6 stating, "Here, the Plaintiffs fail to allege or otherwise demonstrate a basis for standing as a
7 third-party beneficiary." Motion to Dismiss Verified Amended Complaint, 17:24-18:1. This
8 assertion is not true. To the contrary, Plaintiffs did in fact allege standing as third party
9 beneficiaries in the Verified Amended Complaint explicitly alleging:

10 Section 3.2(D)(3) of the WM FRANCHISE AGREEMENT explicitly provides
11 that, "***Each Exempted Hauler shall be a third party beneficiary with the***
12 ***right to enforce***, subject to the terms and conditions in this Section 3.2 D,
13 ***the rights of such Exempted Hauler under this Section 3.2 D.***" [Emphasis
14 Added]. Accordingly, Plaintiff RR is an intended third party beneficiary of
15 the FRANCHISE AGREEMENT.

16 Section 4.4(L)(3) of the WM FRANCHISE AGREEMENT explicitly provides
17 that, "***The exempted facility shall be a third party beneficiary with the***
18 ***right to enforce***, subject to the terms and conditions in this section 4.4 L,
19 ***the rights of the exempted facility under this section 4.4 L.***" [Emphasis
20 Added]. Accordingly, Plaintiff NRS is an intended third party beneficiary of
21 the FRANCHISE AGREEMENTS.

22 Verified Amended Complaint, 15:10-19. When reviewing whether someone is a third-party
23 beneficiary of a contract, the Court looks at whether the contracting parties demonstrated a
24 clear intent to benefit the third party and whether the third party's reliance was foreseeable.
25 *Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 380, 566 P.2d 819, 825 (1977). Further, Nevada
26 Courts construe contracts from "the written language and enforce [them] as written." *Ellison v.*
27 *C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

28 In the present case, the FRANCHISE AGREEMENT states in relevant part that "Each
Exempted Hauler shall be a third party beneficiary . . ." and that "The exempted facility shall be a
third party beneficiary . . ." See, Sections 3.2D(3) and 4.4(I)(3) of the Commercial Franchise

1 Agreement, attached to the Verified Amended Complaint as Exhibit 3 and incorporated therein
2 by reference.

3 Defendants base their entire standing arguments on the language the following
4 language:

5 Each Exempted Hauler shall be a third party beneficiary **with the right to**
6 **enforce, subject to the terms and conditions in this Section 3.2 D, the**
7 **rights of such Exempted Hauler under this Section 3.2 D;**

8 The exempted facility shall be a third party beneficiary **with the right to**
9 **enforce, subject to the terms and conditions in this section 4.4 L, the**
10 **rights of the exempted facility under this section 4.4 L;**

11 and,

12 The Exempted Facility shall be a third party beneficiary **with the right to**
13 **enforce, subject to the terms and conditions in this Section 3.2 G, the**
14 **rights of the Exempted Facility under Section 3.2 G.**

15 [Emphasis Added]. See, Motion to Dismiss Verified Amended Complaint, 18:11-28. Defendants'
16 argue that this language limits status as a third party beneficiary. *Id.* However, Defendants are
17 misplaced in their application of these facts to the law in this area.

18 In their Motion to Dismiss, Defendants misstate both the operative legal principles and
19 the holding in *Lipshie*. Neither *Lipshie* nor any other case holds a contract must be for the
20 exclusive or primary benefit of a non-party to create a third party beneficiary. Plaintiffs need
21 only allege that they are intended third party beneficiaries of some promise contained in a
22 contract, which Plaintiffs have properly alleged here. The benefit need not be the sole or
23 primary purpose of the contract. See, *Acoustics, Inc. v. American Surety. Co.*, 320 P.2d 626, 627
24 (1958) ("Where a contract contains a promise for the benefit of one not a party to the contract,
25 the third party beneficiary has a direct right of action against the promisor.")

26 The Nevada Supreme Court has long held that a third party beneficiary has a direct right
27 of action against the promisor or an actual party to contract. *Hemphill v. Hanson*, 77 Nev. 432,
28 436 n. 1, 366 P.2d 92, 94 n. 1 (1961); See also, *Morelli v. Morelli*, 102 Nev. 326, 329, 720 P.2d
704, 706 (1986) (providing that, while a third-party beneficiary is generally "subject to the

1 defenses that would be valid as between the parties . . ."); and, Restatement (Second) of
2 Contracts § 309 cmt. c (1981) (providing that a third-party beneficiary's right to enforce a
3 contract **is "direct, not merely derivative"**). [Emphasis Added]. As such, as third party
4 beneficiaries, Plaintiffs have a direct right to enforce the contract, not merely sections of the
5 contract that explicitly mention or reference Plaintiffs. Further, Defendants have provided no
6 legal authority which would support the argument that a third party beneficiary only has
7 standing to bring claims limited to enforcement of specific portions of a contract. To the
8 contrary, Nevada case law makes it clear that when a party is a third party beneficiary to a
9 contract, the third party beneficiary has the right to bring an action to enforce the contract.
10 *Hemphill v. Hanson*, 77 Nev. 432, 436 n. 1, 366 P.2d 92, 94 n. 1 (1961).

11 The language of the FRANCHISE AGREEMENT is plain. It clearly and unambiguously
12 establishes that the City and Reno Disposal Company ("Waste Management") explicitly
13 intended the Agreement to benefit each exempted hauler (which includes Plaintiff, Rubbish
14 Runners) and the exempted facility (Plaintiff, Nevada Recycling and Salvage ("NRS")). Given the
15 clear and unambiguous language of the Agreement, Plaintiffs are explicitly intended third-party
16 beneficiaries with the ability to enforce the Agreement. Accordingly, Defendants' Motion to
17 Dismiss the contractual and good faith and fair dealing claims on the basis of standing should
18 be denied in its entirety.

19
20 **i. Plaintiffs' have Standing to Maintain this Action as to the Issue of
Franchise Rate Claims**

21 Even though Plaintiffs, as specifically defined third party beneficiaries in both the
22 FRANCHISE AGREEMENT and the DISPOSAL AGREEMENTS, have standing to bring an action to
23 enforce the contracts in their entirety as set forth more fully above, Plaintiffs also have
24 independent standing to bring each and every claim for breach of contract alleged by Plaintiffs
25 has alleged direct damage to Plaintiffs as a result of the breach.

1 Under Nevada law, an individual who is not named in a contract or a stranger to both
2 parties may still bring suit where a breach of the contract has caused injury to that non-party.
3 *Williams v. City of North Las Vegas*, 91 Nev. 622, 541 P.2d 652 (1975). As required under the
4 notice pleading requirements of this State, Plaintiffs' properly plead the following allegations in
5 its Verified Amended Complaint:

6 The current "Franchise Rates" that WM and/or its affiliates are required to
7 charge under the FRANCHISE AGREEMENT are set forth in Exhibit 3,
attached hereto and incorporated herein.

8 WM has materially breached the FRANCHISE AGREEMENT and its
9 obligations thereunder to the CITY, its commercial customers and third-
party beneficiaries under the FRANCHISE AGREEMENT, NRS and RR, by
10 consistently and intentionally failing to charge the "Franchise Rates" as set
forth in and required under the FRANCHISE AGREEMENT.

11 As a representative example, on February 1, 2015, WM billed and charged a
12 commercial customer located in Reno at 4670 Aircenter Circle and thus,
covered under the FRANCHISE AGREEMENT, \$120.58 for "4 Yard dumpster
13 service- recycle materials." See, Exhibit 10, attached hereto. However, the
current and applicable "Franchised Rate" for a 4 Yard Bin for Recyclable
14 Materials, as set forth in Exhibit 8 attached hereto, is \$135.47. Accordingly,
WM and/or its affiliates, are undercharging the commercial customer by
15 \$14.89, in material breach of the FRANCHISE AGREEMENT and to the direct
detriment of Plaintiffs as licensed competitors authorized to do business in
16 the CITY.

17 ...
At all times relevant herein, REFUSE and WM, and/ or their affiliates, knew
18 and/or should have reasonably foreseen that the explicit rights and
provisions set forth in the FRANCHISE AGREEMENT and the DISPOSAL
19 AGREEMENT relating to Exempted Haulers (RR) and the Exempted Facility
(NRS), was for the benefit of the intended third party beneficiaries
thereunder, the Plaintiffs herein.

20 As a direct and foreseeable consequence of WM's actions in materially
breaching the FRANCHISE AGREEMENT and the DISPOSAL AGREEMENT, as
21 intended third party beneficiaries, RR and NRS have been directly damaged
in an amount to be proven at trial but which exceeds \$10,000.00.
22

23 See, Verified Amended Complaint, 15:24-16:12 and 17:14-22. Plaintiffs have properly alleged
24 that Waste Management has materially breached the FRANCHISE AGREEMENT and its
25 obligations thereunder to Plaintiffs by "consistently and intentionally failing to charge the
26 'Franchised Rates' as set forth in and required under the FRANCHISE AGREEMENT." *Id.* at
27

1 16:1-4. Plaintiffs further allege that these breaches and failure to charge the correct
2 'Franchised Rates,' are "to the direct detriment of Plaintiffs as licensed competitors authorized
3 to do business in the CITY." *Id.* at 16:10-12. Plaintiffs continue to allege that it was reasonable
4 foreseeable that Plaintiffs would rely on Waste Management's performance in accordance with
5 the terms of the FRANCHISE AGREEMENT as intended third party beneficiaries and that as a
6 direct and foreseeable consequence of Waste Managements actions in materially breaching the
7 FRANCHISE AGREEMENT . . . as intended third party beneficiaries, Plaintiffs have been directly
8 damaged. *Id.* at 17:14-22.

9 Based on the foregoing, Defendants' Motion to Dismiss with respect to Plaintiffs claims
10 for breach of contract for failing to charge the "Franchised Rates" should be denied.

11
12 **ii. Plaintiffs' have Standing to Maintain their Claims for Breach of
Contract with Respect to the Eco Center**

13 Again, despite the fact that the DISPOSAL AGREEMENT, attached to Plaintiffs' Verified
14 Amended Complaint at Exhibit 4 and incorporated therein by reference explicitly provides that
15 Plaintiffs are third party beneficiaries (Sec. 3.2(g)(3), p.12), thus, confirming Plaintiffs' standing
16 to bring claims to enforce the AGREEMENT as a whole; Plaintiffs have again also gone above
17 and beyond the basic notice-pleading requirements set forth in NRCP 8 and asserted standing
18 independent to their standing as third party beneficiaries by alleging direct damages suffered
19 by Plaintiffs as a result of Waste Management's material breach for failing to make good faith
20 efforts commence construction on the Eco Center, as provided for in the FRANCHISE
21 AGREEMENT.

22 Plaintiffs specifically allege:

23 Further, the DISPOSAL AGREEMENT additionally requires that REFUSE
24 and/ or its affiliates, including but not limited to WM, "use commercially
25 reasonable efforts to commence and diligently prosecute construction of
26 the Eco-Center" (also known as a "MRF") in the CITY OF RENO by March 7,
27 2015. See, DISPOSAL AGREEMENT, attached hereto at Exhibit 4, at p. 13,
28 3.3A. The rates that WM collects from commercial customers subsid[izes]
the residential customers within the CITY. This is so that Residential
Customers can have single stream recycling under the Residential
Franchise Agreement, which Defendants appear to be in breach of as well.

1 The rates charged by WM were also supposed to be used to build the "Eco-
2 Center." The "Eco-Center" is necessary to adequately service the CITY and
3 without it, WM does not have the ability to adequately service this local
area and in turn, is not properly recycling as agreed to in both the
Residential and Commercial FRANCHISE AGREEMENTS.

4 On the permanent public record, at the October 10, 2012 City Council
5 meeting, upon inquiry by Vice Mayor Dave Aiazzi asking, "So what is the
6 penalty for not building [Eco-Center] in 28 months, they [WM/ REFUSE]
7 have been collecting the money and if it doesn't get built, what happens?"
One of the Reno City Attorneys, Jonathan Shipman, answered, WM/
REFUSE, would be in material breach of the agreement [the FRANCHISE
AGREEMENT].

8 However, more than 28 months later, WM/ REFUSE has failed to move
9 forward with construction of the Eco-Center. As such, WM is in material
10 breach of the DISPOSAL AGREEMENT for failing to "use commercially
reasonable efforts to commence and diligently prosecute construction of
the Eco-Center ..." by March 7, 2015.

11 ...

12 At all times herein and as set forth more fully herein, Plaintiff NRS and RR,
13 respectively, haul and accept recyclable materials as permitted by the
14 FRANCHISE AGREEMENT. Plaintiff, NRS has the only facility within the
CITY of Reno with an actual sort line for recyclable materials and works
15 diligently to ensure as many materials as possible are prepared for
recycling and returned to the economy.

16 Under the FRANCHISE AGREEMENT, residents and business owners have
suffered regular and ongoing rate increases. WM represented that these
17 rate increases were necessary to offset costs of building an Eco-Center
within the CITY of Reno as well as implementing the Single Stream
18 Recycling Program. WM represented that the Eco-Center was necessary
because "The current Waste Management facilities cannot accommodate
19 the increase in recycling volumes that will be generated by the single-
stream recycling program. An expanded facility is required to meet the
needs of the community." Under the FRANCHISE AGREEMENT, WM's
20 construction of the Eco-Center was required to commence on or before
March 7, 2015. To date, construction has not commenced.

21 Because the Commercial Recycling Program in Reno subsidizes the rates for
22 residential services, including the Single Stream Recycling Program,
Plaintiffs' respective costs of doing business have increased. In
23 addition, as a result of the FRANCHISE AGREEMENTS, which include the
recycling programs, Plaintiffs have been forced to change their internal
24 operating procedures in order to ensure compliance with the FRANCHISE
AGREEMENTS. With respect to recyclable materials collected, accepted and
25 sorted by Plaintiffs, respectively, every effort is made to ensure those
materials are sold for the purpose of "returning them to the economy in the
26 form of raw materials for new, reused, repaired, refabricated,
remanufactured, or reconstituted products." [Emphasis Added].
27

1 [Emphasis Added]. Verified Amended Complaint, 16:13-17:6 and 23:26-24:17. Accordingly,
2 Plaintiffs have more than adequately plead allegations reflecting Plaintiffs standing to bring the
3 claims for breach of the FRANCHISE AGREEMENT for failing to comply with the terms and
4 conditions set forth therein with respect to construction of the Eco-Center. As such,
5 Defendants' Motion to Dismiss as to breach of contract must be denied.

6 **iii. Defendants' Improperly Again Attempt to Argue the Merits of**
7 **this Case in their Motion to Dismiss**

8 The court cannot dismiss a complaint for failure to state a claim "unless it appears
9 beyond a doubt that the [non-moving party] could prove no set of facts which, if accepted by
10 the trier of fact, would entitle him to relief." *Edgar v. Wagner*, 101 Nev. 226, 228 (1985). When
11 determining whether allegations in the complaint are sufficient to assert a claim, the test is
12 "whether the allegations give fair notice of the nature and basis of a legally sufficient claim and
13 the relief requested." *Ravera v. City of Reno*, 100 Nev. 68, 70 (1984).

14 Section II(D)(2) beginning on page 20 of Defendants' Motion to Dismiss again spends a
15 lengthy amount of time inappropriately arguing the merits of the case to this court.
16 Defendants' assert "The Defendants Have Not Breached the Commercial Franchise Agreement."
17 Motion to Dismiss Verified Amended Complaint, 20:4-5. Defendants are arguing the merits of
18 the dispute, and not demonstrating or even attempting to demonstrate that Plaintiffs have
19 failed to state a claim upon which relief can be granted, the standard for a Rule 12(b)(5) Motion
20 to Dismiss and the Rule of Civil Procedure by which Defendants base their Motion.

21 Quite frankly, there is no allegation set forth in that section demonstrating that Plaintiff
22 has failed to state a claim for which relief can be granted and, as such, no argument is necessary
23 herein. However, Plaintiffs' do respectfully request that this Court strike Defendants'
24 arguments regarding the merits of this case as such arguments are inappropriate for
25 consideration on a NRCP 12(b)(5) Motion to Dismiss.

26 ///

1 iv. **Defendants Have Failed to Provide Any Facts or Law which**
2 **would Support its Request for Dismissal of Plaintiffs Claims for**
3 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

4 Literally the only time Defendants address Plaintiffs' claims for breach of the covenant of
5 the implied covenant of good faith and fair dealing in their Motion to Dismiss is as follows:

6 D. PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF CONTRACT/
7 THIRD PARTY BENEFICIARY OR BREACH OF THE IMPLIED COVENANT OF
8 GOOD FAITH AND FAIR DEALING;

9 and,

10 As presently alleged, Plaintiff failed to state a claim for breach of contract or
11 breach of the covenant of good-faith and fair dealing against the
12 Defendants.

13 Motion to Dismiss Verified Amended Complaint, 17:10-11 and 20:24-26. Unless a point is
14 obvious, it should be supported by the citation of authority. 4 C.J.S. Appeal and Error § 733.
15 Recently, the Nevada Supreme Court has gone one step further by holding that the Court *may*
16 *not consider issues not supported by cogent argument and citation to relevant authority.*
17 [Emphasis Added]. *Berkson v. LePome*, 245 P.3d 560 (2010).

18 In their Motion to Dismiss, Defendants have failed to make any actual argument or cite
19 any legal authorities supporting its request that this Court dismiss Plaintiffs' claims for breach
20 of the implied covenant of good faith and fair dealing. Accordingly, pursuant to *Berkson*, this
21 Court must disregard Defendants' request that this Court dismiss Plaintiffs' claims against
22 Defendants for breach of the implied covenant of good faith and fair dealing and in turn, deny
23 Defendants' Motion to Dismiss as to that claim.

24 C. **Defendants Completely Misrepresent Plaintiffs' Claims for Unfair Trade**
25 **Practices/ Conspiracy to Restrain Trade Under the Unfair Trade Practices**
26 **Act**

27 Essentially, Defendants' sole argument as to why dismissal of Plaintiffs' claims for Unfair
28 Trade Practices/ Conspiracy to Restrain Trade under the Unfair Trade Practices Act is that
29 "Under NRS 268.081, incorporated cities can 'displace or limit competition' for the '[c]ollection
30 and disposal of garbage and other waste.'" Motion to Dismiss Verified Amended Complaint,

1 21:5-17. However, and as Defendants point out, Plaintiffs' have never argued that the City of
2 Reno did not have the ability to enter into the subject FRANCHISE and DISPOSAL AGREEMENT.
3 *Id.* at 21:14-15. To the contrary, Plaintiffs' Fifth Claim for Relief for Unfair Trade Practices/
4 Conspiracy to Restrain Trade is based on the following:

5 NRS 598A.060 provides,

6 "Every activity enumerated in this subsection constitutes a contract,
7 combination or conspiracy in restraint of trade, and it is unlawful to
conduct any part of any such activity in this State:

8 (a) ***Price fixing, which consists of raising, depressing, fixing, pegging or***
9 ***stabilizing the price of any commodity or service, and which includes,***
but is not limited to:

10 (1) Agreements among competitors to depress prices at which they will buy
essential raw material for the end product.

11 (2) Agreements to establish prices for commodities or services.

12 (3) Agreements to establish uniform discounts, or to eliminate discounts.

13 (4) Agreements between manufacturers to price a premium commodity a
specified amount above inferior commodities.

14 (5) Agreements not to sell below cost.

15 (6) Agreements to establish uniform trade-in allowances.

16 (7) Establishment of uniform cost surveys.

17 (8) Establishment of minimum markup percentages.

18 (9) Establishment of single or multiple basing point systems for
determining the delivered price of commodities.

19 (10) Agreements not to advertise prices.

20 (11) Agreements among competitors to fix uniform list prices as a place to
start bargaining.

21 (12) Bid rigging, including the misuse of bid depositories, foreclosures of
competitive activity for a period of time, rotation of jobs among
competitors, submission of identical bids, and submission of
complementary bids not intended to secure acceptance by the customer. . .
22 "

23 ...
24 (14) Agreements to restrict volume of production.

25 (e) Monopolization of trade or commerce in this State, including, without
limitation, ***attempting to monopolize or otherwise combining or***
26 ***conspiring to monopolize trade or commerce in this State...***
27 [Emphasis Added].

28 In the seminal case of *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104,
117-18, 107 S.Ct. 484, 93 L.Ed.2d 427 (1986), the United States Supreme
Court also addressed the issue of predatory pricing as follows:

"Predatory pricing may be defined as ***pricing below an appropriate***
measure of cost for the purpose of eliminating competitors in the short

1 **run and reducing competition in the long run.** It is a practice that harms
2 both competitors and competition. In contrast to price cutting aimed simply
3 at increasing market share, predatory pricing has as its aim the elimination
4 of competition. Predatory pricing is thus a practice "inimical to the
5 purposes of [the antitrust] laws."
6 [Emphasis Added].

7 In this case, WM has engaged in predatory pricing by charging commercial
8 customers below the Franchised Rates, for customers who compete with
9 Plaintiffs, while at the same time, charging commercial customers more
10 than the Franchised Rates, for customers who do not compete with
11 Plaintiffs.

12 The current Franchised Rates, which must be charged by WM under the
13 FRANCHISE AGREEMENT are set forth in Exhibit 8, attached hereto and
14 incorporated herein by reference.

15 The following are representative examples of WM's price fixing/ predatory
16 pricing:

17 A. For a commercial customer located at 4670 Aircenter Circle in Reno,
18 for January of 2015, WM is charging \$157.13 for a 30 Yard Flat Roll Top.
19 See, Exhibit 11. However, the correct Franchised Rate for the 30 Yard
20 Closed Top Box is \$312.80. See, Exhibit 8 at p.4. This results in an
21 undercharge of \$155.67 per bin. These are drop box services, which
22 Plaintiffs herein directly compete for. As such, Plaintiffs are directly
23 damaged by WM's price fixing conduct.

24 B. For a commercial customer located at 1835 Montello Street in Reno, for
25 January of 2015, WM is charging \$97.19 for one 3 yard dumpster with
26 collection one time per week. See, Exhibit 12. However, the correct
27 Franchised Rate for one 3 yard dumpster with collection one time per week
28 is \$162.98. See, Exhibit 8 at p.1. This results in an undercharge of \$65.79
per bin. These are dumpster/ bin services which Plaintiffs herein directly
compete for. As such, Plaintiffs are directly damaged by WM's price fixing
conduct.

In direct violation of the FRANCHISE AGREEMENT, WM is pricing its
services lower than the appropriate measure of cost as set forth in the
FRANCHISE AGREEMENT.

WM is engaging in this lower pricing in order to deliberately and
intentionally push Plaintiffs out of the market. In fact, WM's agents and
representatives have represented to customers of Plaintiffs that their sole
purpose was to put Plaintiffs out of business. See, Affidavit of John Vaughn,
attached hereto at Exhibit 13. In addition, with respect to services that WM
does not compete with any other businesses for, WM has charged
customers *more* than the FRANCHISE rates; in turn, victimizing local
business owners by overcharging them in violation of the FRANCHISE
AGREEMENT.

In addition and as set forth more fully herein, WM failed to disclose to the
Reno City Council or anyone else, that they had reached a deal to purchase

1 CASTAWAY TRASH HAULING prior to when the FRANCHISE AGREEMENTS
2 were signed granting both WM and CASTAWAY Franchised Zones within
the CITY of Reno.

3 Months after the FRANCHISE AGREEMENTS were signed, WM announced
4 that it had purchased CASTAWAY, thus, taking over its Franchised Zone and
leaving only one FRANCHISEE left, WM.

5 As such, WM has engaged in a scheme and entered into agreements with
6 CASTAWAY to deliberately create a monopoly without disclosing such
intent to the CITY to the detriment of Plaintiffs and in direct violation of
7 NRS 598A.

8 Verified Amended Complaint, 19:7-21:23. Yes, the City of Reno can displace or limit
9 competition. Plaintiffs' have made no allegations to the contrary. What Plaintiffs have alleged
10 is that 1. Defendants have engaged in price fixing by charging outside the rates as required by
11 the FRANCHISE AGREEMENT and as explicitly set and agreed to by the City in an attempt to
12 drive Plaintiffs out of the market in violation of NRS 598A.060; and, 2. That Waste
13 Management, not the City of Reno, failed to disclose that they had reached a deal to purchase
14 CASTAWAY TRASH HAULING prior to when the FRANCHISE AGREEMENTS were signed,
15 conspiring with CASTAWAY TRASH HAULING to create a monopoly in violation of NRS 598A.
16 Plaintiffs' have not alleged that the City of Reno is not permitted to displace or limit
17 competition. Plaintiffs have alleged that it was illegal for Waste Management to conspire with
18 CASTAWAY TRASH HAULING, who was granted the other part of the FRANCHISE for the City of
19 Reno, to combine, thus, leaving Waste Management with a complete monopoly, in violation of
20 NRS 598A and as explicitly alleged in Plaintiffs' Verified Amended Complaint.

21 Once again, Defendants have failed to make any actual arguments or cite any legal
22 authorities supporting its request that this Court dismiss Plaintiffs' claims for Unfair Trade
23 Practices/ Conspiracy to Restrain Trade. In fact, Defendants don't even address the actual
24 allegations set forth in Plaintiffs' Verified Amended Complaint with respect to these claims. As
25 such and pursuant to *Berkson* as discussed more fully above, this Court must disregard
26 Defendants' request that this Court dismiss Plaintiffs' claims against Defendants for Unfair
27

1 Trade Practices and Conspiracy to Restrain Trade and deny Defendants' Motion to Dismiss as to
2 those claims.

3 **D. Plaintiffs' Claims for Fraud, Fraud in the Inducement and Fraudulent**
4 **Misrepresentation have been Plead with the Requisite Specificity Required**
5 **by NRCP 9(b)**

6 **i. Specificity Requirements of NRCP 9(b)**

7 With respect to the heightened pleading requirements when making allegations of fraud,
8 NRCP 9(b) provides, "In all averments of fraud or mistake, the circumstances constituting fraud
9 or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of
10 mind of a person may be averred generally." "The circumstances that must be detailed include
11 averments to the time, the place, the identity of the parties involved, and the nature of the
12 fraud...." *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981).

13 In order to state a claim for fraud, a plaintiff must allege:

14 (1) a false representation made by the defendant; (2) defendant's
15 knowledge or belief that its representation was false or that defendant has
16 an insufficient basis of information for making the representation; (3)
17 defendant intended to induce plaintiff to act or refrain from acting upon the
18 misrepresentation; and (4) damage to the plaintiff as a result of relying on
19 the misrepresentation.

20 *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998). In this case,
21 Plaintiffs have properly made the following allegations of fraud with more than the specificity
22 required under NRCP 9(b):

23 When WM was in negotiations and lobbying the CITY for the FRANCHISE
24 AGREEMENTS and thereafter and for the purpose of inducing the CITY to
25 agree to both residential and commercial FRANCHISE AGREEMENTS, WM
26 represented to the CITY and publically to the citizens and business owners
27 of the CITY that the Commercial rates set forth under the FRANCHISE
28 AGREEMENT were established to subsidize and offset the Residential Rates
to assist in covering the costs associated with single stream recycling.

To intentionally and fraudulently induce the CITY, residents and business
owners to support the Single Stream Recycling Program as well as
commercial recycling services, WM has and continues to represent that the
Single Stream Recycling Program increases the amount of recyclable
material collected, and decreases the amount of waste sent to Landfills.

WM further represents that "Reno residents have been asking for single-
stream recycling for several years. As a result, on Nov. 7, 2012, the Reno

1 City Council approved the single-stream recycling program to make
2 recycling easy and convenient for the residents and *to increase recycling*
3 *within the city.* [Emphasis Added].

4 WM admits that "All customers are billed for recycling, regardless if they
5 use their single-stream recycling cart or not."

6 Both the Commercial and Residential FRANCHISE AGREEMENTS and the
7 Reno Municipal Code Section Sec. 5.90.010 defines "Recycle," "recycled,"
8 and "recycling" as, "the process of collection, sorting, cleansing, treating and
9 reconstituting of recyclable materials that would otherwise be disposed of,
10 and returning them to the economy in the form of raw materials for new,
11 reused, repaired, refabricated, remanufactured, or reconstituted products."
12 [Emphasis Added].

13 WM represents that "Single-stream recycling allows for the collection and
14 processing of a wider variety of recyclable material, including:

- 15 • Plastics bottles (#1 - #7)
- 16 • Plastic containers (#1 - #7)
- 17 • Cardboard
- 18 • Paperboard
- 19 • Paper
- 20 • Junk Mail
- 21 • Newspaper
- 22 • Magazines
- 23 • Glass bottles (without caps)
- 24 • Glass jars (without caps)
- 25 • Aluminum cans
- 26 • Steel cans" [Emphasis Added].

27 At all times herein and as set forth more fully herein, Plaintiff NRS and RR,
28 respectively, haul and accept recyclable materials as permitted by the
FRANCHISE AGREEMENT. Plaintiff, NRS has the only facility within the
CITY of Reno with an actual sort line for recyclable materials and works
diligently to ensure as many materials as possible are prepared for
recycling and returned to the economy.

Under the FRANCHISE AGREEMENT, residents and business owners have
suffered regular and ongoing rate increases. WM represented that these
rate increases were necessary to offset costs of building an Eco-Center
within the CITY of Reno as well as implementing the Single Stream
Recycling Program. WM represented that the Eco-Center was necessary
because "The current Waste Management facilities cannot accommodate
the increase in recycling volumes that will be generated by the single-
stream recycling program. An expanded facility is required to meet the
needs of the community." Under the FRANCHISE AGREEMENT, WM's
construction of the Eco-Center was required to commence on or before
March 7, 2015. To date, construction has not commenced.

Because the Commercial Recycling Program in Reno subsidizes the rates for
residential services, including the Single Stream Recycling Program,
Plaintiffs' respective costs of doing business have increased. In addition, as
a result of the FRANCHISE AGREEMENTS, which include the recycling

1 programs, Plaintiffs' have been forced to change their internal operating
2 procedures in order to ensure compliance with the FRANCHISE
3 AGREEMENTS. With respect to recyclable materials collected, accepted and
4 sorted by Plaintiffs, respectively, every effort is made to ensure those
5 materials are sold for the purpose of "*returning them to the economy* in
6 the form of raw materials for new, reused, repaired, refabricated,
7 remanufactured, or reconstituted products." [Emphasis Added].

8 Despite the rate increase residents and business owners of the CITY of Reno
9 have experienced, and in turn, the increased costs that Plaintiffs have been
10 forced to incur in order to survive over the past two and a half (2½) years
11 which have at all times been represented by WM to be necessary for the
12 construction of an Eco-Center within the CITY and also necessary in order
13 to implement the Single Stream Recycling Program, and upon information
14 and belief, WM is not recycling the recyclable materials contained in
15 residents and commercial business owners' WM recycling containers.

16 One specific example of WM not recycling residential Single Stream
17 Recycling under the Single Stream Recycling Program is as follows:

18 Spencer Investigations, a licensed private investigation company, placed a
19 GPS tracker inside of a recyclable empty blue Laundry Detergent container
20 marked with the plastic recycling number 2 on the bottom, making it
21 appropriate for the Single Stream Recycling Program. Upon securing the
22 GPS tracker unit in the container and sealing it, Spencer Investigations then
23 placed the Laundry Detergent Container, containing the secured GPS
24 tracker, inside of a blue lid WM Residential Single Stream Recycling Tote.
25 See, Photo, attached hereto at Exhibit 14. On March 10, 2015, the blue lid
26 WM Residential Single Stream Recycling Tote was properly placed at the
27 curb for regular recycling collection by WM. WM collected the recyclables
28 from that blue lid WM Residential Single Stream Recycling Tote at
approximately 1:57 p.m. that same day. Less than forty-eight (48) hours
later, the recyclables from the blue lid WM Residential Single Stream
Recycling Tote reached their final destination at the Kiefer Landfill located
in Sacramento County, California at 7:01 a.m. on March 12, 2015- where it
still remains today. See, Photo attached hereto at Exhibit 15. See also,
Affidavit of Dustin Grate, attached hereto at Exhibit 16.

29 The recyclable No. 2 Plastic container placed in the blue lid WM Residential
Single Stream Recycling Tote in Reno, Nevada on March 10, 2015, was not
recycled or returned to the economy at all. It was dumped in a landfill in
California, where it remains today.

Based on the foregoing, WM has expressly breached the FRANCHISE
AGREEMENT and misrepresented that it would be actually recycling the
recyclable materials collected through the Single Stream Recycling
Program, which the Reno City Council relied on in granting WM the
FRANCHISE AGREEMENTS, of which Plaintiffs herein are express Third
Party Beneficiaries.

WM intentionally and fraudulently made representations which were
misleading to the CITY, the citizens and business owners of Reno and
Plaintiffs and other haulers during FRANCHISE NEGOTIATIONS and/or WM

1 intentionally suppressed and concealed the true nature of its recycling
2 programs. Additionally, WM breached the FRANCHISE AGREEMENT.

3 WM, in the course of its business, supplied and continues to supply false
4 information for the guidance of the CITY and others, in their business
5 transactions with the CITY and the FRANCHISE AGREEMENTS, which the
6 CITY, Council Members and community supporters justifiably relied upon.
7 As a result, Plaintiffs have suffered direct damages and losses to their
8 business through the limitation of competition, cost increases, business
9 interferences, loss of business and other such business damages.

10 Based on the foregoing, WM has engaged and committed fraud, fraud in the
11 inducement and fraudulent misrepresentations against the CITY, the
12 citizens and business owners of the City of Reno, Plaintiffs and other small
13 haulers.

14 As the actual, direct, and proximate result and cause of the acts of WM, RR
15 and NRS have been damaged in an amount to be proven at trial but which
16 exceeds \$10,000.00.

17 Verified Amended Complaint, 22:16-26:6. In their Motion to Dismiss, Defendants argue,
18 "Plaintiffs fail to allege any specific person who made any misrepresentations of fact or what
19 the alleged misrepresentations were. Similarly, there are no allegations as to when and where
20 any alleged misrepresentations were made. Moreover, Plaintiffs do not allege how the
21 misrepresentations were transmitted to the listener." Motion to Dismiss Verified Amended
22 Complaint, 22:2-6. However, as set forth above and as alleged in Plaintiffs' Verified Amended
23 Complaint, Plaintiffs do in fact allege: "Who" made misrepresentations of fact- Waste
24 Management (See, Verified Amended Complaint, 22:18-19, 22:23-25, 24:18-24, 25:18-19);
25 "What" the misrepresentations were- "that the Commercial rates set forth under the
26 FRANCHISE AGREEMENT were established to subsidize and offset the Residential Rates to
27 assist in covering the costs associated with single stream recycling." (*Id.* at 22:18-21) and, "that
28 the Single Stream Recycling Program increases the amount of recyclable material collected, and
decreases the amount of waste sent to Landfills." (*Id.* at 22:23-25); "When" and "where" the
misrepresentations were made- "When WM was in negotiations and lobbying the CITY for the
FRANCHISE AGREEMENTS and thereafter . . ." [Emphasis Added]. (*Id.* at 22:16-17) and "Despite
the rate increase residents and business owners of the CITY of Reno have experienced, and in

1 turn, the increased costs that Plaintiffs have been forced to incur in order to survive over the
2 past two and a half (2½) years which have at all times been represented by WM to be necessary
3 for the construction of an Eco-Center within the CITY and also necessary in order to implement
4 the Single Stream Recycling Program, and upon information and belief, WM is not recycling the
5 recyclable materials contained in residents and commercial business owners' WM recycling
6 containers." [Emphasis Added]. (*Id.* at 24:18-24); and, "how" the misrepresentations were
7 transmitted to the "listener[s]"- "WM intentionally and fraudulently made representations
8 which were misleading to the CITY, the citizens and business owners of Reno and Plaintiffs and
9 other haulers during FRANCHISE NEGOTIATIONS and/or WM intentionally suppressed and
10 concealed the true nature of its recycling programs." [Emphasis Added]. (*Id.* at 25:18-21).

11 In addition, Plaintiffs go one step further in specifying the allegations of fraud by
12 providing a detailed accounting of a specific incident illustrating the fraud alleged, which
13 includes the "who, what, when, where, why and how" heightened pleading requirements, as
14 follows:

15 "One specific example of WM not recycling residential Single Stream
16 Recycling under the Single Stream Recycling Program is as follows:
17 Spencer Investigations, a licensed private investigation company, placed a
18 GPS tracker inside of a recyclable empty blue Laundry Detergent container
19 marked with the plastic recycling number 2 on the bottom, making it
20 appropriate for the Single Stream Recycling Program. Upon securing the
21 GPS tracker unit in the container and sealing it, Spencer Investigations then
22 placed the Laundry Detergent Container, containing the secured GPS
23 tracker, inside of a blue lid WM Residential Single Stream Recycling Tote.
24 See, Photo, attached hereto at Exhibit 14. On March 10, 2015, the blue lid
25 WM Residential Single Stream Recycling Tote was properly placed at the
26 curb for regular recycling collection by WM. WM collected the recyclables
27 from that blue lid WM Residential Single Stream Recycling Tote at
28 approximately 1:57 p.m. that same day. Less than forty-eight (48) hours
later, the recyclables from the blue lid WM Residential Single Stream
Recycling Tote reached their final destination at the Kiefer Landfill located
in Sacramento County, California at 7:01 a.m. on March 12, 2015- where it
still remains today. See, Photo attached hereto at Exhibit 15. See also,
Affidavit of Dustin Grate, attached hereto at Exhibit 16.
The recyclable No. 2 Plastic container placed in the blue lid WM Residential
Single Stream Recycling Tote in Reno, Nevada on March 10, 2015, was not
recycled or returned to the economy at all. It was dumped in a landfill in
California, where it remains today."

1 (Id. at 24:25-25:9). There is really no question that Plaintiffs have adequately plead fraudulent
2 inducement and actual fraud with the requisite specificity required by NRCP 9(b). To demand
3 more, would be to force Plaintiffs to essentially lay out their entire case within an initial
4 complaint. While the rules are clear, that fraud must be plead with greater specificity than
5 other claims for relief, Nevada is still a Notice-Pleading state. Plaintiffs have more than
6 adequately set forth the requisite heightened specificity required under NRCP 9(b) to
7 adequately provide Defendants with notice of the fraudulent inducement and fraud claims
8 alleged against them.

9 **ii. Plaintiffs' Properly Allege Claims for Fraud, Fraud in the**
10 **Inducement and Fraudulent Misrepresentation Outside of any**
11 **Contractual Claims**

12 Defendants argue that Plaintiffs theory of fraud is that Reno Disposal (WM) is obligated
13 to recycle and build the Eco-center. Defendants argue that because these are contractual terms,
14 there can only be a single theory of recovery, which is breach of contract. In doing so,
15 Defendants cite *State Farm Mut. Auto Ins. Co. v Wharton*, 88 Nev. 183, 495 P.2d 359, 361 (1972)
16 for the proposition that "The Court... [should] ...analyze the essence of the claim to determine if
17 it is in reality a breach of contract".

18 While the legal statement is accurate, the application of this principle is misguided.
19 Defendants' application of this rule is misguided, because in *State Farm, supra*, the Plaintiff only
20 filed one claim, sounding in breach of contract, but the claim was really a tort action. State
21 Farm was subrogated to the rights of their insured, and brought action against the Defendant
22 for recovery of what they paid as a result of an auto accident. However, State Farm brought this
23 action beyond the personal injury statute of limitations, and was therefore arguing that a
24 breach of contract statute of limitations should apply, and the court disagreed, finding that the
25 action was a personal injury action, subject to the two-year statute of limitations. Nowhere in
26 the State Farm decision did the court address whether a party can bring multiple claims,
27 which is exactly what happened in the present case.

1 Here, Plaintiffs brought claims for breach of contract and fraud/tort. Nevada law clearly
2 allows parties to bring separate and distinct claims for damages in the same case. Where
3 different causes of action rest on separate facts, such causes of action are separate, distinct and
4 independent and may be separately maintained. *State v. Webster*, 88 Nev. 690, 695, 504 P.2d
5 1316, 1320 (1972).

6 Plaintiffs' claims may be characterized as claims for breach of contract, and they may
7 also be characterized as fraud. These claims are separate and distinct claims, and require
8 different proofs. Pursuant to *Webster, supra*, the court should analyze whether the claims are
9 separate and distinct. If so, both claims may be brought.

10 "A claim for breach of contract requires the plaintiff to demonstrate the following
11 elements: (1) the existence of a valid contract; (2) a breach by the defendant; and (3) damages
12 as a result of the breach. *Cohen-Breen v. Gray TV Group, Inc.*, 661 F. Supp. 2d 1170 (D. Nev.
13 2009); Citing, *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006)(citing
14 *Richardson v. Jones*, 1 Nev. 405, 405 (1865)).

15 In contrast, the proof of fraud requires Plaintiff prove: (1) A false representation made
16 by the defendant; (2) defendant's knowledge or belief that its representation was false or that
17 defendant has an insufficient basis of information for making the representation; (3) defendant
18 intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4)
19 damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air,*
20 *Inc.*, 114 Nev. 441, 446-47, 956 P.2d 1382, 1386 (1998), citing, *Bulbman Inc. v. Nevada Bell*, 108
21 Nev. 105, 110-11, 825 P.2d 588, 592 (1992); *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115,
22 117 (1975).

23 In comparing the burdens on the Plaintiffs to establish a claim for breach of contract and
24 fraud, it is clear that the Plaintiffs must satisfy different evidentiary burdens under each claim.
25 In a breach of contract claim, Plaintiffs do not have to prove that Defendant made a false
26 representation, nor do the Plaintiffs have to prove that the Defendant made the false
27

1 representation to induce the Plaintiff to act or refrain from activity. Furthermore, in a fraud
2 action, Plaintiffs do not have to prove there was a valid contract and a breach of contract.

3 In summary, the breach of contract claim and claims for fraud are distinct and separate
4 causes of action. Each relies on separate facts and proofs, which are distinctly different for each
5 claim. As such, a breach of contract and fraud claim may be separately maintained in the same
6 action.

7 Furthermore, there are many other Nevada Supreme Court cases, which impliedly
8 support the proposition that a party can bring dual claims for fraud and breach of contract. For
9 the sake of brevity, Plaintiffs will only list a few of these, but many more examples exist. See,
10 *S.J. Amoroso Const. Co. v. Lazovich & Lazovich*, 107 Nev. 294, 298, 810 P.2d 775, 777-78 (1991),
11 where a breach of contract claim and fraud claim both went to trial over a breach of contract
12 and fraudulent inducement to enter into the contract. See also, *Amaral v. Shull*, No. 53161, 2011
13 WL 1022863, at *2 (Nev. Mar. 21, 2011), which upheld punitive damages on a breach of
14 contract and fraud case based on the contract to purchase a mobile home.

15 **iii. Plaintiffs' Properly Allege Claims for Fraud, Fraud in the**
16 **Inducement and Fraudulent Misrepresentation Outside of any**
Contractual Claims

17 Defendants' final argument in support of their Motion to Dismiss Plaintiffs' claims for
18 Fraud, Fraud in the Inducement and Fraudulent Misrepresentation is that Plaintiffs were
19 required to "plead[] and prov[e] justifiable reliance" and that Plaintiffs' have allegedly failed to
20 do so. Motion to Dismiss Verified Complaint, 23:21-23. In support of their position, Defendants
21 rely on the case of *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592
22 (1992), stating, " '[a] plaintiff has the burden of proving each element of fraud by clear and
23 convincing evidence' which includes pleading and proving 'justifiable reliance upon the
24 misrepresentation.' " [Emphasis Added]. Motion to Dismiss Verified Amended Complaint,
25 23:21-23. However, *Bulbman* makes no mention of this as a pleading requirement. It appears
26
27
28

1 that Defendants decided to insert that language on their own. The citation purportedly cited by
2 Defendants actually reads, in its entirety:

3 A plaintiff has the burden of **proving** each element of fraud *111 claim by
4 clear and convincing evidence. *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d 115
(1975). These elements are:

- 5 1. A false representation made by the defendant;
- 6 2. Defendant's knowledge or belief that the representation is false (or
insufficient basis for making the representation);
- 7 3. Defendant's intention to induce the plaintiff to act or to refrain from
acting in reliance upon the misrepresentation;
- 8 4. Plaintiff's justifiable reliance upon the misrepresentation; and
5. Damage to the plaintiff resulting from such reliance.
Id. at 599, 540 P.2d at 117.

9 *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992). Plaintiffs' do
10 have the burden of proving justifiable reliance as an element of fraud; however, there is no
11 requirement set forth in *Bulbman* that it be explicitly laid out in some specific form as some sort
12 of additional heightened pleading requirement to fraud.

13 In any event, when read in context and as a whole, the allegations set forth in Plaintiffs'
14 Verified Amended Complaint clearly reflect that Plaintiffs' justifiably relied on the
15 misrepresentations made by Waste Management as follows:

16 WM, in the course of its business, supplied and continues to supply false
17 information for the guidance of the CITY and others, in their business
18 transactions with the CITY and the FRANCHISE AGREEMENTS, which the
19 CITY, Council Members and community supporters justifiably relied upon.
As a result, Plaintiffs have suffered direct damages and losses to their
business through the limitation of competition, cost increases, business
interferences, loss of business and other such business damages.

20 Based on the foregoing, WM has engaged and committed fraud, fraud in the
21 inducement and fraudulent misrepresentations against the CITY, the
citizens and business owners of the City of Reno, Plaintiffs and other small
haulers.

22 As the actual, direct, and proximate result and cause of the acts of WM, RR
23 and NRS have been damaged in an amount to be proven at trial but which
24 exceeds \$10,000.00. In addition, the conduct of the Defendants should be
25 punished, and an example made of said conduct, to discourage Defendants
and others in similar positions from engaging in like conduct in the future,
26 through the award of punitive damages in a just and reasonable amount for
Plaintiffs herein. As a direct and proximate result of the reckless, malicious
and oppressive conduct of Defendants and the reckless disregard for the
27 rights of Plaintiffs herein, Plaintiffs are entitled to an award of punitive
damages in order to deter Defendants from engaging in such egregious

conduct in the future.

Verified Amended Complaint, 25:22-26:13. At a minimum, when read as a whole, Plaintiffs' allegations clearly show justifiable reliance.

In addition, Defendants further misrepresent to this Court that "Aside from failing to plead fraud with any specificity, the Plaintiff clearly state that the purported misrepresentations in question were made to the City of Reno or the public. Plaintiffs have not (and cannot) allege that any representations were made to the Plaintiffs ..." (Internal Citations Omitted). Motion to Dismiss Verified Amended Complaint, 24:6-9. That statement is not accurate. In fact, Plaintiffs do specifically plead and allege that, "WM intentionally and fraudulently made representations which were misleading to the CITY, the citizens and business owners of Reno and Plaintiffs and other haulers during FRANCHISE NEGOTIATIONS ..." Verified Amended Complaint, 25:18-19.

As set forth herein, Plaintiffs have adequately plead their claims for Fraud, Fraudulent Inducement and Fraudulent Misrepresentation with the requisite heightened specificity as required by NRCP 9(b) and as such, Defendants' Motion to Dismiss with respect to Plaintiffs' Sixth Claims for Relief regarding Fraud should be denied.

E. Plaintiffs Have Properly Stated Claims for Preliminary and Permanent Injunctions

Defendants final argument in support of their Motion to Dismiss consists of two assertions with respect to Plaintiffs' Seventh Claims for Relief: (1) That a cause of action is separate and distinct from available remedies; and, (2) That the purpose of an injunction is to deter, not punish. Motion to Dismiss Verified Amended Complaint, 24:14-25 and 25:6-7.

i. Plaintiffs' Properly Allege Claims for Preliminary and Permanent Injunction for Which Relief May be Granted

As set forth more fully herein, Nevada is a notice-pleading state. Accordingly, the pleading requirements to effectively and properly plead a cause of action are simple and straightforward. NRCP 8(a) and (e) simply require that:

1 (a) **Claims for Relief.** A pleading which sets forth a claim for relief,
2 whether an original claim, counterclaim, cross-claim, or third-party claim,
3 shall contain (1) a short and plain statement of the claim showing that the
4 pleader is entitled to relief, and (2) a demand for judgment for the relief the
5 pleader seeks. Relief in the alternative or of several different types may be
6 demanded. Where a claimant seeks damages of more than \$10,000, the
7 demand shall be for damages "in excess of \$10,000" without further
8 specification of amount.

9 (e) **Pleading to Be Concise and Direct; Consistency.**

10 (1) Each averment of a pleading shall be simple, concise, and direct. **No**
11 **technical forms of pleading or motions are required.**

12 (2) A party may set forth two or more statements of a claim or defense
13 alternately or hypothetically, either in one count or defense or in separate
14 counts or defenses. When two or more statements are made in the
15 alternative and one of them if made independently would be sufficient, the
16 pleading is not made insufficient by the insufficiency of one or more of the
17 alternative statements. A party may also state as many separate claims or
18 defenses as the party has regardless of consistency and whether based on
19 legal or on equitable grounds or on both. All statements shall be made
20 subject to the obligations set forth in Rule 11.

21 [Emphasis Added]. As set forth in NRCP 8(e)(1), "No technical forms of pleading or motions are
22 required." Further, a preliminary injunction is available when a party seeking injunction can
23 demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable
24 harm for which compensatory relief is inadequate and that the moving party has a reasonable
25 likelihood of success on the merits. See, *Danberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978
26 P.2d 311, 319 (1999); *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d
27 179, 187 (2004). With regards to the prerequisites for the issuance of a preliminary injunction,
28 Nevada Revised Statutes section 33.010 provides as follows:

An injunction may be granted in the following cases:

1. **When it shall appear by the complaint** that the plaintiff is entitled to
the relief demanded, and such relief or any part thereof consists in
restraining the commission or continuance of the act complained of, either
for a limited period or perpetually.

2. **When it shall appear by the complaint** or affidavit that the commission
or continuance of some act, during the litigation, would produce great or
irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or
threatens, or is about to do, or is procuring or suffering to be done, some act

1 in violation of the plaintiffs rights respecting the subject of the action, and
2 tending to render the judgment ineffectual.

3 [Emphasis Added]. As such, by definition, allegations and a request for a Preliminary
4 Injunction is properly presented within the body of a Complaint.

5 The only Nevada case, which is binding authority before this Court,² that Defendants
6 rely on in support of their position that a cause of action is separate and distinct from available
7 remedies is *State Farm Mut. Auto. Ins. Co. v. Jafbros Inc.*, 109 Nev. 926, 928-29, 860 P.2d 176,
8 178 (1993).

9 In that case, the Nevada Supreme Court held,

10 It is axiomatic that a court cannot provide a remedy unless it has found a
11 wrong. "[T]he existence of a right violated is a prerequisite to the granting
12 of an injunction." Accordingly, an injunction will not issue "to restrain an act
13 which does not give rise to a cause of action..." *Id.* "Permanent injunctive
14 relief is available where there is no adequate remedy at law ..., where the
15 balance of equities favors the moving party, and where success on the merits
16 has been demonstrated." In *Guion v. Terra Marketing of Nev., Inc.*, 90 Nev.
17 237, 240, 523 P.2d 847, 848 (1974) (emphasis added), this court stated:
18 "Equity will ... restrain tortious acts where it is essential to preserve a
19 business or property interests and also restrain the publication of
20 false and defamatory words where it is the means or an incident of
21 such tortious conduct."

22 ...
23 The instant case comes before this court in an unusual posture. There has
24 been no trial on the merits and no finding of liability, nor has the district
25 court entered a judgment against State Farm. Furthermore, Jafbros has
26 stipulated to a dismissal of its claims for damages, leaving no prospect for a
27 future trial.

28 In *Fox v. City of West Palm Beach*, 383 F.2d 189 (5th Cir.1967), the Fifth
Circuit Court of Appeals entertained a case in a similar posture. In *Fox*,
appellant sued for a permanent injunction against respondent. *Id.* at 191.
During the testimony of appellant's first witness, the district court raised
the issue of the propriety of injunctive relief, and *sua sponte* entered an
order denying injunctive relief. The Fifth Circuit Court of Appeals reversed
the order denying injunctive relief, stating that even if appellant's
prospects for proving entitlement to an injunction are poor, "he ought
to be given the opportunity to try his case and submit his evidence...."

We conclude that the order of the district court granting a permanent
injunction was premature. At this juncture in the case, it is not clear that

² All other legal authorities cited in support of Defendants' Motion to Dismiss Plaintiffs' claims for injunctive relief
are either cases from outside jurisdictions or federal cases inapplicable to the State Court issues raised herein as
there exists applicable case law in this State which constitutes binding authority on this Court.

1 State Farm's conduct was tortious, and in any event the district court must
2 afford State Farm the opportunity to present a defense. Accordingly, we
3 reverse the order of the district court enjoining State Farm and we remand
the case for a trial on the merits.

4 [Emphasis Added]. As set forth above, the only binding authority submitted to this Court on
5 this issue, holds that injunctive relief will "restrain tortious acts where it is essential to promote
6 a business or property interests and also restrain the publication of false and defamatory
7 words where it is the means or an incident of such *tortious* conduct" and that even if a Plaintiffs'
8 prospects are poor for proving entitlement to an injunction, Plaintiffs should still be permitted
9 to present their evidence. *Id.*

10 In addition, the Nevada Supreme Court has further held that the mere availability of a
11 legal remedy does not bar injunctive relief. To be a bar, a legal remedy must, in fact, be
12 adequate and must not be rendered inadequate by a far superior equitable remedy. See, *Czippot*
13 *v. Fleigh*, 87 Nev. 496, 489 P.2d 681 (1971); *Nevada Escrow Services, Inc. v. Crockett*, 91, Nev.
14 201, 533 P.2d 471 (1975). As such, Plaintiffs' claims for injunctive relief adequately state a
15 claim upon which relief can be granted under the liberal notice pleading standards in the State
16 of Nevada and as such, Defendants' Motion to Dismiss should be denied.

17 **ii. Defendants' Misunderstand Plaintiffs' Pleading of Special**
18 **Damages as an Additional Request for Injunctive Relieve**

19 Defendants' final argument in support of their Motion to Dismiss Plaintiffs' claims for
20 injunctive relief is based on the following statement, "the Defendants should be punished, and
21 an example made of said conduct, to discourage Defendants and others in similar positions
22 from engaging in like conduct in the future, through the award of punitive damages in a just and
23 reasonable amount for Plaintiffs herein." Motion to Dismiss Verified Amended Complaint,
24 24:26-25:2. Defendants then rely on legal authorities from jurisdictions outside of Nevada to
25 support the notion that "an injunction is intended to deter and not punish." *Id.* at 24:16.
26 However, fatal to Defendants' argument is that, Plaintiffs' do not seek an injunction to punish

1 Defendants. To the contrary, Defendants fail to cite the complete request for injunctive relief
2 set forth in Plaintiffs' Verified Amended Complaint, which reads:

3 Based on the foregoing, Plaintiffs are entitled to a preliminary and
4 permanent injunction to stop WM's deceitful misconduct that continues to
5 harm Plaintiffs. In addition, the conduct of the Defendants should be
6 punished, and an example made of said conduct, to discourage Defendants
and others in similar positions from engaging in like conduct in the future,
through the award of punitive damages in a just and reasonable amount
for Plaintiffs herein.

7 [Emphasis Added]. Verified Amended Complaint, 27:18-23. Plaintiffs' are not requesting that
8 an injunction be issued to punish Defendants. As Plaintiffs explicitly allege, Plaintiffs are
9 requesting injunctive relief to "stop [Waste Management's] deceitful misconduct that continues
10 to harm Plaintiffs." *Id.* Then, in accordance with NRCP 9(g), Plaintiffs further request that this
11 Court award punitive damages to punish Defendants for their conduct explicitly requesting, "In
12 addition, the conduct of the Defendants should be punished, . . . , through the award of
13 punitive damages." [Emphasis Added]. *Id.*

14 NRCP 9(g) explicitly requires that "when items of special damage are claimed, they shall
15 be specifically stated," which is exactly what Plaintiffs have done here. Punitive damages
16 constitute "special damages" and as such, are required to be plead in the body of the complaint.
17 This is similar to situations, when a party claims it has incurred attorney fees as foreseeable
18 damages arising from tortious conduct or a breach of contract, such fees are considered special
19 damages. Under these circumstances, "they must be pleaded as special damages in the
20 complaint pursuant to NRCP 9(g) and proved by competent evidence just as any other element
21 of damages." *Sandy Valley Assocs. v. Sky Ranch Estates*, 117 Nev. 948, 956-57, 35 P.3d 964, 971
22 (2001) *receded from on other grounds in Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988
23 (2007). "The mention of attorney fees in a complaint's general prayer for relief is insufficient to
24 meet this requirement." According, Plaintiffs' properly plead additional and special punitive
25 damages in the body of the Verified Amended Complaint under the claim for injunctive relief in
26
27
28

1 addition to Plaintiffs' specific request for injunctive relief. As such, Defendants' request for
2 dismissal of Plaintiffs' claims for injunctive relief must be denied.

3 **F. Should this Court be Inclined to Dismiss any of Plaintiffs' Claims for Relief,**
4 **Plaintiffs Respectfully Request Leave to Amend**

5 NRCP 15(a) provides that a party may amend its pleading by leave of court; "and leave
6 shall be freely given when justice so requires." Further, when considering a Motion to Dismiss
7 made under NRCP 12(b)(5), a District Court must construe the complaint liberally and draw
8 every fair inference in favor of the plaintiff. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d
9 720, 734 (2003)

10 "A complaint should not be dismissed unless it appears to a certainty that the plaintiff
11 could prove no set of facts that would entitle him or her to relief." [Emphasis Added]. *Id.*
12 "Moreover, when a complaint can be amended to state a claim for relief, leave to amend, rather
13 than dismissal, is the preferred remedy." *Id.*

14 In the event that this Court is inclined to dismiss any of Plaintiffs' claims for relief, in the
15 interest of justice, Plaintiffs' respectfully request that they be provided leave to amend.

16 **IV. CONCLUSION**

17 The Nevada Supreme Court has held that because Nevada is a notice-pleading
18 jurisdiction, "our courts liberally construe pleadings to place into issue matters which are fairly
19 noticed to the adverse party." *Langevin v. York*, 111 Nev. 1481, 1483, 907 P.2d 981, 982
20 (1995); Citing, *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (citing NRCP 8(a)).
21 Plaintiffs' Verified Amended Complaint set forth exactly seven (7) different claims for relief,
22 literally amounting to an entire ream of paper. To suggest that Plaintiffs' have not adequately
23 put Defendants on notice of the claims they are alleging is simply disingenuous. Plaintiffs'
24 Verified Amended Complaint is literally comprised of more than two hundred (200) pages of
25 paper. Plaintiffs have not only satisfied the minimal pleading requirements set forth under
26 Nevada's notice-pleading standard; Plaintiffs' Complaint goes as far as satisfying even the most
27
28

1 rigorous fact-pleading standards.

2 Defendants' Motion to Dismiss was a total of twenty-six (26) pages long; in part, because
3 Defendants spent more than half of it arguing the merits of this case instead of limiting their
4 analysis to pointing out failures to state a claim. The legal reasoning for Defendants Motion to
5 Dismiss is that Plaintiffs have failed "to state a claim upon which relief can be granted." NRCP
6 12(b)(5). It is quite shocking that Defendants would even attempt to make such an argument,
7 when the majority of Defendants' Motion is spent setting forth factual counter-arguments;
8 thereby evidencing a clear understanding of the facts and claims Plaintiffs have alleged that are
9 ripe for discovery and trial. The fact that Defendants devoted their Motion to Dismiss to
10 arguing the merits of the case just proves the fact that Defendants are clearly able to formulate
11 a response to Plaintiffs' allegations.

12 It is abundantly clear that the true purpose of Defendants' Motion to Dismiss was to
13 backhandedly force Plaintiffs to show their cards before Defendants have even played their
14 hand. This is a completely inappropriate and improper use of the procedural mechanisms set
15 forth in NRCP 12(b). Nevada Courts have held that, if, on a NRCP 12(b)(5) motion to dismiss
16 for failure to state a claim upon which relief can be granted, matters outside the pleading are
17 presented to and not excluded by the court and/or the motion shall be treated as one for
18 summary judgment and disposed of as provided in Rule 56, all parties shall be given a
19 reasonable opportunity to present all material made pertinent to such a motion by Rule 56. See,
20 NRCP Rule 12(b). As such, should this Court consider the instant Motion as a Rule 56 Motion
21 for Summary Judgment, Plaintiffs' respectfully request adequate time to do discovery and to
22 submit an appropriate Opposition to this Court.

23 Based upon the foregoing, Defendants' Motion to Dismiss is wholly without merit and
24 must be denied. All elements of each claim for relief against Defendants have been properly
25 pled, satisfy all notice-pleading requirements, and must be accepted as true for purposes of
26 Defendants' Motion to Dismiss. There is no basis upon which to dismiss any of Plaintiffs' claims
27
28

1 against Defendants, Plaintiffs' respectfully request that this Court deny Defendants' Motion to
2 Dismiss in its entirety.

3 As this Court is aware, there exists a strong public policy in Nevada to afford a Plaintiff
4 the opportunity to present the merits of their claims and not dismiss actions with prejudice
5 absent a compelling reason. See, *Home Sav. Ass'n v. Aena Cas & Sur. Co.*, 109 Nev. 558, 565
6 (1993). In addition and if necessary, leave to amend should be granted to Plaintiffs under
7 NRCP 15(a), which "leave shall be freely given when justice so requires."

8
9 DATED this 7th day of May, 2015.

10
11 
12 STEPHANIE RICE, ESQ.
13 DEL HARDY, ESQ.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that on this date I served the foregoing document(s) described as **OPPOSITION TO MOTION TO DISMISS VERIFIED AMENDED COMPLAINT** on all parties to this action by:

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

- ☐ Personal delivery
- ☐ Facsimile (FAX) and/or Email:
- ☒ EFLEX- Court's Electronic Filing System
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested

addressed as follows:

MARK G. SIMONS, ESQ.
SCOTT HERNANDEZ, ESQ.
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 17th day of May, 2015.



EMPLOYEE OF HARDY LAW GROUP

3795
Mark G. Simons, Esq., NSB No. 5132
Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rbsllaw.com
shernandez@rbsllaw.com

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND
SALVAGE, LTD., a Nevada Limited
Liability Company; and AMCB, LLC,
a Nevada Limited Liability Company
dba RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY,
INC., a Nevada Corporation dba
WASTE MANAGEMENT; REFUSE,
INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK
AND WHITE COMPANIES, I-X; and
JOHN DOES I-X, inclusive,

Defendants.

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
VERIFIED AMENDED COMPLAINT**

Defendants Reno Disposal Company, Inc. ("Reno Disposal") and Refuse, Inc.
("Refuse"), by and through their undersigned counsel of record, Mark G. Simons and
Scott L. Hernandez, hereby submit this reply brief in support of their Motion to Dismiss
Verified Amended Complaint (the "Motion").

///

///

1 **I. INTRODUCTION**

2 This case is based upon contract interpretation. The contracts at issue are two
3 franchise agreements the City of Reno entered into with the Defendants pursuant to the
4 provisions of NRS 268.081 as follows:

- 5 (1) the Exclusive Service Area Franchise Agreement Commercial Solid
6 Waste and Recyclable Materials agreement with Reno Disposal (the
7 "Commercial Franchise Agreement"), and
8 (2) the Disposal Agreement for Solid Waste and Recyclable Materials with
9 Refuse, Inc. (the "Disposal Agreement").

10 (Jointly "Agreements" unless otherwise stated).¹ Plaintiffs misstate and misrepresent
11 the terms of these agreements seeking to create loopholes in the exclusive rights
12 granted by the City of Reno to the Defendants. Obviously, Plaintiffs then seek financial
13 gain by exploiting these fabricated loopholes in order to profit at the expense of the City
14 and its citizens.

15 In Defendants' opening motion, the plain meaning and application of the
16 Agreements are detailed establishing why the Plaintiffs' claims fail as a matter of law
17 and this Motion must be granted. In opposition, Plaintiffs accuse the Defendants of
18 "arguing the merits of this case instead of limiting their analysis to pointing out failures
19 to state a claim." Opp., p. 42:2-4.² Plaintiffs' accusation is without merit since the very
20 language of the Agreements govern whether or not Plaintiffs have in fact stated any
21 claim that they are entitled to any relief requested due to the express language of these
22 contracts.

23 "Because contract interpretation is generally a question of law, it is suitable for
24 disposition on a motion to dismiss." Am. Auto. Ins. Co. v. Rest Assured Alarm Sys.,
Inc., 786 F. Supp. 2d 798, 803 (S.D.N.Y. 2011); Foxfield Realty, Inc. v. Kubala, 678

25 ¹NRS 268.081 allows the City of Reno to enter into agreements to "displace or limit
26 competition" for the "[c]ollection and disposal of garbage and other waste."

27 ²Opposition, p. 2:25-3:12 (Plaintiffs' discussion how interpretation is premature at this
28 stage but will be appropriate on MSJ). As shown, interpretation of the Agreements in a
motion to dismiss is not "premature" since application of the agreements dictate
whether a legally viable claim has been asserted.

1 N.E.2d 1060, 1062 (Ill. Ct. App. 1997) ("Whether a complaint states a cause of action
2 based on the interpretation of a contract may be the subject of a motion to dismiss
3 where the question presented is a matter of law."). Therefore, the allegations of the
4 Verified Amended Complaint can be tested against the express terms of the
5 Agreements to determine if in fact there is any issue that survives the present Motion.
6 As detailed, the Defendants' Motion must be granted, and the Verified Amended
7 Complaint must be dismissed.

8 **II. PLAINTIFFS HAVE NO RIGHT TO HAUL "EXCLUDED RECYCLABLE**
9 **MATERIALS".**

10 The key dispute in the present case has now devolved into the following: do the
11 Plaintiffs have a right to haul "Excluded Recyclable Materials"? As detailed in
12 Defendants' opening Motion, "Excluded Recyclable Materials" are defined as "Approved
13 Recyclable Materials from Commercial Activity that are a) separated by the generator
14 thereof from all other materials and which contain not less than ninety percent (90%)
15 Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer
16 of Recyclable Material at market price, title to which materials transfers to the buyer
17 upon collection or pickup of such materials, but excluding such materials collected
18 and transported as a service" *Id.* Art. 1, p. 5 (emphasis added). This provision
19 allows a seller to sell recycled materials directly to a buyer of the recycled materials at
20 market price. Although the clear language states that RR is not entitled to collect
21 and/or haul these materials, RR nonetheless contends that this provision does not
22 apply to it.

23 In addressing the competing arguments presented to the Court, it is important to
24 recognize that Plaintiffs concede Reno Disposal's interpretation of the term "Excluded
25 Recyclable Materials" except for one minor dispute. It appears the only disagreement
26 before the Court is whether or not the Commercial Franchise Agreement allows RR to
27 collect and transport Excluded Recyclable Materials "as a service." It is suggested that
28 the Commercial Franchise Agreement's express language stating that "Approved
Recycled Materials" cannot be "collected and transported as a service" is dispositive of

1 this issue and Defendants' Motion should be granted. See e.g., Watson v. Watson, 95
2 Nev. 495, 596 P.2d 507, 508 (1979) ("Courts are bound by language which is clear and
3 free from ambiguity and cannot, using the guise of interpretation, distort the plain
4 meaning of an agreement.").

5 Plaintiffs provide no countervailing textual interpretation of the definition of the
6 term "Excluded Recyclable Materials" and thus, Plaintiffs' silence is a concession that
7 Excluded Recyclable Materials cannot be collected or hauled "as a service".³ Instead,
8 Plaintiffs now provide the Court with an entirely new contention—not contained in the
9 Verified Amended Complaint. Plaintiffs now argue that the "Special Services" provision
10 of the Commercial Franchise Agreement provides RR with the right to haul as a service
11 the "Excluded Recyclable Materials" materials. Opp., p. 10:25-11:12. An analysis of
12 this argument also demonstrates that it fails as a matter of law.

13 Initially, the Court is again reminded of the broad and encompassing language in
14 the Commercial Franchise Agreement that states Reno Disposal has the following
15 rights:

16 City hereby grants to [Reno Disposal] . . . the exclusive rights, privilege,
17 franchise and obligation . . . to provide Collection Services to Commercial
18 Customers. . . . No other person or entity other than [Reno Disposal] . . . shall i)
19 collect . . . ii) transport . . . or iii) deliver any Collection Materials . . . except as
20 expressly provided under this Agreement. **The preceding sentence is
intended to be broadly interpreted to preclude . . . any activity relating to
the collection or transportation of Collection Materials from Commercial
Activities.**

21 Id. (emphasis added). Given the agreement expressly instructs the Court to broadly
22 interpret the Commercial Franchise Agreement to protect Reno Disposal's exclusive
23 franchise rights, the Plaintiffs' arguments must be considered in this context. Canfora
24 v. Coast Hotels and Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (Nev.

25
26 ³Compare Browning v. State, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004) (recognizing
27 that a "claim warrants no consideration" when party fails to provide this court with
28 "any cogent argument, legal analysis, or supporting factual allegations"); Alam v.
Reno Hilton Corp., 819 F. Supp. 905, 908 fn. 3 (D. Nev. 1993) ("Plaintiffs did not
argue to the contrary to this issue in their opposition papers, thereby conceding this
point.").

1 2005) ("when a contract is clear on its face, it "will be construed from the written
2 language and enforced as written." [FN8] The court has no authority to alter the
3 terms of an unambiguous contract.").

4 An analysis of Section 4.5 of the Commercial Franchise Agreement, identifies
5 that Reno Disposal is provided the right to perform certain "Special Services" outside of
6 those exclusive services and responsibilities described in the Commercial Franchise
7 Agreement. This provision provides that:

8 In addition to and separate from Collection Services, Contractor may voluntarily
9 offer certain "Special Services" within the City; provided, however, Contractor
10 shall not violate the exclusive right of another service provided under any other
Commercial Franchise Agreement. Contractor is not required under this
Agreement to provide Special Services, but may elect to do so.

11 Commercial Franchise Agreement, § 4.5. There are three key aspects to this provision.

12 First, this provision only applies to a "contractor" under the Commercial Franchise
13 Agreement. By definition, RR is not a "contractor" under the Commercial Franchise
14 Agreement with the City of Reno. Therefore, by definition, RR is not a "contractor" and
15 cannot provide "Special Services" under the Commercial Franchise Agreement and this
16 argument fails.

17 Second, Reno Disposal may not use Section 4.5 to violate the exclusive right of
18 another "franchise service provider". RR does not have a franchise agreement with the
19 City of Reno. Because RR does not have any franchise agreement with the City of
20 Reno, it has no rights under Section 4.5.

21 Finally, Reno Disposal's right to perform Special Services does not provide any
22 other rights to the Plaintiffs. Plaintiffs claim, however, that because Section 4.5 states
23 that Excluded Recyclable Materials may be collected and hauled by Reno Disposal as a
24 "Special Service," this means that any other hauler can also collect and haul Excluded
25 Recyclable Material as a service. Opp., p. 11:8-12. Again, Plaintiffs' argument is
26 fundamentally flawed since it contradicts the actual language in the definition of
27 "Excluded Recyclable Material" that such material **may not be hauled by any others**

28

1 (such as RR) "as a service".⁴ All section 4.5 of the Commercial Franchise Agreement
2 provides is that a seller and/or buyer may hire Reno Disposal, if Reno Disposal agrees,
3 to haul the Excluded Recyclable Materials for them. Nothing else, nothing more.
4 Accordingly, the Commercial Franchise Agreement does not allow RR or any other
5 hauler to haul Excluded Recyclable Materials as a service.

6 **III. PLAINTIFFS FAIL TO STATE A CLAIM FOR DEFAMATION OR DEFAMATION**
7 **PER SE.**

8 As noted in the Motion and conceded in the Opposition, Plaintiffs must allege "a
9 false and defamatory statement by a defendant concerning the plaintiff" in order to
10 prevail under either a defamation or defamation per se theory. Motion, p. 14:13-21;
11 Opp., p. 12:1-3. Here, the Plaintiffs' allegations demonstrate that the purported
12 defamatory statements are not false and defamatory.

13 **A. The Gilletti Email Is Not a Defamatory Statement.**

14 Plaintiffs argue that a Reno Disposal employee, named Cherolyn Gilletti,
15 misrepresented the terms of the Commercial Franchise Agreement to one of the
16 Plaintiffs' customers sending an email with the following statement

17 Recyclable Material. No business may allow or retain any service provider other
18 than Reno Disposal Company to collect, pickup, transport or deliver Approved
19 Recyclable Materials in the City of Reno in violation of the exclusive franchise
20 agreement or the Reno Municipal Code.

21 Opp., p. 10:2-8. Again, it is clear that under the Commercial Franchise Agreement,
22 Reno Disposal is granted the exclusive right to "accept, transfer, and transport" both
23 "Solid Waste" and "Approved Recyclable Materials" within the City of Reno. Commercial
24 Franchise Agreement, § 3.2(A). While Plaintiffs use three pages of their opposition
25 attempting to spin otherwise, the clear and express terms of the Commercial Franchise
26 Agreement give Reno Disposal an exclusive right to collect and haul Approved

27 ⁴It is suggested that the clear language of "Excluded Recyclable Material" that no
28 other party may haul such materials "as a service" is dispositive of Plaintiffs' claims
and the motion must be granted in Defendants' favor. See e.g., Kaldi v. Farmers
Ins. Exchange, 117 Nev. 273, 281, 21 P.3d 16, 21 (Nev. 2001) ("We are not free to
modify or vary the terms of an unambiguous agreement.")).

1 Recyclable Materials. Accordingly, terms of the Gilletti email are factually accurate and,
2 thus, not defamatory.

3 Moreover, even under the Plaintiffs' logic, there is no way to reasonably construe
4 the Gilletti email as false. Plaintiffs argue that, because Excluded Recyclable Materials
5 are defined as "Approved Recyclable Materials sold by the generator to a buyer at
6 market price," that RR has the right "to haul" Approved Recyclable Materials, which
7 renders the Gilletti false. See Oppo., p. 11:15-17. First, this argument ignores that the
8 entire Commercial Franchise Agreement conveys an exclusive right for Reno Disposal to
9 collect and haul Solid Waste and Approved Recyclable Materials. Second, as noted
10 above, Plaintiffs are not permitted to haul Excluded Recyclable Materials "as a service."
11 See discussion Part II, supra. Therefore, there is no conceivable way to interpret the
12 Gilletti email as false and defamatory.

13 Finally, Ms. Gilletti's email does not concern or reference the Plaintiffs in any
14 fashion. Because there is no statement directed at the Plaintiffs, nothing in the email
15 would lower the Plaintiff in the estimation of the community or subject them to
16 derogatory opinions or contempt. RR is not the franchised hauler under the Commercial
17 Franchise Agreement, and explaining how Reno Disposal is the franchised hauler is
18 entirely irrelevant to RR's standing in the community as a non-franchised hauler.
19 Accordingly, Ms. Gilletti's email cannot form the basis of a claim for defamation or
20 defamation per se.

21 **B. The Other Representations Are Not Defamatory Statements.**

22 The Verified Amended Complaint alleges other purportedly defamatory
23 statements made by unidentified Reno Disposal employees to unidentified customers of
24 the Plaintiffs. Verified Amended Complaint, ¶ 34. As described in the Motion to
25 Dismiss, each of these statements is absolutely true or, at a minimum, substantially true,
26 based on a reasonable and correct reading of the Commercial Franchise Agreement.
27 See Motion, p. 16:15-17:9. In opposition, Plaintiffs appear to argue that any statement
28 made by Reno Disposal that would negatively impact the Plaintiffs' business is

1 automatically defamatory. Opp., p. 15:2-6. A perceived negative impact of a statement
2 does not automatically render a statement false.

3 Because the alleged statements upon which the Plaintiffs base their complaint
4 are either true and/or substantially accurate, the claims for defamation and defamation
5 per se fail. Independently, the claims also fail because none of these statements are
6 directed at the Plaintiffs or even mention the Plaintiffs. Based on the foregoing, and as
7 set forth in the Motion, Plaintiffs have failed to state a claim for either defamation or
8 defamation per se and the Motion should be granted as requested.

9 **IV. PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF CONTRACT OR**
10 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
DEALING.

11 As detailed in the opening Motion, Plaintiffs are intended third-party beneficiaries
12 to the Commercial Franchise Agreement and the Disposal Agreement, but only for
13 limited purposes. Motion, p. 17:10-18:28. The Commercial Franchise Agreement
14 expressly provides that RR's third-party beneficiary status is expressly limited to the
15 rights of Exempted Haulers under Section 3.2 D of the Commercial Franchise
16 Agreement. Commercial Franchise Agreement, § 3.2(D)(3). Additionally, Plaintiff NRS's
17 third-party beneficiary status is expressly limited to the rights of an Exempted Facility
18 under Section 4.4 L of the Commercial Franchise Agreement and Section 3.2 G of the
19 Disposal Agreement. See Id., § 4.4(L)(3); Disposal Agreement, § 3.2(G)(3).

20 Despite the express and clear intent of both the Commercial Franchise
21 Agreement and the Disposal Agreement, Plaintiffs now argue that even though they are
22 expressly designated non-third-party-beneficiaries of these agreements, they have
23 standing to sue under Williams v. City of N. Las Vegas, 91 Nev. 622, 626, 541 P.2d 652,
24 655 (1975). However, the reliance on Williams is misplaced. In Williams, the City of
25 North Las Vegas and Nevada Power entered into a franchise agreement, which required
26 that the City "inspect the Power Company facilities within its jurisdiction." Id. at 625-26.
27 A billboard installer was electrocuted and killed after coming into contact with high
28

1 voltage wires. Id. at 624. The Court held that the purpose of the inspection requirement
2 was to protect the public from hazards related to electrical facilities. Id. at 627.

3 In Williams, the party sustained physical injuries and brought suit for wrongful
4 death. The analysis, therefore, was a tort based analysis to determine if the plaintiff was
5 an intended foreseeable injured party to whom the City would owe a duty to safely
6 inspect the power lines. The Court's decision, found that the plaintiff was a reasonable
7 foreseeable injured party and was an intended beneficiary of the City's performance of
8 its safety duties as follows: "The obvious intention of the city at the time it entered into
9 the franchise agreement was to protect the public from the hazards of imprudent
10 installation or maintenance of electrical facilities within its jurisdiction." Id. Here, the
11 claims are contract based claims, not tort based claims. Further, Plaintiffs are not
12 alleging they have sustained physical harm—the harm sought to be protected by tort law.

13 Further, the economic loss doctrine precludes Plaintiffs from alleging contract
14 based claims seeking economic harm based upon tort principles. As recently stated in
15 Sadler v. PacifiCare of Nev., 340 P.3d 1264, 1268 (Nev. 2014) (reh'g denied (May 1,
16 2015)): "the 'economic loss doctrine marks the fundamental boundary between contract
17 law, which is designed to enforce the expectancy interests of the parties, and tort law,
18 which imposes a duty of reasonable care and thereby [generally] encourages citizens to
19 avoid causing physical harm to others.'" (citation omitted). The Plaintiffs cannot rely
20 upon tort principals of foreseeability to manufacture a contract based claim for alleged
21 economic harm.

22 Moreover, unlike the decedent in Williams, the City of Reno contract in this case
23 expressly defines those intended third-party beneficiaries to the Commercial Franchise
24 Agreement and the Disposal Agreement. Thus, there is no further need for the Court to
25 evaluate the Agreements to determine whether a particular provision is intended to
26 benefit the Plaintiffs or not. The Agreements are clear, Plaintiffs have third-party
27 standing to bring suit but only if the rights asserted are provided under Sections 3.2 D or
28

1 4.4 L of the Commercial Franchise Agreement or Section 3.2 G of the Disposal
2 Agreement.

3 For Plaintiffs to assert rights under any other provisions of the Agreements as a
4 member of the general public under Williams is merely an attempt to circumvent the
5 plain language of the Agreements which this Court is not empowered to do. It is not the
6 Court's purview to create new legal liabilities when the parties themselves did not. See
7 e.g., Physicians Ins. Co. of Wisconsin, Inc. v. Williams, 279 P.3d 174, 178 (Nev.
8 2012) ("We will not rewrite contract provisions that are otherwise unambiguous [or]
9 'attempt to increase the legal obligations of the parties where the parties intentionally
10 limited such obligations.' "); see also Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 623
11 P.2d 981, 983 (1981) ("a court has no power to create a new contract for the parties
12 which they have not created or intended for themselves.").⁵

13 To grant Plaintiffs' expansive rights as alleged intended third-party beneficiaries
14 under each and every provision of the Agreements requires the Court to render the
15 express identification of Plaintiffs' third-party beneficiary status meaningless. Since the
16 Court can't render provisions in the contracts meaningless, Plaintiffs' arguments fail as a
17 matter of law. Accordingly, because Plaintiffs do not allege that the purported breaches
18 of the Agreements arise from Sections 3.2 D or 4.4 L of the Commercial Franchise
19 Agreement or Section 3.2 G of the Disposal Agreement, Plaintiffs have no third-party
20 beneficiary standing to assert claims for breach of contract or breach of the implied
21 covenant of good faith and fair dealing and the Motion should be granted.

22 ///

23 ///

24

25 ⁵Jaeger v. Canadian Bank of Commerce, 327 F.2d 743, 745 (9th Cir. 1964) ("it is
26 elementary that a party to a contract is held only to that liability which falls fairly
27 within the terms of the contract. 'Courts have no power to make new contracts or to
28 impose new terms upon parties to contracts without their consent.'" (citation
omitted)).

1 **V. PLAINTIFFS FAIL TO STATE A CLAIM FOR UNFAIR TRADE PRACTICES.**

2 The Nevada Unfair Trade Practices Act ("UTPA") is Nevada's antitrust statute.
3 Here, Plaintiffs assert a private claim for damages under the UTPA based upon
4 allegations of price fixing and monopoly. Verified Amended Complaint, ¶ 84. In order to
5 prevail in a UTPA claim, Plaintiffs must allege both antitrust conduct and an antitrust
6 injury. "Antitrust injury" is an "injury of the type the antitrust laws were intended to
7 prevent and that flows from that which makes defendants' acts unlawful." Brunswick
8 Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489, 97 S.Ct. 690, 697, 50 L.Ed.2d 701
9 (1977).⁶ "[An] injury, although causally related to an antitrust violation, nevertheless will
10 not qualify as 'antitrust injury' unless it is attributable to an anti-competitive aspect of the
11 practice under scrutiny, 'since "[i]t is inimical to [the antitrust] laws to award damages" for
12 losses stemming from continued competition.'" Atl. Richfield Co. v. USA Petroleum Co.,
13 495 U.S. 328, 334, 110 S. Ct. 1884, 1889, 109 L. Ed. 2d 333 (1990) (citations omitted).
14 Simply put, "a plaintiff can recover only if the loss stems from a competition-reducing
15 aspect or effect of the defendant's behavior." Id. at 344 (emphasis in original).

16 Here, as a matter of law, there is no anti-trust conduct and there is no antitrust
17 injury. As a matter of law, there is no reduction of competition or injury to competition,
18 because, as noted in the Motion, the UTPA does not apply to "[co]nduct which is
19 expressly authorized, regulated or approved by: (a) A statute of this State or the United
20 States; [or] (b) An ordinance of any city or county of this State . . ." Motion, 21:6-8; NRS
21 598A.040(3). It is undisputed in this case that the Commercial Franchise Agreement
22 and the Disposal Agreement are valid, enforceable contracts entered into by the City of
23 Reno under the powers vested in the City. Therefore, as a matter of law, the UTPA
24 does not apply in this case and the Plaintiffs claim for violation of the UTPA must be
25 dismissed.

26
27
28 ⁶Under NRS 598A.050, UTPA "shall be construed in harmony with prevailing judicial
interpretations of the federal antitrust statutes."

1 VI. PLAINTIFFS FAIL TO MEET THE HEIGHTENED PLEADING STANDARD FOR
2 FRAUD.

3 As explained in the opening Motion, a plaintiff must allege fraud with enough
4 specificity to identify the "who, what, when, where, and how" of the fraud in order to
5 defeat a motion to dismiss. Motion, p. 21:23-26; G.K. Las Vegas Limited Partnership v.
6 Simon Property Group, Inc., 460 F.Supp.2d 1222, 1238 (D. Nev. 2006). In opposition,
7 Plaintiffs concede and adopt this rule of pleading by attempting to show how the
8 allegations address the "who, what, when, where, and how" of Defendants' alleged
9 misrepresentations. Plaintiffs argue and Defendants respond as follows:

10 Plaintiffs: "Who" made misrepresentations of fact- Waste Management [also
11 known as, Reno Disposal] (Opp., 30:17-18);

12 Defendants' Response: Plaintiffs fail to identify any particular speaker who made
13 the alleged misrepresentations. Reno Disposal is a corporate entity who
14 can only communicate through its officers, agents, and employees.
15 Plaintiffs fail to identify any particular person who uttered such
16 misrepresentations so the Plaintiffs fail to meet the heightened pleading
17 standard for fraud.

18 Plaintiffs: "What" the misrepresentations were- "that the Commercial rates set
19 forth under the [Commercial Franchise Agreement] were established to
20 subsidize and offset the Residential Rates to assist in covering the costs
21 associated with single stream recycling" and "that the Single Stream
22 Recycling Program increases the amount of recyclable material collected,
23 and decreases the amount of waste sent to Landfills" (Opp., 30:19-23);

24 Defendants' Response: Plaintiff does not (and cannot) allege that either of the
25 above statements constitutes a misrepresentation. Indeed, both of the
26 above statements are absolutely true and cannot be the basis of a fraud
27 allegation. Thus, Plaintiffs do not satisfy the necessary pleading standard
28 for fraud.

29 Plaintiffs: "When" and "where" the misrepresentations were made- "When
30 [Reno Disposal] was in negotiating and lobbying the [City of Reno] for the
31 [Commercial Franchise and Disposal Agreements] and thereafter . . ." and
32 "Despite the rate increase residents and business owners of the City of
33 Reno have experienced, and in turn, the increased costs that Plaintiffs
34 have been forced to incur in order to survive over the past two and a half (2
35 1/2) years which have at all times been represented by [Reno Disposal] to
36 be necessary for the construction of an Eco-Center within the [City of
37 Reno] and also necessary in order to implement the Single Stream
38 Recycling Program, and upon information and belief, [Reno Disposal] is
39 not recycling the recyclable materials contained in residents and
40 commercial business owners' [Reno Disposal] containers" (Opp., p. 30:23-
41 31:6);

1 Defendants' Response: Plaintiffs' conclusory allegations do not begin to address
2 the "when" or "where" of the alleged misrepresentations. Instead, Plaintiffs
3 appear to describe a course of conduct having to do with lobbying the City
4 of Reno, causing some kind of financial hardship to the Plaintiffs, and not
5 building the Eco-Center and recycling collected materials. These
6 allegations, even if true, do not touch upon the necessary "when" and
7 "where" to satisfy the heightened pleading standard a plaintiff must achieve
8 when accusing another party of fraud. Accordingly, Plaintiffs fail to state a
9 claim for fraud.

10 Plaintiffs: "How" the misrepresentations were transmitted to the "Listener[s]"-
11 "[Reno Disposal] intentionally and fraudulently made representations which
12 were misleading to the [City of Reno], the citizens and business owners of
13 Reno and Plaintiffs and other haulers during franchise negotiations and/or
14 [Reno Disposal] intentionally suppressed and concealed the true nature of
15 its recycling program." (Oppo., p. 31:6-10);

16 Defendants' Response: Other than more conclusory statements, Plaintiffs do not
17 allege a single, specific listener who contends the statements were
18 fraudulent. Plaintiffs also do not identify any agent or representative of the
19 City of Reno, the general public, the Plaintiffs, or other haulers who heard
20 the alleged misrepresentation. Again, Plaintiffs' conclusory statements do
21 not satisfy the heightened pleading standard a party must achieve when
22 accusing another of fraud. Accordingly, Plaintiffs fail to state a claim.⁷

23 Under Nevada law, "[t]he mere failure to fulfill a promise or perform in the future .
24 . . will not give rise to a fraud claim absent evidence that the promisor had no intention to
25 perform at the time the promise was made." Bulbman, Inc. v. Nevada Bell, 108 Nev.
26 105, 112, 825 P.2d 588, 592 (1992). Because the allegations of Defendants' alleged
27 fraud is nothing more than Plaintiffs' contention that the Defendants have not preformed
28 under the contract, Plaintiffs contentions do not rise to the level creating and/or
establishing an independent tort duty distinct from any contract duties which have been
violated. Bash v. Bell Tele. Co., 601 A.2d 825, 829 (Pa. 1992) ("To permit a promisee to
sue his promisor in tort for breaches of contract inter se would erode the usual rules of
contractual recovery and inject confusion into our well-settled forms of actions."). Again,

⁷Plaintiffs present a description of a purported "sting" operation to track recyclable
materials in the Single Stream Recycling Program and argues that such a description
meets the heightened pleading standards for fraud. See Opp., p. 31:11-26. However,
this purported story provides none of the elements of fraud, let alone pleads them with
requisite specificity.

1 because the fraud claim is couched in terms of a breach of contract claim and no
2 specifics of a claim for fraud have been pled, the claims for fraud fail as a matter of law.

3 **VII. PLAINTIFFS FAIL TO PLEAD JUSTIFIABLE RELIANCE.**

4 Plaintiffs note each of the five elements of fraud that must be proven in order to
5 prevail, including "Plaintiff's justifiable reliance upon the misrepresentation." Opp., p.
6 35:9-12. Plaintiffs then insinuate that they need not actually plead justifiable reliance.
7 Id. Instead of detailing some fact to the Court how Plaintiffs acted in justifiable reliance
8 upon any alleged representations, the Opposition merely contains a generic block quote
9 reciting three paragraphs of allegations from the Verified Amended Complaint. Opp., p.
10 35:13-27. Nowhere in the cited allegations do Plaintiffs allege that they justifiably relied
11 and/or materially changed their position based upon any specific misrepresentation
12 made by the Defendants. Because Plaintiffs have failed to allege justifiable reliance—a
13 necessary element of fraud—the Motion should be granted.^a

14 **VIII. PLAINTIFFS EXPRESSLY SEEK AN INJUNCTION TO PUNISH THE DEFENDANTS.**

15 As noted in the Motion, Plaintiffs' seventh claim for relief demands an injunction
16 and an award of punitive damages in order to punish and make an example of the
17 defendants. Equitable remedies cannot be used for punitive purposes. Plaintiffs
18 provide absolutely no authority to the contrary. Finally, the Court has already
19 determined that Plaintiffs' allegations do not support injunctive relief. Accordingly, this
20 claim should also be dismissed.

21 **IX. CONCLUSION**

22 Plaintiffs fail to state a claim for which relief may be granted. Under NRCP 12(b),
23 dismissal of all claims contained in the Verified Amended Complaint is warranted. All of
24


25
26 ^aCompare Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986)
27 (judgement should be granted "against a party who fails to make a showing
28 sufficient to establish the existence of an element essential to that party's case, and
on which that party will bear the burden of proof at trial.").

1 the allegedly defamatory statements are true according to the plain language of the
2 Agreements. Plaintiffs' claim for breach of contract must be dismissed; while express,
3 intended beneficiaries to the Agreements, Plaintiffs are not intended beneficiaries for the
4 allegedly breached provisions of the Agreements. Plaintiffs' claim under UTPA must be
5 dismissed for failure to allege antitrust injury. Plaintiffs' fraud allegations fail for failure to
6 meet the heightened pleading standard and for failure to allege justifiable reliance.
7 Furthermore, Plaintiffs seek a punitive injunction, which must be rejected. For all of
8 these reasons, the Motion to Dismiss should be granted.

9 **AFFIRMATION:** The undersigned do hereby affirm that the preceding document
10 does not contain the social security number of any person.

11 DATED this 19th day of May, 2015.

12 ROBISON, BELAUSTEGUI, SHARP & LOW
13 A Professional Corporation
14 71 Washington Street
15 Reno, Nevada 89503

16 
17 MARK G. SIMONS
18 SCOTT L. HERNANDEZ
19 Attorneys for Defendants

20 J:\WPData\MOS\30528.001 (Waste Management)\P-Reply ISD Motion to Dismiss Complaint.wpd


CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS VERIFIED AMENDED COMPLAINT** on all parties to this action by the method(s) indicated below:

- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:
- ☒ by using the Court's CM/ECF Electronic Notification System addressed to:
- ☐ by personal delivery/hand delivery addressed to:
- ☐ by facsimile (fax) addressed to:
- ☐ by Federal Express/UPS or other overnight delivery addressed to:

Del Hardy, Esq.
Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503
Attorneys for Plaintiffs

DATED: 19th day of May, 2015.


Employee of Robison, Belaustegui, Sharp & Low

J:\WPData\MGS\30529 001 (Waste Management)\P-Reply ISO Motion to Dismiss Complaint.wpd

1 CODE: 3860
2 STEPHANIE RICE, ESQ. (SBN 11627)
3 HARDY LAW GROUP
4 96 & 98 Winter Street
5 Reno, Nevada 89503
6 Telephone: (775) 786-5800
7 Fax: (775) 329-8282
8 Attorney for Plaintiff

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13 NEVADA RECYCLING AND SALVAGE, LTD, a
14 Nevada Limited Liability Company; and,
15 AMCB, LLC, a Nevada Limited Liability
16 Company doing business as RUBBISH
17 RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

18 Plaintiffs,

19 vs.

20 RENO DISPOSAL COMPANY, INC., a Nevada
21 Corporation doing business as WASTE
22 MANAGEMENT; REFUSE, INC., a Nevada
23 Corporation; ABC CORPORATIONS, I through X;
24 BLACK AND WHITE COMPANIES, I through X;
25 and, JOHN DOES I through X, inclusive

26 Defendants.
27
28

REQUEST FOR SUBMISSION

29 IT IS HEREBY REQUESTED that the Motion to Dismiss Verified Amended Complaint
30 filed herein on April 20, 2015 and the corresponding Opposition to Motion to Dismiss Verified
31 Complaint, filed herein on May 7, 2015, and no timely Reply to Opposition filed, be submitted
32 to this Court for Decision.

33 DATED this 19th day of May 2015.



STEPHANIE RICE, ESQ. (SBN 11627)
HARDY LAW GROUP
Attorney for Plaintiffs

Hardy Law Group.com

96 N. 9th Street, Reno, NV 89503
Tel: (775) 784-8000 Fax: (775) 784-8000
www.hardylawgroup.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **REQUEST FOR SUBMISSION** on all parties to this action by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
- ☐ Personal Delivery
- ☐ Facsimile (FAX): and/or Email: gary@duhonlawltd.com
- ☐ Federal Express or other overnight delivery
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested
- ☒ Electronically filed

addressed as follows:

Mark Simons, Esq.
Scott Hernandez, Esq.
Robison, Belaustegue, Sharp and Lowe
71 Washington Street
Reno, Nevad 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 19th day of May 2015.


AN EMPLOYEE OF HARDY LAW GROUP

3860
Mark G. Simons, Esq., NSB No. 5132
Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rbsllaw.com
shernandez@rbsllaw.com

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND
SALVAGE, LTD., a Nevada Limited
Liability Company; and AMCB, LLC,
a Nevada Limited Liability Company
dba RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY,
INC., a Nevada Corporation dba
WASTE MANAGEMENT; REFUSE,
INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK
AND WHITE COMPANIES, I-X; and
JOHN DOES I-X, inclusive,

Defendants.

REQUEST FOR SUBMISSION

It is hereby requested that Defendants' Motion to Dismiss Verified Amended
Complaint filed with this Court on April 20, 2015, be submitted to the Court for decision.

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th day of May, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503


MARK G. SIMONS
SCOTT L. HERNANDEZ
Attorneys for Defendants

J:\WPData\NGS\80528 001 CWaste Management-P-Reg Submli.wpd

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **REQUEST FOR SUBMISSION** on all parties to this action by the method(s) indicated below:

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ by using the Court's CM/ECF Electronic Notification System addressed to:


_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

Del Hardy, Esq.
Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503
Attorneys for Plaintiffs

DATED: 19th day of May, 2015.


Employee of Robison, Belaustegui, Sharp & Low

J:\WPData\Y\GS\30565\001 (Waste Management)\P-Req Submit.wpd

CODE: 3860
DEL HARDY, ESQ. (1172)
STEPHANIE RICE, ESQ. (SBN 11627)
HARDY LAW GROUP
96 & 98 Winter Street
Reno, Nevada 89503
Telephone: (775) 786-5800
Fax: (775) 329-8282
Attorneys for Plaintiffs

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHITE COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ., DEL HARDY, ESQ., of
HARDY LAW GROUP (hereinafter "HARDY LAW GROUP"), and moves this Honorable Court for
an order striking Defendants' late-filed Reply to their Motion to Dismiss Verified Complaint.

This Motion is supported by the attached Memorandum of Points and Authorities, the
papers and pleadings on file and any other such matters this Court may wish to consider.

DATED this 22nd day of May 2015.


STEPHANIE RICE, ESQ. (SBN 11627)
HARDY LAW GROUP
Attorney for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Timeline of Events.**

3 - April 20, 2015, Defendants filed their Motion to Dismiss Verified Amended
4 Complaint.

5 - May 7, 2015, Plaintiffs filed their Opposition to Motion to Dismiss Verified
6 Complaint.

7 - May 18, 2015, Plaintiffs filed their Request for Submission.

8 - May 19, 2015, Defendants untimely filed their Reply to Opposition to Motion to
9 Dismiss Verified Amended Complaint and Request for Submission.

10 **II. Defendants' Reply is Late and Should Not Be Considered by This Court.**

11 This is a simple matter of Defendants' failure to follow the Nevada Rules of Civil
12 Procedure and its not the first time. Pursuant to D.C.R.13(3), a party opposing a motion must
13 file a written opposition within 10 days. Pursuant to D.C.R.13(4), the moving party may serve
14 and file a reply. After expiration of the five days, either party may notify the calendar clerk to
15 submit the matter for decision by filing a written request for submission. See D.C.R. 13, in
16 relevant part, as follows:

17 **Rule 13. Motions: Procedure for making motions; affidavits; renewal,
rehearing of motions.**

18 1. All motions shall contain a notice of motion, with due proof of the service
19 of the same, setting the matter on the court's law day or at some other time fixed
by the court or clerk.

20 2. A party filing a motion shall also serve and file with it a memorandum of
21 points and authorities in support of each ground thereof. The absence of such
memorandum may be construed as an admission that the motion is not
22 supported.

23 3. Within 10 days after the service of the motion, the opposing party shall
serve and file his written opposition thereto, together with a memorandum of
24 points and authorities and supporting affidavits, if any, stating facts showing
why the motion should be denied. Failure of the opposing party to serve and file
his written opposition may be construed as an admission that the motion is
25 meritorious and a consent to granting the same.

26 4. The moving party may serve and file reply points and authorities within 5
days after service of the answering points and authorities. Upon the expiration of
27 the 5-day period, either party may notify the calendar clerk to submit the matter
for decision by filing and serving all parties with a written request for
28 submission of the motion on a form supplied by the calendar clerk. A copy of the
form shall be delivered to the calendar clerk, and proof of service shall be filed in
the action.

1 This case is literally only two months old and Defendants have already missed several
2 procedural deadlines.

3 A. Missed Deadlines

- 4 • The Verified Complaint in this case was filed on March 18, 2015 and served on
5 all Defendants herein on March 19, 2015, meaning the original deadline to file an
6 Answer or responsive pleading was April 8, 2015;
- 7 • In the interim, on March 25, 2015, counsel for Defendants, Mark Simons, Esq.
8 and Scott Hernandez, Esq. filed a Notice of Appearance at 3:03 p.m.;
- 9 • At 4:40 p.m. on March 25, 2015, Plaintiffs filed a Verified Amended Complaint
10 and Application for Temporary Restraining Order and Motion for Preliminary
11 Injunction, mailing a copy of each to Defendants' counsel;
- 12 • As a professional courtesy, on the morning of March 26, 2015, Plaintiffs' counsel
13 voluntarily and without request, reached out to Defendants' counsel and
14 electronically (by email) provided to them all of the documents that had been
15 filed in this case, including the Verified Complaint, the Application for
16 Temporary Restraining Order and Motion for Preliminary Injunction, the
17 Proposed Order thereon;
- 18 • When properly adding three (3) days for mailing, an Answer or Response
19 Pleading to the Verified Amended Complaint was due on April 10, 2015.
20 Defendants failed to meet that deadline;
- 21 • On Monday, April 13, 2015 Plaintiffs filed and hand delivered to Defendants'
22 counsel a Notice of Intent to Take Default, providing that if Defendants did not
23 file a response to Plaintiffs Verified Amended Complaint within three (3) days,
24 Plaintiffs would move this Court for a Default. Defendants again failed to meet
25 that deadline;
- 26 • Despite the ten (10) day deadline to oppose a Motion (See, WDCR 12(2)),
27 Defendants did not file and serve their Opposition to Application for Temporary
28 Restraining Order and Motion for Preliminary Injunction until 4:30p.m. the day

before the hearing scheduled to hear the matter on April 16, 2015- literally more than a week after it was due pursuant to the rules:

- On April 16, 2015, the date in which the three-day Notice of Intent to Take Default expired, Defendants' for the first time untimely requested an extension of time and filed an untimely Motion for Extension of Time. NRCP 6(b) provides that an extension of time must be "made before the expiration of the period originally prescribed." Defendants again failed to meet that deadline; and,
- On April 20, 2015, Defendants filed their untimely Motion to Dismiss Verified Amended Complaint.

These failures are not insignificant.

Here, Defendants filed their Motion to Dismiss on April 20, 2015. Plaintiffs timely filed their Opposition on May 7, 2015, which pursuant to NRCP 6(e) includes an extra three days for service. Plaintiffs served their Opposition on May 7, 2015, by electronic filing. Therefore, Defendants' had five judicial days, which is May 14, 2015, plus an additional three days for e-filing, which is May 17, 2015. Since that is a Sunday, Defendant's Reply was due on May 18, 2015. Therefore, Defendants' Reply was late, and should be stricken.

Pursuant to NRCP 1, these rules "... shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Even so, since the inception of this case, Defendants have routinely exceeded several timelines, which govern the process of this case.

These rules are meant to be followed, and when a litigant fails to follow the rules, Nevada courts have routinely sanctioned parties. In *Landmark Plaza, Inc. v. Deligatti*, 80 Nev. 48, 51-52, 389 P.2d 81, 83 (1964), the Supreme Court dismissed an Appeal because the Appellant violated NRCP 75(a), which required the timely filing of an Appeal and Designation of Record on appeal. In *Dougan v. Gustaveson*, 108 Nev. 517, 522-23, 835 P.2d 795, 799 (1992), the Nevada Supreme Court eloquently stated the reason for having timelines and why they should be followed, as follows: "Despite our decision in this case, we do not mean to de-emphasize the importance of compliance with the rules of civil procedure. The timeliness

Hardy Law Group, P.C.
4400 West Flamingo Avenue, Suite 200, Las Vegas, NV 89103
Tel: (702) 735-8888 Fax: (702) 735-8889
www.hardyandcompany.com

1 provisions written into the rules will, as a general proposition, be enforced by the courts in
2 order to promote the timely and efficient processing of cases. In effect, these provisions
3 recognize judicial commitment to the proposition that 'justice delayed is justice denied'. " In
4 *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007), the District Court dismissed a case because
5 Plaintiff failed to timely file a Joint Case Conference. Several other cases show the importance
6 of compliance with the Nevada Rules of Civil Procedure.

7 The Nevada Supreme Court in *Doolittle v. Doolittle*, 262 P.2d 955 (1953) relying upon
8 *Gammill v. Federal Land Bank*, 129 F.2d 502, held that, " . . . it is clear that the rules [of civil
9 procedure] **are expected to be followed . . .**" [Emphasis Added].

10 The Nevada Supreme Court in *Beco v. Tonopah Extension Mining Co.*, 141 P. 453 (Nev.
11 1914) held that once a rule is adopted, it is binding upon the litigants reasoning:

12 As early as 10th Nev., this court, in the case of *Lightle v. Ivancovich*,
13 speaking through Chief Justice Hawley, quoted approvingly from the case
14 of *Hagar v. Mead*, 25 Cal. 600, to the effect that rules of the court,
15 established, as they are, for the purpose of equal and exact justice and
16 promoting a uniform and established practice, should be *regarded and held*
17 *to be as binding and obligatory upon litigants as any other rule of civil*
18 *conduct* *Lightle v. Ivancovich*, 10 Nev. 41.

19 [Emphasis Added]. *Beco v. Tonopah Extension Mining Co.*, 141 P. 453, 455 (Nev. 1914).

20 In addition to being just flat out disrespectful, especially in light of the fact that
21 Plaintiffs' counsel has gone out of its way to voluntarily extend certain professional courtesies,
22 Defendants' counsel's complete disregard for the procedural rules and requirements of the
23 Court is completely unacceptable. **At this juncture, Defendants' have literally failed to**
24 **timely file a single document in this case on time.**

25 This Court cannot allow such complete disregard of the rules continue. It is not fair to
26 Plaintiffs, who make every effort to ensure that they comply with the rules while at the same
27 time, Defendants get to skate *without penalty* while failing to comply with even a single filing
28 deadline.

29 **III. CONCLUSION**

30 Since the inception of this case, Defendants have blatantly ignored the Nevada Rules of
31 Civil Procedure and essentially flaunted the fact that they have been allowed to get away with

1 it by continuing to do it. As such, Plaintiffs' respectfully ask this Court to sanction Defendants
2 in the amount of \$2,700.00 which amount represents the costs Plaintiffs have incurred in
3 Opposing Defendants untimely Motion for Extension back in April as well as this Motion to
4 Strike and allots for 2 hours to be spent filing a Reply to any Opposition to this Motion to
5 Strike. Maybe then Defendants will make some attempt to start complying with the rules,
6 which they have yet to do thus far in this case.

7 In addition and based on the foregoing, Plaintiffs respectfully request this Court strike
8 and not consider Defendants' Reply to Opposition to Motion to Dismiss Verified Amended
9 Complaint as it was untimely filed.

10
11 DATED this 22nd day of May 2015.



STEPHANIE RICE, ESQ. (SBN 11627)
HARDY LAW GROUP
Attorney for Plaintiffs



Hardy Law Group
P.O. Box 10000, Reno, NV 89503
Tel: (775) 322-2222 Fax: (775) 322-2222
www.hardylawgroup.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **MOTION TO STRIKE** on all parties to this action by:

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

Personal Delivery

Facsimile (FAX): and/or Email: gary@duhonlawltd.com

Federal Express or other overnight delivery

Messenger Service

Certified Mail with Return Receipt Requested

Electronically filed

addressed as follows:

Mark Simons, Esq.
Scott Hernandez, Esq.
Robison, Belaustegue, Sharp and Lowe
71 Washington Street
Reno, Nevad 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 22 day of May 2015.


AN EMPLOYEE OF HARDY LAW GROUP

ORIGINAL

FILED

2015 JUN 11 PM 3:54

JACQUELINE BRYANT
CLERK OF THE COURT

BY 
DEPUTY

CV15-00497
NEV RECYCLING ET AL VS RENO
District Court
Washoe County
NDC
DC-0090007314-011
8 Pages
06/11/2015 03:54 PM
2645
PHEMELL

2645
Mark G. Simons, Esq., NSB No. 5132
Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rbsllaw.com
shernandez@rbsllaw.com

Attorneys for Defendants

**IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

NEVADA RECYCLING AND
SALVAGE, LTD., a Nevada Limited
Liability Company; and AMCB, LLC,
a Nevada Limited Liability Company
dba RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY,
INC., a Nevada Corporation dba
WASTE MANAGEMENT; REFUSE,
INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK
AND WHITE COMPANIES, I-X; and
JOHN DOES I-X, inclusive,

Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
TO STRIKE DEFENDANTS' LATE-FILED REPLY**

Defendants Reno Disposal Company, Inc. and Refuse, Inc. (collectively, the
"Defendants"), by and through their undersigned counsel of record, Mark G. Simons
and Scott L. Hernandez, hereby submit the following in opposition to the Plaintiffs
Nevada Recycling and Salvage, Ltd. and AMCB, LLC dba Rubbish Runners'
(collectively, the "Plaintiffs") Motion to Strike Defendants' Late-Filed Reply ("Motion to
Strike").

Robison, Belaustegui,
Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 329-3151

1 **I. INTRODUCTION**

2 In their Motion to Strike, the Plaintiffs argue that the Defendants filed their Reply
3 to Opposition to Motion to Dismiss Verified Amended Complaint (the "Reply") on May
4 19, 2015, instead of May 18, 2015 when it was due. On reflection, the Plaintiffs are
5 correct. The proper deadline to file the Reply was May 18, 2015. However, filing the
6 Reply on May 19th was the result of a calendaring error; it was not filed on May 19th as a
7 means of gaining a litigation advantage. Further, filing the Reply on May 19th caused
8 the Plaintiffs no prejudice. Accordingly, the Motion to Strike should be denied, and the
9 Reply should be considered.

10 **II. FILING THE REPLY ONE DAY LATE IS EXCUSABLE.**

11 Papers that have been tardily filed may be considered if, in the Court's
12 discretion, such tardiness is the result of excusable neglect. See e.g., Garibaldi Bros.
13 Trucking Co. v. Waldren, 72 Nev. 12, 15, 292 P.2d 356, 357 (1956) (holding that an
14 untimely filing of record on appeal was result of excusable neglect and denying motion
15 to dismiss). As a policy, Nevada Courts prefer to decide cases and issues on their
16 merits, as opposed to insisting on strict procedural compliance. See Bahena v.
17 Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 26, 235 P.3d 592, 602 (2010) (stating
18 Nevada's public policy). Indeed, when considering whether to insist on technical
19 procedural compliance, courts consider factors, such as the degree of willfulness of an
20 offending party, prejudice to the non-offending party, and whether a party will be
21 penalized for the errors of counsel. See Young v. Johnny Ribeiro Bldg., Inc., 106 Nev.
22 88, 93, 787 P.2d 777, 780 (1990).

23 Here, filing the Reply on May 19, 2015 was the result of excusable neglect,
24 specifically a calendaring error. See Affidavit of Scott L. Hernandez ("Hernandez Aff"),
25 ¶ 4-5. Plaintiffs' opposition to Defendants' motion to dismiss was filed on the Court's
26 eFlex filing system on May 7, 2015 and was served electronically to counsel the next
27 day. See Exhibit 1. Thereafter, the date for reply was calculated from the date of
28 served as a total of eight days (five days for a reply and three days for electronic filing)

1 but skipping intermediate Saturdays and Sundays. See Hernandez Aff., ¶4. Based on
2 this reasoning, the deadline for reply was erroneously calendared for May 19, 2015 and
3 was filed accordingly. Id. Upon receiving the instant Motion, counsel investigated its
4 calendaring of the reply and discovered the error. Id. at ¶ 5. This error was
5 unintentional and calculated in no way to gain an advantage over the Plaintiffs. Id. at ¶
6 6. Counsel apologizes to Plaintiffs, their counsel, and the Court for this error. Counsel
7 has taken steps to prevent such an error in the future. Id. at ¶ 5.

8 As the one-day delay in filing the Reply was the result of inadvertent attorney
9 error, there is sufficient excusable neglect to deny the Plaintiff's Motion to Strike.
10 Indeed, the Defendants should not be penalized for a mere clerical error of Counsel.

11 **III. THE ONE-DAY DELAY DID NOT PREJUDICE THE PLAINTIFFS.**

12 As noted above, prejudice to the non-offending party should be considered here.
13 The cases cited by the Plaintiffs demonstrate that prejudice, while not necessarily
14 dispositive, is key when denying an untimely filing. Indeed, the amount of delay is
15 notable in each of the cited cases. In Landmark Plaza, Inc. v. Deligatti, 80 Nev. 48, 51,
16 389 P.2d 81, 83 (1964), a designation of the contents of the record on appeal was filed
17 on nearly three months after the appeal was taken. Under former NRCP 75(a), such a
18 designation was required to be filed "promptly" after an appeal is taken. Id. In Arnold v.
19 Kip, 123 Nev. 410, 413, 168 P.3d 1050, 1052 (2007), a case was properly dismissed
20 with prejudice when the plaintiffs filed a case conference report under NRCP 16.1 a
21 month late.

22 Here, the delay was one (1) day. It was not the months and weeks of delay
23 described in Landmark Plaza or Arnold. Further, the Court has not ruled on the Motion
24 to Dismiss nor has a hearing been set. The delay has neither prejudiced nor impacted
25 Plaintiffs in anyway.

26 The Plaintiffs expend the bulk of their Motion to Strike describing several
27 deadlines that the Defendant have allegedly missed so far in litigation, implicitly
28

1 suggesting that the Defendants have engaged in a prejudicial course of conduct.

2 However, the Plaintiffs mischaracterize the record to date.

3 For example, the Motion states that the Defendants failed to timely file their
4 motion to dismiss. However, the Defendants, in fact, timely filed their motion to dismiss
5 pursuant the Court's order to extend time. See Hernandez Aff., ¶8; Exhibit 2. This fact
6 is conspicuously absent from the Plaintiffs' argument. By selectively omitting important
7 facts, the Plaintiffs' discussion of procedural history should be disregarded as
8 inflammatory rhetoric. The fact remains, the Plaintiffs do not (and cannot) demonstrate
9 that they have been prejudiced in any way.

10 Due to a complete lack of prejudice to the Plaintiffs and how miniscule the delay
11 at issue, the Plaintiffs' Motion to Strike should be denied.

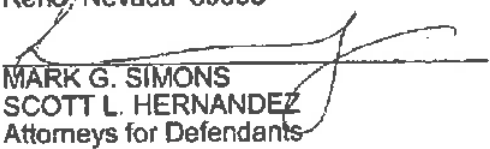
12 **IV. CONCLUSION**

13 Defendants' delay in filing the Reply is the result of inadvertence. Counsel for
14 Defendants have taken steps to ensure that such a delay will not happen again.
15 Further, the Plaintiffs cannot demonstrate any prejudice that would support granting a
16 request as extreme as striking the Reply. The Motion to Strike should be denied.

17 **AFFIRMATION:** The undersigned do hereby affirm that the preceding document
18 does not contain the social security number of any person.

19 DATED this 11th day of June, 2015.

20 ROBISON, BELAUSTEGUI, SHARP & LOW
21 A Professional Corporation
22 71 Washington Street
23 Reno, Nevada 89503

24 
25 MARK G. SIMONS
26 SCOTT L. HERNANDEZ
27 Attorneys for Defendants

28 J:\WPData\MGS\30508\001 (Waste Management)\P-Opp Mtn Strike-SLH.wcd

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY** on all parties to this action by the method(s) indicated below:

- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:
- ☐ by using the Court's CM/ECF Electronic Notification System addressed to:
- ☒ by personal delivery/hand delivery addressed to:
- ☐ by facsimile (fax) addressed to:
- ☐ by Federal Express/UPS or other overnight delivery addressed to:

Del Hardy, Esq.
Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503
Attorneys for Plaintiffs

DATED: 11 day of June, 2015.


Employee of Robison, Belaustegui, Sharp & Low

J:\WPData\MCS\30538.001 (Waste Management)\P-Opp Mtn Suite-SLH.wpd

**AFFIDAVIT OF SCOTT L. HERNANDEZ IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO
STRIKE DEFENDANTS' LATE-FILED REPLY**

STATE OF NEVADA }
COUNTY OF WASHOE }ss.

I, SCOTT L. HERNANDEZ, being duly sworn, depose and state under penalty of perjury the following:

1. I am an attorney licensed in the state of Nevada and am one of the counsel representing Defendants Reno Disposal Company, Inc. and Refuse, Inc. in this matter.

2. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set forth herein.

3. Plaintiffs' Nevada Recycling and Salvage, Ltd. and AMCB, LLC dba Rubbish Runners' opposition to Defendants' motion to dismiss was filed on the Court's eFlex filing system on May 7, 2015 and was served electronically to counsel the next day. Attached hereto as Exhibit 1 is a true and correct copy electronic notice dated May 8, 2015.

4. After receiving the Plaintiff's opposition, my staff calculated the date of reply from the date of service plus total of eight days (five days for a reply and three days for electronic filing). However, intermediate Saturdays and Sundays were skipped when counting those days. Based on this reasoning, the deadline for reply was calendared for May 19, 2015. I confirmed this date. The reply in support of Defendant's motion to dismiss was filed on May 19, 2015.

5. Upon receiving the instant Motion, I investigated the calendaring of the reply and discovered the error. Specifically, the Nevada Supreme Court's holding in *Winston Products Co. v. DeBoer*, 122 Nev. 517, 526-27 (2006) was reconsidered in the

1 context of calendaring replies. I concluded that the method of calculating the deadline
2 for reply briefs in this case was improper. Instead, one should count 5 days, skipping
3 any intermediate weekends and court holidays, and then add then days for electronic
4 service. However, weekends and court holidays must be included when counting these
5 additional three days. My staff has been informed of the correct way to calendar reply
6 briefs going forward.

7
8 6. This calendaring error was unintentional and calculated in no way to gain
9 an advantage over the Plaintiffs.

10 8. Attached hereto and incorporated herein as Exhibit 2 is a true and correct
11 copy of the Order Granting Ex Parte Motion for Extension of Time, filed April 21, 2015.
12 The Defendants timely filed their motion to dismiss pursuant to the Court's order to
13 extend time.

14 FURTHER AFFIANT SAYETH NAUGHT.

15 Dated this 11th day of June, 2015.

16
17 
18 SCOTT L. HERNANDEZ, ESQ.

19 Subscribed and sworn to me
20 on this 11th day of June, 2015
21 by Scott L. Hernandez, Esq.

22 
23 NOTARY PUBLIC



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>No. Pages</u>
-1-	Electronic Notice of filing	-1-
-2-	Order Granting Ex Parte Motion for Extension of Time	-1-

Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

CV 15-28697 DC-0990057314-012
NEW RECYCLING ET AL VS RENO
District Court 05/11/2015 05:54 PM
Washoe County 2645
EX1 PMSEWELL

EXHIBIT 1

EXHIBIT 1

Scott Hernandez

From: eflex@washoecourts.us
Sent: Friday, May 08, 2015 9:05 AM
To: Scott Hernandez
Cc: Wanda Osborne
Subject: NEF: NEV RECYCLING ET AL VS RENO DISPOSAL ET AL (D7): Opposition to Mtn: CV15-00497

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV15-00497
Judge: HONORABLE PATRICK FLANAGAN

Official File Stamp: 05-07-2015:17:35:06
Clerk Accepted: 05-08-2015:09:04:13
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: NEV RECYCLING ET AL VS RENO DISPOSAL ET AL (D7)
Document(s) Submitted: Opposition to Mtn
Filed By: DEL HARDY

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

SCOTT L. HERNANDEZ, ESQ. for REFUSE, INC. et al
MARK G. SIMONS, ESQ. for REFUSE, INC. et al
DEL L. HARDY, ESQ. for NEVADA RECYCLING AND SALVAGE,
LTD. et al

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STEPHANIE RICE, ESQ. for NEVADA RECYCLING AND SALVAGE,
LTD. et al

CV15-00497
NEW RECYCLING ET AL VS RENO 2 Pages
District Court 06/11/2016 03:54 PM 2645
Washoe County PHSEHELL
EX2

EXHIBIT 2

EXHIBIT 2

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA RECYCLING AND
9 SALVAGE, LTD., a Nevada Limited
10 Liability Company; and AMCB, LLC,
11 a Nevada Limited Liability Company
12 dba RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

11 Plaintiffs,

12 vs.

13 RENO DISPOSAL COMPANY,
14 INC., a Nevada Corporation dba
15 WASTE MANAGEMENT; REFUSE,
16 INC., a Nevada Corporation; ABC
17 CORPORATIONS, I-X; BLACK
18 AND WHITE COMPANIES, I-X; and
19 JOHN DOES I-X, inclusive,

20 Defendants.

21 ORDER GRANTING EX PARTE MOTION FOR EXTENSION OF TIME

22 This Court having reviewed Defendants' Ex Parte Motion for Extension of Time,
23 and good cause appearing,

24 IT IS HEREBY ORDERED that Defendants shall have a brief extension of time
25 to and including Monday, April 20, 2015, within which to file a responsive pleading to
26 the Verified Amended Complaint on file in this matter.

27 DATED this 21 day of April, 2015.

28 Patrick Flanagan
DISTRICT COURT JUDGE

Robison, Belsustagul,
Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 328-3151

1 CODE: 3795
2 DEL HARDY, ESQ. (1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHITE COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

REPLY TO OPPOSITION TO MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ. and DEL HARDY, ESQ.,
of HARDY LAW GROUP (hereinafter "HARDY LAW GROUP"), and files the instant Reply to
Opposition to Motion to Strike Defendants' Late-Filed Reply and again respectfully moves this
Honorable Court for an order striking Defendants' late-filed Reply to their Motion to Dismiss
Verified Complaint.

I. CALENDARING ERROR

Our courts have adopted District Court Rules so that the litigation process may be
efficient and just, to the court and the parties. See, NRCP 1. "If the language of a court rule is
clear and unambiguous, the court must conclude that the plain meaning of the rule was

1 intended and enforce the rule as written. *The court has previously declined to formulate*
2 *exceptions to the plain language of a rule.*" [Emphasis Added]. *In re Harrison Living Trust,*
3 112 P.3d 1058, 1061 (Nev. 2005).

4 The Nevada Supreme Court in *Doolittle v. Doolittle*, 262 P.2d 955 (1953) relying upon
5 *Gammill v. Federal Land Bank*, 129 F.2d 502, held that, " . . .it is clear that the rules [of civil
6 procedure] are expected to be followed . . ." [Emphasis Added].

7 Pursuant to NRCP 1, these rules "... shall be construed and administered to secure the
8 just, speedy, and inexpensive determination of every action." Even so, since the inception of
9 this case, Defendants have routinely exceeded several timelines, which govern the process of
10 this case.

11 Defendants' counsel has admitted to filing Defendants' Reply to Opposition to Motion to
12 Dismiss late. Defendants' counsel also argues that the original Motion to Dismiss was in fact
13 timely filed, dismissing Plaintiffs' claims that "Defendants have engaged in a prejudicial course
14 of conduct." See, Opposition to Motion to Strike, 4:1-5. However, Defendants completely fail to
15 address the facts that, an Answer or Response Pleading to Plaintiffs' Verified Amended
16 Complaint was due on April 10, 2015 and Defendants failed to meet that procedural
17 deadline.

18 After a Notice of Intent to Take Default, giving Defendants' three (3) days notice to file
19 an Answer or Responsive Pleading, had expired on April 16, 2015, Defendants filed an
20 untimely Motion for Extension of Time.

21 After Plaintiffs filed their Default and before this Court entered its Order on Defendants'
22 Motion for Extension of Time, Plaintiffs' filed their Motion to Dismiss on April 20, 2015-
23 literally ten (10) days after an Answer or Responsive Pleading was due.

24 In addition, Defendants also failed to timely file their Opposition to Application for
25 Temporary Restraining Order and Motion for Preliminary Injunction and literally did not file
26 that Opposition until 4:30p.m. the day before the hearing scheduled to hear the matter on April
27 16, 2015- literally more than a week after it was due pursuant to the Procedural rules.

28

1 Now, despite the fact that Defendants' Opposition to the instant Motion to Strike
2 pending before this Court, Defendants' have failed to address why the instant Opposition is
3 literally the only document Defendants have timely filed in this case since its inception.

4 Are Defendants' claiming that every single one of these failures were as a result of
5 calendaring errors? When do habitual calendaring error transform excusable neglect to
6 inexcusable neglect or more, rise to the level of intentional disregard for this Court's rules?

7 This Court cannot allow such complete disregard of the rules to continue. It is not fair
8 to Plaintiffs, who make every effort to ensure that they comply with the rules while at the same
9 time, Defendants get to skate without penalty while failing to comply with even a single filing
10 deadline.

11 II. PREJUDICE

12 Defendants' continued failure to timely file documents in accordance with the
13 procedural requirements of this Court is in fact prejudicial to Plaintiffs. As set forth more fully
14 herein and Plaintiffs' moving papers, this was not an isolated incident. Defendants have now
15 made it impossible for Plaintiffs' counsel to plan or set their calendars accordingly to the
16 deadlines set forth herein because Defendants continue to ignore them. Not only that, but this
17 complete failure to comply with the rules displays a level of complete disrespect towards
18 opposing counsel and this Court that cannot be tolerated. Out of all of the times that
19 Defendants have failed to meet filing deadlines in this case, Defendants counsel has only
20 reached out once to the undersigned to ask for an extension. With the exception of that one
21 time, Defendants' counsel has not even picked up the phone to call Plaintiffs' counsel and
22 explain when things like the instant "calendaring error" happen. Plaintiffs' counsel is expected
23 to follow the rules of this Court and they make every effort to do so, which often times means
24 very late nights and/or very early mornings and weekends in the office in order to ensure
25 compliance. It is simply not fair to allow one side to just completely ignore the rules while the
26 other side is prioritizing to ensure they are complied with.

27 Of relevant note, all of Defendants failures to meet the deadlines set forth herein have in
28 effect given Defendants additional time to work on the drafting of the respective document,

1 which gives Defendants an unfair advantage of continually granting themselves more time that
2 Plaintiffs to work on things. Again, this is not fair and should not be tolerated.

3 **III. CONCLUSION**

4 Defendants have continually disregarded the Nevada Rules of Civil Procedure and
5 essentially flaunted the fact that they have been allowed to get away with it by continuing to do
6 it. As such, Plaintiffs' respectfully ask this Court to sanction Defendants in the amount of
7 \$2,700.00 which amount represents the costs Plaintiffs have incurred in Opposing Defendants
8 untimely Motion for Extension back in April, this Motion to Strike and the instant Reply to
9 Opposition to Motion to Strike. Hopefully, such sanction will make Plaintiffs' whole for having
10 to bring the instant Motion while also motivating Defendants to start complying with the rules.

11 In addition and based on the foregoing, Plaintiffs respectfully request that this Court
12 strike and not consider Defendants' Reply to Opposition to Motion to Dismiss Verified
13 Amended Complaint as it was untimely filed.

14 DATED this 15th day of June, 2015.



15 STEPHANIE RICE, ESQ. (SBN 11627)
16 HARDY LAW GROUP
17 Attorney for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98
3 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s)
4 described as **REPLY TO OPPOSITION TO MOTION TO STRIKE** on all parties to this action by:

5 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
6 and mailing in the United States Mail, at Reno, Nevada, postage paid, following
7 ordinary business practices.

8 _____ Personal Delivery

9 _____ Facsimile (FAX): and/or Email:

10 _____ Federal Express or other overnight delivery

11 _____ Messenger Service

12 _____ Certified Mail with Return Receipt Requested

13 ☒ Electronically filed

14 addressed as follows:

15 Mark Simons, Esq.
16 Scott Hernandez, Esq.
17 Robison, Belaustegue, Sharp and Lowe
18 71 Washington Street
19 Reno, Nevada 89503

20 **AFFIRMATION**

21 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding
22 document and attached exhibits, if any, do not contain the Social Security Number of any
23 person.

24 DATED this 15th day of June, 2015.

25 
26 AN EMPLOYEE OF HARDY LAW GROUP
27
28

1 CODE: 3860
2 STEPHANIE RICE, ESQ. (SBN 11627)
3 HARDY LAW GROUP
4 96 & 98 Winter Street
5 Reno, Nevada 89503
6 Telephone: (775) 786-5800
7 Fax: (775) 329-8282
8 Attorney for Plaintiff

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13 NEVADA RECYCLING AND SALVAGE, LTD, a
14 Nevada Limited Liability Company; and,
15 AMCB, LLC, a Nevada Limited Liability
16 Company doing business as RUBBISH
17 RUNNERS,

18 Plaintiffs,

19 vs.

20 RENO DISPOSAL COMPANY, INC., a Nevada
21 Corporation doing business as WASTE
22 MANAGEMENT; REFUSE, INC., a Nevada
23 Corporation; ABC CORPORATIONS, I through X;
24 BLACK AND WHITE COMPANIES, I through X;
25 and, JOHN DOES I through X, inclusive

26 Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

27 **REQUEST FOR SUBMISSION**

28 IT IS HEREBY REQUESTED that Plaintiffs' Motion to Strike Defendants' Late-Filed Reply,
filed herein on May 22, 2015 and the corresponding Opposition, filed herein on June 11, 2105
and Reply to Opposition filed herein on June 15, 2015, be submitted to this Court for Decision.

DATED this 15th day of June 2015.



STEPHANIE RICE, ESQ. (SBN 11627)
HARDY LAW GROUP
Attorney for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98
3 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s)
4 described as **REQUEST FOR SUBMISSION** on all parties to this action by:

5 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
6 and mailing in the United States Mail, at Reno, Nevada, postage paid, following
7 ordinary business practices.

8 _____ Personal Delivery

9 _____ Facsimile (FAX): and/or Email: gary@duhonlawltd.com

10 _____ Federal Express or other overnight delivery

11 _____ Messenger Service

12 _____ Certified Mail with Return Receipt Requested

13 ☒ Electronically filed

14 addressed as follows:

15 Mark Simons, Esq.
16 Scott Hernandez, Esq.
17 Robison, Belaustegue, Sharp and Lowe
71 Washington Street
Reno, Nevad 89503

18 **AFFIRMATION**

19 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding
20 document and attached exhibits, if any, do not contain the Social Security Number of any
21 person.

22 DATED this 15th day of June 2015.

23 
24 AN EMPLOYEE OF HARDY LAW GROUP
25
26
27
28

Hardy Law Group.com

96 & 98 Winter Street, Reno, Nevada 89503 • Fax (775) 332-9308 • Fax (775) 226-0232
www.HardyLawGroup.com

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 NEVADA RECYCLING AND
10 SALVAGE, LTD., a Nevada Limited
11 Liability Company; and AMCB, LLC,
12 a Nevada limited liability Company,
13 dba RUBBISH RUNNERS,

14 Plaintiffs,

Case No.: CV15-00497

15 vs.

Dept. No.: 7

16 RENO DISPOSAL COMPANY, INC.,
17 a Nevada Corporation dba WASTE
18 MANGEMENT; REFUSE, INC., a
19 Nevada Corporation; ABC
20 Corporations, I through X; and JOHN
21 DOES I-X, inclusive,

22 Defendants.
23
24
25
26
27
28

ORDER

20 On April 20, 2015, Defendants RENO DISPOSAL COMPANY, INC. (dba
21 WASTE MANAGEMENT), and REFUSE INC. (hereafter "Defendants") filed a
22 *Motion to Dismiss Verified Amended Complaint*. Plaintiffs NEVADA RECYCLING
23 AND SALVAGE, LTD, and AMCB, LLC, d/b/a/ RUBBISH RUNNERS' (hereafter
24 "Plaintiffs") filed an *Opposition to the Motion to Dismiss* on May 7, 2015. Defendants
25 filed a reply in support of the *Motion to Dismiss* on May 19, 2015.

26 Plaintiffs filed a *Motion to Strike Defendants' Late Filed Reply* on May 22,
27 2015. Defendants filed an *opposition to the Motion to Strike* on June 11, 2015.
28

1 Plaintiffs filed a reply in support of the *Motion to Strike* on June 15, 2015. The *Motion*
2 *to Strike* was submitted for decision on June 15, 2015. The Court considers it here.

3 Pursuant to WDCR 13(4), Defendants' reply in support of their *Motion to*
4 *Dismiss* should have been filed by May 18, 2015. It was instead filed on May 19,
5 2015. Defendants concede the error and state that the late filing was the result of an
6 innocent calendaring error. The Court accepts that representation and further finds
7 that the late filing did not result in any measureable prejudice to the Plaintiffs. The
8 error was therefore excusable. Plaintiffs' *Motion to Strike Defendants' Late Filed*
9 *Reply* is **DENIED**.

10 **IT IS SO ORDERED.**

11 **DATED** this 2nd day of July, 2015.

12 
13 **PATRICK FLANAGAN**
14 District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 2nd day of July, 2015, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 Del Hardy, Esq., for Plaintiffs

8 Mark Simons, Esq., for Defendants

9
10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13
14
15 
16 Judicial Assistant
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND
SALVAGE, LTD., a Nevada Limited
Liability Company; and AMCB, LLC,
a Nevada Limited Liability Company,
dba RUBBISH RUNNERS,

Case No.: CV15-00497

Dept. No.: 7

Plaintiff,

vs.

RENO DISPOSAL COMPANY, INC.,
a Nevada Corporation dba WASTE
MANAGEMENT; REFUSE, INC., a
Nevada Corporation; et al.,

Defendants.

ORDER

On April 20, 2015, Defendants RENO DISPOSAL COMPANY, INC. (dba WASTE MANAGEMENT), and REFUSE INC.'s (hereafter "Defendants") filed a *Motion to Dismiss Verified Amended Complaint*. On May 7, 2015, Plaintiffs NEVADA RECYCLING AND SALVAGE, LTD, and AMCB, LLC, d/b/a/ RUBBISH RUNNERS' (hereafter "Plaintiffs") filed an *Opposition to the Motion to Dismiss*. On May 19, 2015, Defendants filed a reply in support of the *Motion to Dismiss*.

Having reviewed the briefing submitted to the Court on the above-referenced motion, the Court finds that oral argument is necessary before ruling on the matters raised therein. The parties are hereby ORDERED to contact the Court

1 within 10 days of this *Order* to schedule a hearing on the Defendants' *Motion to*
2 *Dismiss Verified Complaint.*

3 DATED this 2nd day of July, 2015.

4 
5 PATRICK FLANAGAN
6 District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 2 day of July, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Del Hardy, Esq., for Plaintiffs

Mark Simons, Esq., for Defendants

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 NEVADA RECYCLING, et al.,)
12)
12 Plaintiffs,)
13)
13 vs. Case No. CV15-00497
14)
14 RENO DISPOSAL, et al.,)
15)
15 Defendants.)
16)
17

18 TRANSCRIPT OF PROCEEDINGS

19 ORAL ARGUMENTS

20 July 29, 2015

21 1:45 p.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 HARDY LAW GROUP
4 By: DEL HARDY, ESQ.
5 By: Stephanie Rice, Esq.
6 96 Winter Street
7 Reno, Nevada

8 For the Defendant:

9 ROBISON, BELAUSTEGUI, SHARP & LOW
10 By: MARK SIMONS, ESQ.
11 By: SCOTT HERNANDEZ, ESQ.
12 71 Washington
13 Reno, Nevada
14
15
16
17
18
19
20
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

RENO, NEVADA, July 29, 2015, 1:45 p.m.

--oOo--

THE CLERK: CV15-00497, Nevada Recycling, et al.,
versus Reno Disposal, et al.. Matter set for oral arguments
as to defendant's motion to dismiss. Counsel, please state
your appearance.

MR. SIMONS: Mark Simons and Scott Hernandez on
behalf of both defendants, your Honor.

THE COURT: All right. Thank you.

MS. RICE: Good afternoon, your Honor. Stephanie
Rice on behalf of plaintiff's Nevada Recycling and Salvage
and AMCB, LLC, doing business as Rubbish Runners.

MR. HARDY: Del Hardy also appearing on behalf of
those parties. Thank you.

THE COURT: Thank you very much. In this
particular case, the plaintiffs filed an amended complaint on
March 25th, 2015, alleging defamation, defamation per se,
breach of contract, breach of covenant of good faith and fair
dealing, unfair trade practices, conspiracy to restrain
trade, fraud, and injunctive relief.

On April 20th, 2015, the defendants filed their
motion to dismiss verified amended complaint pursuant to NRCF
12(b)(5), arguing that the plaintiffs have failed to provide

1 sufficient notice pursuant to NRCP 8 A, that the plaintiffs
2 failed to plead fraud with such specificity as required
3 pursuant to NRCP 9 B.

4 The defendants argue that the plaintiffs' claims
5 are premised on an incorrect reading of a commercial
6 franchise agreement, arguing that the Reno Disposal has an
7 exclusive franchise for hauling solid waste, that Reno
8 Disposal has an exclusive franchise for hauling approved
9 recyclable materials, noting that the plaintiff may haul
10 waste materials, which are expressly excluded from the
11 franchise agreement.

12 Defendants argue that the plaintiffs have failed
13 to state a claim for defamation, defamation per se, that the
14 complaint contains no defamatory statements, that the breach
15 of contract claim fails, that the plaintiffs lack standing as
16 third party beneficiaries, that the plaintiffs have no
17 standing as to the franchise claim, that the plaintiffs have
18 no standing as to the eco center claims.

19 Defendants claim the plaintiffs have failed to
20 state a claim as to unfair trade practices, arguing that the
21 UTPA does not apply in this case. That the plaintiffs have
22 failed to state a claim for fraud or to allege justifiable
23 reliance.

24 The plaintiffs filed their opposition on May 7th,

1 2015, the defendants filed their reply on May 19th and we've
2 set this for a hearing on the motion. Mr. Simons, your
3 motion.

4 MR. SIMONS: Thank you, your Honor. May I use the
5 podium?

6 THE COURT: Certainly.

7 MR. SIMONS: I know the Court has had a long, long
8 criminal calendar this morning. I will take an opportunity
9 to revisit why we're here.

10 THE COURT: Our batteries are charged.

11 MR. SIMONS: What's that?

12 THE COURT: Our batteries are charged. Take your
13 time.

14 MR. SIMONS: All right. If you recall, we've
15 already been here before on a motion for injunction and
16 restraining order asserting the claim that the plaintiffs
17 will sustain injury and harm. At the conclusion of the
18 hearing, the Court determined there was insufficient evidence
19 to support any claim or any right to injunctive relief. That
20 then brought the motion to dismiss and why we're here.

21 At the time we dealt with the context of why we're
22 here, this is a very unique type of setting, which is a
23 franchise agreement. Franchise agreements are agreements
24 that are allowed by statute where a municipality or

1 governmental agency can step in and enter into a contract
2 with a party and/or parties for particular purposes. In this
3 case, it's Waste Management.

4 How do we protect the health and safety of a
5 community, and why is that given priority, or why is the
6 municipality given that right and I'm going to take us back
7 to the mid fourteenth century. Europe lost to a disease
8 50 percent of the population, estimated 50 million people,
9 caused by a little flea living on a little black rat that
10 lived on the garbage in the streets, called bubonic plague.

11 After it almost decimated Europe, the
12 municipalities took steps to protect against that, health and
13 safety of the community. That has translated into the
14 contract that's at issue today. Why? Because our
15 municipality, the City of Reno, has determined that the
16 health and safety of its citizens is of paramount importance.

17 Now, this contract just didn't come into existence
18 in 2012 out of thin air. Back in the '60s, the Court may
19 recall the transfer station that regulates the disposal of
20 the waste, that was constructed. So since the '60s, there's
21 been a franchise agreement in existence, and even reaching
22 back further, but I don't think going back in history is
23 relevant.

24 Since then, there's been franchise agreements.

1 For what reason? To control the waste, to make sure the
2 waste is being properly collected, transported and disposed
3 of. Among one minor benefit is disease is not running
4 rampant in our city.

5 Also, it beautifies our city. We have a company
6 and/or companies that have the ability to remove the waste
7 and provide benefits to not only employees, but to the
8 citizens of the community.

9 So prior to the contract that is at issue, the
10 City of Reno had a franchise agreement with my client that
11 focused on garbage. As we dealt with this, this will be the
12 second time I used this term, putrescible waste, which is
13 animal or vegetable waste. What the city decided to do is
14 expand the scope of what it wanted to franchise and what it
15 wanted to govern by a contract.

16 And it expanded past garbage and defined under the
17 new contract solid waste, and the city just didn't stop
18 there. Solid waste was all the putrescible, non-putrescible
19 waste. The city said, you know what, there is a benefit to
20 our landfills and to our community to recycle, and there's
21 certain things are recyclable, glass, plastic, cardboard,
22 things of that nature, defined as approved recyclable
23 materials. So the city is going to reach out and govern not
24 only solid waste in our community, but certain things that

1 the city is going to designate as a recyclable material.

2 Okay. Great.

3 Who does the city get to enter a contract with?

4 The party and/or parties the city thinks is qualified to
5 perform the services, that has the infrastructure, has the
6 knowledge, has the capability, has the workforce and has the
7 talent to do it. That's obvious. You hire the best when you
8 get the opportunity.

9 And there's repercussions, by entering into that
10 contract with the city for the franchised party, it's not an
11 option, it's an obligation to collect the waste, to collect
12 the recyclable materials, to pay the city the franchise fees,
13 to regulate what is happening, to benefit the city by
14 collecting over \$1.8 million worth of waste that is generated
15 by city facilities and county facilities that aren't paid
16 for. That's a part of the contract obligation. So in this
17 setting, we have the basis of the commercial solid waste and
18 recyclable materials contract, which is exclusive.

19 There is an argument that was made in the
20 opposition to our motion that we shouldn't look at the terms
21 of the contract to determine if a claim has been stated.
22 That's a motion for summary judgment issue. I'm going to
23 represent to the Court that based upon the law, that is an
24 absolute incorrect statement. Given that a contract

1 interpretation of it when it's unambiguous is a question of
2 law, the Court can evaluate at any point in time, including
3 motions to dismiss. The Court does not have to wait for a
4 summary judgment to contemplate it. So we say, they make,
5 plaintiff make certain allegations and they assert certain
6 claims.

7 Now, in light of the setting and in light of the
8 express language of the contract, is there a legally
9 cognizable claim stated? You don't just get to come into
10 court and say, hey, they're bad people, I don't like them,
11 they're doing something that I find morally or ethically
12 wrong or legally wrong. You have to support it with facts
13 and the law has to recognize the claim you're trying to
14 assert. Nevada has certain claims. You got contract based
15 claims, tort based claims, equity based claims. We actually
16 have all three in this complaint.

17 So when they assert breach of contract or breach
18 of the implied covenant of good faith and fair dealing, even
19 attached to it, and say there's a breach. Well, we now know
20 under the rules if the contract is incorporated in, you get
21 to evaluate that, and it does not turn this hearing into a
22 summary judgment. It stays as motion to dismiss under 12 B.

23 So dealing with that, we can't contemplate or
24 evaluate the terms of the contract, I'm going to suggest I

1 don't think that's a proper argument. So I'm going to deal
2 with the language and deal with the context of what is
3 happening here.

4 So we've already got a concession and an admission
5 in paragraph 100 that the contract -- that's paragraph 100 of
6 the amended verified complaint -- that the contract is valid.
7 And in the last hearing, plaintiffs recognized that pursuant
8 to Nevada statute, the municipality could enter into that
9 contract to regulate. So we have an enforceable contract,
10 which is unambiguous, that we need to evaluate, do the terms
11 allow any kind of claim against us for our performance?

12 So stepping back to the contentions that have been
13 asserted, I'm going to walk through the tort contract,
14 equitable claims, that's how it's pled, and the Court has
15 already addressed them in that fashion.

16 We dealt with the defamation. The defamation
17 requires a false statement directed at a plaintiff. But it's
18 not just a plaintiff. It has to be complaining plaintiff,
19 the party who is asserting, hey, we've been defamed. Has to
20 set forth if there's actually been a defamatory statement.
21 The defamatory claims, defamation based claims require that
22 the party come to the Court and say, look, bad things are
23 being said about us directly, not just in general, about us.

24 The Court dealt with some of these defamatory

1 statements early on in the injunction. And the Court
2 recognized that the two pieces of, I'll call evidence, that
3 the plaintiffs were relying upon is an e-mail communication,
4 as well as a purported telephone communication. And in our
5 briefing, we addressed how each of those statements is not
6 false. And it doesn't have to be 100 percent true or
7 indisputably true, it has to be substantially accurate.
8 That's the standard, substantially accurate.

9 And when the Court evaluates the defamation claim,
10 it's a question of law, has a defamation claim been alleged
11 sufficient to withstand a 12(b)(5) motion?

12 So we have statements that are made, and we
13 analyzed the statements. Reno Disposal is the hauler in the
14 City of Sparks. Absolutely 100 percent true. We are the
15 authorized franchisee under the contract.

16 There are other haulers, but they're defined as
17 exempt haulers with specific little accounts, but that
18 doesn't change the fact that our statement is accurate or
19 substantially accurate.

20 That we have -- there will be fines if parties or
21 customers do not comply. Absolutely true. So we're making
22 these statements, which are consistent with the exact
23 language of the agreement.

24 Then we have nothing that is pled, and there's

1 nothing in any of those statements that are relied upon that
2 is directed at the plaintiffs. There's no statement that
3 Rubbish Runners is bad and they're breaching the franchise
4 agreement and they're out there stealing money. Nothing like
5 that. Their name isn't even mentioned, neither is the
6 disposal company. Reno Disposal, dba, Waste Management would
7 be my client, but it would be Refuse, Inc.. Here we go.
8 Nevada Recycling and Salvage, that's the disposal company
9 where the material is taken and processed.

10 So defamation per se is you breached a standard of
11 the law recognized this as a per se statement, the defamatory
12 contact. We don't have any of that here. The Court has
13 already evaluated it once in the injunctive relief that was
14 sought and we established in the pleadings there is no claim
15 stated for defamation.

16 So I'm going to move on to the breach of contract
17 claims, those are claims three and four, versus a breach of
18 contract. Now, this provides a cool little nuance, because
19 the plaintiffs aren't a party to the contract. They're not a
20 signatory. So how do they assert a claim on a contract in
21 which they're not a signatory? They have to do it on a third
22 party beneficiary status.

23 And do we have third party beneficiary status
24 called out for in the contract? Yes. But in two limited

1 circumstances, paragraph 3.2 D, paragraph 4.4 L. I'm just
2 going to take a moment with the Court and address those two
3 components.

4 3.2 D says -- before I jump into what it says, let
5 me place the context of the agreement. The agreement, 3.2 A,
6 provides the broad, powerful language vesting my client with
7 the rights under the franchise agreement. City hereby grants
8 contractor, we're the contractor. We are the party that is
9 under contract with the City of Reno, and that's Reno
10 Disposal. What has the city granted to us? The exclusive
11 rights, exclusive, we have to understand is interpreted based
12 on the plain language, exclusive rights, sole, it's ours,
13 nobody else gets to do it. The sole right, privilege,
14 franchise and obligation within the exclusive service area to
15 provide collection services.

16 Now, collection services is also defined. A lot
17 of defined terms. Collection services are collection of
18 collection materials. So then we look at, what are
19 materials? What is it that we have the exclusive right to
20 collect? That is solid waste and approved recyclable
21 materials, broad, all encompassing, you get everything. And
22 not only are we saying you, Reno Disposal, get to collect
23 everything, we're going to give you suspenders.

24 Your suspenders are going to say, no other person

1 or entity shall collect, transport or deliver to any disposal
2 processing or recycling or similar facility, except as
3 expressly provided under this agreement. So you get
4 everything. Not only do you get everything, nobody else gets
5 anything.

6 And just on the off chance that's not clear
7 enough, we're going to put another sentence in this contract
8 that says, the preceding sentence is intended to be broadly
9 interpreted. So you have to read it in our favor, as the
10 contracting party, that everybody else is precluded from
11 undertaking what? Any activity relating to the collection or
12 transportation of collection materials.

13 Not only do we get it, next sentence says nobody
14 else gets it, third sentence says, just in case we weren't
15 clear the first time, read this broadly to make sure that our
16 intent to grant Reno Disposal all rights is interpreted
17 according to this language, and I put this little star, we're
18 actually going to call out that there's no way to scheme
19 around this by anybody else.

20 It says nobody can solicit, arrange, broker,
21 provide to any person or combination of persons in exchange
22 for payment directly or indirectly of a fee charged, rebate,
23 discount, commission or other consideration in any form, any
24 collection materials that is given to Reno Disposal.

1 So we know Reno Disposal gets exclusive right,
2 nobody else gets the right. And, in fact, any other
3 attempts, contractual or otherwise, between anybody in the
4 community to get around this contract violates the contract.
5 Except for we're going to call out, now that we really made
6 certain that our intent and desire under this contract has
7 been expressly stated, we're going to call out a couple of
8 exceptions.

9 The easiest one is excluded materials. There's
10 just some things that aren't going to be covered by this
11 agreement. And there's a list of excluded materials attached
12 to the agreement. That isn't alleged anywhere in the
13 complaint. So I don't want to spend much time on it, other
14 than to call out the agreement identifies exclusions and the
15 exclusions are articulated with specificity.

16 Next one we talked about, want to jump to exempted
17 drop box material. Exempted drop box material has one
18 offset, the temporary service item, landscaping, special
19 event. We're not going to have those types of conditions
20 subject to the franchise agreement.

21 Then we're going to say exempted hauler accounts.
22 What is that? Well, in 2012 when this contract was entered
23 into, there were other haulers out there doing certain items
24 of which one of them was the plaintiff, the Rubbish Runners,

1 in this case. So the contract defines those contracts that
2 Rubbish Runners has with these specific customers are
3 excluded based upon the terms.

4 Again, none of those accounts are at issue in this
5 complaint. They're not alleging that my client has
6 interfered with their existing accounts or attempting to
7 prevent them to service their existing accounts that would
8 fall under the definition of exempt haulers.

9 Now, we get to the one provision that seems to be
10 the subject matter of this litigation, and that's excluded
11 recyclable materials. Remember there is a specific call out
12 of what are approved recyclable materials, but exempted
13 recyclable materials may be excluded from this franchise
14 agreement if the conditions are satisfied.

15 Now, putting those in context, I'm going to jump
16 back up to sections 3.2 D and 4.4 L. 3.2 D says, exempted
17 drop box services and exempted hauler accounts, which we've
18 defined, are not subject to the franchise agreement. And
19 we're going to give third party beneficiary status to
20 somebody who is performing exempted drop box services or
21 somebody who is performing under an exempt account to protect
22 those rights. Okay. That's great.

23 Those claims are not asserted in this complaint.
24 Again, there's no allegations that there's been a violation

1 of the drop box or there's been an interference with their
2 exempt hauler accounts. So that topic for which they would
3 have third party standing is not in play.

4 The second third party status is the 4.4 L
5 condition, and the reason why I'm going into the specifics of
6 the contract is because there's an allegation by the
7 plaintiff that they have third party beneficiary status for
8 the entire assertion of claims that they made, such as we've
9 failed to perform, failure to bill properly.

10 So I'm calling out, the contract does state there
11 are two limited circumstances where there's third party
12 beneficiary status and neither of those have been triggered
13 or invoked by the allegations in the complaint.

14 Going to 4.4 L. 4.4 L is an exemption that is
15 called out that says, exempt facilities materials, and why
16 was that put in there in the first place? The reason why it
17 was put in there in the first place is the plaintiff, Nevada
18 Recycling and Salvage, was servicing some materials from
19 Castaway, which was another provider. Castaway also entered
20 into a franchise agreement with the City of Reno to perform
21 collection services.

22 Castaway wanted the ability to dispose of up to
23 125,000 cubic yards of material at the plaintiffs' location,
24 Nevada Recycling and Salvage. So there's a specific

1 carve-out of up to 125,000 cubic yards of waste material
2 could be processed by Nevada Recycling and Salvage, which is
3 a processor. Things are dropped off there and then they
4 process it.

5 Going to the specific language of 4.4 L, it
6 doesn't give anyone the right to collect or transport the
7 waste. That's number one. All 4.4 L says is there's an
8 exemption to the duty of the contractor to take all the waste
9 to the transfer station. We're calling out for a one-time
10 exception to that duty. You can take it to Nevada Salvage
11 and Recycling.

12 And here's the specific language of 4.4 L, sub
13 one, subject to the exempt facility material limit, which is
14 125,000 cubic yards, the requirement and obligation of the
15 contractor to deliver all collection materials to a
16 designated facility shall not include or apply to exempt
17 facility materials delivered by contractor to exempt
18 facility, and this contract shall not limit or preclude the
19 exempt facility from accepting, processing, recycling or
20 disposing of any exempt facility materials. That language is
21 clear that it's our ability to transport 125,000 cubic yards
22 to Nevada Recycling and Salvage for them to accept, process,
23 recycle or dispose of.

24 Now, there is no allegation in the complaint that

1 there's been a violation of that provision. Second, even if
2 there is an allegation that somehow we, the contractor,
3 didn't perform, it's not a mandatory compliance, it's a may.
4 We do not have to deliver. So there is under the two
5 provisions, which specifically call out for third party
6 beneficiary status, no claims made.

7 So the third party beneficiary status, encapsulate
8 it in a box, set it aside, because no claims have been
9 asserted under those provisions. And even if there was some
10 type of claim asserted, we have not done anything improper,
11 because there's been not a single allegation of improper
12 conduct in the complaint, and that's what we have to go with
13 at this stage of the process.

14 So now we go to the breach of contract
15 foundational premise that was asserted by plaintiff.
16 Plaintiff is saying, Reno Disposal, you're doing something
17 bad, because you haven't properly billed customers. Okay.
18 You don't have standing to assert that. City of Reno does.
19 You don't.

20 They also assert not moving fast enough on the eco
21 center. The eco center is the state-of-the-art recycling
22 center. Okay. Great. That's up to the city to decide if
23 there's a complaint and if there's failure to perform, not
24 Rubbish Runners or Nevada Recycling and Salvage. They're not

1 parties to those provisions. They're not a third party
2 intended beneficiary under those provisions. They don't have
3 any standing to assert contract claims.

4 I'm going to move on to what appears to be the
5 heart of their contract claim, which is somehow we are
6 interfering with their right to proceed with the excluded
7 recyclable materials.

8 Now, just so we're all aware, excluded recycled
9 materials are defined, and there's provisions that says, in
10 order to qualify as excluded recyclable material, the
11 material has to be separated by the seller, which is
12 essentially the generator of the material. It cannot contain
13 less than 90 percent of recyclable materials. It contains
14 89 percent, it's not part it. Contains 60 percent, it's not
15 excluded by definition.

16 Then it has to be sold. There has to be a
17 segregation, it has to reach a certain quantitative level,
18 and then it has to be sold by the seller directly to a buyer,
19 not to a broker, the person, depends on what they label the
20 broker, the person who is buying it, the buyer. And here's a
21 really interesting provision, at market price, with the title
22 transferring to the buyer upon collection or pick up. Why is
23 this so specific? Because the broad language says, any
24 collection or transportation of waste, which would include

1 solid materials or approved recycling, is solely and
2 exclusively that of the contractor.

3 So, again, absolutely certain, there's no
4 confusion, it includes the sentence not only does this all
5 have to take place, but it excludes materials collected and
6 transported by the service. We want to be really sure that
7 if there's somebody trying to step in and transport it as
8 service, can't do it. Brings us back to the provision of 3.2
9 A. 3.2 A says, preclude anybody from attempting to
10 circumvent the language of this contract, by soliciting,
11 arranging, brokering for payment of money directly or
12 indirectly, all of that broad stuff.

13 So what appears to be the situation based upon the
14 allegations of the complaint is that Rubbish Runners wants to
15 go out and collect and transport recyclable materials for a
16 fee. But not only does it violate the contract, which is the
17 franchise agreement, what it does is it's a clear attempt to
18 circumvent the provisions of the contract. Because if
19 Rubbish Runners is entitled to do that, they don't pay
20 franchise fees, they don't to be subject to the strenuous
21 obligations imposed upon the contractor under the agreement
22 and may try to go out there and undercut. And that appears
23 to be the basis of why we have this lawsuit based upon the
24 allegations.

1 So going to this contract, to the extent it has
2 devolved down into Rubbish Runners contending they can go out
3 and collect and service customers under this excluded
4 recyclable materials provision, they haven't alleged that
5 there's been any interference with that, or that there is a
6 customer which has sought to invoke this provision as
7 qualified under this provision and has been precluded from
8 collecting -- from undertaking activities according to that
9 provision.

10 We don't have a customer here. There's been no
11 customer suing my client saying, hey, you guys are out of
12 line, you're violating the agreement. We don't have that.

13 So at this stage of the process, we have to go
14 with what has been alleged and what is stated, not what may
15 be stated in the future. It's right now. Right now, there's
16 nothing in the complaint that has indicated that there has
17 been a breach by my clients.

18 Now, if you don't have any question on that, I'm
19 going to jump to the UFTA claim.

20 THE COURT: That's fine.

21 MR. SIMONS: That was pretty simple,
22 straightforward. There's allegations that there's been
23 anticompetitive behavior. Under the statutes, it's
24 superseded, we're entitled to do what we were doing. That

1 one, I think, is pretty straightforward.

2 The fraud claims, fraud and fraudulent inducement,
3 that's again interesting, because if there was to be a proper
4 party asserting such claims, it would be the city. You, Reno
5 Disposal, somehow perpetrated a fraud or fraudulently induced
6 us into signing a contract. We don't have that.

7 We have a third party stranger to the contract
8 coming in and saying, hey, we should be allowed, we, stranger
9 to the contract, should not allowed to sue one of the parties
10 to the contract, and we're going to say fraud, but we're not
11 going to tell you what the fraud was. We're not going to
12 tell you who said it, we're not going to tell you what was
13 said, and we're not going to tell we relied upon it. Rule 9
14 C requires all that specificity -- excuse me -- 9 B.

15 Then point two on the fraud, all that has been
16 alleged is a breach of contract. After the contract was
17 entered, we, my clients, failed to perform. All that is a
18 straight breach of contract dressed up under a tort claim for
19 fraud.

20 Subsequent performance does not give rise --
21 subsequent failure to perform does not give rise to a fraud
22 claim. Fraud requires examination of intent at the time the
23 contract was entered into. We don't have any allegations
24 that said that my client intended to deceive or defraud. We

1 have some contentions, after you got the contract, you
2 haven't been performing up to snuff and we don't like it and
3 we want to say bad things about it.

4 Finally, as I mentioned earlier, there's not a
5 single allegation of reliance by the plaintiffs. So you got
6 to allege, and not only allege, the formulaic cause of
7 action, it actually has to support your formulaic recitation
8 with facts that says we took this conduct in reliance upon
9 this statement. We don't have that.

10 So what we have is this fraud claims that are
11 subject to dismissal, because they're not in conformance with
12 specificity requirements. All that is being alleged is a
13 breach of contract. And, finally, they don't even allege
14 facts that cover all the points and elements of the claim.

15 Finally, moving on to the injunction, that claim,
16 well, technically a claim for injunctive relief is not a
17 recognized claim, it's a remedy, but it's been pled as a
18 claim. That remedy has already been denied and rejected by
19 the Court and that remedy was sought on a punitive basis to
20 punish, which is improper basis for injunctive relief.

21 So although it technically pled as a standalone
22 independent cause of action, it is not, but it's dealt with
23 as a remedy. So that independently is subject to dismissal
24 regardless of the substantive basis of the assertion.

1 So, in conclusion, we have a contract that has
2 been admitted to be enforceable, admitted it's unambiguous,
3 admitted that the language is broad, encompassing and
4 interpreted to be in favor of my client's conduct. We have
5 contentions in the complaint that my clients are bad, they're
6 doing bad things, but none of these bad things have any
7 support in terms of giving the plaintiffs a right to a direct
8 cause of action against us.

9 They can feel that they're being harmed, they can
10 feel that we're bad. This is America. You can have those
11 feelings. But the legal system doesn't just recognize and
12 say you can come in and sue us. Any questions, your Honor?

13 THE COURT: No, counsel. Thank you.

14 Would you like to use the podium?

15 MS. RICE: I'm okay with being right here.

16 THE COURT: That's fine.

17 MS. RICE: I guess the first issue I think
18 procedurally needs to be addressed at this point is that
19 counsel has gone way outside the scope of what's contained in
20 the record and the pleadings. The history of how the
21 franchise agreement came about is extrinsic evidence that is
22 not contained anywhere in the record or the pleadings, et
23 cetera, and I don't think can be considered on a motion to
24 dismiss.

1 So I guess we would need to determine whether or
2 not we're going to convert this motion into a motion for
3 summary judgment or if the information is not going to be
4 considered.

5 THE COURT: We're converting this to a motion for
6 summary judgment.

7 MS. RICE: Okay. With respect to one of counsel's
8 last statements that it's been admitted that this franchise
9 agreement contract is not ambiguous, that's not an accurate
10 statement. I can tell you from plaintiffs' perspective,
11 plaintiffs have never admitted or made any such statement.
12 In fact, from the start, plaintiffs --

13 THE COURT: Are you saying it's ambiguous?

14 MS. RICE: It's very ambiguous.

15 THE COURT: In what respects?

16 MS. RICE: The first respect, the first major
17 ambiguity is the definition of excluded recyclable materials,
18 which has been extensively discussed. By the very terms of
19 that provision, excluded recyclable materials are defined as
20 approved recyclable materials, as long as they are separated
21 by the generator from all other materials, and contain not
22 less than 90 percent of those approved recyclable materials
23 and they need to be sold by the generator to a buyer.

24 The next statement in that section states they

1 need to be purchased at market price and title to which
2 materials transfers to the buyer upon collection or pick up
3 of such materials.

4 THE COURT: Which part do you contend is
5 ambiguous?

6 MS. RICE: If title transfers as soon as the
7 materials are collected and transported, there's no hauling
8 involved. So the next provision where it excludes materials
9 collected and transported as a service, title transfers on
10 collection. It's not owned by somebody. It's not being
11 collected or transported as a service.

12 So if Rubbish Runners is purchasing recyclable
13 materials that are separated by 90 percent of approved
14 recyclable materials, and they're paying market rates for it,
15 there's no hauling involved. The second that Rubbish Runners
16 collects those materials, Rubbish Runners owns them.

17 THE COURT: I see your point.

18 MS. RICE: For the next provision to say, but
19 excluding such materials collected or transported as a
20 service is somewhat misleading and confusing, because when
21 you read it that way, title would have already transferred
22 upon collection. So it's no longer being done as a service
23 in that case.

24 Some of the other ambiguities are that the

1 document itself is title an exclusive franchise agreement.
2 There's been discussions and arguments and briefing about the
3 fact that the city has the ability to enter into an exclusive
4 franchise agreement and limit competition across the board.

5 THE COURT: I think everybody agrees they can do
6 that.

7 MS. RICE: Everybody agrees, yes. That was not
8 done here.

9 THE COURT: In what respect?

10 MS. RICE: In the --

11 THE COURT: The city didn't enter into the
12 contract?

13 MS. RICE: No, the city did, but it's not an
14 exclusive contract for all commercial waste and recyclable
15 materials. It explicitly, and opposing counsel refers to
16 them as loop holes, which, again, I take issue with, because
17 they're not loop holes. The city specifically carved out
18 exceptions to what is and what is not exclusively franchised
19 under the agreement.

20 And with respect to the defamation claims, the
21 statement that Waste Management is the only licensed hauler
22 is unequivocally false. The franchise agreement provides
23 that exempted haulers means persons or entities licensed as
24 of October 24th, 2012 by the city and the Washoe County

1 Health District to collect and transport solid waste and
2 recyclable materials in the City of Reno and actively engaged
3 as its primary business in the collection and transportation
4 of all solid waste and recyclable materials in the City of
5 Reno as of October 24th, 2012, including contractor. All
6 exempted haulers are listed scheduled one attached hereto.

7 It's undisputed that Rubbish Runners was a
8 licensed hauler and is an exempted hauler under this
9 agreement. So when Waste Management or its agency
10 representatives makes statements that they're the only
11 licensed hauler, that's not only partially true, that's
12 100 percent false.

13 And it stems a little bit further than some of the
14 items that have been touched on today, the drop boxes, et
15 cetera. There's also other excluded materials in the
16 agreement. Matters that are not franchised are fair game.
17 If Rubbish Runners, which they are, is a licensed hauler,
18 they can haul anything that is not franchised as they choose.

19 THE COURT: Can you give me an example?

20 MS. RICE: I can. On page five of the franchise
21 agreement, it defines excluded materials, and they mean, one,
22 hazardous waste; two, medical and infectious waste; three,
23 volatile, corrosive biomedical infections biohazardous and
24 toxic substances or material, including, without limitation,

1 batteries.

2 THE COURT: I remember. I've read that provision.

3 MS. RICE: It's extensive. It provides that it's
4 okay to -- that paper shredder materials is not franchised.

5 THE COURT: Landscaping.

6 MS. RICE: Yes. Absolutely. So when Waste
7 Management represents to a commercial business that they are
8 the only licensed hauler in the City of Reno, that is a false
9 statement. And the argument that the statement somehow needs
10 to specifically identify who the statement is about is not
11 exactly what the law says. The case provided by opposing
12 counsel and relied on by plaintiffs as well --

13 THE COURT: Chowder.

14 MS. RICE: Chowder. States that it's concerning,
15 it needs to be concerning.

16 THE COURT: Your client is not named in the
17 statement, is it?

18 MS. RICE: No, but my client is a licensed hauler
19 in the City of Reno. So a statement that there are no other
20 licensed haulers, or that Waste Management is the only
21 licensed hauler in the City of Reno, directly concerns
22 Rubbish Runners as a licensed hauler.

23 In addition, when determining whether a statement
24 is capable of defamatory construction and whether it's

1 capable of different meanings, I would argue that's a
2 question of fact for the jury. And that's the Branda versus
3 Sanford case. The truth or falsity of an allegedly
4 defamatory statement is an issue of fact properly left to the
5 jury for resolution.

6 Plaintiffs' complaint in this case, including the
7 exhibits, is 200 pages long. Nevada is a notice pleading
8 state, and while defendants have argued that the notice
9 requirements pursuant to NRCP 8 A have not been satisfied,
10 that is a disingenuous argument, especially considering
11 defendants spent 32 pages in a motion to dismiss arguing why
12 the allegations are wrong. Not that they don't potentially
13 arise to a cause of action or lists the elements and claims
14 for relief, just that they're plain wrong.

15 Clearly, if defendants are able to address the
16 claims, there's more than enough notice. And I would even go
17 as far as to say that it meets -- the complaint in this case
18 meets a fact pleading standard, which is much higher than the
19 Nevada's NRCP 8 A notice requirements.

20 With respect to breach of contract and the
21 argument that plaintiffs can't bring the claims that they are
22 bringing as a third party beneficiary, because it's limited
23 to those sections, that argument fails because, one, they're
24 specifically named as intended third party beneficiaries;

1 two, they, both plaintiffs, benefit tremendously from being
2 named in this agreement. I mean, they have specific
3 sections. They are a part of this agreement.

4 When defendants' counsel argues that a stranger to
5 this agreement can't just come in and make claims that they
6 don't like the other side or they're unhappy because they're
7 a stranger, that's not accurate. Plaintiffs are both
8 implicitly woven throughout this agreement.

9 There are many other business entities, for
10 example, a Junk Mob type of entity that is not specifically
11 named or addressed in this agreement, but just like anyone
12 else could go out and get materials that are excluded. If
13 they are completely not franchised, someone else could go do
14 that. Medical waste disposal companies, that medical waste
15 is not franchised. So that's fair game.

16 But here we have an exempted hauler, who, again,
17 has very specific rights and is woven through this agreement,
18 as well, and is a licensed hauler by the Washoe County Health
19 Department and the City of Reno and a facility that is
20 permitted, given explicit permission under this agreement, to
21 do certain things.

22 With respect to the arguments that Nevada
23 Recycling and Salvage's ability to collect up to
24 125,000 yards of exempted facility materials with an annual

1 increase and the argument that that was because Castaway
2 wanted to take their waste to Nevada Recycling and Salvage,
3 and that Waste Management, if they wanted to, could have the
4 ability to do that, that's not in the agreement anywhere.
5 That goes back to contract formation and the intent of the
6 parties at the time and what was going on.

7 This agreement clearly carves out that the
8 exempted facility has the ability, I want to read the exact
9 language -- exempted facility materials means collection
10 materials delivered to and accepted, processed and recycled
11 or disposed by the exempted facility in an amount equal to or
12 less than the exempted facility limit and excluding garbage.
13 That's on page seven of the franchise agreement.

14 On page ten, the word recycle, recycled and
15 recycling is defined. And, again, the exempted facility
16 materials means collection materials delivered to and
17 accepted, processed and recycled or disposed. So the
18 definition of recycle, recycled or recycling on page ten of
19 the franchise agreement means the processes of collection,
20 sorting, cleansing, treating and reconstituting of recyclable
21 materials that would otherwise be disposed of and returning
22 them to the economy in the form of raw materials for new,
23 reused, repaired, refabricated, remanufactured or
24 reconstituted products.

1 So by definition, the word recycle includes the
2 word collect. So to recycle means to collect, which actually
3 is more in line with the ambiguity in the excluded recyclable
4 materials and the title transferring upon collection.

5 In addition, with respect to the fact that
6 defendants really argued that not charging franchise rates is
7 something that plaintiffs don't have standing to bring for
8 breach of contract. As a party with a -- not a party, but as
9 entities with promises and rights in here that are promised
10 to those entities, the intent of the agreement, one of the
11 mentioned intents, on the first page of this franchise reads,
12 city declares its intention of maintaining reasonable rates
13 for a reliable, proven collection and transportatoin of solid
14 wastes and recyclable materials in an environmentally sound
15 manner within the city.

16 The intent of the agreement was so that the rates
17 set forth in the agreement would be charged. To say that no
18 one except the parties to this agreement have standing to
19 bring a breach of contract claim doesn't make sense, because
20 other parties are directly injured by the failure to charge
21 the franchise rates, including Rubbish Runners, Nevada
22 Recycling and Salvage. And this does go into a little bit of
23 the unfair trade practice claims, but the rates have been set
24 by the city.

1 THE COURT: Doesn't the city enforce the rates if
2 there's a damage -- if rates are not being collected --
3 excuse me. If the fees are not being collected according to
4 the rate, isn't the city damaged by losing out on those
5 collected fees?

6 MS. RICE: Yes. That is a damage, that is a
7 specific damage specific to the City of Reno.

8 THE COURT: So the city has the authority to
9 enforce those rates?

10 MS. RICE: Yes. Absolutely. The answer is
11 absolutely.

12 THE COURT: If I'm missing something, let me know.

13 MS. RICE: No. The answer is absolutely. But
14 that doesn't mean they're the only party with standing to
15 enforce it.

16 THE COURT: How is your client damaged?

17 MS. RICE: The rates set forth in this agreement
18 were set forth by the city council back in November of 2012.
19 And part of the way they set the rates was to allow the other
20 haulers who are licensed in the City of Reno to still compete
21 and do business for the items that are not required as an
22 obligation.

23 THE COURT: Correct. That are not covered by
24 the --

1 MS. RICE: Absolutely. Correct.

2 THE COURT: -- franchise agreement.

3 MS. RICE: So when Waste Management undercharges
4 the franchise rate --

5 THE COURT: For materials that your client is not
6 able to collect? How does that impact your client?

7 MS. RICE: My client could purchase them if they
8 were recyclables.

9 THE COURT: Were they? Are they?

10 MS. RICE: Yes. That's a huge bone of contention
11 at the moment.

12 THE COURT: All right. This sounds more like a
13 taking action than a breach of contract. Go ahead. I
14 apologize.

15 MS. RICE: As beneficiaries, intended third party
16 beneficiaries of the contract, if they're undercharging,
17 they're undercharging a drop box rate, which there's an
18 example in the complaint of Waste Management undercharging a
19 drop box. My client, Rubbish Runners, explicitly gets to do
20 temporary drop boxes. So if Waste Management is not
21 charging, if they're undercharging the franchise rate.

22 THE COURT: More business will go to them.

23 MS. RICE: More business will go to Waste
24 Management, but Waste Management is intentionally breaching

1 the franchise agreement to harm the exempted haulers who
2 explicitly get to do this business under the agreement.

3 THE COURT: All right. I see your argument.

4 MS. RICE: Whether or not they have standing, if
5 they are directly the beneficiary of a promise in this
6 agreement, the agreement promissory intended beneficiary,
7 promises that the exempted haulers get to do the things
8 listed in the agreement. And it says intended third party
9 beneficiaries under section 3.2 B, that is directly affecting
10 and harming Rubbish Runners under that section 3.2 B.

11 THE COURT: I understand where you're going.
12 Thank you. Go ahead.

13 MS. RICE: With respect to the unfair trade
14 practice claims, there are a couple of allegations set forth
15 in the complaint, one of which wasn't necessarily addressed
16 in the motion to dismiss.

17 The allegations contained in the complaint are
18 that, yes, the City of Reno has the ability to enter into
19 this franchise agreement, however, the allegations contained
20 in the complaint are that Castaway and Waste Management had a
21 deal worked out to sell out prior to entering into the
22 franchise agreement.

23 So Castaway and Waste Management each got zones,
24 because Castaway was the next biggest after Waste Management.

1 The next biggest after Castaway was Nevada Recycling and
2 Salvage. If the sale had gone through before the ink was dry
3 on the paper, Waste Management would have acquired Castaway,
4 all of Castaway, and they would have gotten their zone. And
5 next in line would have been Nevada Recycling and Salvage,
6 who would have gotten Castaway's zone.

7 So the allegations in the complaint aren't
8 alleging that the city has done something wrong or that Waste
9 Management has conspired with the city to do something wrong.
10 It's that Waste Management has conspired with Castaway to
11 essentially create a monopoly and limit the competition that
12 essentially would have gone to Nevada Recycling and Salvage
13 had that been done prior to the franchise agreement.

14 Additionally, textbook price fixing is reducing
15 your rates so low that you're not making money to
16 intentionally push someone out of the market. The franchise
17 rates were set by the City of Reno after extensive research
18 on what it costs to do business. And that's why there's a
19 built-in adjustment each year to factor in when, for example,
20 gasoline charges go up or down. So by deliberately and
21 consistently, I might add, undercharging the franchise rates,
22 it's a direct attempt to push Rubbish Runners and Nevada
23 Recycling and Salvage out of the market.

24 As to the fraud claims, the arguments made by the

1 defendants is plaintiffs don't allege the who, what, where,
2 why and how specificity required under NRCP 9 A.

3 THE COURT: 9 B.

4 MS. RICE: 9 B. My apologies.

5 THE COURT: It's okay.

6 MS. RICE: Plaintiffs do allege they made
7 misrepresentations of fact. On page 22, lines 18 and 19; on
8 page 22, lines 23 through 25; page 24, lines 18 through 24;
9 and page 25, lines 18 through 19 of the verified amended
10 complaint, plaintiffs say that Waste Management is who is
11 making the allegations.

12 The what, the misrepresentations were, on page 22,
13 lines 18 through 21, quote, that the commercial rates set
14 forth under the franchise agreement were established to
15 subsidize and offset the residential rates with covering the
16 cost associated with single stream recycling. And, quote,
17 that the single stream recycling program increases the amount
18 of recyclable material collected and decreases the amount of
19 waste sent to the landfills, end quote. That is page 22,
20 lines 23 through 25.

21 The when and where the misrepresentations were
22 made, quote, when Waste Management was in negotiations and
23 lobbying the city for the franchise agreement and thereafter,
24 end quote. At page 22, line 16 through 17, and, quote,

1 despite the rate increase, residents and business owners of
2 the City of Reno have experienced and in turn the increased
3 cost that plaintiffs have been forced to incur in order to
4 survive over the past two and a half years, which have at all
5 times had been represented by Waste Management to be
6 necessary for the construction of an eco center within the
7 city and also necessary in order to implement the single
8 stream recycling program. And upon information and belief,
9 Waste Management is not recycling the recyclable materials
10 contained in resident and commercial business owners
11 recycling containers, end quote. And that's in the complaint
12 at page 24, lines 18 through 24.

13 How the misrepresentations were transmitted to the
14 listeners, quote, Waste Management intentionally and
15 fraudulently made misrepresentations that were misleading to
16 the city, the citizens and business owners of Reno and
17 plaintiff and other haulers during franchise negotiations,
18 and Waste Management intentionally suppressed and concealed
19 the true nature of its recycling programs, end quote.
20 Verified amended complaint at page 25, lines 18 through 21.

21 In addition, there's also a detailed account of a
22 specific incident illustrating the fraud alleged, which also
23 satisfies the who, what, when, where, why and how
24 requirements regarding a GPS tracker placed into a container.

1 THE COURT: By Spencer Investigations.

2 MS. RICE: Correct. That's an extremely detailed
3 account down to the minute of when it occurred.

4 THE COURT: I saw that.

5 MS. RICE: As to defendant's arguments that this
6 fraud claim is really a breach of contract claim couched in a
7 tort for fraud, the issue with that is Waste Management
8 argued that the rates for commercial, as just stated, the
9 rates for commercial subsidized residential rates and the
10 reason why is because they needed to raise the money to build
11 this eco center. And that's why construction was not set to
12 commence on the eco center until 28 months after the
13 franchise agreement was entered into.

14 That allegation can't be -- could not have been
15 true at the time, because, one, Waste Management based on the
16 examples set forth in the complaint, is not charging the
17 franchise commercial rate in order to be able to subsidize
18 residential. Yet they're seemingly still able to perform
19 residential duties. And, two, as also alleged, commencement
20 of the eco center has not began.

21 THE COURT: How does that affect your rights?

22 MS. RICE: Because the rates, the argument that
23 commercial rates subsidized residential.

24 THE COURT: How do you tie that into the eco

1 center? I'm struggling with how the construction or lack of
2 construction of the eco center impacts your client's rights.

3 MS. RICE: Built into the rates was an allocation
4 for money to build the eco center.

5 THE COURT: Right.

6 MS. RICE: My clients' rates are essentially
7 dependent on what the franchise rates are, so the items
8 they're explicitly permitted to compete on.

9 THE COURT: Okay.

10 MS. RICE: So when Waste Management drops the
11 franchise rate, my clients can't do the service if they're
12 taking a loss. And by dropping the franchise rates, that
13 built-in money to build the eco center is no longer there for
14 Waste Management.

15 If Waste Management was charging the rates,
16 construction would have been commenced on the eco center, and
17 my clients presumably would still be able to do business on
18 the items that they're permitted to compete on, because they
19 wouldn't be priced out of the market.

20 THE COURT: Okay.

21 MS. RICE: In addition, Nevada Recycling and
22 Salvage has a huge recycling operation. They already have a
23 sort line, which is essentially what the objectives of the
24 eco center was supposed to be. And Nevada Recycling and

1 Salvage, what they do is they sell the recyclable materials
2 to companies that will put it back into the economy.

3 One example, just for purposes of the argument, is
4 Trex out in Fallon or in Fernley, the plastics that they
5 purchase as a recyclables, they will sell to Trex to make
6 decks to put it back into the economic stream. The eco
7 center was supposed to have several components, a training
8 component --

9 THE COURT: Educational.

10 MS. RICE: Education, jobs, et cetera, and in
11 theory, Nevada Recycling and Salvage would have had the
12 ability to use some of those resources as well. There are
13 things that, for example, they don't do. Nevada Recycling
14 and Salvage can't accept certain things or they don't accept
15 or if they wanted to sell their cardboard bails to an entity
16 or combine their materials, say, they don't have sandwich
17 bales. Sandwich bales are when the materials, they're all
18 approved recyclable materials, but it's cardboard, plastic,
19 laundry detergent bottles, all in one bundle.

20 If NRS gets too full and doesn't have the
21 capability of them sorted and move them back into the stream
22 of economic streams, that is something that the eco center
23 should have been able to do. Because the whole point of
24 commercial franchise -- counsel is right when he states that

1 Waste Management has had a franchise for many years in the
2 City of Reno. For most of those years, it was for garbage,
3 not recycling.

4 The spirit and intent of this agreement, yes, I
5 would agree is for the obvious health and safety purposes,
6 and, of course, we want a beautiful community and a beautiful
7 city, but the intent was also to recycle. That's a huge part
8 of it, because that's how the portion of approved recyclable
9 materials got thrown into this commercial franchise
10 agreement. And the fraud allegations deal with the
11 allegation that Waste Management is not recycling, and it's
12 going to a landfill instead, which completely defeats the
13 spirit of a recycling agreement, because the purpose of
14 recycling is to put it back into the economic stream.

15 The eco center was a very big selling point with
16 the city when the city entered into the franchise agreement,
17 which, obviously, because my clients are limited in the
18 things that they can do, if Waste Management is not
19 performing or said they were going to do something just to
20 obtain the franchise, but never intended on doing it, that
21 harms my clients. Because had that not been a chip on the
22 table, as I stated, NRS, Nevada Recycling and Salvage, would
23 have been third in line for the ability to potentially be a
24 franchiser.

1 As far as the last claim for injunctive relief,
2 this Court did hear that in a hearing and did find that at
3 the time an injunction was not appropriate based on the
4 damages, irreparable harm was what this Court's finding was
5 based on.

6 However, the Court did state that it would be
7 inclined to rehear it should things change, or should we need
8 to hear it down the line. I have the transcript. I can read
9 the exact sentence if you'd like. But something along those
10 lines.

11 The request for injunctive relief is because Waste
12 Management is deliberately interfering. They are making
13 statements that are not true. They are deliberately telling
14 customers that they cannot do business with anyone else,
15 there's no other licensed hauler. And that is taking away
16 from not only my client's revenues, business revenues, but
17 their reputation.

18 We did speak a little bit at the hearing for the
19 injunction on how Reno is a very small town and when a small
20 business owner hears, oh, no, the City of Reno -- code
21 enforcement is going to come out and they're going to fine
22 you and you're going to be in trouble, that's scary. Small
23 business owners in this community need to run their business.

24 Once a statement like that is made, they

1 completely withdraw, even though it's not true. And they
2 think, wow, I don't want to do business with someone who is
3 not licensed to do business. Why would they even put me in
4 that position? It really does affect my client's reputation
5 in the community.

6 And while that may not be irreparable, it may,
7 portions of that may be able to be remedied with monetary
8 damages, to a certain extent, there will always be a little
9 shadow on their reputation. And at the very least, the
10 allegations set forth in the complaint provide more than
11 enough of a proper basis for this Court to reassess whether
12 or not a permanent injunction is appropriate down the road.

13 As this Court is aware, NRCP 15 A provides that a
14 party may amend its pleadings by leave of Court and that
15 leave shall be freely given when justice requires. When
16 considering -- obviously, the standard, when considering a
17 motion to dismiss is the District Court must construe the
18 complaint liberally and draw every fair inference in favor of
19 the plaintiffs. As I stated, the complaint is significant in
20 this case. Every element is laid out there.

21 As far as contract interpretation, counsel --
22 defendants in their opening motion to dismiss in the
23 introduction, counsel states that while slightly complex in
24 their drafting, the commercial franchise agreement creates a

1 public sanctioned monopoly in favor of Waste Management
2 governing the collection of solid waste and recycling in the
3 City of Reno.

4 Nevada law provides that when there are factual
5 complexities or ambiguities existing in a contract, contract
6 interpretation presents a question of fact for the jury. By
7 the defendants' own admission, there are complexities in this
8 agreement, many complexities. This agreement is over 60
9 pages long, and for purposes of the motion to dismiss and the
10 complaint that has been filed herein, only select portions of
11 that agreement have been cited to the Court.

12 And it's plaintiffs' position that with an
13 agreement that is by defendants' own admission a complex
14 agreement, it's plaintiffs' position that the Court can't
15 look at these specific provisions in a vacuum as just those
16 pieces have been pulled out and make a determination as to
17 whether or not something is or is not included or excluded in
18 the franchise agreement.

19 THE COURT: The Court is constrained to interpret
20 the plain language of the contract within the four corners of
21 the contract, doesn't allow the Court to go outside and
22 collect extraneous material and turn it into an MSJ argument
23 at this point.

24 MS. RICE: I would argue that there's been enough

1 extraneous material and formation intent presented before the
2 Court today that if that material is considered by this
3 Court, it would turn it into a motion for summary judgment.

4 THE COURT: It certainly would if it's considered.

5 MS. RICE: If it's considered. But I think with
6 the ambiguities that have been presented and the complexity,
7 the factual complexities of this agreement --

8 THE COURT: Welcome to our world. We don't draft
9 these contracts.

10 MS. RICE: No, we do not. But that's a good
11 point, under the --

12 THE COURT: Just because they're complex doesn't
13 mean they're complicated.

14 MS. RICE: We haven't --

15 THE COURT: That's probably a rhetorical
16 statement. Go ahead. I apologize for interrupting you.

17 MS. RICE: I think we have an agreement that
18 provides exemptions, exceptions, exclusions and definitions
19 within definitions within definitions that exclude the
20 previous definition.

21 THE COURT: Or modify it.

22 MS. RICE: Or modify it.

23 THE COURT: Okay.

24 MS. RICE: Approved recyclable materials are

1 franchised. Approved recyclable materials are also excluded
2 materials. Title transfers on collection or pick up, but
3 collection or pick up can't be done as a service. If it's
4 being purchased, there can't be any hauling after or third
5 party servicing after, because the person who is picking them
6 up owns them.

7 These are ambiguities in this agreement and the
8 standard on a motion to dismiss is very specific. I truly
9 believe plaintiffs have far exceeded the pleading
10 requirements in this state and properly alleged claims and
11 requests for relief that they are able to recover under.

12 THE COURT: All right.

13 MS. RICE: To find otherwise, this Court would
14 need to find beyond a reasonable doubt there's nothing set
15 forth in those allegations on the seven claims for relief
16 that plaintiffs could recover under.

17 And if you have any specific questions, your
18 Honor, I'm happy to answer them.

19 THE COURT: No. Thank you, Ms. Rice. Counsel.

20 MR. SIMONS: Yes, sir. While I'm getting ready,
21 beyond a reasonable doubt is not the standard under rule
22 12(b)(5). It may have applicability in a criminal context,
23 but not at this stage of the proceedings.

24 Now, the only way this complaint does not get

1 dismissed is if the plaintiff confused you and throw a bunch
2 of arguments, hypotheticals, examples that aren't in the
3 complaint.

4 Let's talk about things that are hypothetical,
5 that we wish we would have alleged or maybe could happen,
6 that's not what we're here today about. We're here today
7 about what is actually alleged and what is actually stated
8 under oath and verified by the plaintiffs. That's what we're
9 limited to.

10 So there was talk about ambiguity. I'm going to
11 go through, because I made my notes based on her arguments.
12 I'm going to follow what had been said.

13 You said, where is the ambiguity? As the Court
14 knows, just because people disagree on how it should be
15 interpreted doesn't create an ambiguity. It has to be
16 ambiguous. And the hypothetical that was provided to you
17 when you said, tell me how this is ambiguous? And said,
18 well, if we, plaintiffs, are buyers, then we're not
19 collecting and transporting, because we're the buyer. I
20 agree with that. There's nothing ambiguous about that.

21 If, hypothetically, either of the plaintiffs were
22 buyers and had approved -- and followed along these
23 components, then there's no issue. Has an allegation been
24 asserted in the complaint that plaintiffs are buyers and that

1 we, my defendants, have somehow interfered with that right?

2 Absolutely not.

3 On the contrary, in the verified complaint,
4 paragraph six, I shall read it to the Court, plaintiff,
5 Rubbish Runners, is in the business of providing the services
6 of collection, hauling, disposal of debris and recyclables
7 for commercial accounts within the City of Reno. Doesn't
8 state it's a buyer. Their own statements and admissions
9 affirmatively demonstrate to the Court they're not a buyer.
10 They're a collector and hauler.

11 Okay. Let's look at the language. Excluded
12 recyclable materials cannot be collected and transported as a
13 service. Well, by definitional aspect and based on the
14 undisputed facts provided by plaintiff, they cannot take
15 solace in this provision and say somehow we now can collect
16 and haul. You're either a buyer or not a buyer. Today,
17 they're not a buyer based upon their complaint. That's what
18 we live with.

19 Now, Nevada Recycling and Salvage, paragraph
20 seven, it's a facility in the business of accepting,
21 processing, recycling and disposing of material. Again, not
22 a buyer. Again, by definition of the paragraph seven, they,
23 Nevada Recycling, do not collect or transport materials.
24 There's no ambiguity here. By definition of the contract, by

1 undisputed facts presented, we have nothing. We don't even
2 have an excluded recyclable materials issue before the Court.

3 The plaintiffs themselves cannot take -- have not
4 even invoked this coverage, because they have not asserted
5 they're a buyer. So how can we have a hypothetical that was
6 used. If we were a buyer, if we, the plaintiffs, were a
7 buyer, then there could be an ambiguity.

8 Well, the hypothetical doesn't stop dismissal of
9 the complaint, because it's not a fact alleged in the
10 complaint. In fact, the exact opposite of the hypothetical
11 that is alleged in the complaint under oath and verified.

12 Jumping on to the comment about she took exception
13 with the loop holes. The loop hole is the attempt by the
14 plaintiffs to misconstrue the language in their complaint and
15 in their arguments. I'm just trying to stay focused on the
16 actual language. I just wanted to comment on the loop hole
17 comment.

18 Exempted materials, there's no complaint, there's
19 no allegation in the complaint that we are interfering with
20 the attempts to pick up exempted materials. Okay. We
21 agree. Exempted materials called out for, collect at will.
22 There's no allegation we're interfering with that.

23 Then the comment was brought up, well, we raised
24 the exempted drop box -- excuse me -- the drop box and Waste

1 Management, Reno Disposal is acting improperly because
2 they're under billing. Guess who is the sole and exclusive
3 entity that can place drop boxes? For clarification, and to
4 cut to the chase, it's us, defendants. Drop box definition,
5 page four, means an industry standard receptacle for solid
6 waste or other materials provided by the contractor. We do
7 it. We provide the drop box.

8 If we don't charge the right amount or we don't
9 pay the city the right fees, that's a city issue. That has
10 nothing to do with plaintiffs, because they have no right to
11 place a drop box, zero. Attempting to place a drop box for
12 the collection of waste violates the right given to my
13 client.

14 So if they want to claim, they, plaintiffs, want
15 to claim that there has been some improper conduct by my
16 clients in placing the drop box, they have no right to
17 complain. That's a city issue. If it's an exempted drop
18 box, exempted drop boxes are exempted. Go charge whatever
19 you want. That hasn't been alleged. And even if it was
20 alleged, there's no wrongdoing.

21 So our contractual duties, my client's contractual
22 duties are to the City of Reno. They have no contractual
23 duties except number 3.2 D and 4.4 L, which they can say,
24 hey, you're interfering, you're doing something. Wrong. Not

1 one of those contentions has been asserted in the complaint.

2 With regard to the 4.4 L argument, 4.4 L argument
3 is the limit of 125,000 cubic yards. You heard, I'm going to
4 have to call it disingenuous argument presented, because
5 there was a reading to you of the language of the contract,
6 of that provision that said, Nevada Recycling and Salvage can
7 recycle, and then she read you the definition of recycling,
8 and said collection, that means by collection, we get to go
9 out and do it.

10 Here's what wasn't told to you, collection is a
11 defined term, capital C. It's not a verb that is thrown in
12 there you can go out and collect. It says recycle, recycling
13 and recycled means the process of capital C collection. And
14 I'll tell you what collection means. Guess who gets to
15 collect? Collection defined as the pick up and removal by
16 contractor.

17 Recycle, recycling and recycled includes the
18 collection solely and exclusively by contractor, it doesn't
19 grant Nevada Recycling any rights to go out and collect and
20 salvage and they've already admitted it.

21 So what I'm saying is that the argument that was
22 presented, oh, there's this verb, right, the right to
23 collect, it's not, it's a defined term, and the only person
24 who gets to do that is the contractor.

1 There was also arguments, about, oh, the length of
2 the briefs should indicate to the Court there's some validity
3 to our pleading and we've achieved the pleading requirements.
4 We do have some language and we do have about 121 paragraphs
5 of allegations that we've had to go through and identify for
6 the Court. So the length of the briefs has to deal with the
7 language of the contract, how these things are set up, and
8 the failure to actually assert a claim or prove a standard.

9 So I don't think you can look at the length of the
10 briefs, although I have heard in the past some judges look at
11 the stack and make the determination whether to grant or deny
12 a motion based on the height of the stack of paper. I know
13 this Court absolutely does not do that. So I'm disregarding
14 the length, I think it's the subject and the substance of the
15 briefs.

16 There was also a contention asserted that we're a
17 third party and it's woven throughout the contract. No, it's
18 not woven throughout. The third party beneficiary is called
19 out specifically twice. They have not asserted claims under
20 those provisions. You cannot generalize the contract and
21 say, hey, we have all kinds of third party rights.

22 Finally, well, not finally, I have a little bit
23 more, there was a reference on the defamation claim that
24 we're making false statements by saying we're the only

1 licensed hauler, and under the contract, there are
2 specifically called out exempt haulers. Those exempt haulers
3 are called out for exempt accounts. That's the reason. But
4 other than the exempt accounts and some of this exclusive
5 material, nobody gets to do what we do, and that is
6 collection.

7 Collection services of collection materials, so
8 those statements are accurate. And, again, if the Court
9 thinks that's confusing, I don't really want to get into
10 that, there has to be a defamatory statement directed at a
11 party. It can't just be a generalized statement.
12 Generalized statements are not actionable under law. They
13 have to come in and say, look, they picked us out, they said
14 something specific about us, and somehow we've been harmed.
15 We don't have that. So regardless of the defamation claim,
16 it fails because there's no specificity.

17 There was some talk about generalized conspiracy
18 theory to establish a monopoly and harm. That's great. That
19 may be a claim they want to assert against the City of Reno
20 for acting improperly in part of their evaluation. It has
21 nothing to do with our client. We have a contract. Our
22 duties are exclusive to the City of Reno. We live by them
23 and we will live by them.

24 There was an argument addressing the fraud claims.

1 When I analyze a fraud claim, I say, what was said and who
2 was it said to? If it's not said to me, I don't have an
3 actionable claim. If two parties are over there negotiating
4 some things going on, that's between those two parties. City
5 of Reno wants to sue us for fraud, we're ready.

6 With the specificity of references made, I'm just
7 going to, without going into each of them, our reply brief,
8 both our opening and our reply brief deal with that, our
9 reply brief starting at page 12, so I'm not go to ablate the
10 Court. I know the Court's read it.

11 So even if somehow the Court overlooks, hey, there
12 was no reference or direct misrepresentations made by my
13 client to the plaintiffs, plaintiffs have never even said
14 what's our reliance?

15 Finally, injunctive relief. Counsel is clear at
16 the conclusion, if something in the future happens, come back
17 to me. Well, nothing has happened. We're here today. Today
18 is the day. We have to live with what we've got in the
19 record on the motion to dismiss. There's nothing now.

20 So in conclusion, our arguments are simple and
21 straightforward with regard to each of the claims. If you
22 want to assert breach of contract claims, you've got to have
23 standing. You've got to assert a wrong that was directed at
24 you there was a duty owed under the contract that was

1 breached. It's not there. They cannot come and say
2 generally defendants have not really performed or done what
3 they said they would for somebody else and somehow we've been
4 harmed.

5 That brings up the tax cases where the taxpayer
6 just doesn't have standing. You've got to have specificity
7 of harm. We don't have that. It comes down to, we want to
8 say a bunch of bad things, we want to keep them in this
9 lawsuit and we think we've alleged enough bad things. They
10 haven't. There's legal requirements. That's why the
11 briefing is extensive and that's why we have oral arguments.
12 Any questions, your Honor?

13 THE COURT: No. Thank you, counsel. What I'd
14 like to do is issue a ruling from the bench today. I want to
15 go back and think about things. I'll go over my notes and
16 arguments of counsel, which were outstanding and I want to
17 compliment the attorneys here for doing an outstanding job on
18 behalf of their clients. It doesn't make the judge's job any
19 easier, but certainly it's a credit to you and your clients
20 that forces a judge to think two or three times before they
21 do something.

22 I'm going to try back in about half an hour and
23 I'll issue my ruling. Ms. Rice, anything else you wish to
24 bring up?

1 MS. RICE: Just one very minor thing. I wanted to
2 provide the citation on the case. Dismissal is appropriate
3 only when it appears beyond a reasonable doubt that the
4 plaintiff could not prove a set of facts that would entitle
5 her to relief. It's Zang versus the Eighth Judicial District
6 Court, 120 Nevada 1037, at 1040, and it's a 2004 case.

7 THE COURT: Thank you very much. We'll take a
8 look at that. All right. Thank you again.

9 (A short break was taken.)

10 THE COURT: I apologize for taking so much time.
11 You have to bear with an old judge. All right. Mr. Simons,
12 would you be so kind as to put up those exhibits? One of
13 these days, we'll get some electronics in here that will help
14 us.

15 MR. SIMONS: Is this it?

16 THE COURT: That's the one. The defendants have
17 filed a motion to dismiss the verified amended complaint
18 pursuant to NRCP 12 B, which governs motions to dismiss.
19 Subsection five governs motions to dismiss for failure to
20 state a claim for which -- upon which relief can be granted.
21 When deciding a motion to dismiss under NRCP 12(b)(5), the
22 Court must treat all factual allegations as true and draw all
23 reasonable inferences in favor of the nonmoving party, in
24 this case, the plaintiffs.

1 Nevertheless, a claim should be dismissed if it
2 appears beyond a doubt that plaintiff could prove no set of
3 facts, which if true would entitle plaintiff to relief.
4 Dismissal is appropriate when the allegations are
5 insufficient to establish the elements for the claim for
6 relief.

7 The plaintiff has filed a complaint alleging six
8 claims for relief. One, defamation, two, defamation per se,
9 three, breach of contract, four, breach of the implied
10 covenant of good faith and fair dealing, five, unfair trade
11 practices, conspiracy to restrain trade, and, six, a claim
12 for injunctive and declaratory relief.

13 Turning to the plaintiffs' first claim,
14 defamation -- the first two claims, defamation and defamation
15 per se. The elements of a defamation claim are a false and
16 defamatory statement of fact by the defendant concerning the
17 plaintiff. Two, an unprivileged publication to a third
18 person. Three, fault amounting to at least negligence. And,
19 four, actual or presumed damages. A statement is not
20 defamatory if it is absolutely true or substantially true.
21 That's Pegasus versus Reno Newspapers 118 Nevada 706.

22 Here, plaintiffs allege that Waste Management
23 employees made false statements to, quote, customers and/or
24 prospective customers, close quote, of the plaintiff,

1 including, the following, A, we, parens, Waste Management,
2 close parens, are only the haulers that's allowed in Sparks
3 and Reno; B, open quote, any other provider that goes in
4 there, there will be fines, period, close quote; C, open
5 quote, we, parens, Waste Management, close parens, have an
6 agreement with the city and we are the only trash hauler that
7 is allowed in either, parens, Reno or Sparks, close parens,
8 close quote.

9 Plaintiffs allege that Waste Management employee
10 Galletti made intentional misrepresentations in an e-mail to
11 one of plaintiffs' customers. That e-mail read, at this
12 time, Reno Disposal, which is an affiliate of Waste
13 Management, is the assigned hauler for the City of Reno.
14 Solid waste, every business generating solid waste in the
15 City of Reno is required to subscribe to Reno Disposal
16 Company for the collection, transportation and disposal of
17 all of franchised solid waste material generated by the
18 business, except for business to which the City of Reno has
19 specifically granted in writing an exemption.

20 Recyclable material, no business may allow or
21 retain any service provider other than Reno Disposal Company
22 to collect, pick up, transport or deliver, approved
23 recyclable material in the City of Reno in violation of the
24 exclusive commercial franchise agreement or the Reno

1 Municipal Code.

2 In looking at the agreement itself, the franchise
3 agreement, it is clear that Waste Management's franchise to
4 collect and haul waste and recyclables is nearly completely
5 exclusive. It includes the right to collect, transport and
6 deliver collection materials in the Reno area. That's found
7 in franchise agreement 3.2 A.

8 That clause is intended to be broadly interpreted
9 and includes within the definition of collected materials,
10 quote, all solid waste, bracket, including nearly all paper,
11 glass, aluminum, plastic materials, close bracket, close
12 quote, generated by commercial customers subject to certain
13 exemptions. That's found on page three of the agreement.

14 This agreement provides that Waste Management is
15 entitled to charge fees for customers' noncompliance with the
16 agreement. That's found in section 3.2 B. The few
17 exemptions to the franchise are narrow. They are for, open
18 quote, excluded materials, excluded recyclable materials,
19 exempted drop box materials, exempted hauler account
20 materials and exempted facility materials delivered to
21 exempted facilities, close quote. And that's in section 3.2
22 A.

23 The term exempted drop box materials applies to
24 temporary services for the collection of certain wastes in

1 approved drop boxes, excluding services that would, quote,
2 replace, limit or reduce, close quote, any services provided
3 by Waste Management. That's found in the agreement on pages
4 six and seven.

5 Open quote, exempted hauler account materials,
6 close quote, and, quote, exempted facility materials, close
7 quote, apply to defined existing contracts between listed
8 services providers and identified customers with approval
9 from the city and excluding services involving garbage. The
10 term, open quote, excludable recyclable materials, close
11 quote, generally permits market rate purchasers of recyclable
12 materials to collect them from generators of such materials.
13 The definition makes clear that it excludes, open quote, such
14 materials collected and transported as a service, close
15 quote. That's found on page five of the agreement.

16 A plain interpretation of the unambiguous passages
17 above shows that the franchise agreement was explicitly
18 designed to create a practical monopoly on solid waste and
19 recyclable collection in the Reno, Sparks areas in favor of
20 Waste Management.

21 While it is not literally true that Waste
22 Management is the, quote, only hauler that is allowed in Reno
23 and Sparks, close quote, that statement is substantially
24 true. As such, the first and third statements by Waste

1 Management employees, which plaintiffs complain of cannot be
2 defamatory.

3 The second complained of statement, quote, any
4 other provider that goes in there, there will be fines, close
5 quote, is also substantially true. The agreement does vest
6 Waste Management with the authority to assess fines for
7 customer noncompliance, including the use of out of franchise
8 services.

9 The Galletti e-mail poses even less of a problem.
10 Galletti states that Waste Management has the exclusive right
11 to handle all of the franchise solid waste materials
12 generated by the business, close quote, and that, open quote,
13 no service provider, close quote, other than Waste Management
14 may handle, open quote, approved recyclable materials, close
15 quote. These statements are literally true. Waste
16 Management has the right to handle, quote, franchised, close
17 quote, waste by definition and is the only, quote, service
18 provider, close quote, that may handle approved recyclable
19 materials.

20 In the excludable recyclable materials exception,
21 while encompassing some approved recyclable materials does
22 not include materials handled as a service as such. Those
23 statements cannot constitute defamation.

24 Defendants' motion to dismiss the plaintiffs'

1 claim for defamation and defamation per se is granted.

2 Breach of contract, breach implied covenant of
3 good faith and fair dealing. Plaintiffs allege that Waste
4 Management breached the franchise disposal agreements, by;
5 one, charging customers lower rates than those specified in
6 the agreement; two, failing to diligently construct the eco
7 center; and three, refusing to service commercial customers
8 with 96-gallon tote service.

9 Plaintiffs based their claim on their status as
10 third party beneficiaries to the franchise and disposal
11 agreements. The franchise agreement does provide the
12 plaintiff with third party beneficiary rights as to their
13 ability to handle exempt material under sections 3.2 D and
14 4.4 L.

15 However, the rights of the exempted entities under
16 each section are limited. Each section applies only to the
17 exempted entities' rights to collect and handle exempted
18 materials. Plaintiffs' argument that they have general third
19 party beneficiary standing under Hample versus Hansen, might
20 also be tenable if they can show a clear promissory intent
21 that the franchise agreement was meant to benefit them.

22 Although this is not unlikely given the
23 exclusionary nature of the agreements themselves, plaintiffs'
24 reliance on Williams versus City of North Las Vegas is

1 inaccurate as that case employed a third party beneficiary
2 theory only to address the scope of duty owed to
3 Mrs. Williams when her husband was electrocuted working on a
4 billboard down in Las Vegas in a negligence case.

5 Now, under the plain language, limitations of the
6 plaintiffs' third party beneficiary status in the agreements
7 themselves, not all breaches constitutes a breach against the
8 plaintiffs. The plaintiffs must demonstrate that the
9 violations interfered in some way with their rights to handle
10 exempted materials.

11 The construction of an eco center plainly has no
12 bearing on those rights. It's also not clear how Waste
13 Management's failure to follow the rate schedule as to
14 franchised materials affects plaintiffs' rights to handle
15 exempted materials.

16 Plaintiffs allege that the price adjustment of the
17 drop box materials, which plaintiffs claim they are entitled
18 to compete for, but drop box services are expressly limited
19 by the agreement to temporary services, which cannot, quote,
20 replace, limit or reduce, close quote, services provided by
21 Waste Management.

22 This would seem to imply that plaintiffs were not
23 intended to actually compete with Waste Management for these
24 services. There's some question as to what affect Waste

1 Management's failure to downgrade customers to a 96-gallon
2 tote might have on plaintiffs' ability to provide exempted
3 services, but given the language of the agreement, plaintiffs
4 can prove no set of facts showing that the complained of
5 actions interfered with their rights to handle exempted
6 materials. Defendant's motion to dismiss is therefore
7 granted.

8 Now, the plaintiffs have also alleged price fixing
9 and attempts to monopolize trade under NRS 598A.060. They
10 base their claims on deviations from the price schedule and
11 alleged collusion with Castaway Trash Hauling to obtain a
12 consolidated franchise. Defendants note that unfair trade
13 practices does not apply where the conduct is expressly
14 authorized by local government.

15 As stated, plaintiffs have not alleged deviation
16 from the price schedule, which would amount to substantial
17 interference with the plaintiffs' own ability to continue to
18 haul accepted materials. As such, plaintiffs' claim as to
19 price fixing must be dismissed.

20 The Court now must turn to consider whether
21 plaintiffs have stated an unfair trade practices claim as to
22 Waste Management's alleged collusion with Castaway. Such
23 allegations are subject to the heightened pleading
24 requirements of NRCP 9 B. Here plaintiffs have successfully

1 pleaded the who, what, when, where and how of such activities
2 so as to survive a motion to dismiss.

3 Plaintiffs must also have legal bases for their
4 cause of action. NRS 598A.060, subsection E and F,
5 specifically prohibit actions which result in a
6 monopolization of trade or commerce in the state or
7 consolidation of business interests which would result in the
8 monopolization or substantially lessen competition or be in
9 restraint of trade.

10 Here plaintiffs have alleged such an action on the
11 part of Waste Management. Defendants are correct that
12 actions which are sanctioned by a municipality are exempted
13 from the unfair trade practices liability. However, as
14 alleged, the City of Reno originally intended to grant
15 franchises to two separate entities, not one. And an action
16 to further consolidate service in the Reno area beyond that
17 would not be subject to approval by the City of Reno.

18 Further, plaintiffs have stated their claims with
19 the requisite specificity. They have alleged the general
20 time frame during which they believe Waste Management's
21 collusion with Castaway occurred and have stated specifically
22 that Castaway's representatives made statements to the City
23 of Reno regarding their intentions as to the proposed
24 franchise agreement without divulging the planned

1 acquisition.

2 This was a close call, but given the pleading
3 standards that this Court must apply at this stage of the
4 proceedings, the defendants' motion to dismiss the claims
5 relating to unfair trade practices claims as to the collusion
6 with Castaway in pursuit of an unlawful monopoly is denied.

7 As to the injunctive relief, this Court has
8 previously found that injunctive relief and declaratory
9 relief was not appropriate, that monetary damages was
10 sufficient to compensate the plaintiff for any perceived
11 damages and the Court reaffirms that ruling. It notes as a
12 footnote that injunctive relief is a remedy and not a cause
13 of action.

14 Therefore, Ms. Clerk, plaintiffs' motion to strike
15 the defendants' reply brief as untimely is denied.
16 Defendants' motion to dismiss the claims of defamation and
17 defamation per se is granted. Defendants' motion to dismiss
18 the breach of contract and breach of implied covenant of good
19 faith and fair dealing is granted. Defendants' motion to
20 dismiss the claims relating to price fixing is granted.
21 Defendants' motion to dismiss plaintiffs' unfair trade
22 practices claim as to the collusion with Castaway in pursuit
23 of an unlawful monopoly is denied. Mr. Simons, yes, you
24 rise.

1 MR. SIMONS: There was six claims. The sixth
2 claim was fraud. The seventh claim was injunctive relief.

3 THE COURT: I didn't see a fraud claim.

4 MS. RICE: Mr. Simons is correct, I believe.

5 THE COURT: You're right. It's after the unfair
6 practices. The fraud claim, just a minute, fails in that the
7 plaintiff has not shown reliance and that the -- strike that.
8 I have my notes on my desk.

9 MR. SIMONS: Would you like another break? We can
10 take a break.

11 THE COURT: No. Stay right here. I'm going to
12 finish this. I have my notes here and let's go ahead. I'll
13 reconstruct it from my notes here. The Court agrees with the
14 plaintiff that the claim of fraud, as alleged by the
15 plaintiff, lacks specificity. There are no allegations of an
16 intent to defraud and plaintiff has not shown the requisite
17 element of reliance. And, therefore, the defendants' motion
18 to dismiss the fraud claim is granted. Mr. Simons, please
19 prepare the order.

20 MR. SIMONS: Yes, your Honor.

21 THE COURT: This Court's in recess.

22 --oOo--

23

24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on July 29, 2015, at the hour of 1:45
8 p.m., and took verbatim stenotype notes of the proceedings
9 had upon the oral arguments in the matter of NEVADA
10 RECYCLING, et al., Plaintiffs, vs. RENO DISPOSAL, et al.,
11 Defendants, Case No. CV15-00497, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 71, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 31st day of July 2015.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

CASE NO. CV15-00497

NEVADA RECYCLING et al. vs. RENO DISPOSAL et al.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

07/29/15
HONORABLE
PATRICK
FLANGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

ORAL ARGUMENTS IN RE: DEFENDANT'S MOTION TO DISMISS
THE VERIFIED AMENDED COMPLAINT
Stephanie Rice, Esq., and Del Hardy, Esq., were present in Court on
behalf of the Plaintiff, who was not present.
Mark Simons, Esq., and Scott Hernandez, Esq., were present in
Court on behalf of the Defendant, who was not present.
1:46 p.m. – Court convened with Court and counsel present.
The Court recited a procedural history of this case.
Counsel Simons, on behalf of the Defendant, addressed the Court
and argued in support of Defendant's Motion to Dismiss the Verified
Amended Complaint ("Motion to Dismiss").
Counsel Rice, on behalf of the Plaintiff, addressed the Court and
argued in opposition to Defendant's Motion to Dismiss.
Respective counsel presented additional argument in support of their
respective positions.
3:25 p.m. – Recess.
4:25 p.m. – Court reconvened with Court and counsel present.
COURT ORDERED: Defendant's Motion to Dismiss the Verified
Amended Complaint is GRANTED; Plaintiff's Motion to Strike the
Defendant's Reply Brief as untimely is DENIED; Defendant's Motion
to Dismiss the Claims of Defamation and Defamation *Per Se* is
GRANTED; Defendant's Motion to Dismiss the Breach of Contract
and Breach of Implied Covenant of Good Faith and Fair Dealing is
GRANTED; Defendant's Motion to Dismiss the Claim Relating to
Price Fixing is GRANTED; Defendant's Motion to Dismiss Plaintiff's
Unfair Trade Practices Claim as to the Collusion with Castaway in
Pursuit of an Unlawful Monopoly is DENIED; and the Defendant's
Motion to Dismiss the Claims for Fraud, Fraud in the Inducement,
and Fraudulent Misrepresentation is GRANTED. It is further ordered
that counsel Simons is to prepare the proposed order.
4:50 p.m. – Court stood in recess.

1 CODE: 3870
2 DEL HARDY, ESQ. (1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHITE COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

REQUEST TO CONSIDER PLAINTIFFS' PROPOSED ORDER ON MOTION TO DISMISS

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ. and DEL HARDY, ESQ.,
of HARDY LAW GROUP, by and on behalf of Plaintiffs' NEVADA RECYCLING AND SALVAGE,
LTD. ("NRS") and AMCB, LLC dba RUBBISH RUNNERS ("RR") and hereby submits their
proposed Order on Defendant's Motion to Dismiss.

Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on
March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se, (3)
breach of contract/third party beneficiary, (4) breach of the implied covenant of good faith and
fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud, fraud in the
inducement, fraudulent misrepresentation, and (7) preliminary and permanent injunction and

1 declaratory relief.

2 On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to NRCP
3 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide sufficient
4 notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as required under NRCP
5 9(b) ("Motion"). The Plaintiffs filed their Opposition to the Motion on May 7, 2015. The
6 Defendants filed their Reply in support of the Motion on May 19, 2015.¹

7 The Court heard arguments of counsel on this matter on July 29, 2015. At the
8 conclusion of the hearing on July 29, 2015, the Court asked counsel for Defendants', Mr. Simons
9 to "please prepare the order." See, Transcript, 70:18-19.

10 On August 11, 2015, Plaintiffs' counsel Stephanie Rice emailed Defendants' counsel Mr.
11 Simons stating in relevant part, "Tomorrow will be two weeks since the Judge requested that
12 you prepare the order with respect to Defendants' Motion to Dismiss. When can we expect to
13 see a draft of that? Or, alternatively, if you are extremely busy at the moment, I would be
14 happy to get that Order drafted. Please let me know." See, Exhibit 1, attached hereto. Later
15 that day, Defendants' counsel provided Plaintiffs' counsel with a draft Proposed Order for
16 review.

17 Two days later on August 13, 2015, Plaintiffs' counsel sent her proposed changes back
18 to Defendants' counsel making the following requests,

19 Mr. Simons,

20 Attached is the proposed Order with my proposed changes. Aside from
21 taking out the initial one-sided commentary, the majority of the changes I
22 made just change some of the language to read exactly as the Judge
23 ordered that I pulled directly from the transcript without deviation. I am
not trying to editorialize, I am just trying to use the exact language that the
Judge used as opposed to a synonym or editorial language.

24 One additional change I made that is substantive is with respect to
25 paragraph 13. While your proposed Order does accurately reflect what the

26 ¹ The Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015. The
27 Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in support of the
28 motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to strike in its order dated
July 2, 2015, citing excusable neglect and a lack of prejudice to the Plaintiffs. The Court hereby
reaffirms its order on the Plaintiffs' motion to strike and considers the Defendants' reply in support of
the Motion in the instant ruling and order.

1 Judge Ordered from the bench, I think the Court mis-spoke with respect to
2 including "Exempted Facility Materials" in that sentence because that
3 statement is not true with respect to Exempted Facility Materials. I
4 propose that we jointly ask the Court to correct this statement sua sponte
5 to omit the language "Exempted Facility Materials" and obviously omit that
6 language from the proposed order that we ultimately submit as well.
7 There is no pre-existing contract language with respect to Exempted
8 Facility Materials and that language is contrary to the Franchise
9 Agreement. I think it was just a mistake and I believe it can be easily
10 corrected. But I would prefer that we ask the Judge to correct it now than
11 have to have it be the subject of an Appeal. Please let me know your
12 thoughts.

13
14 Thanks,
15 Stephanie

16 See, Exhibit 2, attached hereto. Defendants then sent another draft to Plaintiffs' counsel on
17 August 19, 2015, essentially mirroring the language in their original, 10 plus page proposed
18 Order, with a few minor changes. See, Exhibit 3, attached hereto. Plaintiffs' counsel then
19 responded with the following:

20 Mark and Scott,

21 It is pretty clear that we are not going to agree on the language of the
22 Proposed Order. So I propose one of two options: 1. We each submit our
23 own proposed orders to the Court; or, 2. We submit a very basic joint
24 proposed Order comprised of exactly the ultimate Order of the Court.

25 Respectfully, the Court did not Order you to draft Proposed Findings of
26 Fact and Conclusions of Law; he requested that you "prepare the Order."
27 This should not be proposed Findings of Fact and Conclusions of Law,
28 which is what is currently being proposed. If you would like to submit
your proposed Order containing facts, arguments of counsel and
commentary, then my suggestion would be that we agree to submit
separate proposed orders to the Court.

I am attaching my proposed Order, reflecting what the Judge Ordered at
the hearing and nothing more. I believe this is appropriate given that
NRCP 52 explicitly provides that "Findings of fact and conclusions of law
are unnecessary on decisions of motions under Rules 12 or 56 or any other
motion except as provided in subdivision (c) of this rule." Accordingly, I
believe that the Proposed Order, as attached to this email is more than
adequate and complies with what the Judge requested.

Please let me know your thoughts.

See, Exhibit 4, attached hereto. Becoming somewhat contentious, Defendants' counsel
responded by stating,

Stephanie,



1 I have issues with your email, two in particular. First, there are no findings
2 of fact contained in Waste Management's proposed order. Your contention
3 otherwise is inaccurate. Indeed, the proposed order mirror the Court's
4 ruling from the bench, and the Court ruled on the basis of the allegations of
5 the Verified First Amended Complaint, as is appropriate under NRCP 12.
6 The Court's rulings are not and cannot be construed as findings of fact.
7 Second, Waste Management was ordered to prepare an order for the court.
8 The parties were not instructed to file any sort of joint order. Accordingly,
9 I decline your offer to do so.

10 The proposed order seeks to clarify the Court's ruling and order from the
11 bench. Specifically, the proposed order removes pronouns, cross-
12 references certain items, and restates sentences that were clear when
13 spoken but lack clarity on the page. A proposed order provides an
14 opportunity for the parties to clarify the record. As an officer of the court, I
15 am sure that you have no intention of obscuring the record. Accordingly,
16 please explain, in specific terms, how and why Waste Management's
17 proposed order fails to clarify the Court's ruling and order from the Bench.

18 If this dialogue cannot be done effectively by redline, I will make myself
19 available to walk through the agreement with you in person or over the
20 phone.

21 Regards,
22 Scott L. Hernandez

23 See, Exhibit 5, attached hereto. Realizing that the parties had a clear difference of opinion and
24 we likely going to be unable to agree on a proposed Order, on August 28, 2015, Plaintiffs'
25 counsel informed Defendants' counsel,

26 Scott,

27 I respectfully disagree. You are proposing to include arguments of counsel
28 as well as findings of fact into the Order and that is not appropriate. It has
seriously been a month since the hearing. We need to get a proposed
Order filed. It is not the job of counsel in the case to *clarify* the Court's
ruling. Quite frankly, Judge Flanagan's Order as he put it on the record,
was very clear. I would again reiterate the fact that this is not a proposed
findings of fact and conclusions of law. It is an Order. The very first
redlined version of the Order I proposed to you I used word for word the
transcript language, with the exception of the error I discussed that I
proposed we request the Court correct.

Your insinuation that I have some sort of intention of obscuring the record
is both inaccurate and grossly offensive. To answer your request as to
"explain in specific terms how and why Waste Management's proposed
order fails to clarify the Court's ruling and order from the Bench" is simple:
It is not the job of any counsel to "clarify" what the Court has Ordered.
When submitting a proposed Order it is simply an assignment to put on
paper what the Court has decided. I think at this juncture it would be best

1 to just submit separate proposed Orders and let the Court decide.

2 Stephanie Rice, Esq.

3 See, Exhibit 6, attached hereto.

4 Based on the foregoing and in light of the time that has elapsed since the hearing on this
5 matter, Plaintiffs respectfully submit their Proposed Order Granting Defendants' Motion to
6 Dismiss Verified Amended Complaint, in Part, and Denying, in Part, as attached hereto at
7 Exhibit 7.

8 DATED this 28th day of August, 2015.

9
10
11 

12 STEPHANIE RICE, ESQ. (SBN 11627)
13 DEL HARDY, ESQ. (SBN 1172)
14 HARDY LAW GROUP
15 Attorney for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28

Hardy Law Group

948-948 White Street, Suite 100, Philadelphia, PA 19106
Tel: (215) 588-8888 Fax: (215) 588-8888
www.hardy-law.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **REQUEST TO CONSIDER PLAINTIFFS' PROPOSED ORDER ON MOTION TO DISMISS** on all parties to this action by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
- ☐ Personal Delivery
- ☐ Facsimile (FAX): and/or Email:
- ☐ Federal Express or other overnight delivery
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested
- ☒ Electronically filed

addressed as follows:

Mark Simons, Esq.
 Scott Hernandez, Esq.
 Robison, Belaustegue, Sharp and Lowe
 71 Washington Street
 Reno, Nevada 89503

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 20th day of August, 2015.


 AN EMPLOYEE OF HARDY LAW GROUP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT

NEVADA RECYCLING AND SALVAGE, et al
V.

RENO DISPOSAL COMPANY, INC. et al

CASE NO. CV15-00497

REQUEST TO CONSIDER PLAINTIFFS'
PROPOSED ORDER ON MOTION TO DISMISS

EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	LENGTH
1	Email from Jodi Alhasan to Stephanie Rice dated August 11, 2015	2
2	Email Correspondence between Stephanie Rice, Mark Simons and Jodi Alhasan	4
3	Email Correspondence between Scott Hernandez and Stephanie Rice	2
4	Email Correspondence between Stephanie Rice and Mark Simons	2
5	Email Correspondence between Scott Hernandez and Stephanie Rice	3
6	Email Correspondence between Stephanie Rice and Scott Hernandez	3
7	Order Granting Defendants' Motion to Dismiss Verified Amended Complaint in Part and Denying in Part	4

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT "1"

EXHIBIT "1"

From: Jodi Alhasan JAlhasan@rbsllaw.com 
Subject: Waste Management ,et al. adv. Nevada Recycling, et al.
Date: August 11, 2015 at 3:51 PM
To: stephanie@hardylawgroup.com, del@hardylawgroup.com
cc: Mark Simone MSimons@rbsllaw.com, Scott Hernandez shernandez@rbsllaw.com, Wanda Osborne wosborne@rbsllaw.com

Counsel –

Pursuant to Mr. Simons' instruction, attached please find the draft Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Part, and Denying in Part, for your review and comment.

Please do not hesitate to contact this office if you have any questions or comments.

Thank you,

Jodi Alhasan,
Assistant to Mark G. Simons, Esq.
and Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington St.
Reno, NV 89503
Phone: (775) 329-3151
Fax: (775) 329-7941

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.



P-Ord Grant Def Mtn
Dismiss.doc

JA000592

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT "2"

EXHIBIT "2"

From: **Stephanie Rice** stephanie@hardylawgroup.com
Sent: **Re: Waste Management, et al. adv. Nevada Recycling, et al.**
Date: **August 14, 2015 at 10:02 AM**
To: **Mark Simons** MSimons@rbsllaw.com
Cc: **Jodi Alhasan** JAlhasan@rbsllaw.com, **Mr. Del Hardy** Del@hardylawgroup.com

Absolutely. Attached is a redlined version with track changes. Please let me know your thoughts with respect to "Exempted Facility Materials" in paragraph 13. I honestly think it is problematic either way, but it definitely does not make sense within the context of the sentence the Judge made when putting his ruling on the record.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com



Proposed Track
Changes to...Dismiss.pdf

On Aug 14, 2015, at 9:24 AM, Mark Simons <MSimons@rbsllaw.com> wrote:

Do you have a redline version for comparison?

From: **Stephanie Rice** [stephanie@hardylawgroup.com]
Sent: **Thursday, August 13, 2015 5:17 PM**
To: **Mark Simons**
Cc: **Jodi Alhasan; Mr. Del Hardy**
Subject: **Re: Waste Management, et al. adv. Nevada Recycling, et al.**

Mr. Simons,

Attached is the proposed Order with my proposed changes. Aside from taking out the initial one-sided commentary, the majority of the changes I made just change some of the language to read exactly as the Judge ordered that I pulled directly from the transcript without deviation. I am not trying to editorialize, I am just trying to use the exact language that the Judge used as opposed to a synonym or editorial language.

One additional change I made that is substantive is with respect to paragraph 13. While your proposed Order does accurately reflect what the Judge Ordered from the bench, I think the Court mis-spoke with respect to including "Exempted Facility Materials" in that sentence because that statement is not true with respect to Exempted Facility Materials. I propose that we jointly ask the Court to correct this statement sua sponte to omit the language "Exempted Facility Materials" and obviously omit that language from the proposed order that we ultimately submit as well. There is no pre-existing contract language with respect to Exempted Facility Materials and that language is contrary to the Franchise Agreement. I think it was just a mistake and I

believe it can be easily corrected. But I would prefer that we ask the Judge to correct it now than have to have it be the subject of an Appeal. Please let me know your thoughts.

Thanks,

Stephanie
Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 12, 2015, at 9:54 AM, Mark Simons <MSimons@rbsllaw.com> wrote:

No problem.

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Tuesday, August 11, 2015 4:55 PM
To: Jodi Alhasan
Cc: Mr. Del Hardy; Mark Simons
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Thank you Jodi. I will try and get our comments over to you by the end of the week at the latest (seeing as how the draft proposed order is you sent is 13 pages long it may take us a day or two to be able to get to it).

Thanks,

Stephanie

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

On Aug 11, 2015, at 3:51 PM, Jodi Alhasan <JAlhasan@rbsllaw.com> wrote:

Counsel –

Pursuant to Mr. Simons' instruction, attached please find the draft Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Part, and Denying in Part, for your review and comment.

Please do not hesitate to contact this office if you have any questions or comments.

Thank you,

Jodi Alhasan,
Assistant to Mark G. Simons, Esq.
and Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington St.
Reno, NV 89503
Phone: (775) 329-3151
Fax: (775) 329-7941

CONFIDENTIALITY: This email (including attachments) is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please do not read, copy, or re-transmit this communication. If you are the intended recipient, this communication may only be copied or transmitted with the consent of the sender. If you have received this email in error, please contact the sender immediately by return email and delete the original message and any attachments from your system. Thank you in advance for your cooperation and assistance.

<P-Ord Grant Def Mtn Dismiss.doc>

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT “3”

EXHIBIT “3”

From: Scott Hernandez shernandez@rbsllaw.com
Subject: RE: Waste Management ,et al. adv. Nevada Recycling, et al.
Date: August 19, 2015 at 1:21 PM
To: Stephanie Rice stephanie@hardylawgroup.com

Stephanie,

Attached please see our updated draft in track changes and clean copy. Please give me a call if you have any questions.

SCOTT L. HERNANDEZ
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
(775) 329-3151
shernandez@rbsllaw.com

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Wednesday, August 19, 2015 11:33 AM
To: Scott Hernandez
Subject: Re: Waste Management ,et al. adv. Nevada Recycling, et al.

Sure. See attached.

Please let me know if you need anything else or want to discuss these proposed changes. It has been several weeks now, so it really does need to be a priority to get this submitted to the Court.

Thanks,

Stephanie

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT “4”

EXHIBIT “4”

From: **Stephanie Rice** stephanie@hardylawgroup.com
Subject: **Re: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.**
Date: August 24, 2015 at 10:50 AM
To: Mark Simons MSimons@rbsllaw.com, Scott Hernandez shernandez@rbsllaw.com
Cc: Mr. Del Hardy Del@HardyLawGroup.com, Jodi Alhasan JAlhasan@rbsllaw.com

Mark and Scott,

It is pretty clear that we are not going to agree on the language of the Proposed Order. So I propose one of two options: 1. We each submit our own proposed orders to the Court; or, 2. We submit a very basic Joint proposed Order comprised of exactly the ultimate Order of the Court.

Respectfully, the Court did not Order you to draft Proposed Findings of Fact and Conclusions of Law; he requested that you "prepare the Order." This should not be proposed Findings of Fact and Conclusions of Law, which is what is currently being proposed. If you would like to submit your proposed Order containing facts, arguments of counsel and commentary, then my suggestion would be that we agree to submit separate proposed orders to the Court.

I am attaching my proposed Order, reflecting what the Judge Ordered at the hearing and nothing more. I believe this is appropriate given that NRCP 52 explicitly provides that "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule." Accordingly, I believe that the Proposed Order, as attached to this email is more than adequate and complies with what the Judge requested.

Please let me know your thoughts.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com



Plaintiffs' Proposed Ord
on Def Mtn Dismiss.pdf

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT "5"

EXHIBIT "5"

From: Scott Hernandez shernandez@rbsllaw.com
Subject: RE: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.
Date: August 27, 2015 at 4:09 PM
To: Stephanie Rice stephanie@hardylawgroup.com
Cc: Mr. Del Hardy Del@HardyLawGroup.com, Mark Simons MSimons@rbsllaw.com, Jodi Alhasan JAAlhasan@rbsllaw.com

Stephanie,

I have issues with your email, two in particular. First, there are no findings of fact contained in Waste Management's proposed order. Your contention otherwise is inaccurate. Indeed, the proposed order mirror the Court's ruling from the bench, and the Court ruled on the basis of the allegations of the Verified First Amended Complaint, as is appropriate under NRCP 12. The Court's rulings are not and cannot be construed as findings of fact. Second, Waste Management was ordered to prepare an order for the court. The parties were not instructed to file any sort of joint order. Accordingly, I decline your offer to do so.

The proposed order seeks to clarify the Court's ruling and order from the bench. Specifically, the proposed order removes pronouns, cross-references certain items, and restates sentences that were clear when spoken but lack clarity on the page. A proposed order provides an opportunity for the parties to clarify the record. As an officer of the court, I am sure that you have no intention of obscuring the record. Accordingly, please explain, in specific terms, how and why Waste Management's proposed order fails to clarify the Court's ruling and order from the Bench.

If this dialogue cannot be done effectively by redline, I will make myself available to walk through the agreement with you in person or over the phone.

Regards,

SCOTT L. HERNANDEZ
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
(775) 329-3151
shernandez@rbsllaw.com

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Monday, August 24, 2015 10:50 AM
To: Mark Simons; Scott Hernandez
Cc: Mr. Del Hardy; Jodi Alhasan
Subject: Re: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.

Mark and Scott,

It is pretty clear that we are not going to agree on the language of the Proposed Order. So I propose one of two options: 1. We each submit our own proposed orders to the Court; or, 2. We submit a very basic Joint proposed Order comprised of exactly the ultimate Order of the Court.

Respectfully, the Court did not Order you to draft Proposed Findings of Fact and Conclusions of Law: he requested that you "renew the Order." This should not be proposed Findings of Fact

and Conclusions of Law, which is what is currently being proposed. If you would like to submit your proposed Order containing facts, arguments of counsel and commentary, then my suggestion would be that we agree to submit separate proposed orders to the Court.

I am attaching my proposed Order, reflecting what the Judge Ordered at the hearing and nothing more. I believe this is appropriate given that NRCP 52 explicitly provides that "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule." Accordingly, I believe that the Proposed Order, as attached to this email is more than adequate and complies with what the Judge requested.

Please let me know your thoughts.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT “6”

EXHIBIT “6”

From: Stephanie Rice stephanie@hardylawgroup.com
Subject: Re: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.
Date: August 28, 2015 at 4:42 PM
To: Scott Hernandez shernandez@rbsllaw.com
Cc: Mr. Del Hardy Del@HardyLawGroup.com, Mark Simons MSimons@rbsllaw.com, Jodi Alhasan JAlhasan@rbsllaw.com

Scott,

I respectfully disagree. You are proposing to include arguments of counsel as well as findings of fact into the Order and that is not appropriate. It has seriously been a month since the hearing. We need to get a proposed Order filed. It is not the job of counsel in the case to *clarify* the Court's ruling. Quite frankly, Judge Flanagan's Order as he put it on the record, was very clear. I would again reiterate the fact that this is not a proposed findings of fact and conclusions of law. It is an Order. The very first redlined version of the Order I proposed to you I used word for word the transcript language, with the exception of the error I discussed that I proposed we request the Court correct.

Your insinuation that I have some sort of intention of obscuring the record is both inaccurate and grossly offensive. To answer your request as to "explain in specific terms how and why Waste Management's proposed order fails to clarify the Court's ruling and order from the Bench" is simple: It is not the job of any counsel to "clarify" what the Court has Ordered. When submitting a proposed Order it is simply an assignment to put on paper what the Court has decided. I think at this juncture it would be best to just submit separate proposed Orders and let the Court decide.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@HardyLawGroup.com

On Aug 27, 2015, at 4:09 PM, Scott Hernandez <shernandez@rbsllaw.com> wrote:

Stephanie,

I have issues with your email, two in particular. First, there are no findings of fact contained in Waste Management's proposed order. Your contention otherwise is inaccurate. Indeed, the proposed order mirror the Court's ruling from the bench, and the Court ruled on the basis of the allegations of the Verified First Amended Complaint, as is appropriate under NRCP 12. The Court's rulings are not and cannot be construed as findings of fact. Second, Waste Management was ordered to prepare an order for the court. The parties were not instructed to file any sort of joint order. Accordingly, I decline your offer to do so.

The proposed order seeks to clarify the Court's ruling and order from the bench. Specifically, the proposed order removes pronouns, cross-references certain items, and restates sentences that were clear when spoken but lack clarity on the page. A proposed order provides an opportunity for the parties to clarify the record. As an officer of the court, I am sure that you have no intention of obscuring the record. Accordingly, please explain, in specific terms, how and why Waste Management's proposed order fails to clarify the Court's ruling and order from the Bench.

If this dialogue cannot be done effectively by redline, I will make myself available to walk through the agreement with you in person or over the phone.

Regards,

SCOTT L. HERNANDEZ
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
(775) 329-3151
shernandez@rbsllaw.com

From: Stephanie Rice [Stephanie.Rice@hardylawgroup.com]
Sent: Monday, August 24, 2015 10:50 AM
To: Mark Simons; Scott Hernandez
Cc: Mr. Del Hardy; Jodi Alhasan
Subject: Re: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.

Mark and Scott,

It is pretty clear that we are not going to agree on the language of the Proposed Order. So I propose one of two options: 1. We each submit our own proposed orders to the Court; or, 2. We submit a very basic Joint proposed Order comprised of exactly the ultimate Order of the Court.

Respectfully, the Court did not Order you to draft Proposed Findings of Fact and Conclusions of Law; he requested that you "prepare the Order." This should not be proposed Findings of Fact and Conclusions of Law, which is what is currently being proposed. If you would like to submit your proposed Order containing facts, arguments of counsel and commentary, then my suggestion would be that we agree to submit separate proposed orders to the Court.

I am attaching my proposed **Order**, reflecting what the Judge Ordered at the hearing and nothing more. I believe this is appropriate given that NRCP 52 explicitly provides that "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule." Accordingly, I believe that the Proposed Order, as attached to this email is more than adequate and complies with what the Judge requested.

Please let me know your thoughts.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

FILED
Electronically
2015-08-28 05:02:15 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5118207 : mcholino

EXHIBIT “7”

EXHIBIT “7”

1 3025

2
3
4
5
6
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 NEVADA RECYCLING AND SALVAGE, LTD, a
10 Nevada Limited Liability Company; and,
11 AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

12 Plaintiffs,

13 vs.

14 RENO DISPOSAL COMPANY, INC., a Nevada
15 Corporation doing business as WASTE
16 MANAGEMENT; REFUSE, INC., a Nevada
17 Corporation; ABC CORPORATIONS, I through
X; BLACK AND WHITE COMPANIES,
I through X; and, JOHN DOES I through X,
inclusive,

18 Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

19 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS VERIFIED AMENDED COMPLAINT,**
20 **IN PART, AND DENYING, IN PART**

21 This matter came on for hearing on July 29, 2015, on the Motion to Dismiss Verified
22 Amended Complaint (the "Motion") filed by Defendants Reno Disposal Company, Inc. dba
23 Waste Management ("Waste Management") and Refuse, Inc. ("Refuse") (collectively referred to
24 as the "Defendants" unless otherwise specified). Mark G. Simons, Esq. and Scott Hernandez,
25 Esq. of the law firm of Robison, Belaustegui, Sharp & Low appeared on behalf of Defendants.

Stephanie Rice, Esq. and Del Hardy, Esq. of the Hardy Law Group appeared on behalf of Plaintiffs Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish Runners ("RR") (collectively the "Plaintiffs" unless otherwise specified).

Plaintiffs filed their Verified First Amended Complaint ("Amended Complaint") on March 25, 2015, alleging the following claims: (1) defamation, (2) defamation per se, (3) breach of contract/third party beneficiary, (4) breach of the implied covenant of good faith and fair dealing, (5) unfair trade practices/conspiracy to restrain trade, (6) fraud, fraud in the inducement, fraudulent misrepresentation, and (7) preliminary and permanent injunction and declaratory relief.

On April 20, 2015, the Defendants filed their Motion to Dismiss pursuant to NRCP 12(b)(5), arguing that the Plaintiffs have failed to state a claim, failed to provide sufficient notice pursuant to NRCP 8(a) and failed to plead fraud with specificity as required under NRCP 9(b) ("Motion"). The Plaintiffs filed their opposition to the Motion on May 7, 2015. The Defendants filed their reply in support of the Motion on May 19, 2015.¹

The Court has considered the allegations set forth in the Amended Complaint, the Agreements incorporated by reference therein, the Defendants' Motion, the Plaintiffs' opposition, the Defendants' reply, the papers submitted in connection with such briefing, and the arguments of the parties at the time of the hearing. In rendering its decision, the Court has accepted the factual allegations in the Amended Complaint as true and construed the pleadings in the light most favorable to Plaintiffs. The Court treated the Motion as a motion to dismiss and not as a motion for summary judgment.²

¹ Plaintiffs moved to strike the Defendants' reply in support of the Motion on May 22, 2015. Defendants opposed the motion to strike on June 11, 2015. The Plaintiffs' filed a reply in support of the motion to strike on June 15, 2015. The Court denied the Plaintiffs' motion to strike in its order dated July 2, 2015, citing excusable neglect and a lack of prejudice to the Plaintiffs. The Court hereby reaffirms its order on the Plaintiffs' motion to strike and considers the Defendants' reply in support of the Motion in the instant ruling and order.

² The transcript of the hearing on the Motion erroneously quotes the Court as saying, "We're converting this to a motion for summary judgment." See Transcript of Proceedings, Oral Arguments (July 29, 2015),

1 ///

2 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
3 Defendants' Motion is GRANTED, in part, and DENIED, in part, as follows:

4 1. As to Plaintiffs' claims for Defamation, Defamation Per Se, Breach of Contract/
5 Third Party Beneficiary, Breach of the Implied Covenant of Good Faith and Fair Dealing, Fraud,
6 Fraud in the Inducement, Fraudulent Misrepresentation, Preliminary and Permanent
7 Injunction,³ and Declaratory Relief, Defendants' Motion to Dismiss is GRANTED;

8 2. As to Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade as
9 they relate to price fixing, Defendants' Motion to Dismiss is GRANTED as to that part; and,

10 3. As to the Plaintiffs' claim for unfair trade practices/conspiracy to restrain trade
11 under NRS 598A.060(1)(e) and (f) as it relates to collusion with Castaway, Defendants' Motion
12 to Dismiss is DENIED.

13 IT IS SO ORDERED.

14 DATED this ___day of September, 2015.

15
16 DISTRICT COURT JUDGE
17
18
19
20
21
22
23
24

25 p. 26:5-6. This quotation is inaccurate. The Court confirms that the Motion was not converted into a
26 motion for summary judgment and the Motion decided under the standard set forth in NRCP 12(b)(5)
and related case law.

27 ³ The Court notes that injunctive relief is a remedy and not a cause of action.
28

1 CODE: 2630
2 DEL HARDY, ESQ. (1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHITE COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

OBJECTION TO DEFENDANTS' PROPOSED ORDER

COMES NOW the undersigned attorneys, STEPHANIE RICE, ESQ. and DEL HARDY, ESQ.,
of HARDY LAW GROUP, by and on behalf of Plaintiffs' NEVADA RECYCLING AND SALVAGE,
LTD. ("NRS") and AMCB, LLC dba RUBBISH RUNNERS ("RR") and Objects to the Proposed
Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in Part, and
Denying, in Part, submitted by Defendants on August 31, 2015.

The proposed order submitted by Defendants includes arguments of counsel as follows:

The Defendants argue that the Plaintiffs' claims are premised on an
incorrect reading of the "Commercial Franchise Agreement," arguing that
Waste Management has an exclusive Franchise for hauling Solid Waste and
Approved Recyclable Materials, nothing that the Plaintiff may haul waste
materials which are expressly excluded from the Commercial Franchise
Agreement.

1 The Defendants argue that the Plaintiffs have failed to state a claim for
 2 defamation, defamation per se, that the Amended Complaint contains no
 3 defamatory statements, that the breach of contract claim fails, that the
 4 Plaintiffs lack standing as third-party beneficiaries, that the Plaintiffs have
 5 no standing as to the franchise claim, that the Plaintiffs have no standing as
 to the Eco Center claims. Defendants' claim the Plaintiffs have failed to
 state a claim as to unfair trade practices, arguing that Nevada's Unfair
 Trade Practices Act ("UTPA") does not apply in this case, and that the
 Plaintiffs failed to state a claim for fraud or to allege justifiable reliance.

6 (Internal Footnote Omitted). Defendants' [Proposed] Order Granting Defendants' Motion to
 7 Dismiss Verified Amended Complaint, in Part, and Denying, in Part, 2:14-3:2. It is not
 8 appropriate to include what Defendants argued and claimed in an Order, especially in light of
 9 the fact that Defendants' failed to include any of the claims or arguments that Plaintiffs' made
 10 in their Opposition.

11 The very next paragraph of Defendants' [Proposed] Order erroneously contains editing
 12 comments stating, "Change Footnote Numbering." Defendants' [Proposed] Order, 3:5-6. This
 13 appears to be a typographical error that was not removed prior to its submission to the Court.

14 The remainder of these Parties' objections to Defendants' [Proposed] Order are based
 15 on the fact that despite having a transcript of the hearing, and rather than using the exact
 16 language in the transcript to draft the majority of their [Proposed] Order, Defendants take it
 17 upon themselves to insert commentary and additional information that is not included in this
 18 Court's transcript. When calling these matters to question, Defendants' counsel Scott
 19 Hernandez replied as follows:

20 The proposed order seeks to clarify the Court's ruling and order from
 21 the bench. Specifically, the proposed order removes pronouns, cross-
 22 references certain items, and restates sentences that were clear when
 spoken but lack clarity on the page. A proposed order provides an
opportunity for the parties to clarify the record.

23 [Emphasis Added]. See, August 27, 2015 Email from Scott Hernandez, attached hereto at
 24 Exhibit 1. The undersigned disagrees that it is the responsibility of the party who is asked by
 25 the Court to draft an Order after a hearing to "clarify the Court's ruling." The Court's ruling is
 26 just that, what the Court ruled. Not what the Court ruled after counsel is given an opportunity
 27 to insert additional commentary, arguments of counsel and other language to their liking.

28 As reflected in the Transcript of the hearing held on Defendants' Motion to Dismiss on

Hardy Law Group
790 W. 19th Street, Suite 200, Las Vegas, NV 89102
Tel: (702) 399-8700 Fax: (702) 399-8100
www.hardylawgroup.com

1 July 29, 2015, Defendants' counsel was asked by this Court to "please prepare the Order." See,
2 Transcript, 70:18-19. This Court did not request [Proposed] Findings of Fact and Conclusions
3 of Law; it simply requested that the Order be prepared. Instead, Defendants have submitted
4 more than ten (10) pages of findings of fact and conclusions of law with their inserts and
5 arguments, with the last page of the document finally being the "Order," as this Court
6 requested.

7 NRCP 52 explicitly provides that "Findings of fact and conclusions of law are
8 unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as
9 provided in subdivision (c) of this rule." [Emphasis Added]. Due to the fact that Defendants'
10 Motion is based on NRCP Rule 12(b)(5), as set forth in NRCP 52, findings of fact and
11 conclusions of law are unnecessary and don't appear to have been requested by the Court and
12 certainly not with Defendants' own commentary and/or supplementary language inserted.

13 As such, Plaintiffs respectfully request that this Court use and enter Plaintiffs'
14 [Proposed] Order Granting Defendants' Motion to Dismiss Verified Amended Complaint, in
15 Part, and Denying, in Part, which is directly based on the transcript of the hearing held on this
16 matter, is in compliance with the Nevada Rules of Civil Procedure and submitted to this Court
17 on August 28, 2015.

18 Respectfully submitted this 2nd day of September, 2015.
19

20
21
22
23
24
25
26
27
28


STEPHANIE RICE, ESQ. (SBN 11627)
DEL HARDY, ESQ. (SBN 1172)
HARDY LAW GROUP
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98
3 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s)
4 described as **OBJECTION TO DEFENDANTS' PROPOSED ORDER** on all parties to this action
5 by:

6 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
7 and mailing in the United States Mail, at Reno, Nevada, postage paid, following
8 ordinary business practices.

9 _____ Personal Delivery

10 _____ Facsimile (FAX): and/or Email:

11 _____ Federal Express or other overnight delivery

12 _____ Messenger Service

13 _____ Certified Mail with Return Receipt Requested

14 ☒ Electronically filed

15 addressed as follows:

16 Mark Simons, Esq.
17 Scott Hernandez, Esq.
18 Robison, Belaustegue, Sharp and Lowe
19 71 Washington Street
20 Reno, Nevada 89503

21 **AFFIRMATION**

22 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding
23 document and attached exhibits, if any, do not contain the Social Security Number of any
24 person.

25 DATED this 20 day of September, 2015.

26 
27 AN EMPLOYEE OF HARDY LAW GROUP
28

Hardy Law Group.com

96 & 98 Winter Street, Reno, NV 89503
Tel: (775) 781-0000 Fax: (775) 781-0001
www.hardy-law.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT

NEVADA RECYCLING AND SALVAGE, et al

V.

RENO DISPOSAL COMPANY, INC. et al

CASE NO. CV15-00497

OBJECTION TO DEFENDANTS' PROPOSED ORDER

EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	LENGTH
1	Emails between Stephanie Rice and Scott Hernandez	3

FILED
Electronically
2015-09-02 02:19:52 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5124303 : tbritton

EXHIBIT “1”

EXHIBIT “1”

From: Scott Hernandez shernandez@rbsllaw.com
Subject: RE: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.
Date: August 27, 2015 at 4:09 PM
To: Stephanie Rice stephanie@hardylawgroup.com
Cc: Mr. Del Hardy Del@HardyLawGroup.com, Mark Simons MSimons@rbsllaw.com, Jodi Alhasan JAlhasan@rbsllaw.com

Stephanie,

I have issues with your email, two in particular. First, there are no findings of fact contained in Waste Management's proposed order. Your contention otherwise is inaccurate. Indeed, the proposed order mirror the Court's ruling from the bench, and the Court ruled on the basis of the allegations of the Verified First Amended Complaint, as is appropriate under NRCP 12. The Court's rulings are not and cannot be construed as findings of fact. Second, Waste Management was ordered to prepare an order for the court. The parties were not instructed to file any sort of joint order. Accordingly, I decline your offer to do so.

The proposed order seeks to clarify the Court's ruling and order from the bench. Specifically, the proposed order removes pronouns, cross-references certain items, and restates sentences that were clear when spoken but lack clarity on the page. A proposed order provides an opportunity for the parties to clarify the record. As an officer of the court, I am sure that you have no intention of obscuring the record. Accordingly, please explain, in specific terms, how and why Waste Management's proposed order fails to clarify the Court's ruling and order from the Bench.

If this dialogue cannot be done effectively by redline, I will make myself available to walk through the agreement with you in person or over the phone.

Regards,

SCOTT L. HERNANDEZ
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
(775) 329-3151
shernandez@rbsllaw.com

From: Stephanie Rice [<mailto:stephanie@hardylawgroup.com>]
Sent: Monday, August 24, 2015 10:50 AM
To: Mark Simons; Scott Hernandez
Cc: Mr. Del Hardy; Jodi Alhasan
Subject: Re: Nevada Recycling and Salvage, et. al. v. Waste Management, et. al.

Mark and Scott,

It is pretty clear that we are not going to agree on the language of the Proposed Order. So I propose one of two options: 1. We each submit our own proposed orders to the Court; or, 2. We submit a very basic Joint proposed Order comprised of exactly the ultimate Order of the Court.

Respectfully, the Court did not Order you to draft Proposed Findings of Fact and Conclusions of Law; he requested that you "prepare the Order." This should not be proposed Findings of Fact

and Conclusions of Law, which is what is currently being proposed. If you would like to submit your proposed Order containing facts, arguments of counsel and commentary, then my suggestion would be that we agree to submit separate proposed orders to the Court.

I am attaching my proposed Order, reflecting what the Judge Ordered at the hearing and nothing more. I believe this is appropriate given that NRCP 52 explicitly provides that "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule." Accordingly, I believe that the Proposed Order, as attached to this email is more than adequate and complies with what the Judge requested.

Please let me know your thoughts.

Stephanie Rice, Esq.

Hardy Law Group
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800
Fax: (775) 322-2303
Stephanie@hardylawgroup.com

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 NEVADA RECYCLING AND
10 SALVAGE, LTD, a Nevada limited
liability company, et al.,

11 Plaintiffs,

Case No.: CV15-00497

12 vs.

Dept. No.: 7

13 RENO DISPOSAL COMPANY, INC.,
14 a Nevada corporation doing business
as WASTE MANAGEMENT, et al.,

15 Defendants.

16 ORDER

17 On August 28, 2015, Plaintiffs, NEVADA RECYCLING AND SALVAGE,
18 LTD (hereafter Plaintiffs), filed its *Request to Consider Plaintiffs' Proposed Order*
19 *on Motion to Dismiss*.

20 Having reviewed the pleadings and papers herein, and good cause appearing,
21 this Court **GRANTS** Plaintiffs *Request to Consider Plaintiffs' Proposed Order on*
22 *Motion to Dismiss*.

23 DATED this 3rd day of September, 2015.

24
25 Patrick Flanagan
26 PATRICK FLANAGAN
27 District Judge
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 3rd day of September, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Del Hardy, Esq. for Nevada Recycling and Salvage, Ltd; and

Mark Simons, Esq. and Scott Hernandez, Esq. for Reno Disposal Co., Inc.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

1

2

3

4

5

6

7

8

9

O

1

2

3

4

5

6

7

8

9

20

91

2

3

4

5

26

07

8

VOLUME ALPHABETICAL INDEX

ITEM DESCRIPTION	BATE STAMP	VOLUME
ACCEPTANCE OF SERVICE OF SUMMONS AND SECOND AMENDED COMPLAINT	JA003732 - JA003733	19
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM FOR DAN REASER, ESQ.	JA001109- JA001121	6
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM ON DAN R. REASER, ESQ.	JA004624- JA004626	23
AFFIDAVIT OF SERVICE OF THE SUBPOENA FOR SPIKE DUQUE	JA001674- JA001682	9
AFFIDAVIT OF SERVICE OF THE SUBPOENA ON JONATHAN SHIPMAN, ESQ.	JA004758- JA004760	23
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000183- JA000186	1
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000187- JA000190	1
ANSWER TO SECOND AMENDED COMPLAINT	JA004113- JA004137	21
ANSWER TO VERIFIED FIRST AMENDED COMPLAINT	JA000883- JA000906	5
CONFIRMING ORDER OF 02/11/2016 RECOMMENDATION	JA005417- JA005418	27
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004639- JA004695	23
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004696- JA004699	23
DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA001700- JA001969	9-10
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	JA000720- JA000856	4
DEFENDANT'S MOTION TO STAY DISCOVERY	JA001122- JA001127	6
DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AND CONSIDER	JA000996- JA001006	5

MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION		
DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	JA000931- JA000995	5
DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000621- JA000684	4
DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002615- JA002922	13-14
DEFENDANTS' MOTION FOR A PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA004706- JA004757	23
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA002923- JA002977	14
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005306- JA005319	26
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005092- JA005144	25
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000487- JA000498	3
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY	JA001160- JA001168	6
DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003508- JA003525	18
DEFENDANTS' REPLY TO OPPOSITION TO SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004152- JA004609	21-23
DEPOSITION TRANSCRIPT OF ANNE MARIE CAREY 02/24/2016	JA002091- JA002144	10
DEPOSITION TRANSCRIPT OF CHRIS BIELSER 02/24/2016	JA002145- JA002175	11
DEPOSITION TRANSCRIPT OF DAVE AIAZZI 12/29/2015	JA001458- JA001670	8

DEPOSITION TRANSCRIPT OF GARY DUHON 05/25/2016	JA003068- JA003240	16
DEPOSITION TRANSCRIPT OF GREG MARTINELLI 12/29/2015	JA001295- JA001457	7
DEPOSITION TRANSCRIPT OF JOSEPH CASSIN 05/25/2016	JA002986- JA003067	15
ERRATA TO DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002978- JA002985	15
JOINT CASE APPEAL STATEMENT	JA005344- JA005357	26
JOINT NOTICE OF APPEAL	JA005333- JA005343	26
MINUTES ORAL ARGUMENTS – JULY 29, 2015	JA000583	3
MINUTES – HEARING IN RE: DEFENDANTS' MOTION FOR PROTECTIVE ORDER 08/02/2016	JA005164	25
MINUTES – ORAL ARGUMENTS IN RE: DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT – AUGUST 18, 2016	JA005176	26
MINUTES STATUS HEARING – JANUARY 29,2016	JA001699	9
MOTION FOR ENTRY OF FINAL JUDGMENT	JA005358- JA005366	26
MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005268- JA005274	26
MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA000857- JA000882	5
MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000388- JA000414	2
MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000480- JA000486	3
NON- PARTY CASTAWAY TRASH HAULING, INC.'S MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001172- JA001205	6
NOTICE OF ENTRY OF ORDER	JA000703- JA000719	4

NOTICE OF ENTRY OF ORDER	JA001277- JA001284	6
NOTICE OF ENTRY OF ORDER	JA002209- JA002216	11
NOTICE OF ENTRY OF ORDER	JA002231- JA002249	11
NOTICE OF ENTRY OF ORDER	JA003531- JA003535	18
NOTICE OF ENTRY OF ORDER	JA005168- JA005175	26
NOTICE OF ENTRY OF ORDER	JA005295- JA005305	26
NOTICE OF ENTRY OF ORDER	JA005400- JA005407	27
NOTICE OF ENTRY OF ORDER	JA005410- JA005416	27
NOTICE OF NRCP 30(B)(6) DEPOSITION OF RENO DISPOSAL COMPANY, INC.	JA002354- JA002357	11
OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000611- JA000618	3
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	JA000907- JA000930	5
OPPOSITION TO MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000415- JA000458	3
OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001206- JA001270	6
OPPOSITION TO MOTION TO STAY DISCOVERY	JA001128- JA001159	6
OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002358- JA002543	12
ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA005165- JA005167	26
ORDER DISMISSING WITHOUT PREJUDICE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DEFENDANTS' MOTION TO STAY DISCOVERY IS DENIED	JA001271- JA001276	6
ORDER DENYING PLAINTIFF'S MOTION FOR AMENDED SCHEDULED ORDER	JA005408- JA005409	27

ORDER FINAL JUDGMENT RENDERED IN FAVOR OF DEFENDANTS	JA005397- JA005399	26
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE DAMAGES & LIABILITY	JA005289- JA005294	26
ORDER GRANTING PLAINTIFF'S REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER TO MOTION TO DISMISS	JA000619- JA000620	3
ORDER DENYING MOTION FOR PROTECTIVE ORDER	JA002203- JA002208	11
ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA003528- JA003530	18
ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REPLY	JA000506- JA000508	3
ORDER - SET MOTION TO DISMISS FOR ORAL ARGUMENT -	JA000509- JA000511	3
ORDER TO SET ORAL ARGUMENTS	JA004700- JA004702	23
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT, IN PART, AND DENYING, IN PART	JA000691- JA000702	4
PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002250- JA002353	11
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA001980- JA002090	10
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003241- JA003507	17-18
PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA003734- JA004112	19-20
PLAINTIFFS' JOINT OPPOSITION TO WASTE MANAGEMENT OF NEVADA, INC'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004610- JA004623	23
PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND	JA004955- JA005051	25

MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER		
PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA004857- JA004954	24
PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA004761- JA004856	24
PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL COMPANY AND REFUSE INC.'S MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES; AND PLAINTIFFS' PROPOSED ORDER	JA005275- JA005288	26
PLAINTIFFS' OPPOSITION TO ENTRY OF FINAL JUDGMENT	JA005367- JA005396	26
PLAINTIFFS' REPLY TO MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005067- JA005082	25
PLAINTIFFS' REPLY TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005052- JA005066	25
PROOF OF SERVICE	JA000385- JA000387	2
RECOMMENDATION FOR ORDER	JA001970- JA001979	10
REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA002176- JA002199	11
REPLY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000459- JA000474	3
REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001285- JA001291	6

REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005320- JA005330	26
REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA001010- JA001101	5-6
REPLY TO OPPOSITION TO MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY	JA000499- JA000503	3
REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002544- JA002612	13
REPLY TO RESPONSE TO OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000685- JA000688	4
REQUEST FOR SUBMISSION	JA004149- JA004151	21
REQUEST FOR SUBMISSION FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004636- JA004638	23
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER	JA002200- JA002202	11
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA005083- JA005085	25
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	JA001007- JA001009	5
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003526- JA003527	18
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO STAY DISCOVERY	JA001169- JA001171	6
REQUEST FOR SUBMISSION OF DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004633- JA004635	23
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000477- JA000479	3
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000475- JA000476	3

AND OPPOSITION TO MOTION TO DISMISS VERIFIED COMPLAINT		
REQUEST FOR SUBMISSION OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001292- JA001294	6
REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002613- JA002614	13
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005090- JA005091	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005331- JA005332	26
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005088 JA005089	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005086- JA005087	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000504- JA000505	3
REQUEST FOR SUBMISSION OF PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER, DEFENDANTS' RESPONSE TO OBJECTION TO PROPOSED ORDER AND REPLY TO RESPONSE TO OBJECTION TO DEFENDANTS' PROPOSED ORDER	JA000689- JA000690	4
REQUEST FOR SUBMISSION OF PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004147- JA004148	21
REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER ON MOTION TO DISMISS SECOND AMENDED COMPLAINT	JA000584- JA000610	3
	JA003536- JA003729	18-19

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER	JA002217- JA002230	11
SUBPOENA - JONATHAN SHIPMAN	JA004703- JA004705	23
SUBPOENA - SPIKE DUQUE	JA001671- JA001673	9
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA001102- JA001108	6
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA004627- JA004632	23
SUMMONS	JA003730- JA003731	19
TRANSCRIPT HEARING – AUGUST 2, 2016	JA005145- JA005163	25
TRANSCRIPT ORAL ARGUMENTS – AUGUST 18, 2016	JA005177- JA005267	26
TRANSCRIPT ORAL ARGUMENTS – JULY 29, 2015	JA000512- JA000582	3
TRANSCRIPT STATUS HEARING – JANUARY 29, 2016	JA001683- JA001698	9
VERIFIED COMPLAINT	JA000001- JA000182	1
VERIFIED FIRST AMENDED COMPLAINT	JA000191- JA000384	2
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004138- JA004140	21
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004141- JA004146	21

1 CODE: 1090
2 DEL HARDY, ESQ.(SBN 1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282

9 *Attorneys for Plaintiffs*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 NEVADA RECYCLING AND SALVAGE, LTD, a
13 Nevada Limited Liability Company; and,
14 AMCB, LLC, a Nevada Limited Liability
15 Company doing business as RUBBISH
16 RUNNERS,

17 *Plaintiffs,*

18 *vs.*

19 RENO DISPOSAL COMPANY, INC., a Nevada
20 Corporation doing business as WASTE
21 MANAGEMENT; REFUSE, INC., a Nevada
22 Corporation; ABC CORPORATIONS, I through
23 X; BLACK AND WHITE COMPANIES,
24 I through X; and, JOHN DOES I through X,
25 inclusive,

26 *Defendants.*

CASE NO.: CV15-00497

DEPT. NO.: 7

27 **VERIFIED FIRST AMENDED COMPLAINT**

28 Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD ("NRS") and AMCB, LLC doing
business as RUBBISH RUNNERS ("RR"), by and through its undersigned counsel, alleges and
claims as follows:

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

1. Plaintiff, NEVADA RECYCLING AND SALVAGE, LTD (hereinafter referred to as "NRS"), is a limited liability company formed under the laws of the State of Nevada with its principal place of business in Washoe County, Nevada.

2. Plaintiff, AMCB, LLC, is a limited liability company formed under the laws of the State of Nevada and doing business as RUBBISH RUNNERS (hereinafter referred to as "RR"), with its principal place of business in Washoe County, Nevada.

3. Upon information and belief, Defendant, RENO DISPOSAL COMPANY, INC., is a corporation formed under the laws of the State of Nevada and believed to be doing business as WASTE MANAGEMENT, (hereinafter and interchangeably referred to as "WM") with its principal place of business in Washoe County, Nevada.

4. Upon information and belief, Defendant, REFUSE, INC., is a corporation formed under the laws of the State of Nevada.

5. Plaintiffs do not know the true names and identities of those defendants herein referred to by fictitious names but is informed and believes and on that basis alleges that they are persons or entities who are servants, agents, employees, or representatives of the named defendants or persons acting in concert with said defendants with reference to the premises pleaded herein and are liable to the Plaintiff by reason thereof. Plaintiffs specifically pray for leave to amend this Complaint to allege the true names, identities, and capacities with appropriate allegations when the same become more fully known to Plaintiffs.

GENERAL ALLEGATIONS

6. Plaintiff, RR, is in the business of providing the services of collection, hauling and disposal of debris and recyclables for commercial accounts within the CITY OF RENO and other surrounding areas.

7. Plaintiff, NRS, is a facility that is in the business of accepting, processing, recycling and disposing of materials up to the limit allowable by law and local ordinance.

1 orchestrating a buy-out agreement by which, CASTAWAY TRASH HAULING would dismiss its
2 lawsuit against WASTE MANAGEMENT and assist WASTE MANAGEMENT in securing a
3 Commercial Franchise Agreement for recyclables with the CITY OF RENO; and, in return,
4 CASTAWAY TRASH HAULING would be purchased by WASTE MANAGEMENT with CASTAWAY
5 TRASH HAULING receiving the sum of approximately \$17,000,000.00.

6 15. Upon information and belief, in accordance with the agreement reached between
7 CASTAWAY TRASH HAULING and WASTE MANAGEMENT, on August 1, 2012, CASTAWAY
8 TRASH HAULING voluntarily dismissed its lawsuit against WASTE MANAGEMENT without
9 prejudice. See, Exhibit 2, attached hereto.

10 16. Plaintiffs had absolutely no knowledge of these private meetings or any
11 knowledge whatsoever about any WASTE MANAGEMENT/ CASTAWAY TRASH HAULING
12 Purchase Agreement at any time prior to January 1, 2013.

13 17. To the contrary, counsel for CASTAWAY TRASH HAULING, Dan Reasor, spoke at
14 Reno City Council meetings on October 10, 2012 and October 24, 2012 making statements in
15 support of a Commercial Franchise leading people to believe that CASTAWAY TRASH HAULING
16 had all of a sudden flipped their position, because it was best for the community. See for
17 example, Reno City Council Meeting on October 24, 2012 at 2:20 where Mr. Reasor states,
18 "We're asked on the flipside to give up an open commercial market so that the other objectives
19 that the city has before it can be achieved. And Castaway has been willing and is willing to
20 come to the table and assume those business risks and change the business model. We
21 understand the other trash haulers don't want to do that. They want to use the model that
22 Castaway has perfected in going after Waste Management's business. They want to preserve
23 that right. We are willing to give that up and we think that other people should come to the
24 table and likewise give it up too."

25 18. Relying in part on the statements and representations made by CASTAWAY and
26 WASTE MANAGEMENT before the counsel and without disclosing the private Agreement

1 reached between the two of them, on November 7, 2012, upon approval by the Reno City
2 Council, the CITY OF RENO (hereinafter referred to as "the CITY") entered into two Exclusive
3 Service Area Franchise Agreements for Commercial Solid Waste and Recyclable Materials.

4 19. One FRANCHISE AGREEMENT was between the CITY OF RENO (hereinafter
5 referred to as the "CITY") and Defendant, RENO DISPOSAL COMPANY, INC. (also known as
6 WASTE MANAGEMENT (hereinafter referred to as "WM")). See, Exhibit 3, attached hereto and
7 incorporated herein by reference.

8 20. The other FRANCHISE AGREEMENT was between the CITY and CASTAWAY
9 TRASH HAULING (hereinafter referred to as "CASTAWAY"). However, WM formally announced
10 its purchase of CASTAWAY in July of 2013, less than nine (9) months after the FRANCHISE
11 AGREEMENT was signed, leaving the remaining WM FRANCHISE AGREEMENT in effect
12 [hereinafter referred to as the "FRANCHISE AGREEMENT").

13 21. Upon information and belief, before the ink was even dry on the FRANCHISE
14 AGREEMENTS, WM and CASTAWAY began telling people and sharing details of their
15 Purchase Agreement; showing that WM and CASTAWAY knew and conspired to workout an
16 Agreement to give WM the entire FRANCHISE and thus, a monopoly, even before the
17 FRANCHISE AGREEMENT was entered into with the CITY of Reno.

18 22. On November 7, 2012, the CITY also entered into a DISPOSAL AGREEMENT with
19 Defendant, REFUSE, INC. (hereinafter referred to as "REFUSE"). See, Exhibit 4, attached hereto
20 and incorporated herein by reference.

21 23. Section 3.2(a) of the FRANCHISE AGREEMENT provides, "City hereby grants
22 contractor [WM], and contractor [WM] shall have throughout the term of this agreement,
23 *except as provided in sections 3.2 d and 4.4 L hereof*, the exclusive right, privilege,
24 franchise and obligation within the exclusive service area of contractor to provide collection
25 services to commercial customers." [Emphasis Added].

26 24. Section 3.2(D) of the FRANCHISE AGREEMENT reads: "Subject to the terms and

1 conditions in this Section 3.2 D, *the franchised exclusive right and obligation of Contractor*
2 *hereunder to provide Collection Services shall not include or apply to* i) Exempted Drop Box
3 Materials collected and transported by Exempted Haulers using Exempted Drop Box Services, or
4 ii) Exempted Hauler Account Materials collected and transported by Exempted Haulers using
5 Exempted Hauler Account Services." [Emphasis Added].

6 24. Plaintiff, RR is a designated "Exempted Hauler" under the FRANCHISE
7 AGREEMENT. See, Schedule 1, attached to the FRANCHISE AGREEMENT.

8 25. Section 4.4(L)(1) of the FRANCHISE AGREEMENT reads: "Subject to the
9 Exempted Facility Material limit and otherwise as provided in this Section 4.4 L, i) the
10 requirement and obligation of the Contractor to deliver all Collection Materials to a
11 Designated Facility shall not include or apply to Exempted Facility Materials delivered by
12 Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed
13 from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not
14 limit or preclude the Exempted Facility from accepting, processing, recycling or disposing
15 of any Exempted Facility Materials."

16 26. Plaintiff, NRS, is defined in the FRANCHISE AGREEMENT as the "Exempted
17 Facility." See, FRANCHISE AGREEMENT at p. 7.

18 27. Section 3.2(A) of the FRANCHISE AGREEMENTS specifies the nature of the
19 "FRANCHISE AGREEMENT" as follows:

20 "City hereby grants Contractor, and Contractor shall have throughout
21 the Term of this Agreement, *except as provided in Sections 3.2 D and*
22 *4.4L hereof*, the exclusive right, privilege, franchise and obligation
23 within the Exclusive Service Area of Contractor to provide Collection
24 Services to Commercial Customers. No person or entity other than
25 Contractor and its subcontractors shall i) collect Collection Materials in
26 Contractor's Exclusive Service Area, ii) transport anywhere in the City
27 Collection Materials Collected in Contractor's Exclusive Service Area, or
28 iii) deliver any Collection Materials Collected in Contractor's Exclusive
Service Area to any Disposal, processing, recycling or similar facility,
except as expressly provided under this Agreement. The preceding
sentence is intended to be broadly interpreted to preclude, without
limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any
activity relating to the collection or transportation of Collection

1 Materials from Commercial Activities that is solicited, arranged,
2 brokered, or provided by any person or combination of persons in
3 exchange for the payment, directly or indirectly, of a fee, charge, rebate,
4 discount, commission, or other consideration, in any form or amount.
5 **Notwithstanding any other provision of this Agreement, the**
6 **exclusive right of Contractor hereunder shall not apply to Excluded**
7 **Materials, Excluded Recyclable Materials, Exempted Drop Box**
8 **Materials, Exempted Hauler Account Materials and subject to and as**
9 **provided in Section 4.4 L, Exempted Facility Material delivered to**
10 **Exempted Facilities. Contractor and other service providers may**
11 **collect and transport Excluded Materials, Exempted Drop Box**
12 **Materials and Exempted Hauler Account Materials (if Contractor has**
13 **been approved for Exempted Hauler Accounts under Schedule 1) in**
14 **the Exclusive Service Area and elsewhere in the City and may charge fees**
15 **and charges for services as the service provider may elect. Contractor**
16 **shall only provide under this Agreement Collection Services to Commercial**
17 **Customers in Contractor's Exclusive Service Area and in no other areas in the**
18 **City; provided, however, Contractor may provide Special Services to**
19 **Commercial Customers or other customers anywhere in the City.**

20 [Emphasis Added].

21 28. As set forth in the FRANCHISE AGREEMENT, WM's exclusive rights do not apply
22 to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop Box Materials,
23 Exempted Hauler Account Materials and as provided in Section 4.4 L, Exempted Facility
24 Material delivered to Exempted Facilities." *Id.*

25 29. "Excluded Materials" are defined as:

26 (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile,
27 corrosive, biomedical, infectious, biohazardous, and toxic substances or
28 material, including without limitation batteries; (iv) waste that
Contractor reasonably believes would, as a result of or upon disposal, be
a violation of Federal, State, or local law, regulation or ordinance,
including land use restrictions or conditions; (v) waste that in
Contractor's reasonable opinion would present a significant risk to
human health or the environment, cause a nuisance or otherwise create
or expose Contractor or City to potential liability; (vi) electronic waste
determined by Contractor to be Excluded Materials (including without
limitation television sets, computers and computer components); (vii)
materials collected and processed at rendering facilities; (viii) Special
Waste, (ix) incidental amounts of Self-Haul materials which are delivered
by an individual directly to a transfer station, recycling facility or
Disposal facility in a manner consistent with City ordinances and codes
and other applicable laws; (x) Construction and Demolition Debris; (xi)
materials which otherwise would constitute Collection Materials that
are removed from premises by landscaping, gardening, cleaning service,
appliance sale and service company or construction contractors as an
incidental part of a gardening, landscaping, tree trimming, cleaning,

1 maintenance, appliance sale or service or construction or similar service
2 offered by that service provider, using its own personnel and
3 equipment, rather than as a hauling service;(xii) Scrap Metals;(xiii)
4 Paper Shredder Materials;(xiv) Bulky Items and items Contractor
5 determines to be excessively bulky or heavy; and (xv) Source Separated
6 Recyclable Materials donated by the generator to any United States
7 revenue Code Section 501(c) 3 or other federally recognized non-profit
8 organization, including charities, youth groups and civic organizations,
9 which materials may be transported from the non-profit organization
10 by Self-Haul or by a third party hauler.

11 See, FRANCHISE AGREEMENT at p. 5.

12 30. "Excluded Recyclable Materials" are defined as:

13 "[e]ither or both i) Approved Recyclable Materials from Commercial
14 Activity that are a) separated by the generator thereof from all other
15 materials and which contain not less than ninety percent (90%)
16 Approved Recyclable Materials and b) sold by the generator thereof
17 directly to a buyer of Recyclable Material at market price, title to
18 which materials transfers to the buyer upon collection or pickup of
19 such materials, but excluding such materials collected and transported
20 as a service, and ii) any other Recyclable Materials that are not
21 Approved Recyclable Materials."

22 See, FRANCHISE AGREEMENT at p. 5-6.

23 31. By explicit definition as set forth above and taken directly from the FRANCHISE
24 AGREEMENT, the definition of "Excluded Recyclable Materials" explicitly includes "Approved
25 Recyclable Materials" as long as they are from commercial activity, separated from non-
26 approved recyclable materials and contain no less than 90% "Approved Recyclable Materials"
27 and purchased by a buyer of recyclable materials. *Id.*

28 32. "Exempted Drop Box Materials" are defined as: "Solid Waste and Approved
Recyclable Material collected and transported in an Exempted Drop Box using Exempted
Drop Box Services, but excludes; (i) Garbage; and, (ii) Compacted Solid Waste and
compacted Approved Recyclable Materials." *Id.* at p. 6.

33. "Exempted Hauler Account Material" is defined as: "Solid Waste and
Recyclable Material collected from an identified customer under an Exempted Account
and transported by such Exempted Hauler using Exempted Hauler Account Services, but

1 excluding Garbage." *Id.* at p. 7.

2 34. Despite the above guaranteed rights explicitly granted to Plaintiffs NRS and
3 RR in the FRANCHISE AGREEMENT, WM has intentionally engaged in an unlawful, fraudulent
4 scheme to harm and destroy the business of NRS, RR and their lawful enterprises by allowing
5 and encouraging its agents and employees to make misleading statements to customers and/or
6 prospective customers of Plaintiffs, including but not limited to the following:

7 "We [WM] are the only hauler that's allowed in Sparks and Reno."

8 "Any other provider that goes in there, there will be fines."

9 "We [WM] have an agreement with the city and we are the only trash hauler
10 that is allowed in either of those cities [Reno and Sparks]."

11 35. Plaintiffs know and understand that each commercial business located in the
12 CITY must have trash (food waste) service with WM and Plaintiffs work hard to ensure each
13 and every one of their respective contractors and customers are in compliance with that
14 requirement.

15 36. However, in breach of the FRANCHISE AGREEMENTS, WM has refused to service
16 certain commercial customers who had requested 96-gallon trash service in order to be in
17 compliance with the FRANCHISE AGREEMENT. One such instance of these occurrences is a
18 customer of Plaintiffs in collaboration with a rental business, who first called Waste
19 Management on September 30, 2014 to request to downgrade their service to a 96-gallon tote-
20 which is explicitly in compliance with the FRANCHISE AGREEMENT. This occurred despite the
21 fact that this customer only deals in recyclable material that is outside of the FRANCHISE
22 AGREEMENT. At that time, on September 30, 2014, that customer was given a confirmation
23 number for the order downgrading their service and assured the downgrade would be
24 effectuated within 1-5 business days. Follow up calls were then made to WM twice in
25 November and once in December still trying to accomplish the same downgrade as initially
26 requested on September 30, 2014. As of December 1, 2014, more than 60 days later, WM had

1 still failed to downgrade the service. On December 3, 2014 follow up emails were sent
2 demanding that the downgrade be effectuated as requested and confirmed back in September.
3 However, these follow up inquiries were ignored. Some commercial customers have had these
4 issues resolved and some have not.

5 37. WM has intentionally misrepresented information to the CITY in an attempt to
6 damage Plaintiffs respective businesses. As a representative example of numerous documented
7 occurrences, on October 2, 2014, a customer of Plaintiffs called and spoke with a WM customer
8 service representative named Cassandra (sp?) and requested 96-gallon tote service one time
9 per week in order to be in compliance with the FRANCHISE AGREEMENT. During the call, the
10 customer's agent was provided a confirmation number and told 96-gallon tote would be
11 delivered within 1-5 business days- which would have meant delivery no later than October 9,
12 2014.

13 38. On October 16, 2014 and despite the fact that the Customer had already started
14 service with WM as a result of the Customer's request two weeks earlier on October 2, 2014,
15 WM employee, John Langelie, provided the CITY a list of customers that WM alleged were in
16 violation of the FRANCHISE AGREEMENT because they purportedly did not have 96-gallon tote
17 service. The customer who ordered service on October 2, 2014 was included in that list.

18 39. As a result, the CITY, believing WM's allegations without further investigation,
19 sent out violation notices and even fined Plaintiffs' Customer (as well as other customers of
20 Plaintiffs not specifically used in this representative example).

21 40. It was later determined that more than half of the list of customers purportedly
22 in violation of the FRANCHISE AGREEMENT that WM employee John Langelie provided to the
23 CITY, was false in that, more than half of those customers included on that list did in fact have
24 service with WM in compliance with the FRANCHISE AGREEMENT and at the time that WM
25 provided the list to the CITY.

26 41. WM deliberately and intentionally misrepresented to the CITY that many of
27
28

1 Plaintiffs customers and/or Plaintiff's contractor's customers did not have service with WM as
2 required by the FRANCHISE AGREEMENT when the customers did in fact have the appropriate
3 service.

4 42. A different and longtime customer of Plaintiffs, who also has service with WM in
5 compliance with the FRANCHISE AGREEMENT, was recently approached by WM employee
6 John Langelles. Despite the fact that this customer was and always has been in clear compliance
7 with the FRANCHISE AGREEMENT, Mr. Langelles told him that his [Mr. Langelles'] sole job
8 purpose with WM is to put Plaintiffs out of business.

9 43. During that conversation, Mr. Langelles also made misleading and fraudulent
10 statements and misrepresentations to the customer regarding the FRANCHISE AGREEMENT.

11 44. On October 30, 2014, WM employee, Cherolyn Gilletti, intentionally
12 misrepresented the current FRANCHISE AGREEMENT to one of Plaintiffs' customers by writing
13 in an email the following:

14 " At this time Waste Management is the assigned hauler for the
15 city of Reno. Please note the following.

16 **Solid Waste:** Every business generating Solid Waste in the City of Reno is
17 required to subscribe to Reno Disposal Company for the collection,
18 transportation and disposal of all of franchised Solid Waste materials
19 generated by the business, except for businesses to which the City of
20 Reno has specifically granted in writing an exemption. . . .

21 **Recyclable Material.** No business may allow or retain any service
22 provider other than Reno Disposal Company to collect, pickup,
23 transport or deliver Approved Recyclable Materials in the City of Reno
24 in violation of the exclusive franchise agreement or the Reno Municipal
25 Code."

26 [Emphasis Added]. See, Exhibit 5 attached hereto.

27 45. All three of those statements are factual misrepresentations.

28 46. The FRANCHISE AGREEMENT also limits WM's ability to continue with individual
service contracts directly with customers in the CITY stating,

"If Commercial Customers in Contractor's Exclusive Service Area are party
to a 'Qualified Service Contract' (as defined below) as of the Effective Date,

1 Contractor will provide Collection Services to such customers 1) at the
2 lesser of a) the Rate for such service provided under this Agreement or b)
3 the rate or charge provided in the Qualified Service Contract; provided that
4 the rate or charge shall not be less than seventy five percent (75%) of the
5 Rate under this Agreement for the same or similar service ('Transition
6 Rate') and ii) the length of the term of Collection Services provided at the
7 Transition Rate to such Commercial Customers ('Transition Term') shall be
8 the longer of a) the initial or base term provided in the Qualified Service
9 Contract (without renewal, rollover or other extensions of such term) or b)
10 the period ending January 1, 2015. For purposes hereof, a 'Qualified
11 Service Contract' means a binding service contract with a commercial
12 customer for the collection and transportation in the City of Solid Waste or
13 Approved Recyclable Materials, or both, dated on or before October 24,
14 2012, by any service provider properly licensed to collect and transport
15 such materials in the City, excluding Exempted Hauler Accounts."

16 [Emphasis Added]. FRANCHISE AGREEMENT at p. 22, Sec. 3.13(A).

17 47. Upon information and belief, and despite the fact that after January 1, 2015, no
18 further qualified service contracts are allowed with customers within the CITY under the
19 FRANCHISE AGREEMENT, on January 22, 2015, when commercial business, Les Schwab
20 (located at 4175 S. Virginia Street in Reno) attempted to down grade their service with WM to a
21 96-gallon tote, the WM customer service representative told them that Les Schwab was locked
22 into a contract with WM and that if they wanted to cancel or down grade their service with WM,
23 Les Schwab would have to pay liquidated damages. See, 2006 Les Schwab Service Contract,
24 attached hereto at Exhibit 6. This shows that WM is misleading customers into believing that
25 they are still locked into a contract when, by the very terms of the FRANCHISE AGREEMENT, all
26 service contracts expired as of January 1, 2015.

27 48. Pursuant to the FRANCHISE AGREEMENT, WM is required to charge Customers
28 the franchised rates set forth in the "Scope of Services" which is subject to change from time to
time for CPI adjustments. See, Exhibits 7 and 8.

49. In direct violation of the FRANCHISE AGREEMENT, WM has and is charging
customers rates other than those explicitly set forth in the FRANCHISE AGREEMENT which
amounts to price fixing and is an attempt to deliberately drive Plaintiffs out of the market.

50. The DISPOSAL AGREEMENT additionally provides that REFUSE or its affiliates,

1 including but not limited to WM, is to begin construction on an Ecocenter (also known as a
2 "MRF") in the CITY OF RENO by March 7, 2015; however, to date, no such construction has
3 commenced. See, DISPOSAL AGREEMENT, attached hereto at Exhibit 4, at p. 13, 3.3A.

4 51. Used as a tool to induce the CITY OF RENO to enter into the FRANCHISE
5 AGREEMENT and subsequently an express condition of the FRANCHISE AGREEMENT, REFUSE
6 and/or WM and/ or its affiliates have repeatedly represented to the CITY OF RENO and its
7 citizens that the Ecocenter is to be built at the current Commercial Row Transfer Station in
8 Reno and that "approximately 200 temporary jobs will be created during the construction
9 phase." See, Exhibit 9, attached hereto.

10 **FIRST CLAIM FOR RELIEF**
11 **(Defamation)**

12 52. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
13 122 of this Complaint, inclusive, and incorporates them herein by reference.

14 53. As alleged herein, WM has and continues to make certain false and defamatory
15 statements regarding Plaintiffs and their ability to lawfully engage in their respective
16 businesses within the CITY.

17 54. The publication of these statements by WM and its agents and/or employees was
18 unprivileged.

19 55. In making these false and defamatory statements WM and its agents and/or
20 employees acted either intentionally or with reckless disregard as to whether or not the
21 statements were true.

22 56. As a result of these false and defamatory statements, Plaintiffs have incurred
23 damages in an amount to be proven at trial but which exceeds \$10,000.00. In addition, the
24 conduct of the Defendants should be punished, and an example made of said conduct, to
25 discourage Defendants and others in similar positions from engaging in like conduct in the
26 future, through the award of punitive damages in a just and reasonable amount for Plaintiffs

1 herein. As a direct and proximate result of the reckless, malicious and oppressive conduct of
2 Defendants and the reckless disregard for the rights of Plaintiffs herein, Plaintiffs are entitled to
3 an award of punitive damages in order to deter Defendants from engaging in such egregious
4 conduct in the future.

5 57. It has been necessary for Plaintiffs to retain the services of legal counsel to
6 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
7 associated herewith, including the reasonable fees of their attorneys.

8 **SECOND CLAIM FOR RELIEF**
9 **(Defamation Per Se)**

10 58. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
11 122 of this Complaint, inclusive, and incorporates them herein by reference.

12 59. The false and defamatory statements made by WM and its agents and/or
13 employees both infer and directly misrepresent that Plaintiffs are illegally engaging in their
14 respective businesses both against the law and in violation of the WM FRANCHISE
15 AGREEMENT, which is not accurate.

16 60. Despite repeated demands to immediately stop making any and all such false and
17 defamatory statements, WM and its agents and/or employees continue to deliberately make
18 these statements to Plaintiffs' respective customers and/or prospective customers, causing
19 direct damage to Plaintiffs in an amount to be proven at trial but which exceeds \$10,000.00.

20 61. WM and its agents and/or employees false statements constitute defamation per
21 se and Plaintiffs are presumed to have incurred damages as a result of these false statements
22 about Plaintiffs respective businesses. In addition, the conduct of the Defendants should be
23 punished, and an example made of said conduct, to discourage Defendants and others in similar
24 positions from engaging in like conduct in the future, through the award of punitive damages in
25 a just and reasonable amount for Plaintiffs herein. As a direct and proximate result of the
26 reckless, malicious and oppressive conduct of Defendants and the reckless disregard for the

1 rights of PLAINTIFFS HEREIN, Plaintiffs are entitled to an award of punitive damages in order
2 to deter Defendants from engaging in such egregious conduct in the future.

3 62. It has been necessary for Plaintiffs to retain the services of legal counsel to
4 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
5 associated herewith, including the reasonable fees of their attorneys.

6 **THIRD CLAIM FOR RELIEF**
7 **(Breach of Contract/Third Party Beneficiary)**

8 63. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
9 122 of this Complaint, inclusive, and incorporates them herein by reference.

10 64. Section 3.2(D)(3) of the WM FRANCHISE AGREEMENT explicitly provides that,
11 *"Each Exempted Hauler shall be a third party beneficiary with the right to enforce,* subject
12 *to the terms and conditions in this Section 3.2 D, the rights of such Exempted Hauler under*
13 *this Section 3.2 D."* [Emphasis Added]. Accordingly, Plaintiff RR is an intended third party
14 beneficiary of the FRANCHISE AGREEMENT.

15 65. Section 4.4(L)(3) of the WM FRANCHISE AGREEMENT explicitly provides that,
16 *"The exempted facility shall be a third party beneficiary with the right to enforce,* subject to
17 *the terms and conditions in this section 4.4 L, the rights of the exempted facility under this*
18 *section 4.4 L."* [Emphasis Added]. Accordingly, Plaintiff NRS is an intended third party
19 beneficiary of the FRANCHISE AGREEMENTS.

20 66. The FRANCHISE AGREEMENT requires WM and/or its affiliates "charge and
21 collect from Customers for Collection Services the Rates provided on the Scope of Services,
22 which Rates may be adjusted as provided in this Agreement." See, FRANCHISE AGREEMENT,
23 attached hereto at exhibit 3 at p.35, 6.2A.

24 67. The current "Franchise Rates" that WM and/or its affiliates are required to
25 charge under the FRANCHISE AGREEMENT are set forth in Exhibit 3, attached hereto and
26 incorporated herein.

68. WM has materially breached the FRANCHISE AGREEMENT and its obligations thereunder to the CITY, its commercial customers and third-party beneficiaries under the FRANCHISE AGREEMENT, NRS and RR, by consistently and intentionally failing to charge the "Franchise Rates" as set forth in and required under the FRANCHISE AGREEMENT.

69. As a representative example, on February 1, 2015, WM billed and charged a commercial customer located in Reno at 4670 Aircenter Circle and thus, covered under the FRANCHISE AGREEMENT, \$120.58 for "4 Yard dumpster service- recycle materials." See, Exhibit 10, attached hereto. However, the current and applicable "Franchised Rate" for a 4 Yard Bin for Recyclable Materials, as set forth in Exhibit 8 attached hereto, is \$135.47. Accordingly, WM and/or its affiliates, are undercharging the commercial customer by \$14.89, in material breach of the FRANCHISE AGREEMENT and to the direct detriment of Plaintiffs as licensed competitors authorized to do business in the CITY.

70. Further, the DISPOSAL AGREEMENT additionally requires that REFUSE and/ or its affiliates, including but not limited to WM, to "use commercially reasonable efforts to commence and diligently prosecute construction of the Eco-Center" (also known as a "MRF") in the CITY OF RENO by March 7, 2015. See, DISPOSAL AGREEMENT, attached hereto at Exhibit 4, at p. 13, 3.3A. The rates that WM collects from commercial customers subsidizes the residential customers within the CITY. This is so that Residential Customers can have single stream recycling under the Residential Franchise Agreement, which Defendants appear to be in breach of as well. The rates charged by WM were also supposed to be used to build the "Eco-Center." The "Eco-Center" is necessary to adequately service the CITY and without it, WM does not have the ability to adequately service this local area and in turn, is not properly recycling as agreed to in both the Residential and Commercial FRANCHISE AGREEMENTS.

71. On the permanent public record, at the October 10, 2012 City Council meeting, upon inquiry by Vice Mayor Dave Aiuzzi asking, "So what is the penalty for not building [Eco-Center] in 28 months, they [WM/ REFUSE] have been collecting the money and if it doesn't get

1 built, what happens?" One of the Reno City Attorneys, Jonathan Shipman, answered, WM/
2 REFUSE, would be in material breach of the agreement [the FRANCHISE AGREEMENT].

3 72. However, more than 28 months later, WM/ REFUSE has failed to move forward
4 with construction of the Eco-Center. As such, WM is in material breach of the DISPOSAL
5 AGREEMENT for failing to "use commercially reasonable efforts to commence and diligently
6 prosecute construction of the Eco-Center ..." by March 7, 2015.

7 73. In addition and as set forth above, WM has materially breached the FRANCHISE
8 AGREEMENT by intentionally interfering with and limiting Plaintiffs' rights thereunder by
9 refusing to service commercial customers with 96-gallon tote service as required by the
10 FRANCHISE AGREEMENT, holding customers to contracts after January 1, 2015, under
11 charging commercial customers and charging rates outside of the required current "Franchised
12 Rates," in a blatant and intentional attempt to deliberately force Plaintiffs' customers out of
13 compliance with the FRANCHISE AGREEMENT and to push Plaintiffs out of the market

14 74. At all times relevant herein, REFUSE and WM, and/ or their affiliates, knew
15 and/or should have reasonably foreseen that the explicit rights and provisions set forth in the
16 FRANCHISE AGREEMENT and the DISPOSAL AGREEMENT relating to Exempted Haulers (RR)
17 and the Exempted Facility (NRS), was for the benefit of the intended third party beneficiaries
18 thereunder, the Plaintiffs herein.

19 75. As a direct and foreseeable consequence of WM's actions in materially breaching
20 the FRANCHISE AGREEMENT and the DISPOSAL AGREEMENT, as intended third party
21 beneficiaries, RR and NRS have been directly damaged in an amount to be proven at trial but
22 which exceeds \$10,000.00. In addition, the conduct of the Defendants should be punished, and
23 an example made of said conduct, to discourage Defendants and others in similar positions
24 from engaging in like conduct in the future, through the award of punitive damages in a just
25 and reasonable amount for Plaintiffs herein. As a direct and proximate result of the reckless,
26 malicious and oppressive conduct of Defendants and the reckless disregard for the rights of

1 Plaintiffs herein, Plaintiffs are entitled to an award of punitive damages in order to deter
2 Defendants from engaging in such egregious conduct in the future.

3 76. It has been necessary for Plaintiffs to retain the services of legal counsel to
4 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
5 associated herewith, including the reasonable fees of their attorneys.

6 **FOURTH CLAIM FOR RELIEF**
7 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

8 77. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
9 122 of this Complaint, inclusive, and incorporates them herein by reference.

10 78. Every contract in Nevada contains an implied covenant of good faith and fair
11 dealing. This duty of good faith and fair dealing exists for the benefit of direct parties to a
12 contract, as well as intended third party beneficiaries of a contract.

13 79. REFUSE, WM and/or their affiliates had a duty to deal with RR and NRS in good
14 faith.

15 80. REFUSE, WM and/or their affiliates failed to deal with RR and NRS in good faith.

16 81. As the natural, actual, direct, and proximate result and cause of the acts and/or
17 omissions/ failures to act of REFUSE, WM and/or their affiliates, as intended third party
18 beneficiaries, RR and NRS have been damaged in an amount to be proven at trial but which
19 exceeds \$10,000.00. In addition, the conduct of the Defendants should be punished, and an
20 example made of said conduct, to discourage Defendants and others in similar positions from
21 engaging in like conduct in the future, through the award of punitive damages in a just and
22 reasonable amount for Plaintiffs herein. As a direct and proximate result of the reckless,
23 malicious and oppressive conduct of Defendants and the reckless disregard for the rights of
24 Plaintiffs herein, Plaintiffs are entitled to an award of punitive damages in order to deter
25 Defendants from engaging in such egregious conduct in the future.

26 82. It has been necessary for Plaintiffs to retain the services of legal counsel to

1 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
2 associated herewith, including the reasonable fees of their attorneys.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Unfair Trade Practices/ Conspiracy to Restrain Trade)**

5 83. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
6 122 of this Complaint, inclusive, and incorporates them herein by reference.

7 84. NRS 598A.060 provides,

8 "Every activity enumerated in this subsection constitutes a contract, combination or
9 conspiracy in restraint of trade, and it is unlawful to conduct any part of any such
activity in this State:

10 (a) *Price fixing, which consists of raising, depressing, fixing, pegging or*
11 *stabilizing the price of any commodity or service, and which includes,*
but is not limited to:

12 (1) Agreements among competitors to depress prices at which they will buy
essential raw material for the end product.

13 (2) Agreements to establish prices for commodities or services.

14 (3) Agreements to establish uniform discounts, or to eliminate discounts.

(4) Agreements between manufacturers to price a premium commodity a
specified amount above inferior commodities.

15 (5) Agreements not to sell below cost.

(6) Agreements to establish uniform trade-in allowances.

16 (7) Establishment of uniform cost surveys.

(8) Establishment of minimum markup percentages.

17 (9) Establishment of single or multiple basing point systems for
determining the delivered price of commodities.

18 (10) Agreements not to advertise prices.

(11) Agreements among competitors to fix uniform list prices as a place to
start bargaining.

19 (12) Bid rigging, including the misuse of bid depositories, foreclosures of
competitive activity for a period of time, rotation of jobs among
20 competitors, submission of identical bids, and submission of
complementary bids not intended to secure acceptance by the customer. . .
21 "

22 ...

23 (14) Agreements to restrict volume of production.

24 ...

(e) Monopolization of trade or commerce in this State, including, without
25 limitation, *attempting to monopolize or otherwise combining or*
conspiring to monopolize trade or commerce in this State. . . .

26 [Emphasis Added].

1 85. In the seminal case of *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 117-
2 18, 107 S.Ct. 484, 93 L.Ed.2d 427 (1986), the United States Supreme Court also addressed the
3 issue of predatory pricing as follows:

4 “Predatory pricing may be defined as *pricing below an appropriate*
5 *measure of cost for the purpose of eliminating competitors in the short*
6 *run and reducing competition in the long run.* It is a practice that harms
7 both competitors and competition. In contrast to price cutting aimed simply
at increasing market share, predatory pricing has as its aim the elimination
of competition. Predatory pricing is thus a practice “inimical to the
purposes of [the antitrust] laws.”

8 [Emphasis Added].

9 86. In this case, WM has engaged in predatory pricing by charging commercial
10 customers below the Franchised Rates, for customers who compete with Plaintiffs, while at the
11 same time, charging commercial customers more than the Franchised Rates, for customers who
12 do not compete with Plaintiffs.

13 87. The current Franchised Rates, which must be charged by WM under the
14 FRANCHISE AGREEMENT are set forth in Exhibit 8, attached hereto and incorporated herein by
15 reference.

16 88. The following are representative examples of WM's price fixing/ predatory
17 pricing:

18 A. For a commercial customer located at 4670 Aircenter Circle in Reno, for January
19 of 2015, WM is charging \$157.13 for a 30 Yard Flat Roll Top. See, Exhibit 11.
20 However, the correct Franchised Rate for the 30 Yard Closed Top Box is \$312.80.
21 See, Exhibit 8 at p.4. This results in an undercharge of \$155.67 per bin. These
22 are drop box services, which Plaintiffs herein directly compete for. As such,
23 Plaintiffs are directly damaged by WM's price fixing conduct.

24 B. For a commercial customer located at 1835 Montello Street in Reno, for January
25 of 2015, WM is charging \$97.19 for one 3 yard dumpster with collection one time
26 per week. See, Exhibit 12. However, the correct Franchised Rate for one 3 yard

1 dumpster with collection one time per week is \$162.98. See, Exhibit 8 at p.1.
2 This results in an undercharge of \$65.79 per bin. These are dumpster/ bin
3 services which Plaintiffs herein directly compete for. As such, Plaintiffs are
4 directly damaged by WM's price fixing conduct.

5 89. In direct violation of the FRANCHISE AGREEMENT, WM is pricing its services
6 lower than the appropriate measure of cost as set forth in the FRANCHISE AGREEMENT.

7 90. WM is engaging in this lower pricing in order to deliberately and intentionally
8 push Plaintiffs out of the market. In fact, WM's agents and representatives have represented to
9 customers of Plaintiffs that their sole purpose was to put Plaintiffs out of business. See,
10 Affidavit of John Vaughn, attached hereto at Exhibit 13. In addition, with respect to services
11 that WM does not compete with any other businesses for, WM has charged customers *more*
12 than the FRANCHISE rates; in turn, victimizing local business owners by overcharging them in
13 violation of the FRANCHISE AGREEMENT.

14 91. In addition and as set forth more fully herein, WM failed to disclose to the Reno
15 City Council or anyone else, that they had reached a deal to purchase CASTAWAY TRASH
16 HAULING prior to when the FRANCHSIE AGREEMENTS were signed granting both WM and
17 CASTAWAY Franchised Zones within the CITY of Reno.

18 92. Months after the FRANCHISE AGREEMENTS were signed, WM announced that it
19 had purchased CASTAWAY, thus, taking over its Franchised Zone and leaving only one
20 FRANCHISEE left, WM.

21 93. As such, WM has engaged in a scheme and entered into agreements with
22 CASTAWAY to deliberately create a monopoly without disclosing such intent to the CITY to the
23 detriment of Plaintiffs and in direct violation of NRS 598A.

24 94. Based on the foregoing, WM has engaged in unfair trade practices in violation of
25 Nevada law.

26 95. As the actual, direct, and proximate result and cause of the acts of WM, RR and
27
28

1 NRS have been damaged in an amount to be proven at trial but which exceeds \$10,000.00. In
2 addition, the conduct of the Defendants should be punished, and an example made of said
3 conduct, to discourage Defendants and others in similar positions from engaging in like
4 conduct in the future, through the award of punitive damages in a just and reasonable amount
5 for Plaintiffs herein. As a direct and proximate result of the reckless, malicious and oppressive
6 conduct of Defendants and the reckless disregard for the rights of PLAINTIFFS herein, Plaintiffs
7 are entitled to an award of punitive damages in order to deter Defendants from engaging in
8 such egregious conduct in the future.

9 96. It has been necessary for Plaintiffs to retain the services of legal counsel to
10 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
11 associated herewith, including the reasonable fees of their attorneys.

12 **SIXTH CLAIM FOR RELIEF**
13 **(Fraud, Fraud in the Inducement, Fraudulent Misrepresentation)**

14 97. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
15 122 of this Complaint, inclusive, and incorporates them herein by reference.

16 98. When WM was in negotiations and lobbying the CITY for the FRANCHISE
17 AGREEMENTS and thereafter and for the purpose of inducing the CITY to agree to both
18 residential and commercial FRANCHISE AGREEMENTS, WM represented to the CITY and
19 publically to the citizens and business owners of the CITY that the Commercial rates set forth
20 under the FRANCHISE AGREEMENT were established to subsidize and offset the Residential
21 Rates to assist in covering the costs associated with single stream recycling.

22 99. To intentionally and fraudulently induce the CITY, residents and business owners
23 to support the Single Stream Recycling Program as well as commercial recycling services, WM
24 has and continues to represent that the Single Stream Recycling Program increases the amount
25 of recyclable material collected, and decreases the amount of waste sent to Landfills.

26 100. WM further represents that "Reno residents have been asking for single-stream
27
28

1 recycling for several years. As a result, on Nov. 7, 2012, the Reno City Council approved the
2 single-stream recycling program to make recycling easy and convenient for the residents and
3 *to increase recycling within the city.*" [Emphasis Added].

4 101. WM admits that "All customers are billed for recycling, regardless if they use
5 their single-stream recycling cart or not."

6 102. Both the Commercial and Residential FRANCHISE AGREEMENTS and the Reno
7 Municipal Code Section Sec. 5.90.010 defines "Recycle," "recycled," and "recycling" as, "the
8 process of collection, sorting, cleansing, treating and reconstituting of recyclable materials that
9 would otherwise be disposed of, *and returning them to the economy* in the form of raw
10 materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products."
11 [Emphasis Added].

12 103. WM represents that "Single-stream recycling allows for the collection and
13 processing of a wider variety of recyclable material, including:

- 14 • Plastics bottles (#1 - #7)
- 15 • Plastic containers (#1 - #7)
- 16 • Cardboard
- 17 • Paperboard
- 18 • Paper
- 19 • Junk Mail
- 20 • Newspaper
- 21 • Magazines
- 22 • Glass bottles (without caps)
- 23 • Glass jars (without caps)
- 24 • Aluminum cans
- 25 • Steel cans" [Emphasis Added].

26 104. At all times herein and as set forth more fully herein, Plaintiff NRS and RR,
27 respectively, haul and accept recyclable materials as permitted by the FRANCHISE
28 AGREEMENT. Plaintiff, NRS has the only facility within the CITY of Reno with an actual sort line
for recyclable materials and works diligently to ensure as many materials as possible are
prepared for recycling and returned to the economy.

105. Under the FRANCHISE AGREEMENT, residents and business owners have

1 suffered regular and ongoing rate increases. WM represented that these rate increases were
2 necessary to offset costs of building an Eco-Center within the CITY of Reno as well as
3 implementing the Single Stream Recycling Program. WM represented that the Eco-Center was
4 necessary because "The current Waste Management facilities cannot accommodate the increase
5 in recycling volumes that will be generated by the single-stream recycling program. An
6 expanded facility is required to meet the needs of the community." Under the FRANCHISE
7 AGREEMENT, WM's construction of the Eco-Center was required to commence on or before
8 March 7, 2015. To date, construction has not commenced.

9 106. Because the Commercial Recycling Program in Reno subsidizes the rates for
10 residential services, including the Single Stream Recycling Program, Plaintiffs' respective costs
11 of doing business have increased. In addition, as a result of the FRANCHISE AGREEMENTS,
12 which include the recycling programs, Plaintiffs' have been forced to change their internal
13 operating procedures in order to ensure compliance with the FRANCHISE AGREEMENTS. With
14 respect to recyclable materials collected, accepted and sorted by Plaintiffs, respectively, every
15 effort is made to ensure those materials are sold for the purpose of "*returning them to the*
16 *economy* in the form of raw materials for new, reused, repaired, refabricated, remanufactured,
17 or reconstituted products." [Emphasis Added].

18 107. Despite the rate increase residents and business owners of the CITY of Reno have
19 experienced, and in turn, the increased costs that Plaintiffs have been forced to incur in order
20 to survive over the past two and a half (2½) years which have at all times been represented by
21 WM to be necessary for the construction of an Eco-Center within the CITY and also necessary in
22 order to implement the Single Stream Recycling Program, and upon information and belief, WM
23 is not recycling the recyclable materials contained in residents and commercial business
24 owners' WM recycling containers.

25 108. One specific example of WM not recycling residential Single Stream Recycling
26 under the Single Stream Recycling Program is as follows:

1 Spencer Investigations, a licensed private investigation company, placed a
2 GPS tracker inside of a recyclable empty blue Laundry Detergent container
3 marked with the plastic recycling number 2 on the bottom, making it
4 appropriate for the Single Stream Recycling Program. Upon securing the
5 GPS tracker unit in the container and sealing it, Spencer Investigations then
6 placed the Laundry Detergent Container, containing the secured GPS
7 tracker, inside of a blue lid WM Residential Single Stream Recycling Tote.
8 See, Photo, attached hereto at Exhibit 14. On March 10, 2015, the blue lid
9 WM Residential Single Stream Recycling Tote was properly placed at the
curb for regular recycling collection by WM. WM collected the recyclables
from that blue lid WM Residential Single Stream Recycling Tote at
approximately 1:57 p.m. that same day. Less than forty-eight (48) hours
later, the recyclables from the blue lid WM Residential Single Stream
Recycling Tote reached their final destination at the Kiefer Landfill located
in Sacramento County, California at 7:01 a.m. on March 12, 2015- where it
still remains today. See, Photo attached hereto at Exhibit 15. See also,
Affidavit of Dustin Grate, attached hereto at Exhibit 16.

10 109. The recyclable No. 2 Plastic container placed in the blue lid WM Residential
11 Single Stream Recycling Tote in Reno, Nevada on March 10, 2015, was not recycled or returned
12 to the economy at all. It was dumped in a landfill in California, where it remains today.

13 110. Based on the foregoing, WM has expressly breached the FRANCHISE
14 AGREEMENT and misrepresented that it would be actually recycling the recyclable materials
15 collected through the Single Stream Recycling Program, which the Reno City Council relied on
16 in granting WM the FRANCHISE AGREEMENTS, of which Plaintiffs herein are express Third
17 Party Beneficiaries.

18 111. WM intentionally and fraudulently made representations which were misleading
19 to the CITY, the citizens and business owners of Reno and Plaintiffs and other haulers during
20 FRANCHISE NEGOTIATIONS and/or WM intentionally suppressed and concealed the true
21 nature of its recycling programs. Additionally, WM breached the FRANCHISE AGREEMENT.

22 112. WM, in the course of its business, supplied and continues to supply false
23 information for the guidance of the CITY and others, in their business transactions with the
24 CITY and the FRANCHISE AGREEMENTS, which the CITY, Council Members and community
25 supporters justifiably relied upon. As a result, Plaintiffs have suffered direct damages and
26 losses to their business through the limitation of competition, cost increases, business

1 interferences, loss of business and other such business damages.

2 113. Based on the foregoing, WM has engaged and committed fraud, fraud in the
3 inducement and fraudulent misrepresentations against the CITY, the citizens and business
4 owners of the City of Reno, Plaintiffs and other small haulers.

5 114. As the actual, direct, and proximate result and cause of the acts of WM, RR and
6 NRS have been damaged in an amount to be proven at trial but which exceeds \$10,000.00. In
7 addition, the conduct of the Defendants should be punished, and an example made of said
8 conduct, to discourage Defendants and others in similar positions from engaging in like
9 conduct in the future, through the award of punitive damages in a just and reasonable amount
10 for Plaintiffs herein. As a direct and proximate result of the reckless, malicious and oppressive
11 conduct of Defendants and the reckless disregard for the rights of Plaintiffs herein, Plaintiffs
12 are entitled to an award of punitive damages in order to deter Defendants from engaging in
13 such egregious conduct in the future.

14 115. It has been necessary for Plaintiffs to retain the services of legal counsel to
15 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
16 associated herewith, including the reasonable fees of their attorneys.

17 **SEVENTH CLAIM FOR RELIEF**
18 **(Preliminary and Permanent Injunction, Declaratory Relief)**

19 116. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
20 122 of this Complaint, inclusive, and incorporates them herein by reference.

21 117. As a result of WM and its affiliates' continued and ongoing conduct, Plaintiffs
22 suffer the threat of irreparable harm in that, WM's misrepresentations to prospective
23 customers of Plaintiffs cause and continue to cause Plaintiffs to lose the business of those
24 prospective customers. In addition, Plaintiffs continue to suffer irreparable harm to their
25 business reputation with each misrepresentation made by WM and its agents.

1 118. When weighing the relative interests of the parties; if WM is restricted from
2 continuing to disparage and misrepresent the lawfulness of Plaintiffs' respective businesses,
3 WM does not suffer any loss, but is merely required to operate within the confines of the law
4 and without making fraudulent misrepresentations about Plaintiffs in order to directly damage
5 their respective businesses. However, if the restraint is denied and WM and its agents are
6 permitted to engage in its misconduct, Plaintiffs will likely be damaged to the point that their
7 businesses will be permanently damaged because customers will choose not to use Plaintiffs' as
8 a direct result of WM's deliberate misrepresentations regarding Plaintiffs' respective
9 businesses.

10 119. Plaintiffs' have a very high likelihood of success on the merits, as even the City of
11 Reno has issued a letter stating that the Plaintiffs' are lawfully licensed to do business within
12 the CITY of Reno, thus, affirming the fraudulent nature of WM and its agents' fraudulent
13 comments.

14 120. The public has a right to choose which entity or entities it wishes to do business
15 with. The public's interest in receiving true and accurate information when selecting a hauling
16 or disposal business is vital to the public's freedom to choose whom it wishes to do business
17 with.

18 121. Based on the foregoing, Plaintiffs are entitled to a preliminary and permanent
19 injunction to stop WM's deceitful misconduct that continues to harm Plaintiffs. In addition, the
20 conduct of the Defendants should be punished, and an example made of said conduct, to
21 discourage Defendants and others in similar positions from engaging in like conduct in the
22 future, through the award of punitive damages in a just and reasonable amount for Plaintiffs
23 herein. As a direct and proximate result of the reckless, malicious and oppressive conduct of
24 Defendants and the reckless disregard for the rights of Plaintiffs herein, Plaintiffs are entitled to
25 an award of punitive damages in order to deter Defendants from engaging in such egregious
26 conduct in the future.

1 122. It has been necessary for Plaintiffs to retain the services of legal counsel to
2 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
3 associated herewith, including the reasonable fees of their attorneys.


4 WHEREFORE, Plaintiffs pray for relief as follows:

- 5
- 6 1. That treble damages, general damages and compensatory damages in excess of
7 \$10,000.00 be awarded and specifically determined according to proof at trial in
8 favor of NEVADA RECYCLING AND SALVAGE, LTD. and AMBC, LLC dba RUBBISH
9 RUNNERS, (collectively "Plaintiffs") herein;
- 10 2. For all judgments requested and set forth herein and all other such relief
11 requested;
- 12 3. For an Order declaring that Defendants have engaged in price fixing amounting
13 to Unfair Trade Practices in violation of NRS 589A to the direct detriment of
14 Plaintiffs and for additional damages in favor of Plaintiffs herein;
- 15 4. For immediate, temporary, preliminary and permanent injunction ordering
16 Defendants to immediately and forever cease engaging in the misconduct set
17 forth herein;
- 18 5. For an award of punitive damages in favor of Plaintiffs in order to deter
19 Defendants from engaging in such egregious conduct in the future;
- 20 6. That Plaintiffs be awarded their attorney's fees and costs incurred herein in
21 accordance with NRS 598A and all other applicable laws;
- 22 7. For any and all pre-judgment and post-judgment interest as allowed by law; and,
- 23 8. For such other and further relief as the Court deems just and proper in the
24 premises.

25 **AFFIRMATION Pursuant to NRS 239B.030**

26 The undersigned does hereby affirm that the preceding document does not contain the
27 Social Security number of any person.

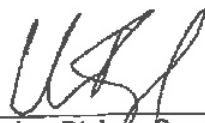
28 DATED this 25th day of March, 2015.

29 
30 STEPHANIE RICE, ESQ.
31 DEL HARDY, ESQ.
32 Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION
Pursuant to NRS 15.010(5)

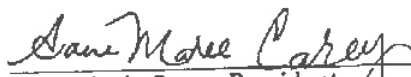
Under penalties of perjury, the undersigned declares that he, on behalf of Plaintiff NEVADA RECYCLING AND SALVAGE, LTD, is one of the Plaintiffs named in the foregoing First Amended Complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.



Christopher Bielser, President
NEVADA RECYCLING AND SALVAGE, LTD.

VERIFICATION
Pursuant to NRS 15.010(5)

Under penalties of perjury, the undersigned declares that she, on behalf of Plaintiff AMCB, LLC dba RUBBISH RUNNERS, is one of the Plaintiffs named in the foregoing First Amended Complaint and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes it to be true.



Anne Marie Carey, President
AMCB, LLC dba RUBBISH RUNNERS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that on this date I served the foregoing document(s) described as **VERIFIED FIRST AMENDED COMPLAINT** on all parties to this action by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

- Personal delivery
- Facsimile (FAX) and/or Email: gary@duhonlawltd.com
- Federal Express or other overnight delivery
- Messenger Service
- Certified Mail with Return Receipt Requested

addressed as follows:

MARK G. SIMONS, ESQ.
SCOTT HERNANDEZ, ESQ.
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25th day of March, 2015.



EMPLOYEE OF HARDY LAW GROUP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT

NEVADA RECYCLING AND SALVAGE, et al
V.
RENO DISPOSAL COMPANY, INC. et al

CASE NO. CV15-00497

VERIFIED FIRST AMENDED COMPLAINT

EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	LENGTH
1	Castaway Trash Hauling Complaint for Declaratory Judgment	14
2	Castaway Trash Hauling Notice of Vountary Dismissal, Without Prejudice	3
3	Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable Materials between City of Reno and Reno Disposal Company, Inc.	68
4	Disposal Agreement Solid Waste and Recyclable Materials between City of Reno and Refuse, Inc.	39
5	Email Correspondence between Cherolyn Gilletti and Stewart Brown	2
6	Waste Management Service Agreement with Les Schwab Tire Center	3
7	Exhibit D Commercial Franchise Agreement Scope of Services	6
8	Exhibit D Commercial Franchise Agreement Scope of Services, Effective April 1, 2014	6
9	Information Regarding the Funding of an Ecocenter by Waste Management	3
10	Waste Management Invoice for Wynit Trash	3
11	Waste Management Invoice for Wynit Trash	3
12	Waste Management Invoice for Catholic Charities of Northern Nevada	3
13	Affidavit of John Vaughn	3
14	Photo of laundry soap container going into the WM bin with a blue lid	2
15	Photo of Kiefer Landfill	2
16	Affidvit of Dustin Grate	3

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “1”

EXHIBIT “1”

CV12-01207
DC-98003426-072
CASTAWAY TRASH ET AL VS CIT 14 Pages
District Court 05/02/2012 11:16 AM
Washoe County \$1422
FILED

§1422
CODE: ~~§1425~~
Dan R. Reaser, Esq.
Nevada State Bar No. 1170
Leslie Bryan Hart
Nevada Bar No. 4932
Brian H. Schusterman, Esq.
Nevada Bar No. 10983
LIONEL SAWYER & COLLINS
50 W. Liberty St., Suite 1100
Reno, NV 89501
(775) 788-8666

Attorneys for Castaway Trash Hauling, Inc.
and Four Thirty-Three, LLC.

FILED

2012 MAY -2 AM 11:16

JOEY HASTINGS

BY *[Signature]*

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

CASTAWAY TRASH HAULING, INC., a
Nevada corporation; and, FOUR THIRTY-
THREE, LLC, a Nevada limited liability
company,

Plaintiffs,

v.

CITY OF RENO, an incorporated city of the
State of Nevada; WASHOE COUNTY
DISTRICT BOARD OF HEALTH, a special
local government district and political
subdivision of the State of Nevada; RENO
DISPOSAL CO., a Nevada Corporation; and,
DOE DEFENDANTS I-X inclusive,

Defendants.

Case No.: CV12 01207

Dept. No.: 3

COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiffs, CASTAWAY TRASH HAULING, INC. ("CASTAWAY"), and FOUR
THIRTY-THREE, LLC ("433 LLC"), acting by and through their legal counsel, Lionel Sawyer
& Collins, bring this complaint and action for a declaratory judgment and allege as follows:

1 PARTIES

2 1. CASTAWAY is a duly organized and existing Nevada corporation.

3 2. 433 LLC is a duly organized and existing Nevada limited liability company.

4 3. The CITY OF RENO (the "CITY"), is a duly incorporated and existing city and
5 municipal corporation pursuant to and with the powers prescribed by the provisions of Title 21
6 of the Nevada Revised Statutes (the "NRS"), situate within the county of Washoe, and state of
7 Nevada.

8 4. The WASHOE COUNTY DISTRICT BOARD OF HEALTH (the "HEALTH
9 BOARD"), is a special local government district and political subdivision of the State of Nevada
10 created and existing pursuant to and with the powers prescribed by NRS Chapter 439.

11 5. RENO DISPOSAL CO. ("RENO DISPOSAL"), is a duly organized and existing
12 Nevada corporation.

13 6. CASTAWAY and 433 LLC do not know the true names and capacities of
14 defendants herein named as DOES I-X, inclusive, who may have or claim any interest which
15 would be affected by the declarations sought by this complaint and action, and hereby request
16 leave of this Court to amend this complaint in accordance with Rules 10(a) and 15 of the Nevada
17 Rules of Civil Procedure to include herein the names, capacities and jurisdiction as to the same
18 with appropriate allegations at such time as ascertained.

19 JURISDICTION AND VENUE

20 7. This Court has subject matter jurisdiction of this action under NRS 30.030 and
21 NRS 30.040.

22 8. Venue is proper in the Second Judicial District Court of the State of Nevada in
23 and for the County of Washoe under NRS 13.040.

24 SUMMARY OF THE DISPUTE

25 9. CASTAWAY is in the business of providing the services of (a) collection,
26 hauling and disposal of trash; and, (b) recycling, including the collection and hauling of food
27 waste for recycling at permitted recycling facilities and composting facilities, each or both for
28 commercial and industrial accounts and facilities ("Castaway's Business"), within Washoe

County Nevada, including without limitation within the incorporated area of the CITY.

10. CASTAWAY holds all of the permits and licenses required to conduct Castaway's Business.

11. Since 2009, to present, CASTAWAY and its affiliate 433 LLC have been jointly planning the development and siting in Washoe County, Nevada, of a materials recovery facility capable of recycling solid waste containing comingled food waste and other recyclable materials (the "MRF Project Business").

12. RENO DISPOSAL is in the business of providing the service of collection, hauling and disposal of garbage within the incorporated area of the CITY.

13. Waste Management, Inc. is an affiliate of RENO DISPOSAL and has publicly announced its plan to develop and site in Washoe County, Nevada, or in Storey County, Nevada, or both, one or more materials recovery facilities capable of recycling solid waste containing comingled food waste and other recyclable materials.

14. The Reno Municipal Code (the "Code"), the First Amended City of Reno Garbage Franchise Agreement, dated August 9, 1994, entered into by and between the CITY and RENO DISPOSAL (the "Franchise Agreement"), and the Regulations of the Washoe County District Board of Health Governing Solid Waste Management (the "Waste Management Regulations"), each or collectively contain provisions establishing (a) the rights and obligations of CASTAWAY and RENO DISPOSAL; and (b) the jurisdiction, authority and powers of the CITY and the HEALTH BOARD relative to CASTAWAY and RENO DISPOSAL.

15. Despite the plain language and intent of the Code, the Franchise Agreement and the Waste Management Regulations, RENO DISPOSAL has claimed in published statements during public meetings and hearings of the CITY and the HEALTH BOARD that CASTAWAY may not provide certain types of services within the CITY and that the HEALTH BOARD's adoption or particular interpretations of certain provisions of the Waste Management Regulations are in conflict with the Code and Franchise Agreement.

16. Despite the plain language and intent of the Code, the Franchise Agreement and the Waste Management Regulations, members of the Reno City Council (the "City Council"),

1 and the HEALTH BOARD have published statements during public meetings and hearings
2 interpreting some or all of the Code, the Franchise Agreement and the Waste Management
3 Regulations, or the interrelation of such Code, the Franchise Agreement and the Waste
4 Management Regulations, inconsistent with the plain language and intent of the Code, the
5 Franchise Agreement and the Waste Management Regulations, and in conflict with statements
6 and interpretations of officers and employees of the Washoe County Health District (the
7 "Department") and its legal counsel the District Attorney of Washoe County (the "District
8 Attorney"), thereby creating present and serious questions with respect to the applicability as to
9 Castaway's Business and the MRF Project Business of various provisions contained in the Code,
10 the Franchise Agreement and the Waste Management Regulations.

11 17. Such present and serious questions of law have caused and will continue to cause
12 harm to CASTAWAY and 433 LLC whose rights, status or other legal relations relative to and
13 Castaway's Business and the MRF Project Business are affected by the Code, the Franchise
14 Agreement and the Waste Management Regulations as interpreted and applied by the CITY or
15 the HEALTH BOARD, or both and as claimed by RENO DISPOSAL.

16 FACTS GIVING RISE TO DISPUTE

17 City of Reno Municipal Code & Garbage Franchise

18 18. NRS 268.081(3) provides that "[t]he governing body of an incorporated city may,
19 to provide adequate, economical and efficient services to the inhabitants of the city and to
20 promote the general welfare of those inhabitants, displace or limit competition in . . . the
21 [c]ollection and disposal of garbage and other waste."

22 19. Pursuant to its authority under NRS 268.081(3), the City Council enacted for the
23 CITY Article II (Garbage Service) of Chapter 5.90 (Franchises) of the Code. Section 5.90.020
24 of the Code provides that "[t]his article establishes an exclusive right to collect, haul and dispose
25 of *garbage* only, and does not include rubbish and waste matter" and that "the franchisee, its
26 successors or assigns, shall have the exclusive privilege of collecting, hauling and disposing of
27 *garbage* subject to the *limitations now or hereafter provided by law.*" [emphasis added].

28 20. Section 5.90.060(10) of the Code also provides that the franchisee shall be

1 required to:

2 Agree to operate the garbage collection and disposal service in accordance
3 with and in conformity to all ordinances, rules and regulations heretofore
4 or hereafter adopted by the city council in the exercise of its police powers
5 and in accordance with the provisions and general laws of the United
6 States or the state relating to or applicable to the whole or any part of such
7 garbage collection and disposal operation and *be subject to and obey all
rules and regulations adopted by the District Board of Health and all
orders, rules and regulations of the District Health Officer.* [emphasis
added].

8 21. Pursuant to its authority under NRS 268.081(3) and the Chapter 5.90 of the Code,
9 the CITY and RENO DISPOSAL entered into the Franchise Agreement.

10 22. In section 2.1 of the Franchise Agreement, the CITY granted RENO DISPOSAL
11 "the exclusive right, privilege, obligation and franchise for the collection, hauling and disposal of
12 *garbage* within the incorporated area of the City of Reno." [emphasis added].

13 23. Section 8.1 of the Franchise Agreement also provides that:

14 Reno Disposal shall operate its garbage collection and disposal service in
15 accordance with and in conformity to all ordinances, rules and regulations
16 heretofore or hereafter adopted by the Reno City Council in the exercise of
17 its police powers and in accordance with the provisions and general laws
18 of the United States or the State of Nevada relating to or applicable to the
19 whole or any part of such garbage collection and disposal operation. Reno
20 Disposal shall also be subject to and shall obey *all rules and regulations
adopted by the District Board of Health Department and all orders, rules
and regulations of the District Health Officer.*" [emphasis added].

21 24. Pursuant to the terms of the Franchise Agreement, RENO DISPOSAL has the
22 right and obligation to provide collection, hauling and disposal of garbage within the
23 incorporated area of the City of Reno.

24 25. Section 5.90.010 of the Code also contains the following definition:

25 Garbage means putrescible animal and vegetable waste resulting from the
26 handling, storage, preparation, cooking, and sale and serving of food and
27 beverage. This includes, but is not limited to:

28 (a) Offal, swill, kitchen and table waste, and other organic animal and
vegetable waste;

(b) 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;

- 1 (c) Any component used in the preparation or manufacture of matter
2 intended for animal or human consumption and;
3 (d) Such matter and/or materials listed in (a) through (c) above that have
4 been discarded without first being sanitized.

5 The mixing, addition, or commingling of garbage with rubbish, trash, or
6 other waste matter exclusive of group I wastes (as determined by
7 regulations of the District Board of Health governing solid waste
8 management), renders the entire resulting mixture as garbage and requires
9 the mixture to be handled as garbage.

10 *The District Board of Health may authorize a different treatment of the*
11 *solid waste stream for materials removed from the solid waste stream as*
12 *"recyclable material" as defined by Chapter 444A of the Nevada Revised*
13 *Statutes, and handled in accordance with regulations issued by the State*
14 *Environmental Commission and the District Board of Health. [emphasis*
15 *added].*

16 Nevada Revised Statutes and Nevada Administrative Code

17 26. NRS 444A.013 defines "recyclable material" as *"solid waste that can be*
18 *processed and returned to the economic mainstream in the form of raw materials or products,*
19 *as determined by the State Environmental Commission."* [emphasis added].

20 27. NAC 444A.100 provides that the State Environmental Commission will interpret
21 the term "recyclable material" to include, without limitation, numerous items that can be
22 processed and returned to the economic mainstream in the form of raw materials or products.

23 28. NRS 444.500 defines the term "solid waste management system" to mean "the
24 entire process of storage, collection, transportation, processing, recycling and disposal of solid
25 waste. The term includes plans and programs for the reduction of waste and public education."

26 29. NRS 444.580 states that "[a]ny district board of health created pursuant to NRS
27 439.370 . . . may adopt standards and regulations for the . . . solid waste management systems or
28 any part thereof more restrictive than those adopted by the State Environmental Commission,
and any district board of health may issue permits thereunder."

Washoe County Health District

30. Pursuant to NRS 439.370 and consistent with an interlocal agreement entered in

1 1972, the CITY, the City of Sparks and Washoe County created the Department, which is duly
2 formed and exercises the powers prescribed in NRS 439.369 to NRS 439.410.

3 31. In accordance with NRS 439.380, upon creation of the Department, the authority
4 and jurisdiction of the CITY, the City of Sparks and Washoe County on the administration of
5 public health was abolished, and thereupon transferred and vested in the HEALTH BOARD and
6 Department.

7 32. Under NRS 439.369 to NRS 439.410, the Department is governed by the
8 HEALTH BOARD. As relevant to subject matters and transactions in this action, NRS 439.410
9 provides that the HEALTH BOARD "has jurisdiction over all public health matters in the
10 [Department]" and may "adopt regulations consistent with law" to, among others things,
11 "[r]egulate sanitation and sanitary practices in the interests of the public health" and "[p]rotect
12 and promote the public health generally in the geographical area subject to the jurisdiction of the
13 [H]ealth [D]istrict."

14 33. Pursuant to its authority to adopt regulations, the HEALTH BOARD adopted the
15 Waste Management Regulations.

16 34. In June, 2010, and October 2011, the HEALTH BOARD approved various
17 amendments to the Waste Management Regulations relating to or affecting recycling within the
18 Department.

19 35. Among other things, in June, 2010, the HEALTH BOARD approved a new
20 definition for "recyclable material" as set forth in Section 010.584 of the Waste Management
21 Regulations and which provides "solid waste that can be processed and returned to the economic
22 mainstream in the form of raw materials or products including use as a feedstock in the
23 generation of energy. "Recyclable material" includes, but is not limited to . . . *Food waste* . . .
24 [emphasis added].

25 36. The June 2010 amendments adopted by the HEALTH BOARD also included a
26 permitting scheme for materials recovery facilities, recycling facilities and composting facilities
27 similar to the Waste Management Regulations' then existing scheme relating to the permitting of
28 transfer stations within the Department.

1 37. Pursuant to the June 2010 amendments to the Waste Management Regulations,
2 upon permitting by the HEALTH BOARD and Department and commencement of operations of
3 a licensed materials recovery facility authorized to recycle solid waste containing commingled
4 food waste and other recyclable materials (a "Licensed MRF"), CASTAWAY may consistent
5 with its licenses and permits thereafter and in furtherance of the MRF Project Business collect,
6 haul and deliver to such a Licensed MRF for recycling mixed loads of solid waste containing
7 food waste and other recyclable materials.

8 38. In October, 2011, the HEALTH BOARD approved a new definition for the term
9 "garbage" as set forth in Section 010.300 of the Waste Management Regulations and which
10 provides "garbage" is "putrescible animal and vegetable wastes resulting from the handling,
11 storage, sale, preparation, cooking and serving of food."

12 39. In October, 2011, the HEALTH BOARD approved Section 050.017 and Section
13 050.018 to the Waste Management Regulations relating to waste collection and transport and
14 recycling. Section 050.017 provides:

15 The mixing, addition or commingling of garbage with rubbish,
16 construction and demolition waste, refuse or other solid waste matter,
17 exclusive of biohazardous or hazardous wastes, renders the entire resulting
18 mixture as garbage and must be handled as garbage, *except as provided in*
19 *Section 050.018 of these regulations.* [emphasis added].

20 40. Section 050.018 to the Waste Management Regulations as adopted by the
21 HEALTH BOARD in October, 2011 states:

22 Solid waste, excluding garbage except in a de minimus amount, that is
23 collected and transported by a permitted waste hauler to an approved and
24 permitted recycling facility, materials recovery facility or composting
25 facility for processing is allowable, provided the processing activity is
26 conducted in a facility permitted pursuant to Sections 055 or 062 of these
27 regulations and in compliance with the provisions of such permit. Any
28 garbage or solid waste resulting from the recycling or recovery process
must be handled in accordance with the provisions of these regulations.

Public Claims By RENO DISPOSAL

41. At the October 26, 2011, meeting of the City Council, representatives of RENO
DISPOSAL publicly claimed that the proposed adoption by the HEALTH BOARD of Section

1 050.017 and Section 050.018 to the Waste Management Regulations then scheduled for the
2 following day would be in conflict with the Code and Franchise Agreement and RENO
3 DISPOSAL advocated that the CITY should oppose adoption of these amendments to Section
4 050.017 and Section 050.018 to the Waste Management Regulations as violative of the Code and
5 Franchise Agreement and as interfering with RENO DISPOSAL's rights under the Franchise
6 Agreement. Accompanying this Complaint and incorporated herein as Exhibit 1 is a true and
7 correct copy of the transcript of the October 26, 2011, meeting of City Council which records the
8 claims of RENO DISPOSAL.

9 42. At the October 27, 2011, meeting of HEALTH BOARD, at which the HEALTH
10 BOARD adopted Section 050.017 and Section 050.018 to the Waste Management Regulations,
11 representatives of RENO DISPOSAL publicly claimed that unless amended in a particular
12 manner Section 050.017 and Section 050.018 to the Waste Management Regulations were in
13 conflict with the Code and Franchise Agreement and RENO DISPOSAL advocated that the
14 HEALTH BOARD may only adopt these amendments to the extent not violative of the Code and
15 Franchise Agreement or interfering with RENO DISPOSAL's rights under the Franchise
16 Agreement. Accompanying this Complaint and incorporated herein as Exhibit 2 is a true and
17 correct copy of the transcript of the October 27, 2011, meeting of HEALTH BOARD which
18 records the claims of RENO DISPOSAL.

19 **Public Statements Of Members of City Council and the Health Board**

20 43. At the City Council meeting conducted on October 26, 2011, members of the City
21 Council made public statements interpreting some or all of the Code, the Franchise Agreement,
22 Waste Management Regulations, the NRS and the Nevada Administrative Code or the
23 interrelation of such Code, the Franchise Agreement, Waste Management Regulations, statutes
24 and administrative regulations, in a manner inconsistent with the plain language and intent of
25 same, thereby calling into question the rights, status or other legal relations as to Castaway's
26 Business and the MRF Project Business under the Code, the Franchise Agreement and the Waste
27 Management Regulations. Accompanying this Complaint and incorporated herein as Exhibit 1
28 is a true and correct copy of the transcript of the October 26, 2011, meeting of City Council

1 which records the public statements of the members of the City Council.

2 44. At the HEALTH BOARD Meeting conducted on October 27, 2011, the HEALTH
3 BOARD adopted Section 050.017 and Section 050.018 to the Waste Management Regulations.

4 45. During the October 27, 2011, hearing on adoption of these regulations, members
5 of the HEALTH BOARD made public statements interpreting some or all of the Code, the
6 Franchise Agreement, Waste Management Regulations, the NRS and the Nevada Administrative
7 Code or the interrelation of such Code, the Franchise Agreement, Waste Management
8 Regulations, statutes and administrative regulations, in a manner inconsistent with the plain
9 language and intent of same, and in further conflict with statements and interpretations of
10 officers and employees of the Department and the District Attorney, thereby calling into question
11 the rights, status or other legal relations as to Castaway's Business and the MRF Project Business
12 under the Code, the Franchise Agreement and the Waste Management Regulations.
13 Accompanying this Complaint and incorporated herein as Exhibit 2 is a true and correct copy of
14 the transcript of the October 27, 2011, meeting of HEALTH BOARD which records the public
15 statements of the members of the HEATH BOARD.

16 **Reno Disposal's Rights Under the Franchise Agreement**

17 46. Pursuant to the terms of the Franchise Agreement, RENO DISPOSAL has the
18 right and obligation to collect, haul and dispose of garbage within the incorporated area of the
19 CITY.

20 47. The June, 2010, and October, 2011, amendments to the Waste Management
21 Regulations affect RENO DISPOSAL's rights and obligations to collect, haul and dispose of
22 garbage within the incorporated area of the CITY, as such amendments (a) change the character
23 of certain solid waste, including solid food waste that is recycled which prior to the adoption of
24 the June 2010 amendments was previously exclusively classified as "garbage"; and (b) contrary
25 to its claims, the rights of RENO DISPOSAL respecting "garbage" under the Code and the
26 Franchise Agreement, are at all times and in all manners expressly subject to the right of the
27 HEALTH BOARD to provide by regulation or order for different treatment of the solid waste
28 stream for materials removed from the solid waste stream as recyclable material.

1

2

3

4

5

1

1 Business and the plans of CASTAWAY and 433 LLC to proceed with intended investments in
2 pursuit of the MRF Project Business.

3 53. An actual controversy exists between CASTAWAY and 433 LLC on the one
4 hand, and RENO DISPOSAL, the CITY and the HEALTH BOARD on the other, within the
5 jurisdiction of this Court and involving the rights, status or other legal relations of CASTAWAY,
6 433 LLC, RENO DISPOSAL, the CITY and the HEALTH BOARD under and pursuant to the
7 Code, the Franchise Agreement and the Waste Management Regulations.

8 54. CASTAWAY and 433 LLC are entitled to a speeding hearing of this declaratory
9 judgment action, and accordingly hereby requests a preferential trial setting.

10 **DECLARATIONS SOUGHT AND REQUEST FOR RELIEF**

11 For the reasons set forth above, CASTAWAY and 433 LLC respectfully request that the
12 Court enter a judgment:

13 1. Declaring that CASTAWAY is entitled to recycle commercial food waste
14 pursuant to the Waste Management Regulations and the Code, and that such activity does not
15 violate the terms of the Franchise Agreement; and

16 2. Declaring CASTAWAY is entitled to collect, haul and recycle mixed loads of
17 recyclable materials from commercial customers, including food waste, pursuant to the Waste
18 Management Regulations and the Code, subject only to the condition that a facility permitted
19 pursuant to the Waste Management Regulations exists and is allowed by the HEALTH BOARD
20 and the Department to accept and process such mixed loads of recyclable materials, and that such
21 activity will not violate the terms of the Franchise Agreement; and,

22 3. Declaring that the claimed rights of RENO DISPOSAL respecting "garbage"
23 under the Code and the Franchise Agreement, are at all times and in all manners expressly
24 subject to the right of the HEALTH BOARD to provide by Section 050.017 and Section 050.018
25 to the Waste Management Regulations for different treatment of the solid waste stream for
26 materials removed from the solid waste stream as recyclable material, including CASTAWAY'S
27 right to conduct Castaway's Business of recycling commercial food waste and the plans of
28 CASTAWAY to collect, haul and recycle mixed loads of recyclable materials from commercial

1 customers, including food waste, pursuant to the MRF Project Business.

2 4. Providing for any and all other relief to which the Court determines CASTAWAY
3 is entitled, including without limitation, any and all appropriate injunctive relief.

4 AFFIRMATION

5 I affirm that the foregoing document does not contain the Social Security Number of any
6 individual.

7 Dated and respectfully submitted this 2nd day of May, 2012.

8 LIONEL SAWYER & COLLINS

9
10 By: Dan R. Reaser
11 Dan R. Reaser, Esq.
12 Nevada Bar No. 1170
13 Leslie Bryan Hart
14 Nevada Bar No. 4932
15 Brian H. Schusterman, Esq.
16 Nevada Bar No. 10983
17 1100 Bank of America Plaza
18 50 West Liberty Street
19 Reno, Nevada 89501

20 Attorneys for Castaway Trash Hauling, Inc.
21 and Four Thirty-Three, LLC.
22
23
24
25
26
27
28

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “2”

EXHIBIT “2”

FILED

Electronically

08-01-2012:04:10:03 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3123127

1 CODE: 2585
2 Dan R. Reaser, Esq.
3 Nevada State Bar No. 1170
4 Leslie Bryan Hart
5 Nevada Bar No. 4932
6 Brian H. Schusterman, Esq.
7 Nevada Bar No. 10983
8 LIONEL SAWYER & COLLINS
9 50 W. Liberty St., Suite 1100
10 Reno, NV 89501
11 (775) 788-8666

12 Attorneys for Castaway Trash Hauling, Inc.
13 and Four Thirty-Three, LLC.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

CASTAWAY TRASH HAULING, INC., a
Nevada corporation; and, FOUR THIRTY-
THREE, LLC, a Nevada limited liability
company,

Plaintiffs,

v.

CITY OF RENO, an incorporated city of the
State of Nevada; WASHOE COUNTY
DISTRICT BOARD OF HEALTH, a special
local government district and political
subdivision of the State of Nevada; RENO
DISPOSAL CO., a Nevada Corporation; and,
DOE DEFENDANTS I-X inclusive,

Defendants.

Case No.: CV12 01207

Dept. No.: 3

NOTICE OF VOLUNTARY DISMISSAL, WITHOUT PREJUDICE

Pursuant to N.R.C.P. Rule 41(a)(1), notice is hereby given that Plaintiffs, CASTAWAY TRASH HAULING, INC., and FOUR THIRTY-THREE, LLC (collectively "Plaintiffs"), by and through their counsel of record, hereby dismiss without prejudice all claims against Defendants

1 CITY OF RENO, WASHOE COUNTY DISTRICT BOARD OF HEALTH, and RENO
2 DISPOSAL CO. (collectively, "Defendants"). Defendants have not served an answer or motion
3 for summary judgment, and therefore the claims against them may be dismissed by this notice.

4 **AFFIRMATION**

5 I affirm that the foregoing document does not contain the Social Security Number of any
6 individual.

7 Dated and respectfully submitted this 1st day of August, 2012.

8 LIONEL SAWYER & COLLINS

9
10 By: 

11 Dan R. Reaser, Esq.
12 Nevada Bar No. 1170
13 Leslie Bryan Hart
14 Nevada Bar No. 4932
15 Brian H. Schusterman, Esq.
16 Nevada Bar No. 10983
17 1100 Bank of America Plaza
18 50 West Liberty Street
19 Reno, Nevada 89501

20 Attorneys for Castaway Trash Hauling, Inc.
21 and Four Thirty-Three, LLC.
22
23
24
25
26
27
28

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “3”

EXHIBIT “3”

11-07-12
G-8.6

**EXCLUSIVE SERVICE AREA FRANCHISE AGREEMENT
COMMERCIAL SOLID WASTE AND
RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 7th day of November, 2012 ("Effective Date"), between the City of Reno, a political subdivision of the State of Nevada, (hereinafter called "City"), and Reno Disposal Company, Inc., a Nevada corporation (hereinafter called "Contractor"), with reference to the following facts.

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; and

WHEREAS, Chapter 5.90 of the Reno Municipal Code authorizes the City Council to award an exclusive franchise for collection, hauling and disposal of all Solid Waste and Recyclable Material, as defined herein, within the City; and

WHEREAS, the City of Reno City Council has determined that the public health, safety and welfare of its residents require that certain commercial Solid Waste and Recyclable Material Collection Services (as defined herein) be provided under one or more Commercial Franchise Agreements (as defined herein) by current service providers meeting the Contractor Qualifications (as defined in this Agreement), which Commercial Franchise Agreements provide the exclusive right and obligation to Contractor and other service providers to provide Collection Services in Exclusive Service Areas (as defined herein) in the City.

WHEREAS, Contractor has represented and warranted to City that it has the experience and qualifications to provide the Collection Services;

WHEREAS, City declares its intention of maintaining reasonable rates for reliable, proven collection and transportation of Solid Waste and Recyclable Material in an environmentally sound manner, within the City;

WHEREAS, City and Contractor have agreed to enter into this Agreement to set forth the terms, covenants and conditions relating to the provision of the Collection Services by Contractor.

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 hereby agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings. To the extent of any inconsistency between the definitions of the following terms provided in this Article and the use or definition of those terms that may appear in related City, County, State or Federal laws, ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor.

"Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

"Agreement" means this Agreement between the City and Contractor, including all exhibits and future amendments.

"Applicable Law" means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the collection and disposition of Solid Waste or Recyclable Materials, including those that are in force and effective as of the Effective Date, as well as such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the Effective Date and during the Term of this Agreement.

"Approved Recyclable Materials" means the Recyclable Materials approved for recycling under this Agreement, which are listed on Exhibit A attached hereto and which may be changed from time to time by agreement of Contractor and City, excluding Excluded Recyclable Materials.

"Bin" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, having a capacity less than seven (7) cubic yards and that generally has a tight-fitting, attached lid, and is designed to be dumped mechanically into a front-loading or rear-loading Collection vehicle.

"Bulky Items" means all discarded waste matter that is too large to be placed in a Cart, including appliances not containing chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require special handling due generally to their size, excluding Excluded Materials.

"Cart" means an industry standard, wheeled Container of approximate thirty-five(35), sixty-four (64), and ninety-six (96) gallon capacity provided by Contractor to Customers for Collection of Solid Waste or Recyclables.

"Cart Service" means provision of Collection Services using Carts.

"City Collection Services" means the Collection Services provided by Contractor to City as provided in Section 3.7.

"City Council" means the governing legislative body of the City of Reno.

"Change in Law" means the following events or conditions:

i) Enactment, adoption, promulgation, issuance, modification, or written change or initial public announcement or enforcement in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or

ii) Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Contractor; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

"Change in Scope" is a material change in the type, extent, or level of Collection Services or the Exclusive Service Area.

"Collection" (and "Collect," "Collected" and "Collecting") means the pickup and removal by Contractor from Commercial Customers in the Exclusive Service Area of Solid Waste and Approved Recyclable Materials and transportation and delivery of such material to an appropriate Designated Facility for such materials.

"Collection Materials" means all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Collection Services" means the Collection of Collection Materials from Commercial Customers in Contractor's Exclusive Service Area to be provided by Contractor hereunder and more fully described in the Scope of Services, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Commercial Activity" means all activity of a business, commercial, industrial, financial, institutional, governmental or similar nature, including without limitation Multi-Family Complexes. Commercial Activity hereunder is intended to be defined and interpreted broadly to include all activities other than residential activities and uses (other than Multi-Family Complexes).

"Commercial Customers" means all non-residential Customers including businesses, institutions, governmental agencies conducting Commercial Activity in Contractor's Exclusive Service Area, including Multi-Family Complexes.

"Commercial Franchise Agreements" means this Agreement and the other similar agreement between the City and the other franchised service provider for the collection and transportation of Solid Waste and Recyclable Materials from Commercial Customers in exclusive service areas in the City.

"Community Collection Location(s)" means an area in which the Contractor has placed a Compactor or Container in a central location to service multiple businesses at the specific request of the City or certain Commercial Customers, and agreed to by Contractor.

"Compactor," "Compactors," "Compactor Service" means any Bin or other Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method.

"Construction and Demolition Debris" means debris resulting from construction, remodeling, repair, renovation, demolition, excavation, dredging, grubbing and related cleanup of residential, commercial or governmental buildings or other structures and pavement, including without limitation construction materials, rubble, bricks, concrete, other masonry materials, soil, rock, lumber, rebar, paving materials and vegetation, including tree stumps. Materials resulting from landscape maintenance are not Construction and Demolition Debris.

"Consumer Price Index" or "CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average-Item: Garbage and Trash Collection (1982=100) as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index.

"Containers" means Carts, Bins, and Drop Boxes or other containers provided by Contractor and Identified on the Scope of Services for use to provide Collection Services.

"Contractor" means the Party identified as Contractor on page 1 of this Agreement.

"City" means the legal entity known as the City of Reno, Nevada, a political subdivision of the State of Nevada.

"City Representative" means the City Manager, or his/her designee, who may be a City official, employee or an agent of City specifically designated to serve as the City Representative and authorized to act on behalf of the City hereunder.

"Customer" means the persons or entities receiving Collection Services.

"Designated Facility" means the transfer station, disposal facility, material recovery facility, eco-center recycling facility or any similar facility designated by the City in accordance with that certain long-term Solid Waste Transfer and Disposal Agreement entered into by the City, pursuant to which the City has provided for the environmentally safe and sound handling, processing, transfer, transport, recycling and Disposal of all Solid Waste and Approved Recyclable Materials generated within the City, and where Contractor shall be required to deliver all Collection Materials.

"Disposal Agreement" is the agreement defined in Section 4.4 of this Agreement, and all amendments, extensions, renewals and replacements thereof.

"Disposal," "Disposing," "Dispose," or "Disposed" means the final landfill disposal of Solid Waste Collected by Contractor, but does not include other beneficial uses such as alternative daily cover.

"Diverted" means the tonnage or percentage of Collected Collection Materials that are not Disposed.

"Drop Box" means an Industry standard receptacle for Solid Waste or other materials provided by the Contractor, generally having a capacity equal to or greater than ten (10) cubic yards.

"Effective Date" means the date on which this Agreement is fully executed by the Parties, as reflected on page 1 of this Agreement.

"Excluded Materials" means: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii) materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and codes and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and Items Contractor determines to be excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States revenue Code Section 501(c) 3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

"Excluded Recyclable Materials" means either or both i) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Material at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service, and ii) any other Recyclable Materials that are not Approved Recyclable Materials.

"Exclusive Service Area" means the geographic territory within the City in which the Contractor shall have the exclusive right and obligation to conduct Collection Services, as described on Exhibit B attached hereto, as such geographic territory may change from time to time as provided under this Agreement. When used in the plural in this Agreement, the term ("Exclusive Service Areas") refers to all such territory within the City considered collectively, within which exclusive Collection Services are to be provided, either by Contractor pursuant to this Agreement, or by another service provider pursuant to another Commercial Franchise Agreement. All the Exclusive Service Areas in the City are described on Exhibit B attached hereto. The Exclusive Service Areas shall be subject to the boundary adjustment process described in Section 3.12 hereof. In addition, if after the Effective Date land is annexed or otherwise added to the City of which is not then in one of the Exclusive Service Areas ("Annexed Land"),

the Annexed Land shall be added to one or more Exclusive Services Areas as follows. If the Annexed Land is contiguous to the Exclusive Service Area of only one service provider under a Commercial Franchise Agreement, then the Annexed Land shall be added to that service providers Exclusive Service area. If the Annexed Land is contiguous to the Exclusive Service Area of more than one service provider, or if the Annexed Area is not contiguous to the City, the Annexed Area shall be divided and added to the respective Exclusive Service Areas in proportion to the respective Proportionate Share of each service provider and City, Contractor and such other service providers will negotiate in good faith to agree on the allocation of the Annexed Area; provided that if such parties cannot agree within 60 days on the allocation of the Annexed Area, the determination of the City in accordance with this Section shall be final.

"Exempted Drop Box" means an industry standard, open top metal roll-off container (also sometimes referred to as a "luggie" or "dino"), equipped for being mechanically rolled onto a vehicle, for collection and transportation of Solid Waste or Recyclable Materials:

- (i) With a capacity of not less than ten (10) cubic yards;
- (ii) Which is delivered to and left at a Customer's site for deposit therein of Exempted Drop Box Materials, then picked up and transported to a materials processing or disposal facility for emptying; and,
- (iii) Excluding a) Compactors, b) Bins, c) containers or receptacles emptied or serviced by front loader vehicles, d) any vehicle into which the materials are deposited at the time of collection at the collection site and e) any other container, receptacle or vehicle not described in subsections (i) and (ii) in this definition above.

"Exempted Drop Box Materials" means Solid Waste and Approved Recyclable Material collected and transported in an Exempted Drop Box using Exempted Drop Box Services, but excludes;

- (i) Garbage; and,
- (ii) Compacted Solid Waste and compacted Approved Recyclable Materials.

"Exempted Drop Box Services" means the collection and transportation by an Exempted Hauler of Exempted Drop Box Materials, using an Exempted Drop Box, performed as Temporary Service and excluding any collection or transportation that would replace, limit or reduce Permanent Service Collection by Contractor. The provision of Exempted Drop Box Services shall not limit or amend the obligation of Operators or other Commercial Customers to subscribe to Collection Services under Section 3.5 of this Agreement. Examples of Exempted Drop Box Services include (each of which are hereby excluded from the exclusive franchise of Contractor under this Agreement and which may be collected and hauled by Exempted Haulers using Exempted Drop Box Services), in each case by Exempted Haulers using an Exempted Drop Box, i) the collection and transportation of landscaping and related materials generated by landscaping, gardening, pruning, tree trimming and other landscape maintenance service providers ii) the collection and transportation of Exempted Drop Box Materials

generated at special events (but excluding materials which are the subject of Permanent Services at the event location), iii) the collection and transportation of Exempted Drop Box Materials under single occurrence service contracts or arrangements for collection and transportation of Exempted Drop Box Materials and iv) collection and transportation of Exempted Drop Box Materials generated in connection with occasional, irregularly scheduled cleanup and disposal by customers.

"Exempted Facility" means of Nevada Recycling & Salvage, a Nevada limited liability company, and its premises located at 1085 Telegraph Street, Reno, Nevada, or replacement premises thereof ("NRS").

"Exempted Facility Materials" means Collection Materials delivered to and accepted, processed, and recycled or disposed by the Exempted Facility i) in an amount equal to or less than the Exempted Facility Material Limit and ii) excluding Garbage.

"Exempted Facility Materials Limit" for NRS shall be a total annual volume of Exempted Facility Materials from Contractor and the service provider under the other Commercial Franchise Agreement not exceeding One Hundred Twenty Five Thousand 125,000 cubic yards, which limit amount shall be increased annually in proportion to the percentage increase in the GDP. The first annual increase shall occur on January 1, 2014 ("Limit Adjustment Date"). The Exempted Facility Materials Limit shall be increased in proportion to the percentage increase in the GDP over the most recent 12 month period ending on October 1 of the year preceding the Limit Adjustment Date (or the most recently published GDP for a 12 month period ending prior to October 1 of the preceding year). The calculation of the increase shall be provided by the Exempted Facility to the City no later than December 1 of the year preceding the Limit Adjustment Date. For purposes hereof, "GDP" shall mean the Gross Domestic Product for the Reno-Sparks Metropolitan Area, all industries, as published by the U.S. Department of Commerce. The term Exempted Facility Materials Limit as used herein shall mean the Exempted Facility Materials Limit as adjusted by increases in the GDP as determined in accordance with this definition.

"Exempted Haulers" means persons or entities: (i) licensed as of October 24, 2012 by the City and the Washoe County Health District to collect and transport Solid Waste and Recyclable Materials in the City of Reno; and, (ii) actively engaged, as its primary business, in the collection and transportation of Solid Waste and Recyclable Materials in the City of Reno as of October 24, 2012, including Contractor. All Exempted Haulers are listed on Schedule 1 attached hereto.

"Exempted Hauler Account" means a contract or account i) established on or before October 24, 2012 and continuing as of October 24, 2012; ii) under or pursuant to which contract or account an Exempted Hauler has provided collection and transportation of Solid Waste and/or Recyclable Materials from Commercial Activity on a regularly scheduled, recurring basis; iii) to a customer identified on Schedule 1; and iv) approved by the City. All approved Exempted Hauler Accounts of each Exempted Hauler, including the name and address of each customer to which service is provided for each Exempted Hauler Account, is identified on Schedule 1 attached hereto.

"Exempted Hauler Account Material" means Solid Waste and Recyclable Material collected from an identified customer under an Exempted Account and transported by such Exempted Hauler using Exempted Hauler Account Services, but excluding Garbage.

"Exempted Hauler Account Services" means the collection and transportation by an Exempted Hauler of Exempted Hauler Account Materials from an Exempted Hauler Account.

"Extension Term" means one or more extensions of the Term of this Agreement, as provided under Section 3.1(B).

"Food Waste" means all compostable pre-consumer and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and egg shells, and food-soiled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, paper milk cartons or other paper products accepted by the Contractor's selected composting facility or other processing facility and that has been Source Separated and placed in a Container for Recycling. Food Waste shall not include dead animals weighing over 15 pounds, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting or other processing facility. The materials accepted by composting site selected by Contractor may change from time to time and the definition of Food Waste shall change accordingly.

"Franchise Fee" means a uniform fee payable to the City and equal to a percentage of the Gross Receipts collected by Contractor, as established and adjusted by the Reno City Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement.

"Franchise Hauler Terms" means as provided in the Disposal Agreement.

"Garbage" means putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking and sale and serving of food and beverage, excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of Garbage with rubbish, trash or other waste matter, exclusive of items i) through viii) inclusive under the definition of Excluded Materials, renders the entire resulting mixture as Garbage.

"Green Waste" means Source Separated biodegradable materials including branches (less than three (3) inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants, leaves, pruning's, shrubs, weeds, wood (uncoated and untreated), wood chips, yard trimmings, Christmas trees (placed in Carts/Bins, with no stands, flocking, and/or decorations, and cut into two (2)-foot sections) that has been placed in a Container for Recycling, excluding Excluded Materials.

"Gross Receipts" means the Rate Revenues actually received, including all money, cash, receipts, property or other thing of value collected by Contractor from Customers for the Collection Services described on the Scope of Services, but excluding any revenues, receipts or proceeds from other sources. Gross Receipts does not include proceeds from Special Services or from the sale of Recyclable Materials.

"Hazardous Waste" means hazardous waste as defined in Nevada Revised Statutes 459.430, hazardous substance as defined in Nevada Revised Statute 459.429 and other hazardous or toxic materials as defined under any other local, state or federal law.

"Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

"Multi-Family Complex" means a multiple-unit Residence with five (5) or more units, some of which are attached, which are billed collectively for Collection Services hereunder.

"Operating Standards" means the additional terms and conditions attached to this Agreement as Exhibit C which are made a part hereof and incorporated herein by reference and which shall be applicable to all service providers under all Commercial Franchise Agreements.

"Operative Date" means the date from and after which Contractor shall be responsible to provide Collection Services to Customers in accordance with the terms of this Agreement, which shall be no later than twelve (12) months after the Effective Date. The Operative Date shall be provided in writing by Contractor to City not less than 30 days prior to the estimated Operative Date.

"Party" or "Parties" means City or Contractor individually, or City and Contractor, respectively.

"Permanent Services" means Collection Services that generally or usually occur on a regularly scheduled, recurring basis.

"Permitted Transferee" means i) an Affiliate of Contractor and ii) a service provider under another Commercial Service Agreement.

"Paper Shredder Materials" means paper and similar paper products and the products and residue resulting from shredding thereof collected and shredded by properly licensed service providers providing paper shredding services.

"Proportionate Share" of Contractor is Eighty and 50/100 percent (80.50%).

"Qualifications" means the Assignee Qualifications, as defined in Section 11.7 of this Agreement.

"Qualified Service Contract" means as provided in Section 3.13 of this Agreement.

"Rate Revenues" means the revenues from the Rates billed to and collected from Customers by Contractor for provision of Collection Services.

"Rates" or "Rate" means the amount each and all Customers shall be charged by Contractor for Collection Services under this Agreement as provided on the Scope of Services and the Transition Rates applicable during the Transition Period, which Rates or Rate may be adjusted from time to time during the Term as provided under this Agreement.

"Recyclable Materials" or "Recyclables" means materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or

implemented after the Effective Date, including Source Separated Green Waste and Source Separated Food Waste.

"Recycle", "Recycled", "Recycling" means the process of Collection, sorting, cleansing, treating and reconstituting of Recyclable Materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

"Recycling Container(s)" means Containers shown on the Scope of Services, provided and designated by Contractor for use for Recycling of Recyclable Materials, and identified for Recycling use by labels or signs on the Recycling Container specifying Recycling use, by using Recycling Containers or portions thereof of a different color than Containers used for Collection of Solid Waste, or by other means.

"Recycling Facility" means a fully permitted, Designated Facility at which Recycling occurs of Recyclable Materials.

"Residue" or "Residuals" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as contaminated paper, putrescible waste, and other debris.

"Return on Revenue" means as provided in Section 6.2 hereof.

"Scope of Services" means the Scope of Services attached hereto as Exhibit D, which specifies each category or type of Collection Services, the Rates applicable to the Collection Services, certain other charges and fees which may be charged by Contractor, and certain other terms.

"Self-Haul" or "Self-Hauler" means that any generator of Recyclable Materials from Commercial Activity may itself (for a commercial generator, this means performance of all collection and transportation services by an individual listed on its payroll as an employee), but not by or through an agent, contractor or other third party, collect, transport and deliver those Recyclable Materials generated within the City by that generator only; provided, however, all Self-Haul owners and occupants shall be required to subscribe to Collection Services as provided under this Agreement, unless exempted under Section 3.5 of this Agreement.

"Single-Stream Recycling" means the use of a single Container to collect Source Separated Recyclables on a co-mingled basis.

"Snapshot Program" means a photo documentation program used by Contractor to notify Commercial Customers who are producing Collection Materials in excess of their current service level, which subjects the Customer to additional fees and charges for the collection of the excess material.

"Solid Waste" means all putrescible and nonputrescible waste matter in solid or semi-solid form, including but not limited to rubbish, Garbage, ashes, refuse, and Residue, but excluding Excluded Materials.

"Source Separated" means the separation of any material or category of materials from other materials by the generator at the point or place of generation.

"Source Separated Recyclables" means Approved Recyclable Materials that are separated by the generator thereof from all materials other than Approved Recyclable Materials and properly prepared and placed together in a Recycling Container for Collection.

"Special Services" means various collection and other services to which Contractor is not granted the exclusive right of Collection under this Agreement and of which Contractor is not required to provide Collection under this Agreement, but which services Contractor at its option may offer to its Customers and to others anywhere in the City at rates and charges determined by Contractor.

"Special Waste" includes any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste. As defined for purposes of this Agreement, "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires and vehicle batteries.

"Subsidy Fee" means a uniform fee equal to Contractor's Proportionate Share of the Balancing Payment, as defined under the Exclusive Franchise Agreement for Residential Solid Waste and Recyclable Materials between Contractor and City of approximately even date with this Agreement, as the Balancing Payment may be adjusted from time to time.

"Temporary Service" means Exempted Drop Box Service that is: (i) temporary and not recurring; (ii) provided for a period of 60 days or less; and, (iii) excludes Permanent Services.

"Term" means the period provided in Section 3.1(A), as extended by any Extension Terms under Section 3.1(B).

"Transition Period" means the period commencing on the Effective Date and ending on January 1, 2015.

"Transition Rates" means the Rates applicable during the Transition Period to each commercial customer who is a party to Qualified Service Contract, as more fully provided in Section 3.13 of this Agreement.

"Working Days" means, unless otherwise specified, Monday through Friday, excluding legal holidays.

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Contractor is qualified to transact business in the State of Nevada and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Contractor, such that this Agreement shall constitute a valid and binding obligation of Contractor enforceable in full accordance with its terms, except only to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights.

C. NO CONFLICT

Contractor warrants and represents that, to Contractor's knowledge, as of the Effective Date neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

D. INFORMATION SUPPLIED BY CONTRACTOR

To Contractor's knowledge the information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's financial information, is true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

E. CONTRACTOR QUALIFICATIONS

Contractor warrants and represents it has the experience, financial capability and operational capability to perform the Contractor's duties and obligations under this Agreement and meets or exceeds the Contractor Qualifications.

2.2 CONTRACTOR QUALIFICATIONS, ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES

Prior to the Effective Date, City requested collective advice of certain commercial solid waste haulers meeting the Contractor Qualifications and then providing solid waste and related hauling services concerning recommended boundaries for the Exclusive Service Areas. The City established the location and boundaries of each Exclusive Service Area in proportion to each qualified service provider's then existing Proportionate Share of the permanent revenues from hauling services collected by all the qualified service providers in Reno. Contractor and the other qualified service providers participated in the process created by and under the supervision of the City. The recommendations of the service providers were strictly advisory and the City reserved full authority to accept, reject or modify the recommendations, to establish Exclusive Service Area boundaries of the City's choosing, or to continue to operate without Exclusive Service Areas consistent with its obligations under applicable law. Contractor stipulates that it participated in the City's process in good faith, and Contractor hereby warrants that its financial materials, disclosures and representations regarding its Customer base and revenues in the City, as of the dates provided to City, are true, correct and complete.

ARTICLE 3 COLLECTION SERVICES AGREEMENT

3.1 AGREEMENT TERM; EXTENSIONS; PERIODIC REVIEW

A. Term

This Agreement shall be effective during the Term, which shall commence on the Effective Date and shall expire on the date 17 years thereafter on November 1, 2029 ("Expiration Date"), unless extended as provided in Section 3.1 (B) below.

B Extension Terms; Termination

The initial Term of this Agreement and each Extension Term of this Agreement shall be automatically extended for an additional five (5) year Extension Term unless City or Contractor provides written notice of termination not less than five (5) years prior to the expiration of the Initial Term and each Extension Term. Contractor shall be entitled to terminate this Agreement effective anytime during the last 3 years of the Initial Term upon not less than twenty four (24) months prior written notice to City.

C Periodic Review by City and Contractor of Collection Services

1. During the 24 month period ("Review Period") commencing on the date five (5) years after the Effective Date ("First Review Period Commencement Date") and on the date of each successive five (5) year anniversary after the First Review Period Commencement Date during the Initial Term and all Extension Terms, each of the City or Contractor may initiate, conduct and complete the review of the operation of the Collection Services under this Agreement, in order to i) assess the effectiveness of the Collection Services and ii) identify areas for possible Improvement ("Review"). Either City or Contractor may provide written notice to the other ("Review Notice") stating, in reasonable detail, the nature, scope and specific areas for review, but the provision of the Review Notice shall not be a condition

precedent to the Review and Review Notice contents shall not limit the nature, scope or specific areas of the Review.

2. City and Contractor shall during the Review Period cooperate in good faith to conduct the review of the Collection Services. If as a result of the Review either or both the City or Contractor determine improvements to the Collection Services would be beneficial, i) City and Contractor shall cooperatively prepare a written report reflecting the results of the Review, the aspects of the Collection Services suggested for improvement and any amendments to this Agreement necessary to make such improvements ("Report") and ii) Contractor and the City will conduct, in good faith, discussions and negotiations concerning any improvements to the Collection Services, including any related amendments to this Agreement; provided, however, neither City nor Contractor shall be obligated to agree to any changes to the Collection Services or amendments to this Agreement. The Report shall provide, in reasonable detail, the findings of the Review, together with any recommendations for improvements or changes to the Collection Services and related amendments to this Agreement. If the City and Contractor do not agree on all of the contents of the Report or the recommendations, the Report shall include the positions of both City and Contractor. The Review, preparation of the Report and all discussions and negotiations shall be completed on or before the expiration of the Review Period. If Contractor and City agree to changes to the Collection Services or agree to amend this Agreement, the amendment will be executed on or prior to the expiration of the Review Period and the changes to the Collection Services will be implemented as soon as reasonably possible thereafter.

3.2 COLLECTION SERVICES AGREEMENT

A. Services Provided; Exclusive Right and Obligation; Exceptions to Exclusive Right

City hereby grants Contractor, and Contractor shall have throughout the Term of this Agreement, except as provided in Sections 3.2 D and 4.4 L hereof, the exclusive right, privilege, franchise and obligation within the Exclusive Service Area of Contractor to provide Collection Services to Commercial Customers. No person or entity other than Contractor and its subcontractors shall i) collect Collection Materials in Contractor's Exclusive Service Area, ii) transport anywhere in the City Collection Materials Collected in Contractor's Exclusive Service Area, or iii) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility, except as expressly provided under this Agreement. The preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount. Notwithstanding any other provision of this Agreement, the exclusive right of Contractor hereunder shall not apply to Excluded Materials, Excluded Recyclable Materials, Exempted Drop Box Materials, Exempted Hauler Account Materials and subject to and as provided in Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities. Contractor and other service providers may collect and transport Excluded Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials (if Contractor has been approved for Exempted Hauler Accounts under Schedule 1) in the

Exclusive Service Area and elsewhere in the City and may charge fees and charges for services as the service provider may elect. Contractor shall only provide under this Agreement Collection Services to Commercial Customers in Contractor's Exclusive Service Area and in no other areas in the City; provided, however, Contractor may provide Special Services to Commercial Customers or other customers anywhere in the City.

B. Compensation to Contractor; Rates

Contractor shall be entitled to charge and collect the Rates from Customers for Collection Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services. However, Contractor shall be entitled to provide and collect fees and charges for Special Services and other services and to charge fees and charges for Customer noncompliance as provided in Section 3.10 and elsewhere in this Agreement.

C. Uniform Commercial Franchise Agreements

City intends to establish a uniform system for the collection, transport and delivery of Collection Materials generated or accumulated as a result of Commercial Activities under this Agreement and the other Commercial Franchise Agreement. Accordingly, the Parties agree this Agreement is and will remain substantially similar to the other Commercial Franchise Agreement, including without limitation the Collection Services and the Rates. Amendments to any Commercial Franchise Agreement must generally be concurrently agreed to and made to all other Commercial Franchise Agreements unless the subject of the amendment relates to a unique or specific feature of the Exclusive Service Area of a particular service provider or a term that is not material. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, Special Services are not intended to be and likely will not be uniform between the Commercial Franchise Agreements or service providers and each service provider under each Commercial Franchise Agreement shall be entitled to offer and charge for any Special Services in the manner, on the conditions and at the rates decided by each such service provider.

D. Exempted Drop Box Services and Exempted Hauler Account Services

1. Subject to the terms and conditions in this Section 3.2 D, the franchised exclusive right and obligation of Contractor hereunder to provide Collection Services shall not include or apply to i) Exempted Drop Box Materials collected and transported by Exempted Haulers using Exempted Drop Box Services, or ii) Exempted Hauler Account Materials collected and transported by Exempted Haulers using Exempted Hauler Account Services.

2. The right of an Exempted Hauler to provide Exempted Hauler Account Services to each of its Exempted Hauler Accounts shall terminate upon the later of i) one (1) year after the Effective Date and ii) either a) termination of the contract or account with the Exempted Hauler for such Exempted Hauler Account or b) the new subscription by the Exempted Hauler Account customer, by contract or account, to Collection Services by the Contractor. Exempted Hauler Account Services may limit the obligation under Section 3.5 hereof of Exempted Hauler Account customers to subscribe to Collection Services;

provided, however, nothing in this Section 3.2 D shall limit the obligation of a Commercial Customer to subscribe to Collection Services by Contractor of Garbage or cause the termination or limitation of any contract or account with any Commercial Customer of Contractor existing as of October 24, 2012.

3. Each Exempted Hauler shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 3.2 D, the rights of such Exempted Hauler under this Section 3.2 D. This Section 3.2 D shall not be amended in a manner that would terminate, limit or restrict any Exempted Hauler from providing Exempted Drop Box Services or Exempted Hauler Account Services under this Section without the prior written consent of such Exempted Hauler, which may not be unreasonably withheld, conditioned or delayed; provided, however, nothing in this Section 3.2 D shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Drop Box Services and Exempted Hauler Account Services.

4. The rights of an Exempted Hauler under this Section 3.2 D may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary to perform such hauling services and an Exempted Hauler owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Hauler. If the Exempted Hauler shall dissolve or otherwise cease business for a period greater than one (1) year, the rights of the Exempted Hauler under this Section 3.2 D shall terminate.

5. The provision of Exempted Drop Box Services and Exempted Hauler Account Services by the Exempted Haulers is a privilege, not a right. Upon the violation by an Exempted Hauler of the exclusive rights of Contractor under this Agreement, upon thirty (30) days written notice of default by City and the failure of the Exempted Hauler to cure such violation, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the termination of the exemption of such Exempted Hauler under this Section to provide Exempted Drop Box Services and/or Exempted Hauler Account Services.

6. Except as expressly provided herein or in the Disposal Agreement, neither this Agreement nor the Disposal Agreement shall limit or preclude Exempted Drop Box Materials collected and transported using Exempted Drop Box Services or Exempted Hauler Account Materials collected and transported using Exempted Hauler Account Services from being delivered by any Exempted Hauler, including Contractor, to any facility for acceptance, processing, recycling, transfer or disposal, including without limitation facilities other than the Designated Facilities.

3.3 FRANCHISE FEES PAYABLE TO CITY

A. Franchise Fees

Subject to adjustment as provided in Section 3.13 of this Agreement during the Transition Period, Contractor shall pay to the City in monthly installments during the Term a Franchise Fee, based on a percentage of Gross Receipts collected by Contractor, as established and adjusted by the Reno City

Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement. The City Council reserves the right to increase or decrease the Franchise Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Franchise Fee i) the Franchise Fee payable under all other Commercial Franchise Agreements shall be increased to the same extent and ii) the Rates shall concurrently be increased or decreased in the amount of such increase or decrease in the Franchise Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

B. Subsidy Fee

Contractor shall pay the Subsidy Fee to the City in monthly installments during the Term. The City reserves the right to increase or decrease the Subsidy Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Subsidy Fee, then: i) the Subsidy Fee payable under all other Commercial Franchise Agreements shall be increased or decreased to the same extent; ii) if the Subsidy Fee is increased, the Rates shall concurrently be increased in an amount necessary to fully compensate Contractor for the amount of such increase in Subsidy Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the 90 day notice period; and iii) if the Subsidy Fee is decreased, the Rates shall concurrently be decreased in an amount necessary to offset the reduction in cost to Contractor for the amount of such decrease in Subsidy Fee, in which event the decrease in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

C. Payment of Franchise Fees and Subsidy Fee by Contractor to City

The Franchise Fee and Subsidy Fee for each calendar month ("Subject Month") during the Term and any extensions of the Term shall be paid by Contractor on or before the twenty fifth (25th) day of the following calendar month. The Franchise Fee shall be calculated by Contractor on the basis of the Gross Receipts actually received and collected by Contractor during the Subject Month. Contractor shall provide to City along with the monthly payment a statement of the Gross Receipts, Franchise Fee and Subsidy Fee for such payment, attested to by a representative of contractor as being true and correct. Any Franchise Fee or Subsidy Fee not paid by the date due shall bear interest at seven percent (7%) per annum until paid. Contractor's Gross Receipts, the Franchise Fees, the Subsidy Fee and the calculation thereof and all related financial matters shall be subject to audit and inspection by the City under Sections 7.5 and 8.3 below and contractor shall cooperate fully in all such audits and inspections.

D. No Additional Fees or Charges

The Franchise Fee and the Subsidy Fee shall be the only fee or compensation paid by Contractor to City in connection with the Collection Services and this Agreement and no other license, permit, privilege or other fee, tax or charge shall be imposed by City upon Contractor; provided, however, that nothing in this Section shall modify the obligation of Contractor to pay building permit fees and other similar fees.

3.4 PROVISION OF COLLECTION SERVICES

A. General

The services to be provided by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items necessary to perform all Collection Services, and the payment of all related expenses including all transfer and Disposal fees, processing fees for Recyclable Materials, taxes, utility charges, etc. Contractor shall provide Collection Services using standard industry practice for comparable operations, in accordance with the Scope of Services and Operating Standards.

B. Hours of Collection; Collection Frequency

Collection Services under this Agreement may be performed at any time, seven days a week on any day of the calendar year provided, however, that Collection Services performed in or near areas zoned for residential use and which disturbs the residents may be limited, upon request of City, to the hours of 6 AM to 6 PM. Contractor may reasonably elect to extend the hours of Collection Services operation near residential zones for a limited time if necessary to catch up as a result of service disruptions. Collection Services may be provided by Contractor to Customers on any schedule available on the Scope of Services as requested by each Customer; provided, however, Garbage Collection Services shall be provided no less often than weekly.

3.5 OBLIGATION TO PROVIDE COLLECTION SERVICES; MANDATORY SERVICE

Contractor shall make available Collection Services as provided under this Agreement to all Commercial Customers within its Exclusive Service Area during the Term and any extension of the Term and shall be compensated by the Rates. Each and every person, firm, association, corporation, partnership, business, or other entity conducting any Commercial Activity ("Operator") on or from any premises which generates, accumulates or causes the generation or accumulation of Solid Waste within the Exclusive Service Area of Contractor shall subscribe to the Collection Services of Solid Waste as required herein and/or the Reno Municipal Code and as necessary to properly dispose of all Solid Waste generated or accumulated on such premises. It is presumed that every premises in Contractor's Exclusive Service Area on or from which Commercial Activity is conducted generates, produces or accumulates Solid Waste and is required to subscribe to Collection Services under this Agreement. Notwithstanding anything to the contrary in this Section 3.5, Operators receiving as of October 24, 2012 Exempted Hauler Account Services that constitute Permanent Services shall not be required to subscribe to Collection Services from Contractor, other than collection of Garbage, so long as such Operator shall continue to receive the Exempted Hauler Account Services. Any Operator seeking to be exempt from Collection Services of Solid Waste hereunder must obtain an exemption from the City. To obtain the exemption, the Operator must apply to the Washoe County Health District ("WCHD") and obtain written approval of the WCHD confirming a finding that: i) no Solid Waste, or as to Exempted Hauler Accounts no Garbage, is being generated, produced or accumulated on or from the premises upon which the Operator's Commercial Activity is occurring; and ii) the Operator is not hauling, burying or otherwise disposing of Solid Waste or Garbage in violation of this Agreement, the Reno Municipal Code or other Applicable Law. Commercial Customers are encouraged, but are not obligated, to recycle; provided, however, no Commercial

Customer In Contractor's Exclusive Service Area may allow or retain any person or entity other than Contractor to collect, pickup, transport or deliver Approved Recyclable Materials in violation of Contractor's exclusive right under this Agreement. With the approval of the owner of a premises upon which Commercial Activity is being conducted, a tenant or occupant thereof may subscribe for Collection Services, but the owner shall remain responsible for compliance with all requirements of this Agreement and the Reno Municipal Code.

3.6 OWNERSHIP OF COLLECTION MATERIALS

Ownership of all Collection Materials, upon placement in any Container, shall transfer to Contractor and shall become the property of Contractor. Title to and ownership of all Collection Materials shall transfer from Contractor to the Designated Facility upon delivery of the Collection Materials by Contractor to the Designated Facility and acceptance by the Designated Facility of such Collection Materials.

3.7 CITY COLLECTION SERVICES

The Contractor shall provide the City Collection Services to facilities owned by City at no charge as provided and subject to the limitations in this Section. The City Collection Services shall be provided by Contractor to buildings, parks and similar facilities owned by City for Collection Materials generated in the normal and ordinary course of operation of such facility and does not include: i) Collection of any material that requires special handling, equipment or processing, including without limitation Excluded Materials; ii) Collection from businesses operating for-profit on or from City property; iii) Collection of materials resulting from natural disasters; special events; repair, construction or reconstruction of City facilities or from activities of any subcontractor on City property; iv) access to or disposal at any transfer station, material recovery facility or landfill; or v) any other Collection Services or other services relating to materials generated from any use, activity or cause other than the operation of City owned facilities in the normal ordinary course for such facility. Any Collection Services provided by Contractor to City other than the City Collection Services shall be paid for by City at the established Rates. In the event the cost or value of the City Collections Services exceeds \$712,425 at the Rates specified on the Scope of Services, as adjusted for changes in the CPI, the Rates shall be concurrently increased in an amount necessary to pay the full amount of such increase and City and Contractor shall cooperate in good faith to establish such increase in Rates.

3.8 EMERGENCY SERVICES

In the event that Contractor, for any reason whatsoever, fails, refuses, or is unable to perform the collection, transportation, and delivery requirements of this Agreement for a period of more than five (5) consecutive business days, and if as a result thereof, Solid Waste accumulates in the Exclusive Service Area to such an extent, in such a manner, or for such a time that City reasonably finds that such accumulation endangers or menaces the public health, safety, or welfare, then City shall have the right, but not the obligation, upon twenty four (24) hours prior written notice to Contractor, during the period of such emergency to perform, or cause to be performed, such services itself with its own or other

personnel and equipment without liability to Contractor. Contractor shall collect and shall pay to the City all Rate Revenues applicable to the emergency services provided by City under this Section.

3.9 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.10 CUSTOMER NONCOMPLIANCE

Contractor may refuse to provide some or all Collection Services to Customers and may charge fees and charges as provided herein or the Scope of Services in the event a Customer prevents or impedes Collections or otherwise fails to follow the requirements and procedures under this Agreement or Applicable Law, rules and policies, including without limitation, i) damage caused by Customers to Containers, ii) failure to provide appropriate, unobstructed access to Containers or otherwise position Collection Materials or Containers properly or timely, iii) overloading of Containers or failure of Customer to place Collection Materials solely and completely within the appropriate Container, iv) improper preparation, separation or contamination by Customer of Recyclable Materials, v) mixing by Customer of Excluded Materials with Collection Materials or placing Excluded Materials in a Container for Collection Services; vi) excessive weight of improper Collection Materials placed by Customer in Containers, vii) invalid claims by a Customer of damage caused by Contractor to Customer's property, viii) the need of Contractor to open gates or access long driveway or roadways to provide Collection Services and ix) or other failure of a Customer to comply with the requirements under this Agreement or applicable law, rules and policies. Upon occurrence of such event(s), Contractor may refuse to collect such materials or Container and impose charges or fees, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of such noncompliance and Contractor may take other reasonable actions, including without limitation applying the Snapshot Program and charging a "Snapshot Fee," as described on the Scope of Services. Upon notice by Contractor to Customer and City and failure of Customer to remedy such failure, Contractor may discontinue service to the Customer, in which event Contractor may charge an account deactivation fee (for services including, without limitation, pick up of any containers), and Contractor may impose charges and fees for reactivation of any deactivated accounts. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights and remedies of Contractor or the City under Applicable Law.

3.11 ADOPTION BY CITY OF ORDINANCES AND AMENDMENTS

On or before the Effective Date hereof and thereafter during the Term of this Agreement, City shall adopt and thereafter maintain new or amended ordinances reasonably necessary or appropriate to implement and make enforceable and binding the terms and conditions of this Agreement; provided, however, subject to Contractor's rights under this Agreement, City shall have the right and discretion to adopt and amend ordinances or otherwise exercise its regulatory authority relating to the subject matter of this Agreement.

3.12 ADJUSTMENT OF EXCLUSIVE SERVICE AREAS

On or before the date twelve (12) months after the Effective Date ("Adjustment Termination Date"), in the event Contractor or another service provider under another Commercial Franchise Agreement experiences a deficiency of five percent (5%) or more in permanent Rate Revenues compared to the Contractor's or such service provider's Proportionate Share of total Rate Revenues under all Commercial Franchise Agreements, the Contractor or such other service providers may submit a written request for a one-time Exclusive Service Area boundary adjustment review and adjustment (hereinafter "Request") in accordance with the provisions of this Section 3.12.

A. Requests shall be submitted in writing on or before the Adjustment Termination Date to the City Representative and all service providers under other Commercial Franchise Agreements. The Request shall describe with reasonable specificity the basis on which such Exclusive Service Area boundary review and adjustment is sought. Within fifteen (15) days after the Request, the other service providers will submit in reasonable detail a complete record of their Rate Revenues, Customer lists and all other information requested by the requesting party or City and related to the establishment of the Exclusive Service Area boundaries.

B. Within thirty (30) days after the Request, the City, Contractor and all other service providers will meet and discuss cooperatively and in good faith to determine if the actual permanent Rate Revenues generated in each Exclusive Service Area under the Commercial Franchise Agreements are in proportion to the respective Proportionate Share of Contractor and each other service provider, using the same methodology employed in originally establishing the Exclusive Service Areas. In the event the City Representative determines the actual permanent Rate Revenues of Contractor or other service provider is less than ninety five percent (95%) of the estimated permanent Rate Revenues used to initially establish the Exclusive Service Area boundaries for such party, the City, Contractor and other service providers will negotiate cooperatively and in good faith to adjust the Exclusive Service Area boundaries to accurately provide to each of Contractor and the other service providers their respective Proportionate Share of the total actual permanent Rate Revenues. If the City, the Contractor and other service providers cannot agree within thirty (30) days on an appropriate adjustment of the Exclusive Service Area boundaries, the City Representative shall issue in writing within thirty (30) days thereafter his finding ("Finding") of the appropriate adjustment to the Exclusive Service Area boundaries. The Contractor and other service providers shall have thirty (30) days from the issuance of the Finding to appeal the Finding to the Reno City Council. If no appeal is filed with the City Council within such thirty (30) day period, the Finding shall be final and the Exclusive Service Areas will be adjusted as provided in the Finding. The decision by the City Council on appeal under this Section 3.12 shall be final and binding on the Contractor and all other service providers and all such parties hereby waive any right to appeal the decision of the City Council. The failure or refusal of the Contractor or any service provider to participate and cooperate in good faith in the discussion and negotiations required under this Section 3.12 shall not defeat or render invalid the Finding by the City Representative or the decision on appeal to the City council under this Section 3.12, and both shall be binding and enforceable in all respects. In the event an adjustment to the Exclusive Service Area boundaries occurs under this Section 3.12, this

Agreement and other Commercial Franchise Agreements will be amended to reflect such adjustments and the City Representative is expressly delegated the authority to execute such amendments.

3.13 IMPLEMENTATION OF COLLECTION SERVICE AGREEMENTS; TRANSITION; QUALIFIED SERVICE CONTRACTS

Contractor currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in Contractor's Exclusive Service Area and will continue to do so after the Effective Date and until implementation of the Collection Services under this Agreement. Contractor also currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in areas of the City other than Contractor's Exclusive Service Area. Subject to the commencement of collection services to such customers by other service providers under the other Commercial Franchise Agreements, Contractor will cease collection services in the exclusive service areas of the other service provider under the other Commercial Franchise Agreement. Contractor, City and the service provider(s) under the other Commercial Franchise Agreement will cooperate in good faith to implement the orderly and efficient transfer of accounts and transition to and commencement of exclusive franchise Collection Services under the Commercial Franchise Agreements in the City, as more fully provided in this Section 3.13.

A. Collection Services in Contractor's Exclusive Service Area; Qualified Service Contracts

Contractor will commence the implementation of Collection Services as required by this Agreement in Contractor's Exclusive Service Area within One Hundred Twenty days (120) days after the Effective Date and will exercise reasonable diligence to complete the implementation of Collection Services on or before the Operative Date. If Commercial Customers in Contractor's Exclusive Service Area are a party to a "Qualified Service Contract" (as defined below) as of the Effective Date, Contractor will provide Collection Services to such customers i) at the lesser of a) the Rate for such service provided under this Agreement or b) the rate or charge provided in the Qualified Service Contract; provided that the rate or charge shall not be less than seventy five percent (75%) of the Rate under this Agreement for the same or similar service ("Transition Rate") and ii) the length of the term of Collection Services provided at the Transition Rate to such Commercial Customers ("Transition Term") shall be the longer of a) the initial or base term provided in the Qualified Service Contract (without renewal, rollover or other extensions of such term) or b) the period ending January 1, 2015. For purposes hereof, a "Qualified Service Contract" means a binding service contract with a commercial customer for the collection and transportation in the City of Solid Waste or Approved Recyclable Materials, or both, dated on or before October 24, 2012, by any service provider properly licensed to collect and transport such materials in the City, excluding Exempted Hauler Accounts.

B. Collection Services in other Exclusive Service Areas

Upon commencement of collection service to a commercial customer by another service provider in the other exclusive service area under the other Commercial Franchise Agreement, Contractor shall cease collection services to such customer. The service provider(s) under the other Commercial Franchise Agreements i) shall commence collection services under such Commercial Franchise Agreements within

one hundred twenty (120) days after the Effective Date and will exercise reasonable diligence to complete the implementation of such collection services on or before the Operative Date and ii) will charge the Transition Rates to each commercial customer located in the service provider's exclusive service area who is a party to a Qualified Service Contract as provided in Section 3.13 (A) above.

C. Temporary Adjustment of Franchise Fees

City and Contractor acknowledge that the Rates provided on the Scope of Services have been established in an amount sufficient to pay Contractor's cost of Collection Services hereunder and that the Transition Rates applicable to Qualified Service Contracts and Transition Accounts, which will be less than the Rates specified on the Scope of Services, will not provide sufficient Rate Revenue to pay the Franchise Fee. Accordingly, City and Contractor agree that no Franchise Fee will be payable by Contractor to City on Rate Revenues derived from Qualified Service Contracts or Transition Accounts.

D. Transition of Collection Services, General Terms

Each service provider under each Commercial Franchise Agreement will be a third party beneficiary of the terms and conditions of this Section 3.13 and similar provisions under the other Commercial Franchise Agreement. Contractor and the other service providers may exchange, borrow or subcontract for the use of the other's Containers during the Transition Period and the Container Identification requirements shall not apply to such Containers during such use.

ARTICLE 4

SCOPE OF SERVICES

4.1 SOLID WASTE COLLECTION SERVICES

Contractor shall provide Collection Services of Solid Waste to Commercial Customers in Contractor's Exclusive Service Area and will provide to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of the Collection Services for Solid Waste shall be offered to Customers by Contractor as provided on the Scope of Services; provided, however, that Collection Services of Garbage shall be provided not less often than Weekly.

4.2 SINGLE STREAM RECYCLING COLLECTION SERVICES

Contractor shall offer Collection Services of Single Stream Recycling for Source Separated Recyclables to Commercial Customers in Contractor's Exclusive Service Area on a subscription basis and will offer to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of Collections Services for Source Separated Recyclables shall be on the request of each Customer. Customers are encouraged to but are not required to subscribe to Collection Services from Contractor of Source Separated Recyclables or other recycling services. Collection Services shall include only Source Separated Recyclables and each

Customer who recycles shall be responsible for separating its Approved Recyclable Material from all other materials, including without limitation Garbage, Excluded Material and Solid Waste other than Approved Recyclable Material, and placing only Approved Recyclable Materials in Recycling Containers provided by Contractor. Recycling Containers shall be used only for Source Separated Recyclables and no other materials of any kind may be placed in Recycling Containers. City, Contractor and other service providers under Commercial Franchise Agreements may agree to change the Recyclable Materials constituting the Approved Recyclable Materials, in which event the Approved Recyclable materials shall change for this Agreement and all other Commercial Franchise Agreements. Contractor may refuse to collect Recyclable Materials not separated and placed for Collection by Customer as required herein and may charge fees or other charges for improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Recyclable Materials placed for Collection which is mixed with more than a de minimis amount of material other than Approved Recyclable Materials.

4.3 FOOD WASTE RECYCLING

The Contractor may at Contractor's election offer Collection Services of Source Separated Food Waste to Commercial Customers within Contractor's Exclusive Service Area, on a subscription basis. If Contractor develops a Source Separated Food Waste Recycling or collection service program, Contractor will have the exclusive right to provide such services in its Exclusive Service Area, at rates to be mutually agreed upon by the Contractor and the City and added to the Scope of Services as an amendment, and Contractor will provide separate Containers suitable for Food Waste as determined appropriate by Contractor for such service. Customers are not required to subscribe to Food Waste Recycling Collection Services. Collection Services of Food Waste shall include only Food Waste and each Customer shall be responsible for properly separating the Food Waste from all other materials, including without limitation other Source Separated Recyclables, Garbage and Excluded Material, and placing the Food Waste only in Recycling Containers designated by Contractor for Food Waste. Recycling Containers designated by Contractor for Food Waste shall be used only for Food Waste and no other materials of any kind may be placed in Recycling Containers designated for Food Waste. Contractor may refuse to collect Food Waste not separated and placed for Collection as required herein and may charge fees or other charges for improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Food Waste placed for Collection which is mixed with more than a de minimis amount of material other than Food Waste.

4.4 DELIVERY OF COLLECTION MATERIALS TO DESIGNATED FACILITIES; DISPOSAL AGREEMENT

Contractor acknowledges that the City has entered into a long term Solid Waste Transfer and Disposal Agreement with Refuse, Inc., a Nevada corporation ("Designated Facility Owner"), to provide the City with an environmentally sound and cost effective solution for the transfer, processing, handling, recycling, and Disposal of certain Solid Waste and Recyclable Materials (the "Disposal Agreement"). Contractor shall deliver all Collection Materials, excluding Exempted Facility Materials delivered at the election of a Franchised Hauler to the Exempted Facility, that Contractor collects within the Exclusive Service Area to a Designated Facility which has been designated by the City pursuant to and in

accordance with the requirements of the Disposal Agreement. Capitalized terms used but not defined in this Section 4.4 have the meaning provided in the Disposal Agreement. Contractor hereby agrees to the "Franchise Hauler Terms" (as defined in the Disposal Agreement), including without limitation the following terms and conditions in this Section 4.4, which terms and conditions are also included in the Disposal Agreement:

A. Delivery of Approved Disposal Materials

Beginning on the Effective Date and throughout the term of this Agreement, subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor will deliver all Approved Disposal Materials collected, handled or transported under the City Franchise Agreements to the Designated Facilities in accordance with the terms and conditions hereof and the Disposal Agreement. Subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor shall deliver i) all Solid Waste to the designated Transfer Station, unless the Designated Facility Owner directs the Solid Waste be delivered to another Designated Facility and ii) all Approved Recyclable Material to the MRF, unless the Designated Facility Owner directs the Approved Recyclable Material be delivered to another Designated Facility. No Approved Disposal Materials shall be delivered to the Disposal Site by Contractor without the prior express approval of the Designated Facility Owner. No person or entity other than the Designated Facility Owner shall be allowed or entitled to accept the Approved Disposal Materials for processing, recycling or disposal except as expressly provided under Section 4.4 L and the Disposal Agreement. Notwithstanding anything in this Section 4.4 (A) to the contrary, i) Contractor shall be entitled to deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste to Disposal facilities other than the Designated Facilities, ii) Disposal facilities other than the Designated Facilities shall be entitled to accept from the Contractor (a) Excluded Materials; (b) Exempted Drop Box Materials; (d) Exempted Hauler Account Materials; (e) Food Waste and (f) Green Waste for processing or recycling and iii) Contractor shall be entitled to deliver to the Exempted Facility, and the Exempted Facility shall be entitled to accept, process, recycle and dispose, Exempted Facility Materials. Except as provided in this Section 4.4 A, Contractor may not, directly or indirectly through other persons or otherwise, perform or conduct any processing, sorting, separating, and/or disposal or other activities regarding the Collection Materials, and it is expressly understood that Contractor's Collection Services hereunder are limited to collecting the Collection Materials and delivering them to the Designated Facilities; provided, however, nothing in this Agreement or the Disposal Agreement shall be interpreted to prohibit or prevent Contractor from directly or indirectly owning and operating a transfer station, disposal facility, materials recovery facility or similar facility that accepts and to which Contractor may collect and deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste, for processing or recycling.

B. No Excluded Materials; Screening of Materials

Contractor will deliver only Approved Disposal Materials of the type appropriate for the Designated Facility to which the materials are delivered and otherwise in accordance with the terms of the Disposal Agreement. No Excluded Materials will be delivered to any Designated Facility by Contractor except with

the prior written and informed approval of the Designated Facility Owner. The Contractor will exercise industry standard, reasonable efforts to screen all materials to i) screen and verify only Approved Recyclable Materials are delivered for Recycling and ii) screen and remove all Hazardous Waste and other Excluded Materials from the materials delivered to the Designated Facilities. Except as provided in Section 4.4 F hereof, ownership of Hazardous Waste and other Excluded Materials shall not transfer to the Designated Facility Owner unless the Designated Facility Owner shall expressly and knowingly accept such ownership in writing and the Designated Facility Owner shall not be responsible for any Hazardous Wastes or other Excluded Materials delivered to a Designated Facility in violation of this Agreement.

C. Payment of Rates and Charges by Contractor

The Contractors will pay the Rates (as defined in the Disposal Agreement), as adjusted, and other charges, to the Designated Facility Owner in accordance with the Disposal Agreement.

D. Limited License

Contractor shall have a limited license to enter the Designated Facilities for the sole purpose of unloading Approved Disposal Materials at an area designated, and in the manner directed, by the Designated Facility Owner.

E. Compliance by Contractor

Contractor and its employees, subcontractors, or other agents shall comply with: i) Applicable Law related directly or indirectly to the delivery to and Disposal of materials at the Designated Facilities, including without limitation the ordinances of the City, ii) all rules and regulations of the Designated Facilities of which Contractor has not less than thirty (30) days prior written notice, including without limitation rules relating to safety, acceptance, rejection or revocation of acceptance of materials, hours of operation, measuring and reporting volumes of Approved Disposal Materials delivered to the Designated Facilities and iii) all Franchise Hauler Terms in the Disposal Agreement.

F. Inspection and Rejection of Materials by Designated Facility Owner

The Designated Facility Owner shall have the right to inspect, analyze or test any material delivered by Contractor to any Designated Facility. The Designated Facility Owner shall have the right to reject, refuse or revoke acceptance of any material if, in the reasonable opinion of the Designated Facility Owner, the material or tender of delivery fails to conform to, or Contractor fail to comply with, the terms of the Disposal Agreement, including without limitation as a result of delivery of Excluded Material. In the event the Designated Facility Owner, by notice to Contractor, rejects or within ten (10) business days of receipt revokes acceptance of materials hereunder, the Contractor shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from the Disposal Facilities property or control. If the rejected material is not removed within three (3) days from receipt of notice, the Designated Facility Owner shall have the right and authority to handle and dispose of the rejected material or Excluded Material in any commercially reasonable manner determined by the Designated Facility Owner. The Contractor shall pay and/or reimburse the Designated Facility Owner for any and all costs,

damages and/or fines incurred as a result of or relating to the tender or delivery of the rejected material or Excluded Material or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of the rejected material or Excluded Material. Title to, ownership of and liability for Excluded Material shall transfer to Contractor unless such Excluded Material is rejected or the acceptance of which is timely revoked. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for delivery of Contaminated Recyclable Materials, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

G. Franchise Hauler Noncompliance

The Designated Facility Owner may suspend on prior written notice some or all Disposal Services to Contractor in the event Contractor fails to comply with the requirements applicable to Contractor in this Agreement or the Disposal Agreement or otherwise fails to follow the requirements and procedures under this Agreement, the Disposal Agreement or Applicable Law, rules and policies, including without limitation, i) improper preparation, separation or contamination of Solid Waste or Approved Recyclable Materials, ii) delivery of Excluded Materials to a Designated Facility; or iii) other failure of a Contractor to comply with the requirements under this Agreement or Applicable Law, rules and policies of which the Designated Facility Owner has provided Contractor reasonable prior notice. Upon occurrence of such event(s), the Designated Facility Owner may charge fees and charges as provided in the Disposal Agreement or otherwise approved by City, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of and damages from such noncompliance. Upon notice of such a failure by the Designated Facility Owner to the Contractor and the City and failure of the Contractor to remedy such failure within thirty (30) days, the Designated Facility Owner may suspend Disposal Service to Contractor. The Contractor shall be reinstated on the first business day following the date upon which any such failure has been corrected. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights or remedies of the Designated Facility Owner under this Agreement, the Disposal Agreement or applicable law.

H. Time of Delivery

The Designated Facility Owner shall provide identical access and parity of use to the Transfer Station, the MRF, the Eco-Center, and any alternative facilities designated pursuant to Section 4.4 I for each Franchise Hauler for delivery and unloading of Solid Waste and Approved Recyclable Materials (including incidental residue) at such facilities. Except where either or both the days and hours of operation for such facilities have been changed upon thirty (30) days prior written notice, such facilities shall be open for each and all of the Franchise Haulers every day of the week between the hours of 5:00 AM and 10:00 PM. Subject to compliance with the notice requirements of this Section 4.4 H, operational and delivery hours may be adjusted by the Designated Facility Owner and approved by City. The Designated Facility

Owner shall have the right to adjust the operating hours of the Designated Facilities to the extent reasonably necessary in the event of an emergency.

I. Alternative Facilities

During the Term of this Agreement, the Designated Facility Owner may designate alternative facilities for the receipt, processing, transfer, or disposal of Collection Materials, Green Waste and Food Waste, provided such alternative facilities do not result in an increase in Rates or material increase in costs to Contractor and Contractor will deliver such materials to the alternative facilities as directed by the Designated Facility Owner. If the Designated Facility Owner designates an alternative facility, unless the alternative facility is required to pay the Host Fee to the City, the Designated Facility Owner shall pay or cause to be paid the Host Fee payable under the Disposal Agreement and applicable to any Approved Disposal Materials delivered to the alternative facility. Upon the approval of City, the Designated Facility Owner may cause or allow Disposal Materials to be delivered to the City waste water treatment plant, in which event no Host Fee, tipping fee or other fee will be payable to City for or on such materials. Nothing in this Section 4.4 I shall limit the right of a Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility or the right of the Exempted Facility to accept, process, recycle or dispose of Exempted Materials under Section 4.4 L hereof.

J. Ownership of Disposal Materials

Ownership of all Approved Disposal Materials, upon delivery to and acceptance by a Designated Facility, shall transfer to the owner or operator of the Designated Facility and shall become the property of the Designated Facility Owner.

K. Third Party Beneficiary

The Designated Facility Owner shall be a third party beneficiary of this Agreement with all rights and remedies to enforce the Franchise Hauler Terms and other terms, covenants and conditions under this Agreement.

L. Exemption for Exempted Facility Materials

1. Subject to the Exempted Facility Material Limit and otherwise as provided in this Section 4.4 L, i) the requirement and obligation of the Contractor to deliver all Collection Materials to a Designated Facility shall not include or apply to Exempted Facility Materials delivered by Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials.

2. The Exempted Facility shall file with the City a quarterly report, in form required by the City and certified true, correct and complete by an owner or officer of the Exempted Facility, consistent with the obligations of the Exempted Facility under Section 4.4 L 7 hereof, stating i) the volume of all Solid Waste and Recyclable Materials, including without limitation the type and volume of Exempted Facility

Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials accepted, processed, recycled and disposed during the calendar quarter and ii) such other information the City may require.

3. The Exempted Facility shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 4.4 L, the rights of the Exempted Facility under this Section 4.4 L. Sections 4.4 L and 3.2 D 6 shall not be amended in a manner that would terminate, limit or restrict i) the right of any Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility, or ii) the right of any Exempted Hauler to deliver Exempted Drop Box Materials or Exempted Hauler Account Materials to the Exempted Facility as provided under Section 3.2 D 6 hereof, or iii) the right of the Exempted Facility to accept, process, recycle or dispose of the materials delivered under Sections 4.4 L 3 i) and ii) hereof, without the prior written consent of the Exempted Facility, which the Exempted Facility may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 4.4 L shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Facility Materials.

4. The rights of the Exempted Facility under this Section 4.4 L may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary for the acceptance, processing, recycling and disposal of the Exempted Facility Materials and the Exempted Facility owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Facility. If the Exempted Facility shall dissolve or otherwise cease business for a period equal to or more than one (1) year, the rights of the Exempted Facility under this Section 4.4 L shall terminate.

5. The Exempted Facility shall pay to the City in quarterly installments a host fee equal to two and one-tenth cents (\$0.021) for each cubic yard of all Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Materials that are accepted, processed, recycled or disposed at the Exempted Facility. The host fee payable under this Section shall be increased in proportion to changes in the Host Fee payable by the Designated Facility Owner under the Disposal Agreement.

6. The Exempted Facility shall be in default hereunder if the Exempted Facility shall i) fail to timely pay the host fee or fail to timely file with the City the reports, each as required under this Section 4.4 L, ii) accept, process, recycle or dispose of Exempted Facility Materials totaling in excess of one hundred five percent (105%) of the Exempted Facility Materials Limit for the Exempted Facility, iii) accept, process, recycle or dispose of Exempted Facility Materials more than the Exempted Facility Material Limit on two occasions in any consecutive five (5) year period, or iv) otherwise materially fail to comply with this Section 4.4 L. Upon thirty (30) days written notice of default by City and the failure of the defaulting Exempted Facility to cure such default, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the right to terminate the rights under this Section 4.4 L of the defaulting Exempted Facility.

7. The Exempted Facility will exercise industry standard, reasonable efforts to screen materials received from the Exempted Haulers and the Franchised Haulers to identify Exempted Facility Materials,

Exempted Drop Box Materials, Exempted Hauler Account Materials and other materials in order to i) prepare and file the reports required to be filed with the City under this Section 4.4 L, ii) comply with the Exempted Facility Materials Limit, iii) pay the host fee required under this Section 4.4 L and otherwise comply with the requirements of this Section 4.4 L.

4.5 SPECIAL SERVICES

In addition to and separate from Collection Services, Contractor may voluntarily offer certain "Special Services" within the City; provided, however, Contractor shall not violate the exclusive right of another service provider under any other Commercial Franchise Agreement. Contractor is not required under this Agreement to provide Special Services, but may elect to do so. Examples of such optional Special Services include: i) on-call Bulky Items pick-up or side-yard services for Customers; ii) the lease, sale and maintenance of Compactors; iii) provision of Compactors or Containers placed in Community Collection Locations for use of more than one customer on terms agreed to by Contractor and the collection, transportation and delivery of Collection Materials deposited in such Compactors or Containers; and iv) collection, transportation, delivery or other services related to Excluded Materials, Exempted Drop Box Materials and Excluded Recyclable Materials which have been Source Separated from other Solid Waste. It is anticipated that the additional Special Services (if any) that Contractor may elect to offer and the fees and charges for the Special Services will not be uniform with services or fees or charges offered by service providers under the other Commercial Franchise Agreements. Contractor may provide Special Services in the manner and at rates, fees and charges in an amount determined by Contractor, which shall not be included in the Gross Receipts. Contractor shall, however, maintain in full force and effect throughout the term of this Agreement a current business license from the City as it relates to provision of Special Services.

ARTICLE 5 OPERATIONS

5.1 CUSTOMER INFORMATION AND PUBLIC EDUCATION

Contractor is responsible for the distribution, preparation, reproduction and mailing of educational information kits for new Customers which describe Contractor's Collection Services, including without limitation information about the various available Containers, Rates, charges, and Single Stream Recycling of Source Separated Recyclables and related Customer responsibilities. Contractor shall distribute the information kits to Customers and shall provide notice to Customers of its commencement of Collection Services under this Agreement at least thirty (30) days prior to the commencement of Collection Services to the Customer.

5.2 CUSTOMER SERVICE

Contractor shall maintain and provide to all Customers a telephone number for Customer service, and shall provide all telephonic services specified in this Section 5.2. Contractor shall install and maintain telephone equipment, and shall have on staff a sufficient number of dedicated service representatives reasonably necessary to handle customer service calls. Such dedicated customer service representatives

shall be available to answer calls from 8 A.M. to 5 P.M., Monday through Friday. Contractor shall also maintain an after-hours telephone message system to record calls received outside Contractor's normal business hours. Contractor shall provide the City a means of contacting a representative of the Contractor on a twenty-four (24) hour basis.

5.3 SERVICE COMPLAINTS

Contractor shall maintain computer records of all oral and written service complaints registered with Contractor from Customers receiving Collection Services ("Complaint Record"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints as provided in Section 5.4 hereof. Contractor shall record the Complaint in the customer file contained in the Contractor's customer database, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. City has the right under this Agreement to inspect the Complaint's made against Contractor upon written request.

5.4 OMBUDSMAN; COMPLAINT RESOLUTION

A. Contractor shall designate and maintain an Ombudsman for the duration of this Agreement. Contractor shall notify the City of the name and title of the person serving as Contractor's Ombudsman. The Ombudsman must be a company official who does not directly or indirectly report to any person who manages the Collection Services, or any Customer account, on a day-by-day basis. On an ongoing basis, Contractor shall immediately notify the City when an Ombudsman is replaced.

B. If, for any reason, a dispute arises between Contractor and a Collection Services customer that is not resolved between Contractor and the Customer to the City's reasonable satisfaction, the City, at its sole option, may I) submit the dispute to the Ombudsman who shall ensure that the matter is formally reviewed, considered, and resolved and/or responded to by the Contractor within seven (7) days or II) make a determination of the dispute resolution without submitting the Ombudsman. If the Ombudsman shall not resolve the dispute to the City's reasonable satisfaction, the City may make a determination of the dispute resolution. The determination by the City of all Collection Services customer disputes shall be final and binding on Contractor and the customer. This Section 5.4 shall not apply to disputes between Contractor and any customer for customer account obligations or the payment or collection thereof.

C. This Section 5.4, however, does not in any way legally obligate the City to submit a dispute to the Ombudsman as a condition precedent to enforcing its rights hereunder in law or in equity, including the right to seek damages for breach, a decree of specific performance, injunctive relief or any other remedy that would be available to the City in the event of a breach, or threatened breach, of any provision of this Agreement by the Contractor, or any of the Contractor's successors or assigns.

5.5 HAZARDOUS AND OTHER EXCLUDED MATERIALS; CONTAMINATION OF APPROVED RECYCLABLE MATERIALS

A. General

If Contractor determines that waste placed in any Container for Collection or delivered to any facility is Hazardous Waste, Medical and Infectious Waste, or other Excluded Materials, in addition to all other rights available under this Agreement or at law or equity, Contractor shall have the right to refuse to accept such waste and to proceed as provided under his Agreement. Customer shall be contacted by Contractor and requested to arrange proper disposal. If Customer cannot be reached immediately, Contractor staff shall, prior to leaving the premises, leave a tag on the top of the Container indicating the reason for refusing to collect the waste.

B. Ownership of and responsibility for Hazardous Waste or other Excluded Material

Notwithstanding anything in this Agreement to the contrary, ownership of Hazardous Waste and other Excluded Materials shall not transfer to Contractor unless Contractor shall knowingly accept for collection and contract expressly in writing to accept, collect and transport such material. All such material shall remain the property of the Customer placing or attempting to place such material for Collection or disposal, and such Customer shall remain solely responsible for such materials, the proper and legal transportation and disposal thereof, the retrieval of such materials from any location (including without limitation a location to which Contractor may have transported them), and for any and all damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the generation, transportation, handling, cleanup, remediation or disposal of such materials.

C. Contamination of Approved Recyclable Materials

Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for Contaminated Approved Recyclable Materials placed in any Recycling Container, may charge for and disposed of such contaminated materials as Solid Waste, and may refuse to Collect such Contaminated materials.

5.6 PERSONNEL

Contractor shall furnish qualified drivers, mechanical, supervisory, clerical and other personnel as necessary to provide the Collection Services required by this Agreement in a safe and efficient manner and otherwise as provided in the Operating Standards.

5.7 VEHICLES AND EQUIPMENT

Contractor shall procure, maintain and replace a sufficient number of industry standard collection vehicles and other equipment to properly provide the Collection Services. All vehicles used in the performance of Collection Services i) shall be maintained in an operational, clean and sanitary manner to industry standards, ii) shall have appropriate safety markings and lights in accordance with current statutes, rules and regulations, iii) shall not allow liquid wastes to leak from the vehicle, iv) shall be

labeled with signs which clearly indicate the vehicle inventory number and customer service number of Contractor v) shall be painted a uniform color, provided Solid Waste collection vehicles and Recyclable Material collection vehicles may use different paint and color schemes and vi) shall be equipped with properly licensed two-way communication equipment. The Contractor shall maintain a base station or have communication equipment capable of reaching all collection vehicles.

5.8 CONTAINERS

A. Container Requirements and Ownership

The Contractor shall procure, maintain, own and provide to Customers a sufficient quantity of Containers to provide the Collection Services. Without the prior written consent of Contractor, which Contractor may withhold in its sole discretion, Customers shall not provide their own containers and shall use only Containers provided by Contractor for Collection Services; provided, however, Customers may provide Compactors for Collection Services performed by Contractor, which Collection Services may be provided for in the Scope of Services and Rates, provided such Compactors are compatible with Contractor's collection equipment. Contractor shall not be responsible for damage to any Compactors except to the extent caused by the gross negligence or intentional misconduct of Contractor.

Any Container damaged or missing on account of accident, act of nature or the elements, fire, or theft or vandalism by persons other than the Customer such that the Container does not comply with the requirements under this Agreement shall be repaired or replaced by Contractor at Contractor's cost within a reasonable time after request by Customer. Customers shall properly care for Containers provided for Customer's use, shall use reasonable efforts to protect such Containers from graffiti or negligent or intentional misuse, and shall not use such Containers for other than their intended purpose. In the event a Customer damages or requests a replacement Container as a result of Customer's damage, lack of reasonable care or intentional misuse, the Contractor may charge the Customer the reasonable cost of replacement of the Container, including a reasonable pickup and delivery charge. Containers shall be located on the Customer premises in a manner required hereunder and under applicable law, rules and policies and otherwise in a location providing appropriate access to the Container by Contractor and allowing safe and efficient collection by the Contractor. Containers shall not be placed by Contractor or Customer in any City Public Street. Ownership of all Carts and other Containers shall remain with Contractor at all times, except for Compactors provided by Customer.

B. Weight Limits of Containers

Cart weight, including all Collection Materials therein, shall not exceed sixty (60) pounds for the thirty five (35)-gallon size, one hundred-twenty (120) pounds for the sixty four (64)-gallon size and one hundred-eighty (180) pounds for the ninety six (96)-gallon size. No specific weight restrictions apply to Bins or Drop-Boxes, provided, however, the Contractor shall not be required collect, lift or remove any Container i) exceeding the safe working capacity of the collection vehicle as determined by Contractor or ii) which would cause the vehicle carrying the Container to exceed legal road weights.

C. Loading Containers: Access to Containers

All Collection Material must be placed by Customers i) only in Containers provided Contractor, ii) completely within the Containers provided by Contractor, such that the lid or other closure on such Container closes completely and iii) only in Containers designated for the type of Collection Material deposited in such Container. No Collection Materials may be placed for collection by Customer except in a Container provided by Contractor, including without limitation in Customer-supplied or other containers, in bundles or placed outside an appropriate Container. Customer must provide unobstructed, efficient access by Contractor to all Containers in a location approved by Contractor.

5.9 SPILLAGE

Contractor shall exercise reasonable efforts to keep Collection Materials collected by the Contractor completely contained in Containers and collection vehicles. Hoppers and tippers on all collection vehicles shall be operated in a reasonable manner so as to minimize blowing or spillage of materials. Spillage of materials caused by Contractor shall be promptly cleaned up by the Contractor at Contractor's expense to the extent reasonably possible and necessary. However, it is understood that wind conditions in the Truckee Meadows make it impossible for the Contractor to prevent the blowing of all material. All vehicles used for Collection Services shall carry spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials reasonably sufficient to contain, control and, for minor events, appropriately clean-up any spillage or release of wind-blown materials, litter, or leaks of Contractor vehicle fluids or leachate.

5.10 CONTRACTOR PLANNING ASSISTANCE

The Contractor shall, upon request, make available a reasonable amount of site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the Contractors Exclusive Service Area, and shall address the ability of Contractor to provide service in the Collection areas. Contractor will not charge for normal and reasonable site planning services. Contractor may charge a reasonable fee for will-serve letters.

5.11 SAFEGUARDING PUBLIC AND PRIVATE FACILITIES

The Contractor shall exercise reasonable efforts to protect public and private improvements, facilities and utilities whether located on public or private property, including street curbs. If such improvements, facilities, utilities or curbs are damaged due to the negligence or intentional misconduct of Contractor, the Contractor shall repair or replace the same. However, Contractor shall not be responsible for damage caused to persons or to public or private property to the extent caused by either or both i) the negligent or intentional acts of a Customer or others and ii) the failure of the Customer property to meet or comply with the requirements of this Agreement and applicable laws, rules and policies, including without limitation the failure of the Container enclosure, approach surface or surrounding area to meet industry standards.

5.12 INCLEMENT WEATHER, CONSTRUCTION AND OTHER SERVICE DISRUPTIONS

When weather, construction or other conditions reasonably prevent or impair Collection Services, Contractor may make reasonable adjustments to the Collection Services, including without limitation postponing Collection until the following regularly scheduled Collection, but shall continue Collection Services to the extent reasonably safe and efficient. No credits or refunds will be provided for missed Collections or other service limitations beyond the reasonable control of contractor. The Contractor shall notify the City of its collection plans and outcomes for each day that severe inclement weather is experienced as soon as practical that same business day.

5.13 VEHICLE DRIVE IN SERVICE

The Contractor shall offer drive-in service, at additional charge, to Customers' property that allows safe access, turn-around space, and clearance for service vehicles. Customers located in an area that does not allow safe access, turn-around or clearance for service vehicles will be provided service if Collection Materials are placed adjacent to the nearest public street or private road that provides safe access in a location approved by Contractor. In the event the Contractor determines a private road or drive cannot be safely negotiated or that providing drive-in service for Customers is impractical due to distance or unsafe conditions, the Contractor will evaluate on-site conditions and make a determination of its preferable approach for providing safe and appropriate service to the Customer. Contractor may require a damage waiver agreement or, upon 30 days prior written notice to the Customer and the City, decline to provide service to Customers where Contractor determines impractical or unsafe.

ARTICLE 6 CUSTOMER RATES

6.1 RATES

A. General Provisions

Contractor shall charge and collect from Customers for Collection Services the Rates provided on the Scope of Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services; provided, however, Contractor shall be entitled to charge other fees and charges for Special Services and other services and may charge other fees and charges for Customer noncompliance as provided in Section 3.10. If a Designated Facility refuses to accept Approved Recyclable Materials, Contractor may collect and deliver such materials for Disposal as Solid Waste and may charge the Rate applicable to Solid Waste for such Collection Services.

6.2 ADJUSTMENT OF RATES

A. CPI Rate Adjustment

Subject to the terms, conditions and limitations of this Section 6.2 A, the Rates, excluding Transition Rates, for all Collection Services shall increase annually during the Term and all Extension Terms in proportion to the percentage increase in the CPI over the preceding year, as provided below ("CPI

Adjustment"). Adjustments to the Rates shall be made in units of One Cent (\$0.01) and fractions thereof shall be rounded to the nearest cent.

The first annual CPI Adjustment of the Rates shall occur April 1, 2014 (such date and each anniversary thereof during the Term, an "Adjustment Date"). The Rates shall be increased in proportion to the percentage increase in the CPI over the most recent twelve (12) month period ending on December 31 of the year preceding the Adjustment Date. In determining the CPI increases, Contractor may elect to increase the Rates applicable to particular or specific services or groups of services by more or less than the CPI, so long as the total increase in the Rates for all Collection Services is less than or equal to the increase in the CPI; provided, however, Contractor and City shall cooperate in good faith to determine the exact amount and allocation of such increases. The Contractor's calculations of the CPI Adjustment and the Return on Revenues described below shall be i) based on financial statements of Contractor which form a part of the financial statements of the parent company of Contractor (which parent's financial statements have been audited by an independent certified public accountant or accounting firm), ii) certified true, correct and complete by the Contractor Representative and iii) provided to the City no later than March 15 of the year of the Adjustment Date. The adjusted Rates shall take effect on the Adjustment Date and shall apply for the ensuing year. If the CPI is changed or discontinued, it will be replaced by an index that would achieve as closely as possible to the same result as if the CPI had not been changed or discontinued.

The CPI Adjustment to the Rates shall be subject to the following limitations:

- i) The CPI shall not be less than zero percent (0%) or more than six percent (6%); and
- ii) Commencing with the Adjustment Date occurring on April 1, 2017, in the event the annual Return on Revenue of Contractor for the three consecutive calendar years immediately preceding the Adjustment Date averages more than eight percent (8%) ("Return on Revenue"), using a three year rolling average, no CPI Adjustment shall apply to the Rates for the year in which such Adjustment Date occurs.

For purposes hereof, "Return on Revenues" shall mean net income divided by gross revenues and expressed as a percentage. Net income is determined by deducting from gross revenues all expenses, which expenses include federal income taxes. Return on Revenue shall be calculated by Contractor in accordance with generally acceptance accounting principles, consistently applied, and otherwise in a manner substantially similar to the calculation of rate increases used under the Existing RFA (as defined in Section 11.23 hereof). The Rates of both service providers under both of the Commercial Franchise Agreements shall increase in the amount and at the time the Rates of Reno Disposal increase.

The service provider under the other Commercial Franchise Agreement is a third party beneficiary of this Section 6.2 A as provided in Section 6.2 A i) of the other Commercial Franchise Agreement.

B. Other Adjustments to Rates

Because the Rates are Contractor's sole compensation for the Collection Services, the Rates must be sufficient to pay known and unknown costs that may increase over time. Accordingly, City and Contractor agree that, in addition to the CPI Adjustment and the other adjustments under this Section, the Rates shall be increased ("Rate Adjustment") in an amount necessary to compensate Contractor for:

1. Increases in costs or expenses resulting from a Change in Law, Change In Scope of Services or increase in City Collection Services;
2. Increase in the Franchise Fee, Subsidy Fee or other fees required, initiated or approved by City or another federal, state or local governmental agency;
3. A change in the volume of Solid Waste or Recyclable Materials or other materials collected by Contractor hereunder that causes a material increase to Contractor's costs or expenses or material decrease in Contractor's revenues, including without limitation changes caused by a change to the Exclusive Service Area, changes to the requirement that all Customers in the Exclusive Service Area have mandatory Collection Services as provided under this Agreement and annexation or consolidation of outlying or noncontiguous area in the City Included in the Exclusive Service Area;
4. Increase in the fees, expenses or costs to Contractor for the transfer, processing, transportation, recycling, or Disposal of Solid Waste and Recyclable Materials charged by the Designated Facilities under the Disposal Agreement, except to the extent such Increase was already factored into the CPI increase; and
5. Any other circumstance, cause or reason not within the reasonable control of Contractor, including without limitation a Force Majeure event, that causes an Increase in costs or reduction in revenue of Contractor, such that the Rates do not fairly compensate Contractor for the Collection Services.

Contractor may initiate a Rate Adjustment under this Section 6.2(B) not more than once annually, beginning no earlier than January 1, 2014. To obtain a Rate Adjustment, Contractor shall prepare and submit to the City a rate adjustment statement setting forth the nature of the event causing the increase in costs and a calculation of the increased costs and the Rate Adjustment necessary to offset such increased costs, together with the Return on Revenue. The City may request any and all documentation and data reasonably necessary to evaluate the Rate Adjustment and shall confirm or deny (with detailed written explanation of the reason for any denial and an alternative Rate Adjustment proposal by City) within ninety (90) days of receipt of the statement from Contractor, which confirmation shall not be unreasonably withheld, conditioned or delayed. Rate Adjustments shall include an amount sufficient to pay the increase in costs incurred by Contractor, plus the Return on Revenue. Contractor shall provide written notice of proposed Rate Adjustments to service providers under all other Commercial Franchise Agreements concurrent with submission of the Rate Adjustment proposal to the City.

- C. Rate for Outlying or Non-Contiguous Areas

As a result of annexation or consolidation of the City limits occurring after the Effective Date, the Rates may not fairly or accurately reflect the cost of providing Collection Services to Customers in such outlying or non-contiguous areas. In such event, at the City's election, i) the Rates shall be increased to pay the additional cost of providing Collection Services to such areas and otherwise fairly compensate Contractor for providing such Collection Services or ii) a special rate for such areas may be adopted under this Agreement. Contractor may initiate a Rate Adjustment or special rate adoption under this Section using the same procedures provided for Rate Adjustments in Section 6.2 (B) above and the Rate Adjustments under this Section 6.2 shall apply to any special rates established under this Section 6.2 (C).

D. Other Commercial Franchise Agreements

It is the intent of the City to maintain reasonably consistent Rates in the Exclusive Service Areas under all Commercial Franchise Agreements in the City. Therefore, a Rate Adjustment under any Commercial Franchise Agreement shall cause a Rate Adjustment under all other Commercial Franchise Agreements in the amount reasonably necessary to pay the increase in costs or expenses incurred by the service providers under such other Commercial Franchise Agreements. To obtain such Rate Adjustment, the service provider(s) under the other Commercial Franchise Agreements shall submit a statement for confirmation by City within 90 days after notice of confirmation of the initial Rate Adjustment, which statement shall be submitted and processed in the same manner provided in Section 6.2 (B) above. This Section shall not apply to Special Services under Section 4.5 above.

ARTICLE 7

BILLING; COLLECTION AND PAYMENT

7.1 BILLING AND COLLECTION

Contractor is responsible for billing Customers and collecting Rates Revenues for all Collection Services. Billing for all Collection Services other than Drop Box services shall be in advance. Billing for Drop Box services may be in advance or in arrears, as determined by Contractor. All payments shall be due and payable on the first day of each monthly billing cycle and shall be delinquent if not paid on or before the date thirty (30) days thereafter. Contractor shall be entitled to charge a late fee equal to the greater of Twenty Five Dollars (\$25.00) or ten percent (10%) of the delinquent amount and interest at one and one-half percent (1.5%) per month on all delinquent accounts. Contractor shall be entitled to terminate any delinquent Customer's account after thirty (30) day's written notice. Contractor shall be entitled to charge Customers other fees and charges, including without limitation NSF check charges and collections costs, and shall be entitled to require a deposit before provision of Collection Services. All Rates, charges, penalties, interest and other amounts due to Contractor for Collection Services shall constitute an obligation of the owner of the property (as shown in the Washoe County Assessor's Office records) to which such services are being provided or upon which is located any Commercial Activity for which such services are being provided. An owner may request that services be provided and billed to a tenant or other occupant of the property, but owner shall not be relieved from the primary obligation to pay all amounts due for such service and Contractor shall have no obligation to first proceed for

collection against the tenant or other occupant. Contractor shall be entitled to establish rules, procedures and requirements for Customers subscribing to Collection Services and for collecting any amount payable for the Collection Services, including without limitation the right to collect security deposits and to exercise lien rights. Nothing in this Section shall limit any rights or remedies of Contractor, including without limitation the right to enforce the terms of this Agreement, the Reno Municipal Code relating hereto and its customer service agreements or to collect any all amounts due for Collection Services and other services.

7.2 RECEIPT OF PAYMENT

Contractor shall record all amounts received from Customers into an appropriate accounting account. All payments of Customer billings shall be made by Customer check, money order, cashier's check credit card or autopay; provided no cash shall be accepted.

7.3 MONTHLY PAYMENT OF FRANCHISE FEES AND SUBSIDY FEE

On or before the twenty-fifth (25th) day of each calendar month, Contractor shall prepare and submit a monthly statement to City for the prior month, together with the Franchise Fees and Subsidy Fee payable to City for the prior calendar month. The monthly statement shall include the following information and calculations as supporting documentation for the Franchise Fee and Subsidy Fee payment:

A. Reported Revenues

The amount of Rate Revenues for the month, along with detail describing, at a minimum, the total number of accounts for each applicable monthly charge and the total number of Customers billed for each such amount.

7.4 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS

Contractor shall solely bear all expenses and losses related to collecting or failing to collect bad debt from delinquent Customer accounts

7.5 AUDIT OF BILLINGS AND FINANCIAL REPORTS; REVIEW OF COSTS

City may at its sole discretion select a qualified independent firm to perform an audit of Contractor's records and data directly relevant to matters relating to Contractor's performance of its obligations under this Agreement, as set forth in this Article. Contractor shall, upon request of written notification by City, permit the audit and inspection of all of such records and data by the firm specified by City. The frequency and timing of the audits shall be determined at City's discretion, but shall not exceed a maximum of two (2) audits during the Base Term and one (1) during any five year extension of the Term. City shall be responsible for payment of all audits during the Base Term of the Agreement and any Extension of the Agreement. City shall provide Contractor thirty (30) days' notice of each audit. City shall determine the scope of any audits based on the general requirements specified below and may elect to conduct either one or both of the following types of audit:

A. **Audit of Billings.** The auditor shall review the billing practices of Contractor with relation to delivery of Collection Services. The intent of this audit is to use sampling to verify that Customers are receiving the type and level of service for which they are billed.

B. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and data submitted by Contractor pursuant to Article 8. The purpose of this audit is to verify that Contractor is correctly calculating Rate Revenues, and is properly remitting Franchise Fees and Supplemental Franchise Fees.

ARTICLE 8 RECORD KEEPING, REPORTING AND INSPECTION

8.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records and accounts, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles, including without limitation records of all Rate Revenues, Gross Receipts, Franchise Fees and Subsidy Fees. Such records shall be subject to audit, copy, and inspection by City Representative or designee at any time during normal business hours upon reasonable prior written notice. Contractor shall maintain and preserve all cash, billing and Disposal records for a period of not less than five (5) years following the close of each of Contractor's fiscal years.

B. Collection Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste Collected and delivered under the terms of this Agreement; and (ii) Recyclable Materials, by type, Collected or Disposed;

C. Customer Complaint Record

Contractor shall maintain the customer complaint record pursuant to Article 5.

D. Other Records

Contractor shall maintain all other records required under other Sections of this Agreement.

8.2 ANNUAL AND QUARTERLY REPORTING

A. General

Annual and quarterly reports shall be submitted to the City within forty five (45) days after the end of the reporting period which include:

1. A summary of the prior period's Rate Revenues, Franchise Fees and Subsidy Fee;

2. Account data, including the number of accounts, amount and type of materials deposited in each Designated Facility and customer count by type of service;
3. Amount (In tons) and type of materials Collected and amount delivered to each Designated Facility;
4. Amount and type of materials Diverted;
5. Customer count by type of service

8.3 INSPECTION BY THE CITY

City Representative, or designee(s), shall have the right to observe and review any of Contractor's records, operations, and equipment, relevant to a determination of Contractor's compliance with the requirements of this Agreement pertaining to the provision of Collection Services, and to enter premises during normal business hours for the purposes of such observations, and review at any time upon not less than twenty four (24) hours prior written notice. City Representative shall notify Contractor's representative upon arrival. City Representative will comply with all policies and procedures of Contractor when on Contractor's premises. Contractor may condition any such entry in or upon Contractor's premises, by City Representative or designee(s), on the prior execution of a waiver of any liability of Contractor for any injury or damages suffered by City Representative or designee(s), or their respective heirs and assigns, or others claiming by, through or under them, arising out of or relating to such entry.

ARTICLE 9

INDEMNITY, INSURANCE, PERFORMANCE SECURITY

9.1 INDEMNIFICATION OF THE CITY

Contractor agrees to and shall indemnify, defend and hold harmless City its officers, officials, employees, volunteers, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, damages, loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property) to the extent caused by (i) the failure of Contractor to comply with this Agreement and (ii) the performance by Contractor, its officers, agents, employees, and subcontractors of the Collection Services or other obligations of Contractor hereunder, except in each case to the extent caused by the default, negligence or intentional misconduct of City. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds, and the Contractor shall be liable hereunder to pay only the amount of damages, if any, that exceeds the total amount that all insurance has paid for the damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

9.2 INSURANCE SCOPE AND LIMITS

A. During the Term of this Agreement Contractor shall procure and maintain the following minimum insurance coverage, to the extent available:

1. **Commercial General Liability:** Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per-occurrence basis.

2. **Automobile Liability:** Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement.

3. **Worker's Compensation:** A policy of Worker's Compensation insurance as may be required by the Nevada Revised Statutes.

B. Other Insurance Provisions

1. The insurance policies shall contain, or be endorsed to contain, the following provisions:

a. City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations.

b. Contractor's insurance coverage shall be primary insurance in relation to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer or reduced in scope or amount except after thirty (30) days prior written notice has been given to City.

d. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Contractor for City.

C. **All Coverages.** Each insurance policy required by this Article shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

D. Verification of Coverage

Contractor shall furnish City, within thirty (30) days after the Effective Date and upon request of City thereafter, with original certificates evidencing coverage required under this Section 9.2.

E. Acceptability of Insurers

All insurance policies required by this Article shall be issued by admitted insurers in good standing with and licensed to do business in the State of Nevada, and possessing a current A.M. Best, Inc. rating of B+ PSC VIII or better.

F. Subcontractors

Contractor 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 in this Section.

G. Liability Coverage Amounts

Not more often than every five (5) years during the Term, City shall be entitled to increase the amount of liability insurance coverage required under this Section 9.2 if such coverage is below amounts generally accepted for similar services. In that event, City and Contractor will cooperate in good faith to establish the amount of liability insurance coverage generally accepted for similar services and Contractor will provide such liability coverage amounts.

9.3 INSTRUMENT FOR SECURING PERFORMANCE

Not less than thirty (30) days after the Effective Date, Contractor shall file with City an instrument, in form reasonably acceptable to City, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractor's default under this Agreement.

**ARTICLE 10
DEFAULT AND REMEDIES**

10.1 DEFAULT BY CONTRACTOR

A. Any of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

1. If Contractor shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless Contractor shall materially cure or remedy such failure within thirty (30) days after written notice by City to Contractor specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such thirty (30) day period, Contractor commences cure or remedy within such 30 day period and diligently prosecutes the same to completion.

2. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, Insolvency, or other similar law, or has an involuntary bankruptcy action filed against it which is not dismissed within 90 days of notice to Contractor; Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property; or Contractor shall make any general assignment for the benefit of Contractor's creditors.

3. Contractor ceases to provide Collection Services as required under this Agreement for a period of five (5) consecutive Working Days or more, for any reason within the reasonable control of Contractor, such cessation poses a material threat to the health, safety and welfare of the public and City shall have provided not less than three (3) Working Days written notice of such default.

10.2 CITY REMEDIES FOR EVENT OF DEFAULT BY CONTRACTOR

A. Upon an uncured Event of Default by Contractor, City shall have the right to:

1. Terminate the Agreement in accordance with Section 10.3.

2. In addition to, or in lieu of termination, exercise all of its remedies in accordance with this Article and any other remedies at law and in equity to which City shall be entitled, including without limitation the right to pursue the performance security under Section 9.3 and make an available claim under any insurance policy.

3. At its discretion waive Contractor's default in full or in part.

10.3 TERMINATION BY CITY

Subject to Dispute Resolution in Section 11.8, City shall only exercise its right to terminate this Agreement through action of the Reno City Council at a regularly scheduled (or special) public meeting of that body. Contractor shall be given reasonable prior notice of such meeting, a written statement of the factual and legal basis of the claimed Event of Default and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting and City shall provide to Contractor copies of all records and information in City's possession or control relating to the Event of Default giving rise to such termination.

10.4 CONTRACTOR REMEDIES; TERMINATION

Contractor shall be entitled to terminate this Agreement or pursue specific performance of this Agreement if City shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless City shall materially cure or remedy such failure within sixty (60) days after written notice by Contractor to City specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such sixty (60) day period, City commences cure or remedy within such 60 day period and diligently prosecutes the same to completion. Contractor shall have the right to terminate this Agreement upon ninety (90) days written notice to City if Applicable Law prohibits, materially limits or makes uneconomical the Collection Services as contemplated in this Agreement. Except as provided in Section 11.8, nothing herein shall limit Contractor's rights and remedies available at law or equity for default by a party under this Agreement.

ARTICLE 11

MISCELLANEOUS AND OTHER AGREEMENTS OF THE PARTIES

11.1 OTHER EXCLUSIVE SERVICE PROGRAMS; RIGHT OF FIRST REFUSAL

In the event City determines that a specific program should be implemented for collection or transportation of Food Waste or Green Waste or for any other Solid Waste or Recyclable Materials, other than as provided in this Agreement, to serve the needs of the public in the City, City will notify Contractor and Contractor and City will discuss and negotiate in good faith to i) develop and implement the program and the franchise fees, rates and other matters related thereto and ii) reach agreement on the terms and conditions of a service agreement relating thereto between the City and Contractor. If Contractor and City are unable to reach agreement on the terms and conditions of the service agreement within 90 days of the City notice, City hereby grants to Contractor the right of first refusal to match and accept a) the terms and conditions of any contract offer by the City to other service providers for such a program ("City Offer") and b) the terms and conditions offered by another service provider to the City that the City is willing to accept relating to such a program ("Third Party Offer"). If the City makes a City Offer or receives a Third Party Offer the City is willing to accept, City shall give Contractor prompt written notice with a copy of thereof. Contractor shall have a period of thirty (30) days to provide written notice to City that Contractor will accept the terms of either the City Offer or the Third Party Offer. If Contractor provides such notice, City and Contractor will enter into a service agreement on the terms and conditions of the offer accepted. If Contractor does not timely provide the acceptance notice, the City shall be free to contract with another service provider on the same terms and conditions as stated in the City Offer or the Third Party Offer, as applicable. In the event the City does not consummate an agreement with another service provider on the same terms and conditions within 120 days of the expiration of the 30 day notice period, then the right of refusal shall revive and Contractor shall have the same right of first refusal to accept any subsequent changed terms and conditions, City Offer or Third Party Offer.

11.2 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Collection Services as an independent contractor engaged by City and not as an officer or employee of City or as a partner of or joint venturer with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Collection Services and all persons performing such services on behalf of Contractor. Neither Contractor nor its officers, employees, subcontractors, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

11.3 FORCE MAJEURE

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, public or private construction activities, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, work stoppages or lockouts, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

11.4 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost (subject to rate adjustment provisions elsewhere in this Agreement), comply with all Applicable Laws, including all permit requirements for Collection Service.

11.5 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

11.6 JURISDICTION AND VENUE

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of Nevada, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in City of Reno.

11.7 ASSIGNMENT

A. Definition

For purposes of this Section 11.7, the term "Assignment" shall include, but not be limited to: (i) a transfer by Contractor to another person or entity of all of Contractor's rights, duties and obligations under this Agreement, including without limitation subcontracting of all or a portion of Contractor's obligations hereunder; (ii) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of Contractor; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of Contractor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

B. City Consent to Assignment; Written Assignment and Assumption

Except for Assignments to a Permitted Transferee and except as provided in this Article or otherwise in this Agreement, Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the assignee shall be deemed suitable and City shall consent to an Assignment if the Assignee meets the Assignee Qualifications (as defined below). A formal written instrument of assignment shall be executed by Contractor and an approved assignee or Permitted Transferee, which shall provide for the assignee's assumption and acceptance of all terms and conditions of this Agreement, including all duties and obligations imposed thereby, and also the assignee's express adoption of the representations of Contractor set forth herein as its own representations. Assignments to Permitted Transferees shall not require the consent of the City.

C. Qualifications of Assignee

A proposed assignee shall be deemed suitable and City shall consent to an Assignment to a proposed assignee upon submission of reasonably satisfactory evidence or support (i) that the proposed assignee has at least five (5) years of Solid Waste and Recyclable Materials collection experience similar to the Collection Services; ii) that the proposed assignee currently or recently conducted Solid Waste and Recyclable Materials collection on a scale reasonably equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (iii) the proposed assignee conducts its operations in substantial accordance with accepted industry standards (iv) the proposed assignee conducts its Solid Waste and Recyclable Materials management practices in substantial compliance with all applicable Federal, State, and local laws; and (v) the proposed assignee has the reasonable financial capability and other capabilities to perform the obligations of Contractor under this Agreement to industry standards and to otherwise comply with all terms, covenants and conditions of this Agreement applicable to Contractor (collectively, the "Assignee Qualifications").

D. Transition

If City consents to an assignment, Contractor shall cooperate fully with City and subsequent Contractor(s) or subcontractor(s), and shall provide all appropriate assistance to ensure an orderly transition. Such cooperation and assistance shall include, but not be limited to, Contractor providing, to City and the subsequent Contractor(s) or subcontractor(s), all route lists and billing information listing accounts, and using Contractor's reasonable efforts to avoid and minimize any disruption or inconvenience to Customers.

11.8 DISPUTE RESOLUTION

A. Continue Performance

In the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

B. Mediation

Any unresolved dispute arising between the Parties under this Agreement after negotiation in good faith shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. In the absence of judicial jurisdiction to appoint a mediator, mediation will be before a panel composed of a mediator selected by each party and a third mediator selected by the two mediators so selected. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue any right or remedy available at law or equity, except as expressly and specifically limited under this Agreement.

11.9 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

11.10 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

11.11 PARTIES IN INTEREST

Except as expressly provided to the contrary herein, nothing in this Agreement, whether express or implied, is intended or shall be deemed to confer any rights on any persons other than City and Contractor and their representatives, successors and permitted assigns.

11.12 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision, nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

11.13 NOTICE

A. Notice Procedures

Except as otherwise specifically provided herein, all notices, demands, requests, proposals, approvals, consents and other communications made in connection with this Agreement shall be in writing and shall be effective when personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to CITY: City of Reno
Office of the City Manager
P.O. Box 1900
One East First Street
15th Floor
Reno, Nevada 89505
Attention: City Manager

If to Contractor: Reno Disposal Company
100 Vassar St.
Reno, Nevada 89502
Attention: District Manager

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section 11.13.

B. Facsimile Notice Procedures

1. Facsimile notice may be substituted for written notice with the following limitations:

- a. Facsimile notice shall be considered valid and delivered during standard business hours and days, Monday through Friday, at such time as an authorized representative of the receiving Party acknowledges receipt in writing or by facsimile acknowledgement to the sending party.
 - b. Written notice, in accordance with Paragraph A, must follow any facsimile notice, in order for the facsimile notice to be considered valid notice hereunder.
2. If above conditions are met, facsimile notice will be considered effective from date and time of transmission as indicated on receiving Party's original copy of the transmission.
 3. Facsimile notices must be sent to the following addressees:

If to City:	City Manager Fax number: (775)334-2020
If to Contractor:	District Manager Fax number: (775) 329-4662
 4. The facsimile number to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section 11.13.

11.14 ACTION BY CITY; CITY AND CONTRACTOR REPRESENTATIVE

Subject to the restrictions provided in this Section 11.14, whenever action or approval by City is required under this Agreement, the City Council hereby delegates to the City Representative the authority to act on or approve such matter unless specifically provided otherwise in this Agreement or unless the City Representative determines in his or her sole discretion that such action or approval requires referral to the City Council. The City Representative will have the authority to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to this Agreement, including without limitation approving Rate Adjustments, agreeing with Contractor to change the Approved Recyclable Materials and extensions of time to perform, so long as such actions do not materially change the scope or nature of the Collection Services or the exclusive right and obligation of Contractor to perform the Collection Services. All actions of City Representative are subject to appeal by Contractor to the City Council and Contractor is entitled to rely on all actions of the City Representative. Any alteration, change or modification of or to this Agreement, in order to become effective, will be made in writing and in each instance signed on behalf of each party. Contractor shall, by the Operative Date, designate in writing a responsible official, or duly authorized agent, who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his/her authority to bind Contractor. City may rely upon action taken by such designated representative as action of Contractor. Notwithstanding anything to the contrary in this Section 11.14, the City Council shall have the sole authority to take the following actions; i) termination of this Agreement under Section 10.3 of this Agreement, ii) Rate Increases in excess of three percent (3%) in excess of the CPI increase and iii) any increase or decrease of the Franchise Fee.

11.15 ENFORCEMENT

Contractor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this Agreement and City ordinances related thereto, including without limitation defending challenges thereto and to prevent violations by third parties thereof (including without limitation the exclusive right and obligation to provide the Collection Services in the Exclusive Service Area). City shall reasonably cooperate in such enforcement; provided, however, City shall not be required to incur third party costs in connection therewith. City will adopt and enforce appropriate ordinances to implement this Agreement and otherwise relating to the collection and transportation of Solid Waste and Recyclable Materials.

11.16 GOOD FAITH

Each Party's interpretation and performance under this Agreement shall be reasonable and consistent with the intent to deal fairly and in good faith with the other Party hereto. Each party's exercise of any discretion hereunder shall be made in good faith and consents and approvals shall not be unreasonably withheld, conditioned or delayed, unless expressly stated to the contrary herein.

11.17 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Contractor and City with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

11.18 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

11.19 INTERPRETATION

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

11.20 MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of both Parties without, in any way, affecting the remainder.

11.21 SEVERABILITY

If any provision of this Agreement is for any reason found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision. All other provisions of this Agreement which are otherwise lawful shall remain in full force and effect, and shall be enforced as if such invalid or unenforceable provision had not been contained herein, and to this end the provisions of this Agreement are hereby declared to be severable.

11.22 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original.

11.23 EXISTING FRANCHISE AGREEMENT

The existing First Amended City of Reno Garbage Franchise Agreement dated August 9, 1994, as amended ("Existing RFA"), will remain in place and effective until the later of i) the Effective Date of this Agreement and ii) the date all of the Disposal Agreement and the other City Franchise Agreements (each as defined in the Disposal Agreement), in form acceptable to Contractor and City, are executed and become effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF RENO

a political subdivision of the State of Nevada.

By DAVID L. AIAZZI Date 11-07-12
Robert A. Cashell, Sr., Mayor

Attest:

By Lynnette R. Jones
Lynnette R. Jones, City Clerk

APPROVED AS TO LEGAL FORM:

By [Signature]
City Attorney's Office



CONTRACTOR

Reno Disposal Company, Inc., a Nevada corporation

By: [Signature]

Title: Vice President
Date: 11/16/12

List of Exhibits:

- | | |
|-------------------|---|
| Exhibit A | List of Approved Recyclable Materials |
| Exhibit B | Exclusive Service Area of Contractor |
| Exhibit C | Operating Standards |
| Exhibit D | Scope of Services |
| Schedule 1 | List of Exempted Haulers and List of Exempted Hauler Accounts and Customers for each Exempted Hauler |

EXHIBIT A
List of Approved Recyclable Materials

EXHIBIT A
COMMERCIAL FRANCHISE AGREEMENT
APPROVED RECYCLABLE MATERIALS

1. Newspaper (Including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the CONTRACTOR and the City.

To qualify as Approved Recyclable Materials, all Recyclable Materials must be reasonably clean and otherwise in a condition acceptable to commercial recycling facilities. Without limiting the foregoing, Approved Recyclable Materials mixed with I) more than a de minimis amount of Garbage, II) 10% or more of materials other than Approved Recyclable Materials, or III) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for placement of Contaminated Recyclable Materials in a Recycling Container for Collection, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

Exhibit B
Exclusive Service Area of Contractor

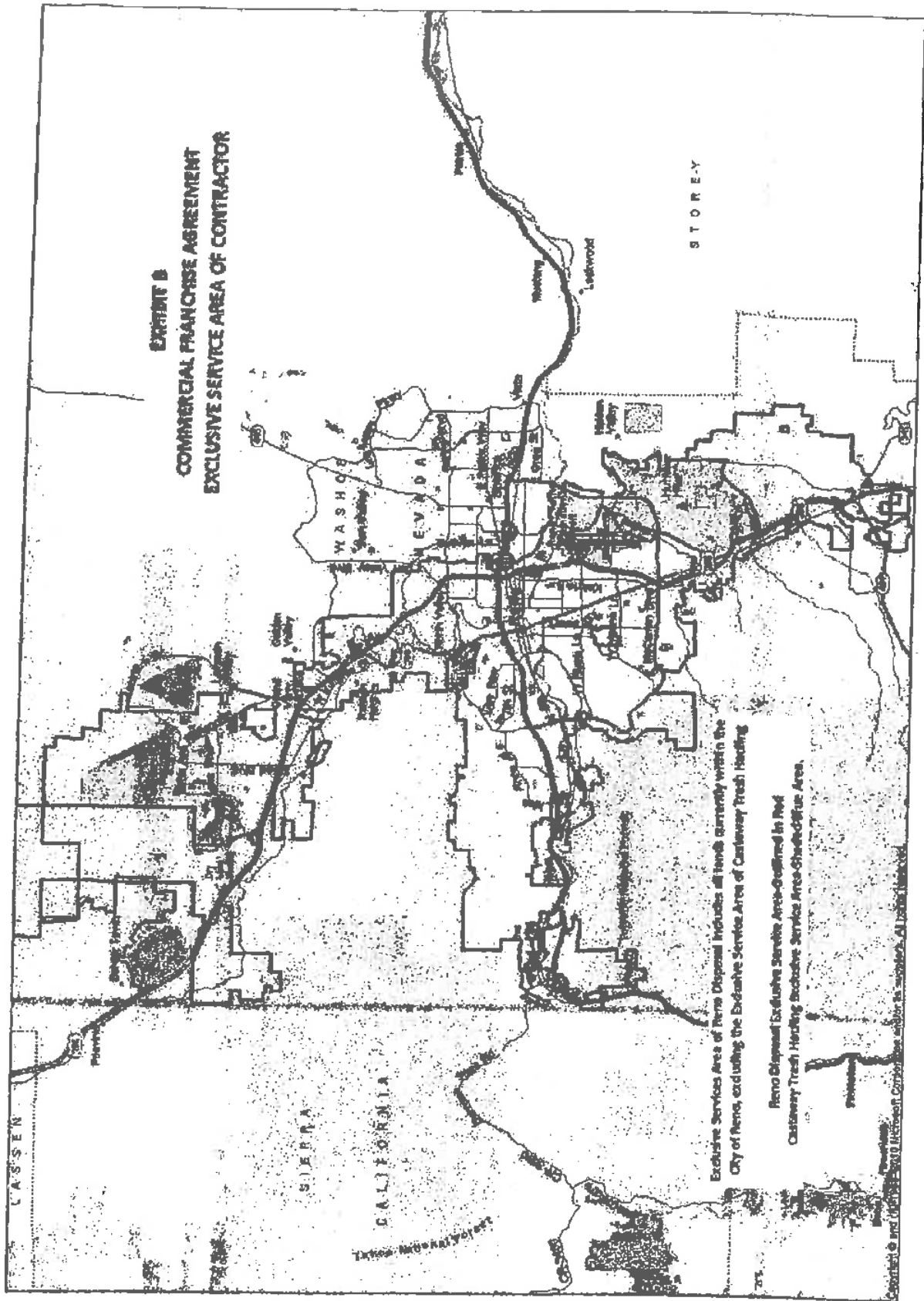


Exhibit C
Operating Standards

EXHIBIT C
COMMERCIAL FRANCHISE AGREEMENT
OPERATING STANDARDS

1. Contractor Standards

- A. Contractor shall perform the Collection Services in a commercially reasonable manner using industry standard practice for comparable operations.
- B. Color and appearance of collection vehicles, containers, employee uniforms, and public education materials provided by Contractor will be designed to provide a standard representation of the company. If subcontractors are used, a distinct but uniform appearance of the subcontractor's equipment, vehicles, and personnel is required.

2. Vehicles and Equipment

Contractor shall furnish sufficient vehicles and equipment to provide all services required under this Agreement. Contractor's name, phone number, and vehicle identification number shall be visibly displayed on its vehicles in letters and figures. Contractor shall maintain all of its vehicles and equipment in a reasonably safe, clean, painted and operable condition. All Collection vehicles must be registered with the Department of Motor Vehicles of the State of Nevada. Vehicles shall be operated in compliance with all applicable safety and local ordinances. Collection vehicles shall be operated in a manner to minimize or prevent spilling, dripping or blowing of materials from the vehicle.

3. Personnel

A. Employee Conduct

Contractor shall reasonably train and supervise its employees i) to provide professional and courteous service to Customers and to other wise deal with the public in a professional and cautious manner and ii) to dress in clean uniform shirts with suitable identification.

B. Employee Operational Requirements

Contractor's employees shall i) not place Containers in a manner that blocks any driveway, sidewalk, mailboxes, or street, ii) shall close all gates opened by them in making collections, unless otherwise directed by the customer, and iii) shall exercise reasonable care to perform Collection Services in a reasonably quiet manner.

C. Driver Qualifications

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the Nevada Department of Motor Vehicles. All Collection vehicle drivers shall also complete Contractor's in-house training program, which includes education on the use of Collection vehicles, Collection programs, and route information as well as Customer service practices and safety information.

D. Background Checks

To the extent permitted by Applicable Law, Contractor shall, prior to hiring a driver, request a report or reports from the State of Nevada indicating whether (i) the individual is listed by the State as a sexual predator and (ii) the individual has a felony record of violence with the State. Contractor will not employ an individual as a driver if those reports show that the individual is so listed or has such a record unless the reports are demonstrated to be erroneous. Once each calendar year, Contractor shall request from the Nevada Department of Motor Vehicles a report of violations committed by drivers employed by Contractor and shall take such action, if any, as Contractor deems appropriate based on such report. Contractor may satisfy these requirements with a background check performed by a third-party in the business of providing such background checks. Contractor shall be entitled to rely without further inquiry on the reports obtained from the State of Nevada or such third-party.

E. Employee Safety Training

Contractor shall provide reasonable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection or who are otherwise directly involved in such services. Contractor shall train its employees involved in collection to identify and not to collect excluded waste.

F. No Gratuities

Contractor shall direct its employees not to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the collection services under this Agreement. Contractor may permit its employees to accept holiday gifts.

Exhibit D
Scope of Services

?

Exhibit D
Commercial Franchise Agreement
Seeger of Sanderson

Bin Collection Services

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 133.15	\$ 224.27	\$ 314.48	\$ 406.79	\$ 498.91	\$ 588.91	N/A
3 Cubic Yards	\$ 157.82	\$ 273.79	\$ 388.45	\$ 500.00	\$ 615.30	\$ 729.91	\$ 849.85
4 Cubic Yards	\$ 187.48	\$ 323.13	\$ 462.49	\$ 594.21	\$ 733.67	\$ 869.02	\$ 1,003.52
5 Cubic Yards	\$ 272.38	\$ 458.05	\$ 674.39	\$ 885.29	\$ 1,119.79	\$ 1,374.29	\$ 1,649.59

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 93.21	\$ 156.99	\$ 228.12	\$ 294.75	\$ 367.84	\$ 448.84	N/A
3 Cubic Yards	\$ 110.47	\$ 181.65	\$ 271.92	\$ 359.49	\$ 449.71	\$ 548.94	\$ 643.90
4 Cubic Yards	\$ 131.18	\$ 226.19	\$ 323.88	\$ 415.95	\$ 513.57	\$ 607.61	\$ 701.88
5 Cubic Yards	\$ 190.62	\$ 322.48	\$ 472.67	\$ 605.79	\$ 743.85	\$ 882.00	\$ 1,167.55

¹ Dumpster and replacing the specified capacity Bin the designated frequency per week. Loading charge per Bin

Exhibit D
Commercial Franchise Agreement
Scope of Services

Waste Collection Services (Cont.)

Additional Dump of Container: Solid Waste and Approved Recyclable Materials²

Service	Rate	Unit	Amount
1 Yr	\$	24.00	24.00
2 Yr	\$	48.00	48.00
3 Yr	\$	72.00	72.00
4 Yr	\$	96.00	96.00
5 Yr	\$	120.00	120.00

Other Services and Fees

Service	Rate
1 Yr	\$ 24.00
2 Yr	\$ 48.00
3 Yr	\$ 72.00
4 Yr	\$ 96.00
5 Yr	\$ 120.00

² Additional dump of existing Customer Site on regularly scheduled service day and non-service day

³ Loading to service or service Site

⁴ Delivery and pick up Site single service

11/11/2012

Exhibit D
Commercial Franchise Agreement
Scope of Services

Cart Collection Services

Cart Collection Service-Field Work

Cart Size	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$ 29.83	\$ 41.88	\$ 62.49	\$ 83.32	\$ 104.15	\$ 124.96	\$ 145.81
2 - 35 Gal Carts	\$ 41.88	\$ 83.32	\$ 124.96	\$ 166.64	\$ 208.39	\$ 249.96	\$ 291.62
1 - 64 Gal Cart	\$ 46.33	\$ 88.06	\$ 130.08	\$ 161.32	\$ 201.06	\$ 241.96	\$ 282.31
2 - 64 Gal Carts	\$ 88.06	\$ 161.32	\$ 241.96	\$ 322.84	\$ 403.39	\$ 483.96	\$ 564.62
3 - 64 Gal Carts	\$ 128.09	\$ 241.96	\$ 362.97	\$ 483.96	\$ 604.95	\$ 725.94	\$ 846.93
1 - 98 Gal Cart	\$ 28.55	\$ 57.10	\$ 85.65	\$ 114.20	\$ 142.75	\$ 171.30	\$ 199.85
2 - 98 Gal Carts	\$ 57.10	\$ 114.20	\$ 171.30	\$ 228.40	\$ 285.50	\$ 342.60	\$ 399.70
3 - 98 Gal Carts	\$ 85.65	\$ 171.30	\$ 256.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
4 - 98 Gal Carts	\$ 114.20	\$ 228.40	\$ 342.60	\$ 456.80	\$ 571.00	\$ 685.20	\$ 799.40

Cart Collection Service-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 98 Gal Cart	\$ 17.48	\$ 34.97	\$ 52.46	\$ 69.95	\$ 87.43	\$ 104.92	\$ 122.41
2 - 98 Gal Carts	\$ 34.97	\$ 69.95	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 98 Gal Carts	\$ 52.46	\$ 104.92	\$ 157.38	\$ 209.84	\$ 262.30	\$ 314.76	\$ 367.22
4 - 98 Gal Carts	\$ 69.95	\$ 139.90	\$ 209.84	\$ 279.78	\$ 349.74	\$ 419.69	\$ 489.63

¹Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

10/21/2012

Exhibit D
Commercial Franchise Agreement
Scope of Services

Drop Box and Curbside Collection Services

Uniform and Payment Collection Services, 4 Annual Recurring Service, and Solid Waste

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$48.00
20 Yard Closed Top	\$55.00
28 Yard Closed Top	\$62.00
Drop Box Initial Delivery Fee	\$75.00

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$48.00
20 Yard Closed Top	\$55.00
28 Yard Closed Top	\$62.00
Drop Box Initial Delivery Fee	\$75.00

Computer Capacity	Rate per Service
10 Yard	\$48.00
12 Yard	\$55.00
14 Yard	\$62.00
16 Yard	\$69.00
18 Yard	\$76.00
20 Yard	\$83.00
22 Yard	\$90.00
24 Yard	\$97.00
26 Yard	\$104.00
28 Yard	\$111.00
30 Yard	\$118.00
32 Yard	\$125.00
34 Yard	\$132.00
36 Yard	\$139.00
38 Yard	\$146.00
40 Yard	\$153.00
42 Yard	\$160.00
44 Yard	\$167.00
46 Yard	\$174.00
48 Yard	\$181.00
50 Yard	\$188.00
52 Yard	\$195.00
54 Yard	\$202.00
56 Yard	\$209.00
58 Yard	\$216.00
60 Yard	\$223.00
62 Yard	\$230.00
64 Yard	\$237.00
66 Yard	\$244.00
68 Yard	\$251.00
70 Yard	\$258.00
72 Yard	\$265.00
74 Yard	\$272.00
76 Yard	\$279.00
78 Yard	\$286.00
80 Yard	\$293.00
82 Yard	\$300.00
84 Yard	\$307.00
86 Yard	\$314.00
88 Yard	\$321.00
90 Yard	\$328.00
92 Yard	\$335.00
94 Yard	\$342.00
96 Yard	\$349.00
98 Yard	\$356.00
100 Yard	\$363.00
102 Yard	\$370.00
104 Yard	\$377.00
106 Yard	\$384.00
108 Yard	\$391.00
110 Yard	\$398.00
112 Yard	\$405.00
114 Yard	\$412.00
116 Yard	\$419.00
118 Yard	\$426.00
120 Yard	\$433.00
122 Yard	\$440.00
124 Yard	\$447.00
126 Yard	\$454.00
128 Yard	\$461.00
130 Yard	\$468.00
132 Yard	\$475.00
134 Yard	\$482.00
136 Yard	\$489.00
138 Yard	\$496.00
140 Yard	\$503.00
142 Yard	\$510.00
144 Yard	\$517.00
146 Yard	\$524.00
148 Yard	\$531.00
150 Yard	\$538.00
152 Yard	\$545.00
154 Yard	\$552.00
156 Yard	\$559.00
158 Yard	\$566.00
160 Yard	\$573.00
162 Yard	\$580.00
164 Yard	\$587.00
166 Yard	\$594.00
168 Yard	\$601.00
170 Yard	\$608.00
172 Yard	\$615.00
174 Yard	\$622.00
176 Yard	\$629.00
178 Yard	\$636.00
180 Yard	\$643.00
182 Yard	\$650.00
184 Yard	\$657.00
186 Yard	\$664.00
188 Yard	\$671.00
190 Yard	\$678.00
192 Yard	\$685.00
194 Yard	\$692.00
196 Yard	\$699.00
198 Yard	\$706.00
200 Yard	\$713.00
202 Yard	\$720.00
204 Yard	\$727.00
206 Yard	\$734.00
208 Yard	\$741.00
210 Yard	\$748.00
212 Yard	\$755.00
214 Yard	\$762.00
216 Yard	\$769.00
218 Yard	\$776.00
220 Yard	\$783.00
222 Yard	\$790.00
224 Yard	\$797.00
226 Yard	\$804.00
228 Yard	\$811.00
230 Yard	\$818.00
232 Yard	\$825.00
234 Yard	\$832.00
236 Yard	\$839.00
238 Yard	\$846.00
240 Yard	\$853.00
242 Yard	\$860.00
244 Yard	\$867.00
246 Yard	\$874.00
248 Yard	\$881.00
250 Yard	\$888.00
252 Yard	\$895.00
254 Yard	\$902.00
256 Yard	\$909.00
258 Yard	\$916.00
260 Yard	\$923.00
262 Yard	\$930.00
264 Yard	\$937.00
266 Yard	\$944.00
268 Yard	\$951.00
270 Yard	\$958.00
272 Yard	\$965.00
274 Yard	\$972.00
276 Yard	\$979.00
278 Yard	\$986.00
280 Yard	\$993.00
282 Yard	\$1000.00
284 Yard	\$1007.00
286 Yard	\$1014.00
288 Yard	\$1021.00
290 Yard	\$1028.00
292 Yard	\$1035.00
294 Yard	\$1042.00
296 Yard	\$1049.00
298 Yard	\$1056.00
300 Yard	\$1063.00
302 Yard	\$1070.00
304 Yard	\$1077.00
306 Yard	\$1084.00
308 Yard	\$1091.00
310 Yard	\$1098.00
312 Yard	\$1105.00
314 Yard	\$1112.00
316 Yard	\$1119.00
318 Yard	\$1126.00
320 Yard	\$1133.00
322 Yard	\$1140.00
324 Yard	\$1147.00
326 Yard	\$1154.00
328 Yard	\$1161.00
330 Yard	\$1168.00
332 Yard	\$1175.00
334 Yard	\$1182.00
336 Yard	\$1189.00
338 Yard	\$1196.00
340 Yard	\$1203.00
342 Yard	\$1210.00
344 Yard	\$1217.00
346 Yard	\$1224.00
348 Yard	\$1231.00
350 Yard	\$1238.00
352 Yard	\$1245.00
354 Yard	\$1252.00
356 Yard	\$1259.00
358 Yard	\$1266.00
360 Yard	\$1273.00
362 Yard	\$1280.00
364 Yard	\$1287.00
366 Yard	\$1294.00
368 Yard	\$1301.00
370 Yard	\$1308.00
372 Yard	\$1315.00
374 Yard	\$1322.00
376 Yard	\$1329.00
378 Yard	\$1336.00
380 Yard	\$1343.00
382 Yard	\$1350.00
384 Yard	\$1357.00
386 Yard	\$1364.00
388 Yard	\$1371.00
390 Yard	\$1378.00
392 Yard	\$1385.00
394 Yard	\$1392.00
396 Yard	\$1399.00
398 Yard	\$1406.00
400 Yard	\$1413.00
402 Yard	\$1420.00
404 Yard	\$1427.00
406 Yard	\$1434.00
408 Yard	\$1441.00
410 Yard	\$1448.00
412 Yard	\$1455.00
414 Yard	\$1462.00
416 Yard	\$1469.00
418 Yard	\$1476.00
420 Yard	\$1483.00
422 Yard	\$1490.00
424 Yard	\$1497.00
426 Yard	\$1504.00
428 Yard	\$1511.00
430 Yard	\$1518.00
432 Yard	\$1525.00
434 Yard	\$1532.00
436 Yard	\$1539.00
438 Yard	\$1546.00
440 Yard	\$1553.00
442 Yard	\$1560.00
444 Yard	\$1567.00
446 Yard	\$1574.00
448 Yard	\$1581.00
450 Yard	\$1588.00
452 Yard	\$1595.00
454 Yard	\$1602.00
456 Yard	\$1609.00
458 Yard	\$1616.00
460 Yard	\$1623.00
462 Yard	\$1630.00
464 Yard	\$1637.00
466 Yard	\$1644.00
468 Yard	\$1651.00
470 Yard	\$1658.00
472 Yard	\$1665.00
474 Yard	\$1672.00
476 Yard	\$1679.00
478 Yard	\$1686.00
480 Yard	\$1693.00
482 Yard	\$1700.00
484 Yard	\$1707.00
486 Yard	\$1714.00
488 Yard	\$1721.00
490 Yard	\$1728.00
492 Yard	\$1735.00
494 Yard	\$1742.00
496 Yard	\$1749.00
498 Yard	\$1756.00
500 Yard	\$1763.00
502 Yard	\$1770.00
504 Yard	\$1777.00
506 Yard	\$1784.00
508 Yard	\$1791.00
510 Yard	\$1798.00
512 Yard	\$1805.00
514 Yard	\$1812.00
516 Yard	\$1819.00
518 Yard	\$1826.00
520 Yard	\$1833.00
522 Yard	\$1840.00
524 Yard	\$1847.00
526 Yard	\$1854.00
528 Yard	\$1861.00
530 Yard	\$1868.00
532 Yard	\$1875.00
534 Yard	\$1882.00
536 Yard	\$1889.00
538 Yard	\$1896.00
540 Yard	\$1903.00
542 Yard	\$1910.00
544 Yard	\$1917.00
546 Yard	\$1924.00
548 Yard	\$1931.00
550 Yard	\$1938.00
552 Yard	\$1945.00
554 Yard	\$1952.00
556 Yard	\$1959.00
558 Yard	\$1966.00
560 Yard	\$1973.00
562 Yard	\$1980.00
564 Yard	\$1987.00
566 Yard	\$1994.00
568 Yard	\$2001.00
570 Yard	\$2008.00
572 Yard	\$2015.00
574 Yard	\$2022.00
576 Yard	\$2029.00
578 Yard	\$2036.00
580 Yard	\$2043.00
582 Yard	\$2050.00
584 Yard	\$2057.00
586 Yard	\$2064.00
588 Yard	\$2071.00
590 Yard	\$2078.00
592 Yard	\$2085.00
594 Yard	\$2092.00
596 Yard	\$2099.00
598 Yard	\$2106.00
600 Yard	\$2113.00
602 Yard	\$2120.00
604 Yard	\$2127.00
606 Yard	\$2134.00
608 Yard	\$2141.00
610 Yard	\$2148.00
612 Yard	\$2155.00
614 Yard	\$2162.00
616 Yard	\$2169.00
618 Yard	\$2176.00
620 Yard	\$2183.00
622 Yard	\$2190.00
624 Yard	\$2197.00
626 Yard	\$2204.00
628 Yard	\$2211.00
630 Yard	\$2218.00
632 Yard	\$2225.00
634 Yard	\$2232.00
636 Yard	\$2239.00
638 Yard	\$2246.00
640 Yard	\$2253.00
642 Yard	\$2260.00
644 Yard	\$2267.00
646 Yard	\$2274.00
648 Yard	\$2281.00
650 Yard	\$2288.00
652 Yard	\$2295.00
654 Yard	\$2302.00
656 Yard	\$2309.00
658 Yard	\$2316.00
660 Yard	\$2323.00
662 Yard	\$2330.00
664 Yard	\$2337.00
666 Yard	\$2344.00
668 Yard	\$2351.00
670 Yard	\$2358.00
672 Yard	\$2365.00
674 Yard	\$2372.00
676 Yard	\$2379.00
678 Yard	\$2386.00
680 Yard	\$2393.00
682 Yard	\$2400.00
684 Yard	\$2407.00
686 Yard	\$2414.00
688 Yard	\$2421.00
690 Yard	\$2428.00
692 Yard	\$2435.00
694 Yard	\$2442.00
696 Yard	\$2449.00
698 Yard	\$2456.00
700 Yard	\$2463.00
702 Yard	\$2470.00
704 Yard	\$2477.00
706 Yard	\$2484.00
708 Yard	\$2491.00
710 Yard	\$2498.00
712 Yard	\$2505.00
714 Yard	\$2512.00
716 Yard	\$2519.00
718 Yard	\$2526.00
720 Yard	\$2533.00
722 Yard	\$2540.00
724 Yard	\$2547.00
726 Yard	\$2554.00
728 Yard	\$2561.00
730 Yard	\$2568.00
732 Yard	\$2575.00
734 Yard	\$2582.00
736 Yard	\$2589.00
738 Yard	\$2596.00
740 Yard	\$2603.00
742 Yard	\$2610.00
744 Yard	\$2617.00
746 Yard	\$2624.00
748 Yard	\$2631.00
750 Yard	\$2638.00
752 Yard	\$2645.00
754 Yard	\$2652.00
756 Yard	\$2659.00
758 Yard	\$2666.00
760 Yard	\$2673.00
762 Yard	\$2680.00
764 Yard	\$2687.00
766 Yard	\$2694.00
768 Yard	\$2701.00
770 Yard	\$2708.00
772 Yard	\$2715.00
774 Yard	\$2722.00
776 Yard	\$2729.00
778 Yard	\$2736.00
780 Yard	\$2743.00
782 Yard	\$2750.00
784 Yard	\$2757.00
786 Yard	\$2764.00
788 Yard	\$2771.00
790 Yard	\$2778.00
792 Yard	\$2785.00
794 Yard	\$2792.00
796 Yard	\$2799.00
798 Yard	\$2806.00
800 Yard	\$2813.00
802 Yard	\$2820.00
804 Yard	\$2827.00
806 Yard	\$2834.00
808 Yard	\$2841.00
810 Yard	\$2848.00
812 Yard	\$2855.00
814 Yard	\$2862.00
816 Yard	\$2869.00
818 Yard	\$2876.00
820 Yard	\$2883.00
822 Yard	\$2890.00
824 Yard	\$2897.00
826 Yard	\$2904.00
828 Yard	\$2911.00
830 Yard	\$2918.00
832 Yard	\$2925.00
834 Yard	\$2932.00
836 Yard	\$2939.00
838 Yard	\$2946.00
840 Yard	\$2953.00
842 Yard	\$2960.00
844 Yard	\$2967.00
846 Yard	\$2974.00
848 Yard	\$2981.00
850 Yard	\$2988.00
852 Yard	\$2995.00
854 Yard	\$3002.00
856 Yard	\$3009.00
858 Yard	\$3016.00
860 Yard	\$3023.00
862 Yard	\$3030.00
864 Yard	\$3037.00
866 Yard	\$3044.00
868 Yard	\$3051.00
870 Yard	\$3058.00
872 Yard	\$3065.00
874 Yard	\$3072.00
876 Yard	\$3079.00
878 Yard	\$3086.00
880 Yard	\$3093.00
882 Yard	\$3100.00
884 Yard	\$3107.00
886 Yard	\$3114.00
888 Yard	\$3121.00
890 Yard	\$3128.00
892 Yard	\$3135.00
894 Yard	\$3142.00

Exhibit D
Commercial Franchise Agreement
Scope of Services

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$ 75.00	Charge to return to customer location for any other reason not specifically included in Scope of Services
Container Liner	\$ 14.32	Plastic liner placed inside the Container before material loaded
Damage/Inactivity	\$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	\$ 21.00	Rinse of Container with water
Container Steam Cleaning	\$ 132.45	Steam Clean of Container
Safety Caps Replacement	\$ 17.35	Safety caps required when a Container is placed in the street
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property
Swap Shut fee	\$ 75.00	Fee for each occurrence of overloading Container such that it does not completely close
Advert/Cruffe-collection fee	\$ 40.00	Charge to open a new service or to open a closed service
Big Out charge	\$ 75.00	Fee for each occurrence to remove material lodged in Container
Encumbrance fee	\$ 7.50	Fee per month for opening encumbrance prior to unloading Container
Locking Container	\$ 17.50	One time charge to install locking mechanism on container
Container Stamp	\$ 75.00	Container ownership (tag line and logo)
Van Service Jailer	\$ 50.00	Charge to provide a van service letter for new development
Final Minute:		
60 min. Call	\$ 50.45	Rate per service for a Final Minute Response Call
3 yard bin	\$ 107.20	Rate per service for a Final Minute Response Bin

SCHEDULE 1
List of Exempted Haulers and
List of each Exempted Hauler's Exempted Hauler Accounts

Exempted Haulers include:

1. Castaway Trash Hauling, Inc., a Nevada corporation
2. Waste Management of Nevada, Inc. a Nevada corporation, sometimes dba B & L Disposal and RSW Recycling.
3. A Team Trash Hauling, LLC, a Nevada limited liability company
4. Carmen's Cleaning
5. Empire Contractors, Inc., a Nevada corporation and Empire Waste Systems
6. Patrick's Construction Cleanup
7. AMCB, LLC, a Nevada limited liability company, dba Rubbish Runners
8. Trashco
9. Oiese Construction

Exempted Hauler Accounts for Each Exempted Hauler (Provide the Name and Address of the Customer for each Exempted Hauler Account):

1. Castaway Trash Hauling, Inc. (No Exempted Hauler Accounts)
2. Waste Management of Nevada, Inc. (No Exempted Hauler Accounts)

Attach list of Exempted Hauler Accounts for each Exempted Hauler

In the event the Exempted Hauler Accounts for Each Exempted Hauler are not reviewed and approved by the City and listed on this Schedule 1 on the Effective Date of this Agreement, each Exempted Hauler will diligently cooperate in good faith with the City and will within 15 days after request from City provide to the City all information requested by the City and reasonably necessary or appropriate for the City to review, approve and list the Exempted Hauler Accounts on this Schedule 1. The Exempted Hauler Accounts will be approved by the City and listed on this Schedule 1 within 60 days after the Effective Date. Within such 60 day period, the City will obtain the exact legal name of each Exempted Hauler that is an entity or the names of all owners of any Exempted Hauler that is not an entity, along with the dba name for each Exempted Hauler, each of which shall be listed on this Schedule 1. After completion as provided in this paragraph, this Schedule 1 shall be attached to this Agreement and shall become a part hereof.

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT "4"

EXHIBIT "4"

11-07-12
G.S.G

**DISPOSAL AGREEMENT
SOLID WASTE AND
RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 14 day of November, 2012 ("Effective Date"), between the City of Reno, a political subdivision of the State of Nevada, (hereinafter called "City"), and Refuse, Inc., a Nevada corporation (hereinafter called "Contractor"), with reference to the following facts.

WITNESSETH:

- A. WHEREAS the Contractor owns and operates an environmentally-sound and permitted Solid Waste disposal site known as the Lockwood Regional Landfill located in Storey County, Nevada (the "Disposal Site"), and also owns and operates an environmentally sound and duly permitted Solid Waste transfer station located at 1390 East Commercial Row and 13890 Mt. Anderson, both in Reno, Nevada (the "Transfer Station").
- B. WHEREAS the Contractor also currently owns and operates a material recovery facility for the processing and recovery of Recyclable Materials, located at 1100 Commercial Row, in Reno Nevada (the "MRF"), and is in the process of permitting and developing a new, integrated Eco-Center in Reno, Nevada which, when and if constructed and operational, will contain a new material recovery facility for the processing and recovery of Recyclable Materials, a household hazardous waste drop-off facility, a green waste and electronics drop-off facility, and potentially other recycling and recovery operations (the "Eco-Center").
- C. WHEREAS the City has entered into a residential collection franchise agreement with a Franchised Hauler for the collection, transportation, recycling, and disposal of Solid Waste and Recyclable Materials from residential customers within the City of Reno (the "Residential Franchise Agreement"), and has also entered into two commercial franchise agreements for separate and distinct zones of the City with two Franchised Haulers for the collection and transportation of commercial Solid Waste and Approved Recyclable Materials from commercial and industrial customers within the City of Reno (the "Commercial Franchise Agreements").
- D. WHEREAS the City has a desire to ensure that the recycling and disposal of Solid Waste and Recyclable Materials collected from City residents and businesses occurs in an environmentally safe, sound, and responsible manner, and to also ensure that the rates for Solid Waste disposal and processing of Recyclables remain cost-effective for its ratepayers.
- E. WHEREAS the City and Contractor thus desire to enter into this Agreement to, among other things, (a) provide for the delivery, transfer, processing, handling, transport, and disposal of Approved Disposal Materials generated within the City at Contractor's Transfer Station, MFR, Eco-Center, or Disposal Site; and (b) establish the respective obligations of the City and Contractor with respect to the

provision of delivery, transfer, processing, handling, transport, and disposal services for all Approved Disposal Materials generated within the City.

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 hereby agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings. To the extent of any inconsistency between the definitions of the following terms provided in this Article and the use or definition of those terms that may appear in related City, County, State or Federal laws, ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor.

"Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

"Agreement" means this Agreement between the City and Contractor, including all exhibits and future amendments.

"Applicable Law" means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the collection and disposition of Solid Waste or Recyclable Materials, including those that are in force and effective as of the Effective Date, as well as such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the Effective Date and during the Term of this Agreement.

"Approved Disposal Materials" means the Solid Waste and Approved Recyclable Materials that are collected by the Franchised Haulers under the City Franchise Agreements, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials, iv) Exempted Hauler Account Materials, v) Exempted Facility Materials, vi) Food Waste and vii) Green Waste.

"Approved Recyclable Materials" means the Recyclable Materials approved for recycling under this Agreement, which are listed on Exhibit A attached hereto and which may be changed from time to time by agreement of Contractor and City, excluding Excluded Recyclable Materials.

"Bulky Items" means all discarded waste matter that is too large to be placed in a Cart, including appliances not containing chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require special handling due generally to their size, excluding Excluded Materials.

"Cart" means an industry standard, wheeled Container of approximate thirty-five (35), sixty-four (64), and ninety-six (96) gallon capacity for collection of Solid Waste or Recyclables.

"City Council" means the governing legislative body of the City of Reno.

"Change in Law" means the following events or conditions:

- i) Enactment, adoption, promulgation, issuance, modification, or written change or Initial public announcement or enforcement in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or
- ii) Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Contractor; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

"Change in Scope" is a material change in the type, extent or level of Disposal Services.

"City" means the legal entity known as the City of Reno, Nevada, a political subdivision of the State of Nevada.

"City Franchise Agreements" means the Residential Franchise Agreement and the Commercial Franchise Agreements, each as defined in Recital C of this Agreement.

"City Representative" means the City Manager, or his/her designee, who may be a City official, employee or an agent of City specifically designated to serve as the City Representative and authorized to act on behalf of the City hereunder.

"Commercial Activity" means as provided in the Commercial Franchise Agreements.

"Commercial Franchise Agreements" means as provided in the Recitals hereof.

"Construction and Demolition Debris" means debris resulting from construction, remodeling, repair, renovation, demolition, excavation, dredging, grubbing and related cleanup of residential, commercial or governmental buildings or other structures and pavement, including without limitation construction materials, rubble, bricks, concrete, other masonry materials, soil, rock, lumber, rebar, paving materials and vegetation, including tree stumps. Materials resulting from landscape maintenance are not Construction and Demolition Debris.

"Consumer Price Index" or "CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average-Item: Garbage and Trash Collection (1982=100) as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor Index.

"Container(s)" means Carts, Bins, and drop boxes or other containers for use to provide collection of Solid Waste and Recyclable Materials.

"Contractor" means the Party Identified as Contractor on page 1 of this Agreement.

"Designated Facility" means the Transfer Station, Disposal Site, MRF, Eco-Center or any similar facility owned or operated by Contractor, to which all Approved Disposal Materials shall be delivered by the Franchised Haulers.

"Disposal," "Disposing," "Dispose," or "Disposed" means the final disposition of Solid Waste, but does not include other beneficial uses such as alternative daily cover.

"Disposal Services" means i) the acceptance, transfer, and transportation of Solid Waste that is Approved Disposal Materials and received from the Franchised Haulers, within and from the Transfer Station (or other Designated Facility, if directed by Contractor) to the Disposal Site; ii) the management of the disposal of all Solid Waste that is Approved Disposal Materials at the Disposal Site; iii) the acceptance, processing, transfer, transportation and management of Approved Recyclable Materials that are Approved Disposal Materials and received from the Franchised Haulers, within and from the MRF (or other Designated Facility, if directed by Contractor); and iv) the transportation and disposal at the Disposal Site of any Residuals from such processing of Approved Recyclable Materials, all as provided in this Agreement. Disposal Services do not include acceptance, processing, transfer, transportation or management of i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials, iv) Exempted Hauler Account Materials, v) Exempted Facility Material, vi) Food Waste or vii) Green Waste.

"Disposal Site" means as provided in Recital A of this Agreement.

"Eco-Center" means as provided in Recital B of this Agreement.

"Effective Date" means the date on which this Agreement is fully executed by the Parties, as reflected on page 1 of this Agreement.

"Excluded Materials" means: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, Infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii) materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and codes and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and items Contractor determines to be

excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States Internal Revenue Code Section 501(c) 3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

"Excluded Recyclable Materials" means either or both I) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Materials at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service; and II) any other Recyclable Materials that are not Approved Recyclable Materials.

"Exempted Drop Box" means as provided in the Commercial City Franchise Agreements.

"Exempted Drop Box Materials" means as provided in the Commercial City Franchise Agreements.

"Exempted Drop Box Services" means as provided in the Commercial City Franchise Agreements.

"Exempted Facility" means as provided in the Commercial City Franchise Agreement.

"Exempted Facility Materials" means as provided in the Commercial City Franchise Agreements.

"Exempted Facility Materials Limit" means as provided under the Commercial City Franchise Agreements.

"Exempted Haulers" means as provided in the Commercial City Franchise Agreements.

"Exempted Hauler Account" means as provided in the Commercial City Franchise Agreements.

"Exempted Hauler Account Material" means as provided in the Commercial City Franchise Agreements.

"Exempted Hauler Account Services" means as provided in the Commercial City Franchise Agreements.

"Extension Term" means one or more extensions of the Term of this Agreement, as provided under Section 3.1(B).

"Food Waste" means all compostable pre-consumer and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and egg shells, and food-soiled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, paper milk cartons or other paper products accepted by the Contractor's selected composting facility or other processing facility and that has been Source Separated and placed in a Container for Recycling. Food Waste shall not include dead animals weighing over 15 pounds, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting or other processing facility. The materials accepted by composting site selected by Contractor may change from time to time and the definition of Food Waste shall change accordingly.

"Franchised Haulers" means the parties providing collection and transportation services of Solid Waste and Approved Recyclable Materials under the City Franchise Agreements.

"Franchise Hauler Terms" means as provided in Section 3.4 hereof.

"Garbage" means putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking and sale and serving of food and beverage, excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of Garbage with rubbish, trash or other waste matter, exclusive of items I) through VIII), inclusive under the definition of Excluded Materials, renders the entire resulting mixture as Garbage.

"Green Waste" means Source Separated biodegradable materials including branches (less than three [3] inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants, leaves, pruning's, shrubs, weeds, wood (uncoated and untreated), wood chips, yard trimmings, Christmas trees (with no stands, flocking and/or decorations, and cut into two [2]-foot sections), excluding Excluded Materials.

"Hazardous Waste" means hazardous waste as defined in Nevada Revised Statutes 459.430, hazardous substance as defined in Nevada Revised Statute 459.429 and other hazardous or toxic materials as defined under any other local, state or federal law.

"Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

"MRP" means as provided in Recital B of this Agreement.

"Party" or "Parties" means City or Contractor individually, or City and Contractor, respectively.

"Permitted Transferee" means an Affiliate of Contractor.

"Paper Shredder Materials" means paper and similar paper products and the products and residue resulting from shredding thereof collected and shredded by properly licensed service providers providing paper shredding services.

"Qualifications" means the Assignee Qualifications, as defined in Section 10.6 of this Agreement.

"Rate Revenues" means the revenues from the Rates billed to and collected from Franchised Haulers by Contractor for provision of Disposal Services, but excluding any revenues, receipts or proceeds from other sources, including without limitation Special Services and proceeds from the sale of Recyclable Materials.

"Rates" or "Rate" means the amount each and all Franchised Haulers shall be charged by Contractor for Disposal Services under this Agreement, which Rates or Rate may be adjusted from time to time during the Term as provided under this Agreement, including the Solid Waste Disposal Rate (as defined in Section 5.2(A) of this Agreement) and the Recyclables Rate (as defined in Section 5.2(B) of this Agreement).

"Recyclable Materials" or "Recyclables" means materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or implemented after the Effective Date, but including Source Separated Green Waste and Source Separated Food Waste.

"Recycle", "Recycled", "Recycling" means the process of collection, sorting, cleansing, treating and reconstituting of Recyclable Materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

"Residential Franchise Agreement" means as provided in Recital C of this Agreement.

"Residue" or "Residuals" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as contaminated paper, putrescible waste, and other debris.

"Self-Haul" or "Self-Hauler" means that the generator of any Approved Disposal Materials, may himself or herself, but not by or through an agent, contractor or other third party, occasionally collect, transport and dispose of incidental amounts of Approved Disposal Materials generated by that generator only, subject to the terms and conditions of the Residential Franchise Agreement and the Commercial Franchise Agreements.

"Solid Waste" means all putrescible and nonputrescible waste matter in solid or semi-solid form, including but not limited to rubbish, Garbage, ashes, refuse and Residue, but excluding Excluded Materials.

"Source Separated" means the separation of any material or category of materials from other materials by the generator at the point or place of generation.

"Special Services" means various disposal and other services which is not within the Disposal Services under this Agreement, but which services Contractor at its option may offer to it's the Franchised Haulers or to others at rates, charges and other terms and conditions determined by Contractor.

"Special Waste" includes any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste. As defined for purposes of this Agreement, "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires and vehicle batteries.

"Term" means the period provided in Section 3.1(A), as extended by any Extension Terms under Section 3.1(B).

"Transfer Station" means as provided in Recital A of this Agreement.

"Working Days" means, unless otherwise specified, Monday through Friday, excluding legal holidays.

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Contractor is qualified to transact business in the State of Nevada and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Contractor, such that this Agreement shall constitute a valid and binding obligation of Contractor enforceable in full accordance with its terms, except only to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights.

C. NO CONFLICT

Contractor warrants and represents that, to Contractor's knowledge, as of the Effective Date neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

D. INFORMATION SUPPLIED BY CONTRACTOR

To Contractor's knowledge the information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's financial information, is true, accurate, correct, and complete in all material respects in and as of the Effective Date of this Agreement.

E. CONTRACTOR QUALIFICATIONS

Contractor warrants and represents it has the experience, financial capability and operational capability to perform the Contractor's duties and obligations under this Agreement and meets or exceeds the Qualifications.

ARTICLE 3 DISPOSAL SERVICES AGREEMENT

3.1 AGREEMENT TERM AND EXTENSIONS

Term

This Agreement shall be effective during the Term, which shall commence on the Effective Date and shall expire on the date 17 years thereafter on November 7, 2029 ("Expiration Date"), unless extended as provided in Section 3.1 (B) below.

B Extension Terms; Termination

The Initial Term of this Agreement and each Extension Term of this Agreement shall be automatically extended for an additional five (5) year Extension Term unless City or Contractor provides written notice of termination not less than five (5) years prior to the expiration of the Initial Term and each Extension Term. Contractor shall be entitled to terminate this Agreement effective anytime during the last 3 years of the Initial Term upon not less than twenty four (24) months prior written notice to City.

C Periodic Review by City and Contractor of Collection Services

1. During the 24 month period ("Review Period") commencing on the date five (5) years after the Effective Date ("First Review Period Commencement Date") and on the date of each successive five (5) year anniversary after the First Review Period Commencement Date during the Initial Term and all Extension Terms, each of the City or Contractor may initiate, conduct and complete the review of the operation of the Collection Services under this Agreement, in order to i) assess the effectiveness of the Collection Services and ii) identify areas for possible improvement ("Review"). Either City or Contractor may provide written notice to the other ("Review Notice") stating, in reasonable detail, the nature, scope and specific areas for review, but the provision of the Review Notice shall not be a condition precedent to the Review and Review Notice contents shall not limit the nature, scope or specific areas of the Review.

2. City and Contractor shall during the Review Period cooperate in good faith to conduct the review of the Collection Services. If as a result of the Review either or both the City or Contractor

determine improvements to the Collection Services would be beneficial, i) City and Contractor shall cooperatively prepare a written report reflecting the results of the Review, the aspects of the Collection Services suggested for improvement and any amendments to this Agreement necessary to make such improvements ("Report") and ii) Contractor and the City will conduct, in good faith, discussions and negotiations concerning any improvements to the Collection Services, including any related amendments to this Agreement; provided, however, neither City nor Contractor shall be obligated to agree to any changes to the Collection Services or amendments to this Agreement. The Report shall provide, in reasonable detail, the findings of the Review, together with any recommendations for improvements or changes to the Collection Services and related amendments to this Agreement. If the City and Contractor do not agree on all of the contents of the Report or the recommendations, the Report shall include the positions of both City and Contractor. The Review, preparation of the Report and all discussions and negotiations shall be completed on or before the expiration of the Review Period. If Contractor and City agree to changes to the Collection Services or agree to amend this Agreement, the amendment will be executed on or prior to the expiration of the Review Period and the changes to the Collection Services will be implemented as soon as reasonably possible thereafter.

3.2 CONTRACTOR'S DISPOSAL SERVICES

A. Solid Waste

Beginning on the Effective Date, and throughout the term of this Agreement, Contractor, by itself or through its subcontractors, shall have the right and obligation to (a) accept, transfer, and transport all quantities and loads of Solid Waste that is Approved Disposal Material from the Franchised Haulers, within and from the Transfer Station (or other Designated Facility, if directed by Contractor) to the Disposal Site; and (b) manage the disposal of all Solid Waste that is Approved Disposal Material at the Disposal Site (collectively the "Waste Disposal Services").

B. Approved Recyclable Materials

Beginning on the Effective Date, and throughout the term of this Agreement, Contractor, by itself or through its subcontractors, shall have the right and obligation to (a) accept, process, transfer, transport, and otherwise manage all quantities and loads of Approved Recyclable Materials that are Approved Disposal Materials from the Franchised Haulers, at the Contractor's MRF (or other Designated Facility, if directed by Contractor); and (b) transport and dispose of any Residuals at the Disposal Site (collectively, the "Recycling Services"). Contractor shall be entitled, but shall not have the exclusive right or obligation, to accept, process, recycle or manage Food Waste or Green Waste under this Agreement.

C. Contractor shall be solely responsible for the sale of Approved Recyclable Materials, and shall be entitled to retain all proceeds therefrom. In the event Contractor is unable, after commercially reasonable efforts, to sell any Approved Recyclable Materials on economically reasonable terms, Contractor and City will cooperate in good faith to determine mutually acceptable terms for the handling or Disposal of such Approved Recyclable Materials, including without limitation Disposing of such Approved Recyclable Materials as Solid Waste and adjusting the Recyclables Rates payable on such Approved Recyclable Materials.

D. Contractor to Furnish Resources

The services to be provided by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, equipment, materials, supplies, and all other items necessary to perform all Disposal Services, and the payment of all related expenses including all transfer and Disposal fees, processing fees for Recyclable Materials taxes, utility charges, etc. Contractor shall provide Disposal Services using standard industry practice for comparable operations.

E. Continuation of Disposal Services

In the event all or any of the City Franchise Agreements are terminated, replaced, superseded, amended or otherwise modified prior to the expiration or termination of this Agreement, Contractor shall continue to have the right to continue to provide the Disposal Services on the terms provided under this Agreement for all Approved Disposal Materials (whether or not collected by the Franchised Haulers) generated by residential and commercial uses in the City to the full extent provided under this Agreement; provided, however, the Rates will be adjusted as provided in Section 5.3 hereof if necessary. City and Contractor will cooperate in good faith to amend this Agreement to provide for continued performance of the Disposal Services by Contractor.

F. Delivery of Exempted Drop Box Materials and Exempted Hauler Account Materials

Except as expressly provided herein or in the City Franchise Agreements, neither this Agreement nor the City Franchise Agreements shall limit or preclude Exempted Drop Box Materials collected and transported using Exempted Drop Box Services or Exempted Hauler Account Materials collected and transported using Exempted Hauler Account Services from being delivered by any Exempted Hauler, including Contractor, to any facility for acceptance, processing, recycling, transfer or disposal, including without limitation facilities other than the Designated Facilities.

G. Exemption for Exempted Facility Materials

1. Subject to the Exempted Facility Material Limit and otherwise as provided in this Section 3.2 G, i) the requirement and obligation of a Franchised Hauler to deliver all Approved Disposal Materials to a Designated Facility shall not include or apply to Exempted Facility Materials delivered by a Franchised Hauler to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials.
2. The Exempted Facility shall file with the City a quarterly report, in form required by the City and certified true, correct and complete by an owner or officer of the Exempted Facility, consistent with the obligations of the Exempted Facility under Section 3.2 G 7 hereof, stating i) the volume of all Solid Waste and Recyclable Materials, including without limitation the type and volume of Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials accepted, processed, recycled and disposed during the calendar quarter and ii) such other information the City may require.

3. The Exempted Facility shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 3.2 G, the rights of the Exempted Facility under Section 3.2 G. Sections 3.2 G and 3.2 F shall not be amended in a manner that would terminate, limit or restrict i) the right of any Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility, or ii) the right of any Exempted Hauler to deliver Exempted Drop Box Materials or Exempted Hauler Account Materials to the Exempted Facility as provided under Section 3.2 F hereof, or iii) the right of the Exempted Facility to accept, process, recycle or dispose of the materials delivered under Sections 3.2 G 3 i) and ii) hereof, without the prior written consent of the Exempted Facility, which the Exempted Facility may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 3.2 G shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Facility Materials.

4. The rights of the Exempted Facility under this Section 3.2 G may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary for the acceptance, processing, recycling and disposal of the Exempted Facility Materials and the Exempted Facility owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Facility. If the Exempted Facility shall dissolve or otherwise cease business for a period equal to or more than one (1) year, the rights of the Exempted Facility under this Section 3.2 G shall terminate.

5. The Exempted Facility shall pay to the City in quarterly installments a host fee equal to two and one-tenth cents (\$0.021) for each cubic yard of Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Materials that are accepted, processed, recycled or disposed at the Exempted Facility. The host fee payable under this Section shall be increased in proportion to changes in the Host Fee payable by the Designated Facility Owner under the Disposal Agreement.

6. The Exempted Facility shall be in default hereunder if the Exempted Facility shall i) fail to timely pay the host fee or fail to timely file with the City the reports, each as required under this Section 3.2 G, ii) accept, process, recycle or dispose of Exempted Facility Materials totaling in excess of one hundred five percent (105%) the Exempted Facility Materials Limit for the Exempted Facility, iii) accept, process, recycle or dispose of Exempted Facility Materials more than the Exempted Facility Material Limit on two occasions in any consecutive five (5) year period, or iv) otherwise materially fail to comply with this Section 3.2 G. Upon thirty (30) days written notice of default by City and the failure of the defaulting Exempted Facility to cure such default, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the right to terminate the rights under this Section 3.2 G of the defaulting Exempted Facility.

7. The Exempted Facility will exercise industry standard, reasonable efforts to screen materials received from the Exempted Haulers and the Franchised Haulers to identify Exempted Facility Materials, Exempted Drop Box Materials, Exempted Hauler Account Materials and other materials in order to i) prepare and file the reports required to be filed with the City under this Section 3.2 G, ii) comply with

the Exempted Facility Materials Limit, II) pay the host fee required under this Section 3.2 G and otherwise comply with the requirements of this Section 3.2 G.

3.3 ADDITIONAL OBLIGATIONS OF CONTRACTOR

As part of the consideration under this Agreement, Contractor agrees to the following:

A. Construction of Eco-Center.

Within twenty eight (28) months following the Effective Date of this Agreement, Contractor or its affiliates shall use commercially reasonable efforts to commence and diligently prosecute construction of the Eco-Center or other similar facilities that will provide transfer, processing, and disposal of Solid Waste and Recyclables. The Contractor's obligations to construct and complete the Eco-Center shall be contingent upon the Contractor's obtaining all necessary permits and approvals from local, regional, or state authorities necessary for the construction and operation of the Eco-Center. It is anticipated that the Eco-Center will include the following features; however, the final design and scope of the facilities shall be subject to Contractor's discretion, in consultation with the City:

1. A material recovery facility for the processing of single stream Recyclables, which processing may include, without limitation, sorting, separating, baling and shipping of Recyclables;
2. A larger Solid Waste transfer area with increased capacity for receiving and transferring Solid Waste, along with area for separation of Recyclables from Solid Waste as determined appropriate by Contractor;
3. A receiving and transfer area for community drop off and disposal of green waste, electronic waste, and household hazardous waste (HHW), subject to the development of rates and policies for such services;
4. A community education center providing a facility viewing area and printed and online educational materials;
5. A designated recycling coordinator, to be employed by Contractor, who shall educate and assist residential and commercial customers to enhance recycling and diversion rates; and
6. Such other services and facilities as mutually agreed upon by the Contractor and the City.

Contractor shall be responsible for the cost of developing the Eco-Center; however, the City shall provide reasonable cooperation and coordination to help facilitate the development of such facility or facilities, including but not limited to providing in the City Franchise Agreements that the Franchised Haulers must deliver Approved Disposal Materials to a Designated Facility (except for Exempted Facility Materials) and to abide by the safety and other operational rules and restrictions of the Designated Facility.

B. Natural Gas Fueling Facility.

Within sixteen (16) months following the Effective Date of this Agreement, Contractor or its affiliates shall use commercially reasonable efforts to commence and diligently prosecute construction of a retail compressed natural gas (CNG) fueling facility that will allow the City to purchase CNG for the City's vehicles at market retail rates. The Contractor's obligations to construct and complete the retail CNG facility shall be contingent upon the Contractor's obtaining all necessary permits from local, regional, or state authorities necessary for the construction and operation of such facility. Contractor shall be responsible for the cost of siting, permitting, and developing the retail CNG facility; however, the City shall provide reasonable cooperation and coordination to help facilitate the development of such facility.

C. Solar Compactors.

Within sixteen (16) months following the Effective Date of this Agreement, Contractor or its affiliates shall purchase twenty five (25) "Big Belly" 32-gallon solar powered Solid Waste compactors for transfer to the City and placement in locations throughout the City as mutually agreed upon by the Contractor and the City. These solar compactors are to be used for public street-side collection of Solid Waste. Collection of Solid Waste materials from the compactors will be included within the scope of the Commercial Franchise Agreements as part of the City Collection Services (as defined in the Commercial Franchise Agreements) and shall be the shared obligation of the Commercial Franchised Haulers as provided in the Commercial Franchise Agreements; provided, however, the City shall own and be responsible for the repair and replacement of the compactors.

D. Compressed Natural Gas Vehicles

Within twenty eight (28) months following the Effective Date of this Agreement, Contractor or its affiliates shall purchase and place into service twelve compressed natural gas powered collection vehicles ("CNG Vehicles") for Collection Services (as defined in the City Franchise Agreements) by Reno Disposal, Inc.. Contractor or its affiliates will own, operate and maintain the CNG Vehicles as required in the City Franchise Agreements.

E. City Disposal Services

City shall be entitled to deliver Approved Disposal Materials generated by the City at City properties to Contractor's Transfer Stations at no charge as provided in and subject to this Section ("City Disposal Services"). The City Disposal Services only shall be provided by Contractor for Approved Disposal Materials generated from buildings, parks and similar facilities owned by City and generated in the normal and ordinary course of operation of such facilities and does not include: i) any material that requires special handling, equipment or processing, including without limitation Excluded Materials or Special Waste; ii) materials generated by businesses operating for-profit on or from City property; iii) materials resulting from natural disasters; special events; repair, construction or reconstruction of City facilities or from activities of any subcontractor on City property; iv) access to or disposal at the Disposal Site; or v) any other Disposal Services or other services relating to materials generated from any use, activity or cause other than the operation of City owned facilities in the normal ordinary course for such facility. Any Disposal Services provided by Contractor to City other than the City Disposal Services shall

be paid for by City at the established Rates. In the event the cost or value of the City Collections Services exceeds \$215,000 at the Rates established as provided herein and adjusted for changes in the CPI in the manner provided in Section 5.3 hereof, the Rates shall be concurrently increased in an amount necessary to pay the full amount of such increase and City and Contractor shall cooperate in good faith to establish such increase in Rates.

3.4 CITY'S OBLIGATION TO PROVIDE FOR DELIVERY OF APPROVED DISPOSAL MATERIALS AND OTHER FRANCHISE HAULER RESPONSIBILITIES; CITY FRANCHISE AGREEMENT TERMS

City hereby agrees to the following terms, covenants and conditions and further agrees I) to cause the terms, covenants and conditions in this Section 3.4 and all other terms applicable to the Franchised Haulers and provided under this Agreement (collectively, the "Franchise Hauler Terms") to be included as obligations of each Franchised Hauler in each City Franchise Agreement, II) to maintain each City Franchise Agreement in full force and effect during the Term of this Agreement (except and unless terminated by City as a result of default by the Franchised Hauler thereunder) and III) to abide by and enforce the terms, covenants and conditions of the City Franchise Agreements. The foregoing agreements are a material part of the consideration under this Agreement and material to Contractor's agreement to enter into this Agreement and provide the Disposal Services, capital improvements, and other services and consideration contemplated herein:

A. Delivery of Approved Disposal Materials

Beginning on the Effective Date, and throughout the term of this Agreement, the Franchised Haulers will deliver all Approved Disposal Materials collected, handled or transported under the City Franchise Agreements to the Designated Facilities in accordance with the terms and conditions of this Agreement. Each Franchised Hauler shall deliver I) all Solid Waste that is Approved Disposal Material to the designated Transfer Station, unless Contractor directs the Solid Waste be delivered to another Designated Facility and II) all Approved Recyclable Material that is Approved Disposal Material to the MRF, unless Contractor directs the Approved Recyclable Material be delivered to another Designated Facility. No Approved Disposal Materials shall be delivered to the Disposal Site by the Franchised Haulers without the prior express approval of Contractor. No person or entity other than Contractor shall be allowed or entitled to accept the Approved Disposal Materials for processing, recycling or disposal except as expressly provided under this Agreement. Notwithstanding anything in this Section 3.4 (A) to the contrary, I) the Franchised Haulers shall be entitled to deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste Disposal facilities other than the Designated Facilities, II) Disposal facilities other than the Designated Facilities shall be entitled to accept (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (e) Food Waste and (f) Green Waste for processing or recycling and III) the Franchised Haulers shall be entitled to deliver to the Exempted Facility, and the Exempted Facility shall be entitled to accept, process, recycle and dispose, Exempted Facility Materials. Nothing in this Agreement or the City Franchise Agreements shall be interpreted to prohibit or prevent a Franchised Hauler from directly or indirectly owning and operating a transfer station, disposal facility, materials recovery facility or similar facility that accepts and to which a Franchised Hauler may collect

and deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste; and (e) Green Waste, for processing or recycling.

B. No Excluded Materials; Screening of Materials

Franchised Haulers will deliver only Approved Disposal Materials of the type appropriate for the Designated Facility to which the materials are delivered and otherwise in accordance with the terms of this Agreement. No Excluded Materials will be delivered to any Designated Facility by a Franchised Hauler except with the prior written and informed approval of Contractor. The Franchised Haulers will exercise industry standard, reasonable efforts to screen all materials to i) screen and verify only Approved Recyclable Materials are delivered for Recycling and ii) screen and remove all Hazardous Waste and other Excluded Materials from the materials delivered to the Designated Facilities. Except as provided in Section 3.4 F hereof, ownership of Hazardous Waste and other Excluded Materials shall not transfer to Contractor unless Contractor shall expressly and knowingly accept such ownership in writing and Contractor shall not be responsible for any Hazardous Wastes or other Excluded Materials delivered to a Designated Facility in violation of this Agreement.

C. Payment of Rates by Franchised Haulers

The Franchised Haulers will pay the Rates to Contractor in accordance with Section 5.2 of this Agreement and otherwise as required under this Agreement.

D. Limited License

The Franchised Haulers shall have a limited license to enter the Designated Facilities for the sole purpose of unloading Approved Disposal Materials at an area designated, and in the manner directed, by Contractor.

E. Compliance by Franchised Haulers

Each Franchised Hauler and its employees, subcontractors, or other agents shall comply with: i) Applicable Law related directly or indirectly to the delivery and Disposal of materials to the Designated Facilities, including without limitation the ordinances of the City, ii) all rules and regulations of the Designated Facilities of which the Franchised Hauler has not less than thirty (30) days prior written notice, including without limitation rules relating to safety, acceptance, rejection or revocation of acceptance of materials, and hours of operation, measuring and reporting volumes of Approved Disposal Materials delivered to the Designated Facilities and iii) all other Franchise Hauler Terms in the Disposal Agreement.

F. Inspection and Rejection of Materials by Contractor

Contractor shall have the right to inspect, analyze or test any material delivered by the Franchised Haulers to any Designated Facility. Contractor shall have the right to reject, refuse or revoke acceptance of any material if, in the reasonable opinion of Contractor, the material or tender of delivery fails to conform to, or the Franchised Haulers fail to comply with, the terms of this Agreement, including

without limitation as a result of delivery of Excluded Material. In the event Contractor, by notice to a Franchised Hauler, rejects or within 10 business days of receipt revokes acceptance of materials hereunder, the Franchised Hauler shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from Contractor's control or property. If the rejected material is not removed within three (3) days from receipt of notice, Contractor shall have the right and authority to handle and dispose of the rejected material or Excluded Material in any commercially reasonable manner determined by Contractor. The Franchised Hauler shall pay and/or reimburse Contractor for any and all costs, damages and/or fines incurred as a result of or relating to the tender or delivery of the rejected material or Excluded Material or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of the rejected material or Excluded Material. Title to, ownership of and liability for Excluded Material shall transfer to Contractor unless such Excluded Material is rejected or the acceptance of which is timely revoked. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for delivery of Contaminated Recyclable Materials, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

G. Franchise Hauler Noncompliance

Contractor may suspend on prior written notice some or all Disposal Services to Franchised Haulers the event a Franchised Hauler fails to comply with the requirements applicable to Franchised Haulers in this Agreement or otherwise fails to follow the requirements and procedures under this Agreement or Applicable Law, rules and policies including without limitation, i) improper preparation, separation or contamination of Approved Recyclable Materials, ii) delivery of Excluded Materials to a Designated Facility; or iii) other failure of a Franchised Hauler to comply with the requirements under this Agreement or Applicable Law, rules and policies of which Contractor has provided the Franchised Haulers reasonable prior notice. Upon occurrence of such event(s), Contractor may refuse to accept such materials and may charge fees and charges as provided herein or otherwise approved by City, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of and damages from such noncompliance. Upon notice of such a failure by Contractor to the Franchise Hauler and City and failure of the Franchise Hauler to remedy such failure within thirty (30) days, Contractor may suspend Disposal Service to the Franchise Hauler. The Franchised Hauler shall be reinstated on the first business day following the date upon which any such failure has been corrected. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights or remedies of Contractor under this Agreement, the City Franchise Agreements or Applicable Law.

H. Time of Delivery

The Contractor shall provide identical access and parity of use to the Transfer Station, the MRF, the Eco-Center, and any alternative facilities designated pursuant to Section 3.4 I for each Franchise Hauler for delivery and unloading of Solid Waste and Approved Recyclable Materials (including incidental residue)

at such facilities. Except where either or both the days and hours of operation for such facilities have been changed upon thirty (30) days prior written notice, such facilities shall be open for each and all of the Franchise Haulers every day of the week between the hours of 5:00 AM and 10:00 PM. Subject to compliance with the notice requirements of this Section 4.4 H, operational and delivery hours may be adjusted by the Designated Facility Owner and approved by City. Contractor shall have the right to adjust the operating hours of the Designated Facilities to the extent reasonably necessary in the event of an emergency.

I. Alternative Facilities

During the Term of this Agreement, the Contractor may designate alternative facilities for the receipt, processing, transfer, or disposal of Approved Disposal Materials, Green Waste and Food Waste, provided such alternative facilities do not result in an increase in Rates or material increase in costs to the Franchised Haulers and the Franchised Hauler(s) selected by Contractor will deliver the Approved Disposal Materials to such alternative facilities as directed by Contractor. If Contractor designates an alternative facility, unless the alternative facility is required to pay the Host Fee to the City, Contractor shall pay or cause to be paid the Host Fee applicable to any Approved Disposal Materials delivered to the alternative facility. Upon the approval of City, Contractor may cause or allow Approved Disposal Materials to be delivered to the City waste water treatment plant, in which event no Host Fee, tipping fee or other fee will be payable to City for or on such materials. Nothing in this Section 3.4 I shall limit the right of a Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility or the right of the Exempted Facility to accept, process, recycle or dispose of Exempted Materials under Section 3.2 G hereof.

J. Ownership of Disposal Materials

Ownership of all Approved Disposal Materials, upon delivery to and acceptance by a Designated Facility, shall transfer to Contractor and shall become the property of Contractor.

K. Third Party Beneficiary; Contractor Rights

Contractor shall be a third party beneficiary of the City Franchise Agreements with all rights and remedies to enforce the Franchise Hauler Terms and other terms, covenants and conditions under the City Franchise Agreements.

3.5 COMPENSATION TO CONTRACTOR; RATES; SPECIAL SERVICES

Contractor shall be entitled to charge and collect the Rates from Franchised Haulers for Disposal Services, as more fully provided in Section 5.2 of this Agreement, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from the Franchised Haulers for Disposal Services shall be Contractor's sole compensation for provision of Disposal Services. However, Contractor also shall be entitled provide and collect fees and charges for Special Services and other services and Contractor shall maintain in full force and effect throughout the term of this Agreement a current business license from the City as it relates to provision of Special Services and such other services.

3.6 HOST FEES PAYABLE TO CITY

A. Host Fees for Approved Disposal Materials from Franchised Haulers

Contractor shall pay to the City in monthly installments during the Term a Host Fee equal to Forty Two Cents (\$.42) for each ton of Approved Disposal Materials accepted by Contractor from Franchised Haulers under this Agreement at a Designated Facility located in the City (excluding the Disposal Site), the tonnage of which shall be determined by weighing the Approved Disposal Materials when transported from the Designated Facility.

B. Host Fees for Other Disposal Materials

Contractor also shall pay to the City in monthly installments during the Term a Host Fee equal to Forty Two Cents (\$.42) for each ton of disposal materials other than Approved Disposal Materials accepted by Contractor from Franchised Haulers under this Agreement at a Designated Facility located in the City (excluding the Disposal Site), the tonnage of which shall be determined by weighing the Approved Disposal Materials when transported from the Designated Facility.

C. Adjustment of Host Fee

The Host Fee shall be increased in proportion to changes in the CPI as provided in Section 5.3 hereof and the City reserves the right to increase or decrease the Host Fee upon ninety (90) days written notice to Contractor. In the event City increases or decreases the Host Fee, the Rates shall concurrently be increased or decreased, respectively, in an amount equal to the increase or decrease of the Host Fee, in which event the increase or decrease in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the 90 day notice period.

D. Payment of Host Fees by Contractor to City

The Host Fees for each calendar month ("Subject Month") during the Term and any extensions of the Term shall be paid by Contractor on or before the 25th day of the following calendar month and shall be calculated by Contractor on the basis of the tons of Approved Disposal Materials and the tons of other materials actually delivered to and accepted by the Designated Facilities during the Subject Month. Contractor shall provide to City along with the monthly payment a statement of the tons of Approved Disposal Materials and Host Fee for such payment, attested to by a representative of contractor as being true and correct. Any Host Fee not paid by the date due shall bear interest at Seven Percent (7%) per annum until paid. The tons of Approved Disposal Materials accepted at the Designated Facility under this Agreement, the Host Fees and the calculation thereof shall be subject to audit and inspection by the City under Sections 6.4 and 7.3 below and contractor shall cooperate fully in all such audits and inspections.

E. No Additional Fees or Charges

The Host Fee shall be the only fee or compensation paid by Contractor to City in connection with the Disposal Services and this Agreement and no other license, permit, privilege or other fee, tax or charge shall be imposed by City upon Contractor; provided; however, that nothing in this section shall modify the obligation of Contractor to pay building permit fees and other similar fees relating to the Designated Facilities.

F. Host Fees Payable By Other Facilities

City shall require all transfer stations, material recovery facilities, disposal sites, landfills or other facilities for the transfer, processing, recycling, deposit or disposal of Solid Waste or Recyclable Materials located in the City, in addition to the Designated Facilities, to pay the Host Fee in the manner and amount provided in this Agreement and adjusted as provided herein.

3.7 EMERGENCY SERVICES

In the event that Contractor, for any reason whatsoever, fails, refuses, or is unable to perform the Disposal Services for Solid Waste for a period of more than five (5) consecutive business days, and if as a result thereof, Solid Waste accumulates at a Designated Facility to such an extent, in such a manner, or for such a time that City reasonably finds that such accumulation endangers or menaces the public health, safety, or welfare and is in violation of Applicable Law, then City shall have the right, but not the obligation, upon twenty four (24) hours prior written notice to Contractor, during the period of such emergency to perform, or cause to be performed, such Disposal Services itself with its own or other personnel and equipment without liability to Contractor.

3.8 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.9 ADOPTION BY CITY OF ORDINANCES AND AMENDMENTS

On or before the Effective Date hereof and thereafter during the Term of this Agreement, City shall adopt and thereafter maintain new or amended ordinances reasonably necessary or appropriate to implement and make enforceable and binding the terms and conditions of this Agreement; provided, however, subject to Contractor's rights under this Agreement, City shall have the right and discretion to adopt and amend ordinances or otherwise exercise its regulatory authority relating to the subject matter of this Agreement.

3.10 OTHER SERVICES

In addition to and separate from Disposal Services, Contractor may voluntarily offer services to persons and entities other than City and the Franchised Haulers and may offer services other than the Disposal Services provided under this Agreement, all in the manner and at rates, fees and charges in an amount determined by Contractor, including without limitation services related to i) Excluded Materials, ii)

Excluded Recyclable Materials, iii) Exempted Drop Box Materials, iv) Exempted Hauler Materials, v) Food Waste and v) Green Waste.

3.11 TRANSITION AND IMPLEMENTATION OF DISPOSAL SERVICES

Contractor currently provides certain Solid Waste and Recyclable Materials disposal services in the City and will continue to do so after the Effective Date and until implementation of the Disposal Services under this Agreement. Contractor will commence the implementation of Disposal Services and other obligations required by this Agreement on the dates specified herein for each such service or obligation, but if no date is specified for a particular service or obligation, within 30 days after on the Effective Date.

ARTICLE 4 OPERATIONS

4.1 PERSONNEL

Contractor shall furnish qualified operational, mechanical, supervisory, clerical and other personnel as necessary to provide the Disposal Services required by this Agreement in a safe and efficient manner and otherwise as provided in this Agreement.

4.2 EQUIPMENT

Contractor shall procure, maintain and replace sufficient equipment to properly provide the Disposal Services. All equipment used in the performance of Disposal Services shall be maintained in an operational manner to industry standards.

4.3 INCLEMENT WEATHER, CONSTRUCTION AND OTHER SERVICE DISRUPTIONS

When weather, construction or other conditions reasonably prevent or impair Disposal Services, Contractor may make reasonable adjustments to the Disposal Services, but shall continue Disposal Services to the extent reasonably safe and efficient.

4.4 SERVICE COMPLAINTS AND RESOLUTION

Contractor shall maintain computer records of all oral and written service complaints registered with Contractor from Franchised Haulers receiving Disposal Services ("Complaint Record"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints. Contractor shall record the Complaint in the customer file contained in the Contractor's customer database, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. City has the right under this Agreement to inspect the Complaint's made against Contractor upon written request.

ARTICLE 5 COMPENSATION TO CONTRACTOR

5.1 COMPENSATION TO CONTRACTOR; RATES

The compensation to be paid by the Franchised Haulers to Contractor under this Agreement shall be the Rates; provided, however, Contractor shall be entitled to charge other fees and charges as provide herein.

5.2 GENERAL RATES PROVISIONS

Commencing within 30 days after the Effective Date, Contractor shall charge and collect the Rates provided in this Section 5.2 from the Franchised Haulers for Disposal Services, which Rates may be adjusted as provided in this Agreement.

A. Rate for Solid Waste

Contractor shall charge the Franchised Haulers and the Franchised Haulers shall pay an initial rate of \$11.41 per compacted cubic yard and \$8.90 per uncompacted cubic yard (measured in accordance with reasonable methods and procedures adopted by Contractor of which at least 30 days written notice has been provided to the Franchised Haulers) of Solid Waste delivered to the Transfer Station or other Designated Facility (if directed by Contractor) (the "Solid Waste Disposal Rate"). The Solid Waste Disposal Rate includes all services related to receiving, transferring, transporting and disposing of the Solid Waste, inclusive of federal, state and local taxes, fees and assessments in effect and applicable to the transfer, transport or disposal of such Solid Waste as of the Effective Date. Contractor shall be entitled to install scales and related equipment at the Transfer Station or other Designated Facility and to convert the Solid Waste Disposal Rate from a rate per cubic yard calculation methodology to a reasonably equivalent rate per ton calculation methodology; provided Contractor and City shall cooperate in good faith to determine the appropriate equivalent rate per ton.

B. Rate for Approved Recyclable Materials

Contractor shall charge the Franchised Haulers and the Franchised Haulers shall pay an initial rate of \$43.22 per ton of Approved Recyclable Materials delivered to the MRF or other Designated Facility, if directed by Contractor (the "Recyclables Rate"). The Recyclables Rate includes all services related to the receiving, transfer, processing, sorting, marketing and sale of Approved Recyclable Materials, inclusive of federal, state and local taxes, fees and assessments in effect and applicable to the receiving, transfer, processing, sorting, marketing, and sale of Approved Recyclable Materials as of the Effective Date. In charging the Recyclables Rate hereunder, Contractor shall determine the tonnage of Approved Recyclable Materials by weighing the Franchised Hauler's vehicles at the Designated Facility. Any Solid Waste Residue remaining after the processing of Approved Recyclable Materials shall be disposed of and charged at the Solid Waste Disposal Rate set forth in Section 5.2(A) above.

C. Rates for Special Waste and Other Services

Subject to reasonable handling restrictions or limitations imposed by Contractor, Contractor may accept from Franchised Haulers or others Special Waste and other materials at the Transfer Station, Disposal Site or other Designated Facility, as directed by Contractor, for disposal or other handling. If accepted by

Contractor, Contractor shall charge and the Franchised Haulers or others shall pay the published gate rates for such Special Waste or other materials as published by Contractor on the date of delivery.

5.3 ADJUSTMENT OF RATES AND HOST FEE

A. CPI Rate Adjustment

The Rates for all Disposal Services and the Host Fee shall increase annually in proportion to the percentage increase in the CPI over the preceding year, as provided below ("CPI Adjustment"). Adjustments to the Rates and Host Fee shall be made in units of one cent (\$0.01) and fractions thereof shall be rounded to the nearest cent.

The first annual CPI Adjustment shall occur January 1, 2014 (such date and each anniversary thereof during the Term, an "Adjustment Date"). The Rates and Host Fee shall be increased in proportion to the percentage increase in the CPI over the most recent twelve (12) month period ending on October 1 of the year preceding the Adjustment Date. The Contractor's calculations of the CPI Adjustment and the Host Fee shall be i) certified true, correct and complete by the Contractor Representative and ii) provided to the City no later than December 1 of the year preceding the Adjustment Date. The adjusted Rates and Host Fee shall take effect on the Adjustment Date and shall apply for the ensuing year. If the CPI is changed or discontinued, it will be replaced by an index that would achieve as closely as possible to the same result as if the CPI had not been changed or discontinued.

B. Other Adjustments to Rates

Because the Rates are primary compensation to Contractor for the Disposal Services, the Rates must be sufficient to pay known and unknown costs that may increase over time or to otherwise compensate Contractor for the Disposal Services. Accordingly, City and Contractor agree that, in addition to the CPI Adjustment and the other adjustments under this Section, the Rates shall be increased ("Rate Adjustment") in an amount necessary to compensate Contractor for:

1. Increases in costs or expenses resulting from a Change in Law or Change in Scope of Services;
2. Increase in the Host Fee or other fee, tax, tariff, assessment or other charge levied or assessed on the storage, handling, transportation or disposal of Solid Waste or Recyclables after the Effective Date and required, initiated or approved by City or another federal, state or local governmental agency;
3. A change in the volume of Solid Waste or Recyclable Materials or other materials disposed by Contractor hereunder that causes a material increase to Contractor's costs or expenses or material decrease in Contractor's revenues, including without limitation changes to the requirement that all Franchised Haulers deliver Solid Waste and Approved Recyclable Materials to Contractor as provided under this Agreement;
4. Increase in the fees, expenses or costs to Contractor for the transfer, processing, transportation, recycling, or disposal of Solid Waste and Approved Recyclable Materials, including without limitation a

material increase in the cost of fuel, except to the extent such increase was already factored into the CPI increase; and

5. Any other circumstance, cause, or reason not within the reasonable control of Contractor, including without limitation a Force Majeure event, that causes an increase in costs or expenses or reduction in revenue of Contractor, such that the Rates do not fairly compensate Contractor for the Disposal Services.

Contractor may initiate a Rate Adjustment under this Section 5.3 not more than once annually, beginning no earlier than January 1, 2024. To obtain a Rate Adjustment, Contractor shall prepare and submit to the City and the Franchised Haulers a rate adjustment statement setting forth the nature of the event causing the increase in costs and a calculation of the increased costs and the Rate Adjustment necessary to offset such increased costs. The City may request any and all documentation and data reasonably necessary to evaluate the Rate Adjustment and shall confirm or deny (with detailed written explanation of the reason for any denial and an alternative Rate Adjustment proposal by City) within ninety (90) days of receipt of the statement from Contractor and after soliciting for a period of not less than 30 days written comment on any proposed Rate Adjustment from the Franchised Haulers, which confirmation shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 6

BILLING; COLLECTION AND PAYMENT

6.1 BILLING, COLLECTION; DISPOSAL AGREEMENTS WITH FRANCHISED HAULERS

Contractor is responsible for billing the Franchised Haulers and collecting Rates Revenues for all Disposal Services. Billing for all Disposal Services shall be in arrears on a monthly basis for all tons or cubic yards of Approved Disposal Materials delivered to and accepted by Contractor during the preceding month. All payments shall be by the Franchised Haulers shall be due and payable on the first day of each monthly billing cycle and shall be delinquent if not paid on or before the last day of that month. Contractor shall be entitled to charge a late fee equal to five percent (5%) of the delinquent amount and interest at seven percent (7%) per annum on all delinquent accounts. Contractor shall be entitled to suspend any delinquent Franchise Hauler's account and delivery rights after Thirty (30) day's written notice. Contractor shall be entitled to charge the Franchised Haulers other appropriate fees and charges, including without limitation NSF check charges and collections costs, and shall be entitled to require a deposit equal to the average monthly billings to such Franchised Hauler as a condition to providing Disposal Services to any Franchised Hauler delinquent more than two times in any 60 month period. All Rates, charges, penalties, interest and other amounts due to Contractor for Disposal Services to a Franchised Hauler shall constitute an obligation of each Franchised Hauler. Contractor shall be entitled to establish rules, procedures and requirements for Franchised Haulers for Disposal Services and for collecting any amount payable for the Disposal Services. At Contractor's election, Contractor and the Franchised Haulers will enter into written disposal agreements by which the Franchised Haulers and Contractor agree to the terms and conditions provided under this Agreement for Disposal Services.

Nothing in this Section shall limit any rights or remedies of Contractor, including without limitation the right to enforce the terms of this Agreement, the Reno Municipal code relating hereto and Contractor's agreements with the Franchised Haulers or to collect any all amounts due for Disposal Services and other services.

6.2 RECEIPT OF PAYMENT

Contractor shall record all amounts received from the Franchised Haulers into an appropriate accounting account.

6.3 MONTHLY PAYMENT OF HOST FEES

On or before the twenty-fifth (25th) day of each calendar month, Contractor shall prepare and submit a monthly statement to City for the prior month, together with the Host Fees payable to City for the prior calendar month. The monthly statement shall include amount (in cubic yards or tons, as appropriate) of Approved Disposal Materials accepted by each Designated Facility under this Agreement for the month and the calculation of the Host Fee.

6.4 AUDIT OF HOST FEE AND AMOUNT OF APPROVED DISPOSAL MATERIALS

City may at its sole discretion and cost select a qualified independent firm to perform an audit of Contractor's records and data specifically relevant to the calculation and payment of the Host Fee, as set forth in this Article. Contractor shall, upon 30 days written notification by City, permit the audit and inspection of all of such records and data by the firm specified by City. The frequency and timing of the audits shall be determined at City's discretion, but shall not exceed a maximum of two (2) audits during the Base Term and one (1) during any five year extension of the Term.

ARTICLE 7

RECORD KEEPING, REPORTING AND INSPECTION

7.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records and accounts, pertaining to the Rates Revenues and Host Fee calculations and payments. Such records shall be subject to audit, copy, and inspection by City Representative or designee at any time during normal business hours upon prior written reasonable notice. Contractor shall maintain and such records for a period of not less than five (5) years following the close of each of Contractor's fiscal years.

B. Approved Disposal Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste accepted under the terms of this Agreement; and (ii) Recyclable Materials, by type, accepted under the Terms of this Agreement.

7.2 ANNUAL AND QUARTERLY REPORTING

A. General

Annual and quarterly reports shall be submitted to the City within forty five (45) days after the end of the reporting period which include a summary of (i) Solid Waste accepted under the terms of this Agreement; and (ii) Recyclable Materials, by type, accepted under the Terms of this Agreement.

7.3 INSPECTION BY THE CITY

City Representative, or designee(s), shall have the right to observe and review Contractor's facilities and records specifically relevant to the amount of Approved Disposal Materials accepted under this Agreement and the calculation of the Rate Revenues and Host Fee and in connection therewith to enter the Designated Facility premises during normal business hours for the purposes of such observations, and review at any time upon not less than twenty four (24) hours prior written notice. City Representative shall notify Contractor's representative upon arrival. City Representative will comply with all policies and procedures of Contractor when on Contractor's premises. Contractor may condition any such entry in or upon Contractor's premises, by City Representative or designee(s), on the prior execution of a waiver of any liability of Contractor for any injury or damages suffered by City Representative or designee(s), or their respective heirs and assigns, or others claiming by, through or under them, arising out of or relating to such entry.

ARTICLE 8

INDEMNITY, INSURANCE, PERFORMANCE SECURITY

8.1 INDEMNIFICATION OF THE CITY

Contractor agrees to and shall indemnify, defend and hold harmless City its officers, officials, employees, volunteers, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, damages, loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property) to the extent caused by (i) the failure of Contractor to comply with this Agreement and (ii) the performance by Contractor, its officers, agents, employees, and subcontractors of the Disposal Services or other obligations of Contractor hereunder, except in each case to the extent caused by the default, negligence or intentional misconduct of City. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds, and the Contractor shall be liable hereunder to pay only the amount of damages, if any, that exceeds the total amount that all insurance has paid for the damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

8.2 INSURANCE SCOPE AND LIMITS

A. During the Term of this Agreement Contractor shall procure and maintain the following minimum insurance coverage, to the extent available:

1. **Commercial General Liability:** Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per-occurrence basis.

2. **Automobile Liability:** Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement.

3. **Worker's Compensation:** A policy of Worker's Compensation Insurance as may be required by the Nevada Revised Statutes.

B. Other Insurance Provisions

1. The insurance policies shall contain, or be endorsed to contain, the following provisions:

a. City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations.

b. Contractor's insurance coverage shall be primary insurance in relation to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer or reduced in scope or amount except after thirty (30) days prior written notice has been given to City.

d. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Contractor for City.

c. **All Coverages.** Each insurance policy required by this Article shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

D. Verification of Coverage

Contractor shall furnish City, within 30 days after the Effective Date and upon request of City thereafter, with original certificates evidencing coverage required under this Section 8.2.

E. Acceptability of Insurers

All insurance policies required by this Article shall be issued by admitted Insurers in good standing with and licensed to do business in the State of Nevada, and possessing a current A.M. Best, Inc. rating of B+ FSC VIII or better.

F. Subcontractors

Contractor 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 in this Section.

G. Liability Coverage Amounts

Not more often than every five (5) years during the Term, City shall be entitled to increase the amount of liability insurance coverage required under this Section 8.2 if such coverage is below amounts generally accepted for similar services. In that event, City and Contractor will cooperate in good faith to establish the amount of liability insurance coverage generally accepted for similar services and Contractor will provide such liability coverage amounts.

8.3 INSTRUMENT FOR SECURING PERFORMANCE

Not less than thirty (30) days after the Effective Date, Contractor shall file with City an instrument, in form reasonably acceptable to City, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractor's default under this Agreement.

**ARTICLE 9
DEFAULT AND REMEDIES**

9.1 DEFAULT OF CONTRACTOR

A. Any of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

1. If Contractor shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless Contractor shall materially cure or remedy such failure within thirty (30) days after written notice by City to Contractor specifying in detail the nature of such default or, if such failure

is not reasonably capable of being cured or remedied within such thirty (30) day period, Contractor commences cure or remedy within such 30 day period and diligently prosecutes the same to completion.

2. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, or other similar law, or has an involuntary bankruptcy action filed against it which is not dismissed within 90 days of notice to Contractor; Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property; or Contractor shall make any general assignment for the benefit of Contractor's creditors.

3. Contractor ceases to provide Disposal Services as required under this Agreement for a period of five (5) consecutive Working Days or more, for any reason within the reasonable control of Contractor, such cessation poses a material threat to the health, safety and welfare of the public and City shall have provided not less than three (3) Working Days written notice of such default.

9.2 CITY REMEDIES FOR EVENT OF DEFAULT BY CONTRACTOR

A. Upon an uncured Event of Default by Contractor, City shall have the right to:

1. Terminate the Agreement in accordance with Section 9.3.

2. In addition to, or in lieu of termination, exercise all of its remedies in accordance with this Article and any other remedies at law and in equity to which City shall be entitled, including without limitation the right to pursue the performance security under Section 8.3 and make an available claim under any insurance policy.

3. At its discretion waive Contractor's default in full or in part.

9.3 TERMINATION BY CITY

Subject to Dispute Resolution in Section 10.7, City shall only exercise its right to terminate this Agreement through action of the Reno City Council at a regularly scheduled (or special) public meeting of that body. Contractor shall be given reasonable notice of such meeting, a written statement of the factual and legal basis of the claimed Event of Default and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting and City shall provide to Contractor copies of all records and information in City's possession or control relating to the Event of Default giving rise to such termination.

9.4 CONTRACTOR REMEDIES; TERMINATION

Contractor shall be entitled to terminate this Agreement or pursue specific performance of this Agreement if City shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless City shall materially cure or remedy such failure within sixty (60) days after written notice by Contractor to City specifying in detail the nature of such default or, if such failure is not

reasonably capable of being cured or remedied within such sixty (60) day period, City commences cure or remedy within such 60 day period and diligently prosecutes the same to completion. Contractor shall have the right to terminate this Agreement upon ninety (90) days written notice to City if Applicable Law prohibits, materially limits or makes uneconomical the Disposal Services or the operation by Contractor of any Designated Facility as contemplated in this Agreement. Except as provided in Section 10.7, nothing herein shall limit Contractor's rights and remedies available at law or equity for default by a party under this Agreement or the City Franchise Agreements.

ARTICLE 10 MISCELLANEOUS AND OTHER AGREEMENTS OF THE PARTIES

10.1 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Disposal Services as an independent contractor engaged by City and not as an officer or employee of City or as a partner of or joint venturer with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Disposal Services and all persons performing such services on behalf of Contractor. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

10.2 FORCE MAJEURE

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, public or private construction activities, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, work stoppages or lockouts, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

10.3 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost (subject to rate adjustment provisions elsewhere in this Agreement), comply with all Applicable Laws, including all permit requirements for Disposal Service.

10.4 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

10.5 JURISDICTION AND VENUE

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of Nevada, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in City of Reno.

10.6 ASSIGNMENT

A. Definition

For purposes of this Section 10.6, the term, "Assignment" shall include, but not be limited to: (i) a transfer by Contractor to another person or entity of all of Contractor's rights, duties and obligations under this Agreement, including without limitation subcontracting of all or a portion of Contractor's obligations hereunder; (ii) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of Contractor; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of Contractor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

B. City Consent to Assignment; Written Assignment and Assumption

Except for Assignments to a Permitted Transferee and except as provided in this Article or otherwise in this Agreement, Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the assignee shall be deemed suitable and City shall consent to an Assignment if the Assignee meets the Assignee Qualifications (as defined below). A formal written instrument of assignment shall be executed by Contractor and an approved assignee or Permitted Transferee, which shall provide for the assignee's assumption and acceptance of all terms and conditions of this Agreement, including all duties and obligations imposed thereby, and also the assignee's express adoption of the representations of Contractor set forth herein as its own representations. Assignments to Permitted Transferees shall not require the consent of the City.

C. Qualifications of Assignee

A proposed assignee shall be deemed suitable and City shall consent to an Assignment to a proposed assignee upon submission of reasonably satisfactory evidence or support that (i) that the proposed assignee has at least five (5) years of Solid Waste and Recyclable Materials disposal experience similar to the Disposal Services; (ii) that the proposed assignee currently or recently conducted Solid Waste and Recyclable Materials disposal on a scale reasonably equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (iii) the proposed assignee conducts its operations in substantial accordance with accepted industry standards (iv) the proposed assignee conducts its Solid Waste and Recyclable Materials management practices in substantial compliance with all Federal, State, and local laws; and (v) the proposed assignee has the reasonable financial capability and other financial capabilities to perform the obligations of Contractor under the Agreement to industry standards and to otherwise comply with all terms, covenants and conditions of this Agreement applicable to Contractor. (collectively, the "Assignee Qualification").

D. Transition

If City consents to an assignment, Contractor shall cooperate fully with City and subsequent Contractor(s) or subcontractor(s), and shall provide all appropriate assistance to ensure an orderly transition. Such cooperation and assistance shall include, but not be limited to, Contractor providing, to City and the subsequent Contractor(s) or subcontractor(s), all route lists and billing information listing accounts, and using Contractor's reasonable efforts to avoid and minimize any disruption or inconvenience to customers.

10.7 DISPUTE RESOLUTION

A. Continue Performance

In the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

B. Mediation

Any unresolved dispute arising between the Parties under this Agreement after negotiation in good faith shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. . In the absence of judicial jurisdiction to appoint a mediator, mediation will be before a panel composed of a mediator selected by each party and a third mediator selected by the two mediators so selected. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue any right or remedy available at law or equity, except as expressly and specifically limited under this Agreement.

10.8 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

10.9 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

10.10 PARTIES IN INTEREST

Except as expressly provided to the contrary herein, nothing in this Agreement, whether express or implied, is intended or shall be deemed to confer any rights on any persons other than City and Contractor and their representatives, successors and permitted assigns.

10.11 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision, nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

10.12 NOTICE

A. Notice Procedures

Except as otherwise specifically provided herein, all notices, demands, requests, proposals, approvals, consents and other communications made in connection with this Agreement shall be in writing and shall be effective when personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to CITY: City of Reno
 Office of the City Manager
 P.O. Box 1900
 One East First Street
 15th Floor
 Reno, Nevada 89505
 Attention: City Manager

If to Contractor: Refuse, Inc.
 100 Vassar St.
 Reno, Nevada 89502

Attention: District Manager

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section 10.12.

B. Facsimile Notice Procedures

1. Facsimile notice may be substituted for written notice with the following limitations:

a. Facsimile notice shall be considered valid and delivered during standard business hours and days, Monday through Friday, at such time as an authorized representative of the receiving Party acknowledges receipt in writing or by facsimile acknowledgement to the sending party.

b. Written notice, in accordance with Paragraph A, must follow any facsimile notice, in order for the facsimile notice to be considered valid notice hereunder.

2. If above conditions are met, facsimile notice will be considered effective from date and time of transmission as indicated on receiving Party's original copy of the transmission.

3. Facsimile notices must be sent to the following addressees:

If to City: City Manager
Fax number: (775)334-2020

If to Contractor: District Manager
Fax number: (775) 329-4662

4. The facsimile number to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section 11.12.

10.13 ACTION BY CITY; CITY AND CONTRACTOR REPRESENTATIVE

Subject to the restrictions provided in this Section 10.13, whenever action or approval by City is required under this Agreement, the City Council hereby delegates to the City Representative the authority to act on or approve such matter unless specifically provided otherwise in this Agreement or unless the City Representative determines in his or her sole discretion that such action or approval requires referral to the City Council. The City Representative will have the authority to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to this Agreement, including without limitation approving Rate Adjustments, agreeing with Contractor to change the Approved Recyclable Materials and extensions of time to perform, so long as such actions do not materially change the scope or nature of the Disposal Services or the exclusive right and obligation of Contractor to perform the Disposal Services. All actions of City Representative are subject to appeal by Contractor to the City Council and Contractor is entitled to rely on all actions of the City Representative. Any alteration, change or modification of or to this Agreement, in order to become effective, will be made in writing and in each instance signed on behalf of each party. Contractor shall, by the Effective Date, designate in writing a

responsible official, or duly authorized agent, who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his/her authority to bind Contractor. City may rely upon action taken by such designated representative as action of Contractor. Notwithstanding anything to the contrary in this Section 10.13, the City Council shall have the sole authority to take the following actions; i) termination of this Agreement under Section 9.3 of this Agreement, ii) Rate Increases in excess of three percent (3%) in excess of the CPI increase, iii) any increase or decrease of the Host Fee.

10.14 ENFORCEMENT

Contractor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this Agreement and City ordinances related thereto, including without limitation defending challenges thereto and to prevent violations by third parties thereof (including without limitation the right and obligation to provide the Disposal Services). City shall reasonably cooperate in such enforcement; provided, however, City shall not be required to incur third party costs in connection therewith. City will adopt and enforce appropriate ordinances to implement this Agreement and otherwise relating to the collection and transportation of Solid Waste and Recyclable Materials.

10.15 THIRD PARTY BENEFICIARY

Each Franchised Hauler shall be a third party beneficiary of this Agreement with all rights and remedies to enforce as to the Contractor the terms, covenants and conditions under this Agreement that relate to duties, obligations, and services of the Contractor to and for the benefit of such Franchised Hauler.

10.16 GOOD FAITH

Each Party's interpretation and performance under this Agreement shall be reasonable and consistent with the intent to deal fairly and in good faith with the other Party hereto. Each party's exercise of any discretion hereunder shall be made in good faith and consents and approvals shall not be unreasonably withheld, conditioned or delayed, unless expressly stated to the contrary herein.

10.17 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Contractor and City with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

10.18 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

10.19 INTERPRETATION

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

10.20 MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of both Parties without, in any way, affecting the remainder.

10.21 SEVERABILITY

If any provision of this Agreement is for any reason found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision. All other provisions of this Agreement which are otherwise lawful shall remain in full force and effect, and shall be enforced as if such invalid or unenforceable provision had not been contained herein, and to this end the provisions of this Agreement are hereby declared to be severable.

10.22 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original.

10.23 EXISTING FRANCHISE AGREEMENT

The existing First Amended City of Reno Garbage Franchise Agreement dated August 9, 1994, as amended ("Existing RFA"), will remain in place and effective until the later of i) the Effective Date of this Agreement and ii) the date all of the City Franchise Agreements, in form acceptable to Contractor and City, are executed and become effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF RENO

a political subdivision of the State of Nevada.

By David L. Halli Date 11-07-12
Robert A. Cashell, Sr., Mayor

Attest:

By Lynnette R. Jones
Lynnette R. Jones, City Clerk.



APPROVED AS TO LEGAL FORM:

By 
City Attorney's Office

CONTRACTOR

Refuse, Inc., a Nevada corporation

By: 

Title: Vice President

Date: 11/2/12

List of Exhibits:

Exhibit A- List of Approved Recyclable Materials

EXHIBIT A
List of Approved Recyclable Materials

**EXHIBIT A
DISPOSAL AGREEMENT
APPROVED RECYCLABLE MATERIALS**

1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the CONTRACTOR and the City.

To qualify as Approved Recyclable Materials, all Recyclable Materials must be reasonably clean and otherwise in a condition acceptable to commercial recycling facilities. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) 10% or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for placement of Contaminated Recyclable Materials in a Recycling Container for Collection, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “5”

EXHIBIT “5”

Sent from my blackberry

From: Stewart Brown [<mailto:stewart@animalartistry.com>]
Sent: Thursday, October 30, 2014 09:57 AM
To: Gilletti, Cheryl
Subject: RE: City of reno

I have put a call into the City of Reno and left a message with Kevin Schuller. When I get this straightened out, I call you back.

From: Gilletti, Cheryl [<mailto:CGillett@wm.com>]
Sent: Thursday, October 30, 2014 9:37 AM
To: stewart@animalartistry.com
Subject: City of reno

Hi Stewart,

Attached is a copy of the city of reno franchise, as well as a summary of the franchise for your review. At this time Waste Management is the assigned hauler for the city of Reno. Please note the following.

Solid Waste: Every business generating Solid Waste in the City of Reno is required to subscribe to Reno Disposal Company for the collection, transportation and disposal of all of franchised Solid Waste materials generated by the business, except for businesses to which the City of Reno has specifically granted in writing an exemption. To obtain the exemption form the City of Reno, the business must obtain a certification by the Washoe County Health Department that (1) the business is not generating, producing or accumulating solid waste and (2) the business is not hauling or otherwise disposing of Solid Waste in violation of the franchise agreement.

Recyclable Material. No business may allow or retain any service provider other than Reno Disposal Company to collect, pickup, transport or deliver Approved Recyclable Materials in the City of Reno in violation of the exclusive franchise agreement or the Reno Municipal Code.

If you have questions, including about whether you can hire a service company other than Reno Disposal Company to collect or transport refuse or recycling materials from your business, please contact Jason Geddes at geddesj@reno.gov or 775-334-3311 or Jonathan Shipman at shipmanj@reno.gov or 775-334-2057.

Please let me know if you have any questions.

Thanks

Cheryl Gilletti
Contract Compliance Representative III

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT "6"

EXHIBIT "6"



Billing Name	LES SCHWAB TIRE CENTER
Billing Address	4175 S VIRGINIA ST
City, State Zip	RENO, NV 89502-8000
County	
Telephone #	(775) 880-7745
Fax #	0
Contact	

System	Quantity	Size	Freq.	Ope	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Charges	
FV	1	3	1	W	X							0	Mo
412	1	4	2	W		X			X			200	Mo
													Mo
													Mo
													Mo
													Mo
													Mo
													Mo
											Total	200	Mo

SPECIAL INSTRUCTIONS		WM No.	
RATE DOES NOT INCLUDE ANY GOVERNMENTAL FEES.			
CUSTOMER DEPOSIT	RENEWABLE	YES	Schedule of Charges
DATE	TERM	36 mgs	
P.O. NUMBER			Service Charge per Month
JOB NUMBER			Camera/Load
RECENT REQUIRED	BILL TO ACCT#		Extra Pickup Charges:
TAXABLE	DISPOSAL SITE		- Per Ltr
			- Per Yard
			- Per Ton
THE UNDERSIGNED INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CUSTOMER ACKNOWLEDGES THAT HE/SH/HE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT HE/SH/HE HAS THE AUTHORITY TO SIGN ON BEHALF OF CUSTOMER.			Hauling per Load
			Disposal per Ton
			Disposal per Load
			Total per Load
			Delivery Charge
			Schedule Charge
Customer: <i>R. S. Spivee</i>		Contractor	Removal Charge / Bin
(Authorized Signature)		(Authorized Signature)	Trip Charge
Manager			Franchise Fees
(TITLE)			Wash Service
D-23-04			Minimum Charge per Month
(DATE)		Territory Number	
		(DATE)	



SERVICE AGREEMENT NON-HAZARDOUS WASTES

Collection Service Agreement Terms And Conditions

1. **SERVICES RENDERED; WASTE MATERIALS.** Customer grants to Company the exclusive right, and Company shall furnish equipment and services, to collect and dispose of and/or recycle all of Customer's Waste Materials. Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous putrescible and non-putrescible solid waste and recyclable materials generated by Customer or at Customer's Service Address. Waste Materials includes Special Waste, such as industrial process wastes, asbestos containing material, petroleum contaminated soils, toxicology-disposed wastes, and demolition debris, provided that Customer has completed a Waste Profile for such Special Waste which has been approved by Company in writing. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any radioactive, volatile, explosive, flammable, explosive, biohazardous, infectious, infectious, regulated chemical or hazardous waste, toxic substances or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or Special Waste not approved in writing by Company (collectively, "Excluded Materials"). This and its liability for Excluded Materials shall remain with Customer at all times.

2. **TERM.** The initial term ("Term") of this Agreement is thirty-six (36) months from the Effective Date set forth above ("Initial Term"). This Agreement shall automatically renew thereafter for additional terms of twelve (12) months each ("Renewal Term") unless either party gives to the other party written notice (see Section 10) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.

3. **SERVICES GUARANTY.** If the Company fails to perform the services described within the business days of its receipt of a written demand from Customer (see Section 10), Customer may terminate this Agreement with the payment of all monies due through the termination date.

4. **CHARGES; PAYMENTS; ADJUSTMENTS.** Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the charges on the invoice, as adjusted hereunder, within ten (10) days of the date of Company's invoice. Customer shall pay a service charge on all past due amounts beginning from the date of the invoice at a rate of eighteen percent (18%) per annum or, if less, the maximum rate allowed by law. Company may increase the charges to account for: any increase in disposal, fuel or transportation costs; any change in the composition of the Waste Materials or increases in the average weight per container of Waste Materials; increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges and acts of God such as floods, fires, etc. Company may also increase the charges to reflect increases in the Consumer Price Index for the municipal or regional area in which the Service Address is located. Increases in charges for reasons other than as provided above require the consent of Customer, which may be evidenced verbally, in writing or by the actions and practices of the parties.

5. **CHARGES.** Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties.

6. **EQUIPMENT; ACCESS.** All equipment furnished by Company shall remain the property of Company; however, Customer shall have sole, exclusive and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unrestricted access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modification as caused by or resulting from Customer's failure to provide access. Company shall not be responsible for any damage to Customer's property, including pavement, subsurface or existing, resulting from Company's provision of services hereunder. Customer warrants that Customer's right of way is sufficient to bear the weight of Company's equipment and vehicles.

7. **LIQUIDATED DAMAGES.** In the event Customer terminates this Agreement prior to the expiration of any term for any reason other than a default by Company, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages in addition to the Company's legal fees: 1) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly charges multiplied by six; 2) if the remaining Initial Term under this Agreement is less


than six months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Term; 3) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly charges multiplied by three; or 4) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Company shall not be liable under any circumstances for any special, incidental or consequential damages arising out of or in connection with performance of this Agreement.

8. **INDEMNITY.** The Company agrees to indemnify, defend and save Customer harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs (1) during the collection or transportation of Customer's Waste Materials, or (2) as a result of the disposal of Customer's Waste Materials, after the date of this Agreement, in a facility owned by a subsidiary of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

9. **RIGHT OF FIRST REFUSAL.** Customer grants to Company a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

10. **MISCELLANEOUS.** (a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, whether written or oral, that may exist between the parties; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; and (e) No written notification required by this Agreement shall be by Certified Mail, Return Receipt Requested. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect to the maximum extent allowed to the intent and meaning of the severed provision. In the event the Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay the Company's attorney's fees and court costs.

Customer	LES SCHWAB TIRE CENTER
301 - 1391	4175 VIRGINIA ST S
	RENO, NV 89502-8009

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “7”

EXHIBIT “7”

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000352

Bin Collection Services

Bin Collection Services-Solid Waste							
Bin Capacity	Monthly Rate by Collection Frequency per Week¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
2 Cubic Yards	\$ 133.15	\$ 224.27	\$ 314.46	\$ 406.78	\$ 496.91	\$ 586.81	N/A
3 Cubic Yards	\$ 157.82	\$ 273.79	\$ 388.45	\$ 500.69	\$ 615.30	\$ 729.91	\$ 919.85
4 Cubic Yards	\$ 187.40	\$ 323.13	\$ 462.40	\$ 594.21	\$ 733.67	\$ 868.02	\$ 1,093.52
6 Cubic Yards	\$ 272.32	\$ 460.65	\$ 674.39	\$ 885.29	\$ 1,119.79	\$ 1,374.29	\$ 1,696.50

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
2 Cubic Yards	\$ 93.21	\$ 156.99	\$ 220.12	\$ 284.75	\$ 347.84	\$ 410.84	N/A
3 Cubic Yards	\$ 110.47	\$ 191.65	\$ 271.92	\$ 350.48	\$ 430.71	\$ 510.94	\$ 643.90
4 Cubic Yards	\$ 131.18	\$ 226.19	\$ 323.68	\$ 415.95	\$ 513.57	\$ 607.81	\$ 831.89
6 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 605.70	\$ 783.85	\$ 982.00	\$ 1,187.55

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000353

Bin Collection Services (Cont.)

**Additional Dump of Container: Solid Waste and Approved
Recyclable Materials ²**

Bin Capacity	Non Service Day Rate per Pickup	Service Day Rate per Pickup
2 Yard	\$ 63.51	\$ 34.00
3 Yard	\$ 70.30	\$ 40.78
4 Yard	\$ 77.13	\$ 47.61
6 Yard	\$ 97.59	\$ 68.06

Other Services and Fees

Service	Rate
Trip Charge ³	\$ 28.08
4 Yard Bin Special -Single Service ⁴	\$ 80.58
6 Yard Bin Special -Single Service ⁴	\$ 107.99

² Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

³ Inability to access or service Bin

⁴ Delivery and pick up Bin-single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000354

Cart Collection Services

Cart Collection Services-Solid Waste

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$ 20.83	\$ 41.66	\$ 62.49	\$ 83.32	\$ 104.15	\$ 124.98	\$ 145.81
2 - 35 Gal Carts	\$ 41.66	\$ 83.32	\$ 124.98	\$ 166.64	\$ 208.30	\$ 249.96	\$ 291.62
1 - 64 Gal Cart	\$ 40.33	\$ 80.66	\$ 120.99	\$ 161.32	\$ 201.65	\$ 241.98	\$ 282.31
2 - 64 Gal Carts	\$ 80.66	\$ 161.32	\$ 241.98	\$ 322.64	\$ 403.30	\$ 483.96	\$ 564.62
3 - 64 Gal Carts	\$ 120.99	\$ 241.98	\$ 362.97	\$ 483.96	\$ 604.95	\$ 725.94	\$ 846.93
1 - 96 Gal Cart	\$ 28.55	\$ 57.10	\$ 85.65	\$ 114.20	\$ 142.75	\$ 171.30	\$ 199.85
2 - 96 Gal Carts	\$ 57.10	\$ 114.20	\$ 171.30	\$ 228.40	\$ 285.50	\$ 342.60	\$ 399.70
3 - 96 Gal Carts	\$ 85.65	\$ 171.30	\$ 256.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
4 - 96 Gal Carts	\$ 114.20	\$ 228.40	\$ 342.60	\$ 456.80	\$ 571.00	\$ 685.20	\$ 799.40

Cart Collection Services-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	\$ 17.49	\$ 34.97	\$ 52.48	\$ 69.95	\$ 87.43	\$ 104.92	\$ 122.41
2 - 96 Gal Carts	\$ 34.97	\$ 69.95	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 96 Gal Carts	\$ 52.48	\$ 104.92	\$ 157.38	\$ 209.84	\$ 262.30	\$ 314.76	\$ 367.22
4 - 96 Gal Carts	\$ 69.95	\$ 139.90	\$ 209.84	\$ 279.79	\$ 349.74	\$ 419.69	\$ 489.63

⁵Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/21

JA000355

Drop Box and Compactor Collection Services

Garbage and Permanent Collection Services of Approved Recyclable Materials and Solid Waste

Drop Box Capacity	Rate per Service ⁶
14 Yard Closed Top	\$ 150.18
20 Yard Closed Top	\$ 205.08
30 Yard Closed Top	\$ 302.90
Drop Box Initial Delivery Fee	\$ 75.00

Drop Box Capacity	Rate per Service ⁶
14 Yard Open Top	\$ 140.28
20 Yard Open Top	\$ 195.18
30 Yard Open Top	\$ 292.79
Drop Box Initial Delivery Fee	\$ 75.00

Compactor Capacity	Rate per Service ⁶
10 Yard	\$ 195.51
12 Yard	\$ 234.61
14 Yard	\$ 273.71
15 Yard	\$ 293.27
16 Yard	\$ 312.82
20 Yard	\$ 391.02
22 Yard	\$ 430.12
24 Yard	\$ 469.22
25 Yard	\$ 488.78
30 Yard	\$ 586.53
40 Yard	\$ 782.04
Delivery charge	\$ 75.00

⁶Pickup, dumping, and replacing the specified capacity Drop Box - single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000356

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$ 75.00	Charge to return to customer location for any other reason not specifically identified in Scope of Services
Container Liner	\$ 14.32	Plastic liner placed inside the Container before material loaded
Demurrage/Inactivity	\$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	\$ 23.69	Rinse of Container with water
Container Steam Cleaning	\$ 132.45	Steam Clean of Container
Safety Cone Replacement	\$ 17.36	Safety cones required when a Container is placed in the street
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property
Snap Shot fee	\$ 75.00	Fee for each occurrence of overloading Container such that lid does not completely close
Activation/Re-activation fee	\$ 40.00	Charge to open a new service or reopen a closed service
Dig Out charge	\$ 75.00	Fee for each occurrence to remove material lodged in Container
Enclosure/lock fee	\$ 7.50	Fee per month for opening enclosure gates or unlocking Container
Locking container	\$ 17.50	One time charge to install locking mechanism on container
Container Swap	\$ 75.00	Container exchange (Drop Box and Bin)
Will Service letter	\$ 85.00	Charge to provide a will-serve letter for new development
Food Waste:		
64 gallon Cart	\$ 50.41	Rate per service for a Food Waste Recycling Cart
3 yard Bin	\$ 197.28	Rate per service for a Food Waste Recycling Bin

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “8”

EXHIBIT “8”

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014



Commercial Bin Collection Services
Effective April 1, 2014

CPI 3.27%

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$137.50	\$231.80	\$324.74	\$420.08	\$513.16	\$608.10
3 Cubic Yards	\$162.98	\$282.74	\$401.15	\$517.06	\$635.42	\$753.78
4 Cubic Yards	\$193.53	\$333.70	\$477.52	\$613.64	\$757.86	\$896.40
6 Cubic Yards	\$281.22	\$475.71	\$686.44	\$893.58	\$1,156.41	\$1,419.23
						\$1,751.98

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$96.25	\$162.12	\$227.32	\$294.08	\$359.21	\$424.27
3 Cubic Yards	\$114.09	\$197.92	\$280.81	\$361.84	\$444.79	\$527.64
4 Cubic Yards	\$135.47	\$233.59	\$334.26	\$429.55	\$530.36	\$627.48
6 Cubic Yards	\$196.86	\$333.00	\$487.51	\$625.51	\$809.48	\$993.46
						\$1,226.38

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000359

Bin Collection Services (Cont.)

**Additional Dump of Container: Solid Waste and Approved
Recyclable Materials ²**

Bin Capacity	Non Service Day Rate per Pickup	Service Day Rate per Pickup
2 Yard	\$85.59	\$35.11
3 Yard	\$72.60	\$42.11
4 Yard	\$79.65	\$49.17
6 Yard	\$100.78	\$70.29

Other Services and Fees

Service	Rate
Trip Charge ³	\$29.00
4 Yard Bin Special -Single Service ⁴	\$83.21
6 Yard Bin Special -Single Service ⁴	\$111.52

²Additional dump of existing Customer Bin on regularly scheduled service day and non-service day
³Inability to access or service Bin
⁴Delivery and pick up Bin-single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000360

Cart Collection Services

Cart Collection Services-Solid Waste

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$21.51	\$43.02	\$84.53	\$86.04	\$107.56	\$129.07	\$150.58
2 - 35 Gal Carts	\$43.02	\$86.04	\$129.07	\$172.09	\$215.11	\$258.13	\$301.16
1 - 64 Gal Cart	\$41.65	\$83.30	\$124.95	\$166.60	\$208.24	\$249.89	\$291.54
2 - 64 Gal Carts	\$83.30	\$166.60	\$249.89	\$333.19	\$416.49	\$499.79	\$583.08
3 - 64 Gal Carts	\$124.95	\$249.89	\$374.84	\$499.79	\$624.73	\$749.68	\$874.62
1 - 96 Gal Cart	\$29.48	\$58.97	\$88.45	\$117.93	\$147.42	\$176.90	\$206.39
2 - 96 Gal Carts	\$58.97	\$117.93	\$176.90	\$235.87	\$294.84	\$353.80	\$412.77
3 - 96 Gal Carts	\$88.45	\$176.90	\$265.35	\$353.80	\$442.25	\$530.70	\$619.16
4 - 96 Gal Carts	\$117.93	\$235.87	\$353.80	\$471.74	\$589.67	\$707.61	\$825.54

Cart Collection Services-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	\$18.06	\$36.12	\$54.18	\$72.23	\$90.29	\$108.35	\$126.41
2 - 96 Gal Carts	\$36.12	\$72.23	\$108.35	\$144.47	\$180.59	\$216.70	\$252.82
3 - 96 Gal Carts	\$54.18	\$108.35	\$162.53	\$216.70	\$270.88	\$325.06	\$379.23
4 - 96 Gal Carts	\$72.23	\$144.47	\$216.70	\$288.94	\$361.17	\$433.41	\$505.64

⁵Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000361

Drop Box and Compactor Collection Services

Garbage, Approved Recyclable Materials and Permanent Services

Drop Box Capacity	Rate per Service ⁶
14 Yard Closed Top	\$155.09
20 Yard Closed Top	\$211.79
30 Yard Closed Top	\$312.80
Drop Box Initial Delivery Fee	\$77.45

Drop Box Capacity	Rate per Service ⁶
14 Yard Open Top	\$144.87
20 Yard Open Top	\$201.56
30 Yard Open Top	\$302.36
Drop Box Initial Delivery Fee	\$77.45

Compactor Capacity	Rate per Service ⁶
10 Yard	\$201.90
12 Yard	\$242.28
14 Yard	\$282.66
15 Yard	\$302.86
16 Yard	\$323.05
20 Yard	\$403.81
22 Yard	\$444.18
24 Yard	\$484.56
25 Yard	\$504.76
30 Yard	\$605.71
40 Yard	\$807.61
Delivery charge	\$77.45

⁶Pickup, dumping, and replacing the specified capacity Drop Box - single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000362

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$77.45	Charge to return to customer location for any other reason not specifically identified in Scope of Services
Container Liner	\$14.79	Plastic liner placed inside the Container before material loaded
Demurrage/Inactivity	\$28.68	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	\$24.46	Rinse of Container with water
Container Steam Cleaning	\$136.78	Steam Clean of Container
Safety Cone Replacement	\$17.93	Safety cones required when a Container is placed in the street
Container Relocation	\$77.45	Relocation of the Container on the Customer's property
Snap Shot fee	\$77.45	Fee for each occurrence of overloading Container such that lid does not completely close
Activation/Re-activation fee	\$41.31	Charge to open a new service or reopen a closed service
Dig Out charge	\$77.45	Fee for each occurrence to remove material lodged in Container
Enclosure/lock fee	\$7.75	Fee per month for opening enclosure gates or unlocking Container
Locking container	\$18.07	One time charge to install locking mechanism on container
Container Swap	\$77.45	Container exchange (Drop Box and Bin)
Will Service letter	\$87.78	Charge to provide a will-serve letter for new development
Food Waste:		
64 gallon Cart	\$52.06	Rate per service for a Food Waste Recycling Cart
3 yard Bin	\$203.73	Rate per service for a Food Waste Recycling Bin

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT "9"

EXHIBIT "9"



[Español](#)

THINK GREEN.™

[View Your Recycling Calendar »](#)

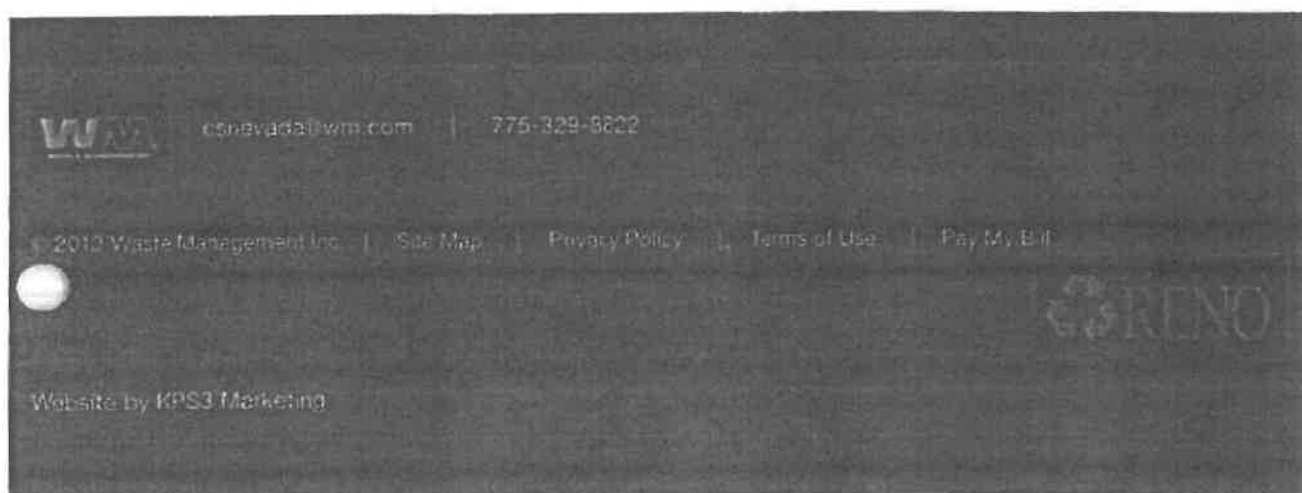


To meet the increase in recycling volume, Waste Management will fully fund an Ecocenter that will be able to accommodate the recycling volumes that will be generated by the Single-Stream Recycling Program. Therefore, an expanded facility is needed to meet the needs of the community. During the construction of the Ecocenter, Waste Management estimates there will be approximately 200 temporary jobs created during the construction phase.

This facility will be called the Ecocenter, and it will be located at the current Commercial Row Transfer Station site. The Ecocenter will serve as a one-stop destination for our community's environmental needs. The planned Ecocenter will include a community drop-off location for green waste, electronic waste, medical waste, and household hazardous waste.

The Transfer Station will be located within the Ecocenter, which will continue to be open to our commercial and residential customers. City of Reno residential Waste Management customers, who are current with their bill, may dispose of one standard pick-up truck with municipal solid waste four times a year at no cost. Customers may utilize the service during normal business hours.

In addition, a Community Center is a part of the planned Ecocenter. Visitors can come to the center to learn about the importance of recycling and conservation.



FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “10”

EXHIBIT “10”



WASTE MANAGEMENT

M - Reno Disposal
3 BOX 43530
10ENIX, AZ 86000

Customer: WYNT TRAI
Online WM ezPay ID: 00009-86189-030
Invoice Date: 02/01/20
Invoice Number: 4080236-1146
Account Number: 010-0137638-1146
Due Date: Due Upon Rece

Page 3 of

WYNT TRAI

00009-86189-030

02/01/20

4080236-1146

010-0137638-1146

Due Upon Rece

Service Location: 010-137638 Wynnit Trach: 4870 Aircenter Cir: Reno Ny 89502-8949

date	Ticket	Description	Quantity	U/M	Rate	Amount
2/01/15		4 Yard dumpster service - recycle materials Co-mingle	1.00			120.58

Total Current Charges

120.58

Payments Received Detail

Payment - thank you

120.58

Total Payments Received

120.58

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014



Commercial Bin Collection Services
Effective April 1, 2014

CPI 3.27%

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$137.50	\$231.60	\$324.74	\$420.08	\$513.16	\$606.10
3 Cubic Yards	\$162.98	\$282.74	\$401.15	\$517.06	\$635.42	\$753.78
4 Cubic Yards	\$193.53	\$333.70	\$477.52	\$613.84	\$757.66	\$896.40
6 Cubic Yards	\$281.22	\$475.71	\$696.44	\$893.58	\$1,156.41	\$1,419.23

#/VALUE

\$949.93

\$1,129.28

\$1,751.98

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$98.25	\$162.12	\$227.32	\$294.06	\$359.21	\$424.27
3 Cubic Yards	\$114.09	\$197.92	\$280.81	\$361.94	\$444.79	\$527.64
4 Cubic Yards	\$135.47	\$233.59	\$334.26	\$429.55	\$530.36	\$627.48
6 Cubic Yards	\$198.86	\$333.00	\$487.51	\$625.51	\$809.48	\$993.46

#/VALUE

\$664.95

\$859.10

\$1,226.38

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “11”

EXHIBIT “11”



WASTE MANAGEMENT

M - B & L Disposal
PO BOX 43680
TUCSON, AZ 85708

Customer:
Online WM ezPay ID:
Invoice Date:
Invoice Number:
Account Number:
Due Date:

Page 3 of 3
WYNN TRU
00609-48310-83
02/01/2
3188949-116
011-0022822-116
Due Upon Rec

Service Location: 011-22822 Wynn Trash (N): 4570 Alroenter Cir: Reno Nv 89502-5849

date	Ticket	Description	Quantity	Unit	Rate	Amount
1/09/15	228670	30 Yd flat roll top	1.00			157.0
		Cb door #7				0.0
		Record tonnage only	.37			157.0
		Ticket Total				
1/20/15	234287	30 Yd flat roll top	1.00			157.0
		Cb door #7				0.0
		Record tonnage only	1.32			157.0
		Ticket Total				
2/01/15		Fuel/environmental charge				80.0
2/01/15		Regulatory cost recovery chrg				14.0
		Total Current Charges				409.0

Payments Received Detail

Payment - thank you	628.0
Total Payments Received	628.0

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000371

Drop Box and Compactor Collection Services

Garbage, Approved Recyclable Materials and Permanent Services

Drop Box Capacity	Rate per Service ⁹
14 Yard Closed Top	\$155.09
20 Yard Closed Top	\$211.79
30 Yard Closed Top	\$312.80
Drop Box Initial Delivery Fee	\$77.45

Drop Box Capacity	Rate per Service ⁹
14 Yard Open Top	\$144.67
20 Yard Open Top	\$201.56
30 Yard Open Top	\$302.38
Drop Box Initial Delivery Fee	\$77.45

Compactor Capacity	Rate per Service ⁹
10 Yard	\$201.90
12 Yard	\$242.28
14 Yard	\$282.66
15 Yard	\$302.86
16 Yard	\$323.05
20 Yard	\$403.81
22 Yard	\$444.18
24 Yard	\$484.58
25 Yard	\$504.76
30 Yard	\$605.71
40 Yard	\$807.61
Delivery charge	\$77.45

⁹Pickup, dumping, and replacing the specified capacity Drop Box - single service

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT "12"

EXHIBIT "12"

Waste Management
 Solid Waste Disposal
 PO BOX 43630
 PHOENIX, AZ 85060

Customer: CATHOLIC CHARITIES OF NORTHERN NEVADA
 Online WM azPay ID: 00012-49423-53004
 Invoice Date: 01/01/2015
 Invoice Number: 3187311-1101-4
 Account Number: 011-0026816-1101-4
 Due Date: Due Upon Receipt

Service Location: 011-26816 Catholic Charities Of Northern Nevada: 1835 Montello St: Reno NV 89512-2639

Date	Ticket	Description	Quantity	U/M	Rate	Amount
01/01/15		1 - 3 Yard dumpster 1 time per week	1.00			07.18
01/01/15		Fuel / environmental charge				20.37
01/01/15		Regulatory cost recovery charge				4.23
01/01/15		Administrative fee				5.00
Total Current Charges						126.78

Payments Received Detail		Amount
Payment - thank you		129.32-
Total Payments Received		129.32-

1007799-0000011-70

From everyday collection to environmental protection, Think Green. Think Waste Management.
 FOR CHANGE OF ADDRESS OR ANY SERVICE ISSUES CONTACT NUMBER ON PAGE 1



Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014



Commercial Bin Collection Services
Effective April 1, 2014

CPI 3.27%

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$137.50	\$231.60	\$324.74	\$420.08	\$513.16	\$606.10	#VAL UEI
3 Cubic Yards	\$162.98	\$282.74	\$401.15	\$517.06	\$635.42	\$753.78	\$949.93
4 Cubic Yards	\$183.53	\$333.70	\$477.52	\$613.64	\$757.66	\$896.40	\$1,129.28
6 Cubic Yards	\$281.22	\$475.71	\$696.44	\$893.58	\$1,156.41	\$1,419.23	\$1,751.98

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$96.25	\$162.12	\$227.32	\$294.06	\$359.21	\$424.27	#VAL UEI
3 Cubic Yards	\$114.09	\$197.92	\$280.81	\$361.94	\$444.79	\$527.64	\$664.95
4 Cubic Yards	\$135.47	\$233.59	\$334.26	\$429.55	\$530.36	\$627.48	\$859.10
6 Cubic Yards	\$196.86	\$333.00	\$487.51	\$625.51	\$809.48	\$993.46	\$1,226.38

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT "13"

EXHIBIT "13"

AFFIDAVIT OF JOHN VAUGHN

I, John Vaughn, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am the owner of Vaughn & Sons Construction, Inc., a Nevada Corporation doing business in Reno, Nevada and surrounding areas;

2. On or about November 19, 2014, an employee of mine was approached by John Langelles, whom I understood to be a District Manager for Waste Management, and a conversation took place which I was, at all times present for;

3. When the conversation began, Mr. Langelles promptly informed us that it was his job to put Nevada Recycling & Salvage/ Green Solutions Recycling out of business;

4. The discussion then moved to pricing and why any local businessman would be charged more than somebody else off the street would be? Mr. Langelles replied that we "could cover up our doors and that [Waste Management] wouldn't charge [Mr. Vaughn] as much" and that "it was the City Council's fault that the prices were what they were for local business owners;"

5. Mr. Langelles also stated that Nevada Recycling & Salvage/ Green Solutions Recycling "is breaking the law" and so Waste Management was working to "get them closed;"

6. Mr. Langelles proceeded to tell me that I "would be bringing my garbage back to Waste Management in the near future because Waste Management was going to put Nevada Recycling & Salvage/ Green Solutions Recycling out of business;"

7. At some point during the conversation, Mr. Langelles informed me that he was not aware that Nevada Recycling & Salvage/ Green Solutions Recycling was actually recycling. Mr. Langelles responded that he had not heard that was happening and he also stated that he doubted that Nevada Recycling & Salvage/ Green Solutions Recycling was really recycling. So I then told Mr. Langelles that I had heard that it was Waste Management who was not really recycling, and he did not respond to that comment;

8. Mr. Langelles again stated that Waste Management was going to put Nevada Recycling & Salvage/ Green Solutions Recycling out of business and that if I had a problem with

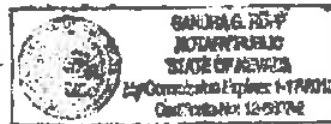
1 that or pricing or any other matters that I needed to take them up with the City Council; and,
2 9. That the same is true of my knowledge except as to those matters therein stated
3 information and belief, and as to those matters I believe them to be true.
4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5
6 Dated this 17 day of March, 2015.

7
8 
9 JOHN VAUGHN

10
11 SUBSCRIBED and SWORN TO before me
12 this 17th day of March, 2015.

13
14 
15 NOTARY PUBLIC



FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “14”

EXHIBIT “14”

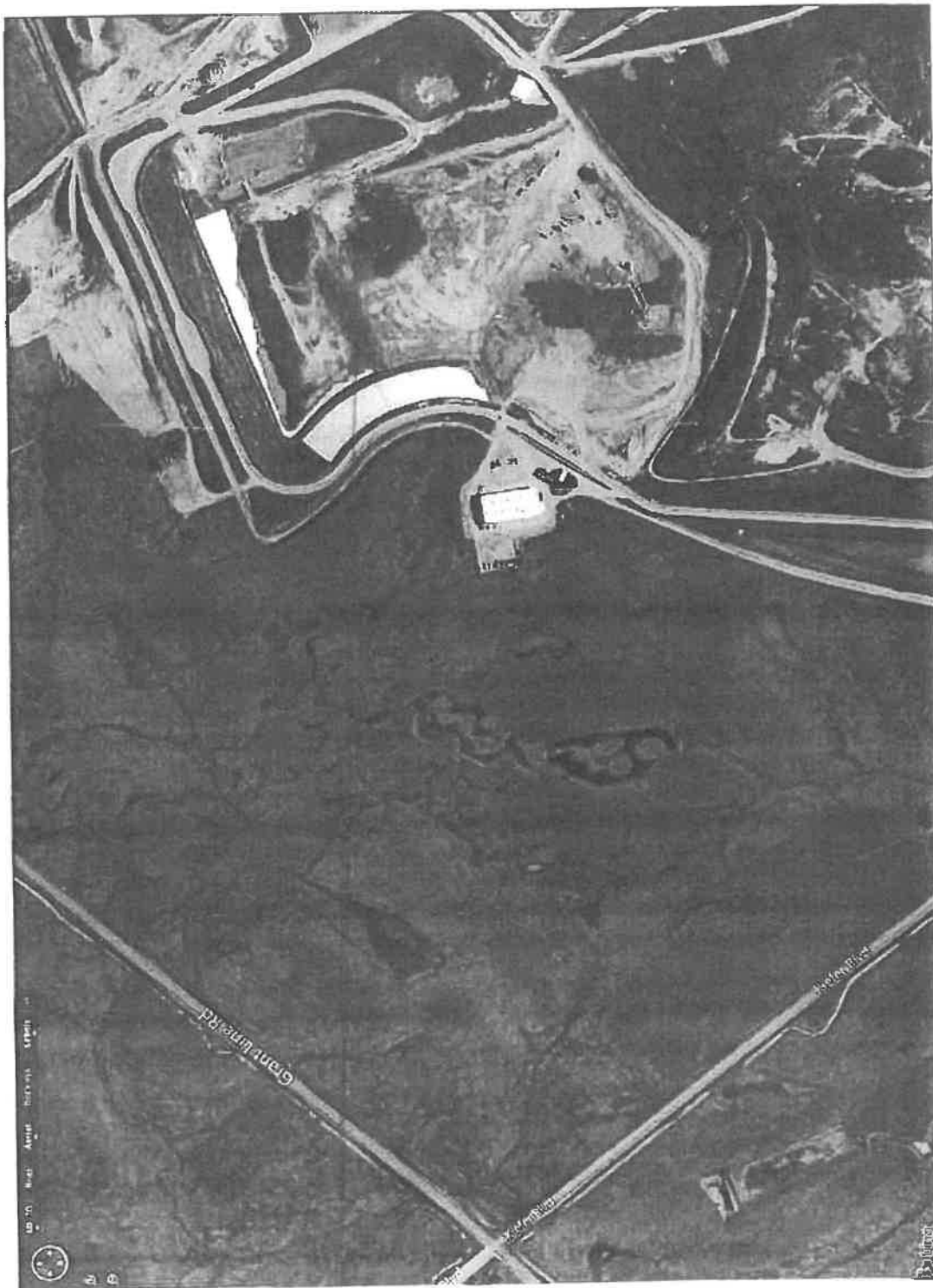


JA000379

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT "15"

EXHIBIT "15"



JA000381

FILED
Electronically
2015-03-25 04:40:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4878454 : ylloyd

EXHIBIT “16”

EXHIBIT “16”

AFFIDAVIT OF DUSTIN GRATE

I, Dustin Grate, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am a private investigator with Spencer Investigations and properly licensed through and in accordance with the laws of the State of Nevada;

2. That I caused a GPS tracker to be placed inside of a recyclable empty blue Laundry Detergent container marked with the plastic recycling number 2 on the bottom. Upon securing the GPS tracker unit in the container and sealing it, I then caused the Laundry Detergent Container, containing the secured GPS tracker, to be placed inside of a blue lid Waste Management Residential Single Stream Recycling Tote in a residential neighborhood in Reno, Nevada;

3. On March 10, 2015, the blue lid Waste Management Residential Single Stream Recycling Tote was properly placed at the curb for regular recycling collection by Waste Management;

4. That, according to GPS records, Waste Management collected the recyclables from that blue lid Waste Management Residential Single Stream Recycling Tote at approximately 1:57 p.m. that same day;

5. Less than forty-eight (48) hours later, the recyclables from the blue lid Waste Management Residential Single Stream Recycling Tote reached their final destination at the Kiefer Landfill located in Sacramento County, California at 7:01 a.m. on March 12, 2015;

6. To date, the GPS data indicates that the recyclables Laundry Container that I caused to be placed in the blue lid Waste Management Residential Single Stream Recycling Tote on March 10, 2015, still remains at the Kiefer Landfill located in Sacramento County, California;

7. That upon information and belief, I affirm that the photographs relating to the above-referenced information and attached to the Amended Verified Complaint as Exhibits 14 and 15, are true and correct copies of such photographs; and,

///

///


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. That the same is true of my knowledge except as to those matters therein
stated information and belief, and as to those matters I believe them to be true.
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 25 day of MARCH, 2015.


DUSTIN GRATE

SUBSCRIBED and SWORN TO before me
this 25 day of March, 2015.


NOTARY PUBLIC



1 CCODE: 3720
2 DEL HARDY, ESQ.(SBN 1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282
9 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through
X; BLACK AND WHITE COMPANIES,
I through X; and, JOHN DOES I through X,
inclusive,

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

PROOF OF SERVICE

In accordance with NRS 598A.210(3) and pursuant to NRCP 5(b), I hereby certify that I
am an employee of Hardy Law Group and that on this day, I simultaneously caused the Verified
First Amended Complaint in the above-referenced action to be filed with the Second Judicial
District Court and that I further, placed a true and correct copy of the Verified FIRST AMENDED
Complaint in a sealed envelope and placed it for collection and mailing in Reno, Nevada and
following ordinary business practices, causing it to be delivered by United States Mail, postage
pre-paid, to the Honorable Adam Laxalt, Attorney General of the State of Nevada at the
following mailing address:

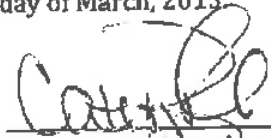
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 25th day of March, 2015



CATHY RYLE, Employee of Hardy Law Group
Legal Assistant to
Stephanie Rice, Esq. and Del Hardy, Esq.

HARDY LAW GROUP
96 & 98 Winter Street
Reno, Nevada 89503
Telephone: 775-786-5800
Facsimile: 775-329-8282

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that on this date I served the foregoing document(s) described as **PROOF OF SERVICE** on all parties to this action by:

☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

- ☐ Personal delivery
- ☐ Facsimile (FAX) and/or Email: gary@duhonlawltd.com
- ☐ Federal Express or other overnight delivery
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested

addressed as follows:

MARK G. SIMONS, ESQ.
SCOTT HERNANDEZ, ESQ.
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 20th day of March, 2015.


EMPLOYEE OF HARDY LAW GROUP

2290
Mark G. Simons, Esq., NSB No. 5132
Scott L. Hernandez, Esq., NSB No. 13147
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rbsllaw.com
shernandez@rbsllaw.com

Attorneys for Defendants

**IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

NEVADA RECYCLING AND
SALVAGE, LTD., a Nevada Limited
Liability Company; and AMCB, LLC,
a Nevada Limited Liability Company
dba RUBBISH RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY,
INC., a Nevada Corporation dba
WASTE MANAGEMENT; REFUSE,
INC., a Nevada Corporation; ABC
CORPORATIONS, I-X; BLACK
AND WHITE COMPANIES, I-X; and
JOHN DOES I-X, inclusive,

Defendants.

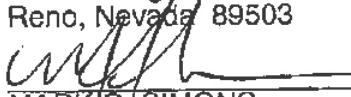
MOTION TO DISMISS VERIFIED AMENDED COMPLAINT

Reno Disposal Company, Inc. ("Reno Disposal") and Refuse, Inc. ("Refuse")
(collectively, the "Defendants"), by and through their undersigned counsel of record,
Mark G. Simons and Scott Hernandez, hereby move this Honorable Court pursuant to
NRCP 12 (b)(5) to dismiss the Verified Amended Complaint against them with prejudice
(the "Motion to Dismiss").

1 This motion is based upon the following points and authorities and the
2 pleadings and papers on file herein.

3 DATED this 20th day of April, 2015.

4 ROBISON, BELAUSTEGUI, SHARP & LOW
5 A Professional Corporation
6 71 Washington Street
7 Reno, Nevada 89503

8 
9 MARK G. SIMONS
10 SCOTT L. HERNANDEZ
11 Attorneys for Defendants

12 **POINTS AND AUTHORITIES**

13 **I. INTRODUCTION.**

14 On November 7, 2012, the City of Reno entered into an Exclusive Service Area
15 Franchise Agreement Commercial Solid Waste and Recyclable Materials agreement
16 (the "Commercial Franchise Agreement") with Reno Disposal and a Disposal Agreement
17 for Solid Waste and Recyclable Materials (the "Disposal Agreement") (collectively, the
18 "Agreements"). The Commercial Franchise Agreement is attached and incorporated by
19 reference into the Verified Amended Complaint as Exhibit 3. The Disposal Agreement
20 is attached and incorporated by reference into the Verified Amended Complaint as
21 Exhibit 4.

22 While slightly complex in their drafting, the Commercial Franchise Agreement
23 creates a public-sanctioned monopoly in favor of Reno Disposal governing the
24 collection of solid waste and recycling in the City of Reno. Similarly, the Disposal
25 Agreement creates an exclusive right for the disposal of solid waste and recycling in the
26 City of Reno.

27 On March 25, 2015, Plaintiffs Nevada Recycling and Salvage, Ltd. ("NRS") and
28 AMCB, LLC d/b/a Rubbish Runners ("RR") (collectively, the "Plaintiffs") filed their
Verified Amended Complaint seeking damages and injunctive relief. While the
allegations are numerous and broad in scope, the inescapable impression is that the

1 Plaintiffs merely object to the terms of the Agreements, to which neither Plaintiff is a
2 party. Although Plaintiffs assert seven claims for relief,¹ the ultimate issues in this case
3 turn on the application of the Agreements.

4 The Verified Amended Complaint fails to set forth allegations that overcome this
5 Motion to Dismiss. Plaintiffs fail to state defamation claims since the Defendants'
6 alleged defamatory statements are supported by the plain language of the Agreements
7 and/or are not defamatory. Similarly, Plaintiffs' breach of contract claims fail because
8 the Defendants' conduct is in full accord with the express terms of the Agreements.
9 Further, Plaintiffs have no standing to bring their breach of contract claims. Plaintiffs'
10 allegations regarding unfair trade practices fail for failure to state a claim because the
11 Agreements are exempt from any trade restrictions and are in full compliance with
12 Nevada law. As for Plaintiffs' fraud allegations, Plaintiffs are attempting to make an end
13 run around the Agreements by alleging promises to abide by the Agreements as a basis
14 for the fraud claims. However, the representations Plaintiffs complain of were alleged
15 statements made to the actual parties to the City of Reno—not to Plaintiffs. Further,
16 Plaintiffs fail to meet the heightened pleading standard for fraud and fail to allege
17 justifiable reliance. Finally, the Plaintiffs' claims for injunctive relief fail because the
18 Plaintiffs seek such equitable relief as a means of punishing the Defendants. In short,
19 the Verified Amended Complaint fails to state any valid claim for relief.

20 Given the Plaintiffs' claims are premised upon the express terms of the
21 Agreements, extensive discussion regarding the appropriate construction of the
22 Agreements is set forth below. Construing these agreements and applying them to the
23 allegations in this case, the Court should grant the Motion to Dismiss on all claims for
24 relief with prejudice.

25
26 ¹Plaintiffs' claims for relief are as follows: 1) Defamation; 2) Defamation Per Se; 3)
27 Breach of Contract/Third Party Beneficiary; 4) Breach of Covenant of Good Faith and
28 Fair Dealing; 5) Unfair Trade Practices/Conspiracy to Restrain Trade; 6) Fraud, Fraud
in the Inducement, Fraudulent Misrepresentation; and 7) Preliminary and Permanent
Injunction, Declaratory Relief.

1 **II. ARGUMENT.**

2 **A. STANDARD OF REVIEW.**

3 NRCp 12(b) governs motions to dismiss for failure to state a claim upon which
4 relief can be granted. NRCp 12(b) provides in pertinent part:

5 How presented. Every defense, in law or fact, to a claim for relief in any
6 pleading, whether a claim, counterclaim, cross-claim, or third-party claim,
7 shall be asserted in the responsive pleading thereto if one is required,
8 except that the following defenses may at the option of the pleader be
 made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of
 jurisdiction over the person, (3) insufficiency of process, (4) insufficiency
 of service of process, (5) failure to state a claim upon which relief can be
 granted, (6) failure to join a party under Rule 19.

9 Pursuant to NRCp 12(b)(5), all or part of a pleading may be dismissed for failure to
10 state a claim upon which relief can be granted. See Bemus v. Estate of Bemus, 114
11 Nev. 1021, 1024, 967 P.2d 437, 439 (1998).

12 When deciding a motion to dismiss under NRCp 12(b)(5), a court must treat all
13 factual allegations as true and draw all reasonable inferences in favor of the nonmoving
14 party. See Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126, 126
15 (1985). Nevertheless, a claim should be dismissed "if it appears beyond a doubt that
16 [plaintiff] could prove no set of facts, which, if true, would entitle [plaintiff] to relief."
17 Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672
18 (2008). "Dismissal is proper where the allegations are insufficient to establish the
19 elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439
20 (2002) (abrogated on other grounds by Buzz Stew, LLC, *supra*, 124 Nev. at 228, n.6).

21 A claimant cannot survive a motion to dismiss by arguing "the possibility that a
22 [claimant] might later establish some set of undisclosed facts to support recovery." Bell
23 Atlantic Corp. v. Twombly, 550 U.S. 544, 561-562, 127 S.Ct. 1955, 1968-1969 (2007).²
24 Furthermore, conclusory allegations, unsupported by the facts alleged, also cannot be
25

26 _____
27 ²When interpreting the Nevada Rules of Civil Procedure, Nevada courts look to federal
28 court interpretation of the corresponding Federal Rules of Civil Procedure. See
 Moseley v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 124 Nev. 654, 662-63, 188
 P.3d 1136, 1142 (2008).

1 accepted as true. See Edmonds v. Perry, 62 Nev. 41, 67, 140 P.2d 566, 578 (1943).
2 The claimant must allege "enough facts to state a claim to relief that is plausible on its
3 face." Id. at 570.

4 1. **Failure to Provide Sufficient Notice Pursuant to NRCP 8(a).**

5 A pleading that does not include necessary averments fails to meet the standard
6 under NRCP 8(a), which requires, at a minimum, a "short and plain statement of the
7 claim showing that the pleader is entitled to relief." NRCP 8(a). A complaint that "fails
8 to give notice of the nature of claimed . . . issues . . . involved in [the] litigation," must be
9 dismissed. Taylor v. State, 73 Nev. 151, 153, 311 P.2d 733, 734 (1957). Indeed,
10 dismissal is appropriate when the allegations fail to impart "knowledge of the basis for
11 the plaintiff's conclusion[s,]" because the defending party is "wholly unable to admit or
12 deny [such allegations] intelligently or conscientiously." Id.

13 2. **Failure to Allege Facts Pursuant to NRCP 9(b).**

14 Allegations based upon fraud must be pled with specificity. NRCP 9(b) requires
15 that, "all averments of fraud or mistake, the circumstances constituting fraud or mistake
16 shall be stated with particularity." In order to satisfy the heightened pleading standard,
17 fraud allegations "must be detailed [and] include averments to the time, the place, the
18 identity of the parties involved, and the nature of the fraud" Brown v. Kellar, 97
19 Nev. 582, 583-584, 636 P.2d 874, 874 (1981). Simply put "the allegations of fraud must
20 be accompanied by the 'who, what, when, where, and how of the misconduct charged.'" G.K. Las Vegas Limited Partnership v. Simon Property Group, Inc., 460 F.Supp.2d
21 1222, 1238 (D. Nev. 2006) (citations omitted). Additionally, even though "malice, intent,
22 knowledge, and other conditions of the mind of a person may be averred generally," the
23 plaintiff still must set forth factual allegations to support the "condition of the mind."
24 NRCP 9(b). See Brown v. Kellar, supra, 97 Nev. at 584. A motion to dismiss fraud
25 allegations must be granted if a plaintiff fails to meet the heightened pleading standard
26 for fraud.
27
28

1 **B. PLAINTIFFS' CLAIMS ARE PREMISED UPON AN INCORRECT**
2 **READING OF THE COMMERCIAL FRANCHISE AGREEMENT.**

3 Admittedly, the Commercial Franchise Agreement contains extensive waste
4 disposal industry jargon. However, despite its technical nature, the language and the
5 concepts of the agreement are not hard to grasp once placed in context. At the basic
6 level, Reno Disposal is granted the exclusive right to "accept, transfer, and transport"
7 both "Solid Waste" and "Approved Recyclable Materials" within the City of Reno,
8 subject to certain exclusions and exemptions. See Commercial Franchise Agreement,
9 § 3.2(A).

10 The basic provisions of the Commercial Franchise Agreement states that Reno
11 Disposal has the following rights:

12 City hereby grants to [Reno Disposal] . . . the exclusive rights, privilege,
13 franchise and obligation . . . to provide Collection Services to Commercial
14 Customers. . . . No other person or entity other than [Reno Disposal] . . . shall i)
15 collect . . . ii) transport . . . or iii) deliver any Collection Materials . . . except as
16 expressly provided under this Agreement. The preceding sentence is intended
17 to be broadly interpreted to preclude . . . any activity relating to the collection or
18 transportation of Collection Materials from Commercial Activities.

19 Id. While there are specifically called out for exemptions and/or exclusions from Reno
20 Disposal's exclusive grant, the limitations are just that, limited and restricted.

21 As further discussed herein, Plaintiffs seek to ignore the limited exemptions
22 and/or exclusions and instead contend that restrictions should be broadly construed in
23 their favor. However, in addition to misstating the terms of the Commercial Franchise
24 Agreement to the Court, Plaintiffs ignore that the express terms of the Commercial
25 Franchise Agreement are to be read to "preclude" other hauling activities—not to allow
26 other activities. Therefore, in this frame of reference, the Plaintiffs' contentions are
27 addressed below.³

28

3 ³Both Solid Waste and Approved Recyclable Materials, are discussed below and are
4 called out for as "Collection Materials." See Commercial Franchise Agreement, Art. 1,
5 p. 3. Reno Disposal has the right and the duty to collect, haul, and dispose of the broad
6 categories of Collection Materials described in the Commercial Franchise Agreement
7 including all Approved Recycled Materials.

1 1. Reno Disposal Has the Exclusive Franchise for Hauling "Solid
2 Waste."

3 As stated, Reno Disposal has the exclusive right to haul and dispose of all Solid
4 Waste within the City of Reno. "Solid Waste" is defined in the Commercial Franchise
5 Agreement as "all putrescible and nonputrescible waste matter in solid or semi-solid
6 form, including but not limited to rubbish, Garbage, ashes, refuse, and Residue, but
7 excluding Excluded Materials." Id. Art. 1, p. 10. Expressly included within the definition
8 of Solid Waste is "Garbage," which is defined as "putrescible animal and vegetable
9 waste resulting from the handling, storage, preparation, cooking and sale and serving of
10 food and beverage, excluding Excluded Materials and Source Separated Food Waste
11 that is actually Recycled." Id., Art. 1, p. 8. Also included within the definition of "Solid
12 Waste" is "Residue," which are "materials which remain after processing Recyclable
13 Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not
14 limited to, materials such as contaminated paper, putrescible waste, and other debris."
15 Id., Art. 1, p. 10. In sum, Solid Waste is the broad, all-inclusive, general category of
16 waste and includes all Garbage (food) and non-Garbage (nonfood) waste. Under the
17 Commercial Franchise Agreement, Reno Disposal, therefore, has the exclusive right to
18 haul and dispose of Solid Waste within the City of Reno.

19 Ignoring these express provisions, the Plaintiffs misstate the terms of this
20 agreement and allege as follows:

21 Plaintiffs know and understand that each commercial business located in the
22 CITY must have trash (food waste) service with WM and Plaintiffs work hard to
23 ensure each and every one of their respective contractors and customers are in
24 compliance with that requirement.

25 Verified Amd. Comp., ¶135. In essence, the Plaintiffs allege that Reno Disposal has a
26 right to collect and haul only "food waste" (i.e., "garbage") under the Commercial
27 Franchise Agreement. The Plaintiffs contention is directly contrary to the express terms
28 of the Commercial Franchise Agreement. Accordingly, to the extent the Plaintiffs
 contend that Reno Disposal only has a franchise to collect food waste and/or garbage

1 under the Commercial Franchise Agreement, the Plaintiffs' claims fail because they are
2 wrong.

3 2. **Reno Disposal Has an Exclusive Franchise for the Hauling of**
4 **"Approved Recyclable Materials."**

5 In addition to collection of "solid waste", Reno Disposal also has the exclusive
6 right to haul and dispose of Approved Recyclable Materials. "Approved Recyclable
7 Materials" is defined as "Recyclable Materials approved for recycling under this
8 Agreement, which are listed on Exhibit A attached hereto and which may be changed
9 from time to time by agreement of Contractor and City, excluding Excluded Recyclable
10 Materials." *Id.*, Art. 1, p. 2. Exhibit A identifies that the Approved Recyclable Materials,
11 are newspapers, chipboard, cardboard, mixed paper, glass, aluminum, steel or tin cans,
12 plastic, food waste if separated and any other agreed upon material. *Id.* Exh. A.

13 Excluded from the definition of Approved Recyclable Materials are "Excluded
14 Recyclable Materials." "Excluded Recyclable Materials" are defined as either or both i)
15 Approved Recyclable Materials from Commercial Activity that are a) separated by the
16 generator thereof from all other materials and which contain not less than ninety
17 percent (90%) Approved Recyclable Materials and b) sold by the generator thereof
18 directly to a buyer of Recyclable Material at market price, title to which materials
19 transfers to the buyer upon collection or pickup of such materials, but excluding such
20 materials collected and transported as a service, and ii) any other Recyclable Materials
21 that are not Approved Recyclable Materials. *Id.* Art. 1, p. 5 (emphasis added). This
22 provision allows a seller to sell recycled materials directly to a buyer of the recycled
23 materials at market price. This provision does not allow RR to collect and/or haul this
24 material.

25 In support of the foregoing, the meaning of Excluded Recyclable Materials may
26 be derived by plain reading and the simple rules of grammar. The grammatical use of
27 the phrase " , but excluding " denotes that what comes before (Excluded Recyclable
28 Materials) is qualified by what comes after. See BUT, Merriam Webster Dictionary,

1 <http://www.merriam-webster.com/dictionary/but> (last visited Apr. 15, 2015). As defined
2 by Merriam Webster, "but" means "without the concomitant that" or "with the exception
3 of —used before a word often taken to be the subject of a clause." *Id.* Accordingly,
4 whatever comes before "but" is to the exclusion and exception of what comes after.
5 Therefore, "but excluding" clearly denotes that whatever is defined after that phrase is
6 logically removed from what came before. Accordingly, "but excluding" defines that
7 any "collection and transported as a service" is not part of the Excluded Recycled
8 Materials exception. Therefore, no party other than Reno Disposal may collect or haul
9 Approved Recyclable Materials. However, direct sales from a seller directly to a buyer
10 paying market rate is exempt.

11 Also applying further grammatical rules, the foregoing conclusion is mandated
12 because the term "such materials" must also be considered. Black's Law Dictionary
13 defines "such" as "[t]hat or those; having just been mentioned." See SUCH, Black's
14 Law Dictionary (10th ed. 2014). Black's provides as an example, "a newly discovered
15 Fabergé egg will be on auction next week; such egg is expected to sell for more than
16 \$500,000." *Id.* In this example, "such egg" refers to that "egg" just mentioned,
17 specifically "a newly discovered Fabergé egg. In this case, "such materials" is
18 immediately proceeded by—and therefore refers to—materials which are (a) composed
19 of 90% Approved Recyclable Materials and (b) sold directly to a buyer market price.
20 Therefore, again, the Excluded Recycled Materials may not be "collected and
21 transported as a service" by any other party—including but not limited to Rubbish
22 Runners.

23 The language in Excluded Recyclable Materials is intended to preserve the right
24 of individuals to sell their recyclables as a commodity on the open market at market
25 price to a buyer of such materials; this provision does not increase the rights of any
26 Exempted Hauler and does not give RR any rights to collect or transport those
27 materials. Indeed, it is clear that the requirement to sell Excluded Recyclable Materials
28 at market price is intended to prevent haulers, such as the Plaintiffs, from creating a

1 sham transaction whereby the hauler ostensibly purchases Excluded Recyclable
2 Materials for less than a market price in an effort to circumvent the Commercial
3 Franchise Agreement. Simply put, Recyclable Material sold as a commodity directly to
4 a buyer at market rate is not within the Commercial Franchise Agreement.

5 In summary, the types of waste for which Reno Disposal has an exclusive right to
6 haul and dispose is extremely broad, and includes Solid Waste, which is both Garbage
7 and non-Garbage waste, and includes Approved Recyclable Materials. There are
8 certain narrow exceptions for transportation of recyclable commodities from sellers
9 directly to buyers of the recycled material.

10 **3. The Plaintiffs May Haul Waste Materials Which Are Expressly**
11 **Excluded from the Commercial Franchise Agreement.**

12 As noted above, there are certain exclusion and exemptions to the definition
13 Solid Waste and Approved Recyclable Materials that are within the Commercial
14 Franchise Agreement. In addition to the Exempted Recyclable Materials, within the
15 definition of "Collection Materials" are four exclusions/exemptions i) Excluded Materials,
16 ii) Excluded Recyclable Materials (as discussed above), iii) Exempted Drop Box
17 Materials and iv) Exempted Hauler Account Materials. Each of these
18 exclusions/exemptions are narrow and are irrelevant to the accusations in the instant
19 case. While it does not appear that any of these items are at issue in this case, it
20 demonstrates that the Commercial Franchise Agreement expressly identifies and
21 details those items other haulers of waste such as RR may haul without violating the
22 terms of the franchise.

23 **i. Excluded Materials.**

24 The Commercial Franchise Agreement details an extensive list of "Excluded
25 Materials" that any hauler can haul. Commercial Franchise Agreement, Art. 1, p.5. The
26 materials on this list do not appear to be at issue in this litigation so they are not
27 addressed.

28 ///

1 ii. **Exempted Drop Box Materials.**

2 Under the Commercial Franchise Agreement, "Exempted Drop Box Materials"
3 are defined as "Solid Waste and Approved Recyclable Material collected and
4 transported in an Exempted Drop Box using Exempted Drop Box Services, but
5 excludes; (1) Garbage [food waste]; and, (ii) Compacted Solid Waste and compacted
6 Approved Recyclable Materials [compacted materials]." See Franchise Agreement,
7 Art. 1, p. 6. "Exempted Drop Box Services" are defined as:

8 the collection and transportation by [1] an Exempted Hauler [such as
9 Rubbish Runners] of [2] Exempted Drop Box Materials [see above], [3]
10 using an Exempted Drop Box, [4] performed as Temporary Service and
11 [4] excluding any collection or transportation that would replace, limit or
12 reduce Permanent Service Collection by Contractor.

13 Id., p.6.⁴ Exempted Drop Box Materials apply only to irregular, nonroutine waste
14 disposal services. Here, the focus is temporary collection and hauling, based on
15 seasonal needs, special events, single occurrence collection and hauling, and
16 "irregularly scheduled cleanup." In contrast, routine hauling of Collection Materials

17 ⁴The Commercial Franchise Agreement provides specific examples of what types of
18 services constitute Exempted Drop Box Services:

- 19 i. the collection and transportation of landscaping and related materials
20 generated by landscaping, gardening, pruning, tree trimming and other
21 landscape maintenance service providers
- 22 ii. the collection and transportation of Exempted Drop Box Materials
23 generated at special events (but excluding materials which are the subject
24 of Permanent Services at the event location)
- 25 iii. the collection and transportation of Exempted Drop Box Materials under
26 single occurrence service contracts or arrangements for collection and
27 transportation of Exempted Drop Box Materials; and
- 28 iv. collection and transportation of Exempted Drop Box Materials generated
in connection with occasional, irregularly scheduled cleanup and disposal
by customers.

Id., Art.1, p

1 (both solid waste" and approved recycled materials) are all covered and subject to the
2 exclusivity contained within the Commercial Franchise Agreement.

3 **iii. Exempted Hauler Account Materials.**

4 Exempted Hauler Account Materials, are "Solid Waste and Recyclable Material
5 collected from an identified customer under an Exempted Account and transported by
6 such Exempted Hauler [such as Rubbish Runners] using Exempted Hauler Account
7 Services, but excluding Garbage." Id., Art. 1, p. 7. "Exempted Hauler Account
8 Services' means the collection and transportation by an Exempted Hauler of Exempted
9 Hauler Account Materials from an Exempted Hauler Account." Id., Art. 1, p. 8.

10 Accordingly, the key to defining Exempted Hauler Account Materials is the
11 definition of an "Exempted Hauler Account." "Exempted Hauler Account" means a
12 contract or account":

- 13 i. established on or before October 24, 2012 and continuing as of
October 24, 2012;
- 14 ii. under or pursuant to which contract or account an Exempted
15 Hauler has provided collection and transportation of Solid Waste
16 and/or Recyclable Materials from Commercial Activity on a
regularly scheduled, recurring basis;
- 17 iii. to a customer identified on Schedule 1; and
- 18 iv. approved by the City.

19 Id., Art. 1, p. 7.

20 This exemption in the Commercial Franchise Agreement was a provision
21 intended to allow then existing contracts RR had with any customer to remain in place
22 and not be subject to Reno Disposal's exclusivity.⁵ Accordingly, focusing on the first
23 requirement, which requires that any contract or account to be established "October 24,
24 2012 and continuing as of October 24, 2012." Under a plain reading, any Exempted
25 Hauler's contract or account, which expired after October 24, 2012, does not satisfy the
26 first requirement for an Exempted Hauler Account. Id., § 3.2(D) ("Exempted Hauler

27 _____
28 ⁵Of not, not relevant at this time, this exemption was not unlimited in duration.

1 Accounts shall terminate upon the later of i) one (1) year after the Effective Date and ii)
2 either a) termination of the contract or account with the Exempted Hauler for such
3 Exempted Hauler Account or b) the new subscription by the Exempted Hauler Account
4 customer, by contract or account, to Collection Services by the Contractor."

5 The Plaintiffs fail to allege any pre-October 24, 2012 contracts upon which
6 Exempted Hauler Accounts may be based. Further, Plaintiffs fail to even attach the
7 Schedule 1 customer list that purports to identify their customers for whom they are
8 entitled to do business. Because the Plaintiffs fail to establish any right to service any
9 Exempted Hauler Account, and Plaintiffs do not allege any interference with any
10 Exempted Hauler Accounts, Plaintiffs have failed to establish any claim based upon
11 interference or damage arising from these accounts.

12 Also notable about Exempted Hauler Account Materials is that these accounts
13 also exclude collection of "garbage". Based on this exclusion, it is appearing that the
14 Plaintiffs' intentionally misread the Commercial Franchise Agreement when they allege:

15 Plaintiffs know and understand that each commercial business located in
16 the CITY must have trash (food waste) service with EM and Plaintiffs work
hard to ensure that each and every one of their respective contractors and
customers are in compliance with that requirement.

17 Verified Amd. Comp., ¶ 35. Plaintiffs contend that merely because a customer must
18 have Reno Disposal haul their Garbage (aka, food waste), the customer may then have
19 anyone they want haul any other waste. This contention by Plaintiff fails for a number
20 of reasons.

21 First, there cannot be any "new" exempted Hauler Accounts. Therefore, RR
22 cannot solicit new customers. Second, RR's contention that they can haul other waste
23 for customers as an Exempt Hauler Account fails if the customer has a 96 gallon tote
24 violates the express terms of the Commercial Franchise Agreement. Finally, all
25 commercial businesses must have Reno Disposal haul their Collection Materials,
26 unless such a commercial business is an Exempted Hauler Account. In that instance,
27 the burden is on the Plaintiffs to prove that their customers meet all four requirements
28

1 for Exempted Hauler Accounts before the Plaintiffs may even haul their Exempted
2 Hauler Account Materials. The scheme described in the Plaintiffs Verified Complaint
3 whereby Reno Disposal's customers (presumably at Plaintiffs' direction) request 96-
4 gallon totes for hauling Garbage which then allows the customer to change its
5 remaining service to RR is not supported by the Commercial Franchise Agreement and
6 instead contradicts its terms.

7 **C. PLAINTIFFS FAIL TO STATE A CLAIM FOR DEFAMATION OR**
8 **DEFAMATION PER SE.**

9 The Plaintiffs' first and second claims for relief are for defamation and
10 defamation per se. As demonstrated herein, the Verified Amended Complaint contains
11 no defamatory statements. Reno Disposal has merely been accurately representing
12 the terms of the Commercial Franchise Agreement. Accordingly, the first and second
13 claims for relief fail as a matter of law.

14 In Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459 (1993), the Nevada
15 Supreme Court defined the elements of a prima facie case of defamation and stated:

16 [A] plaintiff must prove: (1) a false and defamatory statement by
17 defendant concerning the plaintiff; (2) an unprivileged publication to a third
18 person; (3) fault, amounting to at least negligence; and (4) actual or
19 presumed damages.⁶

20 Id. at 462. In defining this cause of action, the court relied upon the Restatement
21 (Second) of Torts, § 558 (1977). Here, the Plaintiffs cannot demonstrate any of the
22 elements for defamation. However, this discussion focuses upon the first element: a
23 statement concerning the plaintiff must be both false and defamatory.

24 The falsity requirement is not satisfied if the statements at issue are substantially
25 true. See Mark v. Seattle Times, 96 Wash. 2d 473, 494, 635 P.2d 1081, 1092 (1981).

26 ⁶Defamation per se is actionable without proof of special damages if the claim falls
27 within one of the traditional four categories: "(1) imputations that plaintiff has committed
28 a crime; (2) imputations that would injure plaintiff's trade, business or office; (3)
imputations that the plaintiff has contracted a loathsome disease; and . . . (4)
imputations of unchastity in a woman." Brand v. Sanford, 97 Nev. 643, 646, 637 P.2d
1223, 1225 (1981).

1 As one court explained, "a defamation defendant need not prove the literal truth of
2 every claimed defamatory statement"; he must "only show that the statement is
3 substantially true or that the gist of the story, the portion that carries the 'sting,' is true."
4 Id. (citing W. Prosser, Torts (4th ed. 1971)). As for the defamatory requirement, "[a]
5 statement is defamatory when it would tend to lower the subject in the estimation of the
6 community, excite derogatory opinions about the subject, and hold the subject up to
7 contempt." K-Mart Corp. v. Washington, 109 Nev. 1180, 1191, 866 P.2d 274, 281-82
8 (1993). Whether a statement is defamatory is a question of law. Id. Here, the Plaintiffs
9 have not (and cannot) allege that the first element is satisfied.

10 **1. The Gilletti Email Is Neither False Nor Defamatory.**

11 In Paragraph 44 of the Verified Amended Complaint, the Plaintiffs allege that "On
12 October 30, 2014, Reno Disposal employee, Cherolyn Gilletti, intentionally
13 misrepresented the current Commercial Franchise Agreement to one of Plaintiffs'
14 customers by writing in an email the following:"

15 At this time Reno Disposal is the assigned hauler for the city of Reno.
16 Please note the following.

17 Solid Waste: Every business generating Solid Waste in the City of Reno is
18 required to subscribe to Reno Disposal Company for the collection,
19 transportation and disposal of all of franchised Solid Waste materials
20 generated by the business, except for businesses to which the City of
21 Reno has specifically granted in writing an exemption. . . .

22 Recyclable Material. No business may allow or retain any service provider
23 other than Reno Disposal Company to collect, pickup, transport or deliver
24 Approved Recyclable Materials in the City of Reno in violation of the
25 exclusive Commercial Franchise Agreement or the Reno Municipal Code.

26 Everything Ms. Gilletti allegedly stated in her email is true according to the terms of the
27 Commercial Franchise Agreement, as explained above.

28 Reno Disposal is the exclusively "assigned" or franchised hauler of "Solid Waste"
and "Approved Recycling Material" for Reno. Under the exemption for Exempted
Hauler Account Materials, the City of Reno must expressly grant an exception to an
Exempted Hauler Account. See Commercial Franchise Agreement, Art. 1, p. 7.
Further, businesses cannot be compelled to have their Excluded Recyclable Materials

1 collected by Reno Disposal, but if a seller sells materials which are Approved Recycled
2 Materials, but the materials are sold **directly** to a buyer at market rate and there is no
3 collection or hauling involved, then that transaction is exempt from the City of Reno
4 franchise agreement. Ms. Gilletti's email accurately explains the terms of the
5 Commercial Franchise Agreement and is not actionable as a matter of law.

6 Moreover, Ms. Gilletti's email does not concern or reference the Plaintiffs in any
7 fashion. Accordingly, there is no statement directed at the Plaintiffs. Further, there is
8 nothing defamatory about her email. Nothing in the email would lower the Plaintiff in
9 the estimation of the community or subject them to derogatory opinions or contempt.
10 RR is not the franchised hauler under the Commercial Franchise Agreement, and
11 explaining how Reno Disposal is the franchised hauler is entirely irrelevant to RR's
12 standing in the community as a non-franchised hauler. Accordingly, Ms. Gilletti's email
13 cannot form the basis of a claim for defamation or defamation per se.

14 **2. The Other Representations Made by Reno Disposal**
15 **Representatives Were Neither False Nor Defamatory.**

16 In Paragraph 34 of the Verified Amended Complaint, the Plaintiffs alleged that
17 Reno Disposal "allow[ed] and encourage[ed] its agents and employees to make
18 misleading statements to customers and/or prospective customers of Plaintiffs, included
19 but not limited to the following"

20 "We [WM] are the only hauler that's allowed in Sparks and Reno."

21 "Any other provider that goes in there, there will be fines."

22 "We [WM] have an agreement with the city and we are the only trash
23 hauler that is allowed in either of those cities [Reno and Sparks]."

24 Again, each of these statements is completely or substantially true. Pegasus v. Reno
25 Newspapers, Inc., 57 P.3d 82, 88 (Nev. 2002) ("a statement [is not] defamatory if it is
26 absolutely true, or substantially true.").

27 The first and third statement are true since Reno Disposal is actually the only
28 franchised hauler under the Commercial Franchise Agreement in the City of Reno and
is also the franchise hauler in the City of Sparks. As for fines, the Commercial

1 Franchise Agreement does provide for both public enforcement of its terms by the City
2 of Reno and private enforcement by Reno Disposal. Accordingly, the second statement
3 is also true.

4 Because the alleged statements upon which the Plaintiffs base their complaint
5 are either true and/or substantially accurate, the claims for defamation and defamation
6 per se fail. Independently, the claims also fail because none of these statements are
7 directed at the Plaintiffs or even mention the Plaintiffs. Defendants are entitled to
8 summary judgment on these claims because Plaintiffs fail to allege a cognizable claim
9 and the motion must be granted.

10 **D. PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF**
11 **CONTRACT/THIRD PARTY BENEFICIARY OR BREACH OF THE**
IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

12 The Plaintiffs allege that they are third-party beneficiaries under the Commercial
13 Franchise Agreement. The Plaintiffs also allege that Reno Disposal breached the
14 agreement by (a) "failing to charge the "Franchise Rates"; (b) failing to "use
15 commercially reasonable efforts to commence and diligently prosecute construction of
16 the Eco-Center"; (c) "interfering with and limited Plaintiffs' rights [under the Franchise
17 Agreement] to service commercial customers with 96-gallon tote service"; and (d) "push
18 Plaintiffs out of the market."⁷ See Verified Amend. Comp., ¶¶ 68, 70, 73. Accepting
19 each of these contentions at face value, the motion must be granted because none of
20 these allegations constitute a breach of contract actionable by the Plaintiffs.

21 **1. The Plaintiffs' Lack of Standing as Third-Party Beneficiaries.**

22 A plaintiff's failure to sufficiently allege standing can sustain a motion to dismiss
23 under NRCP 12(b)(5). See Tyler v. Cuomo, 236 F.3d 1124, 1131-32 (9th Cir. 2000).
24 Here, the Plaintiffs fail to allege or otherwise demonstrate a basis for standing as a

25 _____
26 ⁷Plaintiffs also allege that the Defendants have breached the Commercial Franchise
27 Agreement by "holding customers to contracts after January 1, 2015." See Verified
28 Amd. Complaint, ¶ 73. This allegation makes no sense and is indecipherable.
Accordingly, this allegation fails to even meet the basic pleading standard set forth in
NRCP 8(a).

1 third-party beneficiary. Accordingly, their contract claims must be dismissed with
2 prejudice.

3 "Before a stranger can avail himself of the exceptional privilege of suing for a
4 breach of an agreement, to which he is not a party, he must, at least, show that it was
5 intended for his direct benefit." Olson v. Iacometti, 91 Nev. 241, 245-46, 533 P.2d
6 1360, 1364 (1975). Such a stranger may sue on a contract as a third-party beneficiary
7 only if there is a clear promissory intent to benefit him. Lipshie v. Tracy Inv. Co., 93
8 Nev. 370, 379, 566 P.2d 819, 824-25 (1977). Without such a promissory intent, a
9 plaintiff is without standing to sue on a contract. See Wyatt v. Bowers, 103 Nev. 593,
10 595-96, 747 P.2d 881, 882-83 (1987).

11 The Commercial Franchise Agreement provides that Plaintiff Rubbish Runners is
12 an Exempted Hauler and is "a third party beneficiary with the right to enforce . . . the
13 rights of such Exempted Hauler under this Section 3.2 D." See Commercial Franchise
14 Agreement, § 3.2(D)(3). Similarly, Plaintiff NRS, the Exempted Facility under the
15 Commercial Franchise Agreement, is "a third party beneficiary with the right to enforce .
16 . . the rights of the Exempted Facility under this Section 4.4 L." See id., § 4.4(L)(3).
17 Additionally, under the Disposal Agreement, Plaintiff NRS is "a third party beneficiary
18 with the right to enforce . . . the rights of the Exempted Facility under this Section 3.2
19 G." See Disposal Agreement, § 3.2(G)(3).

20 Plaintiffs are specifically identified third-party beneficiaries of 3.2D and 4.4L of
21 the Commercial Franchise Agreement and 3.2(g) of the Disposal Agreement. The
22 express terms of these agreements limit the third, this the express limit of their third-
23 party beneficiary status. See Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev.
24 481, 487-88, 117 P.3d 219, 223-24 (2005) (holding that unambiguous contracts are
25 construed according to their plain language). Accordingly, Plaintiffs only have standing
26 to bring suit against Defendants for impairment of any of the rights expressly set forth in
27 Sections 3.2(D) and 4.4(L) of the Commercial Franchise Agreement or 3.2(G) of the
28 Disposal Agreement.

1 **a. Plaintiffs have no standing as to Franchise Rate Claims.**

2 As noted above, the Plaintiffs assert a breach of contract for (a) failing to charge
3 Franchise Rates and (b) failing to commence construction of the Eco-Center. See
4 discussion Part II.D, supra. Customer rates are governed by Article 6 of the
5 Commercial Franchise Agreement. There is no reference to customer rates under
6 either Section 3.2(D) or 4.4(L) of the Commercial Franchise Agreement or Section
7 3.2(G) of the Disposal Agreement. Conversely, there is also no reference to Exempted
8 Haulers or the Exempted Facility under Article 6. Therefore, under the express
9 language of the agreements, there is no intent for Reno Disposal's customer rate
10 structure to benefit the Plaintiffs. They are not intended third-party beneficiaries under
11 Article 6. Accordingly, the Plaintiffs' have no standing to sue for breach of contract
12 based upon Reno Disposal's alleged failure to charge Franchise Rates and their claims
13 must be dismissed.

14 **b. Plaintiffs have no standing as to the Eco-Center Claims.**

15 Under Section 3.3(A) of the Disposal Agreement, Refuse, Inc. is obligated to
16 "use commercially reasonable efforts to commence and diligently prosecute
17 construction of the Eco-Center" "[w]ithin twenty eight (28) months following the Effective
18 Date of [the Disposal Agreement]." The Effective Date is November 7, 2012, and
19 Refuse, Inc. began its efforts to prosecute construction of the Eco-Center before the
20 expiration of twenty eight (28) months. While the Court cannot take notice or adjudicate
21 this fact on a motion to dismiss, the Court may grant the Motion based upon the
22 Plaintiffs' failure to allege standing.

23 Unsurprisingly, there is no reference to the Eco-Center under either Section
24 3.2(D) or 4.4(L) Commercial Franchise Agreement or Section 3.2(G) of the Disposal
25 Agreement. Section 3.3(A) of the Disposal Agreement also does not reference
26 Exempted Haulers or the Exempted Facility. Accordingly, under the express terms of
27 the agreements, there is no intent for Refuse, Inc.'s construction of the Eco-Center to
28 benefit the Plaintiffs. Thus, the Plaintiffs are not intended third-party beneficiaries under

1 Section 3.3(A). Once again, Plaintiffs do not (and cannot) allege standing to bring a
2 breach of contract action based upon Refuse, Inc.'s alleged failure to commence
3 construction of the Eco-Center. Again, the motion to dismiss must be granted.

4 **2. The Defendants Have Not Breached the Commercial Franchise**
5 **Agreement.**

6 As noted above, the Plaintiffs assert claims for breach of contract against the
7 Defendants based upon alleged interference with Plaintiffs' "right" to service commercial
8 customers with 96-gallon tote service, as well as Defendants' attempt to push the
9 Plaintiffs out of the waste disposal market. See Verified Amd. Complaint, ¶ 73. First,
10 as extensively discussed above, the Plaintiffs have no right to perform routine hauling of
11 Collection Materials, including Approved Recyclable Materials that are hauled as a
12 service. Therefore, the Plaintiffs are not entitled to participate in a scheme to induce
13 customers to downgrade to a 96-gallon tote in order to circumvent the Commercial
14 Franchise Agreement. Instead, Reno Disposal has the express right and duty to
15 enforce compliance with the Commercial Franchise Agreement, which includes
16 reporting noncompliant businesses to the City of Reno. See id., § 11.15.

17 Further, there is no merit to Plaintiffs' contention that Defendants breached the
18 Commercial Franchise Agreement by forcing Plaintiffs out of the waste disposal market.
19 First, the Plaintiffs are expressly barred from the market due to the terms of the
20 Commercial Franchise Agreement. Second, Reno Disposal is not prohibited from
21 competing for business hauling waste that is exempted from the Commercial Franchise
22 Agreement. Therefore, the Plaintiffs do not (and cannot) allege a breach of contract
23 based upon Reno Disposal's performance of the very business it is charged with
24 exclusively servicing in the City of Reno.

25 As presently alleged, Plaintiff failed to state a claim for breach of contract or
26 breach of the covenant of good-faith and fair dealing against the Defendants. Plaintiffs
27 are only third-party beneficiaries to very limited provisions of the agreements—none of
28 the terms of which are implicated in the Plaintiffs' action. Further, the alleged conduct

1 is not a breach under the franchise agreement as a matter of law. Accordingly, the
2 motion should be granted dismissing these claims as well.

3 **E. PLAINTIFFS' FAIL TO STATE A CLAIM FOR UNFAIR TRADE**
4 **PRACTICES/CONSPIRACY TO RESTRAIN TRADE UNDER THE**
5 **NEVADA UNFAIR TRADE PRACTICES ACT.**

6 Plaintiffs' asserts as their fifth claim a claim for relief under the Nevada Unfair
7 Trade Practices Act ("UTPA"). However, UTPA does not apply to "[co]nduct which is
8 expressly authorized, regulated or approved by: (a) A statute of this State or the United
9 States; [or] (b) An ordinance of any city or county of this State . . ." NRS 598A.040(3).
10 In the present case, the Commercial Franchise Agreement is expressly authorized and
11 approved of by state statute and city ordinance.

12 Under NRS 268.081, incorporated cities can "displace or limit competition" for
13 the "[c]ollection and disposal of garbage and other waste." Reno, an incorporated city,
14 has enacted ordinances allowing franchise agreement for solid waste and recyclable
15 material collection. RMC 5.90.005. The Plaintiffs admit that the Commercial Franchise
16 Agreement is valid and was approved by the Reno City Council. See Verified Amd.
17 Complaint, ¶ 100. Therefore, as a matter of law, the UTPA does not apply in this case
18 and the Plaintiffs claim for violation of the UTPA must be dismissed.

19 **F. PLAINTIFFS FAIL TO STATE A CLAIM FOR FRAUD, FRAUD IN THE**
20 **INDUCEMENT, OR FRAUDULENT MISREPRESENTATION.**

21 Plaintiffs' sixth claim for relief is based upon allegations of fraud. As noted
22 above, allegations of fraud are subject to a heightened pleading standard on a motion
23 to dismiss. Here, Plaintiffs' fail to satisfy the pleading standard.

24 **1. The Plaintiffs' Fraud Allegations Do Not Satisfy NRCP 9(b).**

25 In order to defeat a motion to dismiss, a plaintiff must allege fraud with enough
26 specificity to identify the "who, what, when, where, and how" of the fraud. See G.K.
27 Las Vegas Limited Partnership v. Simon Property Group, Inc., supra, 460 F.Supp.2d at
28 1238.

1 Here, the Plaintiffs's theory of fraud is a general one. See Verified Amd.
2 Complaint, ¶ 98-115. Indeed, Plaintiffs fail to allege any specific person who made any
3 misrepresentations of fact or what the alleged misrepresentations were. Similarly, there
4 are no allegations as to when and where any alleged misrepresentations were made.
5 Moreover, Plaintiffs do not allege how the misrepresentations were transmitted to the
6 listener. Indeed, but for some general allegations about the City and public, Plaintiffs
7 do not allege a specific person to whom any misrepresentations were made.
8 Accordingly, Plaintiffs' fraud allegations fail to reach the heightened pleading standard
9 under NRCP 9(b).

10 **2. The Plaintiffs' Fraud Allegations Are Based Upon Defendants'**
11 **Promise to Perform Under the Disposal Agreement.**

12 In addition, while the Plaintiffs' fraud allegations are general and unspecific, the
13 gist of the Plaintiffs' theory of fraud is that **Reno Disposal** is obligated (1) to recycle
14 collected Recyclable Materials and "return them to the economy" and (2) build the Eco-
15 Center. See Verified Amd. Complaint, ¶ 102, 105. However, under the Disposal
16 Agreement, it is actually Refuse, Inc.'s responsibility to perform the actual recycling
17 services. See Disposal Agreement, Art. 1, p. 7. Furthermore, as discussed above, it is
18 not Reno Disposal's obligation to construct the Eco-Center. Instead, Refuse, Inc. is
19 obligated to construct the Eco-Center under Section 3.3(A) of the Disposal Agreement.
20 Accordingly, the Plaintiffs' vague fraud allegations directed at Reno Disposal fails
21 because Reno Disposal has no obligations to perform the complained of conduct.

22 In addition, Plaintiffs' have failed to allege a valid claim for fraud because the
23 Plaintiffs merely alleged a breach of contract claim dressed up as a tort claim for fraud.
24 Claims based upon a failure to perform a contract are merely breach of contract claims
25 and do not support a claim for fraud. The Court is to analyze the essence of the claim
26 to determine if it is in reality a breach of contract claim. See State Farm Mut. Auto.
27 Ins. Co. v. Wharton, 88 Nev. 183, 186, 495 P.2d 359, 361 (1972) (noting that, in
28 determining whether an action is based on contract or tort, this court looks at the

1 nature of the grievance to determine the character of the action, not the form of the
2 pleadings).

3 In the present case, the Plaintiffs' contentions are that Refuse, Inc. has not
4 abided by the terms of the Disposal Contract. Such contentions do not rise to the level
5 creating and/or establishing an independent tort duty distinct from any contract duties
6 which have been violated. See Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 7 Cal
7 4th. 503, 515, 28 Cal. Rptr. 2d 475, 869 P.2d 454 (1994) ("Conduct amounting to a
8 breach of contract becomes tortious only when it also violates an independent duty
9 arising from principles of tort law."); see also Bash v. Bell Tele. Co., 601 A.2d 825, 829
10 (Pa. 1992) ("To permit a promisee to sue his promisor in tort for breaches of contract
11 inter se would erode the usual rules of contractual recovery and inject confusion into
12 our well-settled forms of actions."). Again, because the fraud claim is couched in terms
13 of a breach of contract claim, the claims for fraud fail as a matter of law.

14 Under Nevada law, "[t]he mere failure to fulfill a promise or perform in the future .
15 . . will not give rise to a fraud claim absent evidence that the promisor had no intention
16 to perform at the time the promise was made." Bulbman, Inc. v. Nevada Bell, 108 Nev.
17 105, 112, 825 P.2d 588, 592 (1992). Because the Defendants' fraud is nothing more
18 than a mere failure to perform under the Disposal Agreement, Plaintiffs fail to state a
19 claim for fraud.

20 3. The Plaintiffs' Fail to Allege Justifiable Reliance.

21 Under Nevada law, "[a] plaintiff has the burden of proving each element of fraud
22 claim by clear and convincing evidence" which includes pleading and proving "justifiable
23 reliance upon the misrepresentation." Bulbman, Inc. v. Nevada Bell, *supra*, 108 Nev. at
24 110-11 (citations omitted). Of particular importance, in this case the element of
25 justifiable reliance is totally absent. "Justifiable reliance" is described as:

26 The causal connection between the wrongful conduct and the resulting damage,
27 essential throughout the law of torts, takes in cases of misrepresentation the
28 form of inducement of the plaintiff to act, or to refrain from acting, to his
detriment. The false representation must have played a material and substantial
part in leading the plaintiff to adopt his particular course; and when he was

1 unaware of it at the time that he acted, or it is clear that he was not in any way
2 influenced by it, and would have done the same thing without it for other
 reasons, his loss is not attributed to the defendant.'

3 Lubbe v. Barba, 91 Nev. 596, 600, 540 P.2d 115, 118 (1975) (citing Prosser on Torts,
4 685 (4th ed. 1971)). In sum, a plaintiff must take an action—to his detriment—in
5 reaction to a representation made by the defendant.

6 Aside from failing to plead fraud with any specificity, the Plaintiff clearly state that
7 the purported misrepresentations in question were made to the City of Reno or the
8 public. See Verified Amd. Complaint, ¶ 98-99. Plaintiffs have not (and cannot) allege
9 that any representations were **made to** the Plaintiffs causing the Plaintiffs to adopt any
10 particular course of action. The Plaintiffs don't even allege that they relied upon any
11 purported representations made by the Defendants. Accordingly, the Plaintiffs fail to
12 state a claim for fraud and the motion should be granted.

13 **G. PLAINTIFFS FAIL TO STATE A CLAIMS FOR A PRELIMINARY OR**
14 **PERMANENT INJUNCTION.**

15 In its seventh claim for relief, the Plaintiffs seek either a preliminary or permanent
16 injunction against the Defendants. Under fundamental equitable principles, an
17 injunction is intended to deter and not punish. See Hecht Co. v. Bowles, 321 U.S. 321,
18 329, 64 S. Ct. 587, 592, 88 L. Ed. 754 (1944); see also Sec. & Exch. Comm'n v. Savoy
19 Indus., Inc., 587 F.2d 1149, 1169 (D.C. Cir. 1978) (holding that injunctions are intended
20 "to deter future violations, and not to punish the violator"); Graphic Sciences, Inc. v. Int'l
21 Mogul Mines Ltd., 397 F. Supp. 112, 128 (D.D.C. 1974) ("The Court well realizes that
22 the function of equity is generally to deter rather than to punish and that the preliminary
23 injunction is best used to preserve the status quo."); Water Res. Comm'n v. Connecticut
24 Sand & Stone Corp., 170 Conn. 27, 34, 364 A.2d 208, 212 (1975) ("An injunction is
25 designed to deter, not to punish.")

26 Here, Plaintiffs seek an injunction for punitive purposes and ask for an injunction
27 and state that **"the Defendants should be punished, and an example made of said**
28 **conduct, to discourage Defendants and others in similar positions from engaging**

1 in like conduct in the future, through the award of punitive damages in a just and
2 reasonable amount for Plaintiffs herein." See Verified Amd. Complaint, ¶ 121
3 (emphasis added). Clearly, Plaintiffs seek an injunction for impermissible purposes.
4 Accordingly, the Plaintiffs fail to state a proper claim for injunctive relief and the motion
5 should be granted on this claim as well.

6 In addition, it is also well-established that a cause of action is separate and
7 distinct from available remedies. The Nevada Supreme Court held that "it is axiomatic
8 that a court cannot provide a remedy unless it has found a wrong. 'The existence of a
9 right violated is a prerequisite to the granting of an injunction.'" State Farm Mut. Auto
10 Ins. Co. v Jafbros Inc., 860 P.2d 176, 178 (Nev. 1993) (citing 43 C.J.S. §18 Injunctions
11 (1978)).

12 The Nevada federal district courts, the Ninth Circuit Court of Appeals, and
13 California courts have taken precisely the same approach. Contreras v. Master Fin.
14 Inc., No. 3-10-CV-0477-LRH-VPC, 2010 WL 4608300, at *5 (D. Nev. Nov. 4, 2010)
15 ("Claims for injunctive or declaratory relief are remedies that may be afforded to a party
16 after he has sufficiently established and proven his claims; they are not a separate
17 cause of action."); Hearne v. Countrywide Home Loans, Inc., No. 3-08-CV-0500-ECR-
18 RAM at 11 (D. Nev. 2010) (order granting motion to dismiss because "[i]njunctive and
19 declaratory relief are not independent causes of action; they are prayers for relief.");
20 Saniel v. Mortgage Elec. Reg. Sys., No. 2:10-CV-01497-RLH-PAL, 2011 WL 778206, at
21 *5, (D. Nev. Mar. 1, 2011) ("Because [plaintiff] has not stated any valid claims, the Court
22 dismisses the petition for declaratory relief."); Josephson v. EMC Mortgage Corp., No.
23 2:10-CV_336-JCM-PAL, 2010 WL 4810714, at *3 (D. Nev. Nov. 19, 2010) ("[I]t is well
24 established that injunctive relief is a remedy, and not an independent cause of action . .
25 . Declaratory relief is a form of relief which is not intended to furnish the plaintiffs with a
26 second cause of action for the determination of identical issues.") (citations omitted)).
27 Accordingly, as here, when Plaintiffs allege a remedy as a cause of action the claims

28

1 should be dismissed for failure to state a claim. See Cox Common PCS, L.P. v. City of
2 San Marcos, 204 F.Supp.2d 1272, 1283 (S.D. Cal. 2002).

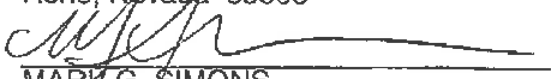
3 **III. CONCLUSION.**

4 Here, the Plaintiffs fail to state a claim for which relief may be granted, and
5 dismissal of all claims contained in the Verified Amended Complaint is appropriate
6 under NRCP 12(b)(5). There is no claim for defamation because the alleged
7 defamatory statements are true according to the terms of the Agreements and/or there
8 is no mention of the Plaintiffs in a defamatory context. Further, there is no valid claim
9 for breach of contract because Plaintiffs do not have standing and/or the complained of
10 conduct is all expressly allowed under the terms of the agreements. In addition, there is
11 no claim under UTPA because the Agreements are permissible and legal restrains of
12 trade. There is also no valid claim for fraud because, the allegations fail to meet the
13 heightened pleading standard and fail to the elements of fraud and the claims merely
14 restate a claim for breach of contract under the guise of a tort claim. Finally, the
15 injunctive claim for relief fails because it is not a valid claim for relief but a remedy and
16 as an independent ground, the remedy is unavailable since Plaintiffs request a punitive
17 injunction. For these reasons, the Motion to Dismiss should be granted in total.

18 **AFFIRMATION:** The undersigned do hereby affirm that the preceding document
19 does not contain the social security number of any person.

20 DATED this 20th day of April, 2015.

21 ROBISON, BELAUSTEGUI, SHARP & LOW
22 A Professional Corporation
23 71 Washington Street
24 Reno, Nevada 89503

25 
26 MARK G. SIMONS
27 SCOTT L. HERNANDEZ
28 Attorneys for Defendants

J:\WPData\MGS\20538 001 (Waste Management)\P-Motion to Dismiss\MGS Edits.docx

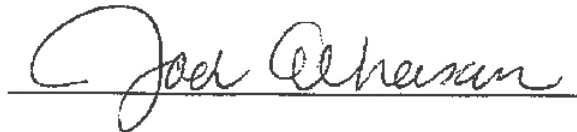
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **MOTION TO DISMISS VERIFIED AMENDED COMPLAINT** on all parties to this action by the method(s) indicated below:

- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:
- ☒ by using the Court's CM/ECF Electronic Notification System addressed to:
- ☐ by personal delivery/hand delivery addressed to:
- ☐ by facsimile (fax) addressed to:
- ☐ by Federal Express/UPS or other overnight delivery addressed to:

Del Hardy, Esq.
Stephanie Rice, Esq.
HARDY LAW GROUP
96 and 98 Winter Street
Reno, NV 89503
Attorneys for Plaintiffs

DATED: 20th day of April, 2015.



J:\WPData\MGS\0516 001 (Waste Management)\P-Motion to Dismiss\MGS Edits).wpd

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 ***

3 Electronically Filed
4 Jun 08 2017 01:14 p.m.
5 Elizabeth A. Brown
6 Clerk of Supreme Court

7 NEVADA RECYCLING AND
8 SALVAGE, LTD, a Nevada Limited
9 Liability Company; AMCB, LLC, a
10 Nevada Limited Liability Company d/b/a
11 RUBBISH RUNNERS,

12 Appellants,

13 vs.

14 RENO DISPOSAL COMPANY, INC, a
15 Nevada Corporation doing business as
16 WASTE MANAGEMENT; REFUSE,
17 INC., a Nevada Corporation; WASTE
18 MANAGEMENT OF NEVADA, INC., a
19 Nevada Corporation,

20 Respondents.

Supreme Court Case No.: 71467

District Court Case No.: CV15-00497

21 **JOINT APPENDIX**

22 **VOLUME 1**

23 JA000001-JA000190

24 Stephanie Rice, Esq.
25 Rich Salvatore, Esq.
26 Del Hardy, Esq.
27 Winter Street Law Group
28 96 & 98 Winter St.
 Reno, NV 89503
 (775)786-5800
 Attorneys for Appellant

 Mark Simons, Esq.
 Therese M. Shanks, Esq.
 Robison, Belaustegui, Sharp and Low
 71 Washington Street
 Reno, NV 89503
 (775)329-3151
 Attorney for Respondent

VOLUME ALPHABETICAL INDEX

ITEM DESCRIPTION	BATE STAMP	VOLUME
ACCEPTANCE OF SERVICE OF SUMMONS AND SECOND AMENDED COMPLAINT	JA003732 - JA003733	19
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM FOR DAN REASER, ESQ.	JA001109- JA001121	6
AFFIDAVIT OF SERVICE OF THE SUBPOENA DUCES TECUM ON DAN R. REASER, ESQ.	JA004624- JA004626	23
AFFIDAVIT OF SERVICE OF THE SUBPOENA FOR SPIKE DUQUE	JA001674- JA001682	9
AFFIDAVIT OF SERVICE OF THE SUBPOENA ON JONATHAN SHIPMAN, ESQ.	JA004758- JA004760	23
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000183- JA000186	1
AFFIDAVIT OF SERVICE OF THE SUMMONS AND VERIFIED COMPLAINT	JA000187- JA000190	1
ANSWER TO SECOND AMENDED COMPLAINT	JA004113- JA004137	21
ANSWER TO VERIFIED FIRST AMENDED COMPLAINT	JA000883- JA000906	5
CONFIRMING ORDER OF 02/11/2016 RECOMMENDATION	JA005417- JA005418	27
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004639- JA004695	23
DEFENDANT WASTE MANAGEMENT OF NEVADA, INC.'S REPLY IN SUPPORT OF ITS JOINER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004696- JA004699	23
DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA001700- JA001969	9-10
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	JA000720- JA000856	4
DEFENDANT'S MOTION TO STAY DISCOVERY	JA001122- JA001127	6
DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AND CONSIDER	JA000996- JA001006	5

MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION		
DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	JA000931- JA000995	5
DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000621- JA000684	4
DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002615- JA002922	13-14
DEFENDANTS' MOTION FOR A PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA004706- JA004757	23
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA002923- JA002977	14
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005306- JA005319	26
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005092- JA005144	25
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000487- JA000498	3
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY	JA001160- JA001168	6
DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003508- JA003525	18
DEFENDANTS' REPLY TO OPPOSITION TO SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004152- JA004609	21-23
DEPOSITION TRANSCRIPT OF ANNE MARIE CAREY 02/24/2016	JA002091- JA002144	10
DEPOSITION TRANSCRIPT OF CHRIS BIELSER 02/24/2016	JA002145- JA002175	11
DEPOSITION TRANSCRIPT OF DAVE AIAZZI 12/29/2015	JA001458- JA001670	8

DEPOSITION TRANSCRIPT OF GARY DUHON 05/25/2016	JA003068- JA003240	16
DEPOSITION TRANSCRIPT OF GREG MARTINELLI 12/29/2015	JA001295- JA001457	7
DEPOSITION TRANSCRIPT OF JOSEPH CASSIN 05/25/2016	JA002986- JA003067	15
ERRATA TO DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA002978- JA002985	15
JOINT CASE APPEAL STATEMENT	JA005344- JA005357	26
JOINT NOTICE OF APPEAL	JA005333- JA005343	26
MINUTES ORAL ARGUMENTS – JULY 29, 2015	JA000583	3
MINUTES – HEARING IN RE: DEFENDANTS' MOTION FOR PROTECTIVE ORDER 08/02/2016	JA005164	25
MINUTES – ORAL ARGUMENTS IN RE: DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT – AUGUST 18, 2016	JA005176	26
MINUTES STATUS HEARING – JANUARY 29,2016	JA001699	9
MOTION FOR ENTRY OF FINAL JUDGMENT	JA005358- JA005366	26
MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005268- JA005274	26
MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA000857- JA000882	5
MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000388- JA000414	2
MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000480- JA000486	3
NON- PARTY CASTAWAY TRASH HAULING, INC.'S MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001172- JA001205	6
NOTICE OF ENTRY OF ORDER	JA000703- JA000719	4

NOTICE OF ENTRY OF ORDER	JA001277- JA001284	6
NOTICE OF ENTRY OF ORDER	JA002209- JA002216	11
NOTICE OF ENTRY OF ORDER	JA002231- JA002249	11
NOTICE OF ENTRY OF ORDER	JA003531- JA003535	18
NOTICE OF ENTRY OF ORDER	JA005168- JA005175	26
NOTICE OF ENTRY OF ORDER	JA005295- JA005305	26
NOTICE OF ENTRY OF ORDER	JA005400- JA005407	27
NOTICE OF ENTRY OF ORDER	JA005410- JA005416	27
NOTICE OF NRCP 30(B)(6) DEPOSITION OF RENO DISPOSAL COMPANY, INC.	JA002354- JA002357	11
OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000611- JA000618	3
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	JA000907- JA000930	5
OPPOSITION TO MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000415- JA000458	3
OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001206- JA001270	6
OPPOSITION TO MOTION TO STAY DISCOVERY	JA001128- JA001159	6
OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002358- JA002543	12
ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA005165- JA005167	26
ORDER DISMISSING WITHOUT PREJUDICE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DEFENDANTS' MOTION TO STAY DISCOVERY IS DENIED	JA001271- JA001276	6
ORDER DENYING PLAINTIFF'S MOTION FOR AMENDED SCHEDULED ORDER	JA005408- JA005409	27

ORDER FINAL JUDGMENT RENDERED IN FAVOR OF DEFENDANTS	JA005397- JA005399	26
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE DAMAGES & LIABILITY	JA005289- JA005294	26
ORDER GRANTING PLAINTIFF'S REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER TO MOTION TO DISMISS	JA000619- JA000620	3
ORDER DENYING MOTION FOR PROTECTIVE ORDER	JA002203- JA002208	11
ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA003528- JA003530	18
ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REPLY	JA000506- JA000508	3
ORDER - SET MOTION TO DISMISS FOR ORAL ARGUMENT -	JA000509- JA000511	3
ORDER TO SET ORAL ARGUMENTS	JA004700- JA004702	23
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT, IN PART, AND DENYING, IN PART	JA000691- JA000702	4
PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002250- JA002353	11
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER	JA001980- JA002090	10
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003241- JA003507	17-18
PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA003734- JA004112	19-20
PLAINTIFFS' JOINT OPPOSITION TO WASTE MANAGEMENT OF NEVADA, INC'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: LIABILITY AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004610- JA004623	23
PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND	JA004955- JA005051	25

MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER		
PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA004857- JA004954	24
PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA004761- JA004856	24
PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER ON RENO DISPOSAL COMPANY AND REFUSE INC.'S MOTIONS FOR SUMMARY JUDGMENT RE: LIABILITY AND DAMAGES; AND PLAINTIFFS' PROPOSED ORDER	JA005275- JA005288	26
PLAINTIFFS' OPPOSITION TO ENTRY OF FINAL JUDGMENT	JA005367- JA005396	26
PLAINTIFFS' REPLY TO MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005067- JA005082	25
PLAINTIFFS' REPLY TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005052- JA005066	25
PROOF OF SERVICE	JA000385- JA000387	2
RECOMMENDATION FOR ORDER	JA001970- JA001979	10
REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR A PROTECTIVE ORDER	JA002176- JA002199	11
REPLY IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000459- JA000474	3
REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001285- JA001291	6

REPLY TO MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005320- JA005330	26
REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION	JA001010- JA001101	5-6
REPLY TO OPPOSITION TO MOTION TO STRIKE DEFENDANTS' LATE-FILED REPLY	JA000499- JA000503	3
REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002544- JA002612	13
REPLY TO RESPONSE TO OBJECTION TO DEFENDANT'S PROPOSED ORDER	JA000685- JA000688	4
REQUEST FOR SUBMISSION	JA004149- JA004151	21
REQUEST FOR SUBMISSION FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004636- JA004638	23
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER	JA002200- JA002202	11
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER PRECLUDING FURTHER DISCOVERY	JA005083- JA005085	25
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	JA001007- JA001009	5
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA003526- JA003527	18
REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO STAY DISCOVERY	JA001169- JA001171	6
REQUEST FOR SUBMISSION OF DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004633- JA004635	23
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000477- JA000479	3
REQUEST FOR SUBMISSION OF MOTION TO DISMISS VERIFIED AMENDED COMPLAINT	JA000475- JA000476	3

AND OPPOSITION TO MOTION TO DISMISS VERIFIED COMPLAINT		
REQUEST FOR SUBMISSION OF MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER	JA001292- JA001294	6
REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION TO AMEND COMPLAINT	JA002613- JA002614	13
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR AND ORDER TO SHOW CAUSE WHY DEFENDANTS AND MARK SIMONS, ESQ. SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING A COURT ORDER	JA005090- JA005091	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR ISSUANCE OF AMENDED SCHEDULING ORDER	JA005331- JA005332	26
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' INTENTIONAL AND WILLFUL VIOLATION OF THIS COURT'S DISCOVERY ORDER	JA005088 JA005089	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND SANCTIONS	JA005086- JA005087	25
REQUEST FOR SUBMISSION OF PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' LATE- FILED REPLY	JA000504- JA000505	3
REQUEST FOR SUBMISSION OF PLAINTIFFS' OBJECTION TO DEFENDANTS' PROPOSED ORDER, DEFENDANTS' RESPONSE TO OBJECTION TO PROPOSED ORDER AND REPLY TO RESPONSE TO OBJECTION TO DEFENDANTS' PROPOSED ORDER	JA000689- JA000690	4
REQUEST FOR SUBMISSION OF PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004147- JA004148	21
REQUEST TO CONSIDER PLAINTIFF'S PROPOSED ORDER ON MOTION TO DISMISS SECOND AMENDED COMPLAINT	JA000584- JA000610	3
	JA003536- JA003729	18-19

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER	JA002217- JA002230	11
SUBPOENA - JONATHAN SHIPMAN	JA004703- JA004705	23
SUBPOENA - SPIKE DUQUE	JA001671- JA001673	9
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA001102- JA001108	6
SUBPOENA DUCES TECUM DAN R. REASER, ESQ.	JA004627- JA004632	23
SUMMONS	JA003730- JA003731	19
TRANSCRIPT HEARING – AUGUST 2, 2016	JA005145- JA005163	25
TRANSCRIPT ORAL ARGUMENTS – AUGUST 18, 2016	JA005177- JA005267	26
TRANSCRIPT ORAL ARGUMENTS – JULY 29, 2015	JA000512- JA000582	3
TRANSCRIPT STATUS HEARING – JANUARY 29, 2016	JA001683- JA001698	9
VERIFIED COMPLAINT	JA000001- JA000182	1
VERIFIED FIRST AMENDED COMPLAINT	JA000191- JA000384	2
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE: DAMAGES	JA004138- JA004140	21
WASTE MANAGEMENT OF NEVADA, INC.'S JOINDER IN DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY	JA004141- JA004146	21

1 CODE: \$1425
2 DEL HARDY, ESQ.(SBN 1172)
3 STEPHANIE RICE, ESQ. (SBN 11627)
4 HARDY LAW GROUP
5 96 & 98 Winter Street
6 Reno, Nevada 89503
7 Telephone: (775) 786-5800
8 Fax: (775) 329-8282

9 *Attorneys for Plaintiffs*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 NEVADA RECYCLING AND SALVAGE, LTD, a
13 Nevada Limited Liability Company; and,
14 AMCB, LLC, a Nevada Limited Liability
15 Company doing business as RUBBISH
16 RUNNERS,

17 *Plaintiffs,*

18 *vs.*

19 RENO DISPOSAL COMPANY, INC., a Nevada
20 Corporation doing business as WASTE
21 MANAGEMENT; REFUSE, INC., a Nevada
22 Corporation; ABC CORPORATIONS, I through
23 X; BLACK AND WHITE COMPANIES,
24 I through X; and, JOHN DOES I through X,
25 inclusive,

26 *Defendants.*

CASE NO.:

DEPT. NO.:

27 **VERIFIED COMPLAINT**

28 Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD ("NRS") and AMCB, LLC doing
business as RUBBISH RUNNERS ("RR"), by and through its undersigned counsel, alleges and
claims as follows:

///

///

1 **PARTIES**

2 1. Plaintiff, NEVADA RECYCLING AND SALVAGE, LTD (hereinafter referred to as
3 "NRS"), is a limited liability company formed under the laws of the State of Nevada with its
4 principal place of business in Washoe County, Nevada.

5 2. Plaintiff, AMCB, LLC, is a limited liability company formed under the laws of the
6 State of Nevada and doing business as RUBBISH RUNNERS (hereinafter referred to as "RR"),
7 with its principal place of business in Washoe County, Nevada.

8 3. Upon information and belief, Defendant, RENO DISPOSAL COMPANY, INC., is a
9 corporation formed under the laws of the State of Nevada and believed to be doing business as
10 WASTE MANAGEMENT, (hereinafter and interchangeably referred to as "WM") with its
11 principal place of business in Washoe County, Nevada.

12 4. Upon information and belief, Defendant, REFUSE, INC., is a corporation formed
13 under the laws of the State of Nevada.

14 5. Plaintiffs do not know the true names and identities of those defendants herein
15 referred to by fictitious names but is informed and believes and on that basis alleges that they
16 are persons or entities who are servants, agents, employees, or representatives of the named
17 defendants or persons acting in concert with said defendants with reference to the premises
18 pleaded herein and are liable to the Plaintiff by reason thereof. Plaintiffs specifically pray for
19 leave to amend this Complaint to allege the true names, identities, and capacities with
20 appropriate allegations when the same become more fully known to Plaintiffs.

21 **GENERAL ALLEGATIONS**

22 6. Plaintiff, RR, is in the business of providing the services of collection, hauling and
23 disposal of debris and recyclables for commercial accounts within the CITY OF RENO and other
24 surrounding areas.

25 7. Plaintiff, NRS, is a facility that is in the business of accepting, processing, recycling
26 and disposing of materials up to the limit allowable by law and local ordinance.

1 8. WASTE MANAGEMENT is believed to be an affiliate of RENO DISPOSAL
2 COMPANY, INC., which is in the business of providing the service of collection, hauling and
3 disposal of garbage, recyclable materials and other materials within the CITY OF RENO and
4 surrounding areas.

5 9. CASTAWAY TRASH HAULING is an entity that was previously in the business
6 providing collection, hauling and disposal of trash and recycling for commercial and industrial
7 accounts within the CITY OF RENO, as well as surrounding areas.

8 10. For many years, WASTE MANAGEMENT was granted the exclusive franchise to
9 service residential and commercial trash collection and disposal within the CITY OF RENO.

10 11. Upon information and belief, beginning in approximately October 2011, WASTE
11 MANAGEMENT undertook to lobby the CITY OF RENO to franchise both residential and
12 commercial recycling services within the CITY OF RENO.

13 12. On May 2, 2012, CASTAWAY TRASH HAULING filed a lawsuit against WASTE
14 MANAGEMENT (and others) alleging, among other things, that "Since 2009, to present,
15 CASTAWAY and its affiliate 433 LLC have been jointly planning the development and siting in
16 Washoe County, Nevada, of a materials recovery facility capable of recycling solid waste
17 containing comingled food waste and other recyclable materials." See, Exhibit 1, attached
18 hereto at 3:4-7.

19 13. In that lawsuit, CASTAWAY TRASH HAULING requested a preferential trial
20 setting and sought declaratory relief that, "CASTAWAY is entitled to collect, haul, and recycle
21 mixed loads of recyclable materials from commercial customers, including food waste,
22 pursuant to the Waste Management Regulations and the Code..." and other similar relief. *Id.* at
23 12:8-21.

24 14. Upon information and belief, between May 2, 2012 (when CASTAWAY TRASH
25 HAULING sued WASTE MANAGEMENT) and September 2012, WASTE MANAGEMENT and
26 CASTAWAY TRASH HAULING held several private meetings together discussing and
27
28

1 orchestrating a buy-out agreement by which, CASTAWAY TRASH HAULING would dismiss its
2 lawsuit against WASTE MANAGEMENT and assist WASTE MANAGEMENT in securing a
3 Commercial Franchise Agreement for recyclables with the CITY OF RENO; and, in return,
4 CASTAWAY TRASH HAULING would be purchased by WASTE MANAGEMENT with CASTAWAY
5 TRASH HAULING receiving the sum of approximately \$17,000,000.00.

6 15. Upon information and belief, in accordance with the agreement reached between
7 CASTAWAY TRASH HAULING and WASTE MANAGEMENT, on August 1, 2012, CASTAWAY
8 TRASH HAULING voluntarily dismissed its lawsuit against WASTE MANAGEMENT without
9 prejudice. See, Exhibit 2, attached hereto.

10 16. Plaintiffs had absolutely no knowledge of these private meetings or any
11 knowledge whatsoever about any WASTE MANAGEMENT/ CASTAWAY TRASH HAULING
12 Purchase Agreement at any time prior to January 1, 2013.

13 17. To the contrary, counsel for CASTAWAY TRASH HAULING, Dan Reasor, spoke at
14 Reno City Council meetings on October 10, 2012 and October 24, 2012 making statements in
15 support of a Commercial Franchise leading people to believe that CASTAWAY TRASH HAULING
16 had all of a sudden flipped their position, because it was best for the community. See for
17 example, Reno City Council Meeting on October 24, 2012 at 2:20 where Mr. Reasor states,
18 "We're asked on the flipside to give up an open commercial market so that the other objectives
19 that the city has before it can be achieved. And Castaway has been willing and is willing to
20 come to the table and assume those business risks and change the business model. We
21 understand the other trash haulers don't want to do that. They want to use the model that
22 Castaway has perfected in going after Waste Management's business. They want to preserve
23 that right. We are willing to give that up and we think that other people should come to the
24 table and likewise give it up too."

25 18. Relying in part on the statements and representations made by CASTAWAY and
26 WASTE MANAGEMENT before the counsel and without disclosing the private Agreement

1 reached between the two of them, on November 7, 2012, upon approval by the Reno City
2 Council, the CITY OF RENO (hereinafter referred to as "the CITY") entered into two Exclusive
3 Service Area Franchise Agreements for Commercial Solid Waste and Recyclable Materials.

4 19. One FRANCHISE AGREEMENT was between the CITY OF RENO (hereinafter
5 referred to as the "CITY") and Defendant, RENO DISPOSAL COMPANY, INC. (also known as
6 WASTE MANAGEMENT (hereinafter referred to as "WM")). See, Exhibit 3, attached hereto and
7 incorporated herein by reference.

8 20. The other FRANCHISE AGREEMENT was between the CITY and CASTAWAY
9 TRASH HAULING (hereinafter referred to as "CASTAWAY"). However, WM formally announced
10 its purchase of CASTAWAY in July of 2013, less than nine (9) months after the FRANCHISE
11 AGREEMENT was signed, leaving the remaining WM FRANCHISE AGREEMENT in effect
12 (hereinafter referred to as the "FRANCHISE AGREEMENT").

13 21. Upon information and belief, before the ink was even dry on the FRANCHISE
14 AGREEMENTS, WM and CASTAWAY began telling people and sharing details of their
15 Purchase Agreement; showing that WM and CASTAWAY knew and conspired to workout an
16 Agreement to give WM the entire FRANCHISE and thus, a monopoly, even before the
17 FRANCHISE AGREEMENT was entered into with the CITY of Reno.

18 22. On November 7, 2012, the CITY also entered into a DISPOSAL AGREEMENT with
19 Defendant, REFUSE, INC. (hereinafter referred to as "REFUSE"). See, Exhibit 4, attached hereto
20 and incorporated herein by reference.

21 23. Section 3.2(a) of the FRANCHISE AGREEMENT provides, "City hereby grants
22 contractor [WM], and contractor [WM] shall have throughout the term of this agreement,
23 *except as provided in sections 3.2 d and 4.4 L hereof*, the exclusive right, privilege,
24 franchise and obligation within the exclusive service area of contractor to provide collection
25 services to commercial customers." [Emphasis Added].

26 24. Section 3.2(D) of the FRANCHISE AGREEMENT reads: "Subject to the terms and
27
28

1 conditions in this Section 3.2 D, ***the franchised exclusive right and obligation of Contractor***
2 ***hereunder to provide Collection Services shall not include or apply to*** i) Exempted Drop Box
3 Materials collected and transported by Exempted Haulers using Exempted Drop Box Services, or
4 ii) Exempted Hauler Account Materials collected and transported by Exempted Haulers using
5 Exempted Hauler Account Services." [Emphasis Added].

6 24. Plaintiff, RR is a designated "Exempted Hauler" under the FRANCHISE
7 AGREEMENT. See, Schedule 1, attached to the FRANCHISE AGREEMENT.

8 25. Section 4.4(L)(1) of the FRANCHISE AGREEMENT reads: "Subject to the
9 Exempted Facility Material limit and otherwise as provided in this Section 4.4 1, i) the
10 requirement and obligation of the Contractor to deliver all Collection Materials to a
11 Designated Facility shall not include or apply to Exempted Facility Materials delivered by
12 Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed
13 from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not
14 limit or preclude the Exempted Facility from accepting, processing, recycling or disposing
15 of any Exempted Facility Materials."

16 26. Plaintiff, NRS, is defined in the FRANCHISE AGREEMENT as the "Exempted
17 Facility." See, FRANCHISE AGREEMENT at p. 7.

18 27. Section 3.2(A) of the FRANCHISE AGREEMENTS specifies the nature of the
19 "FRANCHISE AGREEMENT" as follows:

20 "City hereby grants Contractor, and Contractor shall have throughout
21 the Term of this Agreement, ***except as provided in Sections 3.2 D and***
22 ***4.4L hereof***, the exclusive right, privilege, franchise and obligation
23 within the Exclusive Service Area of Contractor to provide Collection
24 Services to Commercial Customers. No person or entity other than
25 Contractor and its subcontractors shall i) collect Collection Materials in
26 Contractor's Exclusive Service Area, ii) transport anywhere in the City
27 Collection Materials Collected in Contractor's Exclusive Service Area, or
28 iii) deliver any Collection Materials Collected in Contractor's Exclusive
Service Area to any Disposal, processing, recycling or similar facility,
except as expressly provided under this Agreement. The preceding
sentence is intended to be broadly interpreted to preclude, without
limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any
activity relating to the collection or transportation of Collection

1 Materials from Commercial Activities that is solicited, arranged,
2 brokered, or provided by any person or combination of persons in
3 exchange for the payment, directly or indirectly, of a fee, charge, rebate,
4 discount, commission, or other consideration, in any form or amount.
5 **Notwithstanding any other provision of this Agreement, the**
6 **exclusive right of Contractor hereunder shall not apply to Excluded**
7 **Materials, Excluded Recyclable Materials, Exempted Drop Box**
8 **Materials, Exempted Hauler Account Materials and subject to and as**
9 **provided in Section 4.4 L, Exempted Facility Material delivered to**
10 **Exempted Facilities. Contractor and other service providers may**
11 **collect and transport Excluded Materials, Exempted Drop Box**
12 **Materials and Exempted Hauler Account Materials (if Contractor has**
13 **been approved for Exempted Hauler Accounts under Schedule 1) in**
14 **the Exclusive Service Area and elsewhere in the City and may charge fees**
15 **and charges for services as the service provider may elect. Contractor**
16 **shall only provide under this Agreement Collection Services to Commercial**
17 **Customers in Contractor's Exclusive Service Area and in no other areas in the**
18 **City; provided, however, Contractor may provide Special Services to**
19 **Commercial Customers or other customers anywhere in the City.**

20 [Emphasis Added].

21 28. As set forth in the FRANCHISE AGREEMENT, WM's exclusive rights do not apply
22 to "Excluded Materials, Excluded Recyclable Materials, Exempted Drop Box Materials,
23 Exempted Hauler Account Materials and as provided in Section 4.4 L, Exempted Facility
24 Material delivered to Exempted Facilities." *Id.*

25 29. "Excluded Materials" are defined as:

26 (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile,
27 corrosive, biomedical, infectious, biohazardous, and toxic substances or
28 material, including without limitation batteries; (iv) waste that
Contractor reasonably believes would, as a result of or upon disposal, be
a violation of Federal, State, or local law, regulation or ordinance,
including land use restrictions or conditions; (v) waste that in
Contractor's reasonable opinion would present a significant risk to
human health or the environment, cause a nuisance or otherwise create
or expose Contractor or City to potential liability; (vi) electronic waste
determined by Contractor to be Excluded Materials (including without
limitation television sets, computers and computer components); (vii)
materials collected and processed at rendering facilities; (viii) Special
Waste, (ix) incidental amounts of Self-Haul materials which are delivered
by an individual directly to a transfer station, recycling facility or
Disposal facility in a manner consistent with City ordinances and codes
and other applicable laws; (x) Construction and Demolition Debris; (xi)
materials which otherwise would constitute Collection Materials that
are removed from premises by landscaping, gardening, cleaning service,
appliance sale and service company or construction contractors as an
incidental part of a gardening, landscaping, tree trimming, cleaning,

1 maintenance, appliance sale or service or construction or similar service
2 offered by that service provider, using its own personnel and
3 equipment, rather than as a hauling service;(xii) Scrap Metals;(xiii)
4 Paper Shredder Materials;(xiv) Bulky Items and items Contractor
5 determines to be excessively bulky or heavy; and (xv) Source Separated
6 Recyclable Materials donated by the generator to any United States
7 revenue Code Section 501(c) 3 or other federally recognized non-profit
8 organization, including charities, youth groups and civic organizations,
9 which materials may be transported from the non-profit organization
10 by Self-Haul or by a third party hauler.

11 See, FRANCHISE AGREEMENT at p. 5.

12 30. "Excluded Recyclable Materials" are defined as:

13 "[e]ither or both i) Approved Recyclable Materials from Commercial
14 Activity that are a) separated by the generator thereof from all other
15 materials and which contain not less than ninety percent (90%)
16 Approved Recyclable Materials and b) sold by the generator thereof
17 directly to a buyer of Recyclable Material at market price, title to
18 which materials transfers to the buyer upon collection or pickup of
19 such materials, but excluding such materials collected and transported
20 as a service, and ii) any other Recyclable Materials that are not
21 Approved Recyclable Materials."

22 See, FRANCHISE AGREEMENT at p. 5-6.

23 31. By explicit definition as set forth above and taken directly from the FRANCHISE
24 AGREEMENT, the definition of "Excluded Recyclable Materials" explicitly includes "Approved
25 Recyclable Materials" as long as they are from commercial activity, separated from non-
26 approved recyclable materials and contain no less than 90% "Approved Recyclable Materials"
27 and purchased by a buyer of recyclable materials. *Id.*

28 32. "Exempted Drop Box Materials" are defined as: "Solid Waste and Approved
Recyclable Material collected and transported in an Exempted Drop Box using Exempted
Drop Box Services, but excludes; (i) Garbage; and, (ii) Compacted Solid Waste and
compacted Approved Recyclable Materials." *Id.* at p. 6.

33. "Exempted Hauler Account Material" is defined as: "Solid Waste and
Recyclable Material collected from an identified customer under an Exempted Account
and transported by such Exempted Hauler using Exempted Hauler Account Services, but

1 excluding Garbage." *Id.* at p. 7.

2 34. Despite the above guaranteed rights explicitly granted to Plaintiffs NRS and
3 RR in the FRANCHISE AGREEMENT, WM has intentionally engaged in an unlawful, fraudulent
4 scheme to harm and destroy the business of NRS, RR and their lawful enterprises by allowing
5 and encouraging its agents and employees to make misleading statements to customers and/or
6 prospective customers of Plaintiffs, including but not limited to the following:

7 "We [WM] are the only hauler that's allowed in Sparks and Reno."

8 "Any other provider that goes in there, there will be fines."

9 "We [WM] have an agreement with the city and we are the only trash hauler
10 that is allowed in either of those cities [Reno and Sparks]."

11 35. Plaintiffs know and understand that each commercial business located in the
12 CITY must have trash (food waste) service with WM and Plaintiffs work hard to ensure each
13 and every one of their respective contractors and customers are in compliance with that
14 requirement.

15 36. However, in breach of the FRANCHISE AGREEMENTS, WM has refused to service
16 certain commercial customers who had requested 96-gallon trash service in order to be in
17 compliance with the FRANCHISE AGREEMENT. One such instance of these occurrences is a
18 customer of GSR, who first called Waste Management on September 30, 2014 to request to
19 downgrade their service to a 96-gallon tote- which is explicitly in compliance with the
20 FRANCHISE AGREEMENT. This occurred despite the fact that this customer only deals in
21 recyclable material that is outside of the FRANCHISE AGREEMENT. At that time, on September
22 30, 2014, that customer was given a confirmation number for the order downgrading their
23 service and assured the downgrade would be effectuated within 1-5 business days. Follow up
24 calls were then made to WM twice in November and once in December still trying to
25 accomplish the same downgrade as initially requested on September 30, 2014. As of December
26 1, 2014, more than 60 days later, WM had still failed to downgrade the service. On December 3,

1 2014 follow up emails were sent demanding that the downgrade be effectuated as requested
2 and confirmed back in September. However, these follow up inquiries were ignored. Some
3 commercial customers have had these issues resolved and some have not.

4 37. WM has intentionally misrepresented information to the CITY in an attempt to
5 damage Plaintiffs respective businesses. As a representative example of numerous documented
6 occurrences, on October 2, 2014, a customer of Plaintiffs called and spoke with a WM customer
7 service representative named Cassandra (sp?) and requested 96-gallon tote service one time
8 per week in order to be in compliance with the FRANCHISE AGREEMENT. During the call, the
9 customer's agent was provided a confirmation number and told 96-gallon tote would be
10 delivered within 1-5 business days- which would have meant delivery no later than October 9,
11 2014.

12 38. On October 16, 2014 and despite the fact that the Customer had already started
13 service with WM as a result of the Customer's request two weeks earlier on October 2, 2014,
14 WM employee, John Langelles, provided the CITY a list of customers that WM alleged were in
15 violation of the FRANCHISE AGREEMENT because they purportedly did not have 96-gallon tote
16 service. The customer who ordered service on October 2, 2014 was included in that list.

17 39. As a result, the CITY, believing WM's allegations without further investigation,
18 sent out violation notices and even fined Plaintiffs' Customer (as well as other customers of
19 Plaintiffs not specifically used in this representative example).

20 40. It was later determined that more than half of the list of customers purportedly
21 in violation of the FRANCHISE AGREEMENT that WM employee John Langelles provided to the
22 CITY, was false in that, more than half of those customers included on that list did in fact have
23 service with WM in compliance with the FRANCHISE AGREEMENT and at the time that WM
24 provided the list to the CITY.

25 41. WM deliberately and intentionally misrepresented to the CITY that many of
26 Plaintiffs customers and/or Plaintiff's contractor's customers did not have service with WM as

1 required by the FRANCHISE AGREEMENT when the customers did in fact have the appropriate
2 service.

3 42. A different and longtime customer of Plaintiffs, who also has service with WM in
4 compliance with the FRANCHISE AGREEMENT, was recently approached by WM employee
5 John Langelles. Despite the fact that this customer was and always has been in clear compliance
6 with the FRANCHISE AGREEMENT, Mr. Langelles told him that his [Mr. Langelles's] sole job
7 purpose with WM is to put Plaintiffs out of business.

8 43. During that conversation, Mr. Langelles also made misleading and fraudulent
9 statements and misrepresentations to the customer regarding the FRANCHISE AGREEMENT.

10 44. On October 30, 2014, WM employee, Cherolyn Gilletti, intentionally
11 misrepresented the current FRANCHISE AGREEMENT to one of Plaintiffs' customers by writing
12 in an email the following:

13 " At this time Waste Management is the assigned hauler for the
14 city of Reno. Please note the following.

15 **Solid Waste:** Every business generating Solid Waste in the City of Reno is
16 required to subscribe to Reno Disposal Company for the collection,
17 transportation and disposal of all of franchised Solid Waste materials
18 generated by the business, except for businesses to which the City of
19 Reno has specifically granted in writing an exemption. . . .

20 **Recyclable Material.** No business may allow or retain any service
21 provider other than Reno Disposal Company to collect, pickup,
22 transport or deliver Approved Recyclable Materials in the City of Reno
23 in violation of the exclusive franchise agreement or the Reno Municipal
24 Code."

25 [Emphasis Added]. See, Exhibit 5 attached hereto.

26 45. All three of those statements are factual misrepresentations.

27 46. The FRANCHISE AGREEMENT also limits WM's ability to continue with individual
28 service contracts directly with customers in the CITY stating,

"If Commercial Customers in Contractor's Exclusive Service Area are party
to a 'Qualified Service Contract' (as defined below) as of the Effective Date,
Contractor will provide Collection Services to such customers 1) at the
lesser of a) the Rate for such service provided under this Agreement or b)

1 the rate or charge provided in the Qualified Service Contract; provided that
2 the rate or charge shall not be less than seventy five percent (75%) of the
3 Rate under this Agreement for the same or similar service ("Transition
4 Rate") and ii) the length of the term of Collection Services provided at the
5 Transition Rate to such Commercial Customers ("Transition Term") shall be
6 the longer of a) the initial or base term provided in the Qualified Service
7 Contract (without renewal, rollover or other extensions of such term) or b)
8 the period ending January 1, 2015. For purposes hereof, a 'Qualified
9 Service Contract' means a binding service contract with a commercial
10 customer for the collection and transportation in the City of Solid Waste or
11 Approved Recyclable Materials, or both, dated on or before October 24,
12 2012, by any service provider properly licensed to collect and transport
13 such materials in the City, excluding Exempted Hauler Accounts."

14 [Emphasis Added]. FRANCHISE AGREEMENT at p. 22, Sec. 3.13(A).

15 47. Upon information and belief, and despite the fact that after January 1, 2015, no
16 further qualified service contracts are allowed with customers within the CITY under the
17 FRANCHISE AGREEMENT, on January 22, 2015, when commercial business, Les Schwab
18 (located at 100 Vassar Street in Reno) attempted to down grade their service with WM to a 96-
19 gallon tote, the WM customer service representative told them that Les Schwab was locked into
20 a contract with WM and that if they wanted to cancel or down grade their service with WM, Les
21 Schwab would have to pay liquidated damages. See, 2006 Les Schwab Service Contract,
22 attached hereto at Exhibit 6. This shows that WM is misleading customers into believing that
23 they are still locked into a contract when, by the very terms of the FRANCHISE AGREEMENT, all
24 service contracts expired as of January 1, 2015.

25 48. Pursuant to the FRANCHISE AGREEMENT, WM is required to charge Customers
26 the franchised rates set forth in the "Scope of Services" which is subject to change from time to
27 time for CPI adjustments. See, Exhibits 7 and 8.

28 49. In direct violation of the FRANCHISE AGREEMENT, WM has and is charging
customers rates other than those explicitly set forth in the FRANCHISE AGREEMENT which
amounts to price fixing and is an attempt to deliberately drive Plaintiffs out of the market.

50. The DISPOSAL AGREEMENT additionally provides that REFUSE or its affiliates,
including but not limited to WM, is to begin construction on an EcoCenter (also known as a

1 "MRF") in the CITY OF RENO by March 7, 2015; however, to date, no such construction has
2 commenced. See, DISPOSAL AGREEMENT, attached hereto at Exhibit 4, at p. 13, 3.3A.

3 51. Used as a tool to induce the CITY OF RENO to enter into the FRANCHISE
4 AGREEMENT and subsequently an express condition of the FRANCHISE AGREEMENT, REFUSE
5 and/or WM and/ or its affiliates have repeatedly represented to the CITY OF RENO and its
6 citizens that the Ecocenter is to be built at the current Commercial Row Transfer Station in
7 Reno and that "approximately 200 temporary jobs will be created during the construction
8 phase." See, Exhibit 9, attached hereto.

9 **FIRST CLAIM FOR RELIEF**
10 **(Defamation)**

11 52. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
12 103 of this Complaint, inclusive, and incorporates them herein by reference.

13 53. As alleged herein, WM has and continues to make certain false and defamatory
14 statements regarding Plaintiffs and their ability to lawfully engage in their respective
15 businesses within the CITY.

16 54. The publication of these statements by WM and its agents and/or employees was
17 unprivileged.

18 55. In making these false and defamatory statements WM and its agents and/or
19 employees acted either intentionally or with reckless disregard as to whether or not the
20 statements were true.

21 56. As a result of these false and defamatory statements, Plaintiffs have incurred
22 damages in an amount to be proven at trial but which exceeds \$10,000.00. In addition, the
23 conduct of the Defendants should be punished, and an example made of said conduct, to
24 discourage Defendants and others in similar positions from engaging in like conduct in the
25 future, through the award of punitive damages in a just and reasonable amount for Plaintiffs
26 herein. As a direct and proximate result of the reckless, malicious and oppressive conduct of

1 Defendants and the reckless disregard for the rights of Plaintiffs herein, Plaintiffs are entitled to
2 an award of punitive damages in order to deter Defendants from engaging in such egregious
3 conduct in the future.

4 57. It has been necessary for Plaintiffs to retain the services of legal counsel to
5 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
6 associated herewith, including the reasonable fees of their attorneys.

7 **SECOND CLAIM FOR RELIEF**
8 **(Defamation Per Se)**

9 58. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
10 103 of this Complaint, inclusive, and incorporates them herein by reference.

11 59. The false and defamatory statements made by WM and its agents and/or
12 employees both infer and directly misrepresent that Plaintiffs are illegally engaging in their
13 respective businesses both against the law and in violation of the WM FRANCHISE
14 AGREEMENT, which is not accurate.

15 60. Despite repeated demands to immediately stop making any and all such false and
16 defamatory statements, WM and its agents and/or employees continue to deliberately make
17 these statements to Plaintiffs' respective customers and/or prospective customers, causing
18 direct damage to Plaintiffs in an amount to be proven at trial but which exceeds \$10,000.00.

19 61. WM and its agents and/or employees false statements constitute defamation per
20 se and Plaintiffs are presumed to have incurred damages as a result of these false statements
21 about Plaintiffs respective businesses. In addition, the conduct of the Defendants should be
22 punished, and an example made of said conduct, to discourage Defendants and others in similar
23 positions from engaging in like conduct in the future, through the award of punitive damages in
24 a just and reasonable amount for Plaintiffs herein. As a direct and proximate result of the
25 reckless, malicious and oppressive conduct of Defendants and the reckless disregard for the
26 rights of PLAINTIFFS HEREIN, Plaintiffs are entitled to an award of punitive damages in order

1 to deter Defendants from engaging in such egregious conduct in the future.

2 62. It has been necessary for Plaintiffs to retain the services of legal counsel to
3 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
4 associated herewith, including the reasonable fees of their attorneys.

5 **THIRD CLAIM FOR RELIEF**
6 **(Breach of Contract/Third Party Beneficiary)**

7 63. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
8 103 of this Complaint, inclusive, and incorporates them herein by reference.

9 64. Section 3.2(D)(3) of the WM FRANCHISE AGREEMENT explicitly provides that,
10 *"Each Exempted Hauler shall be a third party beneficiary with the right to enforce,* subject
11 *to the terms and conditions in this Section 3.2 D, the rights of such Exempted Hauler under*
12 *this Section 3.2 D."* [Emphasis Added]. Accordingly, Plaintiff RR is an intended third party
13 beneficiary of the FRANCHISE AGREEMENT.

14 65. Section 4.4(L)(3) of the WM FRANCHISE AGREEMENT explicitly provides that,
15 *"The exempted facility shall be a third party beneficiary with the right to enforce,* subject to
16 *the terms and conditions in this section 4.4 L, the rights of the exempted facility under this*
17 *section 4.4 L."* [Emphasis Added]. Accordingly, Plaintiff NRS is an intended third party
18 beneficiary of the FRANCHISE AGREEMENTS.

19 66. The FRANCHISE AGREEMENT requires WM and/or its affiliates "charge and
20 collect from Customers for Collection Services the Rates provided on the Scope of Services,
21 which Rates may be adjusted as provided in this Agreement." See, FRANCHISE AGREEMENT,
22 attached hereto at exhibit 3 at p.35, 6.2A.

23 67. The current "Franchise Rates" that WM and/or its affiliates are required to
24 charge under the FRANCHISE AGREEMENT are set forth in Exhibit 3, attached hereto and
25 incorporated herein.

26 68. WM has materially breached the FRANCHISE AGREEMENT and its obligations

1 thereunder to the CITY, its commercial customers and third-party beneficiaries under the
2 FRANCHISE AGREEMENT, NRS and RR, by consistently and intentionally failing to charge the
3 "Franchise Rates" as set forth in and required under the FRANCHISE AGREEMENT.

4 69. As a representative example, on February 1, 2015, WM billed and charged a
5 commercial customer located in Reno at 4670 Aircenter Circle and thus, covered under the
6 FRANCHISE AGREEMENT, \$120.58 for "4 Yard dumpster service- recycle materials." See,
7 Exhibit 10, attached hereto. However, the current and applicable "Franchised Rate" for a 4
8 Yard Bin for Recyclable Materials, as set forth in Exhibit 8 attached hereto, is \$135.47.
9 Accordingly, WM and/or its affiliates, are undercharging the commercial customer by \$14.89,
10 in material breach of the FRANCHISE AGREEMENT and to the direct detriment of Plaintiffs as
11 licensed competitors authorized to do business in the CITY.

12 70. Further, the DISPOSAL AGREEMENT additionally requires that REFUSE and/ or
13 its affiliates, including but not limited to WM, to "use commercially reasonable efforts to
14 commence and diligently prosecute construction of the Eco-Center" (also known as a "MRF") in
15 the CITY OF RENO by March 7, 2015. See, DISPOSAL AGREEMENT, attached hereto at Exhibit 4,
16 at p. 13, 3.3A. The rates that WM collects from commercial customers subsidizes the residential
17 customers within the CITY. This is so that Residential Customers can have single stream
18 recycling under the Residential Franchise Agreement, which Defendants appear to be in breach
19 of as well. The rates charged by WM were also supposed to be used to build the "Eco-Center."
20 The "Eco-Center" is necessary to adequately service the CITY and without it, WM does not have
21 the ability to adequately service this local area and in turn, is not properly recycling as agreed
22 to in both the Residential and Commercial FRANCHISE AGREEMENTS.

23 71. On the permanent public record, at the October 10, 2012 City Council meeting,
24 upon inquiry by Vice Mayor Dave Aiuzzi asking, "So what is the penalty for not building [Eco-
25 Center] in 28 months, they [WM/ REFUSE] have been collecting the money and if it doesn't get
26 built, what happens?" One of the Reno City Attorneys, Jonathan Shipman, answered, WM/

1 REFUSE, would be in material breach of the agreement [the FRANCHISE AGREEMENT].

2 72. However, more than 28 months later, WM/ REFUSE has failed to move forward
3 with construction of the Eco-Center. As such, WM is in material breach of the DISPOSAL
4 AGREEMENT for failing to "use commercially reasonable efforts to commence and diligently
5 prosecute construction of the Eco-Center ..." by March 7, 2015.

6 73. In addition and as set forth above, WM has materially breached the FRANCHISE
7 AGREEMENT by intentionally interfering with and limiting Plaintiffs' rights thereunder by
8 refusing to service commercial customers with 96-gallon tote service as required by the
9 FRANCHISE AGREEMENT, under charging commercial customers and charging rates outside of
10 the required current "Franchised Rates," in a blatant and intentional attempt to deliberately
11 force Plaintiffs' customers out of compliance with the FRANCHISE AGREEMENT and to push
12 Plaintiffs out of the market.

13 74. At all times relevant herein, REFUSE and WM, and/ or their affiliates, knew
14 and/or should have reasonably foreseen that the explicit rights and provisions set forth in the
15 FRANCHISE AGREEMENT and the DISPOSAL AGREEMENT relating to Exempted Haulers (RR)
16 and the Exempted Facility (NRS), was for the benefit of the intended third party beneficiaries
17 thereunder, the Plaintiffs herein.

18 75. As a direct and foreseeable consequence of WM's actions in materially breaching
19 the FRANCHISE AGREEMENT and the DISPOSAL AGREEMENT, as intended third party
20 beneficiaries, RR and NRS have been directly damaged in an amount to be proven at trial but
21 which exceeds \$10,000.00. In addition, the conduct of the Defendants should be punished, and
22 an example made of said conduct, to discourage Defendants and others in similar positions
23 from engaging in like conduct in the future, through the award of punitive damages in a just
24 and reasonable amount for Plaintiffs herein. As a direct and proximate result of the reckless,
25 malicious and oppressive conduct of Defendants and the reckless disregard for the rights of
26 PLAINTIFFS HEREIN, Plaintiffs are entitled to an award of punitive damages in order to deter

1 Defendants from engaging in such egregious conduct in the future.

2 76. It has been necessary for Plaintiffs to retain the services of legal counsel to
3 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
4 associated herewith, including the reasonable fees of their attorneys.

5 **FOURTH CLAIM FOR RELIEF**
6 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

7 77. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
8 103 of this Complaint, inclusive, and incorporates them herein by reference.

9 78. Every contract in Nevada contains an implied covenant of good faith and fair
10 dealing. This duty of good faith and fair dealing exists for the benefit of direct parties to a
11 contract, as well as intended third party beneficiaries of a contract.

12 79. REFUSE, WM and/or their affiliates had a duty to deal with RR and NRS in good
13 faith.

14 80. REFUSE, WM and/or their affiliates failed to deal with RR and NRS in good faith.

15 81. As the natural, actual, direct, and proximate result and cause of the acts and/or
16 omissions/ failures to act of REFUSE, WM and/or their affiliates, as intended third party
17 beneficiaries, RR and NRS have been damaged in an amount to be proven at trial but which
18 exceeds \$10,000.00. In addition, the conduct of the Defendants should be punished, and an
19 example made of said conduct, to discourage Defendants and others in similar positions from
20 engaging in like conduct in the future, through the award of punitive damages in a just and
21 reasonable amount for Plaintiffs herein. As a direct and proximate result of the reckless,
22 malicious and oppressive conduct of Defendants and the reckless disregard for the rights of
23 PLAINTIFFS HEREIN, Plaintiffs are entitled to an award of punitive damages in order to deter
24 Defendants from engaging in such egregious conduct in the future.

25 82. It has been necessary for Plaintiffs to retain the services of legal counsel to
26 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses

1 associated herewith, including the reasonable fees of their attorneys.

2 **FIFTH CLAIM FOR RELIEF**
3 **(Unfair Trade Practices/ Conspiracy to Restrain Trade)**

4 83. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
5 103 of this Complaint, inclusive, and incorporates them herein by reference.

6 84. NRS 598A.060 provides,

7 "Every activity enumerated in this subsection constitutes a contract, combination or
8 conspiracy in restraint of trade, and it is unlawful to conduct any part of any such
9 activity in this State:

10 (a) *Price fixing, which consists of raising, depressing, fixing, pegging or*
11 *stabilizing the price of any commodity or service, and which includes,*
12 *but is not limited to:*

13 (1) Agreements among competitors to depress prices at which they will buy
14 essential raw material for the end product.

15 (2) Agreements to establish prices for commodities or services.

16 (3) Agreements to establish uniform discounts, or to eliminate discounts.

17 (4) Agreements between manufacturers to price a premium commodity a
18 specified amount above inferior commodities.

19 (5) Agreements not to sell below cost.

20 (6) Agreements to establish uniform trade-in allowances.

21 (7) Establishment of uniform cost surveys.

22 (8) Establishment of minimum markup percentages.

23 (9) Establishment of single or multiple basing point systems for
24 determining the delivered price of commodities.

25 (10) Agreements not to advertise prices.

26 (11) Agreements among competitors to fix uniform list prices as a place to
27 start bargaining.

28 (12) Bid rigging, including the misuse of bid depositories, foreclosures of
competitive activity for a period of time, rotation of jobs among
competitors, submission of identical bids, and submission of
complementary bids not intended to secure acceptance by the customer. . . .
"

...

(14) Agreements to restrict volume of production.

...

(e) Monopolization of trade or commerce in this State, including, without
limitation, *attempting to monopolize or otherwise combining or*
conspiring to monopolize trade or commerce in this State. . . .

[Emphasis Added].

85. In the seminal case of *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 117-

1 18, 107 S.Ct. 484, 93 L.Ed.2d 427 (1986), the United States Supreme Court also addressed the
2 issue of predatory pricing as follows:

3 "Predatory pricing may be defined as *pricing below an appropriate*
4 *measure of cost for the purpose of eliminating competitors in the short*
5 *run and reducing competition in the long run.* It is a practice that harms
6 both competitors and competition. In contrast to price cutting aimed simply
at increasing market share, predatory pricing has as its aim the elimination
of competition. Predatory pricing is thus a practice "inimical to the
purposes of [the antitrust] laws."

7 [Emphasis Added].

8 86. In this case, WM has engaged in predatory pricing by charging commercial
9 customers below the Franchised Rates, for customers who compete with Plaintiffs, while at the
10 same time, charging commercial customers more than the Franchised Rates, for customers who
11 do not compete with Plaintiffs.

12 87. The current Franchised Rates, which must be charged by WM under the
13 FRANCHISE AGREEMENT are set forth in Exhibit 8, attached hereto and incorporated herein by
14 reference.

15 88. The following are representative examples of WM's price fixing/ predatory
16 pricing:

17 A. For a commercial customer located at 4670 Aircenter Circle in Reno, for January
18 of 2015, WM is charging \$157.13 for a 30 Yard Flat Roll Top. See, Exhibit 11.
19 However, the correct Franchised Rate for the 30 Yard Closed Top Box is \$312.80.
20 See, Exhibit 8 at p.4. This results in an undercharge of \$155.67 per bin. These
21 are drop box services, which Plaintiffs herein directly compete for. As such,
22 Plaintiffs are directly damaged by WM's price fixing conduct.

23 B. For a commercial customer located at 1835 Montello Street in Reno, for January
24 of 2015, WM is charging \$97.19 for one 3 yard dumpster with collection one time
25 per week. See, Exhibit 12. However, the correct Franchised Rate for one 3 yard
26 dumpster with collection one time per week is \$162.98. See, Exhibit 8 at p.1.

1 This results in an undercharge of \$65.79 per bin. These are dumpster/ bin
2 services which Plaintiffs herein directly compete for. As such, Plaintiffs are
3 directly damaged by WM's price fixing conduct.

4 89. In direct violation of the FRANCHISE AGREEMENT, WM is pricing its services
5 lower than the appropriate measure of cost as set forth in the FRANCHISE AGREEMENT.

6 90. WM is engaging in this lower pricing in order to deliberately and intentionally
7 push Plaintiffs out of the market. In fact, WM's agents and representatives have represented to
8 customers of Plaintiffs that their sole purpose was to put Plaintiffs out of business. See,
9 Affidavit of John Vaughn, attached hereto at Exhibit 13. In addition, with respect to services
10 that WM does not compete with any other businesses for, WM has charged customers *more*
11 than the FRANCHISE rates; in turn, victimizing local business owners by overcharging them in
12 violation of the FRANCHISE AGREEMENT.

13 91. In addition and as set forth more fully herein, WM failed to disclose to the Reno
14 City Council or anyone else, that they had reached a deal to purchase CASTAWAY TRASH
15 HAULING prior to when the FRANCHISE AGREEMENTS were signed granting both WM and
16 CASTAWAY Franchised Zones within the CITY of Reno.

17 92. Months after the FRANCHISE AGREEMENTS were signed, WM announced that it
18 had purchased CASTAWAY, thus, taking over its Franchised Zone and leaving only one
19 FRANCHISEE left, WM.

20 93. As such, WM has engaged in a scheme and entered into agreements with
21 CASTAWAY to deliberately create a monopoly without disclosing such intent to the CITY to the
22 detriment of Plaintiffs and in direct violation of NRS 598A.

23 94. Based on the foregoing, WM has engaged in unfair trade practices in violation of
24 Nevada law.

25 95. As the actual, direct, and proximate result and cause of the acts of WM, RR and
26 NRS have been damaged in an amount to be proven at trial but which exceeds \$10,000.00. In

1 addition, the conduct of the Defendants should be punished, and an example made of said
2 conduct, to discourage Defendants and others in similar positions from engaging in like
3 conduct in the future, through the award of punitive damages in a just and reasonable amount
4 for Plaintiffs herein. As a direct and proximate result of the reckless, malicious and oppressive
5 conduct of Defendants and the reckless disregard for the rights of PLAINTIFFS herein, Plaintiffs
6 are entitled to an award of punitive damages in order to deter Defendants from engaging in
7 such egregious conduct in the future.

8 96. It has been necessary for Plaintiffs to retain the services of legal counsel to
9 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
10 associated herewith, including the reasonable fees of their attorneys.

11 **SIXTH CLAIM FOR RELIEF**
12 **(Preliminary and Permanent Injunction, Declaratory Relief)**

13 97. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through
14 103 of this Complaint, inclusive, and incorporates them herein by reference.

15 98. As a result of WM and its affiliates' continued and ongoing conduct, Plaintiffs
16 suffer the threat of Irreparable harm in that, WM's misrepresentations to prospective
17 customers of Plaintiffs cause and continue to cause Plaintiffs to lose the business of those
18 prospective customers. In addition, Plaintiffs continue to suffer irreparable harm to their
19 business reputation with each misrepresentation made by WM and its agents.

20 99. When weighing the relative interests of the parties; if WM is restricted from
21 continuing to disparage and misrepresent the lawfulness of Plaintiffs' respective businesses,
22 WM does not suffer any loss, but is merely required to operate within the confines of the law
23 and without making fraudulent misrepresentations about Plaintiffs in order to directly damage
24 their respective businesses. However, if the restraint is denied and WM and its agents are
25 permitted to engage in its misconduct, Plaintiffs will likely be damaged to the point that their
26 businesses will be permanently damaged because customers will choose not to use Plaintiffs' as

1 a direct result of WM's deliberate misrepresentations regarding Plaintiffs' respective
2 businesses.

3 100. Plaintiffs' have a very high likelihood of success on the merits, as even the City of
4 Reno has issued a letter stating that the Plaintiffs' are lawfully licensed to do business within
5 the CITY of Reno, thus, affirming the fraudulent nature of WM and its agents' fraudulent
6 comments.

7 101. The public has a right to choose which entity or entities it wishes to do business
8 with. The public's interest in receiving true and accurate information when selecting a hauling
9 or disposal business is vital to the public's freedom to choose whom it wishes to do business
10 with.

11 102. Based on the foregoing, Plaintiffs are entitled to a preliminary and permanent
12 injunction to stop WM's deceitful misconduct that continues to harm Plaintiffs. In addition, the
13 conduct of the Defendants should be punished, and an example made of said conduct, to
14 discourage Defendants and others in similar positions from engaging in like conduct in the
15 future, through the award of punitive damages in a just and reasonable amount for Plaintiffs
16 herein. As a direct and proximate result of the reckless, malicious and oppressive conduct of
17 Defendants and the reckless disregard for the rights of PLAINTIFFS herein, Plaintiffs are
18 entitled to an award of punitive damages in order to deter Defendants from engaging in such
19 egregious conduct in the future.

20 103. It has been necessary for Plaintiffs to retain the services of legal counsel to
21 prosecute this action and, as such, Plaintiffs are entitled to recover all costs and expenses
22 associated herewith, including the reasonable fees of their attorneys.

23 WHEREFORE, Plaintiffs pray for relief as follows:

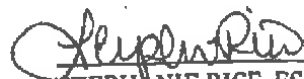
- 24
25 1. That treble damages, general damages and compensatory damages in excess of
26 \$10,000.00 be awarded and specifically determined according to proof at trial in
27 favor of NEVADA RECYCLING AND SALVAGE, LTD. and AMBC, LLC dba RUBBISH
28 RUNNERS, (collectively "Plaintiffs") herein;

2. For all judgments requested and set forth herein and all other such relief requested;
3. For an Order declaring that Defendants have engaged in price fixing amounting to Unfair Trade Practices in violation of NRS 589A to the direct detriment of Plaintiffs and for additional damages in favor of Plaintiffs herein;
4. For immediate, temporary, preliminary and permanent injunction ordering Defendants to immediately and forever cease engaging in the misconduct set forth herein;
5. For an award of punitive damages in favor of Plaintiffs in order to deter Defendants from engaging in such egregious conduct in the future;
6. That Plaintiffs be awarded their attorney's fees and costs incurred herein in accordance with NRS 598A and all other applicable laws;
7. For any and all pre-judgment and post-judgment interest as allowed by law; and,
8. For such other and further relief as the Court deems just and proper in the premises.

AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 18th day of March, 2015.


STEPHANIE RICE, ESQ.
DEL HARDY, ESQ.
Attorneys for Plaintiffs

Pursuant to NRS 15.010(5)

**Christopher Bielser, President
NEVADA RECYCLING AND SALVAGE, LTD.**

Pursuant to NRS 15.010(5)

Anne Marie Carey
Anne Marie Carey, President
AMCB, LLC dba RUBBISH RUNNERS

IN THE SECOND JUDICIAL DISTRICT COURT

NEVADA RECYCLING AND SALVAGE, et al

V.

RENO DISPOSAL COMPANY, INC. et al

CASE NO.

VERIFIED COMPLAINT

EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	LENGTH
1	Castaway Trash Hauling Complaint for Declaratory Judgment	14
2	Castaway Trash Hauling Notice of Vountary Dismissal, Without Prejudice	3
3	Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable Materials between City of Reno and Reno Disposal Company, Inc.	68
4	Disposal Agreement Solid Waste and Recyclable Materials between City of Reno and Refuse, Inc.	39
5	Email Correspondence between Cherolyn Gilletti and Stewart Brown	2
6	Waste Management Service Agreement with Les Schwab Tire Center	3
7	Exhibit D Commercial Franchise Agreement Scope of Services	6
8	Exhibit D Commercial Franchise Agreement Scope of Services, Effective April 1, 2014	6
9	Information Regarding the Funding of an Ecocenter by Waste Management	3
10	Waste Management Invoice for Wynyit Trash	3
11	Waste Management Invoice for Wynyit Trash	3
12	Waste Management Invoice for Catholic Charities of Northern Nevada	3
13	Affidavit of John Vaught	3

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “1”

EXHIBIT “1”

CV-12-01207
DC-5800034925-072
CRISTAWAY TRASH ET AL VS CIT 14 PAGES
District Court 05/02/2012 11:10 AM
Washoe County \$1422
EMPLOYEE

FILED

2012 MAY -2 AM 11:16

JOEY HASTINGS

BY

DEPUTY

CODE: ~~1425~~ ¹⁴²²
Dan R. Reaser, Esq.
Nevada State Bar No. 1170
Leslie Bryan Hart
Nevada Bar No. 4932
Brian H. Schusterman, Esq.
Nevada Bar No. 10983
LIONEL SAWYER & COLLINS
50 W. Liberty St., Suite 1100
Reno, NV 89501
(775) 788-8666

Attorneys for Castaway Trash Hauling, Inc.
and Four Thirty-Three, LLC.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

CASTAWAY TRASH HAULING, INC., a
Nevada corporation; and, FOUR THIRTY-
THREE, LLC, a Nevada limited liability
company,

Plaintiffs,

v.

CITY OF RENO, an incorporated city of the
State of Nevada; WASHOE COUNTY
DISTRICT BOARD OF HEALTH, a special
local government district and political
subdivision of the State of Nevada; RENO
DISPOSAL CO., a Nevada Corporation; and,
DOE DEFENDANTS I-X inclusive,

Defendants.

Case No.:

CV12 01207

Dept. No.:

3

COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiffs, CASTAWAY TRASH HAULING, INC. ("CASTAWAY"), and FOUR
THIRTY-THREE, LLC ("433 LLC"), acting by and through their legal counsel, Lionel Sawyer
& Collins, bring this complaint and action for a declaratory judgment and allege as follows:

1 PARTIES

2 1. CASTAWAY is a duly organized and existing Nevada corporation.

3 2. 433 LLC is a duly organized and existing Nevada limited liability company.

4 3. The CITY OF RENO (the "CITY"), is a duly incorporated and existing city and
5 municipal corporation pursuant to and with the powers prescribed by the provisions of Title 21
6 of the Nevada Revised Statutes (the "NRS"), situate within the county of Washoe, and state of
7 Nevada.

8 4. The WASHOE COUNTY DISTRICT BOARD OF HEALTH (the "HEALTH
9 BOARD"), is a special local government district and political subdivision of the State of Nevada
10 created and existing pursuant to and with the powers prescribed by NRS Chapter 439.

11 5. RENO DISPOSAL CO. ("RENO DISPOSAL"), is a duly organized and existing
12 Nevada corporation.

13 6. CASTAWAY and 433 LLC do not know the true names and capacities of
14 defendants herein named as DOES I-X, inclusive, who may have or claim any interest which
15 would be affected by the declarations sought by this complaint and action, and hereby request
16 leave of this Court to amend this complaint in accordance with Rules 10(a) and 15 of the Nevada
17 Rules of Civil Procedure to include herein the names, capacities and jurisdiction as to the same
18 with appropriate allegations at such time as ascertained.

19 JURISDICTION AND VENUE

20 7. This Court has subject matter jurisdiction of this action under NRS 30.030 and
21 NRS 30.040.

22 8. Venue is proper in the Second Judicial District Court of the State of Nevada in
23 and for the County of Washoe under NRS 13.040.

24 SUMMARY OF THE DISPUTE

25 9. CASTAWAY is in the business of providing the services of (a) collection,
26 hauling and disposal of trash; and, (b) recycling, including the collection and hauling of food
27 waste for recycling at permitted recycling facilities and composting facilities, each or both for
28 commercial and industrial accounts and facilities ("Castaway's Business"), within Washoe

1 County Nevada, including without limitation within the incorporated area of the CITY.

2 10. CASTAWAY holds all of the permits and licenses required to conduct
3 Castaway's Business.

4 11. Since 2009, to present, CASTAWAY and its affiliate 433 LLC have been jointly
5 planning the development and siting in Washoe County, Nevada, of a materials recovery facility
6 capable of recycling solid waste containing comingled food waste and other recyclable materials
7 (the "MRF Project Business").

8 12. RENO DISPOSAL is in the business of providing the service of collection,
9 hauling and disposal of garbage within the incorporated area of the CITY.

10 13. Waste Management, Inc. is an affiliate of RENO DISPOSAL and has publicly
11 announced its plan to develop and site in Washoe County, Nevada, or in Storey County, Nevada,
12 or both, one or more materials recovery facilities capable of recycling solid waste containing
13 comingled food waste and other recyclable materials.

14 14. The Reno Municipal Code (the "Code"), the First Amended City of Reno Garbage
15 Franchise Agreement, dated August 9, 1994, entered into by and between the CITY and RENO
16 DISPOSAL (the "Franchise Agreement"), and the Regulations of the Washoe County District
17 Board of Health Governing Solid Waste Management (the "Waste Management Regulations"),
18 each or collectively contain provisions establishing (a) the rights and obligations of
19 CASTAWAY and RENO DISPOSAL; and (b) the jurisdiction, authority and powers of the
20 CITY and the HEALTH BOARD relative to CASTAWAY and RENO DISPOSAL.

21 15. Despite the plain language and intent of the Code, the Franchise Agreement and
22 the Waste Management Regulations, RENO DISPOSAL has claimed in published statements
23 during public meetings and hearings of the CITY and the HEALTH BOARD that CASTAWAY
24 may not provide certain types of services within the CITY and that the HEALTH BOARD's
25 adoption or particular interpretations of certain provisions of the Waste Management Regulations
26 are in conflict with the Code and Franchise Agreement.

27 16. Despite the plain language and intent of the Code, the Franchise Agreement and
28 the Waste Management Regulations, members of the Reno City Council (the "City Council"),

1 and the HEALTH BOARD have published statements during public meetings and hearings
2 interpreting some or all of the Code, the Franchise Agreement and the Waste Management
3 Regulations, or the interrelation of such Code, the Franchise Agreement and the Waste
4 Management Regulations, inconsistent with the plain language and intent of the Code, the
5 Franchise Agreement and the Waste Management Regulations, and in conflict with statements
6 and interpretations of officers and employees of the Washoe County Health District (the
7 "Department") and its legal counsel the District Attorney of Washoe County (the "District
8 Attorney"), thereby creating present and serious questions with respect to the applicability as to
9 Castaway's Business and the MRF Project Business of various provisions contained in the Code,
10 the Franchise Agreement and the Waste Management Regulations.

11 17. Such present and serious questions of law have caused and will continue to cause
12 harm to CASTAWAY and 433 LLC whose rights, status or other legal relations relative to and
13 Castaway's Business and the MRF Project Business are affected by the Code, the Franchise
14 Agreement and the Waste Management Regulations as interpreted and applied by the CITY or
15 the HEALTH BOARD, or both and as claimed by RENO DISPOSAL.

16 FACTS GIVING RISE TO DISPUTE

17 City of Reno Municipal Code & Garbage Franchise

18 18. NRS 268.081(3) provides that "[t]he governing body of an incorporated city may,
19 to provide adequate, economical and efficient services to the inhabitants of the city and to
20 promote the general welfare of those inhabitants, displace or limit competition in . . . the
21 [c]ollection and disposal of garbage and other waste."

22 19. Pursuant to its authority under NRS 268.081(3), the City Council enacted for the
23 CITY Article II (Garbage Service) of Chapter 5.90 (Franchises) of the Code. Section 5.90.020
24 of the Code provides that "[t]his article establishes an exclusive right to collect, haul and dispose
25 of *garbage* only, and does not include rubbish and waste matter" and that "the franchisee, its
26 successors or assigns, shall have the exclusive privilege of collecting, hauling and disposing of
27 *garbage* subject to the *limitations now or hereafter provided by law.*" [emphasis added].

28 20. Section 5.90.060(10) of the Code also provides that the franchisee shall be

1 required to:

2 Agree to operate the garbage collection and disposal service in accordance
3 with and in conformity to all ordinances, rules and regulations heretofore
4 or hereafter adopted by the city council in the exercise of its police powers
5 and in accordance with the provisions and general laws of the United
6 States or the state relating to or applicable to the whole or any part of such
7 garbage collection and disposal operation and *be subject to and obey all
8 rules and regulations adopted by the District Board of Health and all
9 orders, rules and regulations of the District Health Officer.* [emphasis
10 added].

11 21. Pursuant to its authority under NRS 268.081(3) and the Chapter 5.90 of the Code,
12 the CITY and RENO DISPOSAL entered into the Franchise Agreement.

13 22. In section 2.1 of the Franchise Agreement, the CITY granted RENO DISPOSAL
14 "the exclusive right, privilege, obligation and franchise for the collection, hauling and disposal of
15 *garbage* within the incorporated area of the City of Reno." [emphasis added].

16 23. Section 8.1 of the Franchise Agreement also provides that:

17 Reno Disposal shall operate its garbage collection and disposal service in
18 accordance with and in conformity to all ordinances, rules and regulations
19 heretofore or hereafter adopted by the Reno City Council in the exercise of
20 its police powers and in accordance with the provisions and general laws
21 of the United States or the State of Nevada relating to or applicable to the
22 whole or any part of such garbage collection and disposal operation. Reno
23 Disposal shall also be subject to and shall obey *all rules and regulations
24 adopted by the District Board of Health Department and all orders, rules
25 and regulations of the District Health Officer.*" [emphasis added].

26 24. Pursuant to the terms of the Franchise Agreement, RENO DISPOSAL has the
27 right and obligation to provide collection, hauling and disposal of garbage within the
28 incorporated area of the City of Reno.

29 25. Section 5.90.010 of the Code also contains the following definition:

30 Garbage means putrescible animal and vegetable waste resulting from the
31 handling, storage, preparation, cooking, and sale and serving of food and
32 beverage. This includes, but is not limited to:

33 (a) Offal, swill, kitchen and table waste, and other organic animal and
34 vegetable waste;

35 (b) Bottles, cans, cups, plates, utensils, containers, and/or covering of any
36 construction or material that has been in intimate contact with food,
37 confection, and/or beverage;

- 1 (c) Any component used in the preparation or manufacture of matter
2 intended for animal or human consumption and;
3 (d) Such matter and/or materials listed in (a) through (c) above that have
4 been discarded without first being sanitized.

5 The mixing, addition, or commingling of garbage with rubbish, trash, or
6 other waste matter exclusive of group I wastes (as determined by
7 regulations of the District Board of Health governing solid waste
8 management), renders the entire resulting mixture as garbage and requires
9 the mixture to be handled as garbage.

10 *The District Board of Health may authorize a different treatment of the*
11 *solid waste stream for materials removed from the solid waste stream as*
12 *"recyclable material" as defined by Chapter 444A of the Nevada Revised*
13 *Statutes, and handled in accordance with regulations issued by the State*
14 *Environmental Commission and the District Board of Health. [emphasis*
15 *added].*

16 Nevada Revised Statutes and Nevada Administrative Code

17 26. NRS 444A.013 defines "recyclable material" as "solid waste that can be
18 processed and returned to the economic mainstream in the form of raw materials or products,
19 as determined by the State Environmental Commission." [emphasis added].

20 27. NAC 444A.100 provides that the State Environmental Commission will interpret
21 the term "recyclable material" to include, without limitation, numerous items that can be
22 processed and returned to the economic mainstream in the form of raw materials or products.

23 28. NRS 444.500 defines the term "solid waste management system" to mean "the
24 entire process of storage, collection, transportation, processing, recycling and disposal of solid
25 waste. The term includes plans and programs for the reduction of waste and public education."

26 29. NRS 444.580 states that "[a]ny district board of health created pursuant to NRS
27 439.370 . . . may adopt standards and regulations for the . . . solid waste management systems or
28 any part thereof more restrictive than those adopted by the State Environmental Commission,
and any district board of health may issue permits thereunder."

Washoe County Health District

30. Pursuant to NRS 439.370 and consistent with an interlocal agreement entered in

1 1972, the CITY, the City of Sparks and Washoe County created the Department, which is duly
2 formed and exercises the powers prescribed in NRS 439.369 to NRS 439.410.

3 31. In accordance with NRS 439.380, upon creation of the Department, the authority
4 and jurisdiction of the CITY, the City of Sparks and Washoe County on the administration of
5 public health was abolished, and thereupon transferred and vested in the HEALTH BOARD and
6 Department.

7 32. Under NRS 439.369 to NRS 439.410, the Department is governed by the
8 HEALTH BOARD. As relevant to subject matters and transactions in this action, NRS 439.410
9 provides that the HEALTH BOARD "has jurisdiction over all public health matters in the
10 [Department]" and may "adopt regulations consistent with law" to, among others things,
11 "[r]egulate sanitation and sanitary practices in the interests of the public health" and "[p]rotect
12 and promote the public health generally in the geographical area subject to the jurisdiction of the
13 [H]ealth [D]istrict."

14 33. Pursuant to its authority to adopt regulations, the HEALTH BOARD adopted the
15 Waste Management Regulations.

16 34. In June, 2010, and October 2011, the HEALTH BOARD approved various
17 amendments to the Waste Management Regulations relating to or affecting recycling within the
18 Department.

19 35. Among other things, in June, 2010, the HEALTH BOARD approved a new
20 definition for "recyclable material" as set forth in Section 010.584 of the Waste Management
21 Regulations and which provides "solid waste that can be processed and returned to the economic
22 mainstream in the form of raw materials or products including use as a feedstock in the
23 generation of energy. "Recyclable material" includes, but is not limited to . . . *Food waste* . . .
24 [emphasis added].

25 36. The June 2010 amendments adopted by the HEALTH BOARD also included a
26 permitting scheme for materials recovery facilities, recycling facilities and composting facilities
27 similar to the Waste Management Regulations' then existing scheme relating to the permitting of
28 transfer stations within the Department.

1 37. Pursuant to the June 2010 amendments to the Waste Management Regulations,
2 upon permitting by the HEALTH BOARD and Department and commencement of operations of
3 a licensed materials recovery facility authorized to recycle solid waste containing comingled
4 food waste and other recyclable materials (a "Licensed MRF"), CASTAWAY may consistent
5 with its licenses and permits thereafter and in furtherance of the MRF Project Business collect,
6 haul and deliver to such a Licensed MRF for recycling mixed loads of solid waste containing
7 food waste and other recyclable materials.

8 38. In October, 2011, the HEALTH BOARD approved a new definition for the term
9 "garbage" as set forth in Section 010.300 of the Waste Management Regulations and which
10 provides "garbage" is "putrescible animal and vegetable wastes resulting from the handling,
11 storage, sale, preparation, cooking and serving of food."

12 39. In October, 2011, the HEALTH BOARD approved Section 050.017 and Section
13 050.018 to the Waste Management Regulations relating to waste collection and transport and
14 recycling. Section 050.017 provides:

15 The mixing, addition or commingling of garbage with rubbish,
16 construction and demolition waste, refuse or other solid waste matter,
17 exclusive of biohazardous or hazardous wastes, renders the entire resulting
18 mixture as garbage and must be handled as garbage, *except as provided in*
19 *Section 050.018 of these regulations.* [emphasis added].

20 40. Section 050.018 to the Waste Management Regulations as adopted by the
21 HEALTH BOARD in October, 2011 states:

22 Solid waste, excluding garbage except in a de minimus amount, that is
23 collected and transported by a permitted waste hauler to an approved and
24 permitted recycling facility, materials recovery facility or composting
25 facility for processing is allowable, provided the processing activity is
26 conducted in a facility permitted pursuant to Sections 055 or 062 of these
27 regulations and in compliance with the provisions of such permit. Any
28 garbage or solid waste resulting from the recycling or recovery process
must be handled in accordance with the provisions of these regulations.

Public Claims By RENO DISPOSAL

41. At the October 26, 2011, meeting of the City Council, representatives of RENO
DISPOSAL publicly claimed that the proposed adoption by the HEALTH BOARD of Section

1 050.017 and Section 050.018 to the Waste Management Regulations then scheduled for the
2 following day would be in conflict with the Code and Franchise Agreement and RENO
3 DISPOSAL advocated that the CITY should oppose adoption of these amendments to Section
4 050.017 and Section 050.018 to the Waste Management Regulations as violative of the Code and
5 Franchise Agreement and as interfering with RENO DISPOSAL's rights under the Franchise
6 Agreement. Accompanying this Complaint and incorporated herein as Exhibit 1 is a true and
7 correct copy of the transcript of the October 26, 2011, meeting of City Council which records the
8 claims of RENO DISPOSAL.

9 42. At the October 27, 2011, meeting of HEALTH BOARD, at which the HEALTH
10 BOARD adopted Section 050.017 and Section 050.018 to the Waste Management Regulations,
11 representatives of RENO DISPOSAL publicly claimed that unless amended in a particular
12 manner Section 050.017 and Section 050.018 to the Waste Management Regulations were in
13 conflict with the Code and Franchise Agreement and RENO DISPOSAL advocated that the
14 HEALTH BOARD may only adopt these amendments to the extent not violative of the Code and
15 Franchise Agreement or interfering with RENO DISPOSAL's rights under the Franchise
16 Agreement. Accompanying this Complaint and incorporated herein as Exhibit 2 is a true and
17 correct copy of the transcript of the October 27, 2011, meeting of HEALTH BOARD which
18 records the claims of RENO DISPOSAL.

19 **Public Statements Of Members of City Council and the Health Board**

20 43. At the City Council meeting conducted on October 26, 2011, members of the City
21 Council made public statements interpreting some or all of the Code, the Franchise Agreement,
22 Waste Management Regulations, the NRS and the Nevada Administrative Code or the
23 interrelation of such Code, the Franchise Agreement, Waste Management Regulations, statutes
24 and administrative regulations, in a manner inconsistent with the plain language and intent of
25 same, thereby calling into question the rights, status or other legal relations as to Castaway's
26 Business and the MRF Project Business under the Code, the Franchise Agreement and the Waste
27 Management Regulations. Accompanying this Complaint and incorporated herein as Exhibit 1
28 is a true and correct copy of the transcript of the October 26, 2011, meeting of City Council

1 which records the public statements of the members of the City Council.

2 44. At the HEALTH BOARD Meeting conducted on October 27, 2011, the HEALTH
3 BOARD adopted Section 050.017 and Section 050.018 to the Waste Management Regulations.

4 45. During the October 27, 2011, hearing on adoption of these regulations, members
5 of the HEALTH BOARD made public statements interpreting some or all of the Code, the
6 Franchise Agreement, Waste Management Regulations, the NRS and the Nevada Administrative
7 Code or the interrelation of such Code, the Franchise Agreement, Waste Management
8 Regulations, statutes and administrative regulations, in a manner inconsistent with the plain
9 language and intent of same, and in further conflict with statements and interpretations of
10 officers and employees of the Department and the District Attorney, thereby calling into question
11 the rights, status or other legal relations as to Castaway's Business and the MRF Project Business
12 under the Code, the Franchise Agreement and the Waste Management Regulations.
13 Accompanying this Complaint and incorporated herein as Exhibit 2 is a true and correct copy of
14 the transcript of the October 27, 2011, meeting of HEALTH BOARD which records the public
15 statements of the members of the HEATH BOARD.

16 **Reno Disposal's Rights Under the Franchise Agreement**

17 46. Pursuant to the terms of the Franchise Agreement, RENO DISPOSAL has the
18 right and obligation to collect, haul and dispose of garbage within the incorporated area of the
19 CITY.

20 47. The June, 2010, and October, 2011, amendments to the Waste Management
21 Regulations affect RENO DISPOSAL's rights and obligations to collect, haul and dispose of
22 garbage within the incorporated area of the CITY, as such amendments (a) change the character
23 of certain solid waste, including solid food waste that is recycled which prior to the adoption of
24 the June 2010 amendments was previously exclusively classified as "garbage"; and (b) contrary
25 to its claims, the rights of RENO DISPOSAL respecting "garbage" under the Code and the
26 Franchise Agreement, are at all times and in all manners expressly subject to the right of the
27 HEALTH BOARD to provide by regulation or order for different treatment of the solid waste
28 stream for materials removed from the solid waste stream as recyclable material.

1 Business and the plans of CASTAWAY and 433 LLC to proceed with intended investments in
2 pursuit of the MRF Project Business.

3 53. An actual controversy exists between CASTAWAY and 433 LLC on the one
4 hand, and RENO DISPOSAL, the CITY and the HEALTH BOARD on the other, within the
5 jurisdiction of this Court and involving the rights, status or other legal relations of CASTAWAY,
6 433 LLC, RENO DISPOSAL, the CITY and the HEALTH BOARD under and pursuant to the
7 Code, the Franchise Agreement and the Waste Management Regulations.

8 54. CASTAWAY and 433 LLC are entitled to a speeding hearing of this declaratory
9 judgment action, and accordingly hereby requests a preferential trial setting.

10 **DECLARATIONS SOUGHT AND REQUEST FOR RELIEF**

11 For the reasons set forth above, CASTAWAY and 433 LLC respectfully request that the
12 Court enter a judgment:

13 1. Declaring that CASTAWAY is entitled to recycle commercial food waste
14 pursuant to the Waste Management Regulations and the Code, and that such activity does not
15 violate the terms of the Franchise Agreement; and

16 2. Declaring CASTAWAY is entitled to collect, haul and recycle mixed loads of
17 recyclable materials from commercial customers, including food waste, pursuant to the Waste
18 Management Regulations and the Code, subject only to the condition that a facility permitted
19 pursuant to the Waste Management Regulations exists and is allowed by the HEALTH BOARD
20 and the Department to accept and process such mixed loads of recyclable materials, and that such
21 activity will not violate the terms of the Franchise Agreement; and,

22 3. Declaring that the claimed rights of RENO DISPOSAL respecting "garbage"
23 under the Code and the Franchise Agreement, are at all times and in all manners expressly
24 subject to the right of the HEALTH BOARD to provide by Section 050.017 and Section 050.018
25 to the Waste Management Regulations for different treatment of the solid waste stream for
26 materials removed from the solid waste stream as recyclable material, including CASTAWAY'S
27 right to conduct Castaway's Business of recycling commercial food waste and the plans of
28 CASTAWAY to collect, haul and recycle mixed loads of recyclable materials from commercial

1 customers, including food waste, pursuant to the MRF Project Business.

2 4. Providing for any and all other relief to which the Court determines CASTAWAY
3 is entitled, including without limitation, any and all appropriate injunctive relief.

4 AFFIRMATION

5 I affirm that the foregoing document does not contain the Social Security Number of any
6 individual.

7 Dated and respectfully submitted this 2nd day of May, 2012.

8 LIONEL SAWYER & COLLINS

9
10 By: Dan R. Reaser
11 Dan R. Reaser, Esq.
12 Nevada Bar No. 1170
13 Leslie Bryan Hart
14 Nevada Bar No. 4932
15 Brian H. Schusterman, Esq.
16 Nevada Bar No. 10983
17 1100 Bank of America Plaza
18 50 West Liberty Street
19 Reno, Nevada 89501

20
21 Attorneys for Castaway Trash Hauling, Inc.
22 and Four Thirty-Three, LLC.
23
24
25
26
27
28

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “2”

EXHIBIT “2”

FILED

Electronically
08-01-2012:04:10:03 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3123127

1 CODE: 2585
2 Dan R. Reaser, Esq.
3 Nevada State Bar No. 1170
4 Leslie Bryan Hart
5 Nevada Bar No. 4932
6 Brian H. Schusterman, Esq.
7 Nevada Bar No. 10983
8 LIONEL SAWYER & COLLINS
9 50 W. Liberty St., Suite 1100
10 Reno, NV 89501
11 (775) 788-8666

12 Attorneys for Castaway Trash Hauling, Inc.
13 and Four Thirty-Three, LLC.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

CASTAWAY TRASH HAULING, INC., a
Nevada corporation; and, FOUR THIRTY-
THREE, LLC, a Nevada limited liability
company,

Plaintiffs,

v.

CITY OF RENO, an incorporated city of the
State of Nevada; WASHOE COUNTY
DISTRICT BOARD OF HEALTH, a special
local government district and political
subdivision of the State of Nevada; RENO
DISPOSAL CO., a Nevada Corporation; and,
DOE DEFENDANTS I-X inclusive,

Defendants.

Case No.: CV12 01207

Dept. No.: 3

NOTICE OF VOLUNTARY DISMISSAL, WITHOUT PREJUDICE

Pursuant to N.R.C.P. Rule 41(a)(1), notice is hereby given that Plaintiffs, CASTAWAY
TRASH HAULING, INC., and FOUR THIRTY-THREE, LLC (collectively "Plaintiffs"), by and
through their counsel of record, hereby dismiss without prejudice all claims against Defendants

1 CITY OF RENO, WASHOE COUNTY DISTRICT BOARD OF HEALTH, and RENO
2 DISPOSAL CO. (collectively, "Defendants"). Defendants have not served an answer or motion
3 for summary judgment, and therefore the claims against them may be dismissed by this notice.

4 **AFFIRMATION**

5 I affirm that the foregoing document does not contain the Social Security Number of any
6 individual.

7 Dated and respectfully submitted this 1st day of August, 2012.

8 LIONEL SAWYER & COLLINS

9
10 By: 

Dan R. Reaser, Esq.
Nevada Bar No. 1170
Leslie Bryan Hart
Nevada Bar No. 4932
Brian H. Schusterman, Esq.
Nevada Bar No. 10983
1100 Bank of America Plaza
50 West Liberty Street
Reno, Nevada 89501

11
12
13
14
15 Attorneys for Castaway Trash Hauling, Inc.
16 and Four Thirty-Three, LLC.
17
18
19
20
21
22
23
24
25
26
27
28

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “3”

EXHIBIT “3”

11-07-12
G-8.6

**EXCLUSIVE SERVICE AREA FRANCHISE AGREEMENT
COMMERCIAL SOLID WASTE AND
RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 7th day of November, 2012 ("Effective Date"), between the City of Reno, a political subdivision of the State of Nevada, (hereinafter called "City"), and Reno Disposal Company, Inc., a Nevada corporation (hereinafter called "Contractor"), with reference to the following facts.

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; and

WHEREAS, Chapter 5.90 of the Reno Municipal Code authorizes the City Council to award an exclusive franchise for collection, hauling and disposal of all Solid Waste and Recyclable Material, as defined herein, within the City; and

WHEREAS, the City of Reno City Council has determined that the public health, safety and welfare of its residents require that certain commercial Solid Waste and Recyclable Material Collection Services (as defined herein) be provided under one or more Commercial Franchise Agreements (as defined herein) by current service providers meeting the Contractor Qualifications (as defined in this Agreement), which Commercial Franchise Agreements provide the exclusive right and obligation to Contractor and other service providers to provide Collection Services in Exclusive Service Areas (as defined herein) in the City.

WHEREAS, Contractor has represented and warranted to City that it has the experience and qualifications to provide the Collection Services;

WHEREAS, City declares its intention of maintaining reasonable rates for reliable, proven collection and transportation of Solid Waste and Recyclable Material in an environmentally sound manner, within the City;

WHEREAS, City and Contractor have agreed to enter into this Agreement to set forth the terms, covenants and conditions relating to the provision of the Collection Services by Contractor.

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 hereby agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings. To the extent of any inconsistency between the definitions of the following terms provided in this Article and the use or definition of those terms that may appear in related City, County, State or Federal laws, ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor.

"Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

"Agreement" means this Agreement between the City and Contractor, including all exhibits and future amendments.

"Applicable Law" means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the collection and disposition of Solid Waste or Recyclable Materials, including those that are in force and effective as of the Effective Date, as well as such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the Effective Date and during the Term of this Agreement.

"Approved Recyclable Materials" means the Recyclable Materials approved for recycling under this Agreement, which are listed on Exhibit A attached hereto and which may be changed from time to time by agreement of Contractor and City, excluding Excluded Recyclable Materials.

"Bin" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, having a capacity less than seven (7) cubic yards and that generally has a tight-fitting, attached lid, and is designed to be dumped mechanically into a front-loading or rear-loading Collection vehicle.

"Bulky Items" means all discarded waste matter that is too large to be placed in a Cart, including appliances not containing chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require special handling due generally to their size, excluding Excluded Materials.

"Cart" means an industry standard, wheeled Container of approximate thirty-five (35), sixty-four (64), and ninety-six (96) gallon capacity provided by Contractor to Customers for Collection of Solid Waste or Recyclables.

"Cart Service" means provision of Collection Services using Carts.

"City Collection Services" means the Collection Services provided by Contractor to City as provided in Section 3.7.

"City Council" means the governing legislative body of the City of Reno.

"Change in Law" means the following events or conditions:

- i) Enactment, adoption, promulgation, issuance, modification, or written change or initial public announcement or enforcement in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or
- ii) Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Contractor; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

"Change in Scope" is a material change in the type, extent, or level of Collection Services or the Exclusive Service Area.

"Collection" (and "Collect," "Collected and "Collecting") means the pickup and removal by Contractor from Commercial Customers in the Exclusive Service Area of Solid Waste and Approved Recyclable Materials and transportation and delivery of such material to an appropriate Designated Facility for such materials.

"Collection Materials" means all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Collection Services" means the Collection of Collection Materials from Commercial Customers in Contractor's Exclusive Service Area to be provided by Contractor hereunder and more fully described in the Scope of Services, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Commercial Activity" means all activity of a business, commercial, industrial, financial, institutional, governmental or similar nature, including without limitation Multi-Family Complexes. Commercial Activity hereunder is intended to be defined and interpreted broadly to include all activities other than residential activities and uses (other than Multi-Family Complexes).

"Commercial Customers" means all non-residential Customers including businesses, institutions, governmental agencies conducting Commercial Activity in Contractor's Exclusive Service Area, including Multi-Family Complexes.

"Commercial Franchise Agreements" means this Agreement and the other similar agreement between the City and the other franchised service provider for the collection and transportation of Solid Waste and Recyclable Materials from Commercial Customers in exclusive service areas in the City.

"Community Collection Location(s)" means an area in which the Contractor has placed a Compactor or Container in a central location to service multiple businesses at the specific request of the City or certain Commercial Customers, and agreed to by Contractor.

"Compactor," "Compactors," "Compactor Service" means any Bin or other Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method.

"Construction and Demolition Debris" means debris resulting from construction, remodeling, repair, renovation, demolition, excavation, dredging, grubbing and related cleanup of residential, commercial or governmental buildings or other structures and pavement, including without limitation construction materials, rubble, bricks, concrete, other masonry materials, soil, rock, lumber, rebar, paving materials and vegetation, including tree stumps. Materials resulting from landscape maintenance are not Construction and Demolition Debris.

"Consumer Price Index" or "CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average-Item: Garbage and Trash Collection (1982=100) as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index.

"Containers" means Carts, Bins, and Drop Boxes or other containers provided by Contractor and identified on the Scope of Services for use to provide Collection Services.

"Contractor" means the Party identified as Contractor on page 1 of this Agreement.

"City" means the legal entity known as the City of Reno, Nevada, a political subdivision of the State of Nevada.

"City Representative" means the City Manager, or his/her designee, who may be a City official, employee or an agent of City specifically designated to serve as the City Representative and authorized to act on behalf of the City hereunder.

"Customer" means the persons or entities receiving Collection Services.

"Designated Facility" means the transfer station, disposal facility, material recovery facility, eco-center recycling facility or any similar facility designated by the City in accordance with that certain long-term Solid Waste Transfer and Disposal Agreement entered into by the City, pursuant to which the City has provided for the environmentally safe and sound handling, processing, transfer, transport, recycling and Disposal of all Solid Waste and Approved Recyclable Materials generated within the City, and where Contractor shall be required to deliver all Collection Materials.

"Disposal Agreement" is the agreement defined in Section 4.4 of this Agreement, and all amendments, extensions, renewals and replacements thereof.

"Disposal," "Disposing," "Dispose," or "Disposed" means the final landfill disposal of Solid Waste collected by Contractor, but does not include other beneficial uses such as alternative daily cover.

"Diverted" means the tonnage or percentage of Collected Collection Materials that are not Disposed.

"Drop Box" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, generally having a capacity equal to or greater than ten (10) cubic yards.

"Effective Date" means the date on which this Agreement is fully executed by the Parties, as reflected on page 1 of this Agreement.

"Excluded Materials" means: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii) materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and codes and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and Items Contractor determines to be excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States revenue Code Section 501(c) 3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

"Excluded Recyclable Materials" means either or both I) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Material at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service, and II) any other Recyclable Materials that are not Approved Recyclable Materials.

"Exclusive Service Area" means the geographic territory within the City in which the Contractor shall have the exclusive right and obligation to conduct Collection Services, as described on Exhibit B attached hereto, as such geographic territory may change from time to time as provided under this Agreement. When used in the plural in this Agreement, the term ("Exclusive Service Areas") refers to all such territory within the City considered collectively, within which exclusive Collection Services are to be provided, either by Contractor pursuant to this Agreement, or by another service provider pursuant to another Commercial Franchise Agreement. All the Exclusive Service Areas in the City are described on Exhibit B attached hereto. The Exclusive Service Areas shall be subject to the boundary adjustment process described in Section 3.12 hereof. In addition, if after the Effective Date land is annexed or otherwise added to the City of which is not then in one of the Exclusive Service Areas ("Annexed Land"),

the Annexed Land shall be added to one or more Exclusive Services Areas as follows. If the Annexed Land is contiguous to the Exclusive Service Area of only one service provider under a Commercial Franchise Agreement, then the Annexed Land shall be added to that service providers Exclusive Service area. If the Annexed Land is contiguous to the Exclusive Service Area of more than one service provider, or if the Annexed Area is not contiguous to the City, the Annexed Area shall be divided and added to the respective Exclusive Service Areas in proportion to the respective Proportionate Share of each service provider and City, Contractor and such other service providers will negotiate in good faith to agree on the allocation of the Annexed Area; provided that if such parties cannot agree within 60 days on the allocation of the Annexed Area, the determination of the City in accordance with this Section shall be final.

"Exempted Drop Box" means an industry standard, open top metal roll-off container (also sometimes referred to as a "lugger" or "dino"), equipped for being mechanically rolled onto a vehicle, for collection and transportation of Solid Waste or Recyclable Materials:

- (i) With a capacity of not less than ten (10) cubic yards;
- (ii) Which is delivered to and left at a Customer's site for deposit therein of Exempted Drop Box Materials, then picked up and transported to a materials processing or disposal facility for emptying; and,
- (iii) Excluding a) Compactors, b) Bins, c) containers or receptacles emptied or serviced by front loader vehicles, d) any vehicle into which the materials are deposited at the time of collection at the collection site and e) any other container, receptacle or vehicle not described in subsections (i) and (ii) in this definition above.

"Exempted Drop Box Materials" means Solid Waste and Approved Recyclable Material collected and transported in an Exempted Drop Box using Exempted Drop Box Services, but excludes;

- (i) Garbage; and,
- (ii) Compacted Solid Waste and compacted Approved Recyclable Materials.

"Exempted Drop Box Services" means the collection and transportation by an Exempted Hauler of Exempted Drop Box Materials, using an Exempted Drop Box, performed as Temporary Service and excluding any collection or transportation that would replace, limit or reduce Permanent Service Collection by Contractor. The provision of Exempted Drop Box Services shall not limit or amend the obligation of Operators or other Commercial Customers to subscribe to Collection Services under Section 3.5 of this Agreement. Examples of Exempted Drop Box Services include (each of which are hereby excluded from the exclusive franchise of Contractor under this Agreement and which may be collected and hauled by Exempted Haulers using Exempted Drop Box Services), in each case by Exempted Haulers using an Exempted Drop Box, i) the collection and transportation of landscaping and related materials generated by landscaping, gardening, pruning, tree trimming and other landscape maintenance service providers ii) the collection and transportation of Exempted Drop Box Materials

generated at special events (but excluding materials which are the subject of Permanent Services at the event location), iii) the collection and transportation of Exempted Drop Box Materials under single occurrence service contracts or arrangements for collection and transportation of Exempted Drop Box Materials and iv) collection and transportation of Exempted Drop Box Materials generated in connection with occasional, irregularly scheduled cleanup and disposal by customers.

"Exempted Facility" means of Nevada Recycling & Salvage, a Nevada limited liability company, and its premises located at 1085 Telegraph Street, Reno, Nevada, or replacement premises thereof ("NRS").

"Exempted Facility Materials" means Collection Materials delivered to and accepted, processed, and recycled or disposed by the Exempted Facility i) in an amount equal to or less than the Exempted Facility Material Limit and ii) excluding Garbage.

"Exempted Facility Materials Limit" for NRS shall be a total annual volume of Exempted Facility Materials from Contractor and the service provider under the other Commercial Franchise Agreement not exceeding One Hundred Twenty Five Thousand 125,000 cubic yards, which limit amount shall be increased annually in proportion to the percentage increase in the GDP. The first annual increase shall occur on January 1, 2014 ("Limit Adjustment Date"). The Exempted Facility Materials Limit shall be increased in proportion to the percentage increase in the GDP over the most recent 12 month period ending on October 1 of the year preceding the Limit Adjustment Date (or the most recently published GDP for a 12 month period ending prior to October 1 of the preceding year). The calculation of the increase shall be provided by the Exempted Facility to the City no later than December 1 of the year preceding the Limit Adjustment Date. For purposes hereof, "GDP" shall mean the Gross Domestic Product for the Reno-Sparks Metropolitan Area, all industries, as published by the U.S. Department of Commerce. The term Exempted Facility Materials Limit as used herein shall mean the Exempted Facility Materials Limit as adjusted by increases in the GDP as determined in accordance with this definition.

"Exempted Haulers" means persons or entities: (i) licensed as of October 24, 2012 by the City and the Washoe County Health District to collect and transport Solid Waste and Recyclable Materials in the City of Reno; and, (ii) actively engaged, as its primary business, in the collection and transportation of Solid Waste and Recyclable Materials in the City of Reno as of October 24, 2012, including Contractor. All Exempted Haulers are listed on Schedule 1 attached hereto.

"Exempted Hauler Account" means a contract or account i) established on or before October 24, 2012 and continuing as of October 24, 2012; ii) under or pursuant to which contract or account an Exempted Hauler has provided collection and transportation of Solid Waste and/or Recyclable Materials from Commercial Activity on a regularly scheduled, recurring basis; iii) to a customer identified on Schedule 1; and iv) approved by the City. All approved Exempted Hauler Accounts of each Exempted Hauler, including the name and address of each customer to which service is provided for each Exempted Hauler Account, is identified on Schedule 1 attached hereto.

"Exempted Hauler Account Material" means Solid Waste and Recyclable Material collected from an identified customer under an Exempted Account and transported by such Exempted Hauler using Exempted Hauler Account Services, but excluding Garbage.

"Exempted Hauler Account Services" means the collection and transportation by an Exempted Hauler of Exempted Hauler Account Materials from an Exempted Hauler Account.

"Extension Term" means one or more extensions of the Term of this Agreement, as provided under Section 3.1(B).

"Food Waste" means all compostable pre-consumer and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and egg shells, and food-soiled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, paper milk cartons or other paper products accepted by the Contractor's selected composting facility or other processing facility and that has been Source Separated and placed in a Container for Recycling. Food Waste shall not include dead animals weighing over 15 pounds, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting or other processing facility. The materials accepted by composting site selected by Contractor may change from time to time and the definition of Food Waste shall change accordingly.

"Franchise Fee" means a uniform fee payable to the City and equal to a percentage of the Gross Receipts collected by Contractor, as established and adjusted by the Reno City Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement.

"Franchise Hauler Terms" means as provided in the Disposal Agreement.

"Garbage" means putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking and sale and serving of food and beverage, excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of Garbage with rubbish, trash or other waste matter, exclusive of items i) through viii) inclusive under the definition of Excluded Materials, renders the entire resulting mixture as Garbage.

"Green Waste" means Source Separated biodegradable materials including branches (less than three (3) inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants, leaves, pruning's, shrubs, weeds, wood (uncoated and untreated), wood chips, yard trimmings, Christmas trees (placed in Carts/Bins, with no stands, flocking, and/or decorations, and cut into two (2)-foot sections) that has been placed in a Container for Recycling, excluding Excluded Materials.

"Gross Receipts" means the Rate Revenues actually received, including all money, cash, receipts, property or other thing of value collected by Contractor from Customers for the Collection Services described on the Scope of Services, but excluding any revenues, receipts or proceeds from other sources. Gross Receipts does not include proceeds from Special Services or from the sale of Recyclable Materials.

"Hazardous Waste" means hazardous waste as defined in Nevada Revised Statutes 459.430, hazardous substance as defined in Nevada Revised Statute 459.429 and other hazardous or toxic materials as defined under any other local, state or federal law.

"Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

"Multi-Family Complex" means a multiple-unit Residence with five (5) or more units, some of which are attached, which are billed collectively for Collection Services hereunder.

"Operating Standards" means the additional terms and conditions attached to this Agreement as Exhibit C which are made a part hereof and incorporated herein by reference and which shall be applicable to all service providers under all Commercial Franchise Agreements.

"Operative Date" means the date from and after which Contractor shall be responsible to provide Collection Services to Customers in accordance with the terms of this Agreement, which shall be no later than twelve (12) months after the Effective Date. The Operative Date shall be provided in writing by Contractor to City not less than 30 days prior to the estimated Operative Date.

"Party" or "Parties" means City or Contractor individually, or City and Contractor, respectively.

"Permanent Services" means Collection Services that generally or usually occur on a regularly scheduled, recurring basis.

"Permitted Transferee" means i) an Affiliate of Contractor and ii) a service provider under another Commercial Service Agreement.

"Paper Shredder Materials" means paper and similar paper products and the products and residue resulting from shredding thereof collected and shredded by properly licensed service providers providing paper shredding services.

"Proportionate Share" of Contractor is Eighty and 50/100 percent (80.50%).

"Qualifications" means the Assignee Qualifications, as defined in Section 11.7 of this Agreement.

"Qualified Service Contract" means as provided in Section 3.13 of this Agreement.

"Rate Revenues" means the revenues from the Rates billed to and collected from Customers by Contractor for provision of Collection Services.

"Rates" or "Rate" means the amount each and all Customers shall be charged by Contractor for Collection Services under this Agreement as provided on the Scope of Services and the Transition Rates applicable during the Transition Period, which Rates or Rate may be adjusted from time to time during the Term as provided under this Agreement.

"Recyclable Materials" or "Recyclables" means materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or

Implemented after the Effective Date, including Source Separated Green Waste and Source Separated Food Waste.

"Recycle", "Recycled", "Recycling" means the process of Collection, sorting, cleansing, treating and reconstituting of Recyclable Materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

"Recycling Container(s)" means Containers shown on the Scope of Services, provided and designated by Contractor for use for Recycling of Recyclable Materials, and identified for Recycling use by labels or signs on the Recycling Container specifying Recycling use, by using Recycling Containers or portions thereof of a different color than Containers used for Collection of Solid Waste, or by other means.

"Recycling Facility" means a fully permitted, Designated Facility at which Recycling occurs of Recyclable Materials.

"Residue" or "Residuals" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as contaminated paper, putrescible waste, and other debris.

"Return on Revenue" means as provided in Section 6.2 hereof.

"Scope of Services" means the Scope of Services attached hereto as Exhibit D, which specifies each category or type of Collection Services, the Rates applicable to the Collection Services, certain other charges and fees which may be charged by Contractor, and certain other terms.

"Self-Haul" or "Self-Hauler" means that any generator of Recyclable Materials from Commercial Activity may itself (for a commercial generator, this means performance of all collection and transportation services by an individual listed on its payroll as an employee), but not by or through an agent, contractor or other third party, collect, transport and deliver those Recyclable Materials generated within the City by that generator only; provided, however, all Self-Haul owners and occupants shall be required to subscribe to Collection Services as provided under this Agreement, unless exempted under Section 3.5 of this Agreement.

"Single-Stream Recycling" means the use of a single Container to collect Source Separated Recyclables on a co-mingled basis.

"Snapshot Program" means a photo documentation program used by Contractor to notify Commercial Customers who are producing Collection Materials in excess of their current service level, which subjects the Customer to additional fees and charges for the collection of the excess material.

"Solid Waste" means all putrescible and nonputrescible waste matter in solid or semi-solid form, including but not limited to rubbish, Garbage, ashes, refuse, and Residue, but excluding Excluded Materials.

"Source Separated" means the separation of any material or category of materials from other materials by the generator at the point or place of generation.

"Source Separated Recyclables" means Approved Recyclable Materials that are separated by the generator thereof from all materials other than Approved Recyclable Materials and properly prepared and placed together in a Recycling Container for Collection.

"Special Services" means various collection and other services to which Contractor is not granted the exclusive right of Collection under this Agreement and of which Contractor is not required to provide Collection under this Agreement, but which services Contractor at its option may offer to its Customers and to others anywhere in the City at rates and charges determined by Contractor.

"Special Waste" includes any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste. As defined for purposes of this Agreement, "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires and vehicle batteries.

"Subsidy Fee" means a uniform fee equal to Contractor's Proportionate Share of the Balancing Payment, as defined under the Exclusive Franchise Agreement for Residential Solid Waste and Recyclable Materials between Contractor and City of approximately even date with this Agreement, as the Balancing Payment may be adjusted from time to time.

"Temporary Service" means Exempted Drop Box Service that is: (i) temporary and not recurring; (ii) provided for a period of 60 days or less; and, (iii) excludes Permanent Services.

"Term" means the period provided in Section 3.1(A), as extended by any Extension Terms under Section 3.1(B).

"Transition Period" means the period commencing on the Effective Date and ending on January 1, 2015.

"Transition Rates" means the Rates applicable during the Transition Period to each commercial customer who is a party to Qualified Service Contract, as more fully provided in Section 3.13 of this Agreement.

"Working Days" means, unless otherwise specified, Monday through Friday, excluding legal holidays.

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Contractor is qualified to transact business in the State of Nevada and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Contractor, such that this Agreement shall constitute a valid and binding obligation of Contractor enforceable in full accordance with its terms, except only to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights.

C. NO CONFLICT

Contractor warrants and represents that, to Contractor's knowledge, as of the Effective Date neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

D. INFORMATION SUPPLIED BY CONTRACTOR

To Contractor's knowledge the information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's financial information, is true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

E. CONTRACTOR QUALIFICATIONS

Contractor warrants and represents it has the experience, financial capability and operational capability to perform the Contractor's duties and obligations under this Agreement and meets or exceeds the Contractor Qualifications.

2.2 CONTRACTOR QUALIFICATIONS, ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES

Prior to the Effective Date, City requested collective advice of certain commercial solid waste haulers meeting the Contractor Qualifications and then providing solid waste and related hauling services concerning recommended boundaries for the Exclusive Service Areas. The City established the location and boundaries of each Exclusive Service Area in proportion to each qualified service provider's then existing Proportionate Share of the permanent revenues from hauling services collected by all the qualified service providers in Reno. Contractor and the other qualified service providers participated in the process created by and under the supervision of the City. The recommendations of the service providers were strictly advisory and the City reserved full authority to accept, reject or modify the recommendations, to establish Exclusive Service Area boundaries of the City's choosing, or to continue to operate without Exclusive Service Areas consistent with its obligations under applicable law. Contractor stipulates that it participated in the City's process in good faith, and Contractor hereby warrants that its financial materials, disclosures and representations regarding its Customer base and revenues in the City, as of the dates provided to City, are true, correct and complete.

ARTICLE 3

COLLECTION SERVICES AGREEMENT

3.1 AGREEMENT TERM; EXTENSIONS; PERIODIC REVIEW

A. Term

This Agreement shall be effective during the Term, which shall commence on the Effective Date and shall expire on the date 17 years thereafter on November 1, 2029 ("Expiration Date"), unless extended as provided in Section 3.1 (B) below.

B. Extension Terms; Termination

The initial Term of this Agreement and each Extension Term of this Agreement shall be automatically extended for an additional five (5) year Extension Term unless City or Contractor provides written notice of termination not less than five (5) years prior to the expiration of the initial Term and each Extension Term. Contractor shall be entitled to terminate this Agreement effective anytime during the last 3 years of the initial Term upon not less than twenty four (24) months prior written notice to City.

C. Periodic Review by City and Contractor of Collection Services

1. During the 24 month period ("Review Period") commencing on the date five (5) years after the Effective Date ("First Review Period Commencement Date") and on the date of each successive five (5) year anniversary after the First Review Period Commencement Date during the Initial Term and all Extension Terms, each of the City or Contractor may initiate, conduct and complete the review of the operation of the Collection Services under this Agreement, in order to i) assess the effectiveness of the Collection Services and ii) identify areas for possible improvement ("Review"). Either City or Contractor may provide written notice to the other ("Review Notice") stating, in reasonable detail, the nature, scope and specific areas for review, but the provision of the Review Notice shall not be a condition

precedent to the Review and Review Notice contents shall not limit the nature, scope or specific areas of the Review.

2. City and Contractor shall during the Review Period cooperate in good faith to conduct the review of the Collection Services. If as a result of the Review either or both the City or Contractor determine improvements to the Collection Services would be beneficial, i) City and Contractor shall cooperatively prepare a written report reflecting the results of the Review, the aspects of the Collection Services suggested for improvement and any amendments to this Agreement necessary to make such improvements ("Report") and ii) Contractor and the City will conduct, in good faith, discussions and negotiations concerning any improvements to the Collection Services, including any related amendments to this Agreement; provided, however, neither City nor Contractor shall be obligated to agree to any changes to the Collection Services or amendments to this Agreement. The Report shall provide, in reasonable detail, the findings of the Review, together with any recommendations for improvements or changes to the Collection Services and related amendments to this Agreement. If the City and Contractor do not agree on all of the contents of the Report or the recommendations, the Report shall include the positions of both City and Contractor. The Review, preparation of the Report and all discussions and negotiations shall be completed on or before the expiration of the Review Period. If Contractor and City agree to changes to the Collection Services or agree to amend this Agreement, the amendment will be executed on or prior to the expiration of the Review Period and the changes to the Collection Services will be implemented as soon as reasonably possible thereafter.

3.2 COLLECTION SERVICES AGREEMENT

A. Services Provided; Exclusive Right and Obligation; Exceptions to Exclusive Right

City hereby grants Contractor, and Contractor shall have throughout the Term of this Agreement, except as provided in Sections 3.2 D and 4.4 L hereof, the exclusive right, privilege, franchise and obligation within the Exclusive Service Area of Contractor to provide Collection Services to Commercial Customers. No person or entity other than Contractor and its subcontractors shall i) collect Collection Materials in Contractor's Exclusive Service Area, ii) transport anywhere in the City Collection Materials Collected in Contractor's Exclusive Service Area, or iii) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility, except as expressly provided under this Agreement. The preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount. Notwithstanding any other provision of this Agreement, the exclusive right of Contractor hereunder shall not apply to Excluded Materials, Excluded Recyclable Materials, Exempted Drop Box Materials, Exempted Hauler Account Materials and subject to and as provided in Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities. Contractor and other service providers may collect and transport Excluded Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials (if Contractor has been approved for Exempted Hauler Accounts under Schedule 1) in the

Exclusive Service Area and elsewhere in the City and may charge fees and charges for services as the service provider may elect. Contractor shall only provide under this Agreement Collection Services to Commercial Customers in Contractor's Exclusive Service Area and in no other areas in the City; provided, however, Contractor may provide Special Services to Commercial Customers or other customers anywhere in the City.

B. Compensation to Contractor; Rates

Contractor shall be entitled to charge and collect the Rates from Customers for Collection Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services. However, Contractor shall be entitled to provide and collect fees and charges for Special Services and other services and to charge fees and charges for Customer noncompliance as provided in Section 3.10 and elsewhere in this Agreement.

C. Uniform Commercial Franchise Agreements

City intends to establish a uniform system for the collection, transport and delivery of Collection Materials generated or accumulated as a result of Commercial Activities under this Agreement and the other Commercial Franchise Agreement. Accordingly, the Parties agree this Agreement is and will remain substantially similar to the other Commercial Franchise Agreement, including without limitation the Collection Services and the Rates. Amendments to any Commercial Franchise Agreement must generally be concurrently agreed to and made to all other Commercial Franchise Agreements unless the subject of the amendment relates to a unique or specific feature of the Exclusive Service Area of a particular service provider or a term that is not material. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, Special Services are not intended to be and likely will not be uniform between the Commercial Franchise Agreements or service providers and each service provider under each Commercial Franchise Agreement shall be entitled to offer and charge for any Special Services in the manner, on the conditions and at the rates decided by each such service provider.

D. Exempted Drop Box Services and Exempted Hauler Account Services

1. Subject to the terms and conditions in this Section 3.2 D, the franchised exclusive right and obligation of Contractor hereunder to provide Collection Services shall not include or apply to i) Exempted Drop Box Materials collected and transported by Exempted Haulers using Exempted Drop Box Services, or ii) Exempted Hauler Account Materials collected and transported by Exempted Haulers using Exempted Hauler Account Services.

2. The right of an Exempted Hauler to provide Exempted Hauler Account Services to each of its Exempted Hauler Accounts shall terminate upon the later of i) one (1) year after the Effective Date and ii) either a) termination of the contract or account with the Exempted Hauler for such Exempted Hauler Account or b) the new subscription by the Exempted Hauler Account customer, by contract or account, to Collection Services by the Contractor. Exempted Hauler Account Services may limit the obligation under Section 3.5 hereof of Exempted Hauler Account customers to subscribe to Collection Services;

provided, however, nothing in this Section 3.2 D shall limit the obligation of a Commercial Customer to subscribe to Collection Services by Contractor of Garbage or cause the termination or limitation of any contract or account with any Commercial Customer of Contractor existing as of October 24, 2012.

3. Each Exempted Hauler shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 3.2 D, the rights of such Exempted Hauler under this Section 3.2 D. This Section 3.2 D shall not be amended in a manner that would terminate, limit or restrict any Exempted Hauler from providing Exempted Drop Box Services or Exempted Hauler Account Services under this Section without the prior written consent of such Exempted Hauler, which may not be unreasonably withheld, conditioned or delayed; provided, however, nothing in this Section 3.2 D shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Drop Box Services and Exempted Hauler Account Services.

4. The rights of an Exempted Hauler under this Section 3.2 D may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary to perform such hauling services and an Exempted Hauler owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Hauler. If the Exempted Hauler shall dissolve or otherwise cease business for a period greater than one (1) year, the rights of the Exempted Hauler under this Section 3.2 D shall terminate.

5. The provision of Exempted Drop Box Services and Exempted Hauler Account Services by the Exempted Haulers is a privilege, not a right. Upon the violation by an Exempted Hauler of the exclusive rights of Contractor under this Agreement, upon thirty (30) days written notice of default by City and the failure of the Exempted Hauler to cure such violation, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the termination of the exemption of such Exempted Hauler under this Section to provide Exempted Drop Box Services and/or Exempted Hauler Account Services.

6. Except as expressly provided herein or in the Disposal Agreement, neither this Agreement nor the Disposal Agreement shall limit or preclude Exempted Drop Box Materials collected and transported using Exempted Drop Box Services or Exempted Hauler Account Materials collected and transported using Exempted Hauler Account Services from being delivered by any Exempted Hauler, including Contractor, to any facility for acceptance, processing, recycling, transfer or disposal, including without limitation facilities other than the Designated Facilities.

3.2 FRANCHISE FEES PAYABLE TO CITY

A. Franchise Fees

Subject to adjustment as provided in Section 3.13 of this Agreement during the Transition Period, Contractor shall pay to the City in monthly installments during the Term a Franchise Fee, based on a percentage of Gross Receipts collected by Contractor, as established and adjusted by the Reno City

Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement. The City Council reserves the right to increase or decrease the Franchise Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Franchise Fee i) the Franchise Fee payable under all other Commercial Franchise Agreements shall be increased to the same extent and ii) the Rates shall concurrently be increased or decreased in the amount of such increase or decrease in the Franchise Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

B. Subsidy Fee

Contractor shall pay the Subsidy Fee to the City in monthly installments during the Term. The City reserves the right to increase or decrease the Subsidy Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Subsidy Fee, then: i) the Subsidy Fee payable under all other Commercial Franchise Agreements shall be increased or decreased to the same extent; ii) if the Subsidy Fee is increased, the Rates shall concurrently be increased in an amount necessary to fully compensate Contractor for the amount of such increase in Subsidy Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the 90 day notice period; and iii) if the Subsidy Fee is decreased, the Rates shall concurrently be decreased in an amount necessary to offset the reduction in cost to Contractor for the amount of such decrease in Subsidy Fee, in which event the decrease in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

C. Payment of Franchise Fees and Subsidy Fee by Contractor to City

The Franchise Fee and Subsidy Fee for each calendar month ("Subject Month") during the Term and any extensions of the Term shall be paid by Contractor on or before the twenty fifth (25th) day of the following calendar month. The Franchise Fee shall be calculated by Contractor on the basis of the Gross Receipts actually received and collected by Contractor during the Subject Month. Contractor shall provide to City along with the monthly payment a statement of the Gross Receipts, Franchise Fee and Subsidy Fee for such payment, attested to by a representative of contractor as being true and correct. Any Franchise Fee or Subsidy Fee not paid by the date due shall bear interest at seven percent (7%) per annum until paid. Contractor's Gross Receipts, the Franchise Fees, the Subsidy Fee and the calculation thereof and all related financial matters shall be subject to audit and inspection by the City under Sections 7.5 and 8.3 below and contractor shall cooperate fully in all such audits and inspections.

D. No Additional Fees or Charges

The Franchise Fee and the Subsidy Fee shall be the only fee or compensation paid by Contractor to City in connection with the Collection Services and this Agreement and no other license, permit, privilege or other fee, tax or charge shall be imposed by City upon Contractor; provided, however, that nothing in this Section shall modify the obligation of Contractor to pay building permit fees and other similar fees.

3.4 PROVISION OF COLLECTION SERVICES

A. General

The services to be provided by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items necessary to perform all Collection Services, and the payment of all related expenses including all transfer and Disposal fees, processing fees for Recyclable Materials, taxes, utility charges, etc. Contractor shall provide Collection Services using standard industry practice for comparable operations, in accordance with the Scope of Services and Operating Standards.

B. Hours of Collection; Collection Frequency

Collection Services under this Agreement may be performed at any time, seven days a week on any day of the calendar year provided, however, that Collection Services performed in or near areas zoned for residential use and which disturbs the residents may be limited, upon request of City, to the hours of 6 AM to 6 PM. Contractor may reasonably elect to extend the hours of Collection Services operation near residential zones for a limited time if necessary to catch up as a result of service disruptions. Collection Services may be provided by Contractor to Customers on any schedule available on the Scope of Services as requested by each Customer; provided, however, Garbage Collection Services shall be provided no less often than weekly.

3.5 OBLIGATION TO PROVIDE COLLECTION SERVICES; MANDATORY SERVICE

Contractor shall make available Collection Services as provided under this Agreement to all Commercial Customers within its Exclusive Service Area during the Term and any extension of the Term and shall be compensated by the Rates. Each and every person, firm, association, corporation, partnership, business, or other entity conducting any Commercial Activity ("Operator") on or from any premises which generates, accumulates or causes the generation or accumulation of Solid Waste within the Exclusive Service Area of Contractor shall subscribe to the Collection Services of Solid Waste as required herein and/or the Reno Municipal Code and as necessary to properly dispose of all Solid Waste generated or accumulated on such premises. It is presumed that every premises in Contractor's Exclusive Service Area on or from which Commercial Activity is conducted generates, produces or accumulates Solid Waste and is required to subscribe to Collection Services under this Agreement. Notwithstanding anything to the contrary in this Section 3.5, Operators receiving as of October 24, 2012 Exempted Hauler Account Services that constitute Permanent Services shall not be required to subscribe to Collection Services from Contractor, other than collection of Garbage, so long as such Operator shall continue to receive the Exempted Hauler Account Services. Any Operator seeking to be exempt from Collection Services of Solid Waste hereunder must obtain an exemption from the City. To obtain the exemption, the Operator must apply to the Washoe County Health District ("WCHD") and obtain written approval of the WCHD confirming a finding that: i) no Solid Waste, or as to Exempted Hauler Accounts no Garbage, is being generated, produced or accumulated on or from the premises upon which the Operator's Commercial Activity is occurring; and ii) the Operator is not hauling, burying or otherwise disposing of Solid Waste or Garbage in violation of this Agreement, the Reno Municipal Code or other Applicable Law. Commercial Customers are encouraged, but are not obligated, to recycle; provided, however, no Commercial

Customer In Contractor's Exclusive Service Area may allow or retain any person or entity other than Contractor to collect, pickup, transport or deliver Approved Recyclable Materials in violation of Contractor's exclusive right under this Agreement. With the approval of the owner of a premises upon which Commercial Activity is being conducted, a tenant or occupant thereof may subscribe for Collection Services, but the owner shall remain responsible for compliance with all requirements of this Agreement and the Reno Municipal Code.

3.6 OWNERSHIP OF COLLECTION MATERIALS

Ownership of all Collection Materials, upon placement in any Container, shall transfer to Contractor and shall become the property of Contractor. Title to and ownership of all Collection Materials shall transfer from Contractor to the Designated Facility upon delivery of the Collection Materials by Contractor to the Designated Facility and acceptance by the Designated Facility of such Collection Materials.

3.7 CITY COLLECTION SERVICES

The Contractor shall provide the City Collection Services to facilities owned by City at no charge as provided and subject to the limitations in this Section. The City Collection Services shall be provided by Contractor to buildings, parks and similar facilities owned by City for Collection Materials generated in the normal and ordinary course of operation of such facility and does not include: i) Collection of any material that requires special handling, equipment or processing, including without limitation Excluded Materials; ii) Collection from businesses operating for-profit on or from City property; iii) Collection of materials resulting from natural disasters; special events; repair, construction or reconstruction of City facilities or from activities of any subcontractor on City property; iv) access to or disposal at any transfer station, material recovery facility or landfill; or v) any other Collection Services or other services relating to materials generated from any use, activity or cause other than the operation of City owned facilities in the normal ordinary course for such facility. Any Collection Services provided by Contractor to City other than the City Collection Services shall be paid for by City at the established Rates. In the event the cost or value of the City Collections Services exceeds \$712,425 at the Rates specified on the Scope of Services, as adjusted for changes in the CPI, the Rates shall be concurrently increased in an amount necessary to pay the full amount of such increase and City and Contractor shall cooperate in good faith to establish such increase in Rates.

3.8 EMERGENCY SERVICES

In the event that Contractor, for any reason whatsoever, fails, refuses, or is unable to perform the collection, transportation, and delivery requirements of this Agreement for a period of more than five (5) consecutive business days, and if as a result thereof, Solid Waste accumulates in the Exclusive Service Area to such an extent, in such a manner, or for such a time that City reasonably finds that such accumulation endangers or menaces the public health, safety, or welfare, then City shall have the right, but not the obligation, upon twenty four (24) hours prior written notice to Contractor, during the period of such emergency to perform, or cause to be performed, such services itself with its own or other

personnel and equipment without liability to Contractor. Contractor shall collect and shall pay to the City all Rate Revenues applicable to the emergency services provided by City under this Section.

3.9 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.10 CUSTOMER NONCOMPLIANCE

Contractor may refuse to provide some or all Collection Services to Customers and may charge fees and charges as provided herein or the Scope of Services in the event a Customer prevents or impedes Collections or otherwise fails to follow the requirements and procedures under this Agreement or Applicable Law, rules and policies, including without limitation, i) damage caused by Customers to Containers, ii) failure to provide appropriate, unobstructed access to Containers or otherwise position Collection Materials or Containers properly or timely, iii) overloading of Containers or failure of Customer to place Collection Materials solely and completely within the appropriate Container, iv) improper preparation, separation or contamination by Customer of Recyclable Materials, v) mixing by Customer of Excluded Materials with Collection Materials or placing Excluded Materials in a Container for Collection Services; vi) excessive weight or improper Collection Materials placed by Customer in Containers, vii) invalid claims by a Customer of damage caused by Contractor to Customer's property, viii) the need of Contractor to open gates or access long driveway or roadways to provide Collection Services and ix) or other failure of a Customer to comply with the requirements under this Agreement or applicable law, rules and policies. Upon occurrence of such event(s), Contractor may refuse to collect such materials or Container and impose charges or fees, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of such noncompliance and Contractor may take other reasonable actions, including without limitation applying the Snapshot Program and charging a "Snapshot Fee," as described on the Scope of Services. Upon notice by Contractor to Customer and City and failure of Customer to remedy such failure, Contractor may discontinue service to the Customer, in which event Contractor may charge an account deactivation fee (for services including, without limitation, pick up of any containers), and Contractor may impose charges and fees for reactivation of any deactivated accounts. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights and remedies of Contractor or the City under Applicable Law.

3.11 ADOPTION BY CITY OF ORDINANCES AND AMENDMENTS

On or before the Effective Date hereof and thereafter during the Term of this Agreement, City shall adopt and thereafter maintain new or amended ordinances reasonably necessary or appropriate to implement and make enforceable and binding the terms and conditions of this Agreement; provided, however, subject to Contractor's rights under this Agreement, City shall have the right and discretion to adopt and amend ordinances or otherwise exercise its regulatory authority relating to the subject matter of this Agreement.

3.12 ADJUSTMENT OF EXCLUSIVE SERVICE AREAS

On or before the date twelve (12) months after the Effective Date ("Adjustment Termination Date"), in the event Contractor or another service provider under another Commercial Franchise Agreement experiences a deficiency of five percent (5%) or more in permanent Rate Revenues compared to the Contractor's or such service provider's Proportionate Share of total Rate Revenues under all Commercial Franchise Agreements, the Contractor or such other service providers may submit a written request for a one-time Exclusive Service Area boundary adjustment review and adjustment (hereinafter "Request") in accordance with the provisions of this Section 3.12.

A. Requests shall be submitted in writing on or before the Adjustment Termination Date to the City Representative and all service providers under other Commercial Franchise Agreements. The Request shall describe with reasonable specificity the basis on which such Exclusive Service Area boundary review and adjustment is sought. Within fifteen (15) days after the Request, the other service providers will submit in reasonable detail a complete record of their Rate Revenues, Customer lists and all other information requested by the requesting party or City and related to the establishment of the Exclusive Service Area boundaries.

B. Within thirty (30) days after the Request, the City, Contractor and all other service providers will meet and discuss cooperatively and in good faith to determine if the actual permanent Rate Revenues generated in each Exclusive Service Area under the Commercial Franchise Agreements are in proportion to the respective Proportionate Share of Contractor and each other service provider, using the same methodology employed in originally establishing the Exclusive Service Areas. In the event the City Representative determines the actual permanent Rate Revenues of Contractor or other service provider is less than ninety five percent (95%) of the estimated permanent Rate Revenues used to initially establish the Exclusive Service Area boundaries for such party, the City, Contractor and other service providers will negotiate cooperatively and in good faith to adjust the Exclusive Service Area boundaries to accurately provide to each of Contractor and the other service providers their respective Proportionate Share of the total actual permanent Rate Revenues. If the City, the Contractor and other service providers cannot agree within thirty (30) days on an appropriate adjustment of the Exclusive Service Area boundaries, the City Representative shall issue in writing within thirty (30) days thereafter his finding ("Finding") of the appropriate adjustment to the Exclusive Service Area boundaries. The Contractor and other service providers shall have thirty (30) days from the issuance of the Finding to appeal the Finding to the Reno City Council. If no appeal is filed with the City Council within such thirty (30) day period, the Finding shall be final and the Exclusive Service Areas will be adjusted as provided in the Finding. The decision by the City Council on appeal under this Section 3.12 shall be final and binding on the Contractor and all other service providers and all such parties hereby waive any right to appeal the decision of the City Council. The failure or refusal of the Contractor or any service provider to participate and cooperate in good faith in the discussion and negotiations required under this Section 3.12 shall not defeat or render invalid the Finding by the City Representative or the decision on appeal to the City council under this Section 3.12, and both shall be binding and enforceable in all respects. In the event an adjustment to the Exclusive Service Area boundaries occurs under this Section 3.12, this

Agreement and other Commercial Franchise Agreements will be amended to reflect such adjustments and the City Representative is expressly delegated the authority to execute such amendments.

3.13 IMPLEMENTATION OF COLLECTION SERVICE AGREEMENTS; TRANSITION; QUALIFIED SERVICE CONTRACTS

Contractor currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in Contractor's Exclusive Service Area and will continue to do so after the Effective Date and until Implementation of the Collection Services under this Agreement. Contractor also currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in areas of the City other than Contractor's Exclusive Service Area. Subject to the commencement of collection services to such customers by other service providers under the other Commercial Franchise Agreements, Contractor will cease collection services in the exclusive service areas of the other service provider under the other Commercial Franchise Agreement. Contractor, City and the service provider(s) under the other Commercial Franchise Agreement will cooperate in good faith to implement the orderly and efficient transfer of accounts and transition to and commencement of exclusive franchise Collection Services under the Commercial Franchise Agreements in the City, as more fully provided in this Section 3.13.

A. Collection Services in Contractor's Exclusive Service Area; Qualified Service Contracts

Contractor will commence the Implementation of Collection Services as required by this Agreement in Contractor's Exclusive Service Area within One Hundred Twenty days (120) days after the Effective Date and will exercise reasonable diligence to complete the Implementation of Collection Services on or before the Operative Date. If Commercial Customers in Contractor's Exclusive Service Area are a party to a "Qualified Service Contract" (as defined below) as of the Effective Date, Contractor will provide Collection Services to such customers i) at the lesser of a) the Rate for such service provided under this Agreement or b) the rate or charge provided in the Qualified Service Contract; provided that the rate or charge shall not be less than seventy five percent (75%) of the Rate under this Agreement for the same or similar service ("Transition Rate") and ii) the length of the term of Collection Services provided at the Transition Rate to such Commercial Customers ("Transition Term") shall be the longer of a) the initial or base term provided in the Qualified Service Contract (without renewal, rollover or other extensions of such term) or b) the period ending January 1, 2015. For purposes hereof, a "Qualified Service Contract" means a binding service contract with a commercial customer for the collection and transportation in the City of Solid Waste or Approved Recyclable Materials, or both, dated on or before October 24, 2012, by any service provider properly licensed to collect and transport such materials in the City, excluding Exempted Hauler Accounts.

B. Collection Services In other Exclusive Service Areas

Upon commencement of collection service to a commercial customer by another service provider in the other exclusive service area under the other Commercial Franchise Agreement, Contractor shall cease collection services to such customer. The service provider(s) under the other Commercial Franchise Agreements i) shall commence collection services under such Commercial Franchise Agreements within

one hundred twenty (120) days after the Effective Date and will exercise reasonable diligence to complete the Implementation of such collection services on or before the Operative Date and ii) will charge the Transition Rates to each commercial customer located in the service provider's exclusive service area who is a party to a Qualified Service Contract as provided in Section 3.13 (A) above.

C. Temporary Adjustment of Franchise Fees

City and Contractor acknowledge that the Rates provided on the Scope of Services have been established in an amount sufficient to pay Contractor's cost of Collection Services hereunder and that the Transition Rates applicable to Qualified Service Contracts and Transition Accounts, which will be less than in Rates specified on the Scope of Services, will not provide sufficient Rate Revenue to pay the Franchise Fee. Accordingly, City and Contractor agree that no Franchise Fee will be payable by Contractor to City on Rate Revenues derived from Qualified Service Contracts or Transition Accounts.

D. Transition of Collection Services, General Terms

Each service provider under each Commercial Franchise Agreement will be a third party beneficiary of the terms and conditions of this Section 3.13 and similar provisions under the other Commercial Franchise Agreement. Contractor and the other service providers may exchange, borrow or subcontract for the use of the other's Containers during the Transition Period and the Container identification requirements shall not apply to such Containers during such use.

ARTICLE 4

SCOPE OF SERVICES

4.1 SOLID WASTE COLLECTION SERVICES

Contractor shall provide Collection Services of Solid Waste to Commercial Customers in Contractor's Exclusive Service Area and will provide to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of the Collection Services for Solid Waste shall be offered to Customers by Contractor as provided on the Scope of Services; provided, however, that Collection Services of Garbage shall be provided not less often than Weekly.

4.2 SINGLE STREAM RECYCLING COLLECTION SERVICES

Contractor shall offer Collection Services of Single Stream Recycling for Source Separated Recyclables to Commercial Customers in Contractor's Exclusive Service Area on a subscription basis and will offer to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of Collections Services for Source Separated Recyclables shall be on the request of each Customer. Customers are encouraged to but are not required to subscribe to Collection Services from Contractor of Source Separated Recyclables or other recycling services. Collection Services shall include only Source Separated Recyclables and each

Customer who recycles shall be responsible for separating its Approved Recyclable Material from all other materials, including without limitation Garbage, Excluded Material and Solid Waste other than Approved Recyclable Material, and placing only Approved Recyclable Materials in Recycling Containers provided by Contractor. Recycling Containers shall be used only for Source Separated Recyclables and no other materials of any kind may be placed in Recycling Containers. City, Contractor and other service providers under Commercial Franchise Agreements may agree to change the Recyclable Materials constituting the Approved Recyclable Materials, in which event the Approved Recyclable materials shall change for this Agreement and all other Commercial Franchise Agreements. Contractor may refuse to collect Recyclable Materials not separated and placed for Collection by Customer as required herein and may charge fees or other charges for Improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Recyclable Materials placed for Collection which is mixed with more than a de minimis amount of material other than Approved Recyclable Materials.

4.3 FOOD WASTE RECYCLING

The Contractor may at Contractor's election offer Collection Services of Source Separated Food Waste to Commercial Customers within Contractor's Exclusive Service Area, on a subscription basis. If Contractor develops a Source Separated Food Waste Recycling or collection service program, Contractor will have the exclusive right to provide such services in its Exclusive Service Area, at rates to be mutually agreed upon by the Contractor and the City and added to the Scope of Services as an amendment, and Contractor will provide separate Containers suitable for Food Waste as determined appropriate by Contractor for such service. Customers are not required to subscribe to Food Waste Recycling Collection Services. Collection Services of Food Waste shall include only Food Waste and each Customer shall be responsible for properly separating the Food Waste from all other materials, including without limitation other Source Separated Recyclables, Garbage and Excluded Material, and placing the Food Waste only in Recycling Containers designated by Contractor for Food Waste. Recycling Containers designated by Contractor for Food Waste shall be used only for Food Waste and no other materials of any kind may be placed in Recycling Containers designated for Food Waste. Contractor may refuse to collect Food Waste not separated and placed for Collection as required herein and may charge fees or other charges for Improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Food Waste placed for Collection which is mixed with more than a de minimis amount of material other than Food Waste.

4.4 DELIVERY OF COLLECTION MATERIALS TO DESIGNATED FACILITIES; DISPOSAL AGREEMENT

Contractor acknowledges that the City has entered into a long term Solid Waste Transfer and Disposal Agreement with Refuse, Inc., a Nevada corporation ("Designated Facility Owner"), to provide the City with an environmentally sound and cost effective solution for the transfer, processing, handling, recycling, and Disposal of certain Solid Waste and Recyclable Materials (the "Disposal Agreement"). Contractor shall deliver all Collection Materials, excluding Exempted Facility Materials delivered at the election of a Franchised Hauler to the Exempted Facility, that Contractor collects within the Exclusive Service Area to a Designated Facility which has been designated by the City pursuant to and in

accordance with the requirements of the Disposal Agreement. Capitalized terms used but not defined in this Section 4.4 have the meaning provided in the Disposal Agreement. Contractor hereby agrees to the "Franchise Hauler Terms" (as defined in the Disposal Agreement), including without limitation the following terms and conditions in this Section 4.4, which terms and conditions are also included in the Disposal Agreement:

A. Delivery of Approved Disposal Materials

Beginning on the Effective Date and throughout the term of this Agreement, subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor will deliver all Approved Disposal Materials collected, handled or transported under the City Franchise Agreements to the Designated Facilities in accordance with the terms and conditions hereof and the Disposal Agreement. Subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor shall deliver i) all Solid Waste to the designated Transfer Station, unless the Designated Facility Owner directs the Solid Waste be delivered to another Designated Facility and ii) all Approved Recyclable Material to the MRF, unless the Designated Facility Owner directs the Approved Recyclable Material be delivered to another Designated Facility. No Approved Disposal Materials shall be delivered to the Disposal Site by Contractor without the prior express approval of the Designated Facility Owner. No person or entity other than the Designated Facility Owner shall be allowed or entitled to accept the Approved Disposal Materials for processing, recycling or disposal except as expressly provided under Section 4.4 L and the Disposal Agreement. Notwithstanding anything in this Section 4.4 (A) to the contrary, i) Contractor shall be entitled to deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste to Disposal facilities other than the Designated Facilities, ii) Disposal facilities other than the Designated Facilities shall be entitled to accept from the Contractor (a) Excluded Materials; (b) Exempted Drop Box Materials; (d) Exempted Hauler Account Materials; (e) Food Waste and (f) Green Waste for processing or recycling and iii) Contractor shall be entitled to deliver to the Exempted Facility, and the Exempted Facility shall be entitled to accept, process, recycle and dispose, Exempted Facility Materials. Except as provided in this Section 4.4 A, Contractor may not, directly or indirectly through other persons or otherwise, perform or conduct any processing, sorting, separating, and/or disposal or other activities regarding the Collection Materials, and it is expressly understood that Contractor's Collection Services hereunder are limited to Collecting the Collection Materials and delivering them to the Designated Facilities; provided, however, nothing in this Agreement or the Disposal Agreement shall be interpreted to prohibit or prevent Contractor from directly or indirectly owning and operating a transfer station, disposal facility, materials recovery facility or similar facility that accepts and to which Contractor may Collect and deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste, for processing or recycling.

B. No Excluded Materials; Screening of Materials

Contractor will deliver only Approved Disposal Materials of the type appropriate for the Designated Facility to which the materials are delivered and otherwise in accordance with the terms of the Disposal Agreement. No Excluded Materials will be delivered to any Designated Facility by Contractor except with

the prior written and informed approval of the Designated Facility Owner. The Contractor will exercise industry standard, reasonable efforts to screen all materials to i) screen and verify only Approved Recyclable Materials are delivered for Recycling and ii) screen and remove all Hazardous Waste and other Excluded Materials from the materials delivered to the Designated Facilities. Except as provided in Section 4.4 F hereof, ownership of Hazardous Waste and other Excluded Materials shall not transfer to the Designated Facility Owner unless the Designated Facility Owner shall expressly and knowingly accept such ownership in writing and the Designated Facility Owner shall not be responsible for any Hazardous Wastes or other Excluded Materials delivered to a Designated Facility in violation of this Agreement.

C. Payment of Rates and Charges by Contractor

The Contractors will pay the Rates (as defined in the Disposal Agreement), as adjusted, and other charges, to the Designated Facility Owner in accordance with the Disposal Agreement.

D. Limited License

Contractor shall have a limited license to enter the Designated Facilities for the sole purpose of unloading Approved Disposal Materials at an area designated, and in the manner directed, by the Designated Facility Owner.

E. Compliance by Contractor

Contractor and its employees, subcontractors, or other agents shall comply with: i) Applicable Law related directly or indirectly to the delivery to and Disposal of materials at the Designated Facilities, including without limitation the ordinances of the City, ii) all rules and regulations of the Designated Facilities of which Contractor has not less than thirty (30) days prior written notice, including without limitation rules relating to safety, acceptance, rejection or revocation of acceptance of materials, hours of operation, measuring and reporting volumes of Approved Disposal Materials delivered to the Designated Facilities and iii) all Franchise Hauler Terms in the Disposal Agreement.

F. Inspection and Rejection of Materials by Designated Facility Owner

The Designated Facility Owner shall have the right to inspect, analyze or test any material delivered by Contractor to any Designated Facility. The Designated Facility Owner shall have the right to reject, refuse or revoke acceptance of any material if, in the reasonable opinion of the Designated Facility Owner, the material or tender of delivery fails to conform to, or Contractor fail to comply with, the terms of the Disposal Agreement, including without limitation as a result of delivery of Excluded Material. In the event the Designated Facility Owner, by notice to Contractor, rejects or within ten (10) business days of receipt revokes acceptance of materials hereunder, the Contractor shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from the Disposal Facilities property or control. If the rejected material is not removed within three (3) days from receipt of notice, the Designated Facility Owner shall have the right and authority to handle and dispose of the rejected material or Excluded Material in any commercially reasonable manner determined by the Designated Facility Owner. The Contractor shall pay and/or reimburse the Designated Facility Owner for any and all costs,

damages and/or fines incurred as a result of or relating to the tender or delivery of the rejected material or Excluded Material or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of the rejected material or Excluded Material. Title to, ownership of and liability for Excluded Material shall transfer to Contractor unless such Excluded Material is rejected or the acceptance of which is timely revoked. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for delivery of Contaminated Recyclable Materials, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

G. Franchise Hauler Noncompliance

The Designated Facility Owner may suspend on prior written notice some or all Disposal Services to Contractor in the event Contractor fails to comply with the requirements applicable to Contractor in this Agreement or the Disposal Agreement or otherwise fails to follow the requirements and procedures under this Agreement, the Disposal Agreement or Applicable Law, rules and policies, including without limitation, i) improper preparation, separation or contamination of Solid Waste or Approved Recyclable Materials, ii) delivery of Excluded Materials to a Designated Facility; or iii) other failure of a Contractor to comply with the requirements under this Agreement or Applicable Law, rules and policies of which the Designated Facility Owner has provided Contractor reasonable prior notice. Upon occurrence of such event(s), the Designated Facility Owner may charge fees and charges as provided in the Disposal Agreement or otherwise approved by City, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of and damages from such noncompliance. Upon notice of such a failure by the Designated Facility Owner to the Contractor and the City and failure of the Contractor to remedy such failure within thirty (30) days, the Designated Facility Owner may suspend Disposal Service to Contractor. The Contractor shall be reinstated on the first business day following the date upon which any such failure has been corrected. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights or remedies of the Designated Facility Owner under this Agreement, the Disposal Agreement or applicable law.

H. Time of Delivery

The Designated Facility Owner shall provide identical access and parity of use to the Transfer Station, the MRF, the Eco-Center, and any alternative facilities designated pursuant to Section 4.4 I for each Franchise Hauler for delivery and unloading of Solid Waste and Approved Recyclable Materials (including incidental residue) at such facilities. Except where either or both the days and hours of operation for such facilities have been changed upon thirty (30) days prior written notice, such facilities shall be open for each and all of the Franchise Haulers every day of the week between the hours of 5:00 AM and 10:00 PM. Subject to compliance with the notice requirements of this Section 4.4 H, operational and delivery hours may be adjusted by the Designated Facility Owner and approved by City. The Designated Facility

Owner shall have the right to adjust the operating hours of the Designated Facilities to the extent reasonably necessary in the event of an emergency.

I. Alternative Facilities

During the Term of this Agreement, the Designated Facility Owner may designate alternative facilities for the receipt, processing, transfer, or disposal of Collection Materials, Green Waste and Food Waste, provided such alternative facilities do not result in an increase in Rates or material increase in costs to Contractor and Contractor will deliver such materials to the alternative facilities as directed by the Designated Facility Owner. If the Designated Facility Owner designates an alternative facility, unless the alternative facility is required to pay the Host Fee to the City, the Designated Facility Owner shall pay or cause to be paid the Host Fee payable under the Disposal Agreement and applicable to any Approved Disposal Materials delivered to the alternative facility. Upon the approval of City, the Designated Facility Owner may cause or allow Disposal Materials to be delivered to the City waste water treatment plant, in which event no Host Fee, tipping fee or other fee will be payable to City for or on such materials. Nothing in this Section 4.4 I shall limit the right of a Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility or the right of the Exempted Facility to accept, process, recycle or dispose of Exempted Materials under Section 4.4 L hereof.

J. Ownership of Disposal Materials

Ownership of all Approved Disposal Materials, upon delivery to and acceptance by a Designated Facility, shall transfer to the owner or operator of the Designated Facility and shall become the property of the Designated Facility Owner.

K. Third Party Beneficiary

The Designated Facility Owner shall be a third party beneficiary of this Agreement with all rights and remedies to enforce the Franchise Hauler Terms and other terms, covenants and conditions under this Agreement.

L. Exemption for Exempted Facility Materials

1. Subject to the Exempted Facility Material Limit and otherwise as provided in this Section 4.4 L, i) the requirement and obligation of the Contractor to deliver all Collection Materials to a Designated Facility shall not include or apply to Exempted Facility Materials delivered by Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials.

2. The Exempted Facility shall file with the City a quarterly report, in form required by the City and certified true, correct and complete by an owner or officer of the Exempted Facility, consistent with the obligations of the Exempted Facility under Section 4.4 L 7 hereof, stating i) the volume of all Solid Waste and Recyclable Materials, including without limitation the type and volume of Exempted Facility

Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials accepted, processed, recycled and disposed during the calendar quarter and ii) such other information the City may require.

3. The Exempted Facility shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 4.4 L, the rights of the Exempted Facility under this Section 4.4 L. Sections 4.4 L and 3.2 D 6 shall not be amended in a manner that would terminate, limit or restrict i) the right of any Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility, or ii) the right of any Exempted Hauler to deliver Exempted Drop Box Materials or Exempted Hauler Account Materials to the Exempted Facility as provided under Section 3.2 D 6 hereof, or iii) the right of the Exempted Facility to accept, process, recycle or dispose of the materials delivered under Sections 4.4 L 3 i) and ii) hereof, without the prior written consent of the Exempted Facility, which the Exempted Facility may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 4.4 L shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Facility Materials.

4. The rights of the Exempted Facility under this Section 4.4 L may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary for the acceptance, processing, recycling and disposal of the Exempted Facility Materials and the Exempted Facility owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Facility. If the Exempted Facility shall dissolve or otherwise cease business for a period equal to or more than one (1) year, the rights of the Exempted Facility under this Section 4.4 L shall terminate.

5. The Exempted Facility shall pay to the City in quarterly installments a host fee equal to two and one-tenth cents (\$0.021) for each cubic yard of all Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Materials that are accepted, processed, recycled or disposed at the Exempted Facility. The host fee payable under this Section shall be increased in proportion to changes in the Host Fee payable by the Designated Facility Owner under the Disposal Agreement.

6. The Exempted Facility shall be in default hereunder if the Exempted Facility shall i) fail to timely pay the host fee or fail to timely file with the City the reports, each as required under this Section 4.4 L, ii) accept, process, recycle or dispose of Exempted Facility Materials totaling in excess of one hundred five percent (105%) of the Exempted Facility Materials Limit for the Exempted Facility, iii) accept, process, recycle or dispose of Exempted Facility Materials more than the Exempted Facility Material Limit on two occasions in any consecutive five (5) year period, or iv) otherwise materially fail to comply with this Section 4.4 L. Upon thirty (30) days written notice of default by City and the failure of the defaulting Exempted Facility to cure such default, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the right to terminate the rights under this Section 4.4 L of the defaulting Exempted Facility.

7. The Exempted Facility will exercise industry standard, reasonable efforts to screen materials received from the Exempted Haulers and the Franchised Haulers to identify Exempted Facility Materials,

Exempted Drop Box Materials, Exempted Hauler Account Materials and other materials in order to i) prepare and file the reports required to be filed with the City under this Section 4.4 L, II) comply with the Exempted Facility Materials Limit, III) pay the host fee required under this Section 4.4 L and otherwise comply with the requirements of this Section 4.4 L.

4.5 SPECIAL SERVICES

In addition to and separate from Collection Services, Contractor may voluntarily offer certain "Special Services" within the City; provided, however, Contractor shall not violate the exclusive right of another service provider under any other Commercial Franchise Agreement. Contractor is not required under this Agreement to provide Special Services, but may elect to do so. Examples of such optional Special Services include: i) on-call Bulky Items pick-up or side-yard services for Customers; ii) the lease, sale and maintenance of Compactors; iii) provision of Compactors or Containers placed in Community Collection Locations for use of more than one customer on terms agreed to by Contractor and the collection, transportation and delivery of Collection Materials deposited in such Compactors or Containers; and iv) collection, transportation, delivery or other services related to Excluded Materials, Exempted Drop Box Materials and Excluded Recyclable Materials which have been Source Separated from other Solid Waste. It is anticipated that the additional Special Services (if any) that Contractor may elect to offer and the fees and charges for the Special Services will not be uniform with services or fees or charges offered by service providers under the other Commercial Franchise Agreements. Contractor may provide Special Services in the manner and at rates, fees and charges in an amount determined by Contractor, which shall not be included in the Gross Receipts. Contractor shall, however, maintain in full force and effect throughout the term of this Agreement a current business license from the City as it relates to provision of Special Services.

ARTICLE 5 OPERATIONS

5.1 CUSTOMER INFORMATION AND PUBLIC EDUCATION

Contractor is responsible for the distribution, preparation, reproduction and mailing of educational information kits for new Customers which describe Contractor's Collection Services, including without limitation information about the various available Containers, Rates, charges, and Single Stream Recycling of Source Separated Recyclables and related Customer responsibilities. Contractor shall distribute the information kits to Customers and shall provide notice to Customers of its commencement of Collection Services under this Agreement at least thirty (30) days prior to the commencement of Collection Services to the Customer.

5.2 CUSTOMER SERVICE

Contractor shall maintain and provide to all Customers a telephone number for Customer service, and shall provide all telephonic services specified in this Section 5.2. Contractor shall install and maintain telephone equipment, and shall have on staff a sufficient number of dedicated service representatives reasonably necessary to handle customer service calls. Such dedicated customer service representatives

shall be available to answer calls from 8 A.M. to 5 P.M, Monday through Friday. Contractor shall also maintain an after-hours telephone message system to record calls received outside Contractor's normal business hours. Contractor shall provide the City a means of contacting a representative of the Contractor on a twenty-four (24) hour basis.

5.3 SERVICE COMPLAINTS

Contractor shall maintain computer records of all oral and written service complaints registered with Contractor from Customers receiving Collection Services ("Complaint Record"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints as provided in Section 5.4 hereof. Contractor shall record the Complaint in the customer file contained in the Contractor's customer database, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. City has the right under this Agreement to inspect the Complaint's made against Contractor upon written request.

5.4 OMBUDSMAN; COMPLAINT RESOLUTION

A. Contractor shall designate and maintain an Ombudsman for the duration of this Agreement. Contractor shall notify the City of the name and title of the person serving as Contractor's Ombudsman. The Ombudsman must be a company official who does not directly or indirectly report to any person who manages the Collection Services, or any Customer account, on a day-by-day basis. On an ongoing basis, Contractor shall immediately notify the City when an Ombudsman is replaced.

B. If, for any reason, a dispute arises between Contractor and a Collection Services customer that is not resolved between Contractor and the Customer to the City's reasonable satisfaction, the City, at its sole option, may I) submit the dispute to the Ombudsman who shall ensure that the matter is formally reviewed, considered, and resolved and/or responded to by the Contractor within seven (7) days or II) make a determination of the dispute resolution without submitting the Ombudsman. If the Ombudsman shall not resolve the dispute to the City's reasonable satisfaction, the City may make a determination of the dispute resolution. The determination by the City of all Collection Services customer disputes shall be final and binding on Contractor and the customer. This Section 5.4 shall not apply to disputes between Contractor and any customer for customer account obligations or the payment or collection thereof.

C. This Section 5.4, however, does not in any way legally obligate the City to submit a dispute to the Ombudsman as a condition precedent to enforcing its rights hereunder in law or in equity, including the right to seek damages for breach, a decree of specific performance, injunctive relief or any other remedy that would be available to the City in the event of a breach, or threatened breach, of any provision of this Agreement by the Contractor, or any of the Contractor's successors or assigns.

5.5 HAZARDOUS AND OTHER EXCLUDED MATERIALS; CONTAMINATION OF APPROVED RECYCLABLE MATERIALS

A. General

If Contractor determines that waste placed in any Container for Collection or delivered to any facility is Hazardous Waste, Medical and Infectious Waste, or other Excluded Materials, in addition to all other rights available under this Agreement or at law or equity, Contractor shall have the right to refuse to accept such waste and to proceed as provided under his Agreement. Customer shall be contacted by Contractor and requested to arrange proper disposal. If Customer cannot be reached immediately, Contractor staff shall, prior to leaving the premises, leave a tag on the top of the Container indicating the reason for refusing to collect the waste.

B. Ownership of and responsibility for Hazardous Waste or other Excluded Material

Notwithstanding anything in this Agreement to the contrary, ownership of Hazardous Waste and other Excluded Materials shall not transfer to Contractor unless Contractor shall knowingly accept for collection and contract expressly in writing to accept, collect and transport such material. All such material shall remain the property of the Customer placing or attempting to place such material for Collection or disposal, and such Customer shall remain solely responsible for such materials, the proper and legal transportation and disposal thereof, the retrieval of such materials from any location (including without limitation a location to which Contractor may have transported them), and for any and all damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the generation, transportation, handling, cleanup, remediation or disposal of such materials.

C. Contamination of Approved Recyclable Materials

Approved Recyclable Materials mixed with I) more than a de minimis amount of Garbage, II) ten percent (10%) or more of materials other than Approved Recyclable Materials, or III) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for Contaminated Approved Recyclable Materials placed in any Recycling Container, may charge for and disposed of such contaminated materials as Solid Waste, and may refuse to Collect such Contaminated materials.

5.6 PERSONNEL

Contractor shall furnish qualified drivers, mechanical, supervisory, clerical and other personnel as necessary to provide the Collection Services required by this Agreement in a safe and efficient manner and otherwise as provided in the Operating Standards.

5.7 VEHICLES AND EQUIPMENT

Contractor shall procure, maintain and replace a sufficient number of industry standard collection vehicles and other equipment to properly provide the Collection Services. All vehicles used in the performance of Collection Services I) shall be maintained in an operational, clean and sanitary manner to industry standards, II) shall have appropriate safety markings and lights in accordance with current statutes, rules and regulations, III) shall not allow liquid wastes to leak from the vehicle, IV) shall be

labeled with signs which clearly indicate the vehicle inventory number and customer service number of Contractor v) shall be painted a uniform color, provided Solid Waste collection vehicles and Recyclable Material collection vehicles may use different paint and color schemes and vi) shall be equipped with properly licensed two-way communication equipment. The Contractor shall maintain a base station or have communication equipment capable of reaching all collection vehicles.

5.8 CONTAINERS

A. Container Requirements and Ownership

The Contractor shall procure, maintain, own and provide to Customers a sufficient quantity of Containers to provide the Collection Services. Without the prior written consent of Contractor, which Contractor may withhold in its sole discretion, Customers shall not provide their own containers and shall use only Containers provided by Contractor for Collection Services; provided, however, Customers may provide Compactors for Collection Services performed by Contractor, which Collection Services may be provided for in the Scope of Services and Rates, provided such Compactors are compatible with Contractor's collection equipment. Contractor shall not be responsible for damage to any Compactors except to the extent caused by the gross negligence or intentional misconduct of Contractor.

Any Container damaged or missing on account of accident, act of nature or the elements, fire, or theft or vandalism by persons other than the Customer such that the Container does not comply with the requirements under this Agreement shall be repaired or replaced by Contractor at Contractor's cost within a reasonable time after request by Customer. Customers shall properly care for Containers provided for Customer's use, shall use reasonable efforts to protect such Containers from graffiti or negligent or intentional misuse, and shall not use such Containers for other than their intended purpose. In the event a Customer damages or requests a replacement Container as a result of Customer's damage, lack of reasonable care or intentional misuse, the Contractor may charge the Customer the reasonable cost of replacement of the Container, including a reasonable pickup and delivery charge. Containers shall be located on the Customer premises in a manner required hereunder and under applicable law, rules and policies and otherwise in a location providing appropriate access to the Container by Contractor and allowing safe and efficient collection by the Contractor. Containers shall not be placed by Contractor or Customer in any City Public Street. Ownership of all Carts and other Containers shall remain with Contractor at all times, except for Compactors provided by Customer.

B. Weight Limits of Containers

Cart weight, including all Collection Materials therein, shall not exceed sixty (60) pounds for the thirty five (35)-gallon size, one hundred-twenty (120) pounds for the sixty four (64)-gallon size and one hundred-eighty (180) pounds for the ninety six (96)-gallon size. No specific weight restrictions apply to Bins or Drop-Boxes, provided, however, the Contractor shall not be required collect, lift or remove any Container i) exceeding the safe working capacity of the collection vehicle as determined by Contractor or ii) which would cause the vehicle carrying the Container to exceed legal road weights.

C. Loading Containers: Access to Containers

All Collection Material must be placed by Customers i) only in Containers provided Contractor, ii) completely within the Containers provided by Contractor, such that the lid or other closure on such Container closes completely and iii) only in Containers designated for the type of Collection Material deposited in such Container. No Collection Materials may be placed for collection by Customer except in a Container provided by Contractor, including without limitation in Customer-supplied or other containers, in bundles or placed outside an appropriate Container. Customer must provide unobstructed, efficient access by Contractor to all Containers in a location approved by Contractor.

5.9 SPILLAGE

Contractor shall exercise reasonable efforts to keep Collection Materials collected by the Contractor completely contained in Containers and collection vehicles. Hoppers and tippers on all collection vehicles shall be operated in a reasonable manner so as to minimize blowing or spillage of materials. Spillage of materials caused by Contractor shall be promptly cleaned up by the Contractor at Contractor's expense to the extent reasonably possible and necessary. However, it is understood that wind conditions in the Truckee Meadows make it impossible for the Contractor to prevent the blowing of all material. All vehicles used for Collection Services shall carry spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials reasonably sufficient to contain, control and, for minor events, appropriately clean-up any spillage or release of wind-blown materials, litter, or leaks of Contractor vehicle fluids or leachate.

5.10 CONTRACTOR PLANNING ASSISTANCE

The Contractor shall, upon request, make available a reasonable amount of site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the Contractors Exclusive Service Area, and shall address the ability of Contractor to provide service in the Collection areas. Contractor will not charge for normal and reasonable site planning services. Contractor may charge a reasonable fee for will-serve letters.

5.11 SAFEGUARDING PUBLIC AND PRIVATE FACILITIES

The Contractor shall exercise reasonable efforts to protect public and private improvements, facilities and utilities whether located on public or private property, including street Curbs. If such improvements, facilities, utilities or Curbs are damaged due to the negligence or intentional misconduct of Contractor, the Contractor shall repair or replace the same. However, Contractor shall not be responsible for damage caused to persons or to public or private property to the extent caused by either or both i) the negligent or intentional acts of a Customer or others and ii) the failure of the Customer property to meet or comply with the requirements of this Agreement and applicable laws, rules and policies, including without limitation the failure of the Container enclosure, approach surface or surrounding area to meet industry standards.

5.12 INCLEMENT WEATHER, CONSTRUCTION AND OTHER SERVICE DISRUPTIONS

When weather, construction or other conditions reasonably prevent or impair Collection Services, Contractor may make reasonable adjustments to the Collection Services, including without limitation postponing Collection until the following regularly scheduled Collection, but shall continue Collection Services to the extent reasonably safe and efficient. No credits or refunds will be provided for missed Collections or other service limitations beyond the reasonable control of contractor. The Contractor shall notify the City of its collection plans and outcomes for each day that severe inclement weather is experienced as soon as practical that same business day.

5.13 VEHICLE DRIVE IN SERVICE

The Contractor shall offer drive-in service, at additional charge, to Customers' property that allows safe access, turn-around space, and clearance for service vehicles. Customers located in an area that does not allow safe access, turn-around or clearance for service vehicles will be provided service if Collection Materials are placed adjacent to the nearest public street or private road that provides safe access in a location approved by Contractor. In the event the Contractor determines a private road or drive cannot be safely negotiated or that providing drive-in service for Customers is impractical due to distance or unsafe conditions, the Contractor will evaluate on-site conditions and make a determination of its preferable approach for providing safe and appropriate service to the Customer. Contractor may require a damage waiver agreement or, upon 30 days prior written notice to the Customer and the City, decline to provide service to Customers where Contractor determines impractical or unsafe.

ARTICLE 6 CUSTOMER RATES

6.1 RATES

A. General Provisions

Contractor shall charge and collect from Customers for Collection Services the Rates provided on the Scope of Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services; provided, however, Contractor shall be entitled to charge other fees and charges for Special Services and other services and may charge other fees and charges for Customer noncompliance as provided in Section 3.10. If a Designated Facility refuses to accept Approved Recyclable Materials, Contractor may collect and deliver such materials for Disposal as Solid Waste and may charge the Rate applicable to Solid Waste for such Collection Services.

6.2 ADJUSTMENT OF RATES

A. CPI Rate Adjustment

Subject to the terms, conditions and limitations of this Section 6.2 A, the Rates, excluding Transition Rates, for all Collection Services shall increase annually during the Term and all Extension Terms in proportion to the percentage increase in the CPI over the preceding year, as provided below ("CPI

Adjustment"). Adjustments to the Rates shall be made in units of One Cent (\$0.01) and fractions thereof shall be rounded to the nearest cent.

The first annual CPI Adjustment of the Rates shall occur April 1, 2014 (such date and each anniversary thereof during the Term, an "Adjustment Date"). The Rates shall be increased in proportion to the percentage increase in the CPI over the most recent twelve (12) month period ending on December 31 of the year preceding the Adjustment Date. In determining the CPI increases, Contractor may elect to increase the Rates applicable to particular or specific services or groups of services by more or less than the CPI, so long as the total increase in the Rates for all Collection Services is less than or equal to the increase in the CPI; provided, however, Contractor and City shall cooperate in good faith to determine the exact amount and allocation of such increases. The Contractor's calculations of the CPI Adjustment and the Return on Revenues described below shall be i) based on financial statements of Contractor which form a part of the financial statements of the parent company of Contractor (which parent's financial statements have been audited by an independent certified public accountant or accounting firm), ii) certified true, correct and complete by the Contractor Representative and iii) provided to the City no later than March 15 of the year of the Adjustment Date. The adjusted Rates shall take effect on the Adjustment Date and shall apply for the ensuing year. If the CPI is changed or discontinued, it will be replaced by an index that would achieve as closely as possible to the same result as if the CPI had not been changed or discontinued.

The CPI Adjustment to the Rates shall be subject to the following limitations:

- i) The CPI shall not be less than zero percent (0%) or more than six percent (6%); and
- ii) Commencing with the Adjustment Date occurring on April 1, 2017, in the event the annual Return on Revenue of Contractor for the three consecutive calendar years immediately preceding the Adjustment Date averages more than eight percent (8%) ("Return on Revenue"), using a three year rolling average, no CPI Adjustment shall apply to the Rates for the year in which such Adjustment Date occurs.

For purposes hereof, "Return on Revenues" shall mean net income divided by gross revenues and expressed as a percentage. Net income is determined by deducting from gross revenues all expenses, which expenses include federal income taxes. Return on Revenue shall be calculated by Contractor in accordance with generally acceptance accounting principles, consistently applied, and otherwise in a manner substantially similar to the calculation of rate increases used under the Existing RFA (as defined in Section 11.23 hereof). The Rates of both service providers under both of the Commercial Franchise Agreements shall increase in the amount and at the time the Rates of Reno Disposal increase.

The service provider under the other Commercial Franchise Agreement is a third party beneficiary of this Section 6.2 A as provided in Section 6.2 A i) of the other Commercial Franchise Agreement.

B. Other Adjustments to Rates

Because the Rates are Contractor's sole compensation for the Collection Services, the Rates must be sufficient to pay known and unknown costs that may increase over time. Accordingly, City and Contractor agree that, in addition to the CPI Adjustment and the other adjustments under this Section, the Rates shall be increased ("Rate Adjustment") in an amount necessary to compensate Contractor for:

1. Increases in costs or expenses resulting from a Change in Law, Change in Scope of Services or increase in City Collection Services;
2. Increase in the Franchise Fee, Subsidy Fee or other fees required, initiated or approved by City or another federal, state or local governmental agency;
3. A change in the volume of Solid Waste or Recyclable Materials or other materials collected by Contractor hereunder that causes a material increase to Contractor's costs or expenses or material decrease in Contractor's revenues, including without limitation changes caused by a change to the Exclusive Service Area, changes to the requirement that all Customers in the Exclusive Service Area have mandatory Collection Services as provided under this Agreement and annexation or consolidation of outlying or noncontiguous area in the City included in the Exclusive Service Area;
4. Increase in the fees, expenses or costs to Contractor for the transfer, processing, transportation, recycling, or Disposal of Solid Waste and Recyclable Materials charged by the Designated Facilities under the Disposal Agreement, except to the extent such increase was already factored into the CPI increase; and
5. Any other circumstance, cause or reason not within the reasonable control of Contractor, including without limitation a Force Majeure event, that causes an increase in costs or reduction in revenue of Contractor, such that the Rates do not fairly compensate Contractor for the Collection Services.

Contractor may initiate a Rate Adjustment under this Section 6.2(B) not more than once annually, beginning no earlier than January 1, 2014. To obtain a Rate Adjustment, Contractor shall prepare and submit to the City a rate adjustment statement setting forth the nature of the event causing the increase in costs and a calculation of the increased costs and the Rate Adjustment necessary to offset such increased costs, together with the Return on Revenue. The City may request any and all documentation and data reasonably necessary to evaluate the Rate Adjustment and shall confirm or deny (with detailed written explanation of the reason for any denial and an alternative Rate Adjustment proposal by City) within ninety (90) days of receipt of the statement from Contractor, which confirmation shall not be unreasonably withheld, conditioned or delayed. Rate Adjustments shall include an amount sufficient to pay the increase in costs incurred by Contractor, plus the Return on Revenue. Contractor shall provide written notice of proposed Rate Adjustments to service providers under all other Commercial Franchise Agreements concurrent with submission of the Rate Adjustment proposal to the City.

C. Rate for Outlying or Non-Contiguous Areas

As a result of annexation or consolidation of the City limits occurring after the Effective Date, the Rates may not fairly or accurately reflect the cost of providing Collection Services to Customers in such outlying or non-contiguous areas. In such event, at the City's election, i) the Rates shall be increased to pay the additional cost of providing Collection Services to such areas and otherwise fairly compensate Contractor for providing such Collection Services or ii) a special rate for such areas may be adopted under this Agreement. Contractor may initiate a Rate Adjustment or special rate adoption under this Section using the same procedures provided for Rate Adjustments in Section 6.2 (B) above and the Rate Adjustments under this Section 6.2 shall apply to any special rates established under this Section 6.2 (C).

D. Other Commercial Franchise Agreements

It is the intent of the City to maintain reasonably consistent Rates in the Exclusive Service Areas under all Commercial Franchise Agreements in the City. Therefore, a Rate Adjustment under any Commercial Franchise Agreement shall cause a Rate Adjustment under all other Commercial Franchise Agreements in the amount reasonably necessary to pay the increase in costs or expenses incurred by the service providers under such other Commercial Franchise Agreements. To obtain such Rate Adjustment, the service provider(s) under the other Commercial Franchise Agreements shall submit a statement for confirmation by City within 90 days after notice of confirmation of the initial Rate Adjustment, which statement shall be submitted and processed in the same manner provided in Section 6.2 (B) above. This Section shall not apply to Special Services under Section 4.5 above.

ARTICLE 7

BILLING; COLLECTION AND PAYMENT

7.1 BILLING AND COLLECTION

Contractor is responsible for billing Customers and collecting Rates Revenues for all Collection Services. Billing for all Collection Services other than Drop Box services shall be in advance. Billing for Drop Box services may be in advance or in arrears, as determined by Contractor. All payments shall be due and payable on the first day of each monthly billing cycle and shall be delinquent if not paid on or before the date thirty (30) days thereafter. Contractor shall be entitled to charge a late fee equal to the greater of Twenty Five Dollars (\$25.00) or ten percent (10%) of the delinquent amount and interest at one and one-half percent (1.5%) per month on all delinquent accounts. Contractor shall be entitled to terminate any delinquent Customer's account after thirty (30) day's written notice. Contractor shall be entitled to charge Customers other fees and charges, including without limitation NSF check charges and collections costs, and shall be entitled to require a deposit before provision of Collection Services. All Rates, charges, penalties, interest and other amounts due to Contractor for Collection Services shall constitute an obligation of the owner of the property (as shown in the Washoe County Assessor's Office records) to which such services are being provided or upon which is located any Commercial Activity for which such services are being provided. An owner may request that services be provided and billed to a tenant or other occupant of the property, but owner shall not be relieved from the primary obligation to pay all amounts due for such service and Contractor shall have no obligation to first proceed for

collection against the tenant or other occupant. Contractor shall be entitled to establish rules, procedures and requirements for Customers subscribing to Collection Services and for collecting any amount payable for the Collection Services, including without limitation the right to collect security deposits and to exercise lien rights. Nothing in this Section shall limit any rights or remedies of Contractor, including without limitation the right to enforce the terms of this Agreement, the Reno Municipal Code relating hereto and its customer service agreements or to collect any all amounts due for Collection Services and other services.

7.2 RECEIPT OF PAYMENT

Contractor shall record all amounts received from Customers into an appropriate accounting account. All payments of Customer billings shall be made by Customer check, money order, cashier's check credit card or autopay; provided no cash shall be accepted.

7.3 MONTHLY PAYMENT OF FRANCHISE FEES AND SUBSIDY FEE

On or before the twenty-fifth (25th) day of each calendar month, Contractor shall prepare and submit a monthly statement to City for the prior month, together with the Franchise Fees and Subsidy Fee payable to City for the prior calendar month. The monthly statement shall include the following information and calculations as supporting documentation for the Franchise Fee and Subsidy Fee payment:

A. Reported Revenues

The amount of Rate Revenues for the month, along with detail describing, at a minimum, the total number of accounts for each applicable monthly charge and the total number of Customers billed for each such amount.

7.4 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS

Contractor shall solely bear all expenses and losses related to collecting or failing to collect bad debt from delinquent Customer accounts

7.5 AUDIT OF BILLINGS AND FINANCIAL REPORTS; REVIEW OF COSTS

City may at its sole discretion select a qualified independent firm to perform an audit of Contractor's records and data directly relevant to matters relating to Contractor's performance of its obligations under this Agreement, as set forth in this Article. Contractor shall, upon request of written notification by City, permit the audit and inspection of all of such records and data by the firm specified by City. The frequency and timing of the audits shall be determined at City's discretion, but shall not exceed a maximum of two (2) audits during the Base Term and one (1) during any five year extension of the Term. City shall be responsible for payment of all audits during the Base Term of the Agreement and any Extension of the Agreement. City shall provide Contractor thirty (30) days' notice of each audit. City shall determine the scope of any audits based on the general requirements specified below and may elect to conduct either one or both of the following types of audit:

A. **Audit of Billings.** The auditor shall review the billing practices of Contractor with relation to delivery of Collection Services. The intent of this audit is to use sampling to verify that Customers are receiving the type and level of service for which they are billed.

B. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and data submitted by Contractor pursuant to Article 8. The purpose of this audit is to verify that Contractor is correctly calculating Rate Revenues, and is properly remitting Franchise Fees and Supplemental Franchise Fees.

ARTICLE 8 RECORD KEEPING, REPORTING AND INSPECTION

8.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records and accounts, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles, including without limitation records of all Rate Revenues, Gross Receipts, Franchise Fees and Subsidy Fees. Such records shall be subject to audit, copy, and inspection by City Representative or designee at any time during normal business hours upon reasonable prior written notice. Contractor shall maintain and preserve all cash, billing and Disposal records for a period of not less than five (5) years following the close of each of Contractor's fiscal years.

B. Collection Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste Collected and delivered under the terms of this Agreement; and (ii) Recyclable Materials, by type, Collected or Disposed;

C. Customer Complaint Record

Contractor shall maintain the customer complaint record pursuant to Article 5.

D. Other Records

Contractor shall maintain all other records required under other Sections of this Agreement.

8.2 ANNUAL AND QUARTERLY REPORTING

A. General

Annual and quarterly reports shall be submitted to the City within forty five (45) days after the end of the reporting period which include:

1. A summary of the prior period's Rate Revenues, Franchise Fees and Subsidy Fee;

2. Account data, including the number of accounts, amount and type of materials deposited in each Designated Facility and customer count by type of service;
3. Amount (in tons) and type of materials Collected and amount delivered to each Designated Facility;
4. Amount and type of materials Diverted;
5. Customer count by type of service

8.3 INSPECTION BY THE CITY

City Representative, or designee(s), shall have the right to observe and review any of Contractor's records, operations, and equipment, relevant to a determination of Contractor's compliance with the requirements of this Agreement pertaining to the provision of Collection Services, and to enter premises during normal business hours for the purposes of such observations, and review at any time upon not less than twenty four (24) hours prior written notice. City Representative shall notify Contractor's representative upon arrival. City Representative will comply with all policies and procedures of Contractor when on Contractor's premises. Contractor may condition any such entry in or upon Contractor's premises, by City Representative or designee(s), on the prior execution of a waiver of any liability of Contractor for any injury or damages suffered by City Representative or designee(s), or their respective heirs and assigns, or others claiming by, through or under them, arising out of or relating to such entry.

ARTICLE 9

INDEMNITY, INSURANCE, PERFORMANCE SECURITY

9.1 INDEMNIFICATION OF THE CITY

Contractor agrees to and shall indemnify, defend and hold harmless City its officers, officials, employees, volunteers, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, damages, loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property) to the extent caused by (i) the failure of Contractor to comply with this Agreement and ii) the performance by Contractor, its officers, agents, employees, and subcontractors of the Collection Services or other obligations of Contractor hereunder, except in each case to the extent caused by the default, negligence or intentional misconduct of City. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds, and the Contractor shall be liable hereunder to pay only the amount of damages, if any, that exceeds the total amount that all insurance has paid for the damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

9.2 INSURANCE SCOPE AND LIMITS

- A. During the Term of this Agreement Contractor shall procure and maintain the following minimum insurance coverage, to the extent available:
1. **Commercial General Liability:** Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per-occurrence basis.
 2. **Automobile Liability:** Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement.
 3. **Worker's Compensation:** A policy of Worker's Compensation insurance as may be required by the Nevada Revised Statutes.
- B. **Other Insurance Provisions**
1. The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - a. City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations.
 - b. Contractor's insurance coverage shall be primary insurance in relation to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer or reduced in scope or amount except after thirty (30) days prior written notice has been given to City.
 - d. Contractor's Insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Contractor for City.
- C. **All Coverages.** Each insurance policy required by this Article shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- D. **Verification of Coverage**

Contractor shall furnish City, within thirty (30) days after the Effective Date and upon request of City thereafter, with original certificates evidencing coverage required under this Section 9.2.

E. Acceptability of Insurers

All insurance policies required by this Article shall be issued by admitted insurers in good standing with and licensed to do business in the State of Nevada, and possessing a current A.M. Best, Inc. rating of B+ FSC VII or better.

F. Subcontractors

Contractor 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 in this Section.

G. Liability Coverage Amounts

Not more often than every five (5) years during the Term, City shall be entitled to increase the amount of liability insurance coverage required under this Section 9.2 if such coverage is below amounts generally accepted for similar services. In that event, City and Contractor will cooperate in good faith to establish the amount of liability insurance coverage generally accepted for similar services and Contractor will provide such liability coverage amounts.

9.3 INSTRUMENT FOR SECURING PERFORMANCE

Not less than thirty (30) days after the Effective Date, Contractor shall file with City an instrument, in form reasonably acceptable to City, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractor's default under this Agreement.

**ARTICLE 10
DEFAULT AND REMEDIES**

10.1 DEFAULT BY CONTRACTOR

A. Any of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

1. If Contractor shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless Contractor shall materially cure or remedy such failure within thirty (30) days after written notice by City to Contractor specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such thirty (30) day period, Contractor commences cure or remedy within such 30 day period and diligently prosecutes the same to completion.

2. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, or other similar law, or has an involuntary bankruptcy action filed against it which is not dismissed within 90 days of notice to Contractor; Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property; or Contractor shall make any general assignment for the benefit of Contractor's creditors.

3. Contractor ceases to provide Collection Services as required under this Agreement for a period of five (5) consecutive Working Days or more, for any reason within the reasonable control of Contractor, such cessation poses a material threat to the health, safety and welfare of the public and City shall have provided not less than three (3) Working Days written notice of such default.

10.2 CITY REMEDIES FOR EVENT OF DEFAULT BY CONTRACTOR

A. Upon an uncured Event of Default by Contractor, City shall have the right to:

1. Terminate the Agreement in accordance with Section 10.3.

2. In addition to, or in lieu of termination, exercise all of its remedies in accordance with this Article and any other remedies at law and in equity to which City shall be entitled, including without limitation the right to pursue the performance security under Section 9.3 and make an available claim under any insurance policy.

3. At its discretion waive Contractor's default in full or in part.

10.3 TERMINATION BY CITY

Subject to Dispute Resolution in Section 11.8, City shall only exercise its right to terminate this Agreement through action of the Reno City Council at a regularly scheduled (or special) public meeting of that body. Contractor shall be given reasonable prior notice of such meeting, a written statement of the factual and legal basis of the claimed Event of Default and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting and City shall provide to Contractor copies of all records and information in City's possession or control relating to the Event of Default giving rise to such termination.

10.4 CONTRACTOR REMEDIES; TERMINATION

Contractor shall be entitled to terminate this Agreement or pursue specific performance of this Agreement if City shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless City shall materially cure or remedy such failure within sixty (60) days after written notice by Contractor to City specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such sixty (60) day period, City commences cure or remedy within such 60 day period and diligently prosecutes the same to completion. Contractor shall have the right to terminate this Agreement upon ninety (90) days written notice to City if Applicable Law prohibits, materially limits or makes uneconomical the Collection Services as contemplated in this Agreement. Except as provided in Section 11.8, nothing herein shall limit Contractor's rights and remedies available at law or equity for default by a party under this Agreement.

ARTICLE 11 MISCELLANEOUS AND OTHER AGREEMENTS OF THE PARTIES

11.1 OTHER EXCLUSIVE SERVICE PROGRAMS; RIGHT OF FIRST REFUSAL

In the event City determines that a specific program should be implemented for collection or transportation of Food Waste or Green Waste or for any other Solid Waste or Recyclable Materials, other than as provided in this Agreement, to serve the needs of the public in the City, City will notify Contractor and Contractor and City will discuss and negotiate in good faith to i) develop and implement the program and the franchise fees, rates and other matters related thereto and ii) reach agreement on the terms and conditions of a service agreement relating thereto between the City and Contractor. If Contractor and City are unable to reach agreement on the terms and conditions of the service agreement within 90 days of the City notice, City hereby grants to Contractor the right of first refusal to match and accept a) the terms and conditions of any contract offer by the City to other service providers for such a program ("City Offer") and b) the terms and conditions offered by another service provider to the City that the City is willing to accept relating to such a program ("Third Party Offer"). If the City makes a City Offer or receives a Third Party Offer the City is willing to accept, City shall give Contractor prompt written notice with a copy of thereof. Contractor shall have a period of thirty (30) days to provide written notice to City that Contractor will accept the terms of either the City Offer or the Third Party Offer. If Contractor provides such notice, City and Contractor will enter into a service agreement on the terms and conditions of the offer accepted. If Contractor does not timely provide the acceptance notice, the City shall be free to contract with another service provider on the same terms and conditions as stated in the City Offer or the Third Party Offer, as applicable. In the event the City does not consummate an agreement with another service provider on the same terms and conditions within 120 days of the expiration of the 30 day notice period, then the right of refusal shall revive and Contractor shall have the same right of first refusal to accept any subsequent changed terms and conditions, City Offer or Third Party Offer.

11.2 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Collection Services as an Independent contractor engaged by City and not as an officer or employee of City or as a partner of or joint venturer with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Collection Services and all persons performing such services on behalf of Contractor. Neither Contractor nor its officers, employees, subcontractors, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

11.3 FORCE MAJEURE

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, public or private construction activities, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, work stoppages or lockouts, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

11.4 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost (subject to rate adjustment provisions elsewhere in this Agreement), comply with all Applicable Laws, including all permit requirements for Collection Service.

11.5 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

11.6 JURISDICTION AND VENUE

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of Nevada, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in City of Reno.

11.7 ASSIGNMENT

A. Definition

For purposes of this Section 11.7, the term "Assignment" shall include, but not be limited to: (i) a transfer by Contractor to another person or entity of all of Contractor's rights, duties and obligations under this Agreement, including without limitation subcontracting of all or a portion of Contractor's obligations hereunder; (ii) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of Contractor; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of Contractor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

B. City Consent to Assignment; Written Assignment and Assumption

Except for Assignments to a Permitted Transferee and except as provided in this Article or otherwise in this Agreement, Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the assignee shall be deemed suitable and City shall consent to an Assignment if the Assignee meets the Assignee Qualifications (as defined below). A formal written instrument of assignment shall be executed by Contractor and an approved assignee or Permitted Transferee, which shall provide for the assignee's assumption and acceptance of all terms and conditions of this Agreement, including all duties and obligations imposed thereby, and also the assignee's express adoption of the representations of Contractor set forth herein as its own representations. Assignments to Permitted Transferees shall not require the consent of the City.

C. Qualifications of Assignee

A proposed assignee shall be deemed suitable and City shall consent to an Assignment to a proposed assignee upon submission of reasonably satisfactory evidence or support (i) that the proposed assignee has at least five (5) years of Solid Waste and Recyclable Materials collection experience similar to the Collection Services; (ii) that the proposed assignee currently or recently conducted Solid Waste and Recyclable Materials collection on a scale reasonably equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (iii) the proposed assignee conducts its operations in substantial accordance with accepted industry standards (iv) the proposed assignee conducts its Solid Waste and Recyclable Materials management practices in substantial compliance with all applicable Federal, State, and local laws; and (v) the proposed assignee has the reasonable financial capability and other capabilities to perform the obligations of Contractor under this Agreement to industry standards and to otherwise comply with all terms, covenants and conditions of this Agreement applicable to Contractor (collectively, the "Assignee Qualifications").

D. Transition

If City consents to an assignment, Contractor shall cooperate fully with City and subsequent Contractor(s) or subcontractor(s), and shall provide all appropriate assistance to ensure an orderly transition. Such cooperation and assistance shall include, but not be limited to, Contractor providing, to City and the subsequent Contractor(s) or subcontractor(s), all route lists and billing information listing accounts, and using Contractor's reasonable efforts to avoid and minimize any disruption or inconvenience to Customers.

11.8 DISPUTE RESOLUTION

A. Continue Performance

In the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

B. Mediation

Any unresolved dispute arising between the Parties under this Agreement after negotiation in good faith shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. In the absence of judicial jurisdiction to appoint a mediator, mediation will be before a panel composed of a mediator selected by each party and a third mediator selected by the two mediators so selected. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue any right or remedy available at law or equity, except as expressly and specifically limited under this Agreement.

11.9 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

11.10 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

11.11 PARTIES IN INTEREST

Except as expressly provided to the contrary herein, nothing in this Agreement, whether express or implied, is intended or shall be deemed to confer any rights on any persons other than City and Contractor and their representatives, successors and permitted assigns.

11.12 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision, nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

11.13 NOTICE

A. Notice Procedures

Except as otherwise specifically provided herein, all notices, demands, requests, proposals, approvals, consents and other communications made in connection with this Agreement shall be in writing and shall be effective when personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to CITY: City of Reno
 Office of the City Manager
 P.O. Box 1900
 One East First Street
 15th Floor
 Reno, Nevada 89505
 Attention: City Manager

If to Contractor: Reno Disposal Company
 100 Vassar St.
 Reno, Nevada 89502
 Attention: District Manager

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section 11.13.

B. Facsimile Notice Procedures

1. Facsimile notice may be substituted for written notice with the following limitations:

- a. Facsimile notice shall be considered valid and delivered during standard business hours and days, Monday through Friday, at such time as an authorized representative of the receiving Party acknowledges receipt in writing or by facsimile acknowledgement to the sending party.
- b. Written notice, in accordance with Paragraph A, must follow any facsimile notice, in order for the facsimile notice to be considered valid notice hereunder.
2. If above conditions are met, facsimile notice will be considered effective from date and time of transmission as indicated on receiving Party's original copy of the transmission.

3. Facsimile notices must be sent to the following addressees:

If to City:	City Manager Fax number: (775)334-2020
If to Contractor:	District Manager Fax number: (775) 329-4662

4. The facsimile number to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section 11.13.

11.14 ACTION BY CITY; CITY AND CONTRACTOR REPRESENTATIVE

Subject to the restrictions provided in this Section 11.14, whenever action or approval by City is required under this Agreement, the City Council hereby delegates to the City Representative the authority to act on or approve such matter unless specifically provided otherwise in this Agreement or unless the City Representative determines in his or her sole discretion that such action or approval requires referral to the City Council. The City Representative will have the authority to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to this Agreement, including without limitation approving Rate Adjustments, agreeing with Contractor to change the Approved Recyclable Materials and extensions of time to perform, so long as such actions do not materially change the scope or nature of the Collection Services or the exclusive right and obligation of Contractor to perform the Collection Services. All actions of City Representative are subject to appeal by Contractor to the City Council and Contractor is entitled to rely on all actions of the City Representative. Any alteration, change or modification of or to this Agreement, in order to become effective, will be made in writing and in each instance signed on behalf of each party. Contractor shall, by the Operative Date, designate in writing a responsible official, or duly authorized agent, who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his/her authority to bind Contractor. City may rely upon action taken by such designated representative as action of Contractor. Notwithstanding anything to the contrary in this Section 11.14, the City Council shall have the sole authority to take the following actions; i) termination of this Agreement under Section 10.3 of this Agreement, ii) Rate Increases in excess of three percent (3%) in excess of the CPI increase and iii) any increase or decrease of the Franchise Fee.

11.15 ENFORCEMENT

Contractor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this Agreement and City ordinances related thereto, including without limitation defending challenges thereto and to prevent violations by third parties thereof (including without limitation the exclusive right and obligation to provide the Collection Services in the Exclusive Service Area). City shall reasonably cooperate in such enforcement; provided, however, City shall not be required to incur third party costs in connection therewith. City will adopt and enforce appropriate ordinances to implement this Agreement and otherwise relating to the collection and transportation of Solid Waste and Recyclable Materials.

11.16 GOOD FAITH

Each Party's Interpretation and performance under this Agreement shall be reasonable and consistent with the intent to deal fairly and in good faith with the other Party hereto. Each party's exercise of any discretion hereunder shall be made in good faith and consents and approvals shall not be unreasonably withheld, conditioned or delayed, unless expressly stated to the contrary herein.

11.17 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Contractor and City with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

11.18 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

11.19 INTERPRETATION

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

11.20 MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of both Parties without, in any way, affecting the remainder.

11.21 SEVERABILITY

If any provision of this Agreement is for any reason found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision. All other provisions of this Agreement which are otherwise lawful shall remain in full force and effect, and shall be enforced as if such invalid or unenforceable provision had not been contained herein, and to this end the provisions of this Agreement are hereby declared to be severable.

11.22 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original.

11.23 EXISTING FRANCHISE AGREEMENT

The existing First Amended City of Reno Garbage Franchise Agreement dated August 9, 1994, as amended ("Existing RFA"), will remain in place and effective until the later of i) the Effective Date of this Agreement and ii) the date all of the Disposal Agreement and the other City Franchise Agreements (each as defined in the Disposal Agreement), in form acceptable to Contractor and City, are executed and become effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF RENO

a political subdivision of the State of Nevada.

By  DAVID L. AIAZZI Date 11-07-12
Robert A. Cashell, Sr., Mayor

Attest:

By 
Lynnette R. Jones, City Clerk

APPROVED AS TO LEGAL FORM:

By 
City Attorney's Office



CONTRACTOR

Reno Disposal Company, Inc., a Nevada corporation

By: 

Title: Vice President

Date: 11/16/12

List of Exhibits:

- | | |
|-------------------|---|
| Exhibit A | List of Approved Recyclable Materials |
| Exhibit B | Exclusive Service Area of Contractor |
| Exhibit C | Operating Standards |
| Exhibit D | Scope of Services |
| Schedule 1 | List of Exempted Haulers and List of Exempted Hauler Accounts and Customers for each Exempted Hauler |

EXHIBIT A
List of Approved Recyclable Materials

EXHIBIT A
COMMERCIAL FRANCHISE AGREEMENT
APPROVED RECYCLABLE MATERIALS

1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the CONTRACTOR and the City.

To qualify as Approved Recyclable Materials, all Recyclable Materials must be reasonably clean and otherwise in a condition acceptable to commercial recycling facilities. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) 10% or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for placement of Contaminated Recyclable Materials in a Recycling Container for Collection, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

Exhibit B
Exclusive Service Area of Contractor

111312

55

JA000100

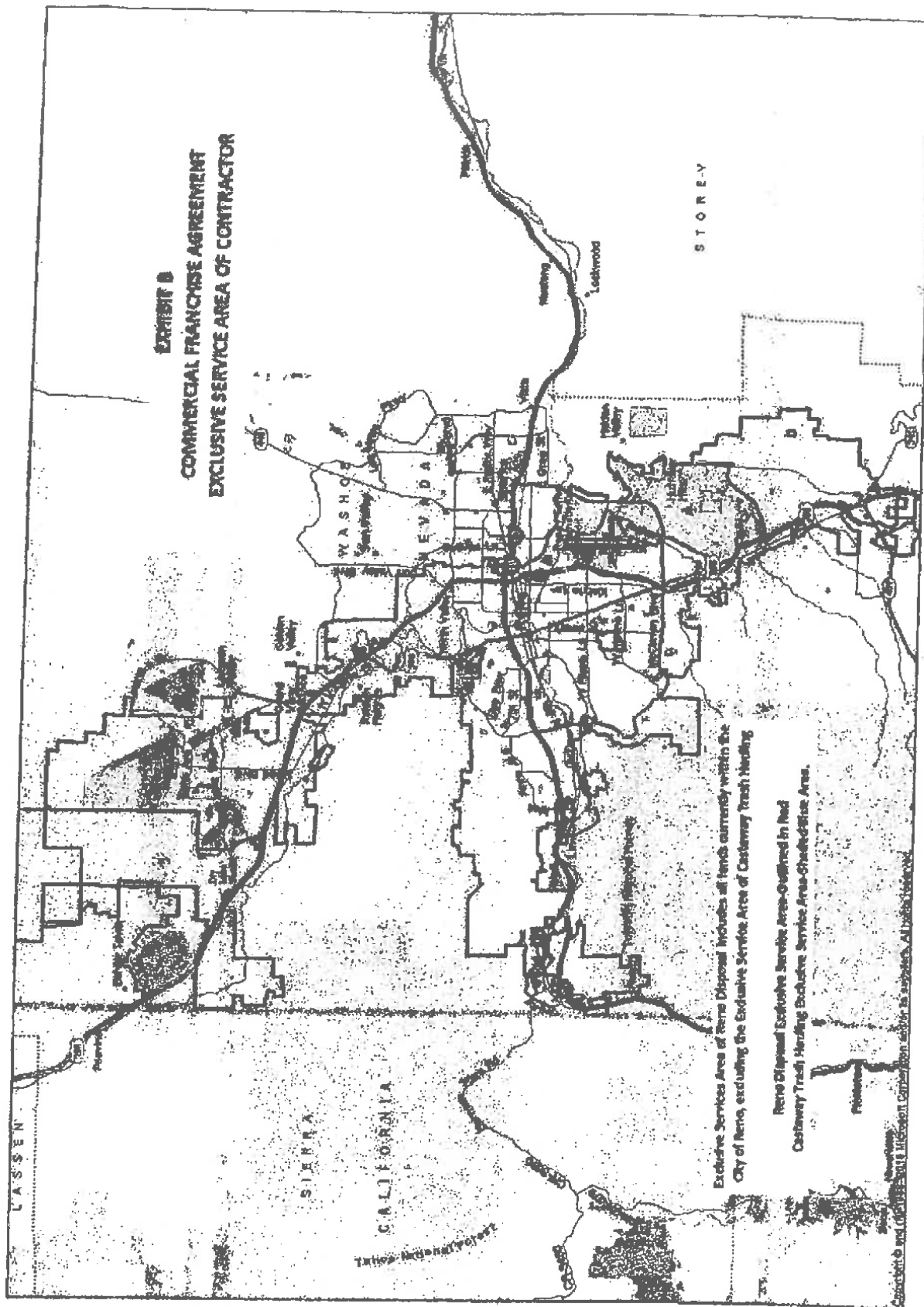


Exhibit C
Operating Standards

EXHIBIT C
COMMERCIAL FRANCHISE AGREEMENT
OPERATING STANDARDS

1. Contractor Standards

- A. Contractor shall perform the Collection Services in a commercially reasonable manner using industry standard practice for comparable operations.
- B. Color and appearance of collection vehicles, containers, employee uniforms, and public education materials provided by Contractor will be designed to provide a standard representation of the company. If subcontractors are used, a distinct but uniform appearance of the subcontractor's equipment, vehicles, and personnel is required.

2. Vehicles and Equipment

Contractor shall furnish sufficient vehicles and equipment to provide all services required under this Agreement. Contractor's name, phone number, and vehicle identification number shall be visibly displayed on its vehicles in letters and figures. Contractor shall maintain all of its vehicles and equipment in a reasonably safe, clean, painted and operable condition. All Collection vehicles must be registered with the Department of Motor Vehicles of the State of Nevada. Vehicles shall be operated in compliance with all applicable safety and local ordinances. Collection vehicles shall be operated in a manner to minimize or prevent spilling, dripping or blowing of materials from the vehicle.

3. Personnel

A. Employee Conduct

Contractor shall reasonably train and supervise its employees i) to provide professional and courteous service to Customers and to otherwise deal with the public in a professional and cautious manner and ii) to dress in clean uniform shirts with suitable identification.

B. Employee Operational Requirements

Contractor's employees shall i) not place Containers in a manner that blocks any driveway, sidewalk, mailboxes, or street, ii) shall close all gates opened by them in making collections, unless otherwise directed by the customer, and iii) shall exercise reasonable care to perform Collection Services in a reasonably quiet manner.

C. Driver Qualifications

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the Nevada Department of Motor Vehicles. All Collection vehicle drivers shall also complete Contractor's in-house training program, which includes education on the use of Collection vehicles, Collection programs, and route information as well as Customer service practices and safety information.

D. Background Checks

To the extent permitted by Applicable Law, Contractor shall, prior to hiring a driver, request a report or reports from the State of Nevada indicating whether (i) the individual is listed by the State as a sexual predator and (ii) the individual has a felony record of violence with the State. Contractor will not employ an individual as a driver if those reports show that the individual is so listed or has such a record unless the reports are demonstrated to be erroneous. Once each calendar year, Contractor shall request from the Nevada Department of Motor Vehicles a report of violations committed by drivers employed by Contractor and shall take such action, if any, as Contractor deems appropriate based on such report. Contractor may satisfy these requirements with a background check performed by a third-party in the business of providing such background checks. Contractor shall be entitled to rely without further inquiry on the reports obtained from the State of Nevada or such third-party.

E. Employee Safety Training

Contractor shall provide reasonable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection or who are otherwise directly involved in such services. Contractor shall train its employees involved in Collection to identify and not to collect excluded waste.

F. No Gratuities

Contractor shall direct its employees not to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection Services under this Agreement. Contractor may permit its employees to accept holiday gifts.

Exhibit D
Scope of Services

Exhibit D
Commercial Franchise Agreements
Scope of Services

11/01/2002

Bin Collection Services

Bin Capacity	Bin Collection Services-Solid Waste						
	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 133.15	\$ 224.27	\$ 314.48	\$ 404.78	\$ 495.01	\$ 585.29	N/A
3 Cubic Yards	\$ 157.82	\$ 273.78	\$ 389.45	\$ 505.29	\$ 621.30	\$ 737.31	\$ 853.32
4 Cubic Yards	\$ 187.48	\$ 323.13	\$ 452.48	\$ 584.21	\$ 715.67	\$ 847.18	\$ 978.69
5 Cubic Yards	\$ 272.32	\$ 458.85	\$ 674.39	\$ 885.29	\$ 1,100.79	\$ 1,316.29	\$ 1,531.79

Bin Capacity	Bin Collection Services-Approved Recyclable Materials						
	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 93.21	\$ 158.98	\$ 226.12	\$ 293.73	\$ 361.34	\$ 428.95	N/A
3 Cubic Yards	\$ 110.47	\$ 191.85	\$ 271.92	\$ 352.48	\$ 433.04	\$ 513.60	\$ 594.16
4 Cubic Yards	\$ 131.18	\$ 228.19	\$ 323.88	\$ 419.95	\$ 516.02	\$ 612.09	\$ 698.16
5 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 615.79	\$ 760.85	\$ 903.91	\$ 1,046.97

¹ Depending and including the specified capacity bin the designated frequency per week, resulting charge per bin

Waste Collection Services (Cont.)

Additional Dump of Container: Solid Waste and Approved Recyclable Materials ¹

Service	Frequency	Rate	Notes
1 Yard	Weekly	\$ 24.00	
2 Yard	Weekly	\$ 48.00	
3 Yard	Weekly	\$ 72.00	
4 Yard	Weekly	\$ 96.00	
5 Yard	Weekly	\$ 120.00	

Other Services and Fees

Service	Rate
Top Charge	\$ 20.00
1 Yard Bin Special - Single Service	\$ 20.00
2 Yard Bin Special - Single Service	\$ 40.00

¹Additional dump of existing Customer Bin on regularly scheduled service day and non-service day
²Availability to access at service Bin
³Delivery and pick up (No-charge service)

Exhibit D
Commercial Franchise Agreement
Scope of Services

Cart Collection Services

Cart Collection Services-Call Weeks

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$ 29.83	\$ 41.83	\$ 62.48	\$ 83.32	\$ 104.15	\$ 124.98	\$ 145.81
2 - 35 Gal Carts	\$ 41.84	\$ 83.32	\$ 124.80	\$ 166.64	\$ 208.38	\$ 249.93	\$ 291.62
1 - 64 Gal Cart	\$ 48.33	\$ 89.88	\$ 130.98	\$ 181.32	\$ 231.85	\$ 281.98	\$ 332.31
2 - 64 Gal Carts	\$ 89.88	\$ 181.32	\$ 241.98	\$ 322.64	\$ 403.30	\$ 483.98	\$ 564.82
3 - 64 Gal Carts	\$ 129.89	\$ 241.98	\$ 362.97	\$ 483.96	\$ 604.95	\$ 725.94	\$ 846.93
1 - 96 Gal Cart	\$ 28.55	\$ 57.10	\$ 85.65	\$ 114.20	\$ 142.75	\$ 171.30	\$ 199.85
2 - 96 Gal Carts	\$ 57.10	\$ 114.20	\$ 171.30	\$ 228.40	\$ 285.50	\$ 342.60	\$ 399.70
3 - 96 Gal Carts	\$ 85.65	\$ 171.30	\$ 256.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
4 - 96 Gal Carts	\$ 114.20	\$ 228.40	\$ 342.60	\$ 456.80	\$ 571.00	\$ 685.20	\$ 799.40

Cart Collection Services-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	\$ 17.48	\$ 34.97	\$ 52.46	\$ 69.95	\$ 87.43	\$ 104.92	\$ 122.41
2 - 96 Gal Carts	\$ 34.97	\$ 69.95	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 96 Gal Carts	\$ 52.46	\$ 104.92	\$ 157.38	\$ 209.84	\$ 262.30	\$ 314.76	\$ 367.22
4 - 96 Gal Carts	\$ 69.95	\$ 139.90	\$ 209.84	\$ 279.79	\$ 349.74	\$ 419.69	\$ 489.63

⁵Emptying and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

Exhibit D
Commercial Franchise Agreement
Scope of Services

10/21/2002

Drop Box and Container Collection Services

Garbage and Recyclable Collection Services of Apartment Communities, Mobile, and Solid Waste

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$100.00
20 Yard Closed Top	\$150.00
30 Yard Closed Top	\$200.00
Drop Box Initial Delivery Fee	\$75.00

Drop Box Capacity	Rate per Service
14 Yard Open Top	\$100.00
20 Yard Open Top	\$150.00
30 Yard Open Top	\$200.00
Drop Box Initial Delivery Fee	\$75.00

Container Capacity	Rate per Service
10 Yard	\$100.00
12 Yard	\$120.00
14 Yard	\$140.00
16 Yard	\$160.00
18 Yard	\$180.00
20 Yard	\$200.00
22 Yard	\$220.00
24 Yard	\$240.00
26 Yard	\$260.00
28 Yard	\$280.00
30 Yard	\$300.00
32 Yard	\$320.00
34 Yard	\$340.00
36 Yard	\$360.00
38 Yard	\$380.00
40 Yard	\$400.00
42 Yard	\$420.00
44 Yard	\$440.00
46 Yard	\$460.00
48 Yard	\$480.00
50 Yard	\$500.00
52 Yard	\$520.00
54 Yard	\$540.00
56 Yard	\$560.00
58 Yard	\$580.00
60 Yard	\$600.00
62 Yard	\$620.00
64 Yard	\$640.00
66 Yard	\$660.00
68 Yard	\$680.00
70 Yard	\$700.00
72 Yard	\$720.00
74 Yard	\$740.00
76 Yard	\$760.00
78 Yard	\$780.00
80 Yard	\$800.00
82 Yard	\$820.00
84 Yard	\$840.00
86 Yard	\$860.00
88 Yard	\$880.00
90 Yard	\$900.00
92 Yard	\$920.00
94 Yard	\$940.00
96 Yard	\$960.00
98 Yard	\$980.00
100 Yard	\$1000.00

*Pick-up, charging, and replacing the specified capacity Drop Box - single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

Other Services and Fees

Service	Rate	Description of Service
Time Charge	\$ 75.00	Charge to return to customer location for any other reason not specifically identified in Scope of Services
Container Liner	\$ 14.12	Plastic liner placed inside the Container before material loading
Demurrage/Inactivity	\$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning Fees	\$ 23.00	Return of Container with water
Container Shown Cleaning	\$ 133.45	Shown Clean of Container
Safety Caps Replacement	\$ 17.30	Safety caps required when a Container is placed in the street
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property
Drop Shed fee	\$ 75.00	Fee for each occurrence of overloading Container such that it does not properly close
Activation/Re-activation fee	\$ 40.00	Charge to open a new service or reopen a closed service
Big Out charge	\$ 75.00	Fee for each occurrence to require material loaded in Container
Encumbrance fee	\$ 7.50	Fee per month for opening encumbrance gates or unlatching Container
Loading container	\$ 17.50	One time charge to install loading mechanism on container
Container Repair	\$ 75.00	Container exchange (long haul and fix)
Full Service Trailer	\$ 85.00	Charge to provide a full service trailer for new development
Fixed Monthly:		
At pickup Cost	\$ 50.41	Rate per service for a Fixed Monthly Recycling Cost
3 year fee	\$ 107.20	Rate per service for a Fixed Monthly Recycling fee

SCHEDULE 1
List of Exempted Haulers and
List of each Exempted Hauler's Exempted Hauler Accounts

Exempted Haulers Include:

1. Castaway Trash Hauling, Inc., a Nevada corporation
2. Waste Management of Nevada, Inc., a Nevada corporation, sometimes dba B & L Disposal and RSW Recycling.
3. A Team Trash Hauling, LLC, a Nevada limited liability company
4. Carmen's Cleaning
5. Empire Contractors, Inc., a Nevada corporation and Empire Waste Systems
6. Patrick's Construction Cleanup
7. AMCB, LLC, a Nevada limited liability company, dba Rubbish Runners
8. Trashco
9. Olcese Construction

Exempted Hauler Accounts for Each Exempted Hauler (Provide the Name and Address of the Customer for each Exempted Hauler Account):

1. Castaway Trash Hauling, Inc. (No Exempted Hauler Accounts)
2. Waste Management of Nevada, Inc. (No Exempted Hauler Accounts)

Attach list of Exempted Hauler Accounts for each Exempted Hauler

In the event the Exempted Hauler Accounts for Each Exempted Hauler are not reviewed and approved by the City and listed on this Schedule 1 on the Effective Date of this Agreement, each Exempted Hauler will diligently cooperate in good faith with the City and will within 15 days after request from City provide to the City all information requested by the City and reasonably necessary or appropriate for the City to review, approve and list the Exempted Hauler Accounts on this Schedule 1. The Exempted Hauler Accounts will be approved by the City and listed on this Schedule 1 within 60 days after the Effective Date. Within such 60 day period, the City will obtain the exact legal name of each Exempted Hauler that is an entity or the names of all owners of any Exempted Hauler that is not an entity, along with the dba name for each Exempted Hauler, each of which shall be listed on this Schedule 1. After completion as provided in this paragraph, this Schedule 1 shall be attached to this Agreement and shall become a part hereof.

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “4”

EXHIBIT “4”

11-07-12
G.8.8

**DISPOSAL AGREEMENT
SOLID WASTE AND
RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 7th day of NOVEMBER, 2012 ("Effective Date"), between the City of Reno, a political subdivision of the State of Nevada, (hereinafter called "City"), and Refuse, Inc., a Nevada corporation (hereinafter called "Contractor"), with reference to the following facts.

WITNESSETH:

- A. WHEREAS the Contractor owns and operates an environmentally-sound and permitted Solid Waste disposal site known as the Lockwood Regional Landfill located in Storey County, Nevada (the "Disposal Site"), and also owns and operates an environmentally sound and duly permitted Solid Waste transfer station located at 1390 East Commercial Row and 13890 Mt. Anderson, both in Reno, Nevada (the "Transfer Station").
- B. WHEREAS the Contractor also currently owns and operates a material recovery facility for the processing and recovery of Recyclable Materials, located at 1100 Commercial Row, in Reno Nevada (the "MRF"), and is in the process of permitting and developing a new, integrated Eco-Center in Reno, Nevada which, when and if constructed and operational, will contain a new material recovery facility for the processing and recovery of Recyclable Materials, a household hazardous waste drop-off facility, a green waste and electronics drop-off facility, and potentially other recycling and recovery operations (the "Eco-Center").
- C. WHEREAS the City has entered into a residential collection franchise agreement with a Franchised Hauler for the collection, transportation, recycling, and disposal of Solid Waste and Recyclable Materials from residential customers within the City of Reno (the "Residential Franchise Agreement"), and has also entered into two commercial franchise agreements for separate and distinct zones of the City with two Franchised Haulers for the collection and transportation of commercial Solid Waste and Approved Recyclable Materials from commercial and industrial customers within the City of Reno (the "Commercial Franchise Agreements").
- D. WHEREAS the City has a desire to ensure that the recycling and disposal of Solid Waste and Recyclable Materials collected from City residents and businesses occurs in an environmentally safe, sound, and responsible manner, and to also ensure that the rates for Solid Waste disposal and processing of Recyclables remain cost-effective for its ratepayers.
- E. WHEREAS the City and Contractor thus desire to enter into this Agreement to, among other things, (a) provide for the delivery, transfer, processing, handling, transport, and disposal of Approved Disposal Materials generated within the City at Contractor's Transfer Station, MFR, Eco-Center, or Disposal Site; and (b) establish the respective obligations of the City and Contractor with respect to the

provision of delivery, transfer, processing, handling, transport, and disposal services for all Approved Disposal Materials generated within the City.

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 hereby agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings. To the extent of any inconsistency between the definitions of the following terms provided in this Article and the use or definition of those terms that may appear in related City, County, State or Federal laws, ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor.

"Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

"Agreement" means this Agreement between the City and Contractor, including all exhibits and future amendments.

"Applicable Law" means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the collection and disposition of Solid Waste or Recyclable Materials, including those that are in force and effective as of the Effective Date, as well as such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the Effective Date and during the Term of this Agreement.

"Approved Disposal Materials" means the Solid Waste and Approved Recyclable Materials that are collected by the Franchised Haulers under the City Franchise Agreements, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials, iv) Exempted Hauler Account Materials, v) Exempted Facility Materials, vi) Food Waste and vii) Green Waste.

"Approved Recyclable Materials" means the Recyclable Materials approved for recycling under this Agreement, which are listed on Exhibit A attached hereto and which may be changed from time to time by agreement of Contractor and City, excluding Excluded Recyclable Materials.

"Bulky Items" means all discarded waste matter that is too large to be placed in a Cart, including appliances not containing chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require special handling due generally to their size, excluding Excluded Materials.

"Cart" means an industry standard, wheeled Container of approximate thirty-five (35), sixty-four (64), and ninety-six (96) gallon capacity for collection of Solid Waste or Recyclables.

"City Council" means the governing legislative body of the City of Reno.

"Change in Law" means the following events or conditions:

- i) Enactment, adoption, promulgation, issuance, modification, or written change or initial public announcement or enforcement in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or
- ii) Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Contractor; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

"Change in Scope" is a material change in the type, extent or level of Disposal Services.

"City" means the legal entity known as the City of Reno, Nevada, a political subdivision of the State of Nevada.

"City Franchise Agreements" means the Residential Franchise Agreement and the Commercial Franchise Agreements, each as defined in Recital C of this Agreement.

"City Representative" means the City Manager, or his/her designee, who may be a City official, employee or an agent of City specifically designated to serve as the City Representative and authorized to act on behalf of the City hereunder.

"Commercial Activity" means as provided in the Commercial Franchise Agreements.

"Commercial Franchise Agreements" means as provided in the Recitals hereof.

"Construction and Demolition Debris" means debris resulting from construction, remodeling, repair, renovation, demolition, excavation, dredging, grubbing and related cleanup of residential, commercial or governmental buildings or other structures and pavement, including without limitation construction materials, rubble, bricks, concrete, other masonry materials, soil, rock, lumber, rebar, paving materials and vegetation, including tree stumps. Materials resulting from landscape maintenance are not Construction and Demolition Debris.

"Consumer Price Index" or "CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average-Item: Garbage and Trash Collection (1982=100) as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index.

"Container(s)" means Carts, Bins, and drop boxes or other containers for use to provide collection of Solid Waste and Recyclable Materials.

"Contractor" means the Party identified as Contractor on page 1 of this Agreement.

"Designated Facility" means the Transfer Station, Disposal Site, MRF, Eco-Center or any similar facility owned or operated by Contractor, to which all Approved Disposal Materials shall be delivered by the Franchised Haulers.

"Disposal," "Disposing," "Dispose," or "Disposed" means the final disposition of Solid Waste, but does not include other beneficial uses such as alternative daily cover.

"Disposal Services" means i) the acceptance, transfer, and transportation of Solid Waste that is Approved Disposal Materials and received from the Franchised Haulers, within and from the Transfer Station (or other Designated Facility, if directed by Contractor) to the Disposal Site; ii) the management of the disposal of all Solid Waste that is Approved Disposal Materials at the Disposal Site; iii) the acceptance, processing, transfer, transportation and management of Approved Recyclable Materials that are Approved Disposal Materials and received from the Franchised Haulers, within and from the MRF (or other Designated Facility, if directed by Contractor); and iv) the transportation and disposal at the Disposal Site of any Residuals from such processing of Approved Recyclable Materials, all as provided in this Agreement. Disposal Services do not include acceptance, processing, transfer, transportation or management of i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials, iv) Exempted Hauler Account Materials, v) Exempted Facility Material, vi) Food Waste or vii) Green Waste.

"Disposal Site" means as provided in Recital A of this Agreement.

"Eco-Center" means as provided in Recital B of this Agreement.

"Effective Date" means the date on which this Agreement is fully executed by the Parties, as reflected on page 1 of this Agreement.

"Excluded Materials" means: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii) materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and codes and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and Items Contractor determines to be

excessively bulky or heavy; and (iv) Source Separated Recyclable Materials donated by the generator to any United States Internal Revenue Code Section 501(c) 3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

"Excluded Recyclable Materials" means either or both I) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Materials at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service; and II) any other Recyclable Materials that are not Approved Recyclable Materials.

"Exempted Drop Box" means as provided in the Commercial City Franchise Agreements.

"Exempted Drop Box Material" means as provided in the Commercial City Franchise Agreements.

"Exempted Drop Box Services" means as provided in the Commercial City Franchise Agreements.

"Exempted Facility" means as provided in the Commercial City Franchise Agreement.

"Exempted Facility Materials" means as provided in the Commercial City Franchise Agreements.

"Exempted Facility Materials Limit" means as provided under the Commercial City Franchise Agreements.

"Exempted Haulers" means as provided in the Commercial City Franchise Agreements.

"Exempted Hauler Account" means as provided in the Commercial City Franchise Agreements.

"Exempted Hauler Account Material" means as provided in the Commercial City Franchise Agreements.

"Exempted Hauler Account Services" means as provided in the Commercial City Franchise Agreements.

"Extension Term" means one or more extensions of the Term of this Agreement, as provided under Section 3.1(B).

"Food Waste" means all compostable pre-consumer and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and egg shells, and food-solled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, paper milk cartons or other paper products accepted by the Contractor's selected composting facility or other processing facility and that has been Source Separated and placed in a Container for Recycling. Food Waste shall not include dead animals weighing over 15 pounds, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting or other processing facility. The materials accepted by composting site selected by Contractor may change from time to time and the definition of Food Waste shall change accordingly.

"Franchised Haulers" means the parties providing collection and transportation services of Solid Waste and Approved Recyclable Materials under the City Franchise Agreements.

"Franchise Hauler Terms" means as provided in Section 3.4 hereof.

"Garbage" means putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking and sale and serving of food and beverage, excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of Garbage with rubbish, trash or other waste matter, exclusive of items I) through VIII), inclusive under the definition of Excluded Materials, renders the entire resulting mixture as Garbage.

"Green Waste" means Source Separated biodegradable materials including branches (less than three (3) inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants, leaves, pruning's, shrubs, weeds, wood (uncoated and untreated), wood chips, yard trimmings, Christmas trees (with no stands, flocking and/or decorations, and cut into two (2)-foot sections), excluding Excluded Materials.

"Hazardous Waste" means hazardous waste as defined in Nevada Revised Statutes 459.430, hazardous substance as defined in Nevada Revised Statute 459.429 and other hazardous or toxic materials as defined under any other local, state or federal law.

"Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

"MRF" means as provided in Recital B of this Agreement.

"Party" or "Parties" means City or Contractor individually, or City and Contractor, respectively.

"Permitted Transferee" means an Affiliate of Contractor.

"Paper Shredder Materials" means paper and similar paper products and the products and residue resulting from shredding thereof collected and shredded by properly licensed service providers providing paper shredding services.

"Qualifications" means the Assignee Qualifications, as defined in Section 10.6 of this Agreement.

"Rate Revenues" means the revenues from the Rates billed to and collected from Franchised Haulers by Contractor for provision of Disposal Services, but excluding any revenues, receipts or proceeds from other sources, including without limitation Special Services and proceeds from the sale of Recyclable Materials.

"Rates" or "Rate" means the amount each and all Franchised Haulers shall be charged by Contractor for Disposal Services under this Agreement, which Rates or Rate may be adjusted from time to time during the Term as provided under this Agreement, including the Solid Waste Disposal Rate (as defined in Section 5.2(A) of this Agreement) and the Recyclables Rate (as defined in Section 5.2(B) of this Agreement).

"Recyclable Materials" or "Recyclables" means materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or implemented after the Effective Date, but including Source Separated Green Waste and Source Separated Food Waste.

"Recycle", "Recycled", "Recycling" means the process of collection, sorting, cleansing, treating and reconstituting of Recyclable Materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

"Residential Franchise Agreement" means as provided in Recital C of this Agreement.

"Residue" or "Residuals" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as contaminated paper, putrescible waste, and other debris.

"Self-Haul" or "Self-Hauler" means that the generator of any Approved Disposal Materials, may himself or herself, but not by or through an agent, contractor or other third party, occasionally collect, transport and dispose of incidental amounts of Approved Disposal Materials generated by that generator only, subject to the terms and conditions of the Residential Franchise Agreement and the Commercial Franchise Agreements.

"Solid Waste" means all putrescible and nonputrescible waste matter in solid or semi-solid form, including but not limited to rubbish, Garbage, ashes, refuse and Residue, but excluding Excluded Materials.

"Source Separated" means the separation of any material or category of materials from other materials by the generator at the point or place of generation.

"Special Services" means various disposal and other services which is not within the Disposal Services under this Agreement, but which services Contractor at its option may offer to it's the Franchised Haulers or to others at rates, charges and other terms and conditions determined by Contractor.

"Special Waste" includes any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste. As defined for purposes of this Agreement, "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires and vehicle batteries.

"Term" means the period provided in Section 3.1(A), as extended by any Extension Terms under Section 3.1(B).

"Transfer Station" means as provided in Recital A of this Agreement.

"Working Days" means, unless otherwise specified, Monday through Friday, excluding legal holidays.

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Contractor is qualified to transact business in the State of Nevada and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Contractor, such that this Agreement shall constitute a valid and binding obligation of Contractor enforceable in full accordance with its terms, except only to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights.

C. NO CONFLICT

Contractor warrants and represents that, to Contractor's knowledge, as of the Effective Date neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

D. INFORMATION SUPPLIED BY CONTRACTOR

To Contractor's knowledge the information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's financial information, is true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

E. CONTRACTOR QUALIFICATIONS

Contractor warrants and represents it has the experience, financial capability and operational capability to perform the Contractor's duties and obligations under this Agreement and meets or exceeds the Qualifications.

**ARTICLE 3
DISPOSAL SERVICES AGREEMENT**

3.1 AGREEMENT TERM AND EXTENSIONS

Term

This Agreement shall be effective during the Term, which shall commence on the Effective Date and shall expire on the date 17 years thereafter on November 7, 2029 ("Expiration Date"), unless extended as provided in Section 3.1 (B) below.

B Extension Terms; Termination

The Initial Term of this Agreement and each Extension Term of this Agreement shall be automatically extended for an additional five (5) year Extension Term unless City or Contractor provides written notice of termination not less than five (5) years prior to the expiration of the Initial Term and each Extension Term. Contractor shall be entitled to terminate this Agreement effective anytime during the last 3 years of the Initial Term upon not less than twenty four (24) months prior written notice to City.

C Periodic Review by City and Contractor of Collection Services

1. During the 24 month period ("Review Period") commencing on the date five (5) years after the Effective Date ("First Review Period Commencement Date") and on the date of each successive five (5) year anniversary after the First Review Period Commencement Date during the Initial Term and all Extension Terms, each of the City or Contractor may initiate, conduct and complete the review of the operation of the Collection Services under this Agreement, in order to i) assess the effectiveness of the Collection Services and ii) identify areas for possible improvement ("Review"). Either City or Contractor may provide written notice to the other ("Review Notice") stating, in reasonable detail, the nature, scope and specific areas for review, but the provision of the Review Notice shall not be a condition precedent to the Review and Review Notice contents shall not limit the nature, scope or specific areas of the Review.

2. City and Contractor shall during the Review Period cooperate in good faith to conduct the review of the Collection Services. If as a result of the Review either or both the City or Contractor

determine improvements to the Collection Services would be beneficial, i) City and Contractor shall cooperatively prepare a written report reflecting the results of the Review, the aspects of the Collection Services suggested for improvement and any amendments to this Agreement necessary to make such improvements ("Report") and ii) Contractor and the City will conduct, in good faith, discussions and negotiations concerning any improvements to the Collection Services, including any related amendments to this Agreement; provided, however, neither City nor Contractor shall be obligated to agree to any changes to the Collection Services or amendments to this Agreement. The Report shall provide, in reasonable detail, the findings of the Review, together with any recommendations for improvements or changes to the Collection Services and related amendments to this Agreement. If the City and Contractor do not agree on all of the contents of the Report or the recommendations, the Report shall include the positions of both City and Contractor. The Review, preparation of the Report and all discussions and negotiations shall be completed on or before the expiration of the Review Period. If Contractor and City agree to changes to the Collection Services or agree to amend this Agreement, the amendment will be executed on or prior to the expiration of the Review Period and the changes to the Collection Services will be implemented as soon as reasonably possible thereafter.

3.2 CONTRACTOR'S DISPOSAL SERVICES

A. Solid Waste

Beginning on the Effective Date, and throughout the term of this Agreement, Contractor, by itself or through its subcontractors, shall have the right and obligation to (a) accept, transfer, and transport all quantities and loads of Solid Waste that is Approved Disposal Material from the Franchised Haulers, within and from the Transfer Station (or other Designated Facility, if directed by Contractor) to the Disposal Site; and (b) manage the disposal of all Solid Waste that is Approved Disposal Material at the Disposal Site (collectively the "Waste Disposal Services").

B. Approved Recyclable Materials

Beginning on the Effective Date, and throughout the term of this Agreement, Contractor, by itself or through its subcontractors, shall have the right and obligation to (a) accept, process, transfer, transport, and otherwise manage all quantities and loads of Approved Recyclable Materials that are Approved Disposal Materials from the Franchised Haulers, at the Contractor's MRF (or other Designated Facility, if directed by Contractor); and (b) transport and dispose of any Residuals at the Disposal Site (collectively, the "Recycling Services"). Contractor shall be entitled, but shall not have the exclusive right or obligation, to accept, process, recycle or manage Food Waste or Green Waste under this Agreement.

C. Contractor shall be solely responsible for the sale of Approved Recyclable Materials, and shall be entitled to retain all proceeds therefrom. In the event Contractor is unable, after commercially reasonable efforts, to sell any Approved Recyclable Materials on economically reasonable terms, Contractor and City will cooperate in good faith to determine mutually acceptable terms for the handling or Disposal of such Approved Recyclable Materials, including without limitation Disposing of such Approved Recyclable Materials as Solid Waste and adjusting the Recyclables Rates payable on such Approved Recyclable Materials.

D. Contractor to Furnish Resources

The services to be provided by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, equipment, materials, supplies, and all other items necessary to perform all Disposal Services, and the payment of all related expenses including all transfer and Disposal fees, processing fees for Recyclable Materials taxes, utility charges, etc. Contractor shall provide Disposal Services using standard Industry practice for comparable operations.

E. Continuation of Disposal Services

In the event all or any of the City Franchise Agreements are terminated, replaced, superseded, amended or otherwise modified prior to the expiration or termination of this Agreement, Contractor shall continue to have the right to continue to provide the Disposal Services on the terms provided under this Agreement for all Approved Disposal Materials (whether or not collected by the Franchised Haulers) generated by residential and commercial uses in the City to the full extent provided under this Agreement; provided, however, the Rates will be adjusted as provided in Section 5.3 hereof if necessary. City and Contractor will cooperate in good faith to amend this Agreement to provide for continued performance of the Disposal Services by Contractor.

F. Delivery of Exempted Drop Box Materials and Exempted Hauler Account Materials

Except as expressly provided herein or in the City Franchise Agreements, neither this Agreement nor the City Franchise Agreements shall limit or preclude Exempted Drop Box Materials collected and transported using Exempted Drop Box Services or Exempted Hauler Account Materials collected and transported using Exempted Hauler Account Services from being delivered by any Exempted Hauler, including Contractor, to any facility for acceptance, processing, recycling, transfer or disposal, including without limitation facilities other than the Designated Facilities.

G. Exemption for Exempted Facility Materials

1. Subject to the Exempted Facility Material Limit and otherwise as provided in this Section 3.2 G, i) the requirement and obligation of a Franchised Hauler to deliver all Approved Disposal Materials to a Designated Facility shall not include or apply to Exempted Facility Materials delivered by a Franchised Hauler to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials.

2. The Exempted Facility shall file with the City a quarterly report, in form required by the City and certified true, correct and complete by an owner or officer of the Exempted Facility, consistent with the obligations of the Exempted Facility under Section 3.2 G 7 hereof, stating i) the volume of all Solid Waste and Recyclable Materials, including without limitation the type and volume of Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials accepted, processed, recycled and disposed during the calendar quarter and ii) such other information the City may require.

3. The Exempted Facility shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 3.2 G, the rights of the Exempted Facility under Section 3.2 G. Sections 3.2 G and 3.2 F shall not be amended in a manner that would terminate, limit or restrict i) the right of any Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility, or ii) the right of any Exempted Hauler to deliver Exempted Drop Box Materials or Exempted Hauler Account Materials to the Exempted Facility as provided under Section 3.2 F hereof, or iii) the right of the Exempted Facility to accept, process, recycle or dispose of the materials delivered under Sections 3.2 G 3 i) and ii) hereof, without the prior written consent of the Exempted Facility, which the Exempted Facility may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 3.2 G shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Facility Materials.

4. The rights of the Exempted Facility under this Section 3.2 G may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary for the acceptance, processing, recycling and disposal of the Exempted Facility Materials and the Exempted Facility owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Facility. If the Exempted Facility shall dissolve or otherwise cease business for a period equal to or more than one (1) year, the rights of the Exempted Facility under this Section 3.2 G shall terminate.

5. The Exempted Facility shall pay to the City in quarterly installments a host fee equal to two and one-tenth cents (\$0.021) for each cubic yard of Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Materials that are accepted, processed, recycled or disposed at the Exempted Facility. The host fee payable under this Section shall be increased in proportion to changes in the Host Fee payable by the Designated Facility Owner under the Disposal Agreement.

6. The Exempted Facility shall be in default hereunder if the Exempted Facility shall i) fail to timely pay the host fee or fail to timely file with the City the reports, each as required under this Section 3.2 G, ii) accept, process, recycle or dispose of Exempted Facility Materials totaling in excess of one hundred five percent (105%) the Exempted Facility Materials Limit for the Exempted Facility, iii) accept, process, recycle or dispose of Exempted Facility Materials more than the Exempted Facility Material Limit on two occasions in any consecutive five (5) year period, or iv) otherwise materially fail to comply with this Section 3.2 G. Upon thirty (30) days written notice of default by City and the failure of the defaulting Exempted Facility to cure such default, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the right to terminate the rights under this Section 3.2 G of the defaulting Exempted Facility.

7. The Exempted Facility will exercise industry standard, reasonable efforts to screen materials received from the Exempted Haulers and the Franchised Haulers to identify Exempted Facility Materials, Exempted Drop Box Materials, Exempted Hauler Account Materials and other materials in order to i) prepare and file the reports required to be filed with the City under this Section 3.2 G, ii) comply with

the Exempted Facility Materials Limit, III) pay the host fee required under this Section 3.2 G and otherwise comply with the requirements of this Section 3.2 G.

3.3 ADDITIONAL OBLIGATIONS OF CONTRACTOR

As part of the consideration under this Agreement, Contractor agrees to the following:

A. Construction of Eco-Center.

Within twenty eight (28) months following the Effective Date of this Agreement, Contractor or its affiliates shall use commercially reasonable efforts to commence and diligently prosecute construction of the Eco-Center or other similar facilities that will provide transfer, processing, and disposal of Solid Waste and Recyclables. The Contractor's obligations to construct and complete the Eco-Center shall be contingent upon the Contractor's obtaining all necessary permits and approvals from local, regional, or state authorities necessary for the construction and operation of the Eco-Center. It is anticipated that the Eco-Center will include the following features; however, the final design and scope of the facilities shall be subject to Contractor's discretion, in consultation with the City:

1. A material recovery facility for the processing of single stream Recyclables, which processing may include, without limitation, sorting, separating, baling and shipping of Recyclables;
2. A larger Solid Waste transfer area with increased capacity for receiving and transferring Solid Waste, along with area for separation of Recyclables from Solid Waste as determined appropriate by Contractor;
3. A receiving and transfer area for community drop off and disposal of green waste, electronic waste, and household hazardous waste (HHW), subject to the development of rates and policies for such services;
4. A community education center providing a facility viewing area and printed and online educational materials;
5. A designated recycling coordinator, to be employed by Contractor, who shall educate and assist residential and commercial customers to enhance recycling and diversion rates; and
6. Such other services and facilities as mutually agreed upon by the Contractor and the City.

Contractor shall be responsible for the cost of developing the Eco-Center; however, the City shall provide reasonable cooperation and coordination to help facilitate the development of such facility or facilities, including but not limited to providing in the City Franchise Agreements that the Franchised Haulers must deliver Approved Disposal Materials to a Designated Facility (except for Exempted Facility Materials) and to abide by the safety and other operational rules and restrictions of the Designated Facility.

B. Natural Gas Fueling Facility.

Within sixteen (16) months following the Effective Date of this Agreement, Contractor or its affiliates shall use commercially reasonable efforts to commence and diligently prosecute construction of a retail compressed natural gas (CNG) fueling facility that will allow the City to purchase CNG for the City's vehicles at market retail rates. The Contractor's obligations to construct and complete the retail CNG facility shall be contingent upon the Contractor's obtaining all necessary permits from local, regional, or state authorities necessary for the construction and operation of such facility. Contractor shall be responsible for the cost of siting, permitting, and developing the retail CNG facility; however, the City shall provide reasonable cooperation and coordination to help facilitate the development of such facility.

C. Solar Compactors.

Within sixteen (16) months following the Effective Date of this Agreement, Contractor or its affiliates shall purchase twenty five (25) "Big Belly" 32-gallon solar powered Solid Waste compactors for transfer to the City and placement in locations throughout the City as mutually agreed upon by the Contractor and the City. These solar compactors are to be used for public street-side collection of Solid Waste. Collection of Solid Waste materials from the compactors will be included within the scope of the Commercial Franchise Agreements as part of the City Collection Services (as defined in the Commercial Franchise Agreements) and shall be the shared obligation of the Commercial Franchised Haulers as provided in the Commercial Franchise Agreements; provided, however, the City shall own and be responsible for the repair and replacement of the compactors.

D. Compressed Natural Gas Vehicles

Within twenty eight (28) months following the Effective Date of this Agreement, Contractor or its affiliates shall purchase and place into service twelve compressed natural gas powered collection vehicles ("CNG Vehicles") for Collection Services (as defined in the City Franchise Agreements) by Reno Disposal, Inc.. Contractor or its affiliates will own, operate and maintain the CNG Vehicles as required in the City Franchise Agreements.

E. City Disposal Services

City shall be entitled to deliver Approved Disposal Materials generated by the City at City properties to Contractor's Transfer Stations at no charge as provided in and subject to this Section ("City Disposal Services"). The City Disposal Services only shall be provided by Contractor for Approved Disposal Materials generated from buildings, parks and similar facilities owned by City and generated in the normal and ordinary course of operation of such facilities and does not include: i) any material that requires special handling, equipment or processing, including without limitation Excluded Materials or Special Waste; ii) materials generated by businesses operating for-profit on or from City property; iii) materials resulting from natural disasters; special events; repair, construction or reconstruction of City facilities or from activities of any subcontractor on City property; iv) access to or disposal at the Disposal Site; or v) any other Disposal Services or other services relating to materials generated from any use, activity or cause other than the operation of City owned facilities in the normal ordinary course for such facility. Any Disposal Services provided by Contractor to City other than the City Disposal Services shall

be paid for by City at the established Rates. In the event the cost or value of the City Collections Services exceeds \$215,000 at the Rates established as provided herein and adjusted for changes in the CPI in the manner provided in Section 5.3 hereof, the Rates shall be concurrently increased in an amount necessary to pay the full amount of such increase and City and Contractor shall cooperate in good faith to establish such increase in Rates.

3.4 CITY'S OBLIGATION TO PROVIDE FOR DELIVERY OF APPROVED DISPOSAL MATERIALS AND OTHER FRANCHISE HAULER RESPONSIBILITIES; CITY FRANCHISE AGREEMENT TERMS

City hereby agrees to the following terms, covenants and conditions and further agrees I) to cause the terms, covenants and conditions in this Section 3.4 and all other terms applicable to the Franchised Haulers and provided under this Agreement (collectively, the "Franchise Hauler Terms") to be included as obligations of each Franchised Hauler in each City Franchise Agreement, II) to maintain each City Franchise Agreement in full force and effect during the Term of this Agreement (except and unless terminated by City as a result of default by the Franchised Hauler thereunder) and III) to abide by and enforce the terms, covenants and conditions of the City Franchise Agreements. The foregoing agreements are a material part of the consideration under this Agreement and material to Contractor's agreement to enter into this Agreement and provide the Disposal Services, capital improvements, and other services and consideration contemplated herein:

A. Delivery of Approved Disposal Materials

Beginning on the Effective Date, and throughout the term of this Agreement, the Franchised Haulers will deliver all Approved Disposal Materials collected, handled or transported under the City Franchise Agreements to the Designated Facilities in accordance with the terms and conditions of this Agreement. Each Franchised Hauler shall deliver i) all Solid Waste that is Approved Disposal Material to the designated Transfer Station, unless Contractor directs the Solid Waste be delivered to another Designated Facility and ii) all Approved Recyclable Material that is Approved Disposal Material to the MRF, unless Contractor directs the Approved Recyclable Material be delivered to another Designated Facility. No Approved Disposal Materials shall be delivered to the Disposal Site by the Franchised Haulers without the prior express approval of Contractor. No person or entity other than Contractor shall be allowed or entitled to accept the Approved Disposal Materials for processing, recycling or disposal except as expressly provided under this Agreement. Notwithstanding anything in this Section 3.4 (A) to the contrary, i) the Franchised Haulers shall be entitled to deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste Disposal facilities other than the Designated Facilities, II) Disposal facilities other than the Designated Facilities shall be entitled to accept (a) Excluded Materials; (b) Exempted Drop Box Materials; (d) Exempted Hauler Account Materials; (e) Food Waste and (f) Green Waste for processing or recycling and III) the Franchised Haulers shall be entitled to deliver to the Exempted Facility, and the Exempted Facility shall be entitled to accept, process, recycle and dispose, Exempted Facility Materials. Nothing in this Agreement or the City Franchise Agreements shall be interpreted to prohibit or prevent a Franchised Hauler from directly or indirectly owning and operating a transfer station, disposal facility, materials recovery facility or similar facility that accepts and to which a Franchised Hauler may Collect

and deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste; and (e) Green Waste, for processing or recycling.

B. No Excluded Materials; Screening of Materials

Franchised Haulers will deliver only Approved Disposal Materials of the type appropriate for the Designated Facility to which the materials are delivered and otherwise in accordance with the terms of this Agreement. No Excluded Materials will be delivered to any Designated Facility by a Franchised Hauler except with the prior written and informed approval of Contractor. The Franchised Haulers will exercise industry standard, reasonable efforts to screen all materials to i) screen and verify only Approved Recyclable Materials are delivered for Recycling and ii) screen and remove all Hazardous Waste and other Excluded Materials from the materials delivered to the Designated Facilities. Except as provided in Section 3.4 F hereof, ownership of Hazardous Waste and other Excluded Materials shall not transfer to Contractor unless Contractor shall expressly and knowingly accept such ownership in writing and Contractor shall not be responsible for any Hazardous Wastes or other Excluded Materials delivered to a Designated Facility in violation of this Agreement.

C. Payment of Rates by Franchised Haulers

The Franchised Haulers will pay the Rates to Contractor in accordance with Section 5.2 of this Agreement and otherwise as required under this Agreement.

D. Limited License

The Franchised Haulers shall have a limited license to enter the Designated Facilities for the sole purpose of unloading Approved Disposal Materials at an area designated, and in the manner directed, by Contractor.

E. Compliance by Franchised Haulers

Each Franchised Hauler and its employees, subcontractors, or other agents shall comply with: i) Applicable Law related directly or indirectly to the delivery and Disposal of materials to the Designated Facilities, including without limitation the ordinances of the City, ii) all rules and regulations of the Designated Facilities of which the Franchised Hauler has not less than thirty (30) days prior written notice, including without limitation rules relating to safety, acceptance, rejection or revocation of acceptance of materials, and hours of operation, measuring and reporting volumes of Approved Disposal Materials delivered to the Designated Facilities and iii) all other Franchise Hauler Terms in the Disposal Agreement.

F. Inspection and Rejection of Materials by Contractor

Contractor shall have the right to inspect, analyze or test any material delivered by the Franchised Haulers to any Designated Facility. Contractor shall have the right to reject, refuse or revoke acceptance of any material if, in the reasonable opinion of Contractor, the material or tender of delivery fails to conform to, or the Franchised Haulers fail to comply with, the terms of this Agreement, including

without limitation as a result of delivery of Excluded Material. In the event Contractor, by notice to a Franchised Hauler, rejects or within 10 business days of receipt revokes acceptance of materials hereunder, the Franchised Hauler shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from Contractor's control or property. If the rejected material is not removed within three (3) days from receipt of notice, Contractor shall have the right and authority to handle and dispose of the rejected material or Excluded Material in any commercially reasonable manner determined by Contractor. The Franchised Hauler shall pay and/or reimburse Contractor for any and all costs, damages and/or fines incurred as a result of or relating to the tender or delivery of the rejected material or Excluded Material or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of the rejected material or Excluded Material. Title to, ownership of and liability for Excluded Material shall transfer to Contractor unless such Excluded Material is rejected or the acceptance of which is timely revoked. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for delivery of Contaminated Recyclable Materials, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

G. Franchise Hauler Noncompliance

Contractor may suspend on prior written notice some or all Disposal Services to Franchised Haulers the event a Franchised Hauler fails to comply with the requirements applicable to Franchised Haulers in this Agreement or otherwise fails to follow the requirements and procedures under this Agreement or Applicable Law, rules and policies including without limitation, i) improper preparation, separation or contamination of Approved Recyclable Materials, ii) delivery of Excluded Materials to a Designated Facility; or iii) other failure of a Franchised Hauler to comply with the requirements under this Agreement or Applicable Law, rules and policies of which Contractor has provided the Franchised Haulers reasonable prior notice. Upon occurrence of such event(s), Contractor may refuse to accept such materials and may charge fees and charges as provided herein or otherwise approved by City, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of and damages from such noncompliance. Upon notice of such a failure by Contractor to the Franchise Hauler and City and failure of the Franchise Hauler to remedy such failure within thirty (30) days, Contractor may suspend Disposal Service to the Franchise Hauler. The Franchised Hauler shall be reinstated on the first business day following the date upon which any such failure has been corrected. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights or remedies of Contractor under this Agreement, the City Franchise Agreements or Applicable Law.

H. Time of Delivery

The Contractor shall provide identical access and parity of use to the Transfer Station, the MRF, the Eco-Center, and any alternative facilities designated pursuant to Section 3.4 I for each Franchise Hauler for delivery and unloading of Solid Waste and Approved Recyclable Materials (including incidental residue)

at such facilities. Except where either or both the days and hours of operation for such facilities have been changed upon thirty (30) days prior written notice, such facilities shall be open for each and all of the Franchise Haulers every day of the week between the hours of 5:00 AM and 10:00 PM. Subject to compliance with the notice requirements of this Section 4.4 H, operational and delivery hours may be adjusted by the Designated Facility Owner and approved by City. Contractor shall have the right to adjust the operating hours of the Designated Facilities to the extent reasonably necessary in the event of an emergency.

I. Alternative Facilities

During the Term of this Agreement, the Contractor may designate alternative facilities for the receipt, processing, transfer, or disposal of Approved Disposal Materials, Green Waste and Food Waste, provided such alternative facilities do not result in an increase in Rates or material increase in costs to the Franchised Haulers and the Franchised Hauler(s) selected by Contractor will deliver the Approved Disposal Materials to such alternative facilities as directed by Contractor. If Contractor designates an alternative facility, unless the alternative facility is required to pay the Host Fee to the City, Contractor shall pay or cause to be paid the Host Fee applicable to any Approved Disposal Materials delivered to the alternative facility. Upon the approval of City, Contractor may cause or allow Approved Disposal Materials to be delivered to the City waste water treatment plant, in which event no Host Fee, tipping fee or other fee will be payable to City for or on such materials. Nothing in this Section 3.4 I shall limit the right of a Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility or the right of the Exempted Facility to accept, process, recycle or dispose of Exempted Materials under Section 3.2 G hereof.

J. Ownership of Disposal Materials

Ownership of all Approved Disposal Materials, upon delivery to and acceptance by a Designated Facility, shall transfer to Contractor and shall become the property of Contractor.

K. Third Party Beneficiary; Contractor Rights

Contractor shall be a third party beneficiary of the City Franchise Agreements with all rights and remedies to enforce the Franchise Hauler Terms and other terms, covenants and conditions under the City Franchise Agreements.

3.5 COMPENSATION TO CONTRACTOR; RATES; SPECIAL SERVICES

Contractor shall be entitled to charge and collect the Rates from Franchised Haulers for Disposal Services, as more fully provided in Section 5.2 of this Agreement, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from the Franchised Haulers for Disposal Services shall be Contractor's sole compensation for provision of Disposal Services. However, Contractor also shall be entitled provide and collect fees and charges for Special Services and other services and Contractor shall maintain in full force and effect throughout the term of this Agreement a current business license from the City as it relates to provision of Special Services and such other services.

3.6 HOST FEES PAYABLE TO CITY

A. Host Fees for Approved Disposal Materials from Franchised Haulers

Contractor shall pay to the City in monthly installments during the Term a Host Fee equal to Forty Two Cents (\$.42) for each ton of Approved Disposal Materials accepted by Contractor from Franchised Haulers under this Agreement at a Designated Facility located in the City (excluding the Disposal Site), the tonnage of which shall be determined by weighing the Approved Disposal Materials when transported from the Designated Facility.

B. Host Fees for Other Disposal Materials

Contractor also shall pay to the City in monthly installments during the Term a Host Fee equal to Forty Two Cents (\$.42) for each ton of disposal materials other than Approved Disposal Materials accepted by Contractor from Franchised Haulers under this Agreement at a Designated Facility located in the City (excluding the Disposal Site), the tonnage of which shall be determined by weighing the Approved Disposal Materials when transported from the Designated Facility.

C. Adjustment of Host Fee

The Host Fee shall be increased in proportion to changes in the CPI as provided in Section 5.3 hereof and the City reserves the right to increase or decrease the Host Fee upon ninety (90) days written notice to Contractor. In the event City increases or decreases the Host Fee, the Rates shall concurrently be increased or decreased, respectively, in an amount equal to the increase or decrease of the Host Fee, in which event the increase or decrease in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the 90 day notice period.

D. Payment of Host Fees by Contractor to City

The Host Fees for each calendar month ("Subject Month") during the Term and any extensions of the Term shall be paid by Contractor on or before the 25th day of the following calendar month and shall be calculated by Contractor on the basis of the tons of Approved Disposal Materials and the tons of other materials actually delivered to and accepted by the Designated Facilities during the Subject Month. Contractor shall provide to City along with the monthly payment a statement of the tons of Approved Disposal Materials and Host Fee for such payment, attested to by a representative of contractor as being true and correct. Any Host Fee not paid by the date due shall bear interest at Seven Percent (7%) per annum until paid. The tons of Approved Disposal Materials accepted at the Designated Facility under this Agreement, the Host Fees and the calculation thereof shall be subject to audit and inspection by the City under Sections 6.4 and 7.3 below and contractor shall cooperate fully in all such audits and inspections.

E. No Additional Fees or Charges

The Host Fee shall be the only fee or compensation paid by Contractor to City in connection with the Disposal Services and this Agreement and no other license, permit, privilege or other fee, tax or charge shall be imposed by City upon Contractor; provided; however, that nothing in this section shall modify the obligation of Contractor to pay building permit fees and other similar fees relating to the Designated Facilities.

F. Host Fees Payable By Other Facilities

City shall require all transfer stations, material recovery facilities, disposal sites, landfills or other facilities for the transfer, processing, recycling, deposit or disposal of Solid Waste or Recyclable Materials located in the City, in addition to the Designated Facilities, to pay the Host Fee in the manner and amount provided in this Agreement and adjusted as provided herein.

3.7 EMERGENCY SERVICES

In the event that Contractor, for any reason whatsoever, fails, refuses, or is unable to perform the Disposal Services for Solid Waste for a period of more than five (5) consecutive business days, and if as a result thereof, Solid Waste accumulates at a Designated Facility to such an extent, in such a manner, or for such a time that City reasonably finds that such accumulation endangers or menaces the public health, safety, or welfare and is in violation of Applicable Law, then City shall have the right, but not the obligation, upon twenty four (24) hours prior written notice to Contractor, during the period of such emergency to perform, or cause to be performed, such Disposal Services itself with its own or other personnel and equipment without liability to Contractor.

3.8 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.9 ADOPTION BY CITY OF ORDINANCES AND AMENDMENTS

On or before the Effective Date hereof and thereafter during the Term of this Agreement, City shall adopt and thereafter maintain new or amended ordinances reasonably necessary or appropriate to implement and make enforceable and binding the terms and conditions of this Agreement; provided, however, subject to Contractor's rights under this Agreement, City shall have the right and discretion to adopt and amend ordinances or otherwise exercise its regulatory authority relating to the subject matter of this Agreement.

3.10 OTHER SERVICES

In addition to and separate from Disposal Services, Contractor may voluntarily offer services to persons and entities other than City and the Franchised Haulers and may offer services other than the Disposal Services provided under this Agreement, all in the manner and at rates, fees and charges in an amount determined by Contractor, including without limitation services related to i) Excluded Materials, ii)

Excluded Recyclable Materials, iii) Exempted Drop Box Materials, iv) Exempted Hauler Materials, v) Food Waste and v) Green Waste.

3.11 TRANSITION AND IMPLEMENTATION OF DISPOSAL SERVICES

Contractor currently provides certain Solid Waste and Recyclable Materials disposal services in the City and will continue to do so after the Effective Date and until implementation of the Disposal Services under this Agreement. Contractor will commence the Implementation of Disposal Services and other obligations required by this Agreement on the dates specified herein for each such service or obligation, but if no date is specified for a particular service or obligation, within 30 days after on the Effective Date.

ARTICLE 4 OPERATIONS

4.1 PERSONNEL

Contractor shall furnish qualified operational, mechanical, supervisory, clerical and other personnel as necessary to provide the Disposal Services required by this Agreement in a safe and efficient manner and otherwise as provided in this Agreement.

4.2 EQUIPMENT

Contractor shall procure, maintain and replace sufficient equipment to properly provide the Disposal Services. All equipment used in the performance of Disposal Services shall be maintained in an operational manner to Industry standards.

4.3 INCLEMENT WEATHER, CONSTRUCTION AND OTHER SERVICE DISRUPTIONS

When weather, construction or other conditions reasonably prevent or impair Disposal Services, Contractor may make reasonable adjustments to the Disposal Services, but shall continue Disposal Services to the extent reasonably safe and efficient.

4.4 SERVICE COMPLAINTS AND RESOLUTION

Contractor shall maintain computer records of all oral and written service complaints registered with Contractor from Franchised Haulers receiving Disposal Services ("Complaint Record"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints. Contractor shall record the Complaint in the customer file contained in the Contractor's customer database, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. City has the right under this Agreement to inspect the Complaint's made against Contractor upon written request.

ARTICLE 5 COMPENSATION TO CONTRACTOR

5.1 COMPENSATION TO CONTRACTOR; RATES

The compensation to be paid by the Franchised Haulers to Contractor under this Agreement shall be the Rates; provided, however, Contractor shall be entitled to charge other fees and charges as provide herein.

5.2 GENERAL RATES PROVISIONS

Commencing within 30 days after the Effective Date, Contractor shall charge and collect the Rates provided in this Section 5.2 from the Franchised Haulers for Disposal Services, which Rates may be adjusted as provided in this Agreement.

A. Rate for Solid Waste

Contractor shall charge the Franchised Haulers and the Franchised Haulers shall pay an initial rate of \$11.41 per compacted cubic yard and \$8.90 per uncompacted cubic yard (measured in accordance with reasonable methods and procedures adopted by Contractor of which at least 30 days written notice has been provided to the Franchised Haulers) of Solid Waste delivered to the Transfer Station or other Designated Facility (if directed by Contractor) (the "Solid Waste Disposal Rate"). The Solid Waste Disposal Rate includes all services related to receiving, transferring, transporting and disposing of the Solid Waste, inclusive of federal, state and local taxes, fees and assessments in effect and applicable to the transfer, transport or disposal of such Solid Waste as of the Effective Date. Contractor shall be entitled to install scales and related equipment at the Transfer Station or other Designated Facility and to convert the Solid Waste Disposal Rate from a rate per cubic yard calculation methodology to a reasonably equivalent rate per ton calculation methodology; provided Contractor and City shall cooperate in good faith to determine the appropriate equivalent rate per ton.

B. Rate for Approved Recyclable Materials

Contractor shall charge the Franchised Haulers and the Franchised Haulers shall pay an initial rate of \$43.22 per ton of Approved Recyclable Materials delivered to the MRF or other Designated Facility, if directed by Contractor (the "Recyclables Rate"). The Recyclables Rate includes all services related to the receiving, transfer, processing, sorting, marketing and sale of Approved Recyclable Materials, inclusive of federal, state and local taxes, fees and assessments in effect and applicable to the receiving, transfer, processing, sorting, marketing, and sale of Approved Recyclable Materials as of the Effective Date. In charging the Recyclables Rate hereunder, Contractor shall determine the tonnage of Approved Recyclable Materials by weighing the Franchised Hauler's vehicles at the Designated Facility. Any Solid Waste Residue remaining after the processing of Approved Recyclable Materials shall be disposed of and charged at the Solid Waste Disposal Rate set forth in Section 5.2(A) above.

C. Rates for Special Waste and Other Services

Subject to reasonable handling restrictions or limitations imposed by Contractor, Contractor may accept from Franchised Haulers or others Special Waste and other materials at the Transfer Station, Disposal Site or other Designated Facility, as directed by Contractor, for disposal or other handling. If accepted by

Contractor, Contractor shall charge and the Franchised Haulers or others shall pay the published gate rates for such Special Waste or other materials as published by Contractor on the date of delivery.

5.3 ADJUSTMENT OF RATES AND HOST FEE

A. CPI Rate Adjustment

The Rates for all Disposal Services and the Host Fee shall increase annually in proportion to the percentage increase in the CPI over the preceding year, as provided below ("CPI Adjustment"). Adjustments to the Rates and Host Fee shall be made in units of one cent (\$0.01) and fractions thereof shall be rounded to the nearest cent.

The first annual CPI Adjustment shall occur January 1, 2014 (such date and each anniversary thereof during the Term, an "Adjustment Date"). The Rates and Host Fee shall be increased in proportion to the percentage increase in the CPI over the most recent twelve (12) month period ending on October 1 of the year preceding the Adjustment Date. The Contractor's calculations of the CPI Adjustment and the Host Fee shall be i) certified true, correct and complete by the Contractor Representative and ii) provided to the City no later than December 1 of the year preceding the Adjustment Date. The adjusted Rates and Host Fee shall take effect on the Adjustment Date and shall apply for the ensuing year. If the CPI is changed or discontinued, it will be replaced by an index that would achieve as closely as possible to the same result as if the CPI had not been changed or discontinued.

B. Other Adjustments to Rates

Because the Rates are primary compensation to Contractor for the Disposal Services, the Rates must be sufficient to pay known and unknown costs that may increase over time or to otherwise compensate Contractor for the Disposal Services. Accordingly, City and Contractor agree that, in addition to the CPI Adjustment and the other adjustments under this Section, the Rates shall be increased ("Rate Adjustment") in an amount necessary to compensate Contractor for:

1. Increases in costs or expenses resulting from a Change in Law or Change in Scope of Services;
2. Increase in the Host Fee or other fee, tax, tariff, assessment or other charge levied or assessed on the storage, handling, transportation or disposal of Solid Waste or Recyclables after the Effective Date and required, initiated or approved by City or another federal, state or local governmental agency;
3. A change in the volume of Solid Waste or Recyclable Materials or other materials disposed by Contractor hereunder that causes a material increase to Contractor's costs or expenses or material decrease in Contractor's revenues, including without limitation changes to the requirement that all Franchised Haulers deliver Solid Waste and Approved Recyclable Materials to Contractor as provided under this Agreement;
4. Increase in the fees, expenses or costs to Contractor for the transfer, processing, transportation, recycling, or disposal of Solid Waste and Approved Recyclable Materials, including without limitation a

material increase in the cost of fuel, except to the extent such increase was already factored into the CPI increase; and

5. Any other circumstance, cause, or reason not within the reasonable control of Contractor, including without limitation a Force Majeure event, that causes an increase in costs or expenses or reduction in revenue of Contractor, such that the Rates do not fairly compensate Contractor for the Disposal Services.

Contractor may initiate a Rate Adjustment under this Section 5.3 not more than once annually, beginning no earlier than January 1, 2014. To obtain a Rate Adjustment, Contractor shall prepare and submit to the City and the Franchised Haulers a rate adjustment statement setting forth the nature of the event causing the increase in costs and a calculation of the increased costs and the Rate Adjustment necessary to offset such increased costs. The City may request any and all documentation and data reasonably necessary to evaluate the Rate Adjustment and shall confirm or deny (with detailed written explanation of the reason for any denial and an alternative Rate Adjustment proposal by City) within ninety (90) days of receipt of the statement from Contractor and after soliciting for a period of not less than 30 days written comment on any proposed Rate Adjustment from the Franchised Haulers, which confirmation shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 6

BILLING; COLLECTION AND PAYMENT

6.1 BILLING, COLLECTION; DISPOSAL AGREEMENTS WITH FRANCHISED HAULERS

Contractor is responsible for billing the Franchised Haulers and collecting Rates Revenues for all Disposal Services. Billing for all Disposal Services shall be in arrears on a monthly basis for all tons or cubic yards of Approved Disposal Materials delivered to and accepted by Contractor during the preceding month. All payments shall be by the Franchised Haulers shall be due and payable on the first day of each monthly billing cycle and shall be delinquent if not paid on or before the last day of that month. Contractor shall be entitled to charge a late fee equal to five percent (5%) of the delinquent amount and interest at seven percent (7%) per annum on all delinquent accounts. Contractor shall be entitled to suspend any delinquent Franchise Hauler's account and delivery rights after Thirty (30) day's written notice. Contractor shall be entitled to charge the Franchised Haulers other appropriate fees and charges, including without limitation NSF check charges and collections costs, and shall be entitled to require a deposit equal to the average monthly billings to such Franchised Hauler as a condition to providing Disposal Services to any Franchised Hauler delinquent more than two times in any 60 month period. All Rates, charges, penalties, interest and other amounts due to Contractor for Disposal Services to a Franchised Hauler shall constitute an obligation of each Franchised Hauler. Contractor shall be entitled to establish rules, procedures and requirements for Franchised Haulers for Disposal Services and for collecting any amount payable for the Disposal Services. At Contractor's election, Contractor and the Franchised Haulers will enter into written disposal agreements by which the Franchised Haulers and Contractor agree to the terms and conditions provided under this Agreement for Disposal Services.

Nothing in this Section shall limit any rights or remedies of Contractor, including without limitation the right to enforce the terms of this Agreement, the Reno Municipal code relating hereto and Contractor's agreements with the Franchised Haulers or to collect any all amounts due for Disposal Services and other services.

6.2 RECEIPT OF PAYMENT

Contractor shall record all amounts received from the Franchised Haulers into an appropriate accounting account.

6.3 MONTHLY PAYMENT OF HOST FEES

On or before the twenty-fifth (25th) day of each calendar month, Contractor shall prepare and submit a monthly statement to City for the prior month, together with the Host Fees payable to City for the prior calendar month. The monthly statement shall include amount (in cubic yards or tons, as appropriate) of Approved Disposal Materials accepted by each Designated Facility under this Agreement for the month and the calculation of the Host Fee.

6.4 AUDIT OF HOST FEE AND AMOUNT OF APPROVED DISPOSAL MATERIALS

City may at its sole discretion and cost select a qualified independent firm to perform an audit of Contractor's records and data specifically relevant to the calculation and payment of the Host Fee, as set forth in this Article. Contractor shall, upon 30 days written notification by City, permit the audit and inspection of all of such records and data by the firm specified by City. The frequency and timing of the audits shall be determined at City's discretion, but shall not exceed a maximum of two (2) audits during the Base Term and one (1) during any five year extension of the Term.

ARTICLE 7

RECORD KEEPING, REPORTING AND INSPECTION

7.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records and accounts, pertaining to the Rates Revenues and Host Fee calculations and payments. Such records shall be subject to audit, copy, and inspection by City Representative or designee at any time during normal business hours upon prior written reasonable notice. Contractor shall maintain and such records for a period of not less than five (5) years following the close of each of Contractor's fiscal years.

B. Approved Disposal Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste accepted under the terms of this Agreement; and (ii) Recyclable Materials, by type, accepted under the Terms of this Agreement.

7.2 ANNUAL AND QUARTERLY REPORTING

A. General

Annual and quarterly reports shall be submitted to the City within forty five (45) days after the end of the reporting period which include a summary of I) Solid Waste accepted under the terms of this Agreement; and (II) Recyclable Materials, by type, accepted under the Terms of this Agreement.

7.3 INSPECTION BY THE CITY

City Representative, or designee(s), shall have the right to observe and review Contractor's facilities and records specifically relevant to the amount of Approved Disposal Materials accepted under this Agreement and the calculation of the Rate Revenues and Host Fee and in connection therewith to enter the Designated Facility premises during normal business hours for the purposes of such observations, and review at any time upon not less than twenty four (24) hours prior written notice. City Representative shall notify Contractor's representative upon arrival. City Representative will comply with all policies and procedures of Contractor when on Contractor's premises. Contractor may condition any such entry in or upon Contractor's premises, by City Representative or designee(s), on the prior execution of a waiver of any liability of Contractor for any injury or damages suffered by City Representative or designee(s), or their respective heirs and assigns, or others claiming by, through or under them, arising out of or relating to such entry.

ARTICLE 8

INDEMNITY, INSURANCE, PERFORMANCE SECURITY

8.1 INDEMNIFICATION OF THE CITY

Contractor agrees to and shall indemnify, defend and hold harmless City its officers, officials, employees, volunteers, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, damages, loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property) to the extent caused by (i) the failure of Contractor to comply with this Agreement and ii) the performance by Contractor, its officers, agents, employees, and subcontractors of the Disposal Services or other obligations of Contractor hereunder, except in each case to the extent caused by the default, negligence or intentional misconduct of City. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds, and the Contractor shall be liable hereunder to pay only the amount of damages, if any, that exceeds the total amount that all insurance has paid for the damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

8.2 INSURANCE SCOPE AND LIMITS

A. During the Term of this Agreement Contractor shall procure and maintain the following minimum insurance coverage, to the extent available:

1. **Commercial General Liability:** Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per-occurrence basis.

2. **Automobile Liability:** Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement.

3. **Worker's Compensation:** A policy of Worker's Compensation Insurance as may be required by the Nevada Revised Statutes.

B. **Other Insurance Provisions**

1. The Insurance policies shall contain, or be endorsed to contain, the following provisions:

a. City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations.

b. Contractor's insurance coverage shall be primary insurance in relation to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer or reduced in scope or amount except after thirty (30) days prior written notice has been given to City.

d. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. **Worker's Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Contractor for City.

C. **All Coverages.** Each insurance policy required by this Article shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

D. **Verification of Coverage**

Contractor shall furnish City, within 30 days after the Effective Date and upon request of City thereafter, with original certificates evidencing coverage required under this Section 8.2.

E. Acceptability of Insurers

All Insurance policies required by this Article shall be issued by admitted insurers in good standing with and licensed to do business in the State of Nevada, and possessing a current A.M. Best, Inc. rating of B+ FSC VIII or better.

F. Subcontractors

Contractor 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 in this Section.

G. Liability Coverage Amounts

Not more often than every five (5) years during the Term, City shall be entitled to increase the amount of liability insurance coverage required under this Section 8.2 if such coverage is below amounts generally accepted for similar services. In that event, City and Contractor will cooperate in good faith to establish the amount of liability insurance coverage generally accepted for similar services and Contractor will provide such liability coverage amounts.

8.3 INSTRUMENT FOR SECURING PERFORMANCE

Not less than thirty (30) days after the Effective Date, Contractor shall file with City an instrument, in form reasonably acceptable to City, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractor's default under this Agreement.

**ARTICLE 9
DEFAULT AND REMEDIES**

9.1 DEFAULT OF CONTRACTOR

A. Any of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

1. If Contractor shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless Contractor shall materially cure or remedy such failure within thirty (30) days after written notice by City to Contractor specifying in detail the nature of such default or, if such failure

is not reasonably capable of being cured or remedied within such thirty (30) day period, Contractor commences cure or remedy within such 30 day period and diligently prosecutes the same to completion.

2. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, or other similar law, or has an involuntary bankruptcy action filed against it which is not dismissed within 90 days of notice to Contractor; Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property; or Contractor shall make any general assignment for the benefit of Contractor's creditors.

3. Contractor ceases to provide Disposal Services as required under this Agreement for a period of five (5) consecutive Working Days or more, for any reason within the reasonable control of Contractor, such cessation poses a material threat to the health, safety and welfare of the public and City shall have provided not less than three (3) Working Days written notice of such default.

9.2 CITY REMEDIES FOR EVENT OF DEFAULT BY CONTRACTOR

A. Upon an uncured Event of Default by Contractor, City shall have the right to:

1. Terminate the Agreement in accordance with Section 9.3.

2. In addition to, or in lieu of termination, exercise all of its remedies in accordance with this Article and any other remedies at law and in equity to which City shall be entitled, including without limitation the right to pursue the performance security under Section 8.3 and make an available claim under any insurance policy.

3. At its discretion waive Contractor's default in full or in part.

9.3 TERMINATION BY CITY

Subject to Dispute Resolution in Section 10.7, City shall only exercise its right to terminate this Agreement through action of the Reno City Council at a regularly scheduled (or special) public meeting of that body. Contractor shall be given reasonable notice of such meeting, a written statement of the factual and legal basis of the claimed Event of Default and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting and City shall provide to Contractor copies of all records and information in City's possession or control relating to the Event of Default giving rise to such termination.

9.4 CONTRACTOR REMEDIES; TERMINATION

Contractor shall be entitled to terminate this Agreement or pursue specific performance of this Agreement if City shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless City shall materially cure or remedy such failure within sixty (60) days after written notice by Contractor to City specifying in detail the nature of such default or, if such failure is not

reasonably capable of being cured or remedied within such sixty (60) day period, City commences cure or remedy within such 60 day period and diligently prosecutes the same to completion. Contractor shall have the right to terminate this Agreement upon ninety (90) days written notice to City if Applicable Law prohibits, materially limits or makes uneconomical the Disposal Services or the operation by Contractor of any Designated Facility as contemplated in this Agreement. Except as provided in Section 10.7, nothing herein shall limit Contractor's rights and remedies available at law or equity for default by a party under this Agreement or the City Franchise Agreements.

ARTICLE 10

MISCELLANEOUS AND OTHER AGREEMENTS OF THE PARTIES

10.1 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Disposal Services as an independent contractor engaged by City and not as an officer or employee of City or as a partner or joint venturer with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Disposal Services and all persons performing such services on behalf of Contractor. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

10.2 FORCE MAJEURE

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, public or private construction activities, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, work stoppages or lockouts, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

10.3 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost (subject to rate adjustment provisions elsewhere in this Agreement), comply with all Applicable Laws, including all permit requirements for Disposal Service.

10.4 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

10.5 JURISDICTION AND VENUE

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of Nevada, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in City of Reno.

10.6 ASSIGNMENT

A. Definition

For purposes of this Section 10.6, the term, "Assignment" shall include, but not be limited to: (i) a transfer by Contractor to another person or entity of all of Contractor's rights, duties and obligations under this Agreement, including without limitation subcontracting of all or a portion of Contractor's obligations hereunder; (ii) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of Contractor; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of Contractor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

B. City Consent to Assignment; Written Assignment and Assumption

Except for Assignments to a Permitted Transferee and except as provided in this Article or otherwise in this Agreement, Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the assignee shall be deemed suitable and City shall consent to an Assignment if the Assignee meets the Assignee Qualifications (as defined below). A formal written instrument of assignment shall be executed by Contractor and an approved assignee or Permitted Transferee, which shall provide for the assignee's assumption and acceptance of all terms and conditions of this Agreement, including all duties and obligations imposed thereby, and also the assignee's express adoption of the representations of Contractor set forth herein as its own representations. Assignments to Permitted Transferees shall not require the consent of the City.

C. Qualifications of Assignee

A proposed assignee shall be deemed suitable and City shall consent to an Assignment to a proposed assignee upon submission of reasonably satisfactory evidence or support that (i) that the proposed assignee has at least five (5) years of Solid Waste and Recyclable Materials disposal experience similar to the Disposal Services; (ii) that the proposed assignee currently or recently conducted Solid Waste and Recyclable Materials disposal on a scale reasonably equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (iii) the proposed assignee conducts its operations in substantial accordance with accepted industry standards (iv) the proposed assignee conducts its Solid Waste and Recyclable Materials management practices in substantial compliance with all Federal, State, and local laws; and (v) the proposed assignee has the reasonable financial capability and other financial capabilities to perform the obligations of Contractor under the Agreement to industry standards and to otherwise comply with all terms, covenants and conditions of this Agreement applicable to Contractor, (collectively, the "Assignee Qualification").

D. Transition

If City consents to an assignment, Contractor shall cooperate fully with City and subsequent Contractor(s) or subcontractor(s), and shall provide all appropriate assistance to ensure an orderly transition. Such cooperation and assistance shall include, but not be limited to, Contractor providing, to City and the subsequent Contractor(s) or subcontractor(s), all route lists and billing information listing accounts, and using Contractor's reasonable efforts to avoid and minimize any disruption or inconvenience to customers.

10.7 DISPUTE RESOLUTION

A. Continue Performance

In the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

B. Mediation

Any unresolved dispute arising between the Parties under this Agreement after negotiation in good faith shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. In the absence of judicial jurisdiction to appoint a mediator, mediation will be before a panel composed of a mediator selected by each party and a third mediator selected by the two mediators so selected. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue any right or remedy available at law or equity, except as expressly and specifically limited under this Agreement.

10.8 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

10.9 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

10.10 PARTIES IN INTEREST

Except as expressly provided to the contrary herein, nothing in this Agreement, whether express or implied, is intended or shall be deemed to confer any rights on any persons other than City and Contractor and their representatives, successors and permitted assigns.

10.11 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision, nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

10.12 NOTICE

A. Notice Procedures

Except as otherwise specifically provided herein, all notices, demands, requests, proposals, approvals, consents and other communications made in connection with this Agreement shall be in writing and shall be effective when personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to CITY: City of Reno
 Office of the City Manager
 P.O. Box 1900
 One East First Street
 15th Floor
 Reno, Nevada 89505
 Attention: City Manager

If to Contractor: Refuse, Inc.
 100 Vassar St.
 Reno, Nevada 89502

Attention: District Manager

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section 10.12.

B. Facsimile Notice Procedures

1. Facsimile notice may be substituted for written notice with the following limitations:

a. Facsimile notice shall be considered valid and delivered during standard business hours and days, Monday through Friday, at such time as an authorized representative of the receiving Party acknowledges receipt in writing or by facsimile acknowledgement to the sending party.

b. Written notice, in accordance with Paragraph A, must follow any facsimile notice, in order for the facsimile notice to be considered valid notice hereunder.

2. If above conditions are met, facsimile notice will be considered effective from date and time of transmission as indicated on receiving Party's original copy of the transmission.

3. Facsimile notices must be sent to the following addressees:

If to City: City Manager
Fax number: (775)334-2020

If to Contractor: District Manager
Fax number: (775) 329-4662

4. The facsimile number to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section 11.12.

10.13 ACTION BY CITY; CITY AND CONTRACTOR REPRESENTATIVE

Subject to the restrictions provided in this Section 10.13, whenever action or approval by City is required under this Agreement, the City Council hereby delegates to the City Representative the authority to act on or approve such matter unless specifically provided otherwise in this Agreement or unless the City Representative determines in his or her sole discretion that such action or approval requires referral to the City Council. The City Representative will have the authority to make approvals, issue interpretations, waive provisions, execute all necessary documents enter into amendments and otherwise take actions on behalf of the City relating to this Agreement, including without limitation approving Rate Adjustments, agreeing with Contractor to change the Approved Recyclable Materials and extensions of time to perform, so long as such actions do not materially change the scope or nature of the Disposal Services or the exclusive right and obligation of Contractor to perform the Disposal Services. All actions of City Representative are subject to appeal by Contractor to the City Council and Contractor is entitled to rely on all actions of the City Representative. Any alteration, change or modification of or to this Agreement, in order to become effective, will be made in writing and in each instance signed on behalf of each party. Contractor shall, by the Effective Date, designate in writing a

responsible official, or duly authorized agent, who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his/her authority to bind Contractor. City may rely upon action taken by such designated representative as action of Contractor. Notwithstanding anything to the contrary in this Section 10.13, the City Council shall have the sole authority to take the following actions; i) termination of this Agreement under Section 9.3 of this Agreement, ii) Rate Increases in excess of three percent (3%) in excess of the CPI Increase, iii) any increase or decrease of the Host Fee.

10.14 ENFORCEMENT

Contractor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this Agreement and City ordinances related thereto, including without limitation defending challenges thereto and to prevent violations by third parties thereof (including without limitation the right and obligation to provide the Disposal Services). City shall reasonably cooperate in such enforcement; provided, however, City shall not be required to incur third party costs in connection therewith. City will adopt and enforce appropriate ordinances to implement this Agreement and otherwise relating to the collection and transportation of Solid Waste and Recyclable Materials.

10.15 THIRD PARTY BENEFICIARY

Each Franchised Hauler shall be a third party beneficiary of this Agreement with all rights and remedies to enforce as to the Contractor the terms, covenants and conditions under this Agreement that relate to duties, obligations, and services of the Contractor to and for the benefit of such Franchised Hauler.

10.16 GOOD FAITH

Each Party's interpretation and performance under this Agreement shall be reasonable and consistent with the intent to deal fairly and in good faith with the other Party hereto. Each party's exercise of any discretion hereunder shall be made in good faith and consents and approvals shall not be unreasonably withheld, conditioned or delayed, unless expressly stated to the contrary herein.

10.17 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Contractor and City with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

10.18 REFERENCES TO LAWS

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

10.19 INTERPRETATION

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

10.20 MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of both Parties without, in any way, affecting the remainder.

10.21 SEVERABILITY

If any provision of this Agreement is for any reason found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision. All other provisions of this Agreement which are otherwise lawful shall remain in full force and effect, and shall be enforced as if such invalid or unenforceable provision had not been contained herein, and to this end the provisions of this Agreement are hereby declared to be severable.

10.22 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original.

10.23 EXISTING FRANCHISE AGREEMENT

The existing First Amended City of Reno Garbage Franchise Agreement dated August 9, 1994, as amended ("Existing RFA"), will remain in place and effective until the later of i) the Effective Date of this Agreement and ii) the date all of the City Franchise Agreements, in form acceptable to Contractor and City, are executed and become effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF RENO

a political subdivision of the State of Nevada.

By DAVID L. HALL Date 11-07-12
Robert A. Cashell, Sr., Mayor

Attest:

By Lynnette R. Jones
Lynnette R. Jones, City Clerk.



APPROVED AS TO LEGAL FORM:

By: 
City Attorney's Office

CONTRACTOR

Refuse, Inc., a Nevada corporation

By: 

Title: Vice President

Date: 11/2/12

List of Exhibits:

Exhibit A- List of Approved Recyclable Materials

EXHIBIT A
List of Approved Recyclable Materials

**EXHIBIT A
DISPOSAL AGREEMENT
APPROVED RECYCLABLE MATERIALS**

1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the CONTRACTOR and the City.

To qualify as Approved Recyclable Materials, all Recyclable Materials must be reasonably clean and otherwise in a condition acceptable to commercial recycling facilities. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) 10% or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for placement of Contaminated Recyclable Materials in a Recycling Container for Collection, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “5”

EXHIBIT “5”

Sent from my blackberry

From: Stewart Brown [<mailto:stewart@animalartistry.com>]
Sent: Thursday, October 30, 2014 09:57 AM
To: Gilletti, Cherolyn
Subject: RE: City of reno

I have put a call into the City of Reno and left a message with Kevin Schuller. When I get this straightened out, I call you back.

From: Gilletti, Cherolyn [<mailto:CGillett@wm.com>]
Sent: Thursday, October 30, 2014 9:37 AM
To: stewart@animalartistry.com
Subject: City of reno

Hi Stewart,

Attached is a copy of the city of reno franchise, as well as a summary of the franchise for your review. At this time Waste Management is the assigned hauler for the city of Reno. Please note the following.

Solid Waste: Every business generating Solid Waste in the City of Reno is required to subscribe to Reno Disposal Company for the collection, transportation and disposal of all of franchised Solid Waste materials generated by the business, except for businesses to which the City of Reno has specifically granted in writing an exemption. To obtain the exemption from the City of Reno, the business must obtain a certification by the Washoe County Health Department that (1) the business is not generating, producing or accumulating solid waste and (2) the business is not hauling or otherwise disposing of Solid Waste in violation of the franchise agreement.
Recyclable Material. No business may allow or retain any service provider other than Reno Disposal Company to collect, pickup, transport or deliver Approved Recyclable Materials in the City of Reno in violation of the exclusive franchise agreement or the Reno Municipal Code.

If you have questions, including about whether you can hire a service company other than Reno Disposal Company to collect or transport refuse or recycling materials from your business, please contact Jason Geddes at geddesj@reno.gov or 775-334-3311 or Jonathan Shipman at shipmanj@reno.gov or 775-334-2057.

Please let me know if you have any questions.

Thanks

Cherolyn Gilletti
Contract Compliance Representative III

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “6”

EXHIBIT “6”



SERVICE AGREEMENT NON-HAZARDOUS WASTES

District Name	Waste Management, Inc.
District Address	100 Vassar Street
City, State, Zip	Reno, Nevada 89502
Phone #	(775) 328-4822 Ext. 2344
Fax #	(775) 328-4882

Renewal Contact	
SIC Code	
Type of Business	611-1351

ACCOUNT NAME	LES SCHWAB TIRE CENTER
Service Address	4175 VIRGINIA ST S
City, State, Zip	RENO, NV 89502-8008
County	
Telephone #	(775) 826-7785
Fax #	0
Contact	

ACCOUNT NUMBER	301-1351
EFFECTIVE DATE	10/01/2006
Reason Code	Contract Renewal
Submitted by	Fabian Gillooly

Billing Name	LES SCHWAB TIRE CENTER
Billing Address	4175 S VIRGINIA ST
City, State, Zip	RENO, NV 89502-8008
County	
Telephone #	(775) 826-7715
Fax #	0
Contact	

CURRENT EQUIPMENT / SERVICE SPECIFICATIONS AND SERVICE DAYS

System	Quantity	Size	Freq.	Opp	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Charges	
FY	1	3	1	W	X							0	Mo
492	1	4	2	W		X			X			290	Mo
													Mo
													Mo
													Mo
													Mo
													Mo
													Mo
													Mo
Total												290	Mo

SPECIAL INSTRUCTIONS		WM No.
RATE DOES NOT INCLUDE ANY GOVERNMENTAL FEES.		
CUSTOMER DEPOSIT	RENEWABLE	YES
DATE	TERM	36 mos
P.O. NUMBER		Schedule of Charges
JOB NUMBER		Service Charge per Month
RECEIPT REQUIRED		290
TAXABLE		Clutter/Locks
		Applicable
		Extra Pickup Charges:
		Applicable
		- Per Lift
		- Per Yard
		- Per Ton
		Handling per Load
		Disposal per Ton
		Disposal per Load
		Total per Load
		Delivery Charge
		Applicable
		Schedule Charge
		Removal Charge / Bin
		Applicable
		Trip Charge
		Franchise Fee
		Applicable
		High Service
		Minimum Charge per Month

THE UNDERSIGNED INDIVIDUAL SIGNED THIS AGREEMENT ON BEHALF OF CUSTOMER ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF CUSTOMER.

TERMIN: NET 10 DAYS

Customer	Contractor
<i>K. S. Seivert</i>	
(Authorized Signature)	(Authorized Signature)
Manager	
(TITLE)	
10-23-06	
(DATE)	
Territory Number	(DATE)

(rev. 5-14-03cp)



SERVICE AGREEMENT NON-HAZARDOUS WASTES

Collection Service Agreement Terms And Conditions

1. **SERVICES RENDERED; WASTE MATERIALS.** Customer grants to Company the exclusive right, and Company shall furnish equipment and services, to collect and dispose of and/or recycle all of Customer's Waste Materials. Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous putrescible and non-putrescible solid waste and recyclable materials generated by Customer or at Customer's Service Address. Waste Materials include Special Wastes, such as industrial process wastes, solvents containing metals, petroleum contaminated soils, insoluble charcoaled wastes, and demolition debris, provided that Customer has completed a Waste Profile for each Special Waste which has been approved by Company in writing. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any radioactive, volatile, corrosive, flammable, explosive, biohazardous, infectious, biohazardous, regulated medical or hazardous waste, toxic substances or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or Special Wastes not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Materials shall remain with Customer at all times.
2. **TERM.** The initial term ("Term") of this Agreement is thirty-six (36) months from the Effective Date set forth above ("Initial Term"). This Agreement shall automatically renew thereafter for additional terms of twelve (12) months each ("Renewal Term") unless either party gives to the other party written notice (See Section 10) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.
3. **SERVICES GUARANTY.** If the Company fails to perform the services described within five business days of its receipt of a written demand from Customer (See Section 10), Customer may terminate this Agreement with the payment of all monies due through the termination date.
4. **CHARGES; PAYMENTS; ADJUSTMENTS.** Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the charges on the invoices, as adjusted hereunder, within ten (10) days of the date of Company's invoice. Customer shall pay a service charge on all past due amounts accruing from the date of the invoice at a rate of eighteen percent (18%) per annum or, if less, the maximum rate allowed by law. Company may increase the charges to account for: any increase in disposal, fuel or transportation costs; any change to the composition of Waste Materials; increased costs due to uncontrollable circumstances, including, without limitation, charges in local, state or federal laws or regulations, imposition of taxes, fees or surcharges and acts of God such as floods, fires, etc. Company may also increase the charges to reflect increases in the Consumer Price Index for the principal or regional area in which the Service Address is located. Increases in charges for reasons other than as provided above require the consent of Customer, which may be evidenced verbally, in writing or by the actions and practices of the parties.
5. **CHARGES.** Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties.
6. **EQUIPMENT; ACCESS.** All equipment furnished by Company shall remain the property of Company; however, Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unobstructed access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modifications caused by or resulting from Customer's failure to provide access. Company shall not be responsible for any damage to Customer's property, including pavement, subsurface or curbing, resulting from Company's provision of services hereunder. Customer warrants that Customer's right of way is sufficient to bear the weight of Company's equipment and vehicles.
7. **LIMITED DAMAGES.** In the event Customer terminates this Agreement prior to the expiration of any term for any reason other than a default by Company, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages in addition to the Company's legal fees: (1) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly charges multiplied by six; (2) if the remaining Initial Term under this Agreement is less


than six months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Term; (3) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly charges multiplied by three; or (4) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Company shall not be liable under any circumstances for any special, incidental or consequential damages arising out of or in connection with performance of this Agreement.

8. **INDEMNITY.** The Company agrees to indemnify, defend and save Customer harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs (1) during the collection or transportation of Customer's Waste Materials, or (2) as a result of the disposal of Customer's Waste Materials, after the date of this Agreement, in a facility owned by a subsidiary of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

9. **RIGHT OF FIRST REFUSAL.** Customer grants to Company a right of first refusal to match any offer arising to services other than those provided hereunder which Customer receives for its waste upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

10. **MISCELLANEOUS.** (a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and it supersedes any and all other agreements, whether written or oral, that may exist between the parties; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; and (e) All written notification required by this Agreement shall be by Certified Mail, Return Receipt Requested. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed here and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision. In the event the Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay the Company's attorney's fees and court costs.

Customer	LES SCHWAB TIRE CENTER
301 - 1351	4175 VIRGINIA GT S
	RENO, NV 89502-6008

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “7”

EXHIBIT “7”

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000157

Bin Collection Services

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 133.15	\$ 224.27	\$ 314.46	\$ 406.78	\$ 496.91	\$ 586.91	N/A
3 Cubic Yards	\$ 157.82	\$ 273.79	\$ 386.45	\$ 500.69	\$ 615.30	\$ 729.91	\$ 919.85
4 Cubic Yards	\$ 187.40	\$ 323.13	\$ 462.40	\$ 594.21	\$ 733.67	\$ 868.02	\$ 1,093.52
6 Cubic Yards	\$ 272.32	\$ 460.65	\$ 674.39	\$ 865.29	\$ 1,119.79	\$ 1,374.29	\$ 1,696.50

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$ 93.21	\$ 156.99	\$ 220.12	\$ 284.75	\$ 347.84	\$ 410.84	N/A
3 Cubic Yards	\$ 110.47	\$ 191.65	\$ 271.92	\$ 350.48	\$ 430.71	\$ 510.94	\$ 643.90
4 Cubic Yards	\$ 131.18	\$ 226.19	\$ 323.68	\$ 415.95	\$ 513.57	\$ 607.61	\$ 831.89
6 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 605.70	\$ 783.85	\$ 962.00	\$ 1,187.55

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000158

Bin Collection Services (Cont.)

**Additional Dump of Container: Solid Waste and Approved
Recyclable Materials ²**

Bin Capacity	Non Service Day Rate per Pickup	Service Day Rate per Pickup
2 Yard	\$ 63.51	\$ 34.00
3 Yard	\$ 70.30	\$ 40.78
4 Yard	\$ 77.13	\$ 47.61
6 Yard	\$ 97.59	\$ 68.06

Other Services and Fees

Service	Rate
Trip Charge ³	\$ 28.08
4 Yard Bin Special -Single Service ⁴	\$ 80.58
6 Yard Bin Special -Single Service ⁴	\$ 107.99

²Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

³Inability to access or service Bin

⁴Delivery and pick up Bin-single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000159

Cart Collection Services

Cart Collection Services-Solid Waste

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$ 20.83	\$ 41.66	\$ 62.49	\$ 83.32	\$ 104.15	\$ 124.98	\$ 145.81
2 - 35 Gal Carts	\$ 41.66	\$ 83.32	\$ 124.98	\$ 166.64	\$ 208.30	\$ 249.96	\$ 291.62
1 - 64 Gal Cart	\$ 40.33	\$ 80.66	\$ 120.99	\$ 161.32	\$ 201.65	\$ 241.98	\$ 282.31
2 - 64 Gal Carts	\$ 80.66	\$ 161.32	\$ 241.98	\$ 322.64	\$ 403.30	\$ 483.96	\$ 564.62
3 - 64 Gal Carts	\$ 120.99	\$ 241.98	\$ 362.97	\$ 483.96	\$ 604.95	\$ 725.94	\$ 846.93
1 - 96 Gal Cart	\$ 28.55	\$ 57.10	\$ 85.65	\$ 114.20	\$ 142.75	\$ 171.30	\$ 199.85
2 - 96 Gal Carts	\$ 57.10	\$ 114.20	\$ 171.30	\$ 228.40	\$ 285.50	\$ 342.60	\$ 399.70
3 - 96 Gal Carts	\$ 85.65	\$ 171.30	\$ 256.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
4 - 96 Gal Carts	\$ 114.20	\$ 228.40	\$ 342.60	\$ 456.80	\$ 571.00	\$ 685.20	\$ 799.40

Cart Collection Services-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	\$ 17.49	\$ 34.97	\$ 52.46	\$ 69.95	\$ 87.43	\$ 104.92	\$ 122.41
2 - 96 Gal Carts	\$ 34.97	\$ 69.95	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 96 Gal Carts	\$ 52.46	\$ 104.92	\$ 157.38	\$ 209.84	\$ 262.30	\$ 314.76	\$ 367.22
4 - 96 Gal Carts	\$ 69.95	\$ 139.90	\$ 209.84	\$ 279.79	\$ 349.74	\$ 419.69	\$ 489.63

⁵Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

JA000160

Drop Box and Compactor Collection Services

Garbage and Permanent Collection Services of Approved Recyclable Materials and Solid Waste

Drop Box Capacity	Rate per Service⁶
14 Yard Closed Top	\$ 150.18
20 Yard Closed Top	\$ 205.08
30 Yard Closed Top	\$ 302.90
Drop Box Initial Delivery Fee	\$ 75.00

Drop Box Capacity	Rate per Service⁶
14 Yard Open Top	\$ 140.28
20 Yard Open Top	\$ 195.18
30 Yard Open Top	\$ 292.79
Drop Box Initial Delivery Fee	\$ 75.00

Compactor Capacity	Rate per Service⁶
10 Yard	\$ 195.51
12 Yard	\$ 234.61
14 Yard	\$ 273.71
15 Yard	\$ 283.27
16 Yard	\$ 312.82
20 Yard	\$ 391.02
22 Yard	\$ 430.12
24 Yard	\$ 469.22
25 Yard	\$ 488.78
30 Yard	\$ 586.53
40 Yard	\$ 782.04
Delivery charge	\$ 75.00

⁶Pickup, dumping, and replacing the specified capacity Drop Box - single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/20

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$ 75.00	Charge to return to customer location for any other reason not specifically identified in Scope of Services
Container Liner	\$ 14.32	Plastic liner placed inside the Container before material loaded
Demurrage/Inactivity	\$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	\$ 23.69	Rinse of Container with water
Container Steam Cleaning	\$ 132.45	Steam Clean of Container
Safety Cone Replacement	\$ 17.36	Safety cones required when a Container is placed in the street
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property
Snap Shot fee	\$ 75.00	Fee for each occurrence of overloading Container such that lid does not completely close
Activation/Re-activation fee	\$ 40.00	Charge to open a new service or reopen a closed service
Dig Out charge	\$ 75.00	Fee for each occurrence to remove material lodged in Container
Enclosure/lock fee	\$ 7.50	Fee per month for opening enclosure gates or unlocking Container
Locking container	\$ 17.50	One time charge to install locking mechanism on container
Container Swap	\$ 75.00	Container exchange (Drop Box and Bin)
Will Service letter	\$ 85.00	Charge to provide a will-serve letter for new development
Food Waste:		
64 gallon Cart	\$ 50.41	Rate per service for a Food Waste Recycling Cart
3 yard Bin	\$ 197.28	Rate per service for a Food Waste Recycling Bin

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “8”

EXHIBIT “8”

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/2/2014



Commercial Bin Collection Services
Effective April 1, 2014

CPI 3.27%

Bin Collection Services-Sold Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$137.50	\$231.60	\$324.74	\$420.08	\$513.16	\$606.10
3 Cubic Yards	\$162.98	\$282.74	\$401.15	\$517.06	\$635.42	\$753.78
4 Cubic Yards	\$193.53	\$333.70	\$477.52	\$613.64	\$757.86	\$896.40
6 Cubic Yards	\$281.22	\$475.71	\$696.44	\$893.58	\$1,156.41	\$1,419.23

#VALUE!

\$1,129.28

\$1,751.98

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$96.25	\$162.12	\$227.32	\$294.06	\$359.21	\$424.27
3 Cubic Yards	\$114.09	\$197.92	\$280.81	\$361.94	\$444.79	\$527.64
4 Cubic Yards	\$135.47	\$233.59	\$334.26	\$429.55	\$530.36	\$627.48
6 Cubic Yards	\$196.86	\$333.00	\$487.51	\$625.51	\$809.48	\$993.46

#VALUE!

\$859.10

\$1,226.38

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/2/2014

JA000164

Bin Collection Services (Cont.)

**Additional Dump of Container: Solid Waste and Approved
Recyclable Materials ²**

Bin Capacity	Non Service Day Rate per Pickup	Service Day Rate per Pickup
2 Yard	\$85.59	\$35.11
3 Yard	\$72.60	\$42.11
4 Yard	\$79.65	\$49.17
6 Yard	\$100.78	\$70.29

Other Services and Fees

Service	Rate
Trip Charge ³	\$29.00
4 Yard Bin Special -Single Service ⁴	\$83.21
6 Yard Bin Special -Single Service ⁴	\$111.52

²Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

³Inability to access or service Bin

⁴Delivery and pick up Bin-single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000165

Cart Collection Services

Cart Collection Services-Solid Waste

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 35 Gal Cart	\$21.51	\$43.02	\$64.53	\$86.04	\$107.56	\$129.07	\$150.58
2 - 35 Gal Carts	\$43.02	\$86.04	\$129.07	\$172.09	\$215.11	\$258.13	\$301.16
1 - 64 Gal Cart	\$41.85	\$83.30	\$124.95	\$166.60	\$208.24	\$249.89	\$291.54
2 - 64 Gal Carts	\$83.30	\$166.60	\$249.89	\$333.19	\$416.49	\$499.79	\$583.08
3 - 64 Gal Carts	\$124.95	\$249.89	\$374.84	\$499.79	\$624.73	\$749.68	\$874.62
1 - 96 Gal Cart	\$29.49	\$58.97	\$88.45	\$117.93	\$147.42	\$176.90	\$206.39
2 - 96 Gal Carts	\$58.97	\$117.93	\$176.90	\$235.87	\$294.84	\$353.80	\$412.77
3 - 96 Gal Carts	\$88.45	\$176.90	\$265.35	\$353.80	\$442.25	\$530.70	\$619.16
4 - 96 Gal Carts	\$117.93	\$235.87	\$353.80	\$471.74	\$589.67	\$707.61	\$825.54

Cart Collection Services-Approved Recyclable Materials

Cart Size	Monthly Rate by Collection Frequency per Week ⁵						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	\$18.06	\$36.12	\$54.18	\$72.23	\$90.29	\$108.35	\$126.41
2 - 96 Gal Carts	\$36.12	\$72.23	\$108.35	\$144.47	\$180.59	\$216.70	\$252.82
3 - 96 Gal Carts	\$54.18	\$108.35	\$162.53	\$216.70	\$270.88	\$325.06	\$379.23
4 - 96 Gal Carts	\$72.23	\$144.47	\$216.70	\$288.94	\$361.17	\$433.41	\$505.64

⁵Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000166

Drop Box and Compactor Collection Services

Garbage, Approved Recyclable Materials and Permanent Services

Drop Box Capacity	Rate per Service ⁶
14 Yard Closed Top	\$155.09
20 Yard Closed Top	\$211.79
30 Yard Closed Top	\$312.80
Drop Box Initial Delivery Fee	\$77.45

Drop Box Capacity	Rate per Service ⁶
14 Yard Open Top	\$144.87
20 Yard Open Top	\$201.56
30 Yard Open Top	\$302.36
Drop Box Initial Delivery Fee	\$77.45

Compactor Capacity	Rate per Service ⁶
10 Yard	\$201.90
12 Yard	\$242.28
14 Yard	\$282.66
15 Yard	\$302.86
16 Yard	\$323.05
20 Yard	\$403.81
22 Yard	\$444.18
24 Yard	\$484.56
25 Yard	\$504.76
30 Yard	\$605.71
40 Yard	\$807.61
Delivery charge	\$77.45

⁶Pickup, dumping, and replacing the specified capacity Drop Box - single service

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$77.45	Charge to return to customer location for any other reason not specifically identified in Scope of Services
Container Liner	\$14.79	Plastic liner placed inside the Container before material loaded
Demurrage/Inactivity	\$28.68	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	\$24.46	Rinse of Container with water
Container Steam Cleaning	\$136.78	Steam Clean of Container
Safety Cone Replacement	\$17.93	Safety cones required when a Container is placed in the street
Container Relocation	\$77.45	Relocation of the Container on the Customer's property
Snap Shot fee	\$77.45	Fee for each occurrence of overloading Container such that lid does not completely close
Activation/Re-activation fee	\$41.31	Charge to open a new service or reopen a closed service
Dig Out charge	\$77.45	Fee for each occurrence to remove material lodged in Container
Enclosure/lock fee	\$7.75	Fee per month for opening enclosure gates or unlocking Container
Locking container	\$18.07	One time charge to install locking mechanism on container
Container Swap	\$77.45	Container exchange (Drop Box and Bin)
Will Service letter	\$67.78	Charge to provide a will-serve letter for new development
Food Waste:		
64 gallon Cart	\$52.06	Rate per service for a Food Waste Recycling Cart
3 yard Bin	\$203.73	Rate per service for a Food Waste Recycling Bin

JA000167

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “9”

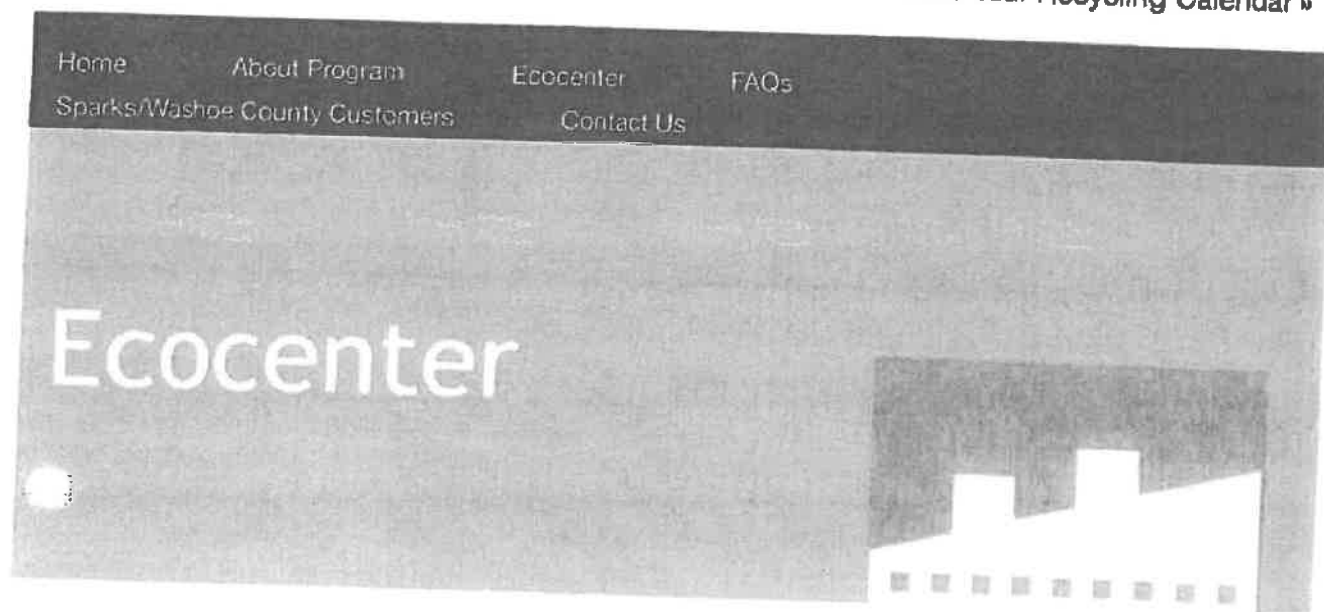
EXHIBIT “9”



Español

THINK GREEN.™

View Your Recycling Calendar »

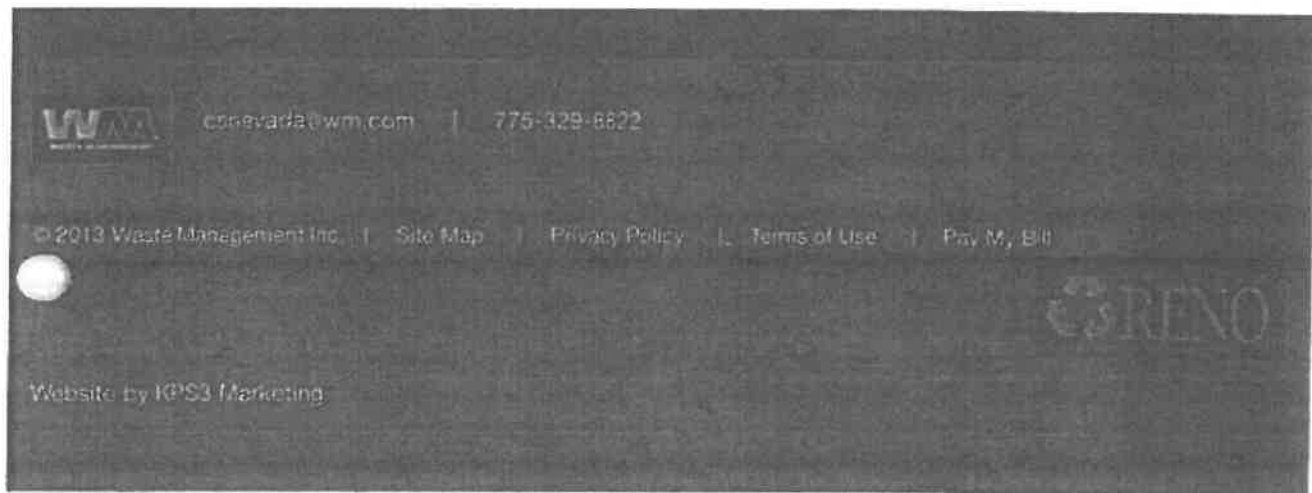


To meet the increase in recycling volume, Waste Management will fully fund an Ecocenter that will be able to accommodate the recycling volumes that will be generated by the Single-Stream Recycling Program. Therefore, an expanded facility is needed to meet the needs of the community. During the construction of the Ecocenter, Waste Management estimates there will be approximately 200 temporary jobs created during the construction phase.

This facility will be called the Ecocenter, and it will be located at the current Commercial Row Transfer Station site. The Ecocenter will serve as a one-stop destination for our community's environmental needs. The planned Ecocenter will include a community drop-off location for green waste, electronic waste, medical waste, and household hazardous waste.

The Transfer Station will be located within the Ecocenter, which will continue to be open to our commercial and residential customers. City of Reno residential Waste Management customers, who are current with their bill, may dispose of one standard pick-up truck with municipal solid waste four times a year at no cost. Customers may utilize the service during normal business hours.

In addition, a Community Center is a part of the planned Ecocenter. Visitors can come to the center to learn about the importance of recycling and conservation.



FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “10”

EXHIBIT “10”



WASTE MANAGEMENT

M - Reno Disposal
PO BOX 43530
RENO, NV 89502

Customer:

Online WM ezPay ID:

Invoice Date:

Invoice Number:

Account Number

Due Date:

Page 3 of

WYNT TRASH

00009-66188-630

02/01/20

4060236-1146

010-0137838-1146

Due Upon Receipt

Service Location: 010-137838 WYNT Trash: 4670 Aircenter Cir: Reno NV 89502-8949

Invoice	Item	Description	Quantity	Unit	Rate	Amount
02/01/15		4 Yard dumpster service - recycle materials Co-mingle	1.00			120.58
Total Current Charges						120.58

Payments Received Detail

Payment - thank you	120.58
Total Payments Received	120.58

**Exhibit D
Commercial Franchise Agreement
Scope of Services**

7/1/2014



**Commercial Bin Collection Services
Effective April 1, 2014**

CPI 3.27%

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$137.50	\$231.60	\$324.74	\$420.08	\$513.16	\$606.10
3 Cubic Yards	\$162.98	\$282.74	\$401.15	\$517.06	\$635.42	\$753.78
4 Cubic Yards	\$193.53	\$333.70	\$477.52	\$613.64	\$757.66	\$898.40
6 Cubic Yards	\$281.22	\$475.71	\$686.44	\$893.58	\$1,156.41	\$1,419.23
						\$1,751.98

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$96.25	\$162.12	\$227.32	\$294.06	\$359.21	\$424.27
3 Cubic Yards	\$114.09	\$197.92	\$280.81	\$361.94	\$444.79	\$527.64
4 Cubic Yards	\$135.47	\$233.59	\$334.26	\$429.55	\$530.36	\$627.48
6 Cubic Yards	\$196.86	\$333.00	\$487.51	\$625.51	\$809.48	\$993.46
						\$1,226.38

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “11”

EXHIBIT “11”



WASTE MANAGEMENT

M - B & L Disposal
PO BOX 43630
TUCSON, AZ 85709

Customer: WYNNIT TR
Online WM exPay ID: 00000-48310-03
Invoice Date: 02/01/15
Invoice Number: 3188949-111
Account Number: 011-0022822-111
Due Date: Due Upon Rec

Page 3 of 3

Service Location: 011-22822 Wynn Trash (N): 4670 Alcenter Cir: Reno NV 89502-5840

date	Ticket	Description	Quantity	WM	Rate	Amount
1/08/15	228870	30 Yd flat roll top	1.00			157.00
		Cb door #7				
		Record tonnage only	.37			0.00
		Ticket Total				157.00
1/20/15	234287	30 Yd flat roll top	1.00			157.00
		Cb door #7				
		Record tonnage only	1.32			0.00
		Ticket Total				157.00
2/01/15		Fuel/environmental charge				80.00
2/01/15		Regulatory cost recovery chrg				14.00
Total Current Charges						409.00

Payments Received Detail

Payment - thank you	628.00
Total Payments Received	628.00

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014

JA000176

Drop Box and Compactor Collection Services

Garbage, Approved Recyclable Materials and Permanent Services

Drop Box Capacity	Rate per Service ⁹
14 Yard Closed Top	\$155.09
20 Yard Closed Top	\$211.79
30 Yard Closed Top	\$312.80
Drop Box Initial Delivery Fee	\$77.45

Drop Box Capacity	Rate per Service ⁹
14 Yard Open Top	\$144.87
20 Yard Open Top	\$201.56
30 Yard Open Top	\$302.36
Drop Box Initial Delivery Fee	\$77.45

Compactor Capacity	Rate per Service ⁹
10 Yard	\$201.90
12 Yard	\$242.28
14 Yard	\$282.66
15 Yard	\$302.88
16 Yard	\$323.05
20 Yard	\$403.81
22 Yard	\$444.18
24 Yard	\$484.58
25 Yard	\$504.76
30 Yard	\$605.71
40 Yard	\$807.61
Delivery charge	\$77.45

⁹Pickup, dumping, and replacing the specified capacity Drop Box - single service

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : yiloyd

EXHIBIT “12”

EXHIBIT “12”

Customer: CATHOLIC CHARITIES OF NORTHERN
NEVADA

Online WM ezPay ID: 00012-49423-43054

Invoice Date: 01/01/2015

Invoice Number: 3187311-1161-E

Account Number: 011-0026616-1181-5

Due Date: Due Upon Receipt

W & L Disposal
PO BOX 43590
PHOENIX, AZ 85080

Service Location: 011-25516 Catholic Charities Of Northern Nevada: 1835 Montello St. Reno Nv 89512-2539

[illegible]

Payments Received Detail

Payment - thank you	128.32
Total Payments Received	128.32

Exhibit D
Commercial Franchise Agreement
Scope of Services

7/1/2014



Commercial Bin Collection Services
Effective April 1, 2014

CPI 3.27%

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$137.50	\$231.60	\$324.74	\$420.08	\$513.16	\$606.10
3 Cubic Yards	\$162.98	\$282.74	\$401.15	\$517.06	\$635.42	\$753.78
4 Cubic Yards	\$193.53	\$333.70	\$477.52	\$613.84	\$757.66	\$896.40
6 Cubic Yards	\$281.22	\$475.71	\$696.44	\$893.58	\$1,156.41	\$1,419.23
						\$1,751.98

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week ¹					
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week
2 Cubic Yards	\$96.25	\$162.12	\$227.32	\$294.06	\$359.21	\$424.27
3 Cubic Yards	\$114.09	\$197.92	\$280.81	\$361.94	\$444.79	\$527.64
4 Cubic Yards	\$135.47	\$233.59	\$334.28	\$429.55	\$530.36	\$627.48
6 Cubic Yards	\$196.86	\$333.00	\$487.51	\$625.51	\$809.48	\$993.46
						\$1,228.38

¹ Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

FILED
Electronically
2015-03-18 09:15:15 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4865757 : ylloyd

EXHIBIT “13”

EXHIBIT “13”

AFFIDAVIT OF JOHN VAUGHN

I, John Vaughn, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am the owner of Vaughn & Sons Construction, Inc., a Nevada Corporation doing business in Reno, Nevada and surrounding areas;

2. On or about November 19, 2014, an employee of mine was approached by John Langelles, whom I understood to be a District Manager for Waste Management, and a conversation took place which I was, at all times present for;

3. When the conversation began, Mr. Langelles promptly informed us that it was his job to put Nevada Recycling & Salvage/ Green Solutions Recycling out of business;

4. The discussion then moved to pricing and why any local businessman would be charged more than somebody else off the street would be? Mr. Langelles replied that we "could cover up our doors and that [Waste Management] wouldn't charge [Mr. Vaughn] as much" and that "it was the City Council's fault that the prices were what they were for local business owners;"

5. Mr. Langelles also stated that Nevada Recycling & Salvage/ Green Solutions Recycling "is breaking the law" and so Waste Management was working to "get them closed;"

6. Mr. Langelles proceeded to tell me that I "would be bringing my garbage back to Waste Management in the near future because Waste Management was going to put Nevada Recycling & Salvage/ Green Solutions Recycling out of business;"

7. At some point during the conversation, Mr. Langelles informed me that he was not aware that Nevada Recycling & Salvage/ Green Solutions Recycling was actually recycling. Mr. Langelles responded that he had not heard that was happening and he also stated that he doubted that Nevada Recycling & Salvage/ Green Solutions Recycling was really recycling. So I then told Mr. Langelles that I had heard that it was Waste Management who was not really recycling, and he did not respond to that comment;

8. Mr. Langelles again stated that Waste Management was going to put Nevada Recycling & Salvage/ Green Solutions Recycling out of business and that if I had a problem with

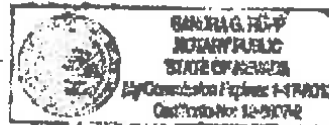
1 that or pricing or any other matters that I needed to take them up with the City Council; and,
2 9. That the same is true of my knowledge except as to those matters therein stated
3 information and belief, and as to those matters I believe them to be true.
4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5
6 Dated this 17 day of March, 2015.

7
8 
9 JOHN VAUGHN

10
11 SUBSCRIBED and SWORN TO before me
12 this 17th day of March, 2015.

13
14 
15 NOTARY PUBLIC



1 CODE: 1067
2 STEPHANIE RICE, ESQ. (SBN 11627)
3 HARDY LAW GROUP
4 96 & 98 Winter Street
5 Reno, Nevada 89503
6 Telephone: (775) 786-5800
7 Fax: (775) 329-8282
8 Attorney for Plaintiff

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13 NEVADA RECYCLING AND SALVAGE, LTD, a
14 Nevada Limited Liability Company; and,
15 AMCB, LLC, a Nevada Limited Liability
16 Company doing business as RUBBISH
17 RUNNERS,

18 Plaintiffs,

19 vs.

20 RENO DISPOSAL COMPANY, INC., a Nevada
21 Corporation doing business as WASTE
22 MANAGEMENT; REFUSE, INC., a Nevada
23 Corporation; ABC CORPORATIONS, I though X;
24 BLACK AND WHIT COMPANIES, I through X;
25 and, JOHN DOES I through X, inclusive

26 Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

27 **AFFIDAVIT OF SERVICE**

28 Attached hereto is the Affidavit of Marc Neville, for service of the Summons and Verified
Complaint on Reno Disposal Company, Inc. on March 19, 2015, in the above-entitled matter.

DATED this 20th day of March 2015.



STEPHANIE RICE, ESQ. (SBN 11627)
DEL HARDY, ESQ. (SBN 1172)
HARDY LAW GROUP
Attorneys for Plaintiffs

AFFIDAVIT OF SERVICE

STATE OF NEVADA

CASE # CV15-00497

COUNTY OF WASHOE

I MARC NEVILLE being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy (ies) of the SUMMONS AND COMPLAINT

on the 19TH day of MARCH, 2015 and served the same on the 19TH day of MARCH, 2015 at 11:10AM by:

- 1 delivering and leaving a copy with the defendant, _____

DESCRIPTION:

at: BUSINESS: _____

- 2 serving the defendant, _____ by personally delivering a copy with:

a person of suitable age and discretion residing at the defendant's usual place of abode located at: _____

- 3 serving, RENO DISPOSAL COMPANY, INC. dba WASTE MANAGEMENT
by personally delivering and leaving a copy at: R/A: CORPORATION TRUST COMPANY OF NEVADA
311 S. DIVISION ST. CARSON CITY, NV

a. with _____ an agent lawfully designated by statute to accept service of process.

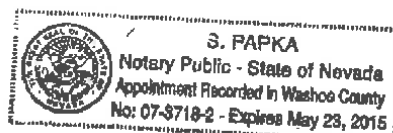
b. with LINDA ROBERTSON, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

c. with _____, pursuant to Chapter 14 of NRS, a guard posted at the gate of Defendant's residence to which the undersigned has been denied access.

SUBSCRIBED AND SWORN before me on this

20TH day of MARCH, 2014

S. Papka
Notary Public



Marc Neville
Affiant-MARC NEVILLE
LICENSE #918
WEST COAST PROCESS SERVICE
403 FLINT STREET,
RENO, NV 89501

1 CODE: 4085

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 NEVADA RECYCLING AND SALVAGE, LTD., and
6 AMCB, LLC dba RUBBISH RUNNERS

7 Plaintiffs,

8 vs.

Case No.: CV15-00497

Dept. No.: 7

9 RENO DISPOSAL COMPANY, INC., dba WASTE
10 MANAGEMENT; REFUSE, INC.; ABC
11 CORPORATIONS I-X; BLACK AND WHITE
12 COMPANIES I-X; and JOHN DOES I-X, inclusive

13 Defendants.

14 SUMMONS

15 TO THE DEFENDANT RENO DISPOSAL COMPANY, INC., dba WASTE MANAGEMENT: YOU
16 HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING
17 HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ THE INFORMATION
18 BELOW VERY CAREFULLY.

19 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set
20 forth in that document (see complaint or petition). When service is by publication, add a brief
21 statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
22 The object of this action is: CIVIL COMPLAINT/UNFAIR TRADE PRACTICES.

- 23 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of
24 this summons, exclusive of the day of service:
- 25 a. File with the Clerk of the Court, whose address is shown below, a formal written
26 answer to the complaint or petition, along with the appropriate filing fees, in
27 accordance with the rules of the Court, and;
 - 28 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and
address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this
Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 18 day of March

Issued on behalf of Plaintiff(s)

DEL HARDY, ESQ. (SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800

CLERK OF THE COURT

By: 

Second Judicial District
750 Court Street
Reno, Nevada 89501

JA000185

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **AFFIDAVIT OF SERVICE** on all parties to this action by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
- ☐ Personal Delivery
- ☒ Facsimile (FAX): and/or Email: gary@duhonlawltd.com
- ☐ Federal Express or other overnight delivery
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested
- ☐ Electronically filed

addressed as follows:

REFUSE, INC.
 c/o The Corporation Trust Company of Nevada
 311 S. Division Street
 Carson City, Nevada 89703

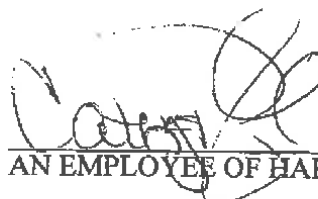
RENO DISPOSAL COMPANY
 c/o The Corporation Trust Company of Nevada
 311 S. Division Street
 Carson City, Nevada 89703

REFUSE, INC
 RENO DISPOSAL COMPANY
 WASTE MANAGEMENT
 c/o Gary Duhon, Esq.
 601 South Arlington Avenue
 Reno, Nevada 89509

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 20th day of March 2015.


 AN EMPLOYEE OF HARDY LAW GROUP

1 CODE: 1067
2 STEPHANIE RICE, ESQ. (SBN 11627)
3 HARDY LAW GROUP
4 96 & 98 Winter Street
5 Reno, Nevada 89503
6 Telephone: (775) 786-5800
7 Fax: (775) 329-8282
8 Attorney for Plaintiff

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA RECYCLING AND SALVAGE, LTD, a
Nevada Limited Liability Company; and,
AMCB, LLC, a Nevada Limited Liability
Company doing business as RUBBISH
RUNNERS,

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC., a Nevada
Corporation doing business as WASTE
MANAGEMENT; REFUSE, INC., a Nevada
Corporation; ABC CORPORATIONS, I through X;
BLACK AND WHIT COMPANIES, I through X;
and, JOHN DOES I through X, inclusive

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

AFFIDAVIT OF SERVICE

Attached hereto is the Affidavit of Marc Neville, for service of the Summons and Verified
Complaint on Refuse, Inc. on March 19, 2015, in the above-entitled matter.

DATED this 20th day of March 2015.



STEPHANIE RICE, ESQ. (SBN 11627)
DEL HARDY, ESQ. (SBN 1172)
HARDY LAW GROUP
Attorneys for Plaintiffs

AFFIDAVIT OF SERVICE

STATE OF NEVADA

CASE # CV15-00497

COUNTY OF WASHOE

I MARC NEVILLE being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy (ies) of the SUMMONS AND COMPLAINT

on the 19TH day of MARCH, 2015 and served the same on the 19TH day of MARCH, 2015 at 11:10AM by:

- 1 delivering and leaving a copy with the defendant,

DESCRIPTION:

at: BUSINESS:

- 2 serving the defendant, _____ by personally delivering a copy with:

a person of suitable age and discretion residing at the defendant's usual place of abode located at:

- 3 serving, REFUSE, INC.

by personally delivering and leaving a copy at:

R/A: CORPORATION TRUST COMPANY OF NEVADA
311 S. DIVISION ST. CARSON CITY, NV

a. with _____ an agent lawfully designated by statute to accept service of process.

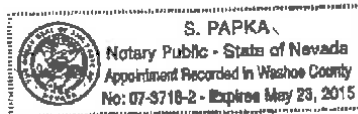
b. with LINDA ROBERTSON, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

c. with _____, pursuant to Chapter 14 of NRS, a guard posted at the gate of Defendant's residence to which the undersigned has been denied access.

SUBSCRIBED AND SWORN before me on this

20TH day of MARCH, 2014

S. Papka
Notary Public



Marc Neville
Affiant-MARC NEVILLE
LICENSE #918
WEST COAST PROCESS SERVICE
403 FLINT STREET,
RENO, NV 89501

1 CODE: 4085

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5 NEVADA RECYCLING AND SALVAGE, LTD., and
6 AMCB, LLC dba RUBBISH RUNNERS

7 Plaintiffs,

8 vs.

9 RENO DISPOSAL COMPANY, INC., dba WASTE
10 MANAGEMENT; REFUSE, INC.,; ABC
11 CORPORATIONS I-X; BLACK AND WHITE
12 COMPANIES I-X; and JOHN DOES I-X, inclusive

13 Defendants.

Case No.: CV15-00497

Dept. No.: 7

14 **SUMMONS**

15 TO THE DEFENDANT REFUSE, INC.: YOU HAVE BEEN SUED. THE COURT MAY DECIDE
16 AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN
17 20 DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

18 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set
19 forth in that document (see complaint or petition). When service is by publication, add a brief
20 statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
21 The object of this action is: CIVIL COMPLAINT/UNFAIR TRADE PRACTICES.

- 22 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of
23 this summons, exclusive of the day of service:
- 24 a. File with the Clerk of the Court, whose address is shown below, a formal written
25 answer to the complaint or petition, along with the appropriate filing fees, in
26 accordance with the rules of the Court, and;
 - 27 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and
28 address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this
Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 18 day of March 2015

Issued on behalf of Plaintiff(s)

DEL HARDY, ESQ. (SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
96 & 98 Winter Street
Reno, NV 89503
(775) 786-5800

CLERK OF THE COURT

By:

Deputy Clerk
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

Hardy Law Group.com

96 & 98 Winter Street, Reno, Nevada 89503 • Fax (775) 289-0222 • www.HardyLawGroup.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **AFFIDAVIT OF SERVICE** on all parties to this action by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
- ☐ Personal Delivery
- ☒ Facsimile (FAX): and/or Email: gary@duhonlawltd.com
- ☐ Federal Express or other overnight delivery
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested
- ☐ Electronically filed

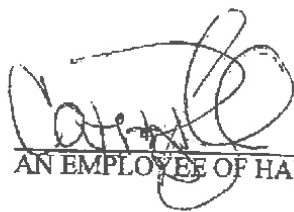
addressed as follows:

- REFUSE, INC.
c/o The Corporation Trust Company of Nevada
311 S. Division Street
Carson City, Nevada 89703
- RENO DISPOSAL COMPANY
c/o The Corporation Trust Company of Nevada
311 S. Division Street
Carson City, Nevada 89703
- REFUSE, INC
RENO DISPOSAL COMPANY
WASTE MANAGEMENT
c/o Gary Duhon, Esq.
601 South Arlington Avenue
Reno, Nevada 89509

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 21st day of March 2015.


AN EMPLOYEE OF HARDY LAW GROUP