

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

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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 8**

20                                   JA001458 – JA001670

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

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5  
6 NEVADA RECYCLING and SALVAGE,  
7 LTD., a Nevada Limited Liability  
8 Company; and, AMCB, LLC, a Nevada  
Limited Liability Company doing  
business as RUBBISH RUNNERS,

**ORIGINAL**

9 Plaintiff,

Case No. CV15-00497

Dept. No. 7

10 vs.

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

15 Defendants.  
16 \_\_\_\_\_/

17 Pages 1 to 74, inclusive.  
18

19 **DEPOSITION OF DAVE AIAZZI**

20 \_\_\_\_\_  
21 Tuesday, December 29, 2015  
22 Reno, Nevada

23 REPORTED BY: CHRISTINA AMUNDSON  
24 CCR #641 (Nevada)  
25 CSR #11883 (California)

MOLEZZO REPORTERS - 775.322.3334  
Deposition of Dave Aiazzi

A P P E A R A N C E S

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ALSO PRESENT: AnnMarie Carey, Chris Bielser

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I N D E X

Deposition of DAVE AIAZZI

<u>EXAMINATION BY</u>	<u>PAGE</u>
Mr. Hardy	5, 58, 67, 70
Ms. Rice	21, 59, 69
Mr. Simons	22, 65, 70

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1 BE IT REMEMBERED that on Tuesday, December 29,  
2 2015, commencing at 1:00 p.m. of said day, at Hardy  
3 Law Group, 96 & 98 Winter Street, Reno, Nevada,  
4 before me, CHRISTINA M. AMUNDSON, a Certified  
5 Shorthand Reporter, personally appeared DAVE AIAZZI.

6 -----  
7 THE REPORTER: "Pursuant to Subsection 2 of  
8 NAC 656.310 regarding conflicts of interest, I need  
9 to note for the record that Rich Molezzo is an  
10 attorney with The Hardy Law Group and is the brother  
11 of John Molezzo.

12 "Will all counsel stipulate on the record  
13 that you agree and authorize me to report said  
14 proceedings."

15 MS. RICE: Same admonitions as before.

16 MR. SIMONS: Just type it in. We'll agree  
17 to it.

18 (Witness sworn.)

19 -----  
20 DAVE AIAZZI,

21 called as a witness in the matter herein,  
22 who, having been first duly sworn, was examined  
23 and testified as follows:  
24  
25

E X A M I N A T I O N

BY MR. HARDY:

Q Mr. Iaizzi, my name is Del Hardy. I represent AMCB LLC, known as Rubbish Runners and I'm going to be asking you some questions.

Have you ever had your deposition taken before?

A Not like this.

Q Okay. But you have had your deposition taken before?

A Yes.

Q In this one you're simply a witness. You're not sitting as a representative of the city or anything, correct?

A Correct.

Q Okay. So you know, kind of, the rules of the road here about the court reporter here is taking everything down that you say and then you will have an opportunity to look at it, and if there's any changes, we get to comment on those changes, you know, kind of all those rules of the road?

A I don't, but that's good to hear.

Q Okay. Let me just go through those briefly, then.

1           This is going to be taken down in written  
2 form and then you'll have an opportunity to review  
3 it. If there's anything you want to change, you're  
4 entitled to change it.

5           If, for example, you can't remember a  
6 particular date right now but it comes to you later  
7 on, you can put that in. But, however, if you said  
8 the light was green and then you turn around and  
9 said no, the light's red, then I have an  
10 opportunity, as well as Mr. Simons, to comment on  
11 that.

12           Are you familiar at all with this lawsuit  
13 that we're talking about right here? Have you read  
14 anything?

15           A   Not directly, no. I don't get the  
16 newspaper anymore.

17           Q   Oh, maybe you are retired.  
18 Congratulations.

19           A   Thank you.

20           Q   You understand your testimony's under oath?

21           A   (Witness nods.)

22           Q   Just give us your best -- if we ask for an  
23 estimate or an average, or something like that, just  
24 give us your best estimate or average that you can.  
25 It helps if you tell us that's your best

1 recollection of what that is.

2 Is there any reason that you can't give  
3 your best testimony here today? Are you on any  
4 medication or anything that would preclude you from  
5 doing that?

6 A No.

7 Q Have you taken a look at any documents,  
8 records, notes, or anything like that in preparation  
9 of your deposition here today?

10 A I tried to find some. Didn't find very  
11 much.

12 Q All right. Where did you look and what did  
13 you find?

14 A In my notebooks that I keep at my house and  
15 also tried to find the minutes of the meetings that  
16 you had referenced in the email you sent to me and I  
17 couldn't find those minutes.

18 I didn't keep notebooks at that time. What  
19 I remember is it was mostly electronic. I was  
20 trying to get into the electronic age. And I think  
21 those went away when they took my computer away when  
22 I left the city.

23 Q So do you think the city maintains those  
24 records at all?

25 A I don't know if they would have kept my

1 personal notes on that computer or that.

2 Q Okay. And that was a city computer that  
3 you had?

4 A Correct.

5 Q Do you remember what brand of computer was?

6 A No. They were buying Dells back then so it  
7 was probably a Dell. Not the singer Adell.

8 Q Okay. What is the best address that we can  
9 get ahold of you?

10 A 1095 Williams Avenue, Reno 89503.

11 Q And I'm going to ask you some obvious  
12 questions. For example, you were on the city  
13 council in 2012, were you not?

14 A Most of 2012. Not all of 2012.

15 Q Okay. And you were in the city council in  
16 2011?

17 A Yes.

18 Q Are you at least aware that this lawsuit is  
19 about a franchise agreement with Waste Management?

20 A Yes.

21 Q All right. Before that franchise agreement  
22 was signed off by the city, were there any meetings  
23 or anything that took place with Waste Management  
24 that you can recall?

25 A Before it was signed off on --

1 Q Yes.

2 A -- and approved by the city council?

3 Q That's correct.

4 A I know that I had met with a lot of people  
5 on this issue.

6 Q Okay. Do you remember any general  
7 meetings, though, what I'll call "stakeholder  
8 meetings"? Do you have a recollection of those?

9 A If you could be more specific. Like, I had  
10 one-on-ones where they wanted to meet me for lunch.  
11 When say general stakeholder meetings, do you mean  
12 stakeholder meetings in a room?

13 Q Yes.

14 A I don't recall any that were arranged by  
15 anyone other than myself.

16 Q Do you remember meeting with Mr. Martinelli  
17 at all about these meetings, this franchise  
18 agreement?

19 A I believe I met with Mr. Martinelli once in  
20 a conference room with his attorneys to talk about  
21 the financing of what they were doing.

22 Q Okay. And can you recall generally what  
23 that conversation -- I mean that meeting was about?

24 A Yeah. It was more about the conversation  
25 about if we raised the fees what they were gonna do

1 on their end, like buying new garbage trucks, the  
2 new green waste disposal facility, the employment  
3 factor of them doing this, if they would hire more  
4 people, those kinds of issues, more explaining what  
5 their side was in the Waste Management agreement.

6 Q Okay. Do you recall any discussions that  
7 they had about zones, particular zones that maybe,  
8 for example, Castaway would have a zone and Waste  
9 Management would have a zone?

10 A I don't remember having that conversation  
11 with Waste Management.

12 Q Okay. Who did you have that conversation  
13 with?

14 A I think with Mr. Duque. I had lunch with  
15 him one time. We discussed those kinds of issues.

16 Q And which Duque? Spike or Steve?

17 A Steve.

18 Q And what was that conversation about? Do  
19 you recall?

20 A It was just about -- there was  
21 generalities. We weren't sitting around with papers  
22 in front of us. It was more general statements  
23 about this is how it will affect my business and we  
24 want to keep this zone here and that zone there,  
25 more fact-finding for me than anything else.



1 Q And you mentioned there was some type of a  
2 green -- something-green that you mentioned?

3 A The recycling facility.

4 Q Yeah. Where was that?

5 A That's all part of the agreement for Waste  
6 Management to build a recycling facility.

7 Q Did you think that was important for the  
8 city?

9 A Very much.

10 Q Okay. And why did you think that was  
11 important for the city?

12 A That was the way the city should be going  
13 for recycling. Also, at the time I thought it was  
14 important for jobs to build the recycling center.

15 There was also some conversation when I  
16 mentioned they were saying by disagreement they  
17 would be putting more people to work in the  
18 recycling facility. And the economy was bad then  
19 and we were looking at ways to put people to work so  
20 that was an important part of that decision.

21 Q And I guess there was some type of a test  
22 out here, actually, at one time for a couple of  
23 weeks to see how things were going to work out.

24 Is that right?

25 A My house wasn't involved but it was near my

1 house that they did some of the recycling.

2 Q Were those statistics or anything given to  
3 you in regards to how that worked out by Waste  
4 Management?

5 A Yes. They gave it to us orally, I think,  
6 in some council meetings. They said what a success  
7 it was. Even before this happened they were telling  
8 us how successful that test it was.

9 Q Okay. Did you ever have any meetings or  
10 speak with Gary Duhon about this franchise  
11 agreement?

12 A I think he was the attorney I mentioned  
13 before that we were talking about in that meeting.

14 Q Okay. And that was only one time that you  
15 recall?

16 A That I can recall, yes.

17 Q How about a guy by the name Chris Barrett?  
18 Do you remember meeting with him or talking to him?

19 A I met with Chris on a lot of things. He  
20 could have been in the same meeting. I couldn't  
21 tell you.

22 Q When you met with him on a lot of other  
23 things, do you mean things other than Waste  
24 Management?

25 A Correct.

1 Q Were you ever told as a councilperson or as  
2 -- did anybody ever tell you that Waste Management  
3 and Castaway were negotiating a possible buyout of  
4 Castaway by Waste Management?

5 A No.

6 Q Would that have affected your vote that you  
7 made on the council when the franchise agreement  
8 came forth?

9 MR. SIMONS: Objection, calls for  
10 speculation.

11 BY MS. RICE:

12 Q I think you can answer, sir.

13 MR. SIMONS: No, he can't. You're asking a  
14 purely speculative question. Go ahead.

15 THE WITNESS: My answer would be not yes or  
16 no because it might have changed what was in the  
17 agreement. So I still might have voted for the  
18 agreement but I think we could have had some  
19 discussion about what was in the agreement.

20 BY MR. HARDY:

21 Q Okay.

22 A So I don't know how that would have  
23 happened.

24 Q Okay. Let's explore that agreement a  
25 little bit. As I understand it, there's kind of

1 this agreement set up so there's two zones, Castaway  
2 and there's Waste Management. Is that correct?

3 MR. SIMONS: Just to clarify, are you  
4 asking if your understanding is correct or if that's  
5 the situation? Do you follow that?

6 THE WITNESS: If I could elaborate a little  
7 bit on my thoughts.

8 BY MR. HARDY:

9 Q Sure.

10 A There were two parts of this agreement.  
11 One was just the rubbish, the garbage pickup that  
12 people have, and then there was the other part that  
13 Castaway and these other people were involved in.  
14 So I always had in my mind that the division between  
15 the two was part of this agreement.

16 Q All right.

17 A So it was my understanding there was more  
18 than just Castaway who was doing pickups. There was  
19 a lot of companies doing that.

20 Q Right. Do you know who drafted this  
21 agreement with the city, this exclusive service  
22 franchise agreement that Waste Management has with  
23 the city?

24 A I don't know who actually at the city sat  
25 down and actually typed it out, no.

1 Q Okay. Do you understand that maybe Waste  
2 Management was the one that gave it to the city?

3 A I wouldn't know.

4 Q Okay. Were you led to believe that it was  
5 the city attorney's office that somehow reviewed it  
6 and approved this agreement?

7 A I believe the city attorney was tasked with  
8 approval all agreements.

9 Q Okay.

10 A Whether they did or not, I don't know.

11 Q Do you know if Jonathan Shipman was  
12 involved in this franchise agreement?

13 A I believe he was the lead attorney on that.

14 Q All right. Did you ever have any  
15 discussions with him?

16 A I can't recall specifically. You know,  
17 there were other meetings that counsel has with  
18 Legal on these that are allowed in the open-meeting  
19 law and there may have been some discussions, not me  
20 with him, but the entire council with Jonathan about  
21 it.

22 Q And the reason you don't have recollection  
23 about that is because you don't have any notes and  
24 those are the kind of notes you'd rely upon?

25 A Correct. And we had a lot of those kinds

1 of meetings.

2 Q An the same is true with emails.

3 Would you communicate with the city staff  
4 by emails sometime?

5 A All of my emails the city still should  
6 have.

7 Q Did you ever hear of a term called  
8 "franchise erosion," if there was going to be too  
9 many people picking up in too many large zones,  
10 there would be franchise erosion.

11 Have you ever heard that term before?

12 A Doesn't sound familiar.

13 Q Okay. Do you know if there's any criteria  
14 for any of the businesses that were doing the trash  
15 pickup, for example, if they had to be in business  
16 for a certain period of time or they had to have so  
17 much money or --

18 A I know we spent a lot of time trying to  
19 make sure that the existing haulers would be kept  
20 whole in this agreement, or as whole as possible.

21 Q Okay. But was there any criteria for those  
22 haulers that they had to be in business for X amount  
23 of time to be able to participate in the agreement?

24 A One --

25 MR. SIMONS: May I? The process will be he

1 gets to ask you a question and I get to put an  
2 objection, and then you get to answer.

3 THE WITNESS: Sure. Okay.

4 MR. SIMONS: I need to object because  
5 haulers has some specified terms in the contract, so  
6 I'll object as vague and ambiguous because you can  
7 have multiple meetings. With that objection, feel  
8 free to answer.

9 THE WITNESS: By "haulers" you mean the  
10 green waste stuff, not the -- are we only talking  
11 about that side? We could save a lot of time.  
12 We're not talking about the residential?

13 BY MR. HARDY:

14 Q We're only talking about commercial.

15 A Okay. So would you repeat the question for  
16 me?

17 Q Sure. Was there any criteria that the  
18 haulers -- commercial haulers had to have in order  
19 to participate in the agreement or to be covered by  
20 the agreement?

21 A The one that I remember in particular --

22 MR. SIMONS: I'm sorry. I still have to  
23 object. It's still vague and ambiguous, but go  
24 ahead.

25 THE WITNESS: The one that I remember is

1 they had to be in business at the time the contract  
2 was approved.

3 BY MR. HARDY:

4 Q Okay. Was there any duration of time that  
5 you recall they had to be in business or could they  
6 have been in business for a year?

7 A I believe they could have opened the day  
8 before.

9 Q Do you remember the council meetings that  
10 occurred when the franchise agreement was brought  
11 before the council? Do you remember when that  
12 occurred?

13 A Not specifically.

14 Q Okay.

15 A I tried to find the minutes for those  
16 meetings that you sent me and I couldn't find them.

17 Q I notice that you signed off as vice mayor.

18 A Oh, okay. I believe you.

19 Q (Indicating).

20 A Yes.

21 Q Was there any particular reason you signed  
22 off as vice mayor? Was there anything standing out  
23 in your mind why that occurred?

24 A The mayor was probably out of town. That's  
25 why you have a vice mayor, if the mayor is out of



1 town or something like that. Nothing particular  
2 about this contract that was different.

3 Q Do you recall that there was a number of  
4 drivers from Castaway that actually showed up at one  
5 of the meetings? Do you remember that?

6 A Not particularly Castaway. I know there  
7 was a lot of employees that showed up.

8 Q And I think you even made a comment from --  
9 sitting up on there as vice mayor that "I wonder if  
10 there's anybody out there to pick up my trash."

11 Do you remember that?

12 A No.

13 Q Okay. Do you recall approximately when you  
14 learned Waste Management had purchased Castaway  
15 Trash Hauling?

16 A I know it was after -- I don't know exactly  
17 when but it was way after I got out. And I think I  
18 -- somebody told me about it in the paper.

19 Q It was after the franchise agreement was  
20 signed by the city, though. Do you recall that?

21 A Correct.

22 Q Do you feel that was a material fact that  
23 the city council, as you as a city councilperson  
24 would like to know if there were negotiations  
25 occurring between Castaway and Waste Management

1 before this franchise agreement was put before you?

2 MR. SIMONS: Objection, calls for  
3 speculation.

4 THE WITNESS: I don't know if this whole  
5 city council would have liked to know about it but I  
6 certainly would have liked to know about it.

7 BY MR. HARDY:

8 Q I think I've already asked you this but I  
9 want to make sure I understand this: You have not  
10 reviewed or know what the complaint is between  
11 Nevada Recycling and Salvage and AMCB as against  
12 Reno Disposal Company, which is Waste Management?

13 A Correct. I have not reviewed it.

14 MR. HARDY: I want to take a five-minute  
15 break.

16 (Recess taken.)

17 BY MR. HARDY:

18 Q You mentioned that Waste Management -- if  
19 Waste Management and Castaway had been negotiating  
20 with each other regarding the buyout of Castaway,  
21 you at least as a council member would have liked to  
22 have known. Why would you have liked to have known?

23 A Well, that's the whole purpose of the  
24 public process, to see what's going on. We try to  
25 really strike a balance with all the different

1 players involved. And I thought that's what we came  
2 to in this agreement was everyone was happy with the  
3 situation. But if one of the larger people change,  
4 then that would have changed, I think, the whole  
5 dynamic.

6 Q Why were there two zones -- just two zones  
7 in the franchise agreement?

8 Do you know why that was?

9 A I really don't recall why that was at all.

10 Q All right.

11 MR. HARDY: I think that's all the  
12 questions I've got today.

13 EXAMINATION

14 BY MR. HARDY:

15 Q I don't have too many.

16 Do you have any recollection as to why  
17 Waste Management was awarded a zone and Castaway was  
18 awarded a zone versus somebody else?

19 A Not right now. If I could watch the  
20 meetings again, I might remember.

21 Q Understandable. It's been three years.

22 Since learning that Waste Management bought  
23 Castaway out, have you spoken with any of the other  
24 previous council members who were on the council at  
25 the time?

1 A About this?

2 Q Yes.

3 A No.

4 MR. SIMONS: Just for the record, are you  
5 appearing on behalf of --

6 MR. HARDY: Nevada Recycling and Salvage.

7 MR. SIMONS: Okay.

8 BY MR. HARDY:

9 Q How do you feel about just personally --  
10 what's your personal opinion about Waste Management  
11 purchasing Castaway after they were each awarded a  
12 zone?

13 A Since I'm not a commercial customer, it  
14 doesn't bother me personally one way or the other.

15 Q Do you have any feelings as a former city  
16 council member who I -- after watching the  
17 meetings -- know spent an extensive amount of time  
18 on this?

19 A It's something I would have liked to know  
20 before we made the decision.

21 MS. RICE: I don't think I have anything  
22 further.

23 EXAMINATION

24 BY MR. SIMONS:

25 Q The ball's been handed off to me.

1 Sir, I'm Mark Simons. I represent the  
2 defendant entities in this action, which, for all  
3 intents and purposes, people refer to as "Waste  
4 Management."

5 Now, you were subpoenaed to attend the  
6 deposition today?

7 A Correct.

8 Q I'll just give you one caution, that if you  
9 allow me to ask the question and then you answer the  
10 question, then we won't get overlap.

11 Is that going to be fair?

12 A Yes.

13 Q It's easy in conversation for people to  
14 over-talk. I just want us to be cautious.

15 All right. Did you have any communications  
16 with Mr. Hardy or Stephanie Rice with regard to  
17 appearing today to provide testimony?

18 A Other than the email about -- he emailed  
19 about appearing and I responded, there was some  
20 emails back and forth.

21 Q About your availability?

22 A Correct.

23 Q Anything regarding the subject matter of  
24 what you might be testifying to?

25 A I asked him about what it was and he gave

1 me some specific dates that the council had met that  
2 we were gonna be discussing, perhaps.

3 Q Okay. So then once you received that email  
4 with some specific dates, that's when you said you  
5 went and did a little homework to look up in the  
6 documents whether you had notebooks or minutes.

7 A Correct.

8 Q About how long ago was that communication  
9 that you received from Mr. Hardy?

10 A A week or two.

11 Q Okay. And just so I'm clear, you said you  
12 couldn't find much. That indicates to me that you  
13 might have found something. Did you find anything?

14 A Yes. I found some minutes from, well, one  
15 of the earlier dates, I believe. I didn't find  
16 anything in my notebooks. I found some of my PDF  
17 files about the entire council day with my notes on  
18 it and nothing was about this particular issue.

19 Q Okay. So everything you did review was  
20 essentially irrelevant to the council meetings?

21 A I believe so.

22 Q All right. Do you know Mr. Hardy on a  
23 personal level?

24 A I know him from other legal dealings I've  
25 had with other entities I'm involved in.

1 Q What do you mean you're involved in?

2 A I was involved in Art Town and helped Art  
3 Town out with getting of the Lear Theater some years  
4 ago.

5 Q Okay.

6 A And we sat next to each other on a plane  
7 one time.

8 Q I'm sorry you had to undergo that  
9 experience.

10 A Thank you.

11 Q I've had to sit by him a few times.

12 After you received the contact from Mr.  
13 Hardy, did you contact anyone at the city to say,  
14 Hey, can you refresh me about what went down with  
15 the franchise agreements?

16 A No.

17 Q Did you contact anybody associated with  
18 Rubbish Runners?

19 A No.

20 Q Did you contact anyone, actually?

21 A No.

22 Q Other than receiving the email that  
23 initiated your dialogue with Mr. Hardy, had you  
24 previously had communications with Mr. Hardy about  
25 the franchise agreement issues?

1 A No.

2 Q How about the same question with Ms. Rice?

3 A No.

4 Q How about the same question with a guy name  
5 Brett Scolari?

6 A No.

7 Q Mike Kimmel?

8 A No.

9 Q Either of those names sound familiar, Brett  
10 or Kimmel?

11 A Brett Scolari sounds familiar to me.

12 Q Did you know that he was representing  
13 Rubbish Runners?

14 A No.

15 Q Now, you earlier testified that you  
16 couldn't remember any stakeholder meetings.

17 A Correct.

18 Q I just want to make sure you're aware -- or  
19 are you aware that stakeholder meetings did occur?

20 A No.

21 Q Okay. Do you know what a stakeholder  
22 meeting is, that phraseology?

23 A We may have different definitions of what  
24 that is.

25 Q Yes. Let's make sure. I'm aware there was



1 some meetings with regard to interested parties that  
2 wanted to talk about fleshing out the concept of  
3 these franchise agreements and so those meetings  
4 have been referred to as "stakeholder meetings."

5           Using my definition, are you aware of  
6 participating in any of those stakeholder meetings?

7           A    It's possible, but I couldn't give you any  
8 definitive -- I went to a lot of meetings.

9           Q    I recognize that. Unfortunately, lawyers  
10 are very detail oriented and so we've got to nitpick  
11 this a little bit.

12           You have no specific recollection of  
13 participating in any shareholder meetings as you sit  
14 here testifying today.

15           A    I have no recollection, but if someone  
16 said, You were here on that date, I would probably  
17 believe them.

18           Q    Okay. Then you mentioned you had a  
19 one-on-one meeting with Greg Martinelli and Gary  
20 Duhon and then subsequently or around this period of  
21 time a meeting with Duque.

22           A    Correct.

23           Q    All right. Now, did you have any meetings  
24 with anybody else that were potential haulers that  
25 would have been affected by the franchise

1 agreements?

2 A I had conversations with a few of them at  
3 the time. Outside of council chambers, like when we  
4 have a meeting and I would go down and talk to them,  
5 I believe I had one or two conversations with  
6 AnnMarie about this issue.

7 Q Okay. AnnMarie, do you associate her with  
8 Rubbish Runners?

9 A That name sounds new to me. I don't know  
10 that.

11 Q How about AMCB?

12 A No.

13 Q Okay. Who do you associate with -- what  
14 business do you associate her with?

15 A I just know that she does that. I don't  
16 associate her with a company. There was a lot of  
17 companies involved.

18 Q Other than the two prior meetings and your  
19 recollection of some meetings with AnnMarie, any  
20 other hauler or person affected by the franchise  
21 agreements with whom you had one-on-one meetings?

22 A Nothing that sticks out to me, no.

23 Q Let's go back and talk about your meetings  
24 with AnnMarie. You say you recall them.

25 Can you tell me about those meetings?

1           A    It was more like I do with everyone at the  
2 council meetings. I would meet with them and ask  
3 them what their concerns were, what would make any  
4 potential agreement okay with them and take all that  
5 information back, very similar to what I had with  
6 Waste Management, What concerns you about this  
7 agreement, what are the high points, what are the  
8 low points, where can we negotiate.

9           Q    So part of your role, you believe, was  
10 acting as facilitator to take in people's comments  
11 and concerns and ultimately craft an agreement that  
12 you believe achieved the city's goals as well as any  
13 interested parties' comment?

14          A    That's absolutely what I think my job was.

15          Q    Did you think you had a duty that you owed  
16 to the city? It's kind of a tough question.

17          A    Yes.

18          Q    Okay. What did you think your duty was to  
19 the city?

20          A    It's multifaceted. I always -- my duty to  
21 the city was to provide good service for the people  
22 who live in the city of Reno, for one thing. But  
23 also this agreement also provided income to the city  
24 of Reno which was also very important at the time.

25          Q    Okay. So did you limit your duty just to

1 this contract or is this your overall duty?

2 A The overall duty.

3 Q Okay. So that duty, you thought, was to  
4 act in the best interest of the city so that the  
5 city got good services.

6 A Good services. I've always thought of the  
7 city as two different things. It's a business that  
8 you've got to take care of but it's also a  
9 government that the role is to take care of the  
10 constituents.

11 Q Okay.

12 A So as a business it was good to get the  
13 income from that but also leveled against that is  
14 the services provided to the constituents.

15 Q Did you believe it was your duty in order  
16 to assist in providing good services for the city  
17 and operating the business aspect of the city that  
18 you undertook activities to make yourself informed  
19 of a particular issue?

20 A Absolutely.

21 Q Okay. And was it your standard practice  
22 that you ensured you were informed sufficiently on  
23 an issue before you were -- you voted on a topic?

24 A As much as I thought I was informed or  
25 could get informed, yes.

1 Q If you felt you weren't informed or had  
2 unanswered questions, was it your practice to vote  
3 or not vote on a particular issue?

4 A If I felt I was uninformed, that was the  
5 point of having the public meetings, to get informed  
6 at those meetings.

7 Q Okay.

8 A Whether something happens later on that I  
9 didn't know about, at the time I feel I was  
10 informed.

11 Q Okay. So you voted on granting these  
12 franchise agreements. Do you recall that?

13 A Correct, yes.

14 Q You recall actually participating in the  
15 vote?

16 A Yeah. That was the last meeting I think I  
17 was at the council, second-to-last meeting.

18 Q You recall what the vote was?

19 A No.

20 Q Okay. Do you recall that you voted in  
21 favor of the agreement?

22 A Yes.

23 Q Not only for the Reno Disposal Company  
24 agreement but also the Castaway Trash Hauling  
25 agreement.

1           A    Yes.

2           Q    Did you communicate with the city attorney  
3 in order to make yourself informed as to the terms  
4 and conditions of the franchise agreements before  
5 you voted on them?

6           A    I don't think I -- I can't recall talking  
7 to him directly.  It's a general thought that they  
8 have to approve this or they also have the right at  
9 the meetings to say this part isn't right or this  
10 part isn't right.

11          Q    Right.

12          A    I more relied on them to come forward with  
13 any objections legally to an agreement.

14          Q    Okay.  A lot of times you hear the word  
15 "city staff."  What does that mean to you?

16          A    Staff are the professional people who work  
17 for the City of Reno that bring the expertise to  
18 certain areas.

19          Q    Okay.  Did you as a city council member  
20 rely upon the expertise of the city staff members  
21 when you undertook activities to make yourself  
22 informed before voting?

23          A    I relied on them to a certain extent to  
24 gather the information, give me their advice but  
25 that doesn't mean as an elected official I have to

1 take their advice.

2 Q Fair enough. But we would agree, it seems  
3 like, that you would solicit their advice an  
4 opinions and comments as part of your  
5 decision-making formula?

6 A Correct.

7 Q All right. Do you recall with whom you  
8 communicated with the city staff about topic or  
9 issues contained in the franchise agreements?

10 A No.

11 Q Okay. Do you have any specific  
12 recollection of communicating with anybody of city  
13 staff or the city attorney's office?

14 A Not outside of the meetings that -- the  
15 public meetings that we have. I don't recall  
16 anything one on one that I would talk to them about.

17 Q Okay.

18 A Can I interrupt you for a second?

19 Q Sure.

20 A Because how it normally happens is they've  
21 already had their discussions with everyone involved  
22 when they bring us the draft proposal.

23 Q Okay.

24 A So pretty much when we get the draft  
25 proposal, that's their opinion. So you don't always

1 have to go back and ask them again because they've  
2 brought it to us right there and said, Here's what  
3 we think is a good deal.

4 Q Okay. And in signing the franchise  
5 agreements for Reno Disposal Company and Castaway,  
6 did you feel that you had sufficient understanding  
7 and knowledge of what the terms meant so that you  
8 could approve and vote -- that you could vote for  
9 approval?

10 A When I signed it, yes. But that has  
11 nothing to do with me physically signing it. You  
12 don't have a choice to sign if the council's  
13 approved.

14 Q That's an excellent detail, so let me redo  
15 my question.

16 At the time you voted to approve the  
17 contract, did you believe you had sufficient  
18 knowledge and understanding of the terms and  
19 conditions in order to vote for approval?

20 A Yes.

21 Q I'm going to walk you through some terms.  
22 (Deposition Exhibit 1 marked for  
23 identification.)

24 BY MR. SIMONS:

25 Q I'll have you look at Exhibit 1 there.



1 Flip back to -- it'll be page 52, and 52 is the  
2 signature block for the City of Reno.

3 A Right.

4 Q I'm just going to walk you through that.  
5 Is that your signature.

6 A Yes.

7 Q Is that your handwriting stating your name?

8 A No.

9 Q Okay. Do you know who Lynette Jones is?

10 A Yes.

11 Q Do you know why she attested your  
12 signature?

13 A She's the city clerk -- was the city clerk.

14 Q Is that her function, to attest signatures  
15 on City of Reno documents?

16 A Yes.

17 Q She approved this to legal form by the city  
18 attorney's office.

19 A Yes.

20 Q Do you know whose signature that is?

21 A No.

22 Q If I told you that was Jonathan Shipman,  
23 would you agree with that or would you have an  
24 opinion one way or another?

25 A I wouldn't have an opinion.

1 Q Do you see the seal that's off to the  
2 right?

3 A Yes.

4 Q What's the purpose of the seal?

5 A I don't know.

6 Q Okay. Now, I want to direct your attention  
7 to go up to paragraph 11.23. You see where it says  
8 "Existing franchise agreement"?

9 A Yes.

10 Q And there's one dated August 9th, 1994.

11 A Yes.

12 Q Do you recall that that was the franchise  
13 agreement that was already in existence between the  
14 City of Reno and Waste Management?

15 A I know there was an existing one. Whether  
16 it was dated that date, I will agree with this one.

17 Q Do you realize that under that  
18 then-existing franchise agreement that Waste  
19 Management was the exclusive provider for those  
20 services governed by that agreement?

21 A Yes.

22 Q So you knew at the time the city was  
23 entering into this agreement that they were going to  
24 be entering into an agreement that provided  
25 exclusive rights to Waste Management.

1 A In some aspects.

2 Q Fair enough. Good.

3 (Deposition Exhibit 2 marked for  
4 identification.)

5 BY MR. SIMONS:

6 Q This is Exhibit 2, and it's the same  
7 agreement that you're looking at, but you see  
8 Exhibit 2 is with Castaway Trash Hauling.

9 Do you see that?

10 A Yes.

11 Q Okay. And I'll also turn your attention to  
12 the signature block. Do you see also on page 52 of  
13 Exhibit 2, which is the Castaway franchise  
14 agreement, that that has your signature?

15 A Yes.

16 Q And it's also attested by Ms. Jones.

17 A Correct.

18 Q And it's approved by the city attorney's  
19 office --

20 A Correct.

21 Q -- with a seal. Correct?

22 A Yes.

23 Q All right. Now, both these contracts are  
24 effective -- if you look at the very front --  
25 November 7<sup>th</sup>, 2012, right?

1 A Okay.

2 Q Now, you understood that -- or did you  
3 understand that there was going to be two zones  
4 created in the city of Reno?

5 A The more we talk about it, the more it  
6 becomes familiar with me, but I assume that that's  
7 true. I will take your word for it.

8 Q Okay. Well, don't ever do that. I'm going  
9 to caution you on that.

10 A Okay. Thank you.

11 Q All I want to know is your knowledge today.

12 A I don't -- unless I read this agreement  
13 again, I would not know that.

14 Q Okay. Going back to Exhibit 1, I'll have  
15 you look at the very first page. Let's go through  
16 the first "Whereas" clauses.

17 A Okay.

18 Q The first whereas, "NRS 268.081 authorizes  
19 a city to displace or limit competition in the area  
20 of collection and disposal of garbage and other  
21 waste." Do you see that?

22 A Yes.

23 Q Did you understand that that statute  
24 authorized the City of Reno to limit competition  
25 with regards to the collection of waste?

1           A    I took the attorney's word for it that it  
2 did.

3           Q    Did you read this agreement before you  
4 voted on it?

5           A    Yes.

6           Q    Do you believe you understood the terms of  
7 the agreement before you voted on it and approved  
8 it?

9           A    Yes.

10          Q    Is that your standard practice when you are  
11 asked to vote on a contract, to read it and to  
12 understand it before you vote one way or the other?

13          A    Yes.

14          Q    Okay. So I'll ask you the same questions  
15 with regard to the Castaway agreement.

16                Did you read that agreement and understand  
17 it before you voted to approve it?

18          A    Yes.

19          Q    Okay. Now, stepping back from the  
20 agreement, did you realize that Nevada law allowed a  
21 municipality to restrict or limit competition in a  
22 given area?

23          A    I assume that to be correct.

24          Q    Okay. Some people say limit or restrict  
25 competition equates to a monopoly.

1 Do you use the phraseology "monopoly"  
2 versus "limit"?

3 A Yes.

4 Q You understand what a monopoly is?

5 A Yes.

6 Q What is your understanding of a monopoly?

7 A Sierra Pacific Power Company.

8 Q If I could expand upon that simple answer,  
9 you understand that one business may be granted the  
10 right to control an entire market.

11 A Correct, such as hauling away my home  
12 garbage.

13 Q Now, let me take you on to the next  
14 "Whereas" clause. "NRS 268.083 authorizes a city to  
15 grant an exclusive franchise to any person to  
16 provide garbage and waste collection and disposal  
17 services within the boundaries of the city."

18 Did you understand that that Nevada statute  
19 granted that authority to the City of Reno?

20 A I relied on the city attorney to agree that  
21 that is true. I did not look up the statute myself.

22 Q Okay. So based upon -- maybe I can  
23 short-circuit this. Based upon your approval of  
24 this agreement, you understood and believed the  
25 terms represented in these "Whereas" clauses were

1 true and accurate statements of Nevada law.

2 A Correct.

3 Q Thank you. I'm going to jump you down to  
4 the fourth "Whereas." "Whereas, the City of Reno  
5 City Council has determined that the public health,  
6 safety, and welfare of its residents require that  
7 certain commercial solid waste and recyclable  
8 material collection services, paren, as defined  
9 herein, closed paren, be provided under one or more  
10 commercial franchise agreements, paren, as defined  
11 herein, closed paren, by current service providers  
12 meeting the contractor qualifications, paren, as  
13 defined in this agreement, closed paren."

14 Okay. I read that just so it would be in  
15 your deposition. Do you agree with that statement?

16 A Yes.

17 Q Okay. And at the time there's a reference  
18 to the City of Reno City Council, you were a member  
19 of that city council, were you not?

20 A Yes.

21 Q And it says you, as a member of the Reno  
22 City Council, agreed to the issuance of franchise  
23 agreements for current service providers meeting the  
24 contractor qualifications. Do you see that?

25 A Yes.

1 Q Do you understand what the contractor  
2 qualifications were?

3 A I did at the time.

4 Q Okay. Right now you don't have a clue.

5 A No.

6 Q All right. Now, do you see in here where  
7 it also -- continuing reading that sentence, "which  
8 commercial franchise agreements provide the  
9 exclusive right and obligation to contractor and  
10 other service providers to provide collection  
11 services in exclusive service areas, paren, as  
12 defined herein, closed paren, in the city."

13 Do you see where it calls out for exclusive  
14 service areas?

15 A Yes.

16 Q And I'll represent to you that's been  
17 referred to as "zones."

18 A Okay.

19 Q Does that refresh your recollection?

20 A Makes sense.

21 Q Okay. Now, I want you to turn to exhibit  
22 -- the same exhibit, turn to page 13. Look at  
23 paragraph 2.2.

24 A Okay.

25 Q It talks about contractor qualifications



1 and establishment of exclusive service area  
2 boundaries. I want you to take a moment -- so I  
3 don't have to read this whole thing in -- please  
4 read it to yourself and let me know when you're  
5 done.

6 (Witness reviewing document.)

7 THE WITNESS: Okay.

8 BY MR. SIMONS:

9 Q Does reading that provision refresh your  
10 recollection that the city requested advice from  
11 certain haulers in the area with regards to how to  
12 structure the franchise agreements?

13 A Yes.

14 Q Okay. Do you remember who those haulers  
15 were?

16 A No.

17 Q Okay. It says in the second sentence, "The  
18 city established the location and boundaries of each  
19 exclusive service area in proportion to each  
20 qualified service provider's then-existing share of  
21 proportionate revenues," right?

22 A Correct.

23 Q Is that an accurate statement?

24 A Yes.

25 Q So would it be fair to say since that's an

1 accurate statement the haulers themselves, such as  
2 Waste Management, Reno Disposal Company, or  
3 Castaway, those entities did not define what the  
4 service areas would be, right, the exclusive service  
5 areas?

6 A I don't know if I would say that's true. I  
7 think this might have been about an agreement with  
8 all of them and the city just codified it.

9 Q Okay. Got to be careful with the word  
10 "codify."

11 A Yes.

12 Q The city incorporated it into their --

13 A Memorialized it.

14 Q Better. Let's take a look at the next  
15 sentence. "Contractor and the other qualified  
16 service providers participate in the process created  
17 by and under the supervision of the city."

18 Do you see that?

19 A Yes.

20 Q What was the process created by and which  
21 was under the supervision of the city with regards  
22 to qualifying as a service provider for a franchise  
23 area?

24 A As I said before, it could have been prior  
25 to council even getting it and then meeting with

1 staff. I don't know about any of those meetings  
2 before it even came to us and for the council as a  
3 whole it could have only happened at a public  
4 meeting.

5           So there's two different steps when we do  
6 things. Staff does their thing and then they bring  
7 it to us and then we do things in public meetings.

8           Q I didn't really follow you so I'm going to  
9 walk you through it.

10          A Okay.

11          Q Are you saying -- do you have any knowledge  
12 of what the process was that was implemented by the  
13 city with regards to selection of the qualified  
14 contractors to have exclusive service areas?

15          A I couldn't tell you whether there was a  
16 formal process or not.

17          Q Okay. Right now nothing. You don't --

18          A Right.

19          Q Okay. So, then, I think you said the  
20 second part was once that was implemented, the  
21 process by the city, it was then brought to the city  
22 council to vote on.

23          A I'm saying that's a possibility. I don't  
24 know if there was a process established before.

25          Q Okay. Here's what we do know -- and not

1 one person will agree. We have two agreements, one  
2 with Reno Disposal Company and one with Castaway.

3 Are you aware of any other service provider  
4 that qualified for an exclusive service area in the  
5 city of Reno?

6 A Since I don't recall the zones, I just know  
7 that there were other haulers. I don't know whether  
8 they were given zones or not right now.

9 Q There's a distinction I'm making between  
10 other haulers and other qualified haulers that would  
11 be entitled to have an exclusive service area zone.

12 Are you aware of any others than Castaway  
13 and Reno Disposal at this time?

14 A No, not at this time.

15 Q Thank you. Taking your attention back to  
16 the next sentence, "The recommendations of the  
17 service providers were strictly advisory and the  
18 city reserved full authority to accept, reject, or  
19 modify the recommendations to establish exclusive  
20 service area boundaries of the city's choosing or to  
21 continue to operate without exclusive service  
22 areas." Do you see that?

23 A Yes.

24 Q Paraphrasing, this says that the city had  
25 reserved the right not to enter into any franchise

1 agreements if it didn't want to, if I'm paraphrasing  
2 it right.

3 A I don't read it that way.

4 Q Do you see where it says, "The city  
5 reserved the full authority to continue to operate  
6 without exclusive service areas"?

7 A Well, that's not the same as what you said  
8 about not granting any organization.

9 Q Okay, that's fair. That's fair.  
10 Do you see where it says, "The city  
11 reserved the full authority to establish the service  
12 area boundaries"?

13 A Yes.

14 Q Is that consistent with your understanding?

15 A Yes.

16 Q Okay. I'm going to direct your attention  
17 to page 47. It has a paragraph 11.7(b). It says  
18 "City consent to assignment."

19 A Got it.

20 Q If you read the paragraph -- I'm going to  
21 let you read it to yourself. Go ahead and read it  
22 to yourself and then we'll go from there.

23 (Witness reviewing document.)

24 THE WITNESS: Okay.

25 BY MR. SIMONS:

1 Q Do you see in here where under this  
2 agreement that you approved assignments of this  
3 contract were allowed to permitted transferees  
4 without further consent of the City?

5 A Well, "which consent shall not be  
6 unreasonably withheld as long as they meet those  
7 qualifications."

8 Q We're only reading paragraph B.

9 A "Provided, however, that the assignee shall  
10 be deemed suitable and the City shall consent to an  
11 agreement."

12 Q Look at the very first clause.

13 A Right.

14 Q "except for assignments to permitted  
15 transferees." Do you see that?

16 A Uh-huh.

17 Q So permitted transferees are carved out as  
18 a separate type of assignment, correct?

19 A Right.

20 Q Then it says, "Contractor shall not assign  
21 this agreement unless the city approves," right?

22 A Without the prior written consent of the  
23 city.

24 Q Okay. So look at the very last sentence,  
25 "Assignments to permitted transferees shall not

1 require the consent of the city." Do you see that?

2 A Yes.

3 Q Did you understand this provision allowed  
4 Waste Management to assign its franchise agreement  
5 to a permitted transferee without further consent of  
6 the city?

7 A As long as they met the qualifications.  
8 That's the way I interpret this entire paragraph.

9 Q Okay. Well, if you see the next paragraph,  
10 it talks about qualifications of an assignee, right?

11 A Yes.

12 Q So up above in paragraph B the last  
13 sentence is very clear. "Assignments to permitted  
14 transferees shall not require the consent of the  
15 city." Do you see that?

16 A Correct.

17 Q Okay. And "permitted transferees" is a  
18 defined term, right, being capitalized?

19 A Yes.

20 Q Turn to page 9, and keep your hand on that  
21 because we're coming back. "Permitted transferee is  
22 defined as an affiliated contractor and a service  
23 provider under another commercial service  
24 agreement." Do you see that?

25 A Yes.

1 Q Do you realize that Castaway Trash Hauling  
2 was another contractor under its own commercial  
3 service agreement?

4 A I'm sorry. Would you say that again?

5 Q Sure. Did you realize Castaway was a  
6 contractor under its own service agreement?

7 A Yes.

8 Q Okay. So you realize -- just using the  
9 straight definition -- a permitted transferee was  
10 called out to be Castaway?

11 A No, I didn't see that.

12 Q You didn't understand that?

13 A Well, I don't interpret it the way you  
14 interpret it. It doesn't mean I don't understand  
15 it.

16 Q Okay.

17 A It says "affiliate of contractor," so  
18 Castaway could have been an affiliate of a  
19 contractor or any affiliate of a contractor and a  
20 service provider under another commercial service  
21 agreement.

22 Q Okay. All right. Now, did you know that  
23 there was also -- if you turn back to page 47 --  
24 and, again, you haven't had the opportunity to  
25 review this contract prior to today.



1 A Correct.

2 Q All right. So I'm kind of throwing a bunch  
3 of stuff at you to kinda get you up to speed.  
4 "Qualifications of an assignee," just read that  
5 provision to yourself.

6 (Witness reviewing document.)

7 THE WITNESS: Okay.

8 BY MR. SIMONS:

9 Q Does this refresh your recollection with  
10 regards to the qualification of service providers?

11 A Yes, to a degree.

12 Q Okay. And tell me in what way does it  
13 refresh your recollection with regards to the  
14 contractor qualifications?

15 A Well, as I recall the conversations it was  
16 having, is, while all of the people wanted the right  
17 for their own area, they also did not want to lose  
18 their right to sell their business, so they wanted  
19 to be able to sell their business to someone else as  
20 long as they met certain criteria.

21 Q Okay. So when you say "they all," are you  
22 talking about Castaway?

23 A Any hauler. I'm sorry.

24 Q Hold on. These contractors -- the one  
25 you're looking at is the contract between the City

1 of Reno and Reno Disposal, right?

2 A Correct.

3 Q And so what you're saying, if I understand  
4 you, is that under this contract Reno Disposal  
5 Company wanted the right to sell its business.

6 A Well, it sort of meshes over because it  
7 also says "solid waste and recyclable materials."

8 Q Okay.

9 A I'm, again separating the home garbage  
10 collection with the recycling portion of this.

11 Q Okay. Well, do you understand that this  
12 contract is with Reno Disposal Company?

13 A Correct.

14 Q And Reno Disposal Company would have a  
15 right to assign this contract right it has with the  
16 city, right?

17 A Correct.

18 Q And you agree that this provision addresses  
19 Reno Disposal Company's right to assign its contract  
20 with the City of Reno to some third party?

21 A If they met these qualifications, yes.

22 Q That would be if the third party met those  
23 qualifications.

24 A Correct.

25 Q Okay. And going back to your prior

1 testimony it's because Reno Disposal Company wanted  
2 the right to be able to sell its business --

3 A Correct, yes.

4 Q -- if there was a potential buyer out there  
5 that had the ability to buy and satisfy the  
6 conditions.

7 A Yes.

8 Q All right. I want to ask you that same  
9 series of questions with Castaway's contract. Might  
10 as well look at it so we're looking at identical  
11 terms.

12 I'm just going to have you take a moment to  
13 compare the same provision, 11.7(c), in that  
14 contract to show that it's identical.

15 (Witness reviewing document.)

16 THE WITNESS: Okay.

17 BY MR. SIMONS:

18 Q Is it identical?

19 A Seems so.

20 Q So just staying on this series of  
21 questions, it's your understanding that Castaway in  
22 entering into this agreement with the City of Reno  
23 wanted the right to sell its business to a potential  
24 third party if that third party could satisfy the  
25 conditions of an assignee.

1 A Yes.

2 Q All right. And you knew at the time you  
3 were approving both of these contracts that you were  
4 authorizing as part of your vote Reno Disposal  
5 Company and/or Castaway to sell their businesses to  
6 another entity or entities should they qualify to do  
7 the work.

8 A Yes.

9 Q Okay. I'm sorry. I need to take a break.

10 (Recess taken.)

11 BY MR. SIMONS:

12 Q We're looking at those contractor  
13 qualifications for an assignee and you mentioned  
14 that being in existence for five years.

15 Do you remember that being one of the  
16 parameters required to be an original contractor  
17 under a franchise agreement?

18 A No.

19 Q You don't know one way or the other?

20 A I don't know one way or the other.

21 Q I just had you turn to page 7 and look at  
22 the exempt hauler account and it talks about  
23 accounts established as of October 24<sup>th</sup>, 2012, and  
24 continuing for various customers scheduled on  
25 Schedule 1 as approved by the city. I kind of

1 paraphrased that. Do you see that?

2 A Yes.

3 Q Do you have any specific recollection of  
4 these exempt hauler accounts being called out for  
5 and carved out from the franchise agreement?

6 A Can I look at Schedule 1?

7 Q Absolutely.

8 A Is that in here?

9 Q Turn to the very last page.

10 A Yes.

11 Q Do you see where it's called out, Schedule  
12 1?

13 A Yes.

14 Q Now, do you see down at the bottom  
15 paragraph, "Attached list of exempt hauler accounts  
16 for each exempt hauler"?

17 A Yes.

18 Q If you read that, it says, "A schedule will  
19 be provided within 60 days and attached to the  
20 agreement."

21 MR. SIMONS: Exhibit 3, please.

22 (Deposition Exhibit 3 marked for  
23 identification.)

24

25 BY MR. SIMONS:

1 Q I'm going to hand you what's been marked as  
2 Exhibit 3 and identified as Schedule 1.

3 Have you ever seen Schedule 1 before?

4 A No.

5 Q Okay.

6 A This looks like an amended version.

7 Q Okay. Did you see something that looked  
8 like a Schedule 1 that had exempt hauler names and  
9 exempt hauler accounts other than this one?

10 A The one that was in the back of this list,  
11 but I don't remember seeing this list (indicating).

12 Q So the record's clear, you remember seeing  
13 Schedule 1, which is attached to the agreement, but  
14 you have not seen Schedule 1 which is identified as  
15 Exhibit 3.

16 A Because what I'm assuming is it gave them  
17 six months to come up with this and I wasn't on the  
18 council then.

19 Q Okay. The six-month reference, do you mean  
20 60 days reference?

21 A Yes, I'm sorry. The 60-day reference, and  
22 I wasn't on the council then.

23 Q Do you understand that as we're going  
24 through this that certain of the haulers wanted to  
25 keep their existing business?

1 A Correct.

2 Q And that was one of the things that you  
3 were trying to achieve with your vote, is that those  
4 existing haulers continue their existing business.

5 A Yes.

6 Q Is this the provision, the exempt-hauler  
7 account that you were talking about that achieved  
8 those existing haulers' then-existing business?

9 A I believe it is.

10 Q All right. Did you know that the City of  
11 Reno approved Reno Disposal Company's acquisition of  
12 Castaway Trash Hauling's contract with the City of  
13 Reno?

14 A I did not know that.

15 Q Based upon that knowledge, you don't have  
16 any problem with Reno Disposal Company acquiring  
17 Castaway's rights under its contract since it's been  
18 approved by the City of Reno, right?

19 A No.

20 MR. SIMONS: I want to take a break and  
21 talk to my client.

22 (Recess taken.)

23 MR. SIMONS: I don't have any other  
24 questions at this time.

25 FURTHER EXAMINATION

1 BY MR. HARDY:

2 Q Let me take you back to page 13 in  
3 whichever agreement. They're both the same. It  
4 says in the third line at the bottom "Contractor  
5 stipulates that it participated in the city's  
6 process in good faith."

7 A I don't see that here. Am I on the right  
8 one?

9 Q Page 13. Right here (indicating). So it  
10 would be Section 2.2 of page 13.

11 You see where it says "Contractor  
12 stipulates that it participated in the City's  
13 process in good faith"?

14 A Yes.

15 Q Do you think it was good faith that either  
16 Castaway and/or Waste Management did not disclose  
17 that they were negotiating a buyout of Castaway?

18 MR. SIMONS: Objection, calls for  
19 speculation, lack of foundation, incomplete  
20 hypothetical, legal conclusion.

21 BY MR. HARDY:

22 Q Please answer the question.

23 A Do I think it was in good faith? I  
24 honestly don't have an opinion one way or the other  
25 whether it was good faith or not.



1 Q All right. Would you have preferred that  
2 they had disclosed it?

3 A Yes.

4 Q Because that clearly showed good faith,  
5 right?

6 MR. SIMONS: Objection, calls for  
7 speculation, legal conclusion.

8 BY MR. HARDY:

9 Q Go ahead.

10 A It would have given me more information to  
11 craft, perhaps, a different agreement.

12 Q Right. Because you were asked to read  
13 other sections of this where, you know, assignments  
14 to transferees, et cetera. There's limiting  
15 exceptions here and you want to have as much  
16 information as possible before the city enters into  
17 such an agreement. Would you agree with me there?

18 A More information's always better.

19 MR. HARDY: Thank you. I have no further  
20 questions.

21 BY MS. RICE:

22 Q I have just a few.

23 With respect to the agreements that you  
24 just looked at and the specific provisions that were  
25 read, when you walked in here today did you have any

1 recollection of that specific language independently  
2 from the questions you were asked by Mr. Simons?

3 A No.

4 Q With respect to these agreements, do you  
5 recall whether or not you actually read every single  
6 page of this particular final draft of the  
7 agreement?

8 A Direct knowledge in remembering it, no, but  
9 I will tell you I did.

10 Q Do you recall the city council meeting when  
11 the franchise agreements were passed?

12 A Not directly.

13 Q If I represented to you that it was a  
14 marathon council meeting and it went very late into  
15 the night because it was this council's last meeting  
16 and there were several things on the agenda, would  
17 that --

18 A No, that wasn't unusual.

19 Q Do you recall receiving final drafts of,  
20 for example, this 65-plus-page agreement the day  
21 before it went to council?

22 A I don't know when I received it, no.

23 Q I believe there's still a little bit of  
24 confusion with respect to the questions being asked  
25 with residential versus commercial and the rights

1 under each. The language of what the agreements say  
2 now speak for themselves.

3 What I want to know is with respect to the  
4 commercial franchise agreements, what was your  
5 understanding of what they meant across the board?

6 MR. SIMONS: I'll object as vague and  
7 ambiguous.

8 THE WITNESS: I know we spent a lot more  
9 time on the commercial side than the residential  
10 side because there was no one asking to do the  
11 residential portion.

12 So we had a lot of discussion with the  
13 existing haulers about how that would help. I had  
14 more conversations with that side than Waste  
15 Management side. And, again, it was to try to  
16 protect the existing people in our community who had  
17 jobs and businesses that we didn't want to put them  
18 out of business with this agreement.

19 BY MR. HARDY:

20 Q So by not wanting to put them out of  
21 business, is it your understanding that the other  
22 haulers all have rights to engage in their  
23 respective hauling businesses under this agreement?

24 A Yes.

25 Q Is that what your intent was, to give the

1 small haulers rights under the agreement?

2 MR. SIMONS: Just object as vague and  
3 ambiguous. There's specific terms. If you want to  
4 point to a specific term.

5 THE WITNESS: That was one of the aspects  
6 that we had to think about.

7 BY MS. RICE:

8 Q What is your understanding of what is not  
9 solely the rights of Waste Management under this  
10 agreement?

11 MR. SIMONS: Hold on. Are you going to ask  
12 him to read this entire contract? Because he  
13 doesn't recall reading it. He recalls voting on it.  
14 If you want to point to a specific provision, but  
15 I'm just going to object as vague, ambiguous, no  
16 temporal component.

17 MR. HARDY: That's what I prefaced it  
18 "What's your understanding."

19 MR. SIMONS: At what point? Today?

20 MS. RICE: At any time.

21 MR. SIMONS: Go ahead. My objection's on  
22 the record.

23 THE WITNESS: I'm sorry. Could you repeat  
24 that again?

25 BY MS. RICE:

1 Q What is your understanding of what the  
2 haulers are able to do, the other haulers who are  
3 not the franchisee, Waste Management? What's your  
4 understanding of what they are able to do under this  
5 agreement?

6 A Keep their existing business with their  
7 existing customers and sell their business if they  
8 want to.

9 Q Are they permitted to do recycling under  
10 this agreement?

11 MR. SIMONS: Who is "they"?

12 MR. HARDY: The small haulers.

13 MR. SIMONS: I'm going to object as vague  
14 and ambiguous.

15 THE WITNESS: I'd have to read the  
16 agreement more about what they could do. And it was  
17 my understanding that's mostly what they did, was  
18 recycling.

19 BY MS. RICE:

20 Q Okay.

21 A But I don't know if every one of them did  
22 that, to answer your question.

23 Q Is there a reason why the city that you  
24 recall didn't just throw their hands up and give the  
25 franchise to one company, just let Waste Management

1 do it all?

2 A Yes. Because we didn't want to put  
3 everyone out of business that were currently doing  
4 that kind of business.

5 Q So by creating these service areas the city  
6 was attempting to avoid creating a monopoly.

7 MR. SIMONS: Objection, calls for  
8 speculation, calls for legal conclusion,  
9 mischaracterizes the witness' testimony.

10 THE WITNESS: I don't think I would say  
11 that. Because if Waste Management at the time was  
12 the only one doing that, we may have signed the  
13 agreement and it would have given them the monopoly.

14 So it was more the fact that there were  
15 other people doing it at the time, so, obviously, on  
16 the residential side we gave Waste Management a  
17 monopoly. So it wasn't that -- I'll speak for  
18 myself. I'm not opposed to moniplies, but when it  
19 took over someone else's existing business, that's  
20 where I had the issue with it.

21 BY MS. RICE:

22 Q Okay. And for your own personal opinion  
23 when you voted on this, that's why this agreement  
24 wasn't created like the residential agreement was.  
25 The commercial agreement is different because you

1 wanted to make sure the small haulers could still  
2 stay in business and operate.

3 A That's my belief, yes.

4 MS. RICE: I don't think I have anything  
5 further.

6 FURTHER EXAMINATION

7 BY MR. SIMONS:

8 Q It's my turn again. Following up on that  
9 last line of questioning, you see Schedule 1 where  
10 it calls out specific --

11 MR. HARDY: You're referring to Exhibit 3?

12 BY MR. SIMONS:

13 Q Schedule 1 which is Exhibit 3.

14 A Yes.

15 Q See where it calls out for exempted haulers  
16 and there's a list of names?

17 A Yes.

18 Q And it calls out for exempted hauler  
19 accounts on the next page. I'm asking you --

20 A I see that, yes.

21 Q Okay. Do you see up above on the second  
22 page where it talks about "exempted hauler accounts  
23 means a contractor account established on or before  
24 October 24<sup>th</sup>, 2012, and continuing as of  
25 October 24<sup>th</sup>, 2012, for which the exempted hauler

1 has provided collection activities and on a  
2 recurring basis to a customer identified on Schedule  
3 1." Do you see all that?

4 A Yes, I see that's there.

5 Q Okay. Is it your understanding that these  
6 exempted hauler accounts were those accounts that  
7 you wanted the small haulers to continue to service  
8 so they could stay in business?

9 MS. RICE: I'll object to that on the basis  
10 on he's already testified he's never seen that  
11 particular agreement before.

12 BY MR. SIMONS:

13 Q Okay. Well, let's go back to the exempted  
14 hauler account definition on page 7.

15 A Okay.

16 Q Let me know when you're there. We went  
17 over this earlier. The same language.

18 A Yes.

19 Q The contract established in October of  
20 2012, recurring basis to existing small haulers, et  
21 cetera et cetera.

22 Are these the exempt accounts that you  
23 wanted to ensure that the small haulers continued to  
24 service?

25 A If I recall, the exempted hauler accounts



1 weren't set up yet by the time we signed this.

2 Q Okay.

3 A And it's not on this Schedule 1 here. I  
4 think that came after I left office.

5 Q Okay. Wasn't that the purpose of these  
6 exempt accounts, to achieve what you said were to  
7 ensure that the small haulers stayed in business?

8 A Yes.

9 Q Okay. You earlier said, if you would have  
10 known what was going on by and between Waste  
11 Management and Castaway, perhaps it may have altered  
12 the agreement. Do you remember making a statement,  
13 sort of that phraseology?

14 A Yes.

15 Q Is that, perhaps, more of a speculative  
16 concept that you're saying today?

17 A Yes.

18 MR. SIMONS: I don't have any other  
19 questions.

20 FURTHER EXAMINATION

21 BY MR. HARDY:

22 Q Just a couple.

23 One is, Do you ever remember making a  
24 comment to anybody at Waste Management saying, Why  
25 don't you just buy Castaway out? Did you ever say?

1           A    I possibly did.  I don't know.  I don't  
2 recall.

3           Q    Did anyone in the City of Reno ever make a  
4 comment to Waste Management to that effect?

5           A    No.

6           Q    Okay.  You didn't get a chance to look at  
7 all of Exhibit 3, Schedule 1.  Go ahead and take a  
8 look at Exhibit 3, Schedule 1, and take a look at  
9 the last page.  Why don't you just read the last  
10 sentence above where it says "If you have any  
11 questions."

12                   (Witness reviewing document.)

13           THE WITNESS:  Okay.

14 BY MR. HARDY:

15           Q    It basically says that this doesn't  
16 represent the city's official position or  
17 interpretation.  That's what it says.

18           A    Okay.

19           Q    Is that what you understand it to mean?

20           MR. SIMONS:  You're asking him to opine as  
21 to interpretation of an agreement that you just  
22 objected to because he's never seen it before?

23           MS. RICE:  No.  You were talking about the  
24 content.

25           MR. SIMONS:  You're not talking about the

1 content?

2 MR. HARDY: I have no further questions.  
3 If you have any further questions, ask them.

4 MR. SIMONS: No.

5 FURTHER EXAMINATION

6 BY MS. RICE:

7 Q I only have one.

8 If you had been informed that Waste  
9 Management was purchasing Castaway prior to entering  
10 into these different service area agreements, would  
11 you have still given Castaway a service area if you  
12 knew that Waste Management was going to be  
13 purchasing it anyway?

14 MR. SIMONS: Objection, asked and answered,  
15 calls for speculation, incomplete hypothetical.

16 Go ahead.

17 THE WITNESS: I don't know what would have  
18 happened, because that information then would have  
19 been given to the public and public comment would  
20 have determined what we would have done with that.

21 As I said, I don't personally have any  
22 impact -- not having a commercial -- it didn't  
23 impact me personally. So that's why you rely on  
24 public comment in public meetings, to tell you other  
25 things you should be looking at.

1 MR. HARDY: Fair enough. I think I'm done.

2 FURTHER EXAMINATION

3 BY MR. SIMONS:

4 Q Are you suggesting with that last answer  
5 that private companies have to disclose their  
6 private business affairs to the public?

7 A No.

8 MR. SIMONS: Okay. That's all.

9 FURTHER EXAMINATION

10 BY MR. HARDY:

11 Q Let me follow up.

12 Do you believe private companies should  
13 disclose their private business affairs if they  
14 object to something the city is doing with them?

15 MR. SIMONS: Objection, calls for  
16 speculation, incomplete hypothetical.

17 THE WITNESS: As I said before, it would  
18 have been nice to know that information to craft...

19 MR. HARDY: All right. That's all the  
20 questions I have.

21 THE REPORTER: And for his read and sign,  
22 how do you want that?

23 MR. HARDY: How would you like that, Dave?  
24 Do you want that to come to you and you can review  
25 it and send it back to us, or how do you want to

1 take care of this?

2 THE REPORTER: I can email it to you.  
3 What's your email address?

4 THE WITNESS: Aiazzi at Gmail dot-com.

5 MR. SIMONS: Here's what I prefer: I ask  
6 that the email coming from opposing counsel's  
7 office -- you're going to communicate directly with  
8 the witness, right?

9 THE REPORTER: Yes.

10 Do you want copies of these transcripts?

11 MR. SIMONS: Yes, please. Both  
12 transcripts. Electronic and a condensed, E-Tran.  
13 No exhibits to my copy.

14 (Whereupon, deposition was concluded at  
15 2:30 p.m.)

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CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this 10<sup>th</sup> day of FEBRUARY, 2016.

  
DAVE AIAZZI

-o0o-

1 STATE OF NEVADA )

2 ss.

3 COUNTY OF WASHOE )

4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court  
6 Reporter in and for the States of Nevada and  
7 California do hereby certify:

8 That I was personally present for the purpose  
9 of acting as Certified Court Reporter in the matter  
10 entitled herein; that the witness was by me duly  
11 sworn;

12 That said transcript which appears hereinbefore  
13 was taken in verbatim stenotype notes by me and  
14 thereafter transcribed into typewriting as herein  
15 appears to the best of my knowledge, skill, and  
16 ability and is a true record thereof.

17   
18 \_\_\_\_\_

19 Christina Amundson, CCR #641 (NV), CSR #11883 (CA)

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CHANGES/CORRECTIONS/NOTES

PAGE LINE




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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 14 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.

### 3.3 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 (25<sup>th</sup>) 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 Counsel. 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 Contractors election offer Collection Services of Source Separated Food Waste to Commercial Customers within Contractors 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 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  
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

Reno Disposal Company, Inc., a Nevada corporation

By: [Signature]

Title: Vice President

Date: 11/16/12

**List of Exhibits:**

- |                   |   |
|-------------------|---|
| <b>Exhibit A</b>  | <b>List of Approved Recyclable Materials</b>  |
| <b>Exhibit B</b>  | <b>Exclusive Service Area of Contractor</b>   |
| <b>Exhibit C</b>  | <b>Operating Standards</b>  |
| <b>Exhibit D</b>  | <b>Scope of Services</b>  |
| <b>Schedule 1</b> | <b>List of Exempted Haulers and list of Exempted Hauler Accounts and Customers for each Exempted Hauler</b> |

**EXHIBIT A**  
**List of Approved Recyclable Materials**

**EXHIBIT A**  
**COMMERCIAL FRANCHISE AGREEMENT**  
**APPROVED RECYCLABLE MATERIALS**

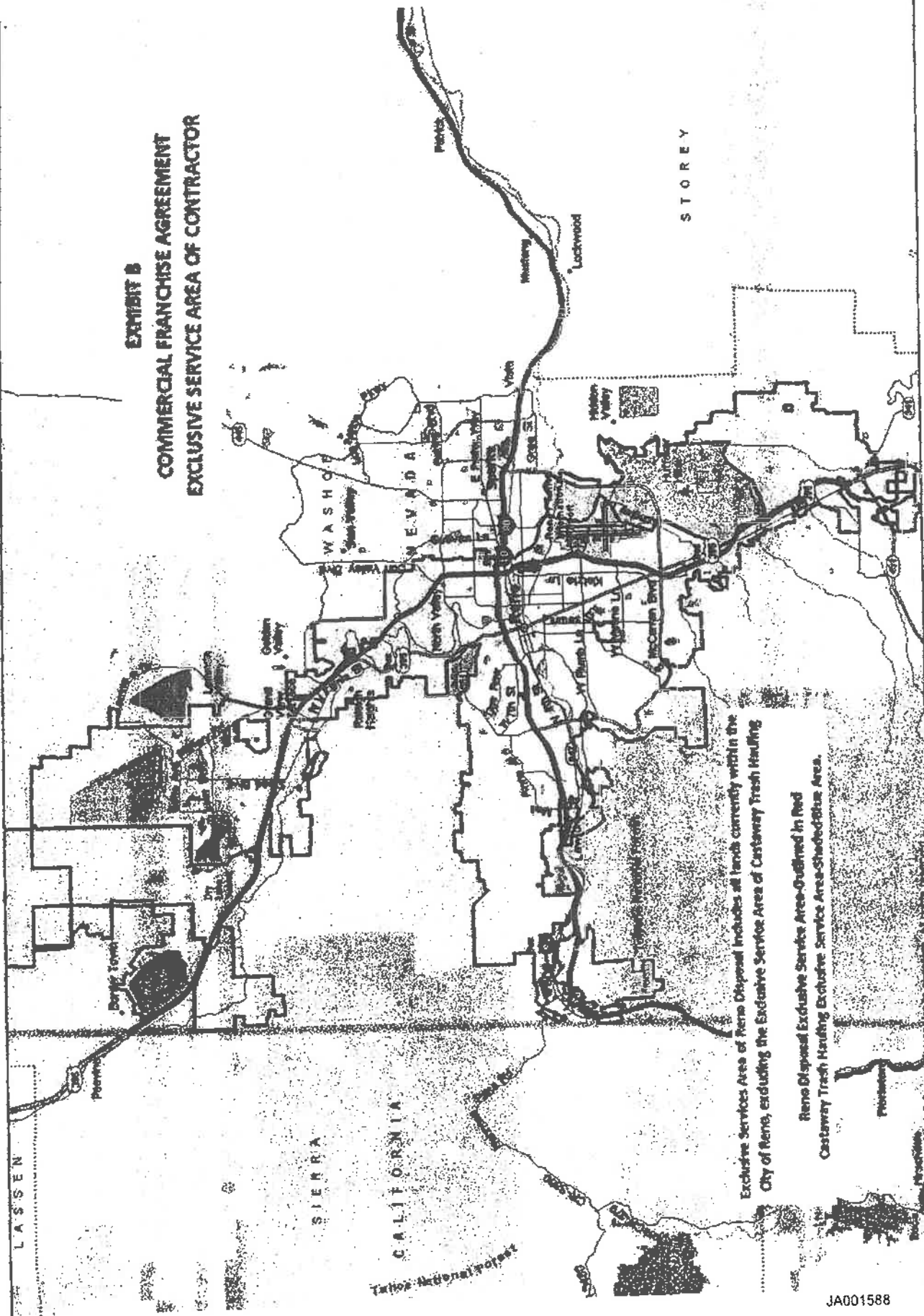
1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, 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 B**  
**COMMERCIAL FRANCHISE AGREEMENT**  
**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**  
**Scope of Services**

**Bin Collection Services**

**Bin Collection Services-Solid Waste**

Bin Capacity	Monthly Rate by Collection Frequency per Week <sup>1</sup>						
	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	\$ 498.91	\$ 590.91	N/A
3 Cubic Yards	\$ 157.82	\$ 273.78	\$ 388.45	\$ 500.69	\$ 615.30	\$ 728.91	\$ 919.85
4 Cubic Yards	\$ 197.40	\$ 323.13	\$ 462.49	\$ 594.21	\$ 733.67	\$ 868.02	\$ 1,093.52
5 Cubic Yards	\$ 272.32	\$ 450.85	\$ 674.39	\$ 855.29	\$ 1,119.79	\$ 1,374.29	\$ 1,696.50

**Bin Collection Services-Approved Recyclable Materials**

Bin Capacity	Monthly Rate by Collection Frequency per Week <sup>1</sup>						
	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	\$ 284.75	\$ 347.84	\$ 410.84	N/A
3 Cubic Yards	\$ 110.47	\$ 191.85	\$ 271.92	\$ 350.48	\$ 430.71	\$ 510.94	\$ 643.90
4 Cubic Yards	\$ 131.16	\$ 226.19	\$ 323.68	\$ 415.95	\$ 513.57	\$ 607.51	\$ 831.89
5 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 635.70	\$ 783.85	\$ 962.00	\$ 1,187.55

<sup>1</sup> 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 <sup>2</sup>

Bin Capacity	Additional Dump of Container: Solid Waste and Approved Recyclable Materials <sup>2</sup>	Additional Dump of Container: Solid Waste and Approved Recyclable Materials <sup>2</sup>
2 Yard	\$ 63.51	\$ 34.99
3 Yard	\$ 79.20	\$ 49.25
4 Yard	\$ 77.13	\$ 43.61
5 Yard	\$ 97.20	\$ 69.65

**Other Services and Fees**

Service	Rate
Bin Change <sup>3</sup>	\$ 29.95
4 Yard Bin Special - Single Service <sup>4</sup>	\$ 90.50
5 Yard Bin Special - Single Service <sup>4</sup>	\$ 107.99

<sup>2</sup> Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

<sup>3</sup> Fee to access or service Bin

<sup>4</sup> Delivery and pick up Bin-sight service

**Exhibit D**  
**Commercial Franchise Agreement**  
**Scope of Services**

**Cart Collection Services**

**Cart Collection Services-Solid Waste**

Cart Size	Monthly Rate by Collection Frequency per Week <sup>1</sup>						
	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	\$ 120.98	\$ 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 <sup>1</sup>						
	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	\$ 278.79	\$ 349.74	\$ 419.69	\$ 489.63

<sup>1</sup>Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart



**Exhibit D**  
**Commercial Franchise Agreement**  
**Scope of Services**

**Drop Box and Dumpster Collection Services**

**Garbage and Flammable Collection Services of Approved Recyclable Materials and Solid Waste**

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$ 140.00
20 Yard Closed Top	\$ 200.00
30 Yard Closed Top	\$ 300.00
Drop Box Initial Delivery Fee	\$ 75.00

Drop Box Capacity	Rate per Service
14 Yard Open Top	\$ 140.00
20 Yard Open Top	\$ 200.00
30 Yard Open Top	\$ 300.00
Drop Box Initial Delivery Fee	\$ 75.00

Container Capacity	Rate per Service
16 Yard	\$ 160.00
22 Yard	\$ 220.00
34 Yard	\$ 340.00
46 Yard	\$ 460.00
58 Yard	\$ 580.00
70 Yard	\$ 700.00
82 Yard	\$ 820.00
94 Yard	\$ 940.00
106 Yard	\$ 1060.00
118 Yard	\$ 1180.00
130 Yard	\$ 1300.00
142 Yard	\$ 1420.00
154 Yard	\$ 1540.00
166 Yard	\$ 1660.00
178 Yard	\$ 1780.00
190 Yard	\$ 1900.00
202 Yard	\$ 2020.00
214 Yard	\$ 2140.00
226 Yard	\$ 2260.00
238 Yard	\$ 2380.00
250 Yard	\$ 2500.00
262 Yard	\$ 2620.00
274 Yard	\$ 2740.00
286 Yard	\$ 2860.00
298 Yard	\$ 2980.00
310 Yard	\$ 3100.00
322 Yard	\$ 3220.00
334 Yard	\$ 3340.00
346 Yard	\$ 3460.00
358 Yard	\$ 3580.00
370 Yard	\$ 3700.00
382 Yard	\$ 3820.00
394 Yard	\$ 3940.00
406 Yard	\$ 4060.00
418 Yard	\$ 4180.00
430 Yard	\$ 4300.00
442 Yard	\$ 4420.00
454 Yard	\$ 4540.00
466 Yard	\$ 4660.00
478 Yard	\$ 4780.00
490 Yard	\$ 4900.00
502 Yard	\$ 5020.00
514 Yard	\$ 5140.00
526 Yard	\$ 5260.00
538 Yard	\$ 5380.00
550 Yard	\$ 5500.00
562 Yard	\$ 5620.00
574 Yard	\$ 5740.00
586 Yard	\$ 5860.00
598 Yard	\$ 5980.00
610 Yard	\$ 6100.00
622 Yard	\$ 6220.00
634 Yard	\$ 6340.00
646 Yard	\$ 6460.00
658 Yard	\$ 6580.00
670 Yard	\$ 6700.00
682 Yard	\$ 6820.00
694 Yard	\$ 6940.00
706 Yard	\$ 7060.00
718 Yard	\$ 7180.00
730 Yard	\$ 7300.00
742 Yard	\$ 7420.00
754 Yard	\$ 7540.00
766 Yard	\$ 7660.00
778 Yard	\$ 7780.00
790 Yard	\$ 7900.00
802 Yard	\$ 8020.00
814 Yard	\$ 8140.00
826 Yard	\$ 8260.00
838 Yard	\$ 8380.00
850 Yard	\$ 8500.00
862 Yard	\$ 8620.00
874 Yard	\$ 8740.00
886 Yard	\$ 8860.00
898 Yard	\$ 8980.00
910 Yard	\$ 9100.00
922 Yard	\$ 9220.00
934 Yard	\$ 9340.00
946 Yard	\$ 9460.00
958 Yard	\$ 9580.00
970 Yard	\$ 9700.00
982 Yard	\$ 9820.00
994 Yard	\$ 9940.00
1006 Yard	\$ 10060.00
1018 Yard	\$ 10180.00
1030 Yard	\$ 10300.00
1042 Yard	\$ 10420.00
1054 Yard	\$ 10540.00
1066 Yard	\$ 10660.00
1078 Yard	\$ 10780.00
1090 Yard	\$ 10900.00
1102 Yard	\$ 11020.00
1114 Yard	\$ 11140.00
1126 Yard	\$ 11260.00
1138 Yard	\$ 11380.00
1150 Yard	\$ 11500.00
1162 Yard	\$ 11620.00
1174 Yard	\$ 11740.00
1186 Yard	\$ 11860.00
1198 Yard	\$ 11980.00
1210 Yard	\$ 12100.00
1222 Yard	\$ 12220.00
1234 Yard	\$ 12340.00
1246 Yard	\$ 12460.00
1258 Yard	\$ 12580.00
1270 Yard	\$ 12700.00
1282 Yard	\$ 12820.00
1294 Yard	\$ 12940.00
1306 Yard	\$ 13060.00
1318 Yard	\$ 13180.00
1330 Yard	\$ 13300.00
1342 Yard	\$ 13420.00
1354 Yard	\$ 13540.00
1366 Yard	\$ 13660.00
1378 Yard	\$ 13780.00
1390 Yard	\$ 13900.00
1402 Yard	\$ 14020.00
1414 Yard	\$ 14140.00
1426 Yard	\$ 14260.00
1438 Yard	\$ 14380.00
1450 Yard	\$ 14500.00
1462 Yard	\$ 14620.00
1474 Yard	\$ 14740.00
1486 Yard	\$ 14860.00
1498 Yard	\$ 14980.00
1510 Yard	\$ 15100.00
1522 Yard	\$ 15220.00
1534 Yard	\$ 15340.00
1546 Yard	\$ 15460.00
1558 Yard	\$ 15580.00
1570 Yard	\$ 15700.00
1582 Yard	\$ 15820.00
1594 Yard	\$ 15940.00
1606 Yard	\$ 16060.00
1618 Yard	\$ 16180.00
1630 Yard	\$ 16300.00
1642 Yard	\$ 16420.00
1654 Yard	\$ 16540.00
1666 Yard	\$ 16660.00
1678 Yard	\$ 16780.00
1690 Yard	\$ 16900.00
1702 Yard	\$ 17020.00
1714 Yard	\$ 17140.00
1726 Yard	\$ 17260.00
1738 Yard	\$ 17380.00
1750 Yard	\$ 17500.00
1762 Yard	\$ 17620.00
1774 Yard	\$ 17740.00
1786 Yard	\$ 17860.00
1798 Yard	\$ 17980.00
1810 Yard	\$ 18100.00
1822 Yard	\$ 18220.00
1834 Yard	\$ 18340.00
1846 Yard	\$ 18460.00
1858 Yard	\$ 18580.00
1870 Yard	\$ 18700.00
1882 Yard	\$ 18820.00
1894 Yard	\$ 18940.00
1906 Yard	\$ 19060.00
1918 Yard	\$ 19180.00
1930 Yard	\$ 19300.00
1942 Yard	\$ 19420.00
1954 Yard	\$ 19540.00
1966 Yard	\$ 19660.00
1978 Yard	\$ 19780.00
1990 Yard	\$ 19900.00
2002 Yard	\$ 20020.00
2014 Yard	\$ 20140.00
2026 Yard	\$ 20260.00
2038 Yard	\$ 20380.00
2050 Yard	\$ 20500.00
2062 Yard	\$ 20620.00
2074 Yard	\$ 20740.00
2086 Yard	\$ 20860.00
2098 Yard	\$ 20980.00
2110 Yard	\$ 21100.00
2122 Yard	\$ 21220.00
2134 Yard	\$ 21340.00
2146 Yard	\$ 21460.00
2158 Yard	\$ 21580.00
2170 Yard	\$ 21700.00
2182 Yard	\$ 21820.00
2194 Yard	\$ 21940.00
2206 Yard	\$ 22060.00
2218 Yard	\$ 22180.00
2230 Yard	\$ 22300.00
2242 Yard	\$ 22420.00
2254 Yard	\$ 22540.00
2266 Yard	\$ 22660.00
2278 Yard	\$ 22780.00
2290 Yard	\$ 22900.00
2302 Yard	\$ 23020.00
2314 Yard	\$ 23140.00
2326 Yard	\$ 23260.00
2338 Yard	\$ 23380.00
2350 Yard	\$ 23500.00
2362 Yard	\$ 23620.00
2374 Yard	\$ 23740.00
2386 Yard	\$ 23860.00
2398 Yard	\$ 23980.00
2410 Yard	\$ 24100.00
2422 Yard	\$ 24220.00
2434 Yard	\$ 24340.00
2446 Yard	\$ 24460.00
2458 Yard	\$ 24580.00
2470 Yard	\$ 24700.00
2482 Yard	\$ 24820.00
2494 Yard	\$ 24940.00
2506 Yard	\$ 25060.00
2518 Yard	\$ 25180.00
2530 Yard	\$ 25300.00
2542 Yard	\$ 25420.00
2554 Yard	\$ 25540.00
2566 Yard	\$ 25660.00
2578 Yard	\$ 25780.00
2590 Yard	\$ 25900.00
2602 Yard	\$ 26020.00
2614 Yard	\$ 26140.00
2626 Yard	\$ 26260.00
2638 Yard	\$ 26380.00
2650 Yard	\$ 26500.00
2662 Yard	\$ 26620.00
2674 Yard	\$ 26740.00
2686 Yard	\$ 26860.00
2698 Yard	\$ 26980.00
2710 Yard	\$ 27100.00
2722 Yard	\$ 27220.00
2734 Yard	\$ 27340.00
2746 Yard	\$ 27460.00
2758 Yard	\$ 27580.00
2770 Yard	\$ 27700.00
2782 Yard	\$ 27820.00
2794 Yard	\$ 27940.00
2806 Yard	\$ 28060.00
2818 Yard	\$ 28180.00
2830 Yard	\$ 28300.00
2842 Yard	\$ 28420.00
2854 Yard	\$ 28540.00
2866 Yard	\$ 28660.00
2878 Yard	\$ 28780.00
2890 Yard	\$ 28900.00
2902 Yard	\$ 29020.00
2914 Yard	\$ 29140.00
2926 Yard	\$ 29260.00
2938 Yard	\$ 29380.00
2950 Yard	\$ 29500.00
2962 Yard	\$ 29620.00
2974 Yard	\$ 29740.00
2986 Yard	\$ 29860.00
2998 Yard	\$ 29980.00
3010 Yard	\$ 30100.00
3022 Yard	\$ 30220.00
3034 Yard	\$ 30340.00
3046 Yard	\$ 30460.00
3058 Yard	\$ 30580.00
3070 Yard	\$ 30700.00
3082 Yard	\$ 30820.00
3094 Yard	\$ 30940.00
3106 Yard	\$ 31060.00
3118 Yard	\$ 31180.00
3130 Yard	\$ 31300.00
3142 Yard	\$ 31420.00
3154 Yard	\$ 31540.00
3166 Yard	\$ 31660.00
3178 Yard	\$ 31780.00
3190 Yard	\$ 31900.00
3202 Yard	\$ 32020.00
3214 Yard	\$ 32140.00
3226 Yard	\$ 32260.00
3238 Yard	\$ 32380.00
3250 Yard	\$ 32500.00
3262 Yard	\$ 32620.00
3274 Yard	\$ 32740.00
3286 Yard	\$ 32860.00
3298 Yard	\$ 32980.00
3310 Yard	\$ 33100.00
3322 Yard	\$ 33220.00
3334 Yard	\$ 33340.00
3346 Yard	\$ 33460.00
3358 Yard	\$ 33580.00
3370 Yard	\$ 33700.00
3382 Yard	\$ 33820.00
3394 Yard	\$ 33940.00
3406 Yard	\$ 34060.00
3418 Yard	\$ 34180.00
3430 Yard	\$ 34300.00
3442 Yard	\$ 34420.00
3454 Yard	\$ 34540.00
3466 Yard	\$ 34660.00
3478 Yard	\$ 34780.00
3490 Yard	\$ 34900.00
3502 Yard	\$ 35020.00
3514 Yard	\$ 35140.00
3526 Yard	\$ 35260.00
3538 Yard	\$ 35380.00
3550 Yard	\$ 35500.00
3562 Yard	\$ 35620.00
3574 Yard	\$ 35740.00
3586 Yard	\$ 35860.00
3598 Yard	\$ 35980.00
3610 Yard	\$ 36100.00
3622 Yard	\$ 36220.00
3634 Yard	\$ 36340.00
3646 Yard	\$ 36460.00
3658 Yard	\$ 36580.00
3670 Yard	\$ 36700.00
3682 Yard	\$ 36820.00
3694 Yard	\$ 36940.00
3706 Yard	\$ 37060.00
3718 Yard	\$ 37180.00
3730 Yard	\$ 37300.00
3742 Yard	\$ 37420.00
3754 Yard	\$ 37540.00
3766 Yard	\$ 37660.00
3778 Yard	\$ 37780.00
3790 Yard	\$ 37900.00
3802 Yard	\$ 38020.00
3814 Yard	\$ 38140.00
3826 Yard	\$ 38260.00
3838 Yard	\$ 38380.00
3850 Yard	\$ 38500.00
3862 Yard	\$ 38620.00
3874 Yard	\$ 38740.00
3886 Yard	\$ 38860.00
3898 Yard	\$ 38980.00
3910 Yard	\$ 39100.00
3922 Yard	\$ 39220.00
3934 Yard	\$ 39340.00
3946 Yard	\$ 39460.00
3958 Yard	\$ 39580.00
3970 Yard	\$ 39700.00
3982 Yard	\$ 39820.00
3994 Yard	\$ 39940.00
4006 Yard	\$ 40060.00
4018 Yard	\$ 40180.00
4030 Yard	\$ 40300.00
4042 Yard	\$ 40420.00
4054 Yard	\$ 40540.00
4066 Yard	\$ 40660.00
4078 Yard	\$ 40780.00
4090 Yard	\$ 40900.00
4102 Yard	\$ 41020.00
4114 Yard	\$ 41140.00
4126 Yard	\$ 41260.00
4138 Yard	\$ 41380.00
4150 Yard	\$ 41500.00
4162 Yard	\$ 41620.00
4174 Yard	\$ 41740.00
4186 Yard	\$ 41860.00
4198 Yard	\$ 41980.00
4210 Yard	\$ 42100.00
4222 Yard	\$ 42220.00
4234 Yard	\$ 42340.00
4246 Yard	\$ 42460.00
4258 Yard	\$ 42580.00
4270 Yard	\$ 42700.00
4282 Yard	\$ 42820.00
4294 Yard	\$ 42940.00
4306 Yard	\$ 43060.00
4318 Yard	\$ 43180.00
4330 Yard	\$ 43300.00
4342 Yard	\$ 43420.00
4354 Yard	\$ 43540.00
4366 Yard	\$ 43660.00
4378 Yard	\$ 43780.00
4390 Yard	\$ 43900.00
4402 Yard	\$ 44020.00
4414 Yard	\$ 44140.00
4426 Yard	\$ 44260.00
4438 Yard	\$ 44380.00
4450 Yard	\$ 44500.00
4462 Yard	\$ 44620.00
4474 Yard	\$ 44740.00
4486 Yard	\$ 44860.00
4498 Yard	\$ 44980.00
4510 Yard	\$ 45100.00
4522 Yard	\$ 45220.00
4534 Yard	\$ 45340.00
4546 Yard	\$ 45460.00
4558 Yard	\$ 45580.00
4570 Yard	\$ 45700.00
4582 Yard	\$ 45820.00
4594 Yard	\$ 45940.00
4606 Yard	\$ 46060.00
4618 Yard	\$ 46180.00
4630 Yard	\$ 46300.00
4642 Yard	\$ 46420.00
4654 Yard	\$ 46540.00
4666 Yard	\$ 46660.00
4678 Yard	\$ 46780.00
4690 Yard	\$ 46900.00
4702 Yard	\$ 47020.00
4714 Yard	\$ 47140.00
4726 Yard	\$ 47260.00
4738 Yard	\$ 47380.00
4750 Yard	\$ 47500.00
4762 Yard	\$ 47620.00
4774 Yard	\$ 47740.00

**Exhibit D**  
**Commercial Franchise Agreement**  
**Scoops of Servicos**

**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 Scoops 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	\$ 23.68	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
Big Out charge	\$ 75.00	Fee for each occurrence to remove material lodged in Container
Enclosure/dock 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 Sump	\$ 75.00	Container sumpage (Dump Box and Bin)
Will Service letter	\$ 85.00	Charge to provide a will-service letter for new development
Food Waste:		
64 gallon Cart	\$ 58.41	Rate per service for a Food Waste Recycling Cart
3 yard Bin	\$ 197.28	Rate per service for a Food Waste Recycling 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. 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.

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**EXCLUSIVE SERVICE AREA FRANCHISE AGREEMENT  
COMMERCIAL SOLID WASTE AND  
RECYCLABLE MATERIALS**

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 12 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**

1

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## 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(8).

"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 (25<sup>th</sup>) 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 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 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 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.

#### 5.2 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

##### 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 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 Robert A. Cashell, Sr. 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

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

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Exhibit B  
Exclusive Service Area of Contractor

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Exhibit C  
Operating Standards

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Exhibit D  
Scope of Services

**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.

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1. 1970-1971  
2. 1972-1973  
3. 1974-1975

4. 1976-1977  
5. 1978-1979  
6. 1980-1981

7. 1982-1983  
8. 1984-1985  
9. 1986-1987  
10. 1988-1989

11. 1990-1991  
12. 1992-1993  
13. 1994-1995

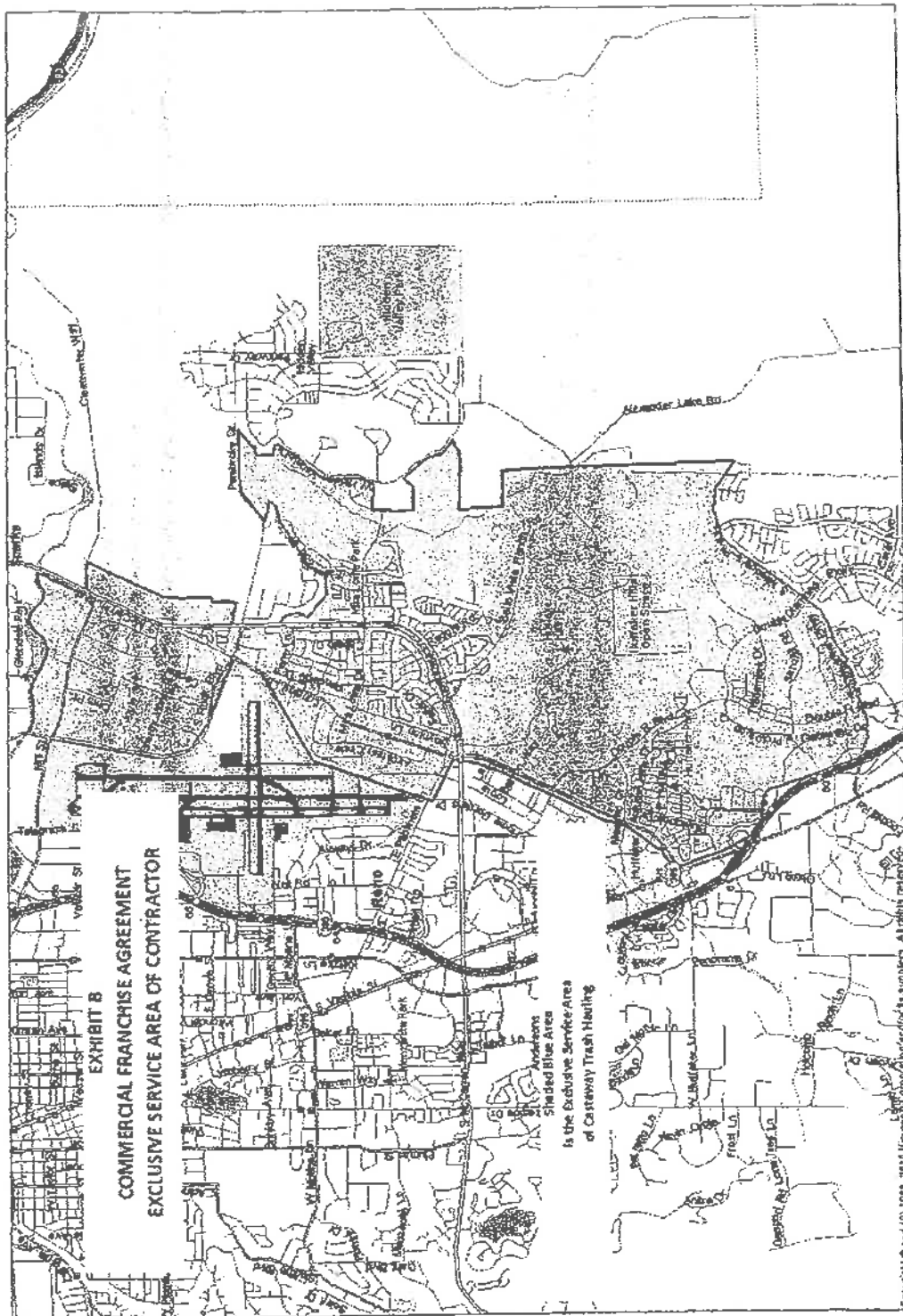
14. 1996-1997  
15. 1998-1999  
16. 2000-2001

17. 2002-2003  
18. 2004-2005  
19. 2006-2007

20. 2008-2009  
21. 2010-2011  
22. 2012-2013

23. 2014-2015  
24. 2016-2017  
25. 2018-2019

26. 2020-2021  
27. 2022-2023  
28. 2024-2025



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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**  
**Commercial Franchise Agreement**  
**Scope of Services**

**Bin Collection Services**

Bin Collection Services-Solid Waste							
Monthly Rate by Collection Frequency per Week <sup>1</sup>							
Bin Capacity	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	\$ 406.70	\$ 486.91	\$ 586.91	N/A
3 Cubic Yards	\$ 157.62	\$ 273.79	\$ 388.45	\$ 500.89	\$ 615.30	\$ 729.91	\$ 919.95
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	\$ 866.29	\$ 1,116.79	\$ 1,374.29	\$ 1,696.50

Bin Collection Services-Approved Recyclable Materials							
Monthly Rate by Collection Frequency per Week <sup>1</sup>							
Bin Capacity	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	\$ 643.99
4 Cubic Yards	\$ 131.18	\$ 226.19	\$ 323.69	\$ 415.95	\$ 519.57	\$ 607.61	\$ 831.89
6 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 626.70	\$ 783.85	\$ 962.00	\$ 1,187.55

<sup>1</sup> Dumping and replacing the specified capacity bin the designated frequency per week. Capacity 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 <sup>2</sup>

Bin Capacity	Non-Service Day Rate per Pickup	Service Day Rate per Pickup
2 Yard	\$ 93.50	\$ 34.00
3 Yard	\$ 70.00	\$ 40.00
4 Yard	\$ 77.13	\$ 47.00
6 Yard	\$ 97.50	\$ 69.00

**Other Services and Fees:**

Service	Rate
Tip Charge <sup>3</sup>	\$ 25.00
4 Yard Bin Special - Single Service <sup>4</sup>	\$ 50.00
6 Yard Bin Special - Single Service <sup>4</sup>	\$ 107.00

<sup>2</sup> Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

<sup>3</sup> Fee to access or service Bin

<sup>4</sup> Delivery and pick up 4to-single service

**Exhibit D**  
**Commercial Franchise Agreement**  
**Scope of Services**

**Cart Collection Services**

**Cart Collection Services-Solid 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	\$ 41.66	\$ 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	\$ 48.32	\$ 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	\$ 57.10	\$ 85.65	\$ 114.20	\$ 142.75	\$ 171.30	\$ 200.85	\$ 229.40
2 - 96 Gal Carts	\$ 85.65	\$ 171.30	\$ 256.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
3 - 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*						
	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	\$ 279.78	\$ 349.74	\$ 419.69	\$ 489.63

\*Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

11/13/2002

**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
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
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
10 Yard	\$ 185.54
12 Yard	\$ 234.61
14 Yard	\$ 273.71
16 Yard	\$ 293.27
18 Yard	\$ 312.82
20 Yard	\$ 331.82
22 Yard	\$ 400.72
24 Yard	\$ 459.23
26 Yard	\$ 488.78
28 Yard	\$ 586.53
30 Yard	\$ 782.84
Delivery charge	\$ 75.00

\*pickup, dumping, and replacing the specified capacity Drop Box - single service

11/14/2012

**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-Rings	\$ 23.68	Rings of Container with water
Container Steam Cleaning	\$ 132.45	Steam Clean of Container
Safety Cone Replacement	\$ 17.38	Safety cones required when a Container is placed in the street
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property
Snag 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
Bag Out charge	\$ 75.00	Fee for each occurrence to remove material lodged in Container
Enclosure/Book fee	\$ 7.50	Fee per month for opening enclosure gates or unlocking Container
Unlocking certificate	\$ 17.50	One time charge to install locking mechanism on container
Container Swap	\$ 75.00	Container exchange (Drop Box and Bin)
NYS Service letter	\$ 85.00	Charge to provide a will-sue letter for new development
Food Waste		
64 gallon Cart	\$ 50.41	Rate per service for a Food Waste Recycling Cart
3 yard bin	\$ 187.38	Rate per service for a Food Waste Recycling Bin

5 of 5

WM000211

JA001667



## SCHEDULE 1

### Exempted Haulers and Exempted Hauler Accounts under

#### City of Reno Commercial Franchise Agreements

On November 2, 2012, the City of Reno entered into Exclusive Service Area Franchise Agreements with Reno Disposal Company, Inc. and Castaway Trash Hauling, LLC. The agreements apply to all Collection Materials. As defined, Collection Materials include all Solid Waste and Approved Recyclable Materials, excluding 1) Excluded Materials, 2) Exempted Drop Box Materials and 3) Exempted Hauler Account Materials. Exempted Haulers and Exempted Hauler Accounts are explained below and include those that qualify under both definitions.

"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.

Company Name	Status on 10/24/2012
A Team Trash Hauling	Exempted Hauler
Castaway Trash Hauling, LLC	Exempted Hauler
Earth First Recycling, Inc.	Exempted Hauler
Empire Contractors	Exempted Hauler
High Desert Recycling, Inc.	Exempted Hauler
Patrick's Construction Clean-up	Exempted Hauler
Reno Disposal (B&L or RSW)	Exempted Hauler
Ruan Transport Corporation	Exempted Hauler
Rubish Runners	Exempted Hauler
Tom's Hauling & Cleanup	Exempted Hauler
Trashco	Exempted Hauler
1-800-Got-Junk	Not exempted, excluded materials hauler
American Document Destruction	Not exempted, services exemption, paper shredder materials
American Shredding, Inc.	Not exempted, services exemption, paper shredder materials
Carmen's Cleaning	Not exempted, services exemption
Go Junk Removal	Not exempted, services exemption
J Mac Enterprises, Inc.	Not exempted, services exemption, C&D exemption
Majestic Construction Clean-up, Inc.	Not exempted, services exemption, C&D exemption
Nash Cleaning Service	Not exempted, services exemption
Olcese Construction	Not exempted, C&D exemption
Peavine Construction	Not exempted, C&D exemption
Sani Hut Company, Inc.	Not exempted, special waste exemption
Shred It Reno, Inc.	Not exempted, services exemption, paper shredder materials
Western Metals Recycling, LLC	Not exempted, scrap metal exemption



"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.

Exempted Hauler	Exempted Hauler Account	Service Address
A Team Trash Hauling LLC	Aramark	1195 Trademark Dr, Ste 103
A Team Trash Hauling LLC	Ke-Ta Trailer Park	11400 S Virginia St
A Team Trash Hauling LLC	Lovely Rita Brewing Company	115 Mary Street
A Team Trash Hauling LLC	McKinley Holding	2055 Woodhaven
A Team Trash Hauling LLC	McKinley Holding	1676 Round Mountain
A Team Trash Hauling LLC	Nevada Drywall and Stucco	850 Maestro Drive Suite #100
A Team Trash Hauling LLC	Sierra Shadows Mobile Home Community	10700 Stead Blvd
A Team Trash Hauling LLC	Aramark	1195 Trademark Dr, Ste 103
Empire Contractors	Freeman Decorating	Various
Empire Contractors	Olson	1264 Hwy 40
Empire Contractors	TNT Auctions	Various
Empire Contractors	West Coast Lighting & Energy	12150 Moya Blvd
Patrick's Construction Clean-up	Bobs Auto & Truck Repair	1985 Kuenzli Lane
Patrick's Construction Clean-up	Capstone Communities	Camden Place at Virginia
Patrick's Construction Clean-up	Capstone Communities	Glen Manor at Virginia
Patrick's Construction Clean-up	Caughin Ranch	395 Neil Road
Patrick's Construction Clean-up	Custom Lawn and Landscape	1 Sun Villa Blvd
Patrick's Construction Clean-up	Custom Lawn and Landscape	25 Colombard Way
Patrick's Construction Clean-up	Custom Lawn and Landscape	2750 Outlook Dr.
Patrick's Construction Clean-up	Custom Lawn and Landscape	2825 Lake Ridge Shores
Patrick's Construction Clean-up	DS Towing	105 Sunshine Lane
Patrick's Construction Clean-up	Galena Forest Estates HOA	Douglas Fir Drive
Patrick's Construction Clean-up	International market	225 Gentry Way
Patrick's Construction Clean-up	National Tow	5125 Tenaya Creek Lane
Patrick's Construction Clean-up	Streamline Paint and Body	80 Sunshine Lane
Patrick's Construction Clean-up	Tejardo Market	2194 Camelia Drive
Rubish Runners	Anixter Fastener	990 North Hills Blvd
Rubish Runners	Burlington Coat Factory	4055 S. Virginia Street
Rubish Runners	Curtis Brothers	572 Reactor Way
Rubish Runners	Griffen Logistics	Gentry Way
Rubish Runners	Harry's Quality Cars	3055 Kietzke Lane
Rubish Runners	Moana Nursery	1100 W. Moana
Rubish Runners	Moana Nursery	11301 S. Virginia St.
Rubish Runners	Moana Nursery	3260 Yori Ave./316 Gentry Way
Rubish Runners	Selective Real Estate	Multiple
Trashco	Safari RV	2802 Kietzke Lane

This document is intended to complete the Commercial Franchise Agreements with Reno Disposal Company, Inc. and Castaway Trash Hauling, LLC. This document should not be viewed as a completely accurate or comprehensive summary of all commercial franchise contracts, contract provisions or applicable city ordinances. Many important contract provisions and concepts are not covered herein and there are numerous details, exceptions and qualifications associated with the provisions described below that can only be ascertained by reviewing the applicable contract. Users of this document should not rely on the summary provisions herein and should not use this as a replacement for any contract. Use of the document for such purposes is not advised and poses significant risks. The summary set forth herein shall not be deemed to represent City's official position or interpretation of any particular contract provision.

If you have any questions, please contact Jason Geddes at [geddesj@reno.gov](mailto:geddesj@reno.gov) or 775-334-3311 or Jonathan Shipman at [shipmanj@reno.gov](mailto:shipmanj@reno.gov) or 775-334-2057.

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 7**

20                                   JA001295 – JA001457

21  
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1 IN THE SECOND JUDICIAL DISTRICT COURT  
2 OF THE STATE OF NEVADA  
3 IN AND FOR THE COUNTY OF WASHOE

4 -o0o-

5  
6 NEVADA RECYCLING and SALVAGE,  
7 LTD., a Nevada Limited Liability  
8 Company; and, AMCB, LLC, a Nevada  
Limited Liability Company doing  
business as RUBBISH RUNNERS,

**ORIGINAL**

9 Plaintiff,

Case No. CV15-00497

Dept. No. 7

10 vs.

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

15 Defendants.  
16 \_\_\_\_\_/

17 Pages 1 to 95, inclusive.  
18

19 **DEPOSITION OF GREG MARTINELLI**  
20 \_\_\_\_\_

21 Tuesday, December 29, 2015  
22 Reno, Nevada

23 REPORTED BY: CHRISTINA AMUNDSON  
24 CCR #641 (Nevada)  
25 CSR #11883 (California)

MOLEZZO REPORTERS - 775.322.3334  
Deposition of Greg Martinelli

A P P E A R A N C E S

FOR NEVADA RECYCLING AND SALVAGE:

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FOR RUBBISH RUNNERS:

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FOR DEFENDANT :

ROBISON, BELAUSTEGUI, SHARP & LOW

BY: MARK G. SIMONS, ATTORNEY AT LAW

71 Washington Street

Reno, NV 89503

775.329.3151

ALSO PRESENT: AnnMarie Carey, Chris Bielser

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I N D E X

Deposition of GREG MARTINELLI

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1 BE IT REMEMBERED that on Tuesday, December 29,  
2 2015, commencing at 9:00 a.m. of said day, at Hardy  
3 Law Group, 96 & 98 Winter Street, Reno, Nevada,  
4 before me, CHRISTINA M. AMUNDSON, a Certified  
5 Shorthand Reporter, personally appeared GREG  
6 MARTINELLI.

7 -----  
8 THE REPORTER: "Pursuant to Subsection 2 of  
9 NAC 656.310 regarding conflicts of interest, I need  
10 to note for the record that Rich Molezzo is an  
11 attorney with The Hardy Law Group and is the brother  
12 of John Molezzo.

13 "Will all counsel stipulate on the record  
14 that you agree and authorize me to report said  
15 proceedings."

16 MR. SIMONS: Are you an employee of Molezzo  
17 Reporters?

18 THE REPORTER: Yes, I am.

19 MR. SIMONS: Yes.

20 MS. RICE: Yes.

21 (Witness sworn.)

22 -oOo-

23

24

25

1 GREG MARTINELLI,  
2 called as a witness in the matter herein,  
3 who, having been first duly sworn, was examined  
4 and testified as follows:

5 E X A M I N A T I O N

6 BY MS. RICE:

7 Q Good morning, Mr. Martinelli. My name's  
8 Stephanie Rice and I represent the plaintiff, Nevada  
9 Recycling and Salvage. This is a deposition where  
10 I'm going to ask you some questions and you're  
11 expected to answer truthfully.

12 Although there's no judge present, this is  
13 a formal legal proceeding just like if you're  
14 testifying in court and you're under the same legal  
15 obligations to tell the truth, the whole truth, and  
16 nothing but the truth.

17 If you don't understand any of my  
18 questions, please immediately let me know and I'll  
19 rephrase them for you.

20 Before the deposition can be used in court,  
21 you will have the opportunity to read over it and  
22 correct it. Specifically with respect to any  
23 mistakes that you made that were minor or if you  
24 didn't know how to spell a name at the time or  
25 couldn't recall a date and we left a blank to fill

1 it in, you'll be allowed to do that.

2           However, if you do make major, substantive  
3 changes -- like, for example, if you tell me today  
4 that you work for Waste Management but then when you  
5 get your deposition back you scratch that out and  
6 make the change saying that you don't work for Waste  
7 Management, that you work for ABC Trucking  
8 Company -- one, I will probably need to bring you  
9 back in here and redepose you and, two, we would  
10 likely use those inconsistencies at trial, just so  
11 you're aware.

12           Do you understand all of those things?

13           A    I do.

14           Q    Okay. Have you ever had your deposition  
15 taken before?

16           A    Yes.

17           Q    On how many occasions?

18           A    Half a dozen.

19           Q    And can you provide the dates or  
20 approximate dates of when those were?

21           A    No, not all of them. The last one, I  
22 think, was about two years ago.

23           Q    And what was that regarding?

24           A    It was regarding a motorcycle accident that  
25 occurred on the Haul Road in Washoe County on the

1 way to the Lockwood Landfill.

2 Q And did you testify at that deposition  
3 because Waste Management was in some way involved  
4 with that accident?

5 A No. We weren't involved in the accident.

6 Q Okay. So you were just a witness?

7 A I was a witness, yes.

8 Q Okay. And what, if you recall, was the  
9 content of the other depositions?

10 A I don't have any idea. I don't remember.

11 Q Were they of a personal nature?

12 A No. They were all business related.

13 Q And when you say "business related,"  
14 related to the solid waste industry business?

15 A Yes.

16 Q And do you know approximately how long ago  
17 those were?

18 A I don't, no. I've been at Waste Management  
19 25 years, so it's sometime in that 25-year period.

20 Q Okay.

21 A I'm sorry. I don't recall.

22 Q Well, since one was two years ago and the  
23 rest could have been as long as 25 years ago,  
24 because this is so important I'm going to go through  
25 and refresh some of the important ground rules of a

1 deposition.

2           The court reporter is taking everything  
3 down that we say so it's important that you answer  
4 with words rather than a nod or a shake of the head.

5           Do you understand?

6           A    I do.

7           Q    To make it easier for the court reporter to  
8 record what we say accurately, it's important that  
9 we not talk over each other. For this reason I  
10 would ask that you please wait until I finish the  
11 question before you begin to answer it.

12          A    No problem.

13          Q    And you do understand that you're under  
14 oath?

15          A    I do.

16          Q    And that means that you're sworn to tell  
17 the truth.

18          A    I do.

19          Q    And even though we are in an informal  
20 setting here in this office, the answers have the  
21 same force and effect as if we were in a courtroom  
22 with a judge and jury. Do you understand that?

23          A    I do.

24          Q    Again, if you don't understand my question  
25 or the way it's phrased, please let me know.

1 Is that okay?

2 A That's fine.

3 Q In you need a break, also can we agree  
4 you'll let me know as well?

5 A I appreciate that.

6 Q Okay. And are you prepared to answer  
7 questions today?

8 A Yes.

9 Q Is there any reason why you wouldn't be  
10 able to give me full, complete, and truthful  
11 answers?

12 A No.

13 Q There's nothing that will prevent you from  
14 giving me your full attention for the time that  
15 we're here?

16 A No.

17 Q You aren't taking any medications or  
18 suffering from any illnesses that would prevent you  
19 from understanding any of the questions or answering  
20 them fully?

21 A No, I'm not.

22 Q Okay. Please state your name for the  
23 record.

24 A Greg Martinelli.

25 Q And, Mr. Martinelli, where do you live?

1 A I live in Reno, Nevada.

2 Q And what is your date of birth?

3 A June 15th, 1955.

4 Q And have you ever gone by any other names  
5 or aliases?

6 A No.

7 Q Have you ever been arrested?

8 A No.

9 Q Can you please describe your educational  
10 history to me beginning with high school.

11 A I graduated from Wooster High School in  
12 1973 and the University of Nevada, Reno in 1977.

13 Q Any postgraduate work?

14 A No.

15 Q Can you tell me your employment history  
16 since high school.

17 A I worked for the power company the year I  
18 got out of high school. I worked for Bevel Aqua  
19 House Movers for a couple of years before I joined  
20 the Washoe County Sheriff's Office in July of 1978.  
21 I retired from the Sheriff's Office in early 1990  
22 and I went to work for Reno Disposal Company in  
23 April of 1990.

24 Q So you currently work for?

25 A I'm employed at Waste Management. I'm

1 sorry.

2 Q Okay. So when did you actually begin  
3 working for Waste Management?

4 A U.S.A. Waste acquired Carmella Ballardini  
5 Limited, which was the holding company for the  
6 operating companies in the Reno area, in June of  
7 1998.

8 Q Okay. And at that time what was your  
9 position with Waste Management?

10 A I handled the -- all the personnel  
11 functions for the company and the collection  
12 operations.

13 Q So like human resources?

14 A Yes.

15 Q And how long did you hold that position  
16 approximately?

17 A Let me back up. I did the personnel  
18 function from about June-ish of '91 till about '97  
19 and then '97 I took on the additional  
20 responsibilities of the operations function. I did  
21 that until January of 2003 at which time I took over  
22 the duties as a general manager.

23 Q And what do you mean by "the operations  
24 functions"?

25 A The collection operations.



1 Q Okay, collections.

2 A Yes. All of our residential services,  
3 commercial services, and roll-off services.

4 Q Okay. And in January of 2003 you became  
5 the general manager?

6 A Yes.

7 Q What does it mean to be the general manager  
8 of Waste Management?

9 A At that time Waste Management, Nevada was a  
10 separate market area, is what the description is the  
11 company uses, and I was the market area general  
12 manager, which means I was responsible for all  
13 business operations, financial, disposal  
14 collections, all functions within the company.

15 Q Okay. And is that the position that you  
16 hold today?

17 A It is not.

18 Q When did you change from being the general  
19 manager?

20 A It was 2009 -- late 2009, I believe. The  
21 company had a major reorganization and they  
22 essentially eliminated the general manager positions  
23 throughout the company and consolidated down from  
24 about 52 market areas down to 30 or 32 market areas  
25 and Nevada became part of the Sacramento market

1 area.

2 Q When that happened, what position did you  
3 come out with?

4 A I essentially held the same position I hold  
5 today and I'm called an area manager for public  
6 sector. I'm primarily responsible -- I'm  
7 responsible for all franchise operations here  
8 meaning the management of the contracts, contract  
9 negotiations, revenue management within those  
10 franchises.

11 And then I also have the additional  
12 responsibility of assisting in that same capacity  
13 with the other 40 or so franchises that make up the  
14 Northern California/Nevada area.

15 Q And that is the position that you've held  
16 from 2009 to today?

17 A Correct.

18 Q So is it fair to say that you have speaking  
19 authority for Waste Management?

20 MR. SIMONS: Hold on. What is that?

21 That's vague and ambiguous, "speaking authority."

22 BY MS. RICE:

23 Q Do you have speaking authority for Waste  
24 Management?

25 MR. SIMONS: He doesn't have speaking

1 authority. He's here as a witness. You didn't  
2 identify a 30(b)6 representative. He's here as a  
3 witness.

4 BY MS. RICE:

5 Q Can you go ahead and answer that.

6 A I don't understand what you mean by  
7 "speaking authority."

8 Q Are you able to bind the corporation?

9 MR. SIMONS: He's here as a witness.  
10 You're asking for a legal conclusion. You can make  
11 your arguments to the court at the appropriate time.

12 BY MS. RICE:

13 Q So in your capacity as the area manager  
14 now, do you have the ability to make decisions in  
15 this area on behalf of the corporation?

16 A In what area?

17 Q In the Reno and California area with the  
18 40-plus franchises that you run and operate.

19 A I don't have signature authority.

20 Q Is there a difference to you between  
21 signature authority and decision-making authority?

22 A Yes.

23 Q Can you articulate that difference for me?

24 A I cannot -- I'm not a corporate officer any  
25 longer so I cannot sign any documents that require

1 corporate authorization.

2 Q Okay. But you were a corporate officer at  
3 one time?

4 A I was a vice president of Waste Management,  
5 Nevada, Inc. and Waste Management California, Inc.  
6 during the time that I was the market regional  
7 manager.

8 Q So 2003 through 2009?

9 A Yes.

10 Q Why are you no longer a vice president or  
11 an officer?

12 A Because the corporation reorganized and  
13 eliminated the position that I held, so there's no  
14 -- I'm not in a position where I could be a  
15 corporate officer.

16 Q Okay. Who for Waste Management has  
17 signature authority at this time?

18 A There's quite an extensive list of  
19 presidents and vice presidents of the holding  
20 companies. But at this time the local one is Barry  
21 Skolnick. He is the area vice president of Northern  
22 California and Nevada.

23 Q And how long has he been the area  
24 president?

25 A 2012, I believe. Prior to that it was --

1 at the time that my position was eliminated in 2009,  
2 the market area VP would have been Alex O'Seguera,  
3 O-S-e-g-u-e-r-a.

4 Q Thank you.

5 A My wife's a court reporter, so I know I  
6 better take care of her or I'll get in trouble.

7 Q So who do you report to directly within the  
8 company?

9 A I report to Alex O'Seguera.

10 Q And what's your position now?

11 A He's a vice president of the company and he  
12 is responsible for overseeing all of the public  
13 sector functions within the area.

14 Q And how long have you reported to him?

15 A Since 2009.

16 Q And who does he report to?

17 A He reports to Barry Skolnick.

18 Q What is your current business address?

19 A 100 Vassar Street, Reno, Nevada 89502.

20 Q Obviously, you received a subpoena in this  
21 case and the date on the original subpoena was  
22 December 18<sup>th</sup>.

23 When were you notified that that date had  
24 been rescheduled?

25 A Last week. I don't recall exactly which

1 day. I had a meeting with Mark and he had said he  
2 made arrangements for it to be today.

3 Q And so when you say "Mark," you're  
4 referring to Mr. Simons?

5 A Mr. Simons, yes.

6 Q What did you do to prepare for your  
7 deposition today?

8 A Spoke with counsel.

9 Q "Counsel" being?

10 A Mark Simons.

11 Q Was anybody else present?

12 A Not -- Gary Duhon was present in some  
13 conversations, but in the two of them just Mark and  
14 I were present.

15 Q And what did you discuss when Mr. Duhon was  
16 present?

17 MR. SIMONS: Don't answer that question.  
18 Attorney-client privilege.

19 BY MS. RICE:

20 Q Does Mr. Duhon represent you?

21 A He does.

22 Q In what capacity?

23 A He handled the negotiations with the City  
24 of Reno on the existing City of Reno franchise  
25 agreement.

1 Q But he does not represent you in this case?

2 MR. SIMONS: This person is an employee of  
3 the entity that's been sued in this case.

4 THE WITNESS: Excuse me?

5 Completely unrelated, can I have some  
6 water?

7 MS. RICE: Can we go off the record.

8 (Recess taken.)

9 BY MS. RICE:

10 Q What information did Mr. Duhon provide you  
11 in preparation of this deposition today?

12 MR. SIMONS: Don't answer that question.  
13 Attorney-client privilege.

14 MS. RICE: Mr. Duhon doesn't represent him  
15 in this matter.

16 MR. SIMONS: I can assert the privilege.  
17 You can file a motion.

18 BY MS. RICE:

19 Q Did you review any documents in preparation  
20 for your deposition today?

21 A I did not.

22 Q Not a single piece of paper?

23 A I did not.

24 Q Okay. Did you have any communications with  
25 anybody telling them that you were having your

1 deposition taken today?

2 A I told Barry Skolnick that I was having my  
3 deposition taken.

4 Q And did you have any conversations with him  
5 about the deposition or the lawsuit?

6 A No.

7 Q And what was his response?

8 A He just said, "Are you doing some  
9 deposition prep with our attorney," that kind of a  
10 dialogue. There was no specifics about anything.

11 Q Okay. When was the last time you spoke  
12 with Mr. Duhon?

13 A Last Wednesday.

14 Q And what was the content of that  
15 conversation?

16 MR. SIMONS: Again, don't answer.  
17 Attorney-client privilege.

18 BY MS. RICE:

19 Q Let's clarify a little bit.

20 Does Mr. Duhon currently represent you  
21 today?

22 A Yes.

23 Q In what capacity?

24 A He's helping us handle the issues we're  
25 having with the City of Reno.



1 Q Okay. Mr. Duhon has represented you since  
2 when? If he represents you today, when did he start  
3 representing you in that capacity?

4 A Oh, mid 2011.

5 Q And that representation has been consistent  
6 to date?

7 A Yes.

8 Q Have you recently met or spoken with anyone  
9 from the law firm of Fennemore Craig?

10 A I don't know who that is. I mean, I've  
11 heard of the law firm but I don't know.

12 Q Okay. Have you recently met or spoken with  
13 Dan Reasor?

14 A No.

15 Q Have you recently met or spoken with Leslie  
16 Bryan Hart?

17 A No.

18 Q When was the last time you met or spoke  
19 with Chris Barrett?

20 A Last Wednesday.

21 Q And what was the content of those  
22 discussions?

23 A It was a social gathering.

24 Q Have you spoken to Mr. Barrett about the  
25 lawsuit in this case?

1 A He's aware of it, yes.

2 Q And what has the content of those  
3 conversations been?

4 A Mostly just that it's occurring, what the  
5 status of the litigation is regarding the judge's  
6 rulings, that I was being deposed.

7 Q Did you have any discussions about your  
8 deposition?

9 A Not other than I was being deposed.

10 Q Did he make any comments in response to  
11 that statement?

12 A No.

13 Q Have you met or spoken with Sarah Polito  
14 within the past two weeks?

15 A Yes.

16 Q And have the content of any of those  
17 conversations included anything about your  
18 deposition here today?

19 A Other than I was -- my deposition was being  
20 taken.

21 Q Have you spoken with Ms. Polito regarding  
22 this lawsuit?

23 A Yes.

24 Q And what has the content of those  
25 conversations been?

1 MR. SIMONS: To the extent I was involved  
2 in those conversations, I'm instructing you not to  
3 answer.

4 THE WITNESS: Rephrase.

5 MR. SIMONS: To the extent I was involved  
6 in those communications, I'm instructing you not to  
7 answer.

8 THE WITNESS: I understand.

9 MS. RICE: Mr. Simons, are you asserting  
10 that you're representing Ms. Polito as well?

11 MR. SIMONS: I'm asserting the  
12 attorney-client privilege absolutely.

13 THE WITNESS: Would you repeat the question  
14 for me?

15 BY MS. RICE:

16 Q What does the content of your conversations  
17 with Ms. Polito regarding this lawsuit consist of?

18 MR. SIMONS: To the extent you've had  
19 communications with Ms. Polito involving myself, I'm  
20 instructing you not to answer.

21 THE WITNESS: I understand.

22 She's the communications specialist for the  
23 company, so she attended one of the court hearings  
24 with me. So the conversation would have been  
25 related to whatever she would have needed to release

1 in a communications fashion, and she knows my  
2 deposition's being taken today.

3 BY MS. RICE:

4 Q Have you met or spoken with Steve Duque in  
5 the recent past?

6 A Early December.

7 Q And what was the content of those  
8 conversations?

9 A I saw him at a political fundraiser for Ron  
10 Smith and most of the conversation with him revolved  
11 around what he was doing, what was transpiring in  
12 his life, that sort of thing.

13 Q Did you have any conversations about the  
14 pending lawsuit or current issues with Waste  
15 Management?

16 A I don't recall with Steve, no.

17 Q When was the last time you spoke with Steve  
18 prior to that occasion?

19 A God, I haven't seen him in quite some time.  
20 I don't recall specifically. I might have saw him  
21 at the cioppino feed in February of this year, the  
22 Boys & Girls Club Cioppino Feed.

23 Q Have you had any conversations at all with  
24 Steve Duque regarding the litigation in this case?

25 A I don't think so. I don't recall

1 specifically discussing anything with him.

2 Q When was the last time you spoke or met  
3 with Spike Duque?

4 A I saw Spike at the same function for Ron  
5 Smith in early December.

6 Q And what was the content of those  
7 conversations?

8 A It was socially. And he asked me what was  
9 going on with the litigation and I explained to him  
10 the state of it. He'd mentioned something about a  
11 conversation he'd had with Reasor about something  
12 that had been served on Reasor. Didn't elaborate  
13 and give me much detail.

14 Q What did he tell you about that  
15 conversation?

16 A Basically that Reasor had received a  
17 request for some information about the dialogue that  
18 occurred with us during the franchise negotiations,  
19 nothing real specific, just kind of a broad-based  
20 term like that.

21 Q And what was his response to that?

22 A He wasn't happy that he was kinda being  
23 pulled back into something that he had got out of a  
24 couple years ago.

25 Q Did he make any other comments or say

1 anything else about it?

2 A Not that I recall, no.

3 Q Did you make any comments or say anything  
4 else about it?

5 A No.

6 Q Have you spoken with anybody else about the  
7 lawsuit in this case?

8 A I mean, Alex O'Seguera is someone I have to  
9 keep updated as to the status of activities, so Alex  
10 is aware.

11 Dave Stratton is our controller. His  
12 office is next to mine. So I'm sure he's been  
13 involved in some conversations but I don't remember  
14 anything specific other than the content of what  
15 happened in the courtroom, that sort of thing. He  
16 knew my deposition was being taken.

17 Q What is your understanding as to your  
18 testimony here today? I'm going to give you two  
19 sides that could go.

20 Do you understand that you're here to  
21 testify on behalf of Waste Management or is it your  
22 understanding that you're here as an employee of  
23 Waste Management to answer questions about your  
24 knowledge of various matters through your employment  
25 capacity?

1       A    It's my understanding that I'm here to tell  
2 you the truth about my employment capacity.

3       Q    Based on your experience and knowledge of  
4 the corporation, can you identify by first and last  
5 names all of the corporate officials or management  
6 who you report to with Waste Management and have  
7 reported to since 2012?

8       A    Are you referring to direct reporting  
9 lines?

10      Q    All reporting lines that you believe are  
11 important entity officials.

12           MR. SIMONS: I'd like to -- what he thinks  
13 is important? Okay. Go ahead.

14           THE WITNESS: I mean, what I've articulated  
15 to you, Alex O'Seguera is my immediate supervisor.  
16 Barry Skolnick is the area vice president, who I  
17 happen to office with so, you know, I have daily  
18 interaction with him.

19           His boss is the senior vice president of  
20 the southern tier. His name is John Morris and he's  
21 officed in our Houston office. And he works for Jim  
22 Trevethan, who is the CFO of the company who is in  
23 Houston, Texas. And David Steiner is the CEO of the  
24 company, who is in Houston, Texas.

25      Q    And you communicate in some form or

1 fashion, whether direct or indirect, with all of  
2 them?

3 A I'm involved in -- generally my  
4 communications with anybody above Barry's level is  
5 because I've been copied on an email.

6 Q Okay. I'll hand you an exhibit.  
7 (Deposition Exhibit 1 marked for  
8 identification.)

9 BY MS. RICE:

10 Q Do you recognize this document, Mr.  
11 Martinelli?

12 (Witness reviewing document.)

13 THE WITNESS: Yes, I do.

14 BY MS. RICE:

15 Q Can you identify what it is?

16 A It is the commercial franchise agreement  
17 that Reno disposal holds with the City of Reno.

18 Q And can you please tell me what the date is  
19 on that document?

20 A The effective date is the 7th of  
21 November 2012. The signature date on behalf of Reno  
22 Disposal was November 16th, 2012.

23 Q And at that signature page do you recognize  
24 that signature of who signed on behalf of Reno  
25 Disposal?



1 A I do.

2 Q And whose signature is that?

3 A David Stratton.

4 Q And with respect to Reno Disposal Company,  
5 Inc. -- because we've been referring to "Waste  
6 Management" a lot -- what is Reno Disposal Company,  
7 Inc. to Waste Management?

8 A Reno Disposal Company, Inc. is an operating  
9 entity which is owned by Waste Management Nevada,  
10 Inc. which is a holding company, a parent company.

11 Q And what other entities does Waste  
12 Management of Nevada parent?

13 A Refuse Incorporated. If you don't mind, I  
14 can't recall. We consolidated some subsidiaries of  
15 Waste Management Nevada, Inc. that were doing  
16 business as, and I believe that Fernley Disposal is  
17 no longer a standalone corporation. I think it's a  
18 dba of Waste Management Nevada, Inc.

19 Capital Sanitation, Inc. is an operating  
20 entity under Waste Management Nevada, Inc. and holds  
21 the franchise in Carson City. And the same would  
22 apply on the Fernley comment, the same would apply  
23 for Lyon County, that they hold the franchise with  
24 Lyon County.

25 Reno Disposal does business as Independent

1 Sanitation in the unincorporated area of Washoe  
2 County and as Sparks Sanitation in the city of  
3 Sparks.

4 Q Okay. Which entity are you employed by?

5 A I'm employed by Waste Management Nevada,  
6 Inc.

7 Q So do you work for all of those entities?

8 A Essentially, yes.

9 Q But you essentially only receive one  
10 paycheck and it's directly from Waste Management of  
11 Nevada, Inc.?

12 A That's correct.

13 Q But in your capacity as the area manager,  
14 you work for all of those other subsidiary entities.

15 Is that correct?

16 A I was to be officed someplace. So even  
17 though I have responsibilities in Nevada County,  
18 Grassvalley, city of Woodland, I have to be officed  
19 someplace. So since I live in Nevada, I'm paid out  
20 of Waste Management Nevada, Inc.

21 Q And when you said -- I'm going to back up a  
22 little bit. When you recognized that signature on  
23 the franchise agreement, that's Mr. Stratton's  
24 signature?

25 A That's correct.

1 Q Why did he execute this agreement?

2 A My recollection was that the president had  
3 not yet relocated to Nevada and we wanted to turn  
4 the document back to the city. And he was an  
5 officer that was in Reno that could sign it and so  
6 he signed it and we returned it.

7 Q Is there a reason why you didn't sign it at  
8 that time?

9 A I'm not a corporate officer.

10 Q So you weren't a corporate officer  
11 November 7<sup>th</sup>, 2012, but you did participate in  
12 negotiations leading up to the execution of this  
13 agreement with the city, correct?

14 A I did.

15 Q And what did your participation in the Reno  
16 franchise negotiations involve?

17 A I initiated the dialogue with the city in  
18 2007 to try and implement single-stream recycling  
19 and participated with the -- we started out  
20 conversing with Reno and Sparks and Washoe County in  
21 an effort to have a consolidated agreement.

22 And it didn't go anywhere, so I'm not quite  
23 sure when -- I think in 2011 we decided that, you  
24 know, the other two entities wanted to sit back and  
25 see what Reno was going to do and so we started

1 speaking exclusively with Reno about adding some  
2 single-stream recycling and offering services in  
3 their franchises.

4 Q When you say "we"...

5 A Waste Management, Reno Disposal.

6 Q Are we going to use "Reno Disposal" and  
7 "Waste Management" interchangeably for this purpose  
8 only?

9 A The legal entity that holds the contract is  
10 Reno Disposal.

11 Q Right.

12 A The trucks say "Waste Management" on them.

13 Q Correct.

14 A And I use the terms interchangeably as  
15 well, even though I understand the legal conundrum  
16 that it creates. And I'm sorry. It's probably  
17 easier if we just refer to it as "Reno Disposal." I  
18 want to make sure I'm referring to the right entity  
19 instead of using "Waste Management."

20 Q Then we will do that.

21 A I'll make an effort to do that. Sorry.

22 Q Who were you communicating with on the City  
23 end?

24 A It was Jason Geddes from the beginning.  
25 Jason held the -- I can't remember -- environmental

1 services manager is what I believe his title was  
2 with the City of Reno and he held that position when  
3 we first started discussions in 2007 and ran the  
4 single-stream pilot in Northwest Reno.

5 Q And when you initiated the negotiations in  
6 2011 with just the City of Reno, was there anybody  
7 else with the City of Reno you were communicating  
8 with?

9 A Yeah. I can't be specific to the times,  
10 but John Flansberg was the Public Works director and  
11 Jason reported to him. Bill Thomas was the  
12 assistant city manager. He participated in  
13 conversations. John Shipman was the assistant city  
14 attorney -- or deputy city attorney, I guess, at  
15 that time and he was involved in discussions --  
16 maybe not in every meeting but he was involved.

17 Dan Marin from the City of Sparks and John  
18 Berkich from Washoe County still continued to attend  
19 some of the meetings relative to -- just so they  
20 knew what was going on because they wanted at some  
21 point to bring it into their communities.

22 Q And was anybody else from Waste Management  
23 or Reno Disposal Company engaging in negotiations  
24 with you during that time frame?

25 A Early in the process I had a government

1 affairs person working for me, Mike Genera. He was  
2 involved in the pilot. Mike left the company in, I  
3 believe, 2010. I'm not 100 percent sure on that.  
4 It's G-e-n-e-r-a and he was primarily involved in  
5 just getting the pilot rolled out in Northwest Reno.

6 Q Okay. So does that mean you were the only  
7 contact person from Reno Disposal Company who  
8 engaged in negotiations with the City of Reno during  
9 2011 and 2012?

10 A I was the spokesperson. I don't recall  
11 every person that attended each meeting, but I would  
12 have been the Waste Management representative, yes,  
13 Reno Disposal representative.

14 Q Okay. Is it fair to say you were Reno  
15 Disposal Company, Inc.'s primary contact with the  
16 city and city officials during the 2011 and 2012  
17 franchise negotiations?

18 A That's a fair statement.

19 Q Do you have any recollection as to when the  
20 negotiations began to take place in 2011?

21 A I don't.

22 Q As far as the things that may have been  
23 going on at the same time, do you have any  
24 recollection as to whether or not that was the  
25 approximate time frame when Waste Management went to

1 the Washoe County Health Department and sought to  
2 amend and change the definition of "garbage"?

3 A I believe that occurred in 2011.

4 Q Do you have an understanding as to why  
5 Waste Management approached the Washoe County Health  
6 Department to attempt to change the previous  
7 definition of "garbage"?

8 A My recollection is that we didn't approach  
9 the health department. Castaway had approached the  
10 health department and we were responsive to  
11 something they were trying to do. The definition of  
12 "garbage" was already there.

13 Q Okay. Do you recall why Castaway was  
14 approaching the health department?

15 MR. SIMONS: Objection to the extent it  
16 calls for speculation.

17 THE WITNESS: And I'm trying to remember  
18 what transpired back in that time. My recollection  
19 was it was more related to the difference between  
20 garbage and trash as it was to just specifically  
21 discussing garbage.

22 But I don't remember what their -- I don't  
23 remember what their play was. I don't recall. I  
24 recall the meetings but I just don't remember  
25 specifically what they were trying to do.

1 BY MS. RICE:

2 Q And in 2011, around that time frame, was  
3 Waste Management working with Castaway at that time  
4 or in opposition to what they sought from Washoe  
5 County?

6 A We were in opposition.

7 Q When did Waste Management's opposition with  
8 Castaway change?

9 A I don't understand the question.

10 Q Over the years there's been extensive  
11 litigation between Waste Management and Castaway.

12 Are you aware of that?

13 A I guess you would have to define  
14 "extensive," but yes --

15 Q Are you aware --

16 A -- there's been litigation. Yes.

17 Q Okay. When did Waste Management and  
18 Castaway's relationship change from a contentious  
19 one to one in which they began to work together?

20 A I don't think it ever -- I mean,  
21 contentious -- I guess, is there a middle ground  
22 between contentious and work together?

23 I would say that we probably weren't  
24 trusting of each other until after October of 2013  
25 after we had purchased them.



1 Q And going back to the franchise agreement  
2 that you have in front of you, originally when this  
3 document was executed isn't it true that there were  
4 two different franchise agreements?

5 A Yes, there's two agreements.

6 Q One which provides that the franchisee is  
7 Reno Disposal Company and one providing the  
8 franchisee as Castaway Trash Hauling.

9 A Correct.

10 Q Can you explain why a decision was made to  
11 have two different franchisees?

12 A Again, not 100 percent sure of my dates.  
13 At some point it became apparent to me that the City  
14 of Reno was not going to make a decision to have a  
15 -- what I would refer to as a traditional franchise.

16 So, in other words, they decide that this  
17 is the way we want to handle our solid waste needs  
18 in our community and this is how we're gonna do it.  
19 They wanted to split the baby, so to speak.

20 And so at some point in mid 2012 I took a  
21 concept to them of creating franchise zones. And  
22 this isn't a brilliant idea that Martinelli had.  
23 This is something that's done in a lot of  
24 communities in America and for the same reason. The  
25 politicians don't have the political will to make

1 the choice to do what they may want to do.

2 And so I took this franchise zones concept  
3 to them and said, What if we do this and how does  
4 this work? So I kind of explained the process to  
5 them, that we would create zones based on however  
6 many haulers that they wanted to have based on what  
7 their relative piece of the financial pie was, so to  
8 speak, and that way everybody would have their own  
9 zone and they could operate entirely in their own  
10 zone.

11 So I don't know internally what happened  
12 with the City of Reno, how they jogged that around  
13 or whatever, but they thought it was an acceptable  
14 process to explore and so we started having  
15 discussions in that regard.

16 Q Who specifically did you make that proposal  
17 to initially?

18 A Well, Jason for sure, Jason Geddes. I  
19 don't recall who else was in the room when we had  
20 this discussion but there was other people there  
21 from the city.

22 We never just had a one-on-one meeting with  
23 Jason so I don't know whether John Flansberg was  
24 there or Bill Thomas or John Shipman, but there were  
25 other members from the City of Reno there.

1 Q Do you recall who from the city made it  
2 clear that they weren't going to grant just one  
3 franchisee to you?

4 A I do not.

5 Q Did you bring that proposal to Castaway  
6 before you brought it to the city?

7 A No.

8 Q Why not propose three zones or four zones?

9 A I didn't propose any particular number of  
10 zones. I proposed the concept, because I didn't  
11 know how many zones that they would want to  
12 entertain.

13 It didn't make any difference to me how  
14 many zones there were. There could have been 10  
15 zones. It didn't matter. It was, you know, however  
16 they wanted to split it up. It was going to be a  
17 management issue that they were gonna have to deal  
18 with, not me. I would have had my zone and I would  
19 have been responsible for everything in that zone.

20 Q But, essentially, you realized that the  
21 city was not willing to give Waste Management or  
22 Reno Disposal, Inc. the entire franchise for the  
23 City of Reno and so you brought the zone proposal to  
24 them as an alternative to get them to work with you.

25 MR. SIMONS: Objection, mischaracterizes

1 testimony.

2 THE WITNESS: I had been working on trying  
3 to bring single-stream recycling to Reno because I  
4 basically had -- I basically had an equipment issue.  
5 The trucks that I was running that were  
6 source-separated were approaching 30 years old and I  
7 was at a tipping point that I needed to do something  
8 with this equipment.

9 So I couldn't go out and buy equipment to  
10 manage a source-separated program if the  
11 source-separated program was going to go away. And  
12 so single-stream recycling was taking hold and so I  
13 approached the city with trying to do something -- I  
14 ran the pilot in Northwest Reno, not because I  
15 needed to know if it worked. I knew it worked. But  
16 I needed local data to show local politicians to  
17 show the community what we did when we ran this  
18 pilot.

19 So we ran 990 carts to 990 residences in  
20 Northwest Reno and they participated in the program.  
21 And I think we ran it for six weeks or eight weeks,  
22 something like that, and then took all the data and  
23 started the conversations about what we would do  
24 with single-stream.

25 So during this process when -- the city

1 didn't want to put something out to bid. The  
2 contract didn't expire until 2019, yet we still had  
3 this issue of what we would do with this equipment  
4 and how would we manage this process.

5 And it became fairly clear that they were  
6 not going to create an exclusive franchise,  
7 essentially, and so that's when I approached them  
8 with the zone concept, because we'd had success with  
9 that in the city of Stockton, Butte County. The Los  
10 Angeles area does a ton of this kinda stuff and so  
11 that's the reason I approached them with that  
12 concept.

13 Q Do you have any recollection as to the  
14 approximate time frame that the city made it clear  
15 to you they were not willing to grant an exclusive  
16 franchise to Waste Management or Reno Disposal?

17 MR. SIMONS: I've got to object, vague and  
18 ambiguous. There already was an exclusive, he said,  
19 that ran through 2009.

20 Do you understand the question?

21 THE WITNESS: Yes. I don't know how to  
22 answer it. I just don't recall.

23 BY MS. RICE:

24 Q Did you personally participate in the  
25 negotiations between Waste Management and Castaway

1 for the purchase of Castaway Trash Hauling?

2 A I need to understand what you mean by  
3 "participate."

4 Q Waste Management purchased Castaway Trash  
5 Hauling.

6 A Correct.

7 Q Did you engage in negotiations between  
8 Waste Management and Castaway Hauling for that  
9 purchase?

10 A No.

11 Q Who did?

12 A Joe Cassin, C-a-s-s-i-n, is our  
13 acquisitions guy and he would have had those  
14 discussions with Spike or Dan Reasor. I don't know  
15 which.

16 Q Did you know that discussions and  
17 negotiations were going on between Waste Management  
18 and Castaway?

19 A I did.

20 Q And do you know approximately when you  
21 learned of those negotiations?

22 A I do not. 2012?

23 Q But before the franchise agreement was  
24 executed.

25 A Yes. I first started talking to Castaway

1 Hauling about buying them in the spring of 2005.

2 Q Okay. That's a seven-year gap.

3 What is your understanding as to when  
4 purchase negotiations between Waste Management and  
5 Castaway got to a serious point where there was  
6 going to be a purchase, that it was just working out  
7 the terms?

8 A I don't know specifically when in 2012. I  
9 don't know who initiated the conversation between  
10 Joe Cassin and Spike Duque. They have their own  
11 relationship, so I don't know whether Spike called  
12 Joe or Joe called Spike. I don't know.

13 Q And you had absolutely no participation in  
14 those negotiations or discussions?

15 A I was in some meetings later in 2012 where  
16 discussions were occurring. I was copied on some  
17 emails between the attorney that handles our  
18 acquisitions with Joe, but I didn't have any  
19 dialogue with Spike about terms or anything like  
20 that.

21 Q And can you recall approximately when those  
22 meetings or the emails you received occurred?

23 A I can't. 2012 -- mid to late 2012.

24 Q But before the franchise agreement was  
25 executed.

1 A Yes.

2 Q Have you personally reviewed any of the  
3 purchase agreements, any memorandums, corporate  
4 resolutions, any documents regarding the purchase?

5 A During the due diligence process, yes, I  
6 did.

7 Q And when was that?

8 A It was the early part of 2013.

9 Q Had you reviewed any documents at all or  
10 communications regarding Waste Management's purchase  
11 of Castaway prior to that?

12 A Other than emails that I might have been  
13 copied on. I don't recall seeing the letter of  
14 intent or the asset purchase agreement until during  
15 the due diligence period. I mean, it wasn't my  
16 function. It isn't what I was responsible for  
17 doing. I had my hands full with the things I was  
18 involved in.

19 Q When was the letter of intent executed?

20 A I don't know.

21 Q Why didn't you disclose the fact that Waste  
22 Management was buying Castaway to the City of Reno  
23 during franchise negotiations?

24 A Because I was party to a nondisclosure  
25 agreement.



1 Q And you were a signer on that nondisclosure  
2 agreement?

3 A I was not.

4 Q Have you seen the nondisclosure agreement?

5 A If it was in the final package, I would  
6 have seen it during the due diligence -- when I was  
7 doing due diligence.

8 Q Have you read the nondisclosure agreement?

9 A If it was in these documents at the time,  
10 I'm sure I did.

11 Q Well, if you were doing the final due  
12 diligence and had received that package in 2013,  
13 what nondisclosure agreement were you under when you  
14 learned about the buyout negotiations in mid 2012?

15 MR. SIMONS: That mischaracterizes. He  
16 didn't say "mid 2012."

17 BY MS. RICE:

18 Q Mid to late 2012.

19 A I don't understand the question.

20 Q If you didn't receive the nondisclosure  
21 agreement until you received the package for the due  
22 diligence in early 2013, what obligation did you  
23 have to keep the negotiations for the purchase  
24 confidential from the city prior to that?

25 A Because they -- an authorized

1 representative of the company had bound me to it.

2 Q Who was that authorized representative?

3 A In this case I'm sure it was Joe Cassin.

4 Q And how do you know that you're bound by  
5 that document?

6 A Because I'm an employee of the corporation.

7 Q How did you know that you were bound by it  
8 in mid to late 2012?

9 A Because Joe Cassin had told me that he had  
10 signed a nondisclosure.

11 Q And what else did he tell you?

12 A That him and Spike were talking.

13 MR. SIMONS: That's enough.

14 THE WITNESS: Okay.

15 MS. RICE: That's not enough. What else  
16 was discussed?

17 MR. SIMONS: Yes, it's enough. He said  
18 he's subject to a nondisclosure agreement. So I've  
19 given you the contents of it. I don't want the  
20 witness to disclose matters that are subject to the  
21 nondisclosure agreement.

22 MS. RICE: A nondisclosure agreement he  
23 testified he didn't even receive until 2013.

24 BY MS. RICE:

25 Q Were you told directly by Mr. Cassin not to

1 tell the City of Reno that Waste Management was in  
2 the process of purchasing Castaway?

3 A No.

4 Q Then why didn't you disclose that  
5 information?

6 A Because this is not the first company that  
7 we've purchased and I'm very familiar with what  
8 "nondisclosure" means.

9 Q Have you reviewed that nondisclosure  
10 agreement in the recent past?

11 A No.

12 Q Has anybody else with Waste Management told  
13 you not to disclose any of the terms or issues  
14 related to Waste Management's purchase of Castaway?

15 A Has anyone told me what?

16 Q Not to disclose anything about Waste  
17 Management's purchase of Castaway.

18 MR. SIMONS: To the extent you may have had  
19 communications with counsel, I'm instructing you not  
20 to answer, okay?

21 THE WITNESS: No.

22 BY MS. RICE:

23 Q No, or not outside of the presence of  
24 counsel?

25 A No, no one has told me specifically not to

1 have any discussions about the nondisclosure.

2 Q What have you been told?

3 MR. SIMONS: If you're asking about  
4 communications with --

5 BY MS. RICE:

6 Q Outside the presence of counsel, what have  
7 you been told?

8 A Nothing.

9 Q When you had meetings with counsel or  
10 communications with counsel regarding this, who else  
11 was present?

12 A Well, depending on when it was, Chris  
13 Barrett was in a lot of meetings. Gary Duhon was in  
14 a lot of meetings. The representatives that I've  
15 told you from the City of Reno were in those  
16 meetings.

17 Q And when were those meetings held?

18 A Throughout 2012.

19 Q So are you representing that there are  
20 members of the City of Reno who knew that Waste  
21 Management was purchasing Castaway prior to  
22 execution of the franchise agreement?

23 A I'm not.

24 Q Who was in the room when you had  
25 conversations with counsel regarding Waste

1 Management's purchase of Castaway?

2 A I never had any conversations with counsel  
3 about our purchase of Castaway.

4 Q Who have you discussed within Waste  
5 Management the purchase of Castaway with?

6 A The chain of authority that I answer to.

7 Q And what was the content of those  
8 discussions?

9 MR. SIMONS: I'm instructing the witness  
10 not to answer, attorney-client privilege and  
11 common-interest privilege.

12 MS. RICE: He already explained that  
13 counsel wasn't present.

14 MR. SIMONS: I understand. Counsel doesn't  
15 have to be present for the information to be  
16 protected.

17 BY MS. RICE:

18 Q What was the content of your conversations  
19 with Chris Barrett regarding Waste Management's  
20 purchase of Castaway?

21 MR. SIMONS: I need to take a break with  
22 the witness to determine if the common-interest  
23 privilege applies.

24 MR. HARDY: Take a break. We've gone for  
25 an hour.

1 MS. RICE: Off the record.

2 (Recess taken.)

3 MR. SIMONS: I'm got going to be asserting  
4 an objection. You can answer the question.

5 THE WITNESS: Could you repeat it?

6 BY MS. RICE:

7 Q Yes. What was the content of your  
8 communications with Chris Barrett regarding Waste  
9 Management's purchase of Castaway?

10 A He was just advised that our acquisition  
11 guys were talking to Spike and didn't know where the  
12 process was going.

13 Q And approximately when did you have that  
14 conversation?

15 A 2012. I don't know specific.

16 Q Have you had any other conversations with  
17 Chris Barrett regarding Waste Management's purchase  
18 of Castaway?

19 A He knew that it had occurred in late '13.  
20 He wasn't involved in any of that type of a process.

21 Q Did you and Mr. Barrett ever discuss the  
22 terms of the purchase or any matters surrounding the  
23 purchase?

24 A I'm sure at some point Chris knew of the  
25 buyout but I don't -- he wouldn't really have any

1 reason to know what the specifics were.

2 Q If you were aware that Waste Management was  
3 negotiating to purchase Castaway in mid to late 2012  
4 prior to execution of the franchise agreement, why  
5 didn't you disclose it to the city?

6 MR. SIMONS: Asked and answered.

7 THE WITNESS: I was a party to a  
8 nondisclosure agreement.

9 BY MS. RICE:

10 Q Doesn't Waste Management purchasing  
11 Castaway make your multiple-zone proposal,  
12 essentially, a wash?

13 MR. SIMONS: Objection to the extent calls  
14 for a legal conclusion, vague and ambiguous.

15 You do realize I get to make objections on  
16 the record. I have to do that to protect the  
17 record.

18 THE WITNESS: I understand.

19 MR. SIMONS: Unless I instruct you not to  
20 answer, you're obligated to answer.

21 THE WITNESS: I understand.

22 Stephanie, could you ask me again?

23 BY MS. RICE:

24 Q Yes. Doesn't the fact that Waste  
25 Management was buying Castaway defeat the entire

1 purpose of proposing zones to the city?

2 MR. SIMONS: Objection, calls for  
3 speculation, legal conclusion.

4 THE WITNESS: The zone -- I proposed the  
5 zone concept to the city to deal with what I  
6 perceived as the city's Castaway issue.

7 So Castaway was chirping in the city's ear  
8 claiming all of this stuff. They were proposing --  
9 they actually proposed a joint venture with us to do  
10 something with some Canadian company called PlasCo.

11 And so it was clear to me that the city  
12 wanted to -- they continued to want to feed the  
13 residential agreement through the commercial  
14 agreement but they wanted to quiet Castaway down,  
15 and this seemed like a good resolution that was the  
16 zones.

17 But, again, when I proposed the zones, I  
18 proposed zones. It didn't make any difference to me  
19 how many zones there was gonna be. That was the  
20 city's decision, not mine.

21 BY MS. RICE:

22 Q Which goes back to your statement that in  
23 mid 2012 the city made it clear it was not going to  
24 grant an exclusive franchise for everything to one  
25 company.



1 A It did not satisfy their Castaway issue,  
2 yes. At that time the only issues that the city  
3 ever relayed to me was the Castaway issue. They  
4 never brought up any other haulers.

5 Q Who at the city brought that up to you?

6 A One of the three or four that were in those  
7 meetings, Jason, John Shipman, John Flansberg, or  
8 Bill Thomas.

9 Q But if Waste Management was purchasing  
10 Castaway, doesn't that fix the Castaway issue?

11 MR. SIMONS: Objection, calls for legal  
12 conclusion, calls for speculation.

13 THE WITNESS: Yes.

14 BY MS. RICE:

15 Q So then why didn't you disclose that Waste  
16 Management ...

17 A I don't know how many times I can tell you.  
18 I was a party to a nondisclosure agreement. I was  
19 legally bound not to discuss it.

20 Q If you weren't legally bound not to discuss  
21 it, would you have told them, the city?

22 MR. SIMONS: That calls for speculation.

23 BY MS. RICE:

24 Q If you were not legally bound by what  
25 you're referring to as a nondisclosure agreement,

1 would you have disclosed the fact that Waste  
2 Management was buying Castaway to the city prior to  
3 execution of the franchise agreement?

4 A I don't know.

5 Q Since Waste Management purchased Castaway,  
6 have they changed the way they operate under the  
7 terms of the franchise agreement?

8 A Who is "they"?

9 Q Waste Management or Reno Disposal Company.

10 A Have they changed the way they operate? I  
11 don't understand the question.

12 Q Has Reno Disposal Company changed any  
13 operational aspects that Castaway was previously  
14 using?

15 A No.

16 Q For example, can you explain how Reno  
17 Disposal Company arrives at the amount it pays the  
18 City of Reno in franchise and host fees?

19 A The host fees are paid pursuant to a  
20 disposal agreement that Refuse Incorporated holds  
21 with the City of Reno, and I believe it's 44 cents  
22 per ton. So every ton that goes into the recycling  
23 facility or transfer station a 44-cent-per-ton fee  
24 is paid to the city and franchise fees are paid on  
25 gross receipts collected.

1 Q So is all of the waste or recyclables  
2 that's collected by Waste Management then weighed?

3 A Essentially, yes. The recycling that goes  
4 in the front end is weighed on the way into the  
5 recycling facility so that a weight is created.

6 The tons that go out of the back of the  
7 transfer station are weighed so that the tons are  
8 calculated as to what comes out of that facility.

9 Q So is there no calculation or measurement  
10 as to what comes into the Reno transfer station  
11 facility?

12 A I mean, yes, it's tracked coming in for our  
13 commercial customers, but our weight is predicated  
14 on what goes out of the back of the facility. I  
15 mean, we know if we bring in a recycling truck full  
16 of recyclables into the recycling center that it's  
17 weighed and we know how much that is.

18 If we bring in a truck from a garbage  
19 route, we know that 25 or 40 yards comes into the  
20 facility -- or it's yards not tons. That's why we  
21 weigh it out of the back end, to determine what the  
22 host fee is that we have to pay to the city. They  
23 get it on all tons. It doesn't matter whether it's  
24 our tons, public tons. It doesn't make any  
25 difference. They get it on all tons because the

1 transfer station is in their city and that's why  
2 they call it a "host fee."

3 Q Then how is material that's taken directly  
4 from a business or from a residential route directly  
5 out to the landfill, how is that calculated?

6 A It's not taken directly to the landfill.

7 Q Never?

8 A It has to be -- all garbage has to go  
9 through a transfer station in Washoe County.

10 Q And there's never any exceptions to that?

11 A If we have a breakdown, or something, then  
12 we have to notify the health department that we need  
13 to do a direct haul and material can go out to the  
14 landfill. But it's usually that they grant that  
15 exemption for a short period of time. They want all  
16 garbage going through the transfer station.

17 Q Aside from those small exemptions, to your  
18 knowledge there are no direct hauls to the landfill  
19 out of the city of Reno?

20 MR. SIMONS: I'll object as to relevance.  
21 This doesn't seem to be relating to this contract --  
22 or does it relate to this contract?

23 MS. RICE: It does.

24 MR. SIMONS: Okay.

25 THE WITNESS: So I get confused about what

1 we're talking about here. We have direct roll-off  
2 hauls that go directly to the landfill, depending on  
3 what the material is. Most of them go through the  
4 transfer station but we do have direct hauls of  
5 roll-off. Anything that we pick up on a residential  
6 route comes back and goes through either the Stead  
7 or Sage transfer stations.

8 BY MS. RICE:

9 Q Okay. Then how are the fees calculated on  
10 the roll-offs if the roll-offs aren't going through  
11 a transfer station?

12 A I'm sorry. What fees?

13 Q How is that material weighed?

14 A It's weighed at the landfill. So the host  
15 agreement that we have with the City of Reno is for  
16 tons that go into the transfer stations, not the  
17 landfill. The landfill's in Storey County.

18 So the agreement with the City of Reno is  
19 for the Stead Transfer Station and the Sage Street  
20 Transfer Station. So tons that are going into that  
21 facility are what we pay a host fee to the City of  
22 Reno on. We pay a 3 percent franchise fee on all  
23 tons that go into the landfill at Storey County.

24 Q So with the exception of commercial  
25 roll-offs, every single piece of solid waste or

1 recyclable material generated and coming from the  
2 city of Reno goes through a transfer station.

3 A Generally, yes.

4 Q What's the "generally" part of that?

5 A Well, unless there's for some reason an  
6 unusual circumstance that would require a direct  
7 haul to the landfill.

8 Q So, then, how does the City of Reno collect  
9 their host fees on the roll-offs that are coming out  
10 of the city of Reno?

11 MR. SIMONS: I'll object that this line of  
12 questioning is irrelevant to the limited issues that  
13 are still left in this litigation.

14 MS. RICE: It directly relates to the  
15 franchise.

16 MR. SIMONS: Okay. If you're going to ask  
17 how they're operating under the franchise, that's  
18 irrelevant. The court's already said that issue is  
19 irrelevant so you don't have standing to bring those  
20 claims. So are we talking about --

21 MS. RICE: The way that they operate now  
22 versus the way that Castaway was operating under the  
23 Castaway model and how they've changed all directly  
24 relates to Waste Management's and Castaway's  
25 collusion and conspiracy to work together to screw

1 everyone else.

2 MR. SIMONS: Well, I appreciate your  
3 perception of things, but the witness has already  
4 testified that there has not been a change from an  
5 operational aspect, so trying to make up a change  
6 isn't getting us anywhere.

7 Unless the witness will say, Hey, there's  
8 been massive changes from how Castaway did business  
9 versus how it's being done now, I don't see how this  
10 has any relevance.

11 MS. RICE: Are you going to allow him to  
12 answer the question?

13 MR. SIMONS: No. I need you to explain it  
14 because, otherwise, I'm going to object and instruct  
15 him not to answer and file a protective order on  
16 this line of questioning because I don't think it's  
17 relevant. But if the dialogue -- if you convince me  
18 otherwise, then we have a duty to meet and confer in  
19 good faith and try to resolve the issue.

20 MS. RICE: I don't think I even need an  
21 answer. I think I have what I need, so we can just  
22 leave that alone.

23 MR. SIMONS: Okay.

24 BY MS. RICE:

25 Q The only other question I have is, What did

1 you and Mr. Simons discuss during the break that we  
2 took?

3 MR. SIMONS: Be real careful on this one  
4 because now you're asking for attorney-client  
5 privilege, and I understand there's a case that  
6 deals with it.

7 I'll make the representation that we  
8 discussed the content of who Mr. Barrett was and his  
9 role with regards to Castaway's decision to ensure  
10 that he wasn't part of that chain. Does my  
11 representation accurately --

12 THE WITNESS: Correct. That's what we  
13 discussed.

14 MR. SIMONS: Okay. I don't want to get too  
15 much further, it's a touchy issue, but go ahead.  
16 Hopefully, that satisfies you.

17 BY MS. RICE:

18 Q Okay. What was discussed with respect to  
19 Mr. Barrett and Waste Management's purchase of  
20 Castaway?

21 A What Mark just relayed. We just discussed  
22 what Chris' role in the -- the work he does for me.  
23 He had no role in the acquisition.

24 BY MS. RICE:

25 Q But he knew about it.



1 A At some point he knew about it, yes.

2 Q Did you and Mr. Simons discuss anything  
3 else on the break?

4 A No.

5 Q Nothing else?

6 A No.

7 MR. SIMONS: Well, that's not true. We  
8 talked about the weather.

9 BY MS. RICE:

10 Q When was the last time you reviewed the  
11 purchase agreement or any documents related to the  
12 Waste Management purchase of Castaway?

13 A I don't recall. I don't recall looking  
14 specifically at the purchase agreement. I recall  
15 having to look up something related to a piece of  
16 equipment. So it would have been one of the  
17 exhibits but I don't even remember in what context.  
18 I know there was something we were trying to sell or  
19 -- I just don't remember. It had something to do  
20 with a piece of equipment so I was looking at their  
21 list of assets.

22 Q And when was that?

23 A Oh, sometime late 2014.

24 Q When was the last time you reviewed the  
25 nondisclosure agreement that you've mentioned?

1       A    That would have been when I looked at the  
2 package that we received for conducting the due  
3 diligence, so it would have been sometime in 2013.

4           MS. RICE: I don't think I have anything  
5 further.

6           MR. HARDY: My turn.

7           MS. RICE: Sure.

8                       EXAMINATION

9 BY MR. HARDY:

10       Q    Good morning, sir. My name is Del Hardy  
11 and I represent AMCB LLC, dba Rubbish Runners.

12           MR. SIMONS: You actually represent both  
13 parties, your office does?

14           MR. HARDY: Yeah. But I'm making a special  
15 appearance on behalf of them and filed a document as  
16 such.

17 BY MR. HARDY:

18       Q    I might bounce around a little bit because  
19 there's some questions that I need filled in.

20           When you were talking about your job in  
21 2012 with Waste Management, it's kinda my  
22 understanding that you're kind of the guy that does  
23 the logistics and that kind of stuff. You're the  
24 one that decides how much equipment is going to be  
25 out there at certain times.

1 Is that what your role would be?

2 A Not today, no.

3 Q In 2012.

4 A No, not in 2012.

5 Q Okay. Because you mentioned something  
6 about you had some older equipment that you were  
7 concerned about and you were wondering how you would  
8 take care of that and what role Waste Management was  
9 going to be playing in Washoe County as far as trash  
10 pickup, et cetera.

11 So why would that be your concern?

12 A Because I've been there 25 years and I'm  
13 the only one that's left that knows any of the  
14 historical data about things, whether it's property,  
15 assets, that sorta thing.

16 Q And was it you that put together this pilot  
17 program that you were talking about that had  
18 something to do with the recycling?

19 A Yes. I took the concept of the City of  
20 Reno and we worked with them to develop it.

21 Q And that was all before this franchise  
22 agreement that's been marked as Exhibit 1 was  
23 signed. Is that correct?

24 A That's correct.

25 Q Okay. Do you believe that the way this

1 franchise agreement was signed was because of that  
2 program that you put together?

3 A I don't think directly. It wasn't the only  
4 reason. I mean, the city wanted to add -- you know,  
5 specifically, I mean, Jason Geddes wanted to add a  
6 single-stream process to recycling. He wanted to  
7 encourage recycling in the city of Reno. His job  
8 was to basically enhance their sustainability  
9 operations within the city and this is something  
10 that he had a special interest in.

11 Q Right. And you had some role with the city  
12 in regards to getting this thing drafted -- this  
13 franchise agreement drafted, correct?

14 A I did.

15 Q Okay. And who was it, by the way, that  
16 actually drafted the agreement itself? Who drafted  
17 it? Do you know?

18 A Gary Duhon and John Shipman.

19 Q Is it your testimony that Mr. Shipman had  
20 input into the drafting of this agreement?

21 A Yes.

22 Q Would you say it was mostly Gary Duhon's  
23 role to draft it?

24 A I always saw things after the fact so I  
25 don't know what conversations or exchange of emails

1 back and forth occurred between him and John.

2 Q Okay. Have you ever seen any other  
3 exclusive area franchise agreements that Waste  
4 Management has entered into?

5 A Yes.

6 Q Okay. Can you name the areas where you've  
7 seen those agreements?

8 A There's one in the city of Stockton. The  
9 public services has half of the city and Waste  
10 Management has the other half of the city. There's  
11 one in Butte County that I'm aware of. I think  
12 there's a couple over in the Oakland area but I'm  
13 not sure exactly. There's a lot of different cities  
14 over there so I'm not exactly sure which  
15 jurisdiction.

16 Q Okay. Did Gary Duhon ever come to you and  
17 ask you for certain input in regards to certain  
18 language that was going to be used?

19 A Yes.

20 Q And when he would do that, what type of  
21 information would you give him?

22 MR. SIMONS: Don't answer the question.  
23 Attorney-client privilege.

24 BY MR. HARDY:

25 Q Would you give him other franchise

1 agreements to look at as models?

2 A I don't recall specifically agreements. I  
3 recall language. So, you know, do you guys have  
4 some language related to X that was already, you  
5 know -- because --

6 MR. SIMONS: That's enough. You have to be  
7 real careful about your communication with counsel.

8 MR. HARDY: We're probably getting into  
9 mirkier water. I would agree with Mr. Simons.

10 BY MR. HARDY:

11 Q How about yourself individually? Do you  
12 keep business notes, memorandums, self-written  
13 emails of any sort?

14 A Yes, I keep notes. When I'm working on a  
15 project, I'll have a tablet like that that I keep  
16 notes on (indicating).

17 Q Did you keep the tablet that has to do with  
18 this franchise agreement that's been marked as an  
19 exhibit?

20 A I'm sure I have quite an extensive stack of  
21 documents.

22 Q What type of file would that be in, sir?

23 A Some of it is in hard copy and some of it  
24 is in email.

25 Q Emails to whom?

1 A Mr. Duhon or back and forth with the city.

2 Q And in regards to the business notes, have  
3 you reviewed any of those since this litigation has  
4 started?

5 A I have not.

6 Q Do you know who Dave Aiazzi is?

7 A I do.

8 Q Have you ever discussed with Mr. Iaizzi at  
9 any time during the negotiations of this franchise  
10 agreement or any time thereafter the franchise  
11 agreement?

12 A During but not after, no.

13 Q Okay.

14 A I haven't seen Dave since he left office.

15 Q Tell me what your conversations were with  
16 Mr. Iaizzi as regards to this franchise agreement.

17 A Actually, they were quite extensive.  
18 Obviously, we had meetings, meaning the Waste  
19 Management team and the city team, with each of the  
20 council members trying to bring them up to speed as  
21 to what was transpiring in the negotiations, finding  
22 out what their areas of interest were and what they  
23 wanted to see in this agreement.

24 And we had conducted the pilot in 2007 and  
25 it was in Dave's ward and Dave liked the pilot. I

1 don't remember specifically whether he participated  
2 or not. I don't know if he was one of the houses or  
3 not. And then Dave chaired several of the -- what  
4 we refer to as "stakeholder meetings" that occurred  
5 in, oh, late, late September, October-ish of 2012.

6 At some point prior to that the City had  
7 sent out a notice to various haulers about what  
8 their intentions were. And I don't remember the  
9 specific language in their letter but they were  
10 basically letting them know what they were planning  
11 on doing and asking for their input. And, as a  
12 result of that, several stakeholder meetings were  
13 held in the seventh floor conference room of City  
14 Hall with various players --

15 Q Okay.

16 A -- and their representatives.

17 Q And was Castaway involved in the  
18 stakeholder meetings?

19 A They were.

20 Q Okay. Anybody else?

21 A AnnMarie was. I don't recall if Chris was  
22 ever at any of those or not.

23 Q Okay.

24 A His dad was at one, I'm sure of. Gosh, I'm  
25 drawing a blank on the gentleman that owns TrashCo



1 out in Washoe Valley. He was there. Telio Assessi  
2 was there at some of them. Joe Conner was at some  
3 of them. There were a lot of people. I'm trying to  
4 go around the room and pick up who they all were but  
5 those are the ones that come to mind at the moment.

6 Q And you mentioned that this was in  
7 September and October -- is that right? -- just  
8 before the agreement was signed.

9 A Yeah, that was my recollection, that at  
10 some point the City -- I mean, I've got their letter  
11 somewhere that shows that they sent this letter out,  
12 but I haven't looked at it so I don't recall when it  
13 was specifically.

14 Q And focusing on that exact period of time,  
15 the September-October window of 2012, what had been  
16 reached between Castaway and Waste Management, to  
17 your knowledge?

18 A I don't know. I don't know specifically.  
19 My focus primarily was on working on the franchise.

20 Q Tell me what you did know.

21 A I knew that there were conversations going  
22 on between Joe Cassin and Spike Duque. I, quite  
23 frankly, didn't trust Spike so I was just proceeding  
24 as if we were gonna create these two zones and gonna  
25 move forward and he would have one part of the city

1 and I'd have the other part of the city.

2 Q And why didn't you trust Spike?

3 A Because if it were me, I'd have kept my  
4 zone.

5 Q Why is that?

6 A Because I'd been doing this for 25 years  
7 and I understand the value of it.

8 Q And there's a great value in it, right?

9 A Yep.

10 Q How much was Castaway bought out for  
11 approximately? Do you know?

12 MR. SIMONS: Don't answer. Subject to  
13 confidentiality agreement, common interest. There's  
14 no need for you to know that.

15 BY MR. HARDY:

16 Q At any of these stakeholder meetings -- let  
17 me back up. So at least by September and October of  
18 2012 you knew that there was a purchase discussion  
19 between Castaway and Waste Management. True?

20 A True.

21 Q And at any of those stakeholder meetings  
22 you didn't disclose that to anybody, did you?

23 A No.

24 Q And where are you getting the information  
25 that Castaway and Waste Management were working at a

1 purchase agreement?

2 A I'm sorry?

3 MR. SIMONS: Excuse me. He didn't say they  
4 were working on a purchase agreement. That  
5 mischaracterizes it.

6 BY MR. HARDY:

7 Q Castaway, by September and October of 2012,  
8 and Waste Management were working out a purchase  
9 agreement where Waste Management was going to  
10 purchase Castaway.

11 A They were having -- Joe Cassin was having  
12 discussions with Spike Duque, but I don't know what  
13 the content of the discussions were.

14 Q Were you being told that Waste Management  
15 was purchasing Castaway at that time?

16 A I was told that they were having  
17 discussions.

18 Q Okay. Weren't told that there was going to  
19 be a purchase?

20 MR. SIMONS: Asked and answered.

21 BY MR. HARDY:

22 Q Is that correct, sir?

23 A I wasn't told that a deal had been reached.

24 Q Do you know if there's any discussions as  
25 to the amount of money Waste Management was willing

1 to pay Castaway at that time?

2 A Do I know if there was a discussion about  
3 the value?

4 Q Yes.

5 A I know some numbers had been thrown around  
6 but I don't know if -- I don't know if I'd been told  
7 of a firm amount that had been decided upon.

8 Q Are you aware of the two meetings -- they  
9 occurred in October. I think there was, actually,  
10 two city council meetings. Was it October 10<sup>th</sup>  
11 and October 12<sup>th</sup>, the two city council meetings  
12 involving the franchise agreement?

13 A October 10<sup>th</sup> sounds like a correct date.  
14 The 12<sup>th</sup> doesn't. That was a couple days later.

15 Q Okay. Did you attend those meetings?

16 A Yes.

17 Q Do you recall that employees of Castaway  
18 showed up in support of the new franchise agreement  
19 that had been reached or was being pitched to the  
20 city to be reached?

21 A I recall a lot of public comment but I  
22 don't recall specifically who all the people were.

23 Q Okay. I'm asking you specifically if you  
24 knew that there was people from Castaway that were  
25 employees of Castaway, such as drivers, who showed

1 up to say, We're In support of this agreement.

2 A I understand your question. I just don't  
3 specifically remember any of the people.

4 Q Okay. Who would have been involved, if  
5 Waste Management had any involvement with Castaway  
6 in putting those logistics together, putting those  
7 people together to come up and testify, who from  
8 Waste Management at that time?

9 A If it was at a city council meeting, it  
10 would have been me.

11 Q All right. Who was your PR person at that  
12 time?

13 A Justin Caporusso.

14 Q And is he still with Waste Management?

15 A He's not.

16 Q Where is Justin Caporusso now?

17 A Justin works for a county entity over in  
18 the Sacramento area. I'm not sure which county.

19 Q How long ago did he leave Waste Management?

20 A A couple years. Maybe 2013.

21 Q Did he leave on good terms?

22 A Yeah. He just moved on, found a good  
23 opportunity.

24 Q Anybody else that would have any dealing  
25 with public relations that worked at Waste

1 Management back in 2012 when this was all going on,  
2 September, October?

3 A I don't remember when we hired Sarah.  
4 Obviously, Sarah we hired before Justin left, but I  
5 don't remember whether she was employed at that time  
6 or not. So if she was, she would have been  
7 involved.

8 Q Okay. Are you aware of any meetings that  
9 Spike Duque had with his employees prior to the  
10 franchise agreement being signed by the city about  
11 Waste Management buying Castaway?

12 A The only knowledge I have of that is what I  
13 read in Ms. Rice's document. As paranoid as Spike  
14 was, that would surprise me.

15 Q Why would you say that? What --

16 A That's one of the reasons I didn't trust  
17 him. He was kind of all over the board about  
18 things. It would surprise me that he would tell his  
19 employees something before something was actually  
20 cast in stone.

21 Q Right. Anybody else at Castaway that had  
22 that level of control of Castaway other than Spike  
23 Duque that you know of?

24 A His son Steve was their operations manager  
25 but I don't know, really, how they ran it. I mean,

1 I took the job title as operations meant that Steve  
2 ran the daily operations but Spike was the president  
3 and the money behind the company.

4 Q Were you ever present in a meeting with Dan  
5 Reasor prior to the October 12<sup>th</sup> signing of the  
6 franchise agreement?

7 A Was I present at the meeting with Dan  
8 Reasor?

9 Q Yes.

10 A Yes.

11 Q Okay. What meeting or meetings were those?

12 A It was in -- the first meeting, I think, I  
13 was involved with Dan was in June of 2012.

14 Q Okay. What was discussed at that meeting?

15 MR. SIMONS: Please don't answer the  
16 question. I'm asserting the common-interest  
17 privilege.

18 MR. HARDY: Can you make a little more of a  
19 record for me in that regard? Common interest with  
20 who? Are you saying a common interest with  
21 Castaway?

22 MR. SIMONS: Yes.

23 MR. HARDY: It's a nonexistent entity now.

24 MR. SIMONS: Okay. Make your arguments.

25 We can brief it, but we still have rights.

1 BY MR. HARDY:

2 Q Who was present at that meeting with Dan  
3 Reasor and you in June of 2012?

4 A Alex O'Seguera, Gary Duhon, Brad Capurro,  
5 and Keith Capurro.

6 Q Who are Brad and Keith Capurro?

7 A They had some type of an ownership interest  
8 in Castaway.

9 Q Tell me about the next meeting after that  
10 June 2012 meeting.

11 A The only thing I recall ever doing with Dan  
12 was some conversations outside of counsel meetings.  
13 I don't recall ever meeting with him in a setting  
14 like that again.

15 Q Okay. Were there any other group meetings  
16 with representatives of Castaway and yourself after  
17 that June 2012 meeting with which Mr. Reasor was  
18 present?

19 A I had met with -- after the execution of  
20 the agreement, I spent quite a bit of time with  
21 Spike and Steve Duque trying to iron out what the  
22 boundaries of their zone was gonna look like.

23 Q I'm sorry. Say that again.

24 That was after the franchise agreement was  
25 signed?



1 A Yes.

2 Q You met with Steve and Spike about what  
3 their zone would be.

4 Is that what your testimony is?

5 A Yes, the section of town, you know, where  
6 the boundaries would be. We knew it was gonna be in  
7 Southeast Reno but we hadn't defined what the  
8 boundaries would be. It would be approximately  
9 three and a half million dollars of revenue so we  
10 needed to carve out sections of the city that  
11 depicted that much revenue.

12 Q And how soon after the October 12<sup>th</sup>,  
13 2012, franchise agreement were these meetings taking  
14 place?

15 A Well, it had to be shortly. It was  
16 actually November because the city was pestering us  
17 for what these boundaries look like.

18 Q Okay. During the time in which you were  
19 meeting Spike and Steve in regards to logistics of  
20 how you were going to break up the two zones, was  
21 there any discussions about the fact that Waste  
22 Management was going to be purchasing Castaway?

23 A Not specifically. I mean, I knew that he  
24 was having conversations with Joe Cassin and that  
25 his lawyer was talking with our acquisition lawyer.

1 But, I mean, it really wasn't an issue of mine to  
2 discuss what the terms were because I wasn't  
3 involved in that particular function.

4 Q Okay.

5 A And, again, I didn't trust Spike.

6 Q You figured it would be two zones no matter  
7 what?

8 A Yeah.

9 Q Okay. Why was there only two zones  
10 selected rather than more than two zones? Why was  
11 that done?

12 A I don't know. I don't know what the city's  
13 thinking was on that.

14 Q Okay. And did you understand who would  
15 make that decision for the city?

16 A I don't know what the chain of authority  
17 was. I don't know how they went about making it.

18 Q All right. You mentioned there were emails  
19 back and forth between you and other parties in  
20 regards to communications as to the franchise  
21 agreement. Who would those emails have been with?

22 A Probably primarily with Jason Geddes and  
23 then the other parties who would have been copied  
24 would have been Bill Thomas, John Flansberg, and  
25 John Shipman.

1 Q Well, let's not talk about the people at  
2 the city. Do you have any inter memos that you gave  
3 some type of insight about what your thoughts were  
4 about how the negotiations and stuff were going?  
5 Did you have any inter memo reports you did or  
6 anything like that?

7 A I'm sure. I mean, I don't recall  
8 specifically but I'm sure.

9 Q And you already mentioned those people's  
10 names in that list that you just gave us?

11 A Alex O'Seguera -- yes, that would have been  
12 the people that would have been involved in that  
13 dialogue because Alex would have been -- since Alex  
14 is my direct supervisor, I would have been required  
15 to keep him informed as to what's transpired.  
16 Actually, Alex attended a couple of the stakeholder  
17 meetings in September because I was out of town.

18 Q Were you kind of the point guy for the  
19 franchise agreement for Waste Management?

20 A Yes.

21 Q At any of these meetings that took place,  
22 was it ever discussed -- I'm talking meetings with  
23 the city, was it ever discussed, well, what happens  
24 if, for example, Waste Management acquires Castaway?

25 A Yes.

1 Q You did raise that issue?

2 A No, I didn't raise that issue. You asked  
3 if it was discussed. It was discussed.

4 Q Tell me what was discussed about that.

5 A I don't remember who at the city asked the  
6 question but they asked -- I mean, many times we  
7 were asked, Why don't you just buy these guys.

8 But the conversation, I think, was directed  
9 from -- it might have been from John Shipman in one  
10 of those meetings. And John asked us if we were  
11 going to acquire Castaway and we told him that we've  
12 had discussions with them in the past and we very  
13 may well have discussions with them in the future.

14 Q And you made that disclosure even though  
15 you knew there was a nondisclosure agreement?

16 A Yes.

17 Q And who suggested to you at the city, Why  
18 don't you just buy these guys?

19 A Every one of the staff members and every  
20 one of the council members.

21 Q Dave Aiazzi?

22 A Yes.

23 Q Mr. Geddes?

24 A Yes.

25 Q Mr. Shipman?

1 A Yes.

2 Q And what was your response when they had  
3 asked that question of you?

4 A Dependent upon when the conversation was.  
5 When the mayor asked me, I told him that we have  
6 tried and that was early in the process. But  
7 generally it was the same answer that I just gave  
8 you, that we've had discussions with them in the  
9 past and we may very well have discussions with them  
10 in the future.

11 Q Okay. When did you first learn that there  
12 was a nondisclosure agreement between Castaway and  
13 Waste Management?

14 A I don't recall.

15 Q Was it before the meeting with Dan Reasor  
16 in June of 2012?

17 A Yes.

18 MR. SIMONS: Del, when you get to a point  
19 where we can take a restroom break ...

20 MS. RICE: Absolutely. Take a break right  
21 now.

22 (Recess taken.)

23

24 BY MR. HARDY:

25 Q You'd mentioned earlier in your testimony

1 that there were some numbers that were being  
2 discussed before the franchise agreement was signed  
3 of what Waste Management and Castaway were talking  
4 about a purchase. What were those numbers?

5 Do you recall?

6 MR. SIMONS: Objection. I'll instruct the  
7 witness not to answer on common-interest privilege.  
8 BY MR. HARDY:

9 Q You mentioned in regards to the zone for  
10 Castaway the number of \$3.5 million.

11 What was that about? Can you explain that  
12 to me?

13 A In order for us to establish what the size  
14 of Castaway ozone would be. The proposal to the  
15 city was that the zones would be created based on  
16 the relative revenue of however many haulers they  
17 wanted to create based on the business they had  
18 today with an opportunity to grow within their zone,  
19 so Castaway had to identify what their business in  
20 the city of Reno was.

21 Q And that was \$3.5 million a year?

22 A Yes.

23 Q Net revenue?

24 A I think that was their gross number.

25 Q And who was it that you learned that from,

1 that number?

2 A Spike. And I don't remember, Del, whether  
3 he provided that to me directly or to the city and  
4 then to me. I don't remember how it all came about.

5 Q Okay. And you mentioned that depending on  
6 how many zones there were going to be, that means  
7 how many different stakeholders were going to have a  
8 zone. Is that right?

9 A Yes.

10 Q But wasn't it always Waste Management's  
11 position at the stakeholder meetings that more than  
12 two zones would create franchise erosion?

13 A No.

14 Q Never heard that word "franchise erosion"?

15 A Oh, sure. Probably my word.

16 Q And that was discussed when you were  
17 discussing the fact that there's more than two  
18 zones. Isn't that, in fact, true?

19 A I don't recall in that context. I mean,  
20 the erosion was occurring because of the business  
21 model that Castaway was employing. Essentially,  
22 they were going and cherry-picking all of the  
23 commercial business, the profitable commercial  
24 business that was subsidizing the residential  
25 business, and by doing so, there was no subsidy

1 going back to the residential.

2 Q And so what you're saying is that Waste  
3 Management wasn't -- because of Castaway's model,  
4 Waste Management wasn't making a profit on the  
5 residential because Castaway was taking the  
6 commercial. Is that what you're telling me?

7 A Well, we've never made a profit on the  
8 residential.

9 Q And let me again take you back to the  
10 language of "franchise erosion." Was that ever used  
11 by you or Mr. Duhon at these stakeholder meetings?

12 A I don't recall.

13 MR. HARDY: That's all the questions I  
14 have. Any followup, Stephanie?

15 MS. RICE: No. I think I'm done.

16 MR. HARDY: Thank you very much.

17 MR. SIMONS: I have a few questions.

18 MS. RICE: Okay.

19 EXAMINATION

20 BY MR. SIMONS:

21 Q Mr. Martinelli, you indicated earlier that  
22 the city was concerned about giving a zone to  
23 Castaway. Is my understanding correct that Castaway  
24 was desirous of a zone?

25 A Apparently, that's what they had expressed



1 to the city, yes.

2 Q Okay. Now, was Castaway capable of  
3 providing the collection services for waste that was  
4 ultimately embodied in Castaway's commercial  
5 franchise agreement?

6 A Based on what the city establishes their  
7 criteria, at the moment Castaway was able to meet  
8 those requirements but they were going to have to  
9 get a garbage hauling permit from the health  
10 district. That's the only thing that they lacked.

11 Q Okay. So at the time these franchise  
12 agreements were executed, Waste Management, or Reno  
13 Disposal, and Castaway were both qualified under the  
14 criteria established by the city to haul waste.

15 A Correct.

16 Q Okay. Were there any other haulers that  
17 satisfied the city's criteria?

18 MR. HARDY: I'll interpose an objection as  
19 to lack of foundation, but go ahead and answer.

20 BY MR. SIMONS:

21 Q You get to answer.

22 A I didn't hear.

23 Q He gets to put an objection on the record,  
24 just like we discussed earlier. You still get to  
25 answer.

1           So to your knowledge were there any other  
2 haulers that satisfied the city's qualifications to  
3 obtain a franchised zone?

4           A    Not that I was aware of, no.

5           Q    Okay. If there was any other hauler that  
6 would have been qualified to service a franchise  
7 zone, to your understanding would the city have  
8 provided a zone to that entity or entities?

9           MR. HARDY: I'll interpose an objection as  
10 to lack of foundation, speculation as to what the  
11 city would and would not do.

12           THE WITNESS: I don't know what the city  
13 would have done. They never approached us with  
14 adding any other zones other than ...

15 BY MR. SIMONS:

16           Q    You understand that under the franchise  
17 agreement the city reserved the authority to create  
18 zones based upon those contractors if the city  
19 qualified to haul waste?

20           A    That's my understanding, yes.

21           Q    So is it your understanding that the city  
22 qualified two haulers to haul waste under the  
23 franchise agreements?

24           A    Yes.

25           Q    Are you familiar with the plaintiff that

1 has sued you, dba Rubbish Runners?

2 A Yes.

3 Q At the time these franchise agreements were  
4 negotiated and entered into, was Rubbish Runners  
5 capable or qualified by the city to haul waste under  
6 a franchise agreement for a specific zone?

7 MR. HARDY: Lack of foundation.

8 THE WITNESS: I don't believe they had the  
9 qualifications that the city established, no.

10 BY MR. SIMONS:

11 Q So at the time the -- to your knowledge, at  
12 the time the franchise agreements were executed --  
13 there being two of them -- those were the only two  
14 contractors that were qualified by the city to be  
15 able to perform services in a zone?

16 A Yes.

17 Q Anything in that franchise agreement  
18 preclude Castaway from purchasing Reno Disposal?

19 A No.

20 Q Anything in there that precludes Reno  
21 Disposal from purchasing Castaway?

22 A No.

23 Q Okay. Did Rubbish Runners at any of these  
24 stakeholder meetings assert to the city that they  
25 were qualified or capable of hauling waste in a

1 zone?

2 A Boy, there was a lot of conversation. I  
3 know AnnMarie was represented by -- I think his name  
4 was Kimmel. Yeah, I can't remember his first name.

5 MS. CAREY: Mike.

6 THE WITNESS: Oh, thank you.

7 BY MR. SIMONS:

8 Q You said Kimmel, K-i-m-m-e-l?

9 A I think that's the spelling, yeah.

10 Q Okay.

11 A And I know he spoke a lot at the meetings  
12 but I don't recall specifically what his  
13 representations were.

14 Q Okay.

15 MR. SIMONS: I have no further questions.

16 MS. RICE: I have a couple followups.

17 FURTHER EXAMINATION

18 BY MS. RICE:

19 Q So you were just asked four different  
20 questions stating that Castaway satisfied the  
21 requirements under the franchise while this was  
22 being negotiated. But that's not accurate if they  
23 needed to obtain additional permits.

24 Is that correct?

25 A I think his question was what the

1 qualifications they had. So my understanding was  
2 that was the only one that they did not meet, that  
3 they were gonna have to obtain a garbage hauling  
4 permit from the health district.

5 Q Isn't that the same circumstances that  
6 Nevada Recycling and Salvage or Rubbish Runners  
7 would have had?

8 A I believe there's -- I think that there's a  
9 business time period in the agreement and some type  
10 of a financial requirement.

11 Q And of all of those requirements, can you  
12 please articulate which ones Rubbish Runners was  
13 lacking?

14 A The time one was the only one that I was  
15 aware of, the time in business. I think it required  
16 five years.

17 Q And what about Nevada Recycling and  
18 Salvage?

19 MR. SIMONS: I'll object. Nevada Recycling  
20 and Salvage is not a hauler, based upon your  
21 verified complaint.

22 THE WITNESS: They never had collection  
23 operations. I actually met with Chris and his dad  
24 sometime in the summer of 2012 and told him that we  
25 were taking the concept -- this zone concept to the

1 city and for collection operations, but they didn't  
2 have any collection operations. They were only  
3 concerned about the disposal operations.

4 BY MS. RICE:

5 Q But they could have had a collection  
6 operation had they gotten collection permits.

7 MR. SIMONS: Objection, calls for  
8 speculation, incomplete hypothetical.

9 THE WITNESS: They were not identified as  
10 an exempted hauler in the franchise agreement.

11 BY MS. RICE:

12 Q Correct. But they didn't apply for a  
13 permit prior to October 24<sup>th</sup>, 2012, right?

14 A Correct.

15 Q But they could have done so, had they been  
16 offered a zone, correct?

17 A My guess would be, since they weren't a  
18 hauling company, I don't know whether the city would  
19 have granted the fact that their disposal operation  
20 had been in business for five years and not their  
21 collection operation, so I can't speak for the city.

22 Q But my question was, They could have  
23 applied for a hauling permit prior to that date that  
24 the city set as the deadline, October 24<sup>th</sup>, 2012,  
25 and been qualified to haul.

1 MR. SIMONS: Objection. They could have  
2 applied? Could have, would have, should have, but  
3 you're asking for speculation if the city would have  
4 granted them on that. I'm sorry. That's my  
5 objection. Misstates the testimony. Go ahead.

6 THE WITNESS: I think that anybody could  
7 have applied to the city.

8 BY MS. RICE:

9 Q Just like Castaway needed to apply for a  
10 waste-hauling permit as well.

11 A Yes.

12 Q So just to clarify, Castaway did not  
13 satisfy the requirements initially for the zone  
14 pursuant to the terms of the franchise agreement  
15 either. They had to take an additional step and get  
16 an additional permit, correct?

17 A That's my understanding, yes.

18 MS. RICE: I don't have anything else.

19 FURTHER EXAMINATION

20 BY MR. HARDY:

21 Q Just a couple of questions.

22 In regards to this criteria, who was it  
23 that suggested that this criteria be put into the  
24 franchise agreement -- do you know --

25 A I don't.

1 Q -- in regards to the financial as well as  
2 business time?

3 A I don't. It's the city's requirements. I  
4 assume it was someone from the city.

5 Q It wasn't proposed by Waste Management, is  
6 your testimony?

7 A I don't recall any drafts that we proposed  
8 that.

9 Q And why wasn't Rubbish Runners qualified,  
10 in your opinion?

11 A I don't think they'd been in business the  
12 five years that the requirements required.

13 Q Okay. And if that was weighed by the city,  
14 what else?

15 A The city could have done anything they  
16 wanted. It was their franchise.

17 Q That was weighed by the city. What else  
18 would have made them not qualified?

19 A Not qualify?

20 Q Yes.

21 A Well, they would have needed a  
22 garbage-hauler permit, like Castaway.

23 Q Anything else?

24 MR. SIMONS: Object to the extent it's  
25 speculation about what the city may or may not have



1 done.

2 THE WITNESS: I'd have to go back and look  
3 at the entire list to answer, but they would have  
4 been required to do everything else everybody else  
5 would have been required to do.

6 MR. HARDY: That's all the questions I  
7 have. Thank you so much for your time.

8 THE REPORTER: And for his review and  
9 signature?

10 MR. SIMONS: Yes. Send it to me.

11 (Whereupon, deposition was concluded at  
12 11:21 a.m.)

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CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this 20th day of January, 2016.

Greg M Martinelli

GREG MARTINELLI

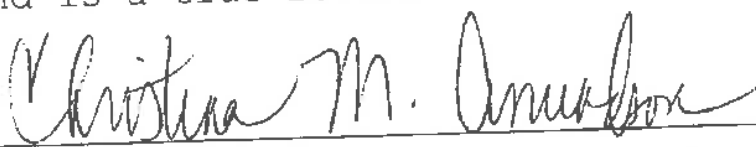
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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court  
6 Reporter in and for the States of Nevada and  
7 California do hereby certify:

8 That I was personally present for the purpose  
9 of acting as Certified Court Reporter in the matter  
10 entitled herein; that the witness was by me duly  
11 sworn;

12 That said transcript which appears hereinbefore  
13 was taken in verbatim stenotype notes by me and  
14 thereafter transcribed into typewriting as herein  
15 appears to the best of my knowledge, skill, and  
16 ability and is a true record thereof.

17   
18

19 Christina Amundson, CCR #641 (NV), CSR #11883 (CA)

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CHANGES/CORRECTIONS/NOTES

	PAGE	LINE	
1			
2			
3	10	18	Bevilacqua
4	15	6	Area
5	16	2	Oseguera
6	16	9	Oseguera
7	16	10	his
8	25	8	Oseguera
9	26	15	Oseguera
10	26	22	COO
11	32	13	Jon
12	32	17	Marran
13	37	24	Jon
14	40	19	2019
15	<del>47</del>	25	Council } I understood this to be Council
16	48	2	Council / not counsel
17	52	7	Jon
18	63	18	Jon
19	64	1	Jon
20	64	9	Republic
21	66	8	Aiazzi
22	66	16	Aiazzi
23	68	1	Olcese
24	75	4	Oseguera
25	77	25	Jon

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79	9	Jon
79	10	Jon
81	14	Zone

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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 14 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.

### 3.3 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 (25<sup>th</sup>) 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 Contractors 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 Customers 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**

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 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 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  
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:**

- |                   |   |
|-------------------|---|
| <b>Exhibit A</b>  | <b>List of Approved Recyclable Materials</b>  |
| <b>Exhibit B</b>  | <b>Exclusive Service Area of Contractor</b>   |
| <b>Exhibit C</b>  | <b>Operating Standards</b>  |
| <b>Exhibit D</b>  | <b>Scope of Services</b>  |
| <b>Schedule 1</b> | <b>List of Exempted Haulers and list of Exempted Hauler Accounts and Customers for each Exempted Hauler</b> |

**EXHIBIT A**  
**List of Approved Recyclable Materials**

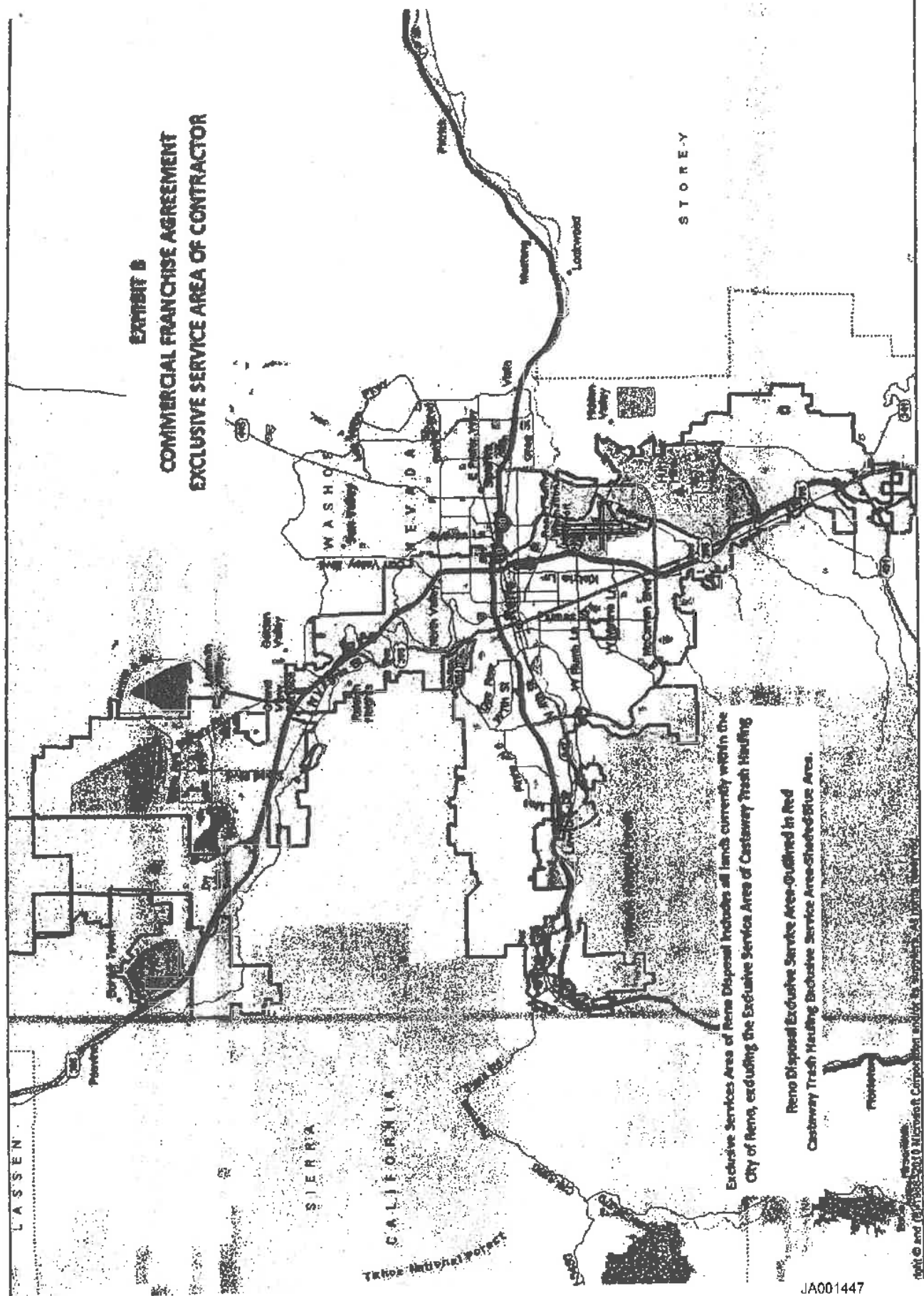
**EXHIBIT A**  
**COMMERCIAL FRANCHISE AGREEMENT**  
**APPROVED RECYCLABLE MATERIALS**

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 B**  
**COMMERCIAL FRANCHISE AGREEMENT**  
**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**  
**Scope of Services**

11/01/2012

**Bin Collection Services**

**Bin Collection Services-Solid Waste**

Bin Capacity	Monthly Rate by Collection Frequency per Week <sup>1</sup>						
	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	\$ 404.78	\$ 495.91	\$ 586.91	N/A
3 Cubic Yards	\$ 157.82	\$ 273.79	\$ 388.45	\$ 500.69	\$ 615.30	\$ 729.91	\$ 918.05
4 Cubic Yards	\$ 187.40	\$ 323.13	\$ 462.40	\$ 594.21	\$ 733.67	\$ 868.02	\$ 1,093.52
5 Cubic Yards	\$ 272.32	\$ 450.95	\$ 674.39	\$ 865.29	\$ 1,118.79	\$ 1,374.29	\$ 1,696.50

**Bin Collection Services-Approved Recyclable Materials**

Bin Capacity	Monthly Rate by Collection Frequency per Week <sup>1</sup>						
	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	\$ 284.75	\$ 347.84	\$ 410.84	N/A
3 Cubic Yards	\$ 110.47	\$ 191.85	\$ 271.92	\$ 350.48	\$ 430.71	\$ 510.94	\$ 643.90
4 Cubic Yards	\$ 131.16	\$ 226.19	\$ 323.68	\$ 415.95	\$ 513.57	\$ 607.81	\$ 831.89
5 Cubic Yards	\$ 190.62	\$ 322.46	\$ 472.07	\$ 605.70	\$ 763.86	\$ 952.09	\$ 1,187.55

<sup>1</sup> Dumping and septering the specified capacity bin the designated frequency per week; capacity 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<sup>2</sup>

Bin Capacity	Frequency	Rate
2 Yard	1	\$34.00
3 Yard	1	\$40.00
4 Yard	1	\$47.00
5 Yard	1	\$54.00

**Other Services and Fees**

Service	Rate
Bin Change <sup>3</sup>	\$ 75.00
4 Yard Bin Special - Single Service <sup>4</sup>	\$ 80.00
5 Yard Bin Special - Single Service <sup>4</sup>	\$ 107.00

<sup>2</sup> Additional dump of existing Customer Bin on regularly scheduled service day and non-service day

<sup>3</sup> Availability to service on service day

<sup>4</sup> Delivery and pick up Bin single service

**Exhibit D**  
**Commercial Franchise Agreement**  
**Scope of Services**

10/19/2012

**Cart Collection Services**

**Cart Collection Services-Solid Waste**

Cart Size	Monthly Rate by Collection Frequency per Week <sup>*</sup>						
	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 <sup>*</sup>						
	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	\$ 17.40	\$ 34.80	\$ 52.40	\$ 69.85	\$ 87.43	\$ 104.92	\$ 122.41
2 - 96 Gal Carts	\$ 34.80	\$ 69.85	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 96 Gal Carts	\$ 52.40	\$ 104.92	\$ 157.38	\$ 209.84	\$ 262.30	\$ 314.76	\$ 367.22
4 - 96 Gal Carts	\$ 69.85	\$ 139.90	\$ 209.84	\$ 279.79	\$ 349.74	\$ 419.69	\$ 489.63

<sup>\*</sup>Dumping and replacing the specified capacity Cart the designated frequency per week; monthly charge per cart

**Exhibit D**  
**Commercial Franchise Agreement**  
**Scope of Services**

10/11/2022

**Drop Box and Curbside Collection Services**

**Garbage and Recyclable Collection Services of Annual Recyclable Materials and Solid Waste**

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$ 188.18
20 Yard Closed Top	\$ 255.00
26 Yard Closed Top	\$ 362.50
Drop Box Initial Delivery Fee	\$ 75.00

Drop Box Capacity	Rate per Service
14 Yard Open Top	\$ 148.28
20 Yard Open Top	\$ 185.18
26 Yard Open Top	\$ 282.78
Drop Box Initial Delivery Fee	\$ 75.00

Compacted Capacity	Rate per Service
10 Yard	\$ 188.18
12 Yard	\$ 236.00
14 Yard	\$ 273.71
15 Yard	\$ 303.27
16 Yard	\$ 333.00
18 Yard	\$ 363.00
22 Yard	\$ 423.52
24 Yard	\$ 458.52
25 Yard	\$ 488.52
26 Yard	\$ 543.52
28 Yard	\$ 702.00
Delivery Charge	\$ 75.00

\*Pickup, changing, and replacing the specified capacity drop box - single service

**Exhibit B**  
**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	\$ 17.35	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 Sheet 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 enclosures gates or unlatching Container
Locking container	\$ 17.50	One time charge to install locking mechanism on container
Container Swap	\$ 75.00	Container exchange (Drop Box and Bin)
Full Service letter	\$ 65.00	Charge to provide a full service 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

**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.



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NEVADA RECYCLING AND  
SALVAGE, LTD, a Nevada Limited  
Liability Company; AMCB, LLC, a  
Nevada Limited Liability Company d/b/a  
RUBBISH RUNNERS,

**VS.**

## Respondents.

District Court Case No.: CV15-00497

## VOLUME 6

JA001096 – JA001294

Mark Simons, Esq.  
Therese M. Shanks, Esq.  
Robison, Belaustegui, Sharp and Low  
71 Washington Street  
Reno, NV 89503  
(775)329-3151  
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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 )  
2 ) ss.  
3 County of Washoe )  
4 I, STEPHANIE KOETTING, a Certified Court Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, do hereby certify;  
7 That I was present in Department No. 7 of the  
8 above-entitled Court on July 29, 2015, at the hour of 1:45  
9 p.m., and took verbatim stenotype notes of the proceedings  
10 had upon the oral arguments in the matter of NEVADA  
11 RECYCLING, et al., Plaintiffs, vs. RENO DISPOSAL, et al.,  
12 Defendants, Case No. CV15-00497, and thereafter, by means of  
13 computer-aided transcription, transcribed them into  
14 typewriting as herein appears;  
15 That the foregoing transcript, consisting of pages 1  
16 through 71, both inclusive, contains a full, true and  
17 complete transcript of my said stenotype notes, and is a  
18 full, true and correct record of the proceedings had at said  
19 time and place.  
20 DATED: At Reno, Nevada, this 31st day of July 2015.  
21  
22 S/s Stephanie Koetting  
23 STEPHANIE KOETTING, CCR #207  
24



1 CODE: 4065  
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 **SUBPOENA DUCES TECUM**  
28 **DAN R. REASER, ESQ.**

THE STATE OF NEVADA SENDS GREETINGS TO:

DAN R. REASER, ESQ.  
c/o Fennemore Craig  
300 E. 2<sup>nd</sup> Street, Suite 1510  
Reno, Nevada 89501

You are hereby commanded to appear at the Law Offices of Hardy Law Group, 98 Winter Street, Reno, Nevada 89503, on November 16, 2015, at 10:00 a.m.

You are commanded to bring with you the following:

1. Any and all correspondence, including but not limited to: letters,

1 emails, memorandum, and proposals; by and/or between you (and/or  
2 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
3 2012 and October 28, 2015.

4 2. Any and all correspondence, including but not limited to: letters,  
5 emails, memorandum, and proposals; by and/or between you (and/or  
6 any agent of your law firm) and Greg Martinelli between January 1, 2012  
7 and October 28, 2015.

8 3. Any and all documents exchanged by and/or between you (and/or  
9 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
10 2012 and October 28, 2015, including but not limited to: proposals,  
11 contracts, draft documents, agreements, invoices and accountings.

12 4. Any and all documents exchanged by and/or between you (and/or  
13 any agent of your law firm) and Greg Martinelli between January 1, 2012  
14 and October 28, 2015, including but not limited to: proposals, contracts,  
15 draft documents, agreements, invoices and accountings.

16 You may deliver these documents to Del Hardy, Esq., of Hardy Law Group, 98 Winter  
17 Street, Reno, NV 89503 on or before November 16, 2015, at 10:00 a.m., in lieu of appearing  
18 that day.

19 *Any person failing to appear and produce the records may be deemed in*  
20 *contempt of the court and shall be liable to the party injured in the sum of*  
21 *\$100.00, and for such damages as may be sustained by him on account of*  
22 *such neglect or refusal.*

23 DATED this 28<sup>th</sup> day of October, 2015.

24  
25   
26 STEPHANIE RICE, ESQ.  
27 DEL HARDY, ESQ.  
28 Attorneys for Plaintiffs

1  
2 CERTIFICATE OF CUSTODIAN OF RECORDS

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

5 \_\_\_\_\_, hereby swears under penalty of perjury and  
6 certifies the following:

7 1. That he or she is holds the position title of \_\_\_\_\_  
8 at \_\_\_\_\_, and in such capacity is the custodian of the records of said  
9 business;

10 2. That on the \_\_\_\_ day of \_\_\_\_\_, 2015, the Deponent received  
11 a Subpoena Duces Tecum for the release of communications, records and/or documents  
12 relating to Gary Duhon, Esq. and Greg Martinelli, from January 1, 2012 through October 28,  
13 2015;

14 3. That the Deponent has examined the original of those records and/ or  
15 documents and has made a true and exact copy of them and that the reproduction of them  
16 attached hereto is true and complete; and

17 4. That the original of those records and/or documents was made at or near the  
18 time of the acts, events, conditions and opinions recited therein by or from information,  
19 transmitted by a person with knowledge of the course of the regularly conducted activity of  
20 the Deponent or the business in which the Deponent is engaged or employed.

21 DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

22  
23 \_\_\_\_\_ (Signature)  
24 SUBSRIBED and SWORN to before me this  
25 \_\_\_\_ day of \_\_\_\_\_, 2015.

26 NOTARY PUBLIC  
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**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 **SUBPOENA DUCES TECUM-DAN R. REASER, ESQ.** 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 28 day of October, 2015.

  
\_\_\_\_\_  
EMPLOYEE OF HARDY LAW GROUP

1                   **RULE 45 (c) AND (d) NEVADA RULES OF CIVIL PROCEDURE**

2   (c)   **PROTECTION OF PERSONS SUBJECT TO SUBPOENA.**

3       (1)   A party or an attorney responsible for the issuance and service of a subpoena shall  
4   take reasonable steps to avoid imposing undue burden or expense on a person subject to that  
5   subpoena. The court on behalf of which the subpoena was issued, shall enforce this duty and  
6   impose upon the party or attorney in breach of this duty an appropriate sanction, which may  
7   include, but is not limited to, lost earnings and a reasonable attorney's fee.

8       (2)(A) A person commanded to produce and permit inspection and copying of designated  
9   books, papers, documents or tangible things, or inspection or premises need not appear in person  
10   at the place of production or inspection unless commanded to appear for deposition, hearing or  
11   trial.

12       (2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit  
13   inspection and copying may, within 14 days after service of the subpoena or before the time within  
14   14 days after service of the subpoena or before the time specified for compliance if such time is less  
15   than 14 days after service, serve upon the party or attorney designated in the subpoena written  
16   objection to the inspection or copying of any or all of the designated materials or of the premises. If  
17   objection is made, the party serving the subpoena shall not be entitled to inspect and copy the  
18   materials or inspect the premises except pursuant to an order of the court by which the subpoena  
19   was issued. If objection has been made, the party serving the subpoena may, upon notice to the  
20   person commanded to produce, move at any time for an order to compel the production. Such an  
21   order to compel production shall protect any person who is not a party or an officer of a party from  
22   significant expense resulting from the significant expense resulting from the inspection and copying  
23   commanded.

24       (3)(A) On timely motion, the court by which the subpoena was issued shall quash or modify  
25   the subpoena if it

- 26           (i)   fails to allow reasonable time for compliance; or  
27           (ii)   requires a person who is not a party or an officer of a party to travel to a  
28               place more than 100 miles from the place where that person resides, is  
             employed or regularly transacts business in person, except that such a person  
             may in order to attend trial be commanded to travel from any such place  
             within the state in which the trial is held; or  
             (iii)   requires disclosure of privileged or other protected matter and no exception  
             or waiver applies; or  
             (iv)   subjects a person to undue burden.

29       (3)(B) If a subpoena

- 30           (i)   requires disclosure of a trade secret or other confidential research,  
31               development, or commercial information; or  
32           (ii)   requires disclosure of an unretained expert's opinion or information not  
33               describing specific events or occurrences in dispute and resulting from the  
34               expert's study made not at the request of any party, the court may, to protect  
35               a person subject to or affected by the subpoena, quash or modify the  
36               subpoena or, if the party in whose behalf the subpoena is issued shows a  
37               substantial need for the testimony of material that cannot be otherwise met  
38               without undue hardship and assures that the person to whom the subpoena  
39               is addressed will be reasonably compensated, the court may order  
40               appearance or production only upon specified conditions.

41   ///

42   ///

43   ///

1 (d) DUTIES IN RESPONDING TO SUBPOENA.

2 (1) A person responding to a subpoena to produce documents shall produce them a they  
3 are kept in the usual course of business or shall organize and label them to correspond with the  
4 categories in the demand.

5 (2) When information subject to a subpoena is withheld on a claim that it is privileged or  
6 subject to protection as trial preparation materials, the claim shall be made expressly and shall be  
7 supported by a description of the nature of the documents, communications, or things not produced  
8 that is sufficient to enable the demanding party to contest the claims.  
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STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

I hereby certify and return that I received the within Subpoena Duces Tecum on the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, and that I personally served the same upon  
\_\_\_\_\_ by showing the within to him/her, and delivering  
to him/her a copy of the same in \_\_\_\_\_ County, \_\_\_\_\_, on this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Affiant)

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

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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 as **Exhibit 1** is the Affidavit of Dustin Grate, for service of a Subpoena  
Duces Tecum for Dan R. Reaser, Esq., on October 28, 2015, in the above-entitled matter. A  
copy of that Subpoena Duces Tecum is attached hereto as **Exhibit 2**.

DATED this 29<sup>th</sup> day of October 2015.

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



**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:

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 proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 20<sup>th</sup> day of October 2015.



AN EMPLOYEE OF HARDY LAW GROUP

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**IN THE SECOND JUDICIAL DISTRICT COURT**

**NEVADA RECYCLING AND SALVAGE, et al**

**V.**

**RENO DISPOSAL COMPANY, INC. et al**

**CASE NO. CV15-00497**

**AFFIDAVIT OF SERVICE**

**EXHIBIT INDEX**

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>	<b>LENGTH</b>
1	Affidavit of Dustin Grate	2
2	Subpoena Duces Tecum for Dan R. Reaser, Esq.	8

FILED  
Electronically  
2015-10-29 12:54:54 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5212393 : rk Watkins


EXHIBIT "1"

EXHIBIT "1"

1 STATE OF WYOMING )  
2 COUNTY OF WASHAKIE ) ss.

3 I hereby certify and return that I received the within Subpoena Duces Tecum on the 28<sup>th</sup>  
4 day of OCTOBER, 20 15, and that I personally served the same upon  
5 DAN R. REASEN SSC by showing the within to him/her, and delivering  
6 to him/her a copy of the same in WASHAKIE County, WYOMING, on this  
7 28<sup>th</sup> day of OCTOBER, 20 15.

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(Affiant) 

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Jacqueline Bryant  
Clerk of the Court  
Transaction # 5212393 : rk Watkins

EXHIBIT "2"

EXHIBIT "2"

1 CODE: 4065  
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 **SUBPOENA DUCES TECUM**  
28 **DAN R. REASER, ESQ.**

THE STATE OF NEVADA SENDS GREETINGS TO:

DAN R. REASER, ESQ.  
c/o Fernemore Craig  
300 E. 2<sup>nd</sup> Street, Suite 1510  
Reno, Nevada 89501

You are hereby commanded to appear at the Law Offices of Hardy Law Group, 98 Winter  
Street, Reno, Nevada 89503, on November 16, 2015, at 10:00 a.m.

You are commanded to bring with you the following:

1. Any and all correspondence, including but not limited to: letters,

1 emails, memorandum, and proposals; by and/or between you (and/or  
2 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
3 2012 and October 28, 2015.

4 2. Any and all correspondence, including but not limited to: letters,  
5 emails, memorandum, and proposals; by and/or between you (and/or  
6 any agent of your law firm) and Greg Martinelli between January 1, 2012  
7 and October 28, 2015.

8 3. Any and all documents exchanged by and/or between you (and/or  
9 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
10 2012 and October 28, 2015, including but not limited to: proposals,  
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12 4. Any and all documents exchanged by and/or between you (and/or  
13 any agent of your law firm) and Greg Martinelli between January 1, 2012  
14 and October 28, 2015, including but not limited to: proposals, contracts,  
15 draft documents, agreements, invoices and accountings.

16 You may deliver these documents to Del Hardy, Esq., of Hardy Law Group, 98 Winter  
17 Street, Reno, NV 89503 on or before November 16, 2015, at 10:00 a.m., in lieu of appearing  
18 that day.

19 *Any person failing to appear and produce the records may be deemed in*  
20 *contempt of the court and shall be liable to the party injured in the sum of*  
21 *\$100.00, and for such damages as may be sustained by him on account of*  
22 *such neglect or refusal.*

23 DATED this 28<sup>th</sup> day of October, 2015.

24  
25   
26 STEPHANIE RICE, ESQ.  
27 DEL HARDY, ESQ.  
28 Attorneys for Plaintiffs

**CERTIFICATE OF CUSTODIAN OF RECORDS**

STATE OF NEVADA

COUNTY OF WASHOE

} ss.

\_\_\_\_\_, hereby swears under penalty of perjury and certifies the following:

1. That he or she is holds the position title of \_\_\_\_\_ at \_\_\_\_\_, and in such capacity is the custodian of the records of said business;

2. That on the \_\_\_\_ day of \_\_\_\_\_, 2015, the Deponent received a Subpoena Duces Tecum for the release of communications, records and/or documents relating to Gary Duhon, Esq. and Greg Martinelli, from January 1, 2012 through October 28, 2015;

3. That the Deponent has examined the original of those records and/ or documents and has made a true and exact copy of them and that the reproduction of them attached hereto is true and complete; and

4. That the original of those records and/or documents was made at or near the time of the acts, events, conditions and opinions recited therein by or from information, transmitted by a person with knowledge of the course of the regularly conducted activity of the Deponent or the business in which the Deponent is engaged or employed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

SUBSIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

(Signature)

NOTARY PUBLIC



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 or this date I served the foregoing document(s) described as **SUBPOENA DUCES TECUM**  
4 **DAN R. REASER, ESQ.** on all parties to this action by:

5 X Placing an original or true copy thereof in a sealed envelope placed for  
6 collection 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 \_\_\_\_\_ EFLEX- Court's Electronic Filing System  
11 \_\_\_\_\_ Messenger Service  
12 \_\_\_\_\_ Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**  
18 Pursuant to NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED this 28 day of October, 2015.

22  
23   
24 EMPLOYEE OF HARDY LAW GROUP  
25  
26  
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RULE 45 (c) AND (d) NEVADA RULES OF CIVIL PROCEDURE

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued, shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to the inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which the subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(3)(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony of material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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1 (d) DUTIES IN RESPONDING TO SUBPOENA.

2 (1) A person responding to a subpoena to produce documents shall produce them as they  
are kept in the usual course of business or shall organize and label them to correspond with the  
categories in the demand.

3 (2) When information subject to a subpoena is withheld on a claim that it is privileged or  
subject to protection as trial preparation materials, the claim shall be made expressly and shall be  
4 supported by a description of the nature of the documents, communications, or things not produced  
that is sufficient to enable the demanding party to contest the claims.  
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1 STATE OF \_\_\_\_\_  
2 COUNTY OF \_\_\_\_\_ } ss.

3 I hereby certify and return that I received the within Subpoena Duces Tecum on the  
4 day of \_\_\_\_\_, 20\_\_\_\_, and that I personally served the same upon  
5 \_\_\_\_\_ by showing the within to him/her, and delivering  
6 to him/her a copy of the same in \_\_\_\_\_ County, \_\_\_\_\_, on this  
7 day of \_\_\_\_\_, 20\_\_\_\_.

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11 (Affiant)  
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1 2490  
2 Mark G. Simons, Esq., NSB No. 5132  
3 Scott L. Hernandez, Esq., NSB No. 13147  
4 ROBISON, BELAUSTEGUI, SHARP & LOW  
5 71 Washington Street  
6 Reno, Nevada 89503  
7 Telephone: (775) 329-3151  
8 Facsimile: (775) 329-7169  
9 Email: [msimons@rbsllaw.com](mailto:msimons@rbsllaw.com)  
10 [shernandez@rbsllaw.com](mailto:shernandez@rbsllaw.com)

11 *Attorneys for Defendants Waste Management of Nevada  
12 and Refuse, Inc.*

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

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

**CASE NO.: CV15-00497**

**DEPT. NO.: 7**

20 Plaintiffs,

21 vs.

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

Defendants.

**DEFENDANT'S MOTION TO STAY DISCOVERY**

Defendants Reno Disposal Company, Inc. dba Waste Management of Nevada  
("Reno Disposal") and Refuse, Inc., by and through its attorneys, Robison, Belaustegui,  
Sharp & Low, bring this Motion to Stay Discovery pending the Court's decision on the

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

1 Defendants' Motion for Summary Judgment, which is currently submitted to the Court.  
2 This motion is based upon the following memorandum of points and authorities, the  
3 pleadings and papers filed in this action, and any evidence or argument presented to  
4 the Court in hearing.

5 DATED this 29<sup>th</sup> day of October, 2015.  
6

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

11 MARK G. SIMONS  
12 SCOTT L. HERNANDEZ  
13 Attorneys for Defendants

14 **POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 The Court should grant this motion to stay discovery pending the Court's  
17 decision on the Defendants' Motion for Summary Judgment ("MSJ"). If the MSJ is  
18 granted, the entire action, as presently before the Court, would be dismissed with  
19 prejudice. Accordingly, a stay of discovery would promote efficiency, preserve judicial  
20 and litigant resources, and avoid unnecessary burden and expense.

21 **II. FACTUAL AND PROCEDURAL BACKGROUND**

22 This instant dispute arises from two exclusive franchise agreements for  
23 commercial Solid Waste and Recyclable Materials within the City of Reno. These  
24 agreements granted exclusive franchises for the collection of Solid Waste and  
25 Approved Recyclable Materials within the City to two separate "Contractors" each  
26 servicing a different geographic area in Reno defined as the "Exclusive Service Area."  
27  
28

1 One franchise agreement was executed by the City and Reno Disposal, and the other  
2 was executed by the City and Castaway Trash Hauling ("Castaway"). Castaway later  
3 assigned the rights under its own franchise agreement to Reno Disposal. Castaway's  
4 assignment of its franchise agreement to Reno Disposal was done pursuant to express  
5 contractual provisions authorizing and approving such conduct.  
6

7 The Plaintiffs filed their Verified First Amended Complaint ("Amended  
8 Complaint"), asserting malfeasance allegedly perpetrated by the Defendants which  
9 related to Reno Disposal's franchise agreement. The Defendants moved to dismiss the  
10 Amended Complaint as to all claims for relief. The Court granted the Defendants'  
11 motion to dismiss with prejudice as to all claims for relief except one. Plaintiffs'  
12 remaining claim for unfair trade practices/conspiracy to restrain trade was based solely  
13 upon the Defendants' alleged collusion with Castaway to obtain a consolidated  
14 franchise.  
15

16 The Court's order granting the motion to dismiss, in part, was entered on  
17 September 15, 2015. On September 24, 2015, the Defendants filed the MSJ, seeking  
18 summary judgment on the Plaintiffs' sole remaining claim for unfair trade practices on  
19 the basis of collusion. If granted, the MSJ will depose of the Plaintiffs' entire case. The  
20 Plaintiffs' opposition to the MSJ was filed on October 8, 2015; the Defendants' reply  
21 brief was filed on October 16, 2015. A request for submission on the MSJ was also  
22 filed on October 16, 2015. The thoroughly brief MSJ is currently pending before the  
23 Court.  
24

### 25 26 **III. LEGAL ARGUMENT**

#### 27 **A. STANDARD OF REVIEW.**

28 The question of whether to grant a stay of discovery is within the Court's

1 discretion, as courts have the inherent power to manage their own docket. See Landis  
2 v. North Am. Co., 299 U.S. 248, 254-55 (1936) ("[T]he power to stay proceedings is  
3 incidental to the power inherent in every court to control the disposition of the causes  
4 on its docket with economy of time and effort for itself, for counsel, and for litigants.").  
5 Additionally, the Court may also stay discovery pursuant to NRCP 26(c), which permits  
6 the Court to order, for good causes shown, that discovery not be had or that discovery  
7 only be had on specified terms and conditions. See NRCP 26(c)(1), (2); see also  
8 NRCP 1 (stating that the NRCP "shall be construed and administered to secure the just,  
9 speedy, and inexpensive determination of every action.").

10  
11 While "[s]tays of discovery are generally disfavored" (Republic of Ecuador v.  
12 Bjorkman, 801 F. Supp. 2d 1121, 1128 (D. Colo. 2011)), Courts will often enter a stay  
13 of discovery where a pending dispositive motion resolves the entire case. See  
14 Tradebay, LLC v. eBay, Inc., 278 F.R.D. 597, 602-03 (D. Nev. 2011). This is because  
15 "prohibiting or delaying discovery will often cause unwarranted delay, especially if a  
16 pending dispositive motion challenges fewer than all of Plaintiff's claims." Id.; see also  
17 Hovermale v. Sch. Bd. of Hillsborough Cnty. Fla., 128 F.R.D. 287, 289 (M.D. Fla. 1989)  
18 ("In addition, motions to stay discovery are not favored and are rarely appropriate where  
19 resolution of the dispositive motion may not dispose of the entire case.").

20  
21  
22 **B. EFFICIENCY AND JUSTICE WILL BE SERVED BY STAYING**  
23 **DISCOVERY IN THIS CASE.**

24 The Court should exercise its discretion to stay discovery in this case pending its  
25 decision on the MSJ. According to the above-referenced authorities, the situation  
26 before the Court is precisely the situation in which a stay of discovery should be  
27 granted. Indeed, if granted, the MSJ will resolve the Plaintiffs' sole remaining unfair  
28



1 trade practices claim, obviating any need for discovery at all.

2 Further, there is no trial date set in the pending action. If the Court grants a stay  
3 of discovery, the Court can consider the duration of that stay when determining the trial  
4 date in this action and can coordinate the trial date accordingly. This would ensure that  
5 the Plaintiffs will not be prejudiced with a shorter discovery period; instead, all parties  
6 will be given the benefit of the Court's decision on the MSJ before accruing litigation  
7 costs and disrupting business activities to engage in the discovery process.

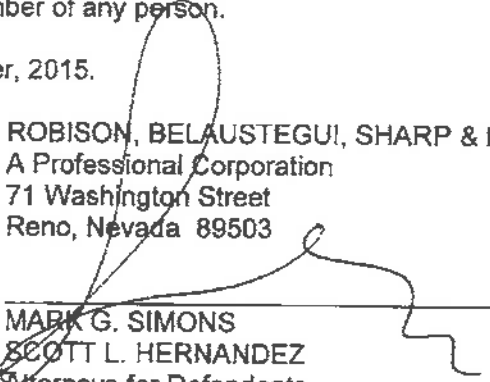
8  
9 **IV. CONCLUSION**

10 For the foregoing reasons, Defendants' Motion for Stay of Discovery should be  
11 granted. Granting this motion will promote an efficient resolution of the case, given that  
12 the entirety of this action will be disposed upon grant of the MSJ.

13  
14 **AFFIRMATION:** The undersigned do hereby affirm that the preceding document  
15 does not contain the social security number of any person.

16 DATED this 29<sup>th</sup> day of October, 2015.

17  
18 ROBISON, BELAUSTEGUI, SHARP & LOW  
19 A Professional Corporation  
20 71 Washington Street  
21 Reno, Nevada 89503

22   
23 MARK G. SIMONS  
24 SCOTT L. HERNANDEZ  
25 Attorneys for Defendants

26  
27 P-Motion to Stay Discovery 10-26-15  
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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 TO STAY DISCOVERY** 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:

Del Hardy, Esq.  
Stephanie Rice, Esq.  
HARDY LAW GROUP  
*Attorneys for Plaintiffs*

☒ by personal delivery/hand delivery addressed to:

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

\_\_\_\_\_ by facsimile (fax) addressed to:

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

DATED this 27<sup>th</sup> day of October, 2015.

  
Employee of Robison, Belaustegui, Sharp & Low

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 STAY DISCOVERY**

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 Oppose Defendants' Motion to Stay Discovery. This Opposition is based on the attached  
Memorandum of Points and Authorities and the Exhibits and Affidavits attached hereto, any  
arguments of counsel, the pleadings and papers on file herein and any other such matters this  
Court may wish to consider.

DATED this 2<sup>nd</sup> day of November, 2015.

  
STEPHANIE RICE, ESQ.  
DEL HARDY, ESQ.  
Attorneys for Plaintiffs

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     INTRODUCTION AND SUMMARY OF THE ARGUMENT**

3           It would be a gross abuse of discretion for this Court to grant Defendants' Motion Stay  
4   Discovery as well as Defendants' Motion for Summary Judgment. Defendants' Motion to Stay  
5   Discovery is based solely on the unsuitable presumption that they will prevail on their Motion  
6   for Summary Judgment. However, and at the very least, Defendants simply cannot prevail on  
7   their Motion for Summary Judgment because their Motion for Summary Judgment is premature  
8   as Plaintiffs have not yet had an opportunity to do any discovery and Plaintiffs' complied with  
9   NRCP 56(f) asking that this Court allow Plaintiffs time to conduct discovery in order to garner  
10   additional support to oppose Defendants' Motion for Summary Judgment.

11          Further, the entire premise of Defendants Motion for Summary Judgment is that the City,  
12   the Reno Municipal Code and State Laws approved of Defendants purchase of Castaway,  
13   effectively making Defendants the only garbage hauler in the City of Reno, therefore Defendants  
14   conduct in scheming with Castaway to create this monopoly was okay because it was condoned  
15   by the City. However, that is 1. Unequivocally not true; and, 2. Not what Plaintiffs have  
16   properly plead and alleged against Defendants.

17          The Reno Municipal Code provisions applicable to the Franchise Agreements were not  
18   amended until after the Franchise Agreements were executed and the very purpose for which  
19   they were amended was to harmonize them with the Franchise Agreements. So Defendants  
20   cannot use these provisions as a shield to protect themselves from the their conduct in  
21   conspiring to create a monopoly before the applicable Reno Municipal Code provisions or the  
22   Franchise Agreements were in effect.

23          The facts are simple. Defendants worked with Castaway to form a secret buy-out  
24   agreement and agreed to keep it hidden from the City of Reno until after both Castaway and  
25   Waste Management had secured the two Franchised Zones within the City of Reno. Once the  
26   Franchise Agreements were executed in Waste Management and Castaway's favor, the buy-out

1 was made public. This is because if Waste Management had bought out Castaway before the  
2 two Franchised zones were awarded by the City of Reno, then another entity, other than  
3 Defendants, would have been awarded the second zone- thus, rendering Defendants unable to  
4 secure the monopoly they secretly planned with Castaway.

5 When sitting council member at the time Dave Aiazzi was asked, "Did you know that WM  
6 already cut a deal to buy Castaway when they went before the City Council?" and, "Would you  
7 have still supported WM getting the franchise if you had known this?" Mr. Aiazzi responded  
8 stating, "I don't believe the deal would have passed as it is now . . . I would think that there  
9 would have been much more discussion on how this part of the contract was addresse[d]. We  
10 spent a majority of time on this issue alone." This is the exact reason why Waste Management  
11 deliberately and intentionally failed to disclose this information to the City prior to execution of  
12 the two Franchise Agreements- so that Waste Management could have an exclusive monopoly,  
13 despite the City's explicit efforts and intention to have more than one Franchisee and two  
14 different Franchised zones.

15 This is all set forth in Plaintiffs' Opposition to Motion for Summary Judgment, as well as  
16 Plaintiffs' request for discovery pursuant to NRCF 56(f). The real issue here is this:

17 **Defendant knows that through discovery Plaintiffs can prove this, which is why**  
18 **Defendants are doing everything in their power to thwart Plaintiffs' from exercising**  
19 **their legal right to engage in discovery.**

20 The basis for Defendants' Motion to Stay Discovery is because they assume they will be  
21 prevailing on their Motion for Summary Judgment which at the very least, by the very language  
22 set forth in NRCF 56 and long standing legal precedent in the State of Nevada, simply cannot be  
23 the case because of the very fact that Plaintiffs have not had the opportunity to engage in  
24 discovery. Plaintiffs are entitled to do discovery. Defendants Motion for Summary Judgment  
25 must be denied, because Plaintiffs have a legal right to conduct discovery. To fail to allow  
26 Plaintiffs to conduct discovery would be a gross abuse of discretion. Accordingly, both

1 Defendants' Motion for Summary Judgment and Defendants' Motion to Stay Discovery must be  
2 denied in their entirety.

3 **II. UNDISPUTED FACTS**

4 Defendants filed their Motion for Summary Judgment before they had even filed an  
5 Answer in this case. Literally the exact same day Defendants filed their Answer, Plaintiffs'  
6 counsel sent correspondence requesting available dates for a 16.1 Early Case Conference. See,  
7 Exhibit 1, attached hereto. An Early Case Conference was then held on October 14, 2015 and a  
8 Joint Case Conference Report was filed herein on October 23, 2015.

9 On October 28, 2015, Plaintiffs' served a Subpoena Duces Tecum on Castaway's previous  
10 counsel seeking records by and between Waste Management and Castaway during the time  
11 frame before the Franchise Agreements were entered into as well as after, which Plaintiffs  
12 believe will directly support their claims that Defendants conspired with Castaway to create a  
13 monopoly, despite the City's efforts to have two different garbage haulers within the City of  
14 Reno. Literally the day after that records subpoena was served, Defendants' filed their Motion  
15 to Stay Discovery. Clearly, Defendants' are doing any and everything in their power to stop  
16 Plaintiffs' from their legal right to engage in discovery.

17 **III. LEGAL ARGUMENT**

18 **A. Defendants' cannot prevail on their Motion for Summary Judgment**

19 In *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 110 P.2d 59 (2005), in a case  
20 with procedural circumstances directly on point with this case, the Nevada Supreme Court held  
21 that the District Court erred in granting summary judgment because it improperly denied  
22 Plaintiff's NRCP 56(f) request for a continuance to conduct discovery to oppose the summary  
23 judgment motion. Just like Plaintiffs herein, in *Aviation Ventures*, the Plaintiff therein filed a  
24 request for a continuance when opposing the Defendants' Motion for Summary Judgment in  
25 accordance with NRCP 56(f) because they were unable to gather facts to support the  
26 Opposition without formal discovery. *Id.* at 118.

1 Again, exactly as Plaintiffs have done herein, in *Aviation Ventures*, its opposition to the  
2 motion for summary judgment, Plaintiff "informed the District Court that the parties had yet to  
3 file a joint case conference report as required under NRCP 16.1 and that, as a result, discovery  
4 had not yet begun." *Id.* In addition and again exactly as is the case here, the Nevada Supreme  
5 Court took into account that "less than eight months had passed between the complaint and the  
6 granting of summary judgment" and that there was "no evidence in the record that [the Plaintiff  
7 therein] lacked diligence in conducting discovery." *Id.* Further, the Court also considered the  
8 fact that the Plaintiff in *Aviation Ventures* had "requested a continuance before either party had  
9 filed a joint case conference report, which must precede discovery." *Id.* These are the exact  
10 procedural facts currently before this Court. When Defendants filed their Motion for Summary  
11 Judgment, the parties had yet to file a Joint Case Conference Report as required under NRCP  
12 16.1 and thus, Plaintiffs had not yet had the opportunity to engage in discovery. Further, and  
13 even more compelling that as set forth in *Aviation Ventures*, here, not only did Defendants file  
14 their Motion for Summary Judgment less than eight (8) months between when the Complaint  
15 was filed and when the Motion for Summary Judgment was filed, here, there was less than six  
16 (6) months between when the Amended Complaint was filed and when Defendants filed their  
17 Motion for Summary Judgment. Ultimately, in *Aviation Ventures*, the Nevada Supreme Court  
18 agreed with the Plaintiff and held that the District Court abused its discretion in that the  
19 District Court should have granted the Plaintiffs' request for a continuance to allow it to engage  
20 in discovery. *Id.* at 118-119.

21 In *Halimi v. Blacketer* 105 Nev. 105, 770 P.2d 531, 531-531 (1989), the Nevada Supreme  
22 Court held that the District Court had abused its discretion in denying an NRCP 56(f) request  
23 for continuance and granted summary judgment in a case where the complaint had been filed  
24 only a year before the summary judgment was granted. The Court noted that summary  
25 judgment is improper when a party seeks additional time to conduct discovery to compile facts  
26 to oppose the motion. *Id.* at 106, 770 P.2d at 531; See also, *Ameritrade, Inc. v. First Interstate*

1 *Bank*, 105 Nev. 696, 699-700, 782 P.2d 1318, 1320 (1989)(holding, that the District Court  
2 abused its discretion when summary judgment was granted only eight months after the filing of  
3 the Complaint).

4 The *Halimi* Court further held that, when no dilatory motive was shown, it was an abuse  
5 of discretion to refuse a request for further discovery at such an early stage in the proceedings.  
6 *Halimi*, 105 Nev. at 106, 770 P.2d at 531. The same is true here. It simply cannot be shown that  
7 Plaintiffs have any sort of dilatory motive in their request for an opportunity to conduct  
8 discovery because literally the very same day that Defendants filed their Answer, Plaintiffs'  
9 counsel immediately sought to schedule an NRCP 16.1 Early Case Conference in order to get the  
10 discovery ball rolling and further, immediately upon the filing of a Joint Case Conference Report  
11 herein, commenced discovery by serving a Subpoena Duces Tecum for records. See, Exhibit 2,  
12 attached hereto.

13 In *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642, the Nevada Supreme  
14 Court similarly held that the Plaintiff therein was entitled to additional time for discovery, and,  
15 thus, the District Court's grant of summary judgment less than two years after the filing of the  
16 complaint was abuse of discretion.

17 These are not isolated cases. The case law is clear and voluminous. The long standing  
18 precedent in this jurisdiction is that when a proper request for a continuance in order to  
19 conduct discovery is made in accordance with NRCP 56(f), it is an abuse of discretion for the  
20 Court to grant summary judgment.

21 Here, Plaintiffs have invoked the protections of NRCP 56(f) in good faith and  
22 affirmatively set forth by Affidavit why a continuance is necessary and why discovery is needed  
23 in order to better support Plaintiffs' Opposition to Motion for Summary Judgment. Plaintiffs  
24 have met their burden under NRCP 56(f). Plaintiffs have properly supported their request for a  
25 continuance with an affidavit stating that further discovery is necessary to assist in opposing  
26 the summary judgment motion and explaining the factual evidence Plaintiffs expected to learn



1 by engaging in discovery. See, *Choy v. Ameristar Casinos, Inc.* 265 P.3d 698, 700 (Nev. 2011)  
2 (providing that a party requesting a continuance of a summary judgment motion to conduct  
3 further discovery must attach an affidavit explaining why he is seeking the continuance). See  
4 also, Plaintiffs' NRCP 56(f) Affidavit attached to Plaintiffs' Opposition to Motion for Summary  
5 Judgment, a true and correct copy of which is attached hereto at Exhibit 3 for this Court's  
6 convenience.

7 Based on the foregoing, Defendants' Motion for Summary Judgment must be denied and,  
8 as set forth more fully below, Defendants' Motion to Stay Discovery must also be denied.

9 ***B. Defendants' Motion to Stay Discovery must be denied in its entirety***

10 Defendants' Motion to Stay Discovery is improper and wholly inadequate for a number  
11 of reasons. First, Defendants cite to only one Nevada case in support of their request therein  
12 and that case is not a State Court case but rather a Federal District Court case. Second, the  
13 cases that Defendants do rely on are in part irrelevant and in other part do not even support  
14 their position.

15 In their Motion to Stay Discovery, Defendants cite to exactly four (4) cases to support  
16 their request: *Landis v. North Am. Co.*, 299 US 248, 254-55 (1936), *Republic of Ecuador v.*  
17 *Bjorkman*, 801 F. Supp.2d 1121, 1128 (D. Colo. 2011), *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.  
18 897, 602-603 (D. Nev. 2011), and, *Hovermale v. Sch. Bd. of Hillsborough Cnty. Fla.*, 128 F.R.D.  
19 287, 289 (M.D. Fla. 1989).

20 The first case, *Landis v. North Am. Co.*, 299 US 248 (1936), has absolutely nothing to do  
21 with staying discovery. *Landis* is about staying proceedings in one lawsuit in order to abide by  
22 the proceedings of another lawsuit and the issue of whether the parties to the two causes are  
23 required to be the same and whether the issues must be identical- which is clearly irrelevant to  
24 the case at hand. However, should this Court be inclined to attempt to apply the *Landis* holding  
25 to a situation considering a stay of discovery, as we have here, it is important for this Court to  
26 consider the heavy burden that *Landis* analyzed therein:

1 [A] Litigant seeking stay of proceedings in one suit to abide proceedings in  
2 another must make out clear case of hardship or inequity in being required  
3 to go forward, if there is even a fair possibility that the stay for which he  
4 prays will work damage to some one else, and only in rare circumstances  
5 will a litigant in one cause be compelled to stand aside while a litigant in  
6 another settles the rule of law that will define the rights of both.

7 *Id.* at 254-255. While Plaintiff maintains that Landis is inapplicable and irrelevant to this issues  
8 before this Court, even if this Court were to attempt to apply Landis to Defendants' instant  
9 request, Defendants have failed to meet their burden of showing "**a clear case of hardship or**  
10 **inequity**" in asking to stay discovery. In fact, Defendants fail to detail at all whatsoever exactly  
11 what harm they would suffer by proceeding with discovery.

12 The second case relied upon by Defendants is the Colorado case of *Republic of Ecuador v.*  
13 *Bjorkman*, 801 F. Supp.2d 1121, 1128 (D. Colo. 2011). In citing that case, Defendants write,  
14 "While '[s]tays of discovery are generally disfavored,' (*Republic of Ecuador v. Bjorkman*, 801 F.  
15 Supp.2d 1121, 1128 (D. Colo. 2011)), Courts will often enter a stay of discovery where a  
16 pending dispositive motion resolves the entire case. See *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.  
17 597, 602-603 (D. Nev. 2011). " See, Motion to Stay Discovery, at 4:12-14. First off, *Republic of*  
18 *Ecuador* says absolutely nothing about entering a stay of discovery where a pending dispositive  
19 motion resolves the entire case.

20 In fact, in *Republic of Ecuador* the lower Court entered an Order granting the Petitioner's  
21 Application for Issuance of a Subpoena and the Respondent filed a Motion to Stay Enforcement  
22 of the Court Order. *Id.* at 1126. While *Republic of Ecuador* is a Colorado case that is not binding  
23 on this Court, it is not even persuasive in that it deals with staying a Court Order, not staying all  
24 discovery proceedings until a ruling on a dispositive is entered like the case at hand. In any  
25 event, the *Republic of Ecuador* Court held that the movants failed to demonstrate good cause to  
26 justify their request for a stay of execution of the lower Court's order. *Id.* at 1128. As such, the  
27 only accurate statement relied upon by Defendants in their Motion to Stay Discovery with  
28

1 respect to the *Republic of Ecuador* case is that, "Stays of discovery are generally disfavored in  
2 this district." *Id.*; See also, Motion to Stay Discovery, at 4:12-14.

3 The third case that Defendants rely on is the Nevada District Court case of *Tradebay, LLC*  
4 *v. eBay, Inc.*, 278 F.R.D. 597, 602-603 (D. Nev. 2011), and the only case that deals with Nevada  
5 jurisdiction cited by Defendants, albeit a Federal case. Defendants' citation to this case appears  
6 to state that, "Courts will often enter a stay of discovery where a pending dispositive motion  
7 resolves the entire case." See, Motion to Stay Discovery, at 4:13-15. The *Tradebay* case  
8 however, deals with staying discovery while a Motion to Dismiss is pending, not a Motion for  
9 Summary Judgment. In addition, in *Tradebay*, contrary to the facts of this case, in making their  
10 ruling, the Court relied on the fact that the Plaintiff did not claim the need for discovery in its  
11 opposition to the Motion to Dismiss. *Id.* at 608. Obviously these facts are distinguishable from  
12 the facts of the case before this Court because, the motion pending before this Court is a Motion  
13 for Summary Judgment and Plaintiffs here have explicitly requested the opportunity to engage  
14 in discovery. Further, Defendants fail to note that the *Tradebay* Court analyzed the request to  
15 stay discovery pending a ruling on the Motion to Dismiss therein as follows:

16 The purpose of Federal Rule of Civil Procedure 12(b)(6) is to enable  
17 defendants to challenge the legal sufficiency of a complaint without  
18 subjecting themselves to discovery. The Ninth Circuit has held that  
19 discovery at the pleading stage is only appropriate where factual issues are  
20 raised by a Rule 12(b) motion, and a pending Rule 12(b) motion to dismiss  
is sufficient cause for granting a protective order. . . . Staying discovery  
when a court is convinced that the plaintiff will be unable to state a claim  
for relief furthers the goal of efficiency for the court and the litigants.

21 (Internal Citations Omitted). *Id.* at 601. Clearly this reasoning is inapplicable to the case before  
22 this Court because we are not dealing with a Rule 12(b)(6) Motion but instead a NRCP Rule 56  
23 Motion for Summary Judgment. Here, we are not dealing with whether or not Plaintiffs' have  
24 been able to state a claim for relief, which has already been decided by this Court. Further, this  
25 argument is premised on the presumption that the Defendants will be successful on the  
26 underlying pending Motion to Dismiss (or here, Motion for Summary Judgment) which, as set

1 forth more fully herein, it would be an abuse of discretion for this Court to grant Defendants'  
2 pending Motion for Summary Judgment without at least first giving Plaintiffs the opportunity to  
3 engage in reasonable discovery as respectfully requested. The *Tradebay* Court goes on to state:

4 It is well-established that a party seeking a stay of discovery carries the  
5 heavy burden of making a strong showing why discovery should be denied.  
6 A showing that discovery may involve some inconvenience and expense  
7 does not suffice to establish good cause for issuance of a protective order.  
8 Rather, a party seeking a protective order must show a particular and  
9 specific need for the protective order, and broad or conclusory statements  
concerning the need for protection are insufficient. . . .

10 The Ninth Circuit has also held that under certain circumstances it is an  
11 abuse of discretion to deny discovery while a dispositive motion is pending.

12 (Internal Citations Omitted). *Id.* at 601-602. Here, assuming arguendo that this argument can  
13 be applied to a Motion for Summary Judgment as opposed to a Motion to Dismiss (which is  
14 highly unlikely at best), Defendants have unequivocally failed to meet their "heavy burden." To  
15 the contrary, Defendants have not noted one single reason or example of a "particular and  
16 specific need" to stay discovery. Instead, Defendants make one single conclusory statement  
17 that, "all parties will be given the benefit of the Court's decision on the MSJ *before accruing*  
18 *litigation costs and disrupting business activities to engage in the discovery process.*"  
19 [Emphasis Added]. Motion to Stay Discovery, at 5:6-8.

20 This singular conclusory statement, while grossly inadequate to satisfy the "particular  
21 and specific need" requirement, warrants a bit more discussion. As set forth herein, Plaintiffs  
22 have commenced discovery. However, the discovery that Plaintiffs have propounded thus far  
23 (in the past week since the Joint Case Conference Report has been filed) is a Subpoena Duces  
24 Tecum (a Subpoena for records) on a non-party. Plaintiffs are perplexed as to how this, as the  
25 only pending discovery at the time of the filing of Defendants' Motion to Stay Discovery, will  
26 cause Defendants to "accru[e] litigation costs and disrupt[] business activities." Quite frankly,  
27 the only "litigation costs" incurred in propounding this discovery on a non-party was incurred  
28 by Plaintiffs. Further, Plaintiffs have made a records request from a non-party rendering

1 Plaintiffs equally baffled as to how the discovery currently pending in this case could possibly  
2 cause Defendants a "disrupti[on of] business activities." The answer is simple- the pending  
3 discovery in this case will have absolutely no barring on Defendants' "litigation costs" or a  
4 "disrupti[on]" of Defendants' "business activities." What is does do is give Plaintiffs their fair  
5 and rightful opportunity to conduct reasonable inquiry into documents which will provide  
6 evidence that will prove Plaintiffs' case. In any event and as set forth in the *Tradebay* case  
7 relied upon by Defendants, "A showing that discovery may involve some inconvenience and  
8 expense does not suffice to establish good cause for issuance of a protective order." *Tradebay,*  
9 *LLC*, 278 F.R.D. at 601.

10 The fourth and final case relied upon by Defendants in their Motion to Stay Discovery is  
11 the Florida case of *Hovermale v. Sch. Bd. of Hillsborough Cnty. Fla.*, 128 F.R.D. 287, 289 (M.D. Fla.  
12 1989). Defendants rely on this case for the position that "motions to stay discovery are not  
13 favored and are rarely appropriate where resolution of the dispositive motion may not dispose  
14 of the entire case." Motion to Stay Discovery, at 4:18-21. However, Defendants completely take  
15 this statement out of context. While the *Hovermale* decision does include that quotation  
16 [which, while not properly cited as such by Defendants, is actually a citation from another  
17 case], the sentence immediately preceding the quotation relied upon by Defendants reads as  
18 follows:

19 It is an abuse of that discretion, however, to stay general discovery if  
20 'plaintiff [has] been denied discovery which relates to the summary  
21 judgment motion.'

22 [Emphasis Added]. *Id.* at 289; Citing, *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5th Cir.  
23 1976). While not completely rising to the level of a violation of Rule 3.3(a)(2)<sup>1</sup> of the Nevada  
24 Rules of Professional Conduct, only because it is not authority in the controlling jurisdiction (i.e.  
25 Nevada), the fact that Defendants attempts to rely on this case knowing that literally the very

26 <sup>1</sup> Rule 3.3(a)(2) provides, "A lawyer shall not knowingly: Fail to disclose to the tribunal legal authority in the  
27 controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by  
28 opposing counsel."

1 sentence preceding the one Defendants' cite to this Court, unequivocally supports Plaintiffs  
2 position and contradicts Defendants, is both unethical and improper. Such gross and egregious  
3 misrepresentations of law should not be tolerated.

4 Further, the *Hovermale* Court ultimately held that, "*it would be improper and an abuse*  
5 *of discretion to stay general discovery in this case pending a determination on defendants'*  
6 *motion for summary judgment,*" and as such, the Motion to Stay Discovery was denied.  
7 [Emphasis Added]. *Hovermale*, 128 F.R.D. at 290. Again, the *Hovermale* Court completely  
8 supports the fact that granting Defendants' Motion to Stay Discovery would be an abuse of  
9 discretion.

10 Defendants have failed to provide any authority that actually supports their request that  
11 this Court grant their Motion to Stay Discovery. In fact, the authorities cited by Defendants  
12 either support Plaintiffs' Opposition or are inapplicable to the case currently pending before  
13 this Court.

14 Again, the case law is clear. Not only would it be inappropriate for this Court to grant  
15 Defendants' Motion to Stay Discovery pending a decision on Defendants' Motion for Summary  
16 Judgment, it would be an abuse of discretion for this Court to grant either Defendants' Motion  
17 to Stay Discovery or Defendants Motion for Summary Judgment because as set forth more fully  
18 herein, Plaintiffs are entitled in accordance with NRCP 56(f) to have an opportunity to engage  
19 in reasonable discovery. Failure to afford Plaintiffs that opportunity would results in an abuse  
20 of discretion by this Court. See, *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 110  
21 P.2d 59 (2005).

#### 22 **IV. REQUEST FOR SANCTIONS**

23 NRCP 26(g)(2) provides as follows:

24 Every discovery request, response or objection made by a party  
25 represented by an attorney shall be signed by at least one attorney of  
26 record in the attorney's individual name, whose address shall be stated. . . .  
27 The signature of the attorney or party constitutes a certification that to the  
28 best of the signer's knowledge, information, and belief, formed after a  
reasonable inquiry, the request, response, or objection, is:

1  
2 (A) *consistent with these rules and warranted by existing law or a good*  
3 *faith argument for the extension, modification, or reversal of*  
4 *existing law;*

5 (B) *not interposed for any improper purpose, such as to harass, obscure,*  
6 *equivocate or to cause unnecessary delay* or needless increase in the  
7 cost of litigation; and

8 (C) not unreasonable or unduly burdensome or expensive, given the needs  
9 of the case, the discovery already had in the case, the amount in  
10 controversy, and the importance of the issues at stake in the litigation.

11 [Emphasis Added]. As set forth more fully herein, by signing their Motion to Stay Discovery,  
12 which is comprised of misrepresentations, law that is completely contradictory to the laws of  
13 this jurisdiction, fails to support Defendants' position whatsoever and was clearly done for the  
14 sole purpose of delaying Plaintiffs' legal right to discovery while, Defendants have violated  
15 NRCPP 26(g)(2). NRCPP 26(g)(3) further provides:

16 If without substantial justification a certification is made in violation of this  
17 rule, the court, upon motion or upon its own initiative, shall impose upon  
18 the person who made the certification, the party on whose behalf the  
19 disclosure, request, response, or objection was made, or both, an  
20 appropriate sanction, which may include an order to pay the amount of the  
21 reasonable expenses incurred because of the violation, including a  
22 reasonable attorney's fee.

23 Since the inception of this case, Defendants have blatantly and routinely ignored the  
24 Nevada Rules of Civil Procedure and essentially flaunted the fact that they have been allowed to  
25 do so by continuing to do it. In an effort to refresh this Courts recollection as to just how many  
26 times Defendants have failed to comply with the rules of this Court without penalty, despite  
27 repeated requests by Plaintiffs, the following is a non-exhaustive list of Defendants' failures:

- 28 • Defendants failed to timely file a responsive pleading/ Answer to Plaintiffs' Verified Amended Complaint;
- Defendants failed to timely file a Motion for Extension of Time to file a responsive pleading/ Answer to Plaintiffs' Verified Amended Complaint;

- Defendants failed to file a timely Opposition to Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction;
- Defendants failed to timely file their Reply to Opposition to Motion to Dismiss; and,
- Now, Defendant has filed an improper and frivolous Motion to Stay Discovery which is not based on any case law that supports their request and instead was filed for the sole purpose of delaying Plaintiffs' from the right to engage in discovery.

Each and every time that Defendants have failed to comply with the rules of this Court, Plaintiffs have asked that this Court take action to force Defendants to comply with the rules and every single time, this Court has refused to do so.

The procedural rules of this Court 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 provisions written into the rules will, as a general proposition, be enforced by the courts in order to promote the timely and efficient processing of cases. In effect, these provisions recognize judicial commitment to the proposition that 'justice delayed is justice denied'."

The Nevada Supreme Court in *Doolittle v. Doolittle*, 262 P.2d 955 (1953) relying upon *Gammill v. Federal Land Bank*, 129 F.2d 502, held that, "...it is clear that the rules [of civil procedure] **are expected to be followed**..." [Emphasis Added].

This Court should not continue to allow such complete disregard of the rules to continue. It is not fair to Plaintiffs, who make every effort to ensure that they comply with the



1 rules while at the same time, Defendants get to skate without penalty. Again, at some point,  
2 enough is enough.


3 As such and in accordance with NRCP 26(g)(3), Plaintiffs' respectfully ask this Court to  
4 sanction Defendants in the amount of \$5,000.00, which amount represents the costs Plaintiffs  
5 have incurred in consistently having to object to Defendants' procedural failures. And the  
6 instant Motion to Stay Discovery is no exception.

7 Plaintiffs even gave Defendants' the opportunity to withdraw their Motion to Stay  
8 Discovery and explained that their failure to do so would result in Plaintiffs' request for  
9 sanctions. Not surprisingly, Defendants ignored Plaintiffs' offer, likely assuming there would  
10 again be no repercussions for their procedural deficiencies. Enough is enough. In the interest  
11 of justice and fairness to Plaintiffs, Defendants must be held accountable.

12 **V. CONCLUSION**

13 Based on the foregoing, Plaintiffs respectfully request that this Court deny Defendants'  
14 Motion for Summary Judgment and further deny Defendants' unfounded and meritless Motion  
15 to Stay Discovery. In addition, Plaintiffs' further respectfully ask that this Court sanction  
16 Defendants for their habitual misconduct and award Plaintiffs attorney's fees in the about of  
17 \$5,000 for their repeated procedural failures.

18  
19 DATED this 2<sup>nd</sup> day of November, 2015.

20   
21 STEPHANIE RICE, ESQ.  
22 DEL HARDY, ESQ.  
23 Attorneys for Plaintiffs  
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, and that  
3 on this date I served the foregoing document(s) described as **OPPOSITION TO MOTION TO**  
4 **STAY DISCOVERY** on all parties to this action by:

5 \_\_\_\_\_  
6 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.

7 ☒ Personal delivery  
8 \_\_\_\_\_  
9 Facsimile (FAX) and/or Email:  
10 ☒ EFLEX- Court's Electronic Filing System  
11 \_\_\_\_\_  
12 Messenger Service  
13 \_\_\_\_\_  
14 Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**  
18 **Pursuant to NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain  
19 the social security number of any person.

20  
21 DATED this 2nd day of November, 2015.

22   
23 **EMPLOYEE OF HARDY LAW GROUP**  
24  
25  
26  
27  
28

**AFFIDAVIT OF STEPHANIE RICE, ESQ.**

I, Stephanie Rice, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
2. That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
3. That I believe that denying Plaintiffs an opportunity to engage in discovery would be unfair and contrary to the explicit and long standing precedent of this jurisdiction and respectfully request that this Court allow Plaintiffs' to have the opportunity to engage in discovery and deny Defendants' Motion to Stay Discovery;
4. That I have read the foregoing OPPOSITION TO MOTION TO STAY DISCOVERY and know the contents thereof;
5. Based on information and belief that I affirm that the Exhibits attached to such OPPOSITION TO MOTION TO STAY DISCOVERY, above-mentioned, namely Exhibits 1 through 3 are true and correct copies of such documents; and,
6. 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 2<sup>nd</sup> day November, 2015.

  
STEPHANIE RICE

SUBSCRIBED and SWORN TO before me  
this 2<sup>nd</sup> day of November, 2015.

  
NOTARY PUBLIC



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**IN THE SECOND JUDICIAL DISTRICT COURT**

NEVADA RECYCLING AND SALVAGE et. al.

v.

RENO DISPOSAL COMPANY et. al.

CASE NO. CV15-00497

**OPPOSITION TO MOTION TO STAY DISCOVERY**

**EXHIBIT INDEX**

EXHIBIT #	DESCRIPTION	LENGTH
1	Email correspondence from Stephanie Rice to Scott Hernandez and Mark Simons with her dates of availability for a 16.1 Early Case Conference and requesting their available dates	2
2	Subpoena Duces Tecum of Dan R. Reaser, Esq.	8
3	Affidavit of Stephanie Rice and Affidavit of Del Hardy	4

FILED  
Electronically  
2015-11-02 11:24:07 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5214685 : mpurdy

# EXHIBIT “1”

# EXHIBIT “1”

From: **Stephanie Rice** stephanie@hardylawgroup.com  
Subject: Nevada Recycling and Salvage, et. al. v. Waste Management  
Date: October 2, 2015 at 3:26 PM  
To: Scott Hernandez shernandez@rbsllaw.com, Mark Simons msimons@rbsllaw.com



Mark and Scott,

Please let me know when one or both of you are available for a 16.1 Early Case Conference. I am available the morning of Monday, October 5th, anytime Wednesday, October 7th, late afternoon October 8th or anytime Friday, October 9th.  
Stephanie Rice, Esq.

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

FILED  
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2015-11-02 11:24:07 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5214685 : mpurdy

# EXHIBIT “2”

# EXHIBIT “2”

1 CODE: 4065  
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 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
13  
14 IN AND FOR THE COUNTY OF WASHOE

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

20 Plaintiffs,

21 vs.

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

Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

29  
30  
31 SUBPOENA DUCES TECUM  
32 DAN R. REASER, ESQ.

33 THE STATE OF NEVADA SENDS GREETINGS TO:

34 DAN R. REASER, ESQ.  
35 c/o Fennemore Craig  
36 300 E. 2<sup>nd</sup> Street, Suite 1510  
37 Reno, Nevada 89501

38 You are hereby commanded to appear at the Law Offices of Hardy Law Group, 98 Winter  
39 Street, Reno, Nevada 89503, on November 16, 2015, at 10:00 a.m.

40 You are commanded to bring with you the following:

- 41 1. Any and all correspondence, including but not limited to: letters,



1 emails, memorandum, and proposals; by and/or between you (and/or  
2 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
3 2012 and October 28, 2015.

4 2. Any and all correspondence, including but not limited to: letters,  
5 emails, memorandum, and proposals; by and/or between you (and/or  
6 any agent of your law firm) and Greg Martinelli between January 1, 2012  
7 and October 28, 2015.

8 3. Any and all documents exchanged by and/or between you (and/or  
9 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
10 2012 and October 28, 2015, including but not limited to: proposals,  
11 contracts, draft documents, agreements, invoices and accountings.

12 4. Any and all documents exchanged by and/or between you (and/or  
13 any agent of your law firm) and Greg Martinelli between January 1, 2012  
14 and October 28, 2015, including but not limited to: proposals, contracts,  
15 draft documents, agreements, invoices and accountings.

16 You may deliver these documents to Del Hardy, Esq., of Hardy Law Group, 98 Winter  
17 Street, Reno, NV 89503 on or before November 16, 2015, at 10:00 a.m., in lieu of appearing  
18 that day.

19 *Any person failing to appear and produce the records may be deemed in*  
20 *contempt of the court and shall be liable to the party injured in the sum of*  
21 *\$100.00, and for such damages as may be sustained by him on account of*  
22 *such neglect or refusal.*

23 DATED this 28<sup>th</sup> day of October, 2015.

24  
25   
26 STEPMANIE RICE, ESQ.  
27 DEL HARDY, ESQ.  
28 Attorneys for Plaintiffs

**CERTIFICATE OF CUSTODIAN OF RECORDS**

STATE OF NEVADA

COUNTY OF WASHOE

} ss.

\_\_\_\_\_, hereby swears under penalty of perjury and certifies the following:

1. That he or she is holds the position title of \_\_\_\_\_ at \_\_\_\_\_, and in such capacity is the custodian of the records of said business;

2. That on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, the Deponent received a Subpoena Duces Tecum for the release of communications, records and/or documents relating to Gary Duhon, Esq. and Greg Martinelli, from January 1, 2012 through October 28, 2015;

3. That the Deponent has examined the original of those records and/ or documents and has made a true and exact copy of them and that the reproduction of them attached hereto is true and complete; and

4. That the original of those records and/or documents was made at or near the time of the acts, events, conditions and opinions recited therein by or from information, transmitted by a person with knowledge of the course of the regularly conducted activity of the Deponent or the business in which the Deponent is engaged or employed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

(Signature)

NOTARY PUBLIC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 on this date I served the foregoing document(s) described as SUBPOENA DUCES TECUM-  
4 DAN R. REASER, ESQ. on all parties to this action by:

5 X Placing an original or true copy thereof in a sealed envelope placed for  
6 collection 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 \_\_\_\_\_ EFLEX- Court's Electronic Filing System

11 \_\_\_\_\_ Messenger Service

12 \_\_\_\_\_ Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**

18 Pursuant to NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED this 28 day of October, 2015.

22  
23   
24 EMPLOYEE OF HARDY LAW GROUP  
25  
26  
27  
28

RULE 45 (c) AND (d) NEVADA RULES OF CIVIL PROCEDURE

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued, shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to the inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which the subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(3)(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony of material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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1 (d) DUTIES IN RESPONDING TO SUBPOENA.

2 (1) A person responding to a subpoena to produce documents shall produce them as they  
are kept in the usual course of business or shall organize and label them to correspond with the  
categories in the demand.

3 (2) When information subject to a subpoena is withheld on a claim that it is privileged or  
subject to protection as trial preparation materials, the claim shall be made expressly and shall be  
4 supported by a description of the nature of the documents, communications, or things not produced  
that is sufficient to enable the demanding party to contest the claims.

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STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

I hereby certify and return that I received the within Subpoena Duces Tecum on the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, and that I personally served the same upon  
\_\_\_\_\_ by showing the within to him/her, and delivering  
to him/her a copy of the same in \_\_\_\_\_ County, \_\_\_\_\_, on this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Affiant)

FILED  
Electronically  
2015-11-02 11:24:07 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5214685 : mpurdy

# EXHIBIT “3”

# EXHIBIT “3”

---

**AFFIDAVIT OF STEPHANIE RICE, ESQ.**

I, Stephanie Rice, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
2. That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
3. That Defendants just filed their Answer to Plaintiffs' Verified Amended Complaint on October 2, 2015, after the filing of their Motion for Summary Judgment;
4. That a 16.1 Early Case Conference has been scheduled for October 14, 2015;
5. As such, in accordance with NRCP 26(a), discovery in this case cannot commence sooner than 10 days after the filing of a Joint Case Conference Report;
6. As a result, no discovery has occurred to date in this case;
7. That the following discovery is needed in order to further show the existence of genuine issues of material facts present in this case:
  - The Deposition of Robert "Jay" Gardner, a former employee and, upon information and belief, shareholder of Castaway Trash Hauling with knowledge of the Waste Management buyout of Castaway Trash Hauling;
  - The Deposition of Spike Duque, one of the owners of Castaway Trash Hauling with direct and specific knowledge of the Waste Management buyout of Castaway Trash Hauling and knowledge of the fact that there was already an agreement in place prior to the execution of the Franchise Agreements;
  - The Deposition of Steven Duque, one of the owners of Castaway Trash Hauling with direct and specific knowledge of the Waste Management buyout of Castaway Trash Hauling and knowledge of the fact that there was already an agreement in place prior to the execution of the Franchise Agreements;
  - The Deposition of Brad Capurro, who is believed to have been a shareholder with Castaway with direct and specific knowledge of the Waste Management buyout of



1 Castaway Trash Hauling and knowledge of the fact that there was already an  
2 agreement in place prior to the execution of the Franchise Agreements; and

- 3 • The Depositions of Jessica Sferrazza, David Alazzi, Sharon Zadra, Pierre Hascheff and  
4 Dan Gustin, who were all voting members of the Reno City Council who voted on the  
5 Franchise Agreements and who are believed to have been surprised by the news of  
6 Waste Management buying out Castaway and would have voted differently had they  
7 been informed of the Waste Management/ Castaway buyout prior to voting on the  
8 Franchise Agreements.

9 8. Due to the fact that one half of the above-named individuals had previous  
10 ownership interests in Castaway Trash Hauling, it is believed that they are unwilling to assist  
11 with the facts and information sought by Plaintiffs without a formal subpoena;

12 9. Due to the fact that the other half of the above-named individuals are former  
13 and/or current elected officials, the undersigned has had and believes she will continue to have  
14 difficulty obtaining a sworn statement or additional information from them without the formal  
15 discovery process;

16 10. Based on the foregoing, I have been unable to obtain by affidavit additional facts  
17 essential to further justify the Plaintiffs' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;

18 11. That I have read the foregoing OPPOSITION TO MOTION FOR SUMMARY  
19 JUDGMENT and know the contents thereof;

20 12. Based on information and belief that I affirm that the Exhibits attached to such  
21 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, above-mentioned, namely Exhibits 1  
22 through 4 are true and correct copies of such documents; and,

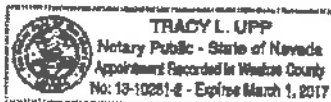
23 13. That the same is true of my knowledge except as to those matters therein stated  
24 information and belief, and as to those matters I believe them to be true.

25 FURTHER YOUR AFFIANT SAYETH NAUGHT.

26 Dated this 8<sup>th</sup> day October, 2015.

27 SUBSCRIBED and SWORN TO before me  
28 this 8 day of October, 2015.

NOTARY PUBLIC



**AFFIDAVIT OF DEL HARDY, ESQ.**

I, DEL HARDY, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
2. That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
3. That the email attached to Plaintiffs' Opposition to Motion to Dismiss at Exhibit 1, by an between myself and Former Councilman David Alazzi is a true and correct copy of my communications with Mr. Alazzi;
4. That I further asked Mr. Alazzi for an Affidavit containing the information contained in our email transaction and that as of the date of this Affidavit, he has not responded to my request one way or the other; and,
5. 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.

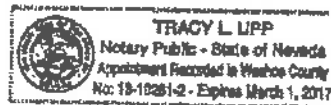
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 8 day October, 2015.

  
DEL HARDY

SUBSCRIBED and SWORN TO before me  
this 8 day of October, 2015.

  
NOTARY PUBLIC



3785  
Mark G. Simons, Esq., NSB No. 5132  
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*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' REPLY  
IN SUPPORT OF MOTION TO STAY DISCOVERY**

Defendants Reno Disposal Company, Inc., dba Waste Management ("Reno  
Disposal") and Refuse, Inc., (collectively, the "Defendants"), hereby submit their reply  
brief in support of their Motion to Stay Discovery.

1     **I.     INTRODUCTION**

2             The Motion to Stay Discovery is intended to prevent the undue burden and  
3     expense of discovery in a case that may be disposed by the Motion for Summary  
4     Judgement ("MSJ") currently submitted to the Court.

5             The MSJ presents a question of contract interpretation of two unambiguous  
6     contracts: the City of Reno's Commercial Solid Waste and Recyclable Materials  
7     Franchise Agreements ("Franchise Agreements") with (1) Reno Disposal Company, Inc.  
8     ("Reno Disposal") and (2) Castaway Trash Hauling ("Castaway"). If the plain language  
9     of the Franchise Agreements allowed Castaway to assign its franchise rights to Reno  
10    Disposal, such an assignment is privileged under Nevada's Unfair Trade Practices Act.  
11    Thus, the sole remaining claim for relief in this case must be disposed on summary  
12    judgment.

13            The Motion to Stay Discovery does not contemplate staying discovery forever. If  
14    granted, the stay will only be in effect until the Court resolves the MSJ. Indeed, if the  
15    MSJ is denied, the Plaintiffs will have the benefit of full discovery in this case.

16            Any discovery is a case that will be moot upon the complete disposition of a case  
17    is inherently unfair and burdensome, whether such discovery is propounded to the  
18    parties or any third-party. "The law does not require the doing of a futile act."  
19    Hernandez v. State, 124 Nev. 639, 651, 188 P.3d 1126, 1134 (2008). Staying  
20    discovery is fair and just in this case. For the reasons discussed below, the Motion to  
21    Stay Discovery should be granted so that the Court can take the time necessary to  
22    consider and rule upon the MSJ without forcing the parties into a futile discovery  
23    process.

24     **II.    LEGAL ARGUMENT**

25            **A.    Plaintiffs' Apply the Wrong Standard.**

26            In their Opposition, the Plaintiffs devote a significant portion of its discussion  
27    rearguing the MSJ, which has been fully briefed and submitted to the Court. Pursuant  
28

1 to the argument and authority set forth in the Opposition, the Plaintiffs assert that the  
2 Court must pre-determine the merits of the MSJ before granting a stay of discovery.  
3 See Opposition to Motion for Stay of Discovery ("Oppo"), pp. 4-7. This is not the  
4 applicable standard. The cases asserted by the Plaintiffs all deal directly with grants of  
5 summary judgment in the context of NRCP 56(f). The instant Motion to Stay Discovery  
6 is not a motion for summary judgment. Accordingly, the cases cited and the standard  
7 advocated by the Plaintiffs are inapposite.

8 Instead, the proper standard is stated within the cases cited in the Motion to Stay  
9 Discovery.<sup>1</sup> See, e.g., Tradebay, LLC v. eBay, Inc., 278 F.R.D. 597(D. Nev. 2011).  
10 The Tradebay Court actually utilized the "preliminary peek" test, whereby other courts  
11 determined whether a stay of discovery should be permitted. See 278 F.R.D. at 602. A  
12 movant must demonstrate the following under the preliminary peek test:

13 First, the pending motion must be potentially dispositive of  
14 the entire case or at least dispositive on the issue on which  
15 discovery is sought. Second, the court must determine  
16 whether the pending potentially dispositive motion can be  
decided without additional discovery.

17 *Id.* The pending MSJ satisfies both of these prongs.

18 **1. The MSJ Is Potentially Dispositive of the Entire Case.**

19 As noted in the MSJ, all of the Plaintiffs' claims for relief, except for one, were  
20 dismissed with prejudice when Court granted, in part, the Defendants' Motion to  
21 Dismiss. See MSJ, pp. 3-4. The sole remaining claim for relief in this action is the  
22 Plaintiffs' claim for collusion under Nevada's Unfair Trade Practices Act ("UTPA"). See  
23 *id.* The MSJ asserts that the assignment of Castaway's Franchise Agreement to Reno  
24 Disposal was preapproved by the Reno City Council under the plain language of the  
25 Franchise Agreements, pursuant to the Reno Municipal Code and Nevada statute. See

26  
27 <sup>1</sup>As an aside, the Plaintiffs also advocate for a "heavy burden" standard and cite to  
28 Tradebay, LLC v. eBay, Inc., 278 F.R.D. 597(D. Nev. 2011). See Oppo., p. 8.  
However, there is no such standard. When the Court in Tradebay said "heavy burden,"  
it was describing the preliminary peek test.

1 MSJ, p. 4-6. Accordingly, Castaway's assignment was privileged under NRS  
2 598A.040(3), and the Plaintiffs' remaining claim under UTPA is subject to summary  
3 judgment. See id.

4 Despite Plaintiffs' arguments to the contrary, the issue is not whether the MSJ is  
5 actually dispositive of the entire case; the issue is whether it is "**potentially dispositive**  
6 of the entire case." See Tradebay, LLC v. eBay, Inc., *supra*, 278 F.R.D. at 602  
7 (emphasis added). Here, there is no reasonable dispute that if the Defendants' prevail  
8 on their MSJ, the entire case is disposed. There will be no ancillary issues to litigate.  
9 The case will be over. Accordingly, the first prong of the preliminary peek test is met.

## 10 **2. The MSJ Can Be Decided Without Additional Discovery.**

11 The Court can make its determination on the MSJ without additional discovery,  
12 because the dispositive issue is a question of law that involves the interpretation of  
13 Castaway and Reno Disposal's Franchise Agreements. See MSJ, pp. 4-10; see also  
14 Reply in Support of MSJ, pp. 12-14. Specifically, if the Court interprets the Franchise  
15 Agreements as an approval of Castaway's ability to assign its right thereunder, the case  
16 must be dismissed under NRS 598A.040(3).

17 The Court has held that Reno Disposal's Franchise Agreement is unambiguous.  
18 Further, there is no dispute that Castaway's Franchise Agreement is also  
19 unambiguous. The law requires the Court to enforce the terms of unambiguous  
20 contracts, and parol evidence regarding those terms are inadmissible. Lowden Inv. Co.  
21 v. General Elec. Credit Co., 103 Nev. 374, 379, 741 P.2d 806 (1987) ("Parol evidence is  
22 not admissible to vary or contradict the terms of a written agreement."); D.E. Shaw  
23 Laminar Portfolios, LLC v. Archon Corp., 570 F.Supp.2d 1262, 1268 -1269 (D. Nev.  
24 2008) ("extraneous evidence cannot be used to explain the meaning of a contract that  
25 is unambiguous on its face."). In sum, the dispositive issue in this case is a question of  
26 law, so no additional evidence is necessary to grant summary judgement.

27 Whether the Court actually agrees that summary judgment can be granted  
28

1 without discovery is irrelevant to the analysis. Instead, the preliminary peek test asks  
2 whether it is possible to grant summary judgment under Defendants' theory without  
3 additional discovery. Because, the interpretation of the franchise agreements is  
4 determinative in this case, the Defendants have set forth a legitimate basis for the Court  
5 to grant summary judgment without further discovery. Accordingly, the second prong of  
6 the preliminary peek test has been satisfied. Therefore, the Motion to Stay Discovery  
7 may be granted in order to allow the Court time to rule on the MSJ.

8 **B. Granting the Motion to Stay Discovery Will Further the Policy Set**  
9 **Forth in NRCP 1.**

10 The Court is empowered to control its docket under NRCP 1 "to secure the just,  
11 speedy, and inexpensive determination of every action." The Court in Tradebay  
12 discussed the interplay between Rule 1 and stays of discovery:

13 [T]his court's role is to evaluate the propriety of an order  
14 staying or limiting discovery with the goal of accomplishing  
15 the objectives of Rule 1. With Rule 1 as its prime directive,  
16 this court must decide whether it is more just to speed the  
17 parties along in discovery and other proceedings while a  
18 dispositive motion is pending, or whether it is more just to  
19 delay or limit discovery and other proceedings to accomplish  
20 the inexpensive determination of the case.

21 Tradebay, LLC v. eBay, Inc., supra, 278 F.R.D. at 603.

22 Here, accomplishing an inexpensive and final determination of this case on  
23 summary judgment outweighs any efforts by the Plaintiffs' to speed along discovery.  
24 First, no trial date has been set in this matter. As mentioned in the Motion to Stay  
25 Discovery, if the MSJ is denied, the Court can set a trial date which accounts for the  
26 duration of the stay, so the parties will not be forced to complete discovery on a  
27 shortened timeframe.

28 Second, in denying the Plaintiffs' Application for Temporary Restraining Order  
and Motion for Preliminary Injunction, the Court acknowledged that taking the time to  
resolve of the pending lawsuit will result in no irreparable injury to the Plaintiffs.  
Accordingly, granting a stay of discovery until the Court resolves the MSJ does not

1 unduly prejudice the Plaintiffs in anyway.

2 Third, the NRCP allows Nevada courts to rule on motions for summary prior to  
3 the commencement of discovery. NRCP 56(a) states that a plaintiff "may, at any time  
4 after the expiration of 20 days from the commencement of the action" file a motion for  
5 summary judgment. Further, NRCP 56(b) states that a defendant may move for  
6 summary judgment at "any time" without qualification. In contrast, NRCP 26 permits  
7 discovery to be propounded only after the filing of a joint case conference report.  
8 Under NRCP 16.1(b), the joint case conference report must be filed 30 days after the  
9 first case conference, which must take place 30 days after an answer is filed. An  
10 answer must be served within 20 days after being served with a summons and  
11 complaint.

12 Assuming there are no NRCP 12(b) motions, the NRCP contemplates discovery  
13 commencing up to 80 days after service of a summons and complaint. Whereas, under  
14 the same rules, a defendant may file and serve a motion for summary judgment, which  
15 can be fully briefed, submitted, and ruled upon before any discovery rights accrue.  
16 Contrary to Plaintiffs' contention otherwise, the MSJ is not premature. Moreover, there  
17 is no basis to argue that the Plaintiffs' rights under the NRCP will be prejudiced if the  
18 Motion to Stay Discovery is granted, because granting summary judgment prior to  
19 discovery is permitted by the rules.

20 **C. There Is No Basis for Sanctions Against the Defendants.**

21 The Plaintiffs wrongly request sanctions against the Defendants under  
22 NRCP 26(g) for seeking to stay discovery without substantial justification. Plaintiffs  
23 make much of the fact that the Defendants do not cite case authority in which the  
24 Nevada Supreme Court upheld a stay of discovery on a motion for summary judgment.  
25 Notably, the Plaintiffs do not cite to any cases decided by the Nevada Supreme Court  
26 in which a stay of discovery was denied.

27 By focusing on the Defendants reliance on federal case authority, the Plaintiffs  
28



1 forget that when interpreting the NRCP, Nevada courts look to federal court  
2 interpretation of the corresponding Federal Rules of Civil Procedure. See Moseley v.  
3 Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 124 Nev. 654, 662-63, 188 P.3d 1136,  
4 1142 (2008). Accordingly, the Motion to Stay Discovery represents a good-faith  
5 argument for the extension of federal law to the instant case. Accordingly, the Motion  
6 to Stay Discovery is squarely within the acceptable purview of NRCP 26(g) and cannot  
7 be the basis for sanctions.

8 Given the Plaintiffs demand for sanctions, it must also be noted that the  
9 Defendants' did not withhold a material quotation from Hovermale v. Sch. Bd. Of  
10 Hillsborough Cnty. Fla., 128 F.R.D. 287, 289 (M.D. Fla. 1989) in the Motion to Stay  
11 Discovery. The Defendants agree that the Hovermale Court stated "[i]t is an abuse of  
12 discretion . . . to stay general discovery if 'plaintiff [has] been denied discovery which  
13 relates to the summary judgment motion.'" See Oppo., p. 11:15-22. As explained  
14 above, this rule is inapplicable. No discovery that the Plaintiffs can propound will ever  
15 relate to the MSJ, because the MSJ turns on the interpretation of unambiguous  
16 contracts, which is a question of law. See discussion Part II.A.2, supra. Accordingly,  
17 Plaintiffs' arguments regarding the miscitation of Hovermale are misplaced.

### 18 III. CONCLUSION

19 The Motion for Stay of Discovery should be granted for the reasons set forth  
20 above. The preliminary peek test is satisfied, because the MSJ may dispose of the  
21 entire case without further discovery. Moreover, granting the Motion will further the  
22 underlying policy of the NRCP; a stay will contribute to the efficient administration of  
23 justice and prevent the initiation of a futile discovery process.

24 The reasons for the Motion for Stay of Discovery are sound and grounded in the  
25 law. A stay of discovery should be granted and in effect until the MSJ is resolved.  
26 Further, the Plaintiffs' request for sanctions should be denied.  
27  
28

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

DATED this 6th day of November, 2015.

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

MARK G. SIMONS  
SCOTT L. HERNANDEZ  
Attorneys for Defendants

P-Reply ISO Def. MSJ.doc

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**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' REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY** 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:

X by using the Court's CM/ECF Electronic Notification System:

Del Hardy, Esq.  
Stephanie Rice, Esq.  
HARDY LAW GROUP  
*Attorneys for Plaintiffs*

\_\_\_\_\_ by personal delivery/hand delivery addressed to:

\_\_\_\_\_ by facsimile (fax) addressed to:

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

DATED this 6<sup>th</sup> day of November, 2015.

  
Employee of Robison, Belaustegui, Sharp & Low

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2 Mark G. Simons, Esq., NSB No. 5132  
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11 *Attorneys for Defendants*

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

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

CASE NO.: CV15-00497

DEPT. NO.: 7

20 Plaintiffs,

21 vs.

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

Defendants.

**REQUEST FOR SUBMISSION**

It is hereby requested that Defendants' Motion to Stay Discovery which was filed with this Court on October 29, 2015, be submitted to the Court for decision.

///

///

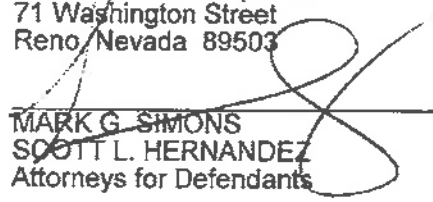
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**AFFIRMATION:** The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6<sup>th</sup> day of November, 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\MGS\30538.D01 (Waste Management)\P-Req Submit 10 16 15.wpd

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Sharp & Low  
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(775) 329-3451

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 REQUEST FOR SUBMISSION on all parties to this action by the method(s)  
5 indicated below:

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

8 \_X\_ by using the Court's CM/ECF Electronic Notification System addressed to:

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

13 \_\_\_\_\_ by personal delivery/hand delivery addressed to:

14 \_\_\_\_\_ by facsimile (fax) addressed to:

15 \_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

16 DATED: 6th day of November, 2015.

17  
18   
19 Employee of Robison, Belaustegui, Sharp & Low

20  
21 J:\WPData\MGS\30538.001 (Wase Management)\P-Req Submit 11-6-15.wpd

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Attorneys for Non-Party Castaway Trash Hauling, Inc.

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,

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.

CASE NO.: CV15-00497

DEPT. NO.: 7

**NON-PARTY CASTAWAY TRASH HAULING, INC.'S MOTION TO QUASH  
SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER**

Pursuant to Rule 45(c)(3) of the Nevada Rules of Civil Procedure, Non-Party Castaway Trash Hauling, Inc. ("Castaway") moves to quash the Subpoena Duces Tecum (the "Subpoena") served by Plaintiffs on Dan R. Reaser, Esq. The Subpoena requires disclosure of confidential and protected matter, and no exception or waiver applies. The Subpoena also places an undue burden on Mr. Reaser that substantially outweighs Plaintiffs' need, if any, for the discovery, and it seeks information that is obtainable from the parties to this case. Castaway certifies that it has in good faith conferred or attempted to confer with Plaintiffs in an effort to resolve the dispute but without success. As a result, Castaway, in good faith and for good cause, respectfully requests that the Court quash the Subpoena and enter a protective order, pursuant to NRCP 26(c),

1 precluding Plaintiffs from seeking the requested discovery from Mr. Reaser. This Motion is  
2 supported by the following memorandum of points and authorities, and documents currently on  
3 file with the court, and any oral argument the Court may entertain.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 Plaintiffs have no legal basis to seek production of the documents and materials requested  
7 from Mr. Reaser in their Subpoena. That information not only falls under the protection of the  
8 common interest privilege but is also confidential pursuant to both a Non-Disclosure Agreement  
9 and a confidentiality clause in an Agreement for Purchase and Sale of Assets. Further, producing  
10 the documents and materials requested would impose an undue burden on Mr. Reaser, and the  
11 information should be requested from the parties to this case. Accordingly, the Court should  
12 quash the Subpoena and issue a protective order over the information.

13 **II. STATEMENT OF FACTS**

14 **A. Castaway and Waste Management.**

15 In or around February 2012, Waste Management of Nevada, Inc. ("Waste Management"  
16 or "WM"), a corporate affiliate of Defendants Reno Disposal Company, Inc. and Refuse, Inc.,  
17 entered into negotiations with Castaway to acquire certain assets of Castaway (the "Business  
18 Purpose"). Affidavit of Dan Reaser (the "Reaser Affidavit") attached hereto as Exhibit 1, ¶ 2.  
19 Involved in the negotiation process were, among others, Castaway attorney Dan Reaser, Waste  
20 Management attorney Gary Duhon, and Waste Management representative Greg Martinelli. *Id.*  
21 at ¶ 4. Necessary to that negotiation was the disclosure, by both Castaway and Waste  
22 Management, of certain technical and business information that was confidential and proprietary  
23 in nature. *Id.* Accordingly, the parties entered into a Mutual Non-Disclosure Agreement (the  
24 "NDA"), which provided broad protection for Castaway and Waste Management's confidential  
25 and proprietary information. *Id.* at ¶ 5.

26 On or about November 30, 2012, Waste Management and Castaway entered an  
27 Agreement for Purchase and Sale of Assets (the "APA"), pursuant to which Waste Management  
28



1 purchased the Castaway assets. Reaser Affidavit, ¶ 6. The APA, like the NDA that preceded it,  
2 provides broad protection for the parties' confidential and proprietary information. *Id.* at ¶ 7.  
3 Specifically, the APA defines the term "confidential information" as follows:

4 "Confidential Information" means any confidential or proprietary financial and  
5 business operations information concerning the business and affairs of the  
6 Company or the Buyer, as applicable, other than such information that is (i)  
7 generally available to the public, (ii) received by a Party from another source  
8 lawfully having possession of and a right to disclose such information provided  
9 that such sources is not known by the recipient to be bound by a confidentiality  
10 agreement, or (iii) independently developed by the recipient without use of or  
11 reference to the other party's Confidential Information.

12 Thus, the APA considers confidential any "confidential or proprietary financial and business  
13 operations information" that was obtained by either party from the other.

14 With regard to that confidential information, neither Castaway nor Waste Management  
15 are permitted to use or disclose the confidential information except in connection with the APA  
16 itself:

17 Each Party will treat and hold as such all of the Confidential Information, refrain  
18 from using any of the Confidential Information except in connection with this  
19 Agreement and for disclosure to its legal, financial and other advisors, and after  
20 termination of this Agreement, the Buyer shall deliver promptly to the Sellers or  
21 destroy, at the request and option of the Sellers, all tangible embodiments (and all  
22 copies) of the Confidential Information which are in its possession.

23 Thus, disclosure to third parties by Castaway of confidential or proprietary information  
24 concerning Waste Management's business and affairs, including information relating to Waste  
25 Management's negotiations that led to the execution of the NDA and APA, is prohibited by the  
26 terms of the APA.

27 On or about March 18, 2015, Plaintiffs Nevada Recycling and Salvage, Ltd. and AMCB,  
28 LLC filed a complaint in the Second Judicial District court against Reno Disposal Company, Inc.  
and Refuse, Inc. Although Plaintiffs could have chosen to do so, they have not requested that  
Waste Management or its corporate affiliates, which are the named defendants in this action,  
produce documents, communications, and/or correspondence relating to Waste Management's  
business and affairs, including its execution of the APA and purchase of assets from Castaway.

1 Affidavit of Leslie Bryan Hart (the "Hart Affidavit") attached hereto as **Exhibit 2, ¶ 2.** For  
2 reasons unknown, Plaintiffs have not served any discovery on Defendants. *Id.* at ¶ 3.

3 Instead, on or about October 28, 2015, Plaintiffs served upon Mr. Reaser the Subpoena  
4 here at issue, requesting that Mr. Reaser present the following:

5 1. Any and all correspondence, including but not limited to: letters, emails,  
6 memorandum, and proposals; by and/or between you (and/or any agent of your  
7 law firm) and Gary Duhon, Esq. between January 1, 2012 and October 28, 2015.

8 2. Any and all correspondence, including but not limited to: letters, emails,  
9 memorandum, and proposals; by and/or between you (and/or any agent of your  
10 law firm) and Greg Martinelli between January 1, 2012 and October 28, 2015.

11 3. Any and all documents exchanged by and/or between you (and/or any  
12 agent of your law firm) and Gary Duhon, Esq. between January 1, 2012 and  
13 October 28, 2015, including but not limited to: proposals, contracts, draft  
14 documents, agreements, invoices and accountings.

15 4. Any and all documents exchanged by and/or between you (and/or any  
16 agent of your law firm) and Greg Martinelli between January 1, 2012 and  
17 October 28, 2015, including but not limited to: proposals, contracts, draft  
18 documents, agreements, invoices and accountings.

19 Subpoena Duces Tecum, attached hereto as **Exhibit 3, p. 1-2.**

20 On November 11, 2015, Castaway's counsel sent a letter to Plaintiffs' counsel objecting  
21 to the Subpoena and setting forth the reasons for its objections, among which were  
22 confidentiality, common-interest privilege, and undue burden. Hart Affidavit at ¶ 4. Plaintiffs'  
23 counsel responded in a letter dated November 13, 2015, in which Plaintiffs expressed their  
24 opinion that Castaway's objections were inappropriate and inapplicable, and that Plaintiffs were  
25 entitled to the documents and correspondence requested, and threatened to file a motion to  
26 compel and seek sanctions against Mr. Reaser. *Id.* Castaway therefore certifies that it has in good  
27 faith conferred or attempted to confer with Plaintiffs to resolve this dispute without court action,  
28 and now makes this motion to quash and for a protective order in good faith and for good cause.

### 29 **III. ARGUMENT**

30 Rule 45(c)(3) of the Nevada Rules of Civil Procedure identifies the circumstances in  
31 which a district court should quash or modify a subpoena. The Court must quash a subpoena

1 when the subpoena “requires disclosure of privileged or other protected matter and no exception  
2 or waiver applies.” NRCPC 45(c)(3)(A). Likewise, the Court must quash a subpoena when it  
3 “subjects a person to undue burden.” *Id.* The Court may also quash a subpoena when the  
4 subpoena requires “disclosure of a trade secret or other confidential research, development, or  
5 commercial information.” NRCPC 45(c)(3)(B).

6 In addition to the limitations of Rule 45(c)(3), all subpoenas are also subject to the  
7 limitations imposed by Rule 26(b)(2). *See* NRCPC 26(b)(1) (“All discovery is subject to the  
8 limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).”). Under Rule 26(b)(2), the court must  
9 limit discovery when it is “unreasonably cumulative or duplicative, or is obtainable from some  
10 other source that is more convenient, less burdensome, or less expensive” or where “the  
11 discovery is unduly burdensome or expensive, taking into account the needs of the case, the  
12 amount in controversy, limitations on the parties resources, and the importance of the issues at  
13 stake in the litigation.” In deciding whether and how to limit discovery, “a district court has wide  
14 discretion to consider a number of factors.” *Las Vegas Sands Corp. v. Eighth Judicial Dist.*  
15 *Court of Nev.*, 130 Nev. Adv. Rep. 61, 331 P.3d 876, 879 n. 4 (2014). One means of limiting  
16 discovery is to issue a protective order mandating “that discovery not be had.” NRCPC 26(c)(1).  
17 Another is to order that “commercial information not be revealed.” NRCPC 26(c)(7).

18 Mr. Reaser was served with a subpoena that seeks the disclosure of information that is  
19 both confidential and protected by the common interest privilege, and it subjects Mr. Reaser to  
20 undue burden and seeks from him information that is obtainable from parties to this litigation.  
21 Accordingly, the court must quash the subpoena and limit discovery pursuant to Rules 45(c)(3)  
22 and 26(b)(2). Such limitation on discovery should include a protective order that the requested  
23 discovery not be had pursuant to Rule 26(c).

24 **A. The Court must quash the Subpoena and issue a protective order because the**  
25 **Subpoena requires the disclosure of privileged information.**

26 The Court “shall quash or modify” a subpoena that “requires disclosure of privileged or  
27 other protected matter and no exception or waiver applies.” NRCPC 45(c)(3)(A). Nevada law  
28 provides that where communications are “[m]ade for the purpose of facilitating the rendition of

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1 professional legal services to the client, by the client or the client's lawyer to a lawyer  
2 representing another in a matter of common interest," the information is privileged and protected  
3 from disclosure. NRS 49.095(3). This rule is known at common law as the "common interest  
4 privilege" or "joint defense privilege," and it is not unique to Nevada. *See, e.g., In re Teleglobe*  
5 *Communs. Corp.*, 493 F.3d 345, 364 (3d Cir. 2007) (analyzing the common interest privilege in  
6 Delaware); *Kashian v. Harriman*, 98 Cal. App. 4th 892, 914 (Cal. App. 2002) (analyzing the  
7 common interest privilege in California); *330 Acquisition Co., LLC v. Regency Sav. Bank*, 12  
8 A.D.3d 214, 214 (N.Y. App. Div. 2004) (analyzing the common interest privilege in New York).

9 Nevada's common interest privilege applies to all communications between an attorney  
10 or the attorney's client and another attorney or that attorney's client with a common interest. *See*  
11 NRS 49.095(3); NRS 49.055. Although NRS 49.095(3) refers only to communications by a  
12 client or the client's lawyer to another lawyer, the statute must be read in conjunction with NRS  
13 49.055. *See Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 351, 891 P.2d 1180, 1184  
14 (1995) (applying and interpreting NRS 49.095 in conjunction with NRS 49.055). That statute  
15 provides that a communication remains confidential even when revealed to third parties so long  
16 as the disclosure "is in furtherance of the rendition of professional legal services." NRS 49.055.  
17 Accordingly, the protections of NRS 49.095(3) remain in effect even where communication  
18 occurs between a lawyer or the lawyer's client and another lawyer's client. *See Wesley M.*  
19 *Ayres*, Discovery Commissioner, *Notes on Discovery and Arbitration*, The Writ (August 1999),  
20 available at <http://www.wcbar.org/WritArchives/discovery/AUG96.html>.

21 Although typically applied in the context of civil or criminal litigation, the common  
22 interest privilege also applies in transactional contexts. *In re Teleglobe Communs. Corp.*, 493  
23 F.3d 345, 364 (3d Cir. 2007) ("[The common interest privilege] applies in civil and criminal  
24 litigation, and even in purely transactional contexts."); Restatement (Third) of the Law  
25 Governing Lawyers § 76 ("If two or more clients with a common interest in a litigated or  
26 nonlitigated matter are represented by separate lawyers and they agree to exchange information  
27 concerning the matter, a communication of any such client that otherwise qualifies as privileged  
28 under §§ 68-72 that relates to the matter is privileged as against third persons.").

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1       The common interest privilege also applies even where parties' interests are not  
2 completely identical; in fact, their interests may even be adverse. *See, e.g., United States v.*  
3 *Gonzalez*, 669 F.3d 974, 980 (9th Cir. 2012) (finding "parties to an asserted [common interest  
4 agreement] need not have identical interests and may even have some adverse motives"); *Holmes*  
5 *v. Collection Bureau of Am., Ltd.*, No. C 09-02540 WHA, 2010 WL 143484, at \*2 (N.D. Cal.  
6 Jan. 8, 2010) (stating that "[t]he interests of the parties involved in a common defense need not  
7 be identical, and, indeed, may even be adverse in some respects"); *D&D Assocs. Inc. v. Bd. of*  
8 *Educ. of North Plainfield*, No. 03-1026, 2011 WL 1871110, at \*4 (N.D.J. May 13, 2011) ("The  
9 fact that parties with common interests may also have some adverse interests does not destroy  
10 the common-interest privilege as to communications regarding the common interest.").

11       During the negotiations and drafting leading up to the execution of the NDA and APA,  
12 Mr. Reaser communicated frequently and exchanged a significant amount of confidential  
13 information with Mr. Duhon and Mr. Martinelli, Waste Management's attorney and  
14 representative, respectively. That information was exchanged in an effort to negotiate and draft  
15 the NDA and APA, which allowed Waste Management to acquire the assets of Castaway. Both  
16 Waste Management and Castaway shared a common interest in that transaction. Accordingly,  
17 pursuant to NRS 49.095(3), that information is privileged and protected from disclosure. That the  
18 communications did not occur solely between attorneys does not remove the communications  
19 from the protection of the common interest privilege. *See* NRS 49.055. Likewise, the fact that the  
20 communications occurred in a transactional context and not during the course of litigation does  
21 not make the common interest privilege inapplicable. *See In re Teleglobe*, 493 F.3d at 364.  
22 Finally, although Castaway and Waste Management were briefly involved in litigation, the  
23 parties resolved that dispute and ultimately negotiated and entered into the APA. That the parties  
24 were once adverse does not prevent them from enjoying the protections of the common interest  
25 privilege. *See Gonzalez*, 669 F.3d at 980. The information Plaintiffs seek is therefore privileged  
26 pursuant to the common interest doctrine, and the Court must quash the Subpoena pursuant to  
27 NRCP 45(c)(3)(A)(iii) and should limit discovery by issuing a protective order pursuant to  
28 NRCP 26(c).

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1           B.   The Court should quash the Subpoena because it requires Mr. Reaser's  
2               disclosure of confidential information.

3           A court should also quash a subpoena when it requires "disclosure of a trade secret or  
4   other confidential research, development, or commercial information." NRCP 45(c)(3)(B).  
5   Plaintiffs' Subpoena requests all correspondence and documents exchanged between Mr. Reaser,  
6   who served as counsel for Castaway, and Mr. Duhon and Mr. Martinelli, counsel and  
7   representative for Waste Management, respectively. That information and correspondence  
8   concerns the business and affairs of Castaway and Waste Management in that it involves  
9   financial and business details exchanged in anticipation of Waste Management's purchase of  
10   Castaway's assets. *See* Reaser Affidavit, ¶ 8. It is therefore subject to the confidentiality clause  
11   of the APA. Accordingly, the information constitutes confidential commercial information, and  
12   the court should, pursuant to NRCP 45(c)(3)(B), quash the Subpoena requesting such  
13   information.

14           C.   The Court must quash the Subpoena and should issue a protective order  
15               because the Subpoena subjects Mr. Reaser to undue burden and the  
16               information is obtainable from Defendants.

17           A court "shall quash or modify" a subpoena that "subjects a person to undue burden."  
18   NRCP 45(c)(3)(A). Undue burden is also grounds for a court to place limitations on discovery.  
19   NRCP 26(b)(2). Similarly, a court may limit discovery where discovery is obtainable from some  
20   other source that is more convenient, less burdensome, or less expensive. *Id.* Such limitations  
21   include the issuance of a protective order. NRCP 26(c). "[A] district court has wide discretion to  
22   consider a number of factors in deciding whether to limit discovery that is ... unduly  
23   burdensome." *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court of Nev.*, 130 Nev. Adv. Rep.  
24   61, 331 P.3d 876, 879 n. 4 (2014). One such relevant factor is whether compliance with a  
25   discovery request would cause an individual to violate ethical obligations. *See Walton v. N.C.*  
26   *Dep't of Agric. & Consumer Servs.*, 2011 U.S. Dist. LEXIS 77322, \*5, 2011 WL 2893622  
27   (E.D.N.C. July 14, 2011) (holding that a doctor could not be compelled to comply with a  
28   discovery request because the request imposed upon the doctor an undue burden in that it  
  required that she disclose privileged and protected materials in violation of her ethical

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1 obligations).

2 Another relevant factor is whether the discovery has been requested of a non-party, and if  
3 it so, whether it can also be requested of a party. *Amini Innovation Corp. v. McFerran Home*  
4 *Furnishings, Inc.*, 300 F.R.D. 406, 410 (C.D. Cal. 2014) ("Courts are particularly reluctant to  
5 require a non-party to provide discovery that can be produced by a party."). Many courts will  
6 "prohibit a party from obtaining discovery from a non-party if that same information is available  
7 from another party to the litigation." *Rocky Mountain Medical Management*, 2013 U.S. Dist.  
8 LEXIS 175590, 2013 WL 6446704 at \*4 (D. Idaho Dec. 9, 2013); *see also Precourt v. Fairbank*  
9 *Reconstruction Corp.*, 280 F.R.D. 462, 467 (D. S.D. 2011) ("If the party seeking information can  
10 easily obtain the same information without burdening the non-party, the court will quash the  
11 subpoena."); *Brown v. City of Syracuse*, 648 F. Supp. 2d 461, 466 (N.D. N.Y. 2009) (when  
12 balancing hardships between requesting party and non-party, court should consider whether there  
13 are other sources for obtaining the material); *Arthrex, Inc. v. Parcus Medical, LLC*, 2011 U.S.  
14 Dist. LEXIS 148555, 2011 WL 6415540 at \*6 (S.D. Ind. Dec. 21, 2011) ("A party's ability to  
15 obtain documents from a source with which it is litigating is a good reason to forbid it from  
16 burdening a non-party with production of those same requests.").

17 The requested discovery in this instance is unduly burdensome. First, the Subpoena seeks  
18 confidential information that, if turned over, would cause Mr. Reaser to violate his ethical  
19 obligations. As set forth above, Plaintiffs' Subpoena requests correspondence and information  
20 that is subject to the confidentiality clause of the APA. Mr. Reaser, however, is bound by the  
21 Nevada Rules of Professional Conduct and cannot reveal confidential client information without  
22 the informed consent of his clients. NRPC 1.6. Compliance with the Subpoena would therefore  
23 cause Mr. Reaser to violate the rules of professional conduct, and it is unduly burdensome.

24 Additionally, the discovery request is unduly burdensome because it seeks from Mr.  
25 Reaser and Castaway, non-parties, information and documents that should be sought in the first  
26 instance from Defendants. The information and communications Plaintiffs seek in the Subpoena  
27 pertain to Mr. Reaser's interactions with Waste Management's counsel and representative. That  
28 information is therefore necessarily also available from Waste Management, an affiliate of

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1 Defendants, and should be requested from Waste Management or from Defendants, not from a  
2 non-party. Yet, for reasons unknown to Castaway, Plaintiffs have failed to serve *any* discovery  
3 on Defendants.<sup>1</sup> The discovery request is therefore unduly burdensome, and the court must quash  
4 the Subpoena pursuant to NRCP 45(c)(3)(A) and should limit discovery by issuing a protective  
5 order pursuant to NRCP 26(b)(2) and 26(c).

6 D. The Court should also issue a protective order because the Subpoena  
7 requests information that is irrelevant.

8 Discovery requests must be limited to matters that are relevant to the subject matter  
9 involved in a pending action. NRCP 26(b)(1). In this case, Plaintiffs seek from Mr. Reaser "any  
10 and all correspondence" and "all documents exchanged" between Mr. Reaser and Mr. Duhon or  
11 Mr. Martinelli between January 1, 2012, and October 28, 2015. This request is not specific to  
12 any topic, transaction, occurrence, or issue that is relevant to the subject matter of this lawsuit,  
13 and as to Mr. Duhon, would include communications related to other client matters and even  
14 personal communications between these men. The request therefore seeks irrelevant information  
15 and should be limited pursuant to NRCP 26(b)(2).

16 IV. CONCLUSION

17 For the foregoing reasons, Castaway requests that the court quash the Subpoena served  
18 on Dan R. Reaser, Esq. by Plaintiffs and issue a protective order preventing the discovery of the  
19 information sought. Additionally, Castaway requests that the court impose upon Plaintiffs an  
20 appropriate sanction for the issuance of the Subpoena, including the reasonable attorneys' fees  
21 required to prepare this Motion, pursuant to NRCP 45(c)(1).

22 ///

23 ///

24 ///

25 ///

26  
27 <sup>1</sup> Castaway presumes that Plaintiffs have chosen to serve discovery on Mr. Reaser and  
28 Castaway, rather than Defendants, as a means of harassing, annoying, and oppressing Castaway,  
which constitutes separate and additional grounds for the Court to issue a protective order. See  
NRCP 26(c) (authorizing a court to order that discovery not be had "to protect a party or person





1 CERTIFICATE OF SERVICE

2 Pursuant to Nev. R. Civ. P. 5(b) and N.E.F.R. 9(b)(d), I certify that on the 20<sup>th</sup> day of  
3 November, 2015, a true and correct copy of the **NON-PARTY CASTAWAY TRASH**  
4 **HAULING, INC.'S MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR**  
5 **PROTECTIVE ORDER**, was electronically served via the court's electronic filing system to  
6 the following attorneys associated with this case. If the following person(s) is not registered with  
7 the court's e-filing system, then a true and correct paper copy of the above-named document was  
8 served via U.S. Mail to the following:  
9

10 Mark G. Simons, Esq.  
11 Scott Hernandez, Esq.  
12 Robison, Belaustegui, Sharp & Low  
71 Washington Street  
Reno, Nevada 89503

13 Del Hardy, Esq.  
14 Stephanie Rice, Esq.  
15 Hardy Law Group  
96 & 98 Winter St.  
Reno, NV 89503

16  
17 /s/ Pamela Carmon  
18 Pamela Carmon  
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EXHIBITS LIST

<u>Exhibit</u>	<u>Description</u>	<u>No. of Pages</u>
1	Affidavit of Dan Reaser	2
2	Affidavit of Leslie Bryan Hart	9
3	Subpoena Duces Tecum	7

FILED  
Electronically  
2015-11-20 11:14:13 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5245706 : mcholino

# Exhibit 1

# Exhibit 1

**AFFIDAVIT OF DAN R. REASER**

STATE OF NEVADA       )  
                                  ) SS:  
COUNTY OF WASHOE    )

Dan R. Reaser, being first duly sworn, deposes and says as follows:

1. I am a Director with the law firm of Fennemore Craig, P.C. On October 28, 2015, I was served with a Subpoena Duces Tecum (the "Subpoena") by Nevada Recycling and Salvage, Ltd., and AMCB, LLC. I am familiar with the Subpoena and the Motion to Quash and for Protective Order (the "Motion") filed by Castaway, and I could competently testify to matters set forth in this affidavit.

2. I represented Castaway Trash Hauling, Inc. ("Castaway") in connection with Castaway's negotiations with Waste Management of Nevada, Inc. ("Waste Management" or "WM") for Waste Management to acquire certain assets of Castaway.

3. Upon information and belief, Waste Management is a corporate affiliate to Reno Disposal Company, Inc. and Refuse, Inc.

4. During Castaway's negotiations with Waste Management, I communicated with Gary Duhon, Waste Management's attorney, and Greg Martinelli, a representative of Waste Management, and I on behalf of Castaway, exchanged certain technical and business information of Castaway and Waste Management that was confidential and proprietary in nature.

5. To protect Castaway and Waste Management's technical and business information, the parties entered into a Mutual Non-Disclosure Agreement (the "NDA"). The NDA provided broad protection for the parties' confidential and proprietary information.

6. On or about November 30, 2012, Waste Management and Castaway executed an Agreement for Purchase and Sale of Assets (the "APA"), pursuant to which Waste Management purchased certain assets of Castaway.

7. Like the NDA, the APA provides broad protection for Castaway and Waste Management's confidential and proprietary information. Excerpts from the APA have been included in the Motion, and those excerpts are true and accurate reproductions of those portions of the APA.

8. The Subpoena seeks documents and communications between Mr. Duhon, Mr. Martinelli, and myself. The documents and communications sought include those that I received in the course of representing Castaway in a variety of matters, and relate to Castaway's and Waste Management's technical and business information that is confidential and proprietary in nature. The Subpoena also seeks documents and communications concerning matters unrelated to Castaway and Waste Management.

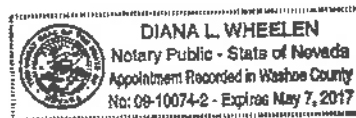
9. I swear under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 20<sup>th</sup> day of November, 2015.

Dan R. Reaser  
Dan R. Reaser

SUBSCRIBED AND SWORN to before me  
this 20<sup>th</sup> day of November, 2015.

Diana L. Wheelen  
Notary Public



FILED  
Electronically  
2015-11-20 11:14:13 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5245706 : mcholica

# Exhibit 2

# Exhibit 2

**AFFIDAVIT OF LESLIE BRYAN HART**

STATE OF NEVADA        )  
                                  ) SS:  
COUNTY OF WASHOE     )

Leslie Bryan Hart, being first duly sworn, deposes and says as follows:

1. I am a Director with the law firm of Fennemore Craig, P.C., counsel for Castaway Trash Hauling, Inc. ("Castaway") in connection with the Subpoena Duces Tecum served on Castaway's attorney, Dan Reaser, on October 28, 2015 ("the Subpoena"). I am familiar with the Subpoena and could competently testify to the matters set forth in this affidavit.

2. On or about November 19, 2015, I spoke with Mark Hernandez, counsel for Waste Management and its affiliates named as defendants in this suit (collectively "Waste Management"), in an effort to determine whether Nevada Recycling and Salvage, Ltd. and AMCB LLC, dba Rubbish Runners ("Nevada Recycling"), had served Waste Management with a request for production seeking the documents that it was attempting to obtain from Castaway and Mr. Reaser.

3. I understand from my conversation with Mr. Hernandez that Nevada Recycling has not served any written discovery on Waste Management, nor has it noticed any depositions in this case.

4. Attached hereto as Exhibit A are true and correct copies of correspondence exchanged between Stephanie Rice, counsel for Nevada Recycling, and me in an effort to resolve the dispute over the Subpoena. Those letters are dated November 11, 2015, November 13, 2015, and November 16, 2015. In her letter of November 13, 2015, Ms. Rice indicates that my positions are unfounded and she threatens to seek sanctions against Mr. Reaser.




5. I swear under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

AFFIRMATION  
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing does not contain the social security number of any person.

DATED this 20<sup>th</sup> day of November, 2015.

  
\_\_\_\_\_  
Leslie Bryan Hart

SUBSCRIBED AND SWORN to before me  
this 20<sup>th</sup> day of November, 2015.

  
\_\_\_\_\_  
Notary Public



Exhibit A

Exhibit A

# FENNEMORE CRAIG, P.C.

300 E. Second Street  
Suite 1510  
Reno, Nevada 89501  
(775) 788-2200

Leslie Bryan Hart  
Direct Phone: (775) 788-2228  
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Tucson (520) 879-6800

November 11, 2015

## Via E-Mail and U.S. Mail

Del Hardy, Esq.  
Stephanie Rice, Esq.  
Hardy Law Group  
96-98 Winter Street  
Reno, Nevada 89503

Re: *Nevada Recycling and Salvage, Ltd, et al., v. Reno Disposal Company, Inc., et al.*,  
Case No. CV15-00497 - Objection to Subpoena Duces Tecum, pursuant to Rule  
45(c)(2)(B)

Dear Counsel:

Fennemore Craig, P.C., represents Castaway Trash Hauling, Inc. ("Castaway") in connection with the Subpoena Duces Tecum dated October 28, 2015 and served on Castaway's counsel, Dan R. Reaser, that same day ("the Subpoena"). Please be advised that Castaway and Mr. Reaser object to the Subpoena pursuant to Nevada Rule of Civil Procedure 45(c)(2)(B).

The Subpoena seeks to require Mr. Reaser to produce four categories of documents, including (1) correspondence between Mr. Reaser and/or his law firm and Gary Duhon, Esq., over a nearly four year period; (2) correspondence between Mr. Reaser and/or his law firm and Gary Martinelli, over a nearly four year period; (3) documents exchanged by and between Mr. Reaser and/or his law firm and Gary Duhon, Esq., over a nearly four year period, and (4) documents exchanged between Mr. Reaser and/or his law firm and Gary Martinelli, over a nearly four year period. The Subpoena is objectionable for a multitude of reasons, including relevance and overbreadth. Each of the four categories seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence in the above captioned case, as the request is not limited by subject matter to exclude documents that may have been exchanged between Mr. Reaser, his current or past law firm, and Mr. Duhon or Mr. Martinelli concerning matters unrelated to the dispute between Nevada Recycling and Reno Disposal Company. The Subpoena is also objectionable because it imposes an undue burden on Castaway as the documents sought from Castaway's counsel pursuant to the Subpoena can and should be requested from Reno Disposal Company, a party to this case. In addition to other objections not specifically asserted

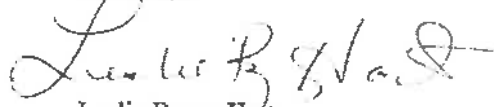
## FENNEMORE CRAIG

Del Hardy, Esq.  
Stephanie Rice, Esq.  
November 11, 2015  
Page 2

in this letter, and that are reserved, Castaway also objects to the Subpoena to the extent it seeks to invade the attorney-client privilege, work product privilege, and the common interest privilege, and seeks information protected from disclosure by a Mutual Non-Disclosure Agreement entered between Castaway and Waste Management of Nevada, Inc.

Pursuant to Rule 45(c)(2)(B), Castaway objects to compliance with the Subpoena.

Sincerely,



Leslie Bryan Hart

LBH/pkc  
11037063.1

**Hardy Law Group.com**  
*Attorneys and Counselors at Law*

96 & 98 Winter Street, Reno, Nevada 89503  
www.HardyLawGroup.com

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Fax (775) 322-2303 • Fax (775) 329-8282

Stephanie Rice, Esq.  
[Stephanie@HardyLawGroup.com](mailto:Stephanie@HardyLawGroup.com)

November 13, 2015

Leslie Bryan Hart, Esq.  
Fennemore Craig, P.C.  
300 E. Second Street, Suite 1510  
Reno, Nevada 89501

**Sent Via Hand Delivery & Email to Avoid Delay:** [lhart@fclaw.com](mailto:lhart@fclaw.com); [pcarmon@fclaw.com](mailto:pcarmon@fclaw.com)

Re: Subpoena Duces Tecum- Dan Reaser, Esq. in Case No. CV15-00497

Dear Ms. Bryan Hart,

I am in receipt of your November 11, 2015 correspondence asserting objections based on NRCP 45(c)(2)(B) to the Subpoena Duces Tecum that was served on Mr. Reaser on October 28, 2015. Respectfully, the objections set forth therein were either asserted as an honest mistake, not recalling all of the facts of you and Mr. Reaser's representation of Castaway Trash Hauling over the years; or, an inappropriate lodging of clearly inapplicable objections in an effort to prevent Plaintiffs' from obtaining documents they are clearly entitled to through proper channels of discovery. It is my hope the former is the case.

Most concerning is your assertion that "Castaway also objects to the Subpoena to the extent it seeks to invade the attorney-client privilege, work product privilege, and the common interest privilege, and seeks information protected from disclosure by a Mutual Non-Disclosure Agreement entered between Castaway and Waste Management of Nevada, Inc." The undersigned is at a loss as to how the information requested can possibly be subject to the attorney-client privilege when the information requested seeks communications and documents exchanged between Mr. Reaser and Gary Duhon, the then lawyer for Waste Management, as well as Greg Martinelli, a Waste Management employee. It is simply absurd to reasonably believe that an attorney-client privilege exists between Mr. Reaser and/or members of his law firm and Waste Management and/or its employees. As admitted in your correspondence, "Dan R. Reaser" is "Castaway's counsel," not Waste Management's counsel. NRS 49.095 (1) and (2) provides:

A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

1. Between the client or the client's representative and the client's lawyer or the representative of the client's lawyer.
2. Between the client's lawyer and the lawyer's representative.

As such, NRS 49.095 does not provide for an attorney-client privilege protecting communications between a lawyer and another lawyer representing an opposing party or communications between a lawyer and a representative of an opposing party. In addition, NRS 49.105 explains that it is the client that holds the attorney-client privilege, not the attorney. Here, Castaway Trash Hauling not only sold out to Waste Management years ago, but the formal entity itself is completely dissolved as of December 19, 2014. As such, an entity no longer in existence cannot possibly be invoking anything, let alone an attorney-client privilege, because it does not exist.

Your assertion of an objection on the basis of the "common interest privilege" is even more disingenuous. NRS 49.095(3) addresses the so-called "common interest privilege," which states, "A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications: Made for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest." To state that Mr. Reaser was representing Castaway while Gary Duhon was representing Waste Management "*in a matter of common interest*" is a blatant misrepresentation. Might I remind you that during the time frame the subpoena requests communications from, Castaway Trash Hauling, by and through Mr. Reaser and yourself, were directly suing Waste Management ("Reno Disposal Company"). To represent that Mr. Reaser can somehow assert the "common interest privilege" for the production of communications between himself and the company it was suing, as well as the opposing company's then lawyer is by definition impossible.

Your relevance objections are equally inapposite. The entire basis of the claims by Plaintiffs against Waste Management is that Castaway and Waste Management deliberately concealed information from the City of Reno during Franchise negotiations. As such and at the very least, the "Mutual Non-Disclosure Agreement entered between Castaway and Waste Management of Nevada, Inc." is absolutely relevant and discoverable, as is all of the communications between Mr. Reaser and Waste Management's then lawyer Gary Duhon and its representative Greg Martinelli. There was a lawsuit pending in 2012 filed by you and Mr. Reaser on behalf of Castaway and against Waste Management. All of a sudden Castaway withdrew its lawsuit, was awarded a Franchised zone and then immediately sold out to Waste Management. All communications and documents exchanged between Mr. Reaser as counsel for Castaway and Mr. Duhon and Mr. Martinelli from 2012 through October 28, 2015 are relevant in order to determine how Castaway Trash Hauling went from suing Waste Management to changing their tune overnight in order to obtain a Franchised zone to selling out to its long standing and publically hated competitors. That information is reasonably calculated to lead to the discovery of admissible evidence in the above captioned case.

Further, making an objection pursuant to NRCP 45(c)(2)(B), also explicitly subjects you to the provisions of NRCP 45(d)(2) which provides:

When information subject to a subpoena is withheld *on a claim that it is privileged* or subject to protection as trial preparation materials, *the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.*

[Emphasis Added]. Accordingly, your objections are deficient in that pursuant to NRC 45(d)(2), you are still required to timely produce to this office a privilege log to support your claimed "privileges" that explicitly describes each document or communications that you are not producing in sufficient detail to allow Plaintiffs to be able to determine whether or not the claimed privilege is valid.

The vague objections on the basis of relevance and over breadth, without specificity are inadequate. The suggestion that these items should have instead been requested from Reno Disposal Company is also inapplicable in that with respect to the requests for communications between Mr. Reaser and Mr. Duhon, Mr. Duhon is not representing Reno Disposal in this case and as such, is a non-party just as Castaway is. The privilege objections asserted on behalf of Mr. Reaser are inapplicable and the assertion of such blatantly inappropriate and unsubstantiated objections are particularly alarming given Mr. Reaser's experience with the State Bar of Nevada Disciplinary Board, demonstrating his superior knowledge and understanding of the ethical rules that lawyers are bound by in this State.

Again, it is my hope that these objections were made in error as a result of the time that has passed since you and Mr. Reaser represented Castaway Trash Hauling. With your recollection now refreshed, please ensure Mr. Reaser complies with the Subpoena Duces Tecum's requested production of documents and provide all such documents requested and a detailed privilege log for all items in which a privilege is being asserted on or before Monday, November 16, 2015 at 10:00 a.m. Should Mr. Reaser fail to comply, this office will be filing a Motion to Compel and will seek sanctions against Mr. Reaser for his refusal to comply. Hopefully that can be avoided by Mr. Reaser's compliance.

Sincerely,



Stephanie Rice, Esq.

DH/SR

CC: Client; File; Mark Simons & Scott Hernandez, 71 Washington Street, Reno, Nevada 89503 (Via USPS)

Enclosure(s): None.

JA001196

# FENNEMORE CRAIG, P.C.

300 E. Second Street  
Suite 1510  
Reno, Nevada 89501  
(775) 788-2200

Leslie Bryan Hart  
Direct Phone: (775) 788-2228  
Direct Fax: (775) 788-2229  
lhart@fcilaw.com

Law Offices  
Denver (303) 291-3200  
Las Vegas (702) 692-8000  
Nogales (520) 281-3480  
Phoenix (602) 916-5000  
Reno (775) 788-2200  
Tucson (520) 879-6800

November 16, 2015

Via E-Mail and U.S. Mail

Del Hardy, Esq.  
Stephanie Rice, Esq.  
Hardy Law Group  
96-98 Winter Street  
Reno, Nevada 89503

Re: *Nevada Recycling and Salvage, Ltd, et al., v. Reno Disposal Company, Inc., et al.*,  
Case No. CV15-00497 - Objection to Subpoena Duces Tecum, pursuant to Rule  
45(c)(2)(B)

Dear Counsel:

I have received Ms. Rice's letter dated November 13, 2015. Please be advised that Castaway and its counsel, Dan Reaser, disagree with the assertions of that letter and Castaway continues to object to compliance with the Subpoena Duces Tecum.

Sincerely,



Leslie Bryan Hart

LBH/pkc  
11037063.1



FILED  
Electronically  
2015-11-20 11:14:13 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5245706 : mxholico

Exhibit 3

Exhibit 3

# ORIGINAL

CODE: 4065  
DEL HARDY, ESQ. (SBN 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

**SUBPOENA DUCES TECUM**  
**DAN R. REASER, ESQ.**

THE STATE OF NEVADA SENDS GREETINGS TO:

DAN R. REASER, ESQ.  
c/o Fennemore Craig  
300 E. 2<sup>nd</sup> Street, Suite 1510  
Reno, Nevada 89501

You are hereby commanded to appear at the Law Offices of Hardy Law Group, 98 Winter  
Street, Reno, Nevada 89503, on November 16, 2015, at 10:00 a.m.

You are commanded to bring with you the following:

1. Any and all correspondence, including but not limited to: letters,

1 emails, memorandum, and proposals; by and/or between you (and/or  
2 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
3 2012 and October 28, 2015.

4 2. Any and all correspondence, including but not limited to: letters,  
5 emails, memorandum, and proposals; by and/or between you (and/or  
6 any agent of your law firm) and Greg Martinelli between January 1, 2012  
7 and October 28, 2015.


8 3. Any and all documents exchanged by and/or between you (and/or  
9 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
10 2012 and October 28, 2015, including but not limited to: proposals,  
11 contracts, draft documents, agreements, invoices and accountings.

12 4. Any and all documents exchanged by and/or between you (and/or  
13 any agent of your law firm) and Greg Martinelli between January 1, 2012  
14 and October 28, 2015, including but not limited to: proposals, contracts,  
15 draft documents, agreements, invoices and accountings.

16 You may deliver these documents to Del Hardy, Esq., of Hardy Law Group, 98 Winter  
17 Street, Reno, NV 89503 on or before November 16, 2015, at 10:00 a.m., in lieu of appearing  
18 that day.

19 *Any person failing to appear and produce the records may be deemed in*  
20 *contempt of the court and shall be liable to the party injured in the sum of*  
21 *\$100.00, and for such damages as may be sustained by him on account of*  
22 *such neglect or refusal.*

23 DATED this 28<sup>th</sup> day of October, 2015.

24  
25   
26 STEPHANIE RICE, ESQ.  
27 DEL HARDY, ESQ.  
28 Attorneys for Plaintiffs

**CERTIFICATE OF CUSTODIAN OF RECORDS**

STATE OF NEVADA        )  
                                  )ss.  
COUNTY OF WASHOE     )

\_\_\_\_\_, hereby swears under penalty of perjury and certifies the following:

1. That he or she is holds the position title of \_\_\_\_\_ at \_\_\_\_\_, and in such capacity is the custodian of the records of said business;

2. That on the \_\_\_\_ day of \_\_\_\_\_, 2015, the Deponent received a Subpoena Duces Tecum for the release of communications, records and/or documents relating to Gary Duhon, Esq. and Greg Martinelli, from January 1, 2012 through October 28, 2015;

3. That the Deponent has examined the original of those records and/ or documents and has made a true and exact copy of them and that the reproduction of them attached hereto is true and complete; and

4. That the original of those records and/or documents was made at or near the time of the acts, events, conditions and opinions recited therein by or from information, transmitted by a person with knowledge of the course of the regularly conducted activity of the Deponent or the business in which the Deponent is engaged or employed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
(Signature)

SUBSRIBED and SWORN to before me this

\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 on this date I served the foregoing document(s) described as SUBPOENA DUCES TECUM-  
4 DAN R. REASER, ESQ. on all parties to this action by:

5 X Placing an original or true copy thereof in a sealed envelope placed for  
6 collection 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 \_\_\_\_\_ EFLEX- Court's Electronic Filing System  
11 \_\_\_\_\_ Messenger Service  
12 \_\_\_\_\_ Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**  
18 **Pursuant to NRS 239B.030**

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED this 28 day of October, 2015.

22   
23 EMPLOYEE OF HARDY LAW GROUP  
24  
25  
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**RULE 45 (c) AND (d) NEVADA RULES OF CIVIL PROCEDURE**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued, shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to the inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which the subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(3)(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony of material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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1 (d) DUTIES IN RESPONDING TO SUBPOENA.

2 (1) A person responding to a subpoena to produce documents shall produce them as they  
3 are kept in the usual course of business or shall organize and label them to correspond with the  
4 categories in the demand.

5 (2) When information subject to a subpoena is withheld on a claim that it is privileged or  
6 subject to protection as trial preparation materials, the claim shall be made expressly and shall be  
7 supported by a description of the nature of the documents, communications, or things not produced  
8 that is sufficient to enable the demanding party to contest the claims.  
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1 STATE OF \_\_\_\_\_ )  
2 COUNTY OF \_\_\_\_\_ ) ss.

3 I hereby certify and return that I received the within Subpoena Duces Tecum on the \_\_\_\_\_  
4 day of \_\_\_\_\_, 20\_\_\_\_, and that I personally served the same upon  
5 \_\_\_\_\_ by showing the within to him/her, and delivering  
6 to him/her a copy of the same in \_\_\_\_\_ County, \_\_\_\_\_, on this  
7 day of \_\_\_\_\_, 20\_\_\_\_.

8  
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10 \_\_\_\_\_  
11 (Affiant)  
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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  
11  
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF WASHOE**

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

19 Plaintiffs,

20 vs.

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

28 Defendants.

CASE NO.: CV15-00497

DEPT. NO.: 7

29 **OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE**  
30 **ORDER**

31 COMES NOW, Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. ("NRS") and AMCB,  
32 LLC dba RUBBISH RUNNERS, by and through their counsel of record, DEL HARDY, ESQ.,  
33 STEPHANIE RICE, ESQ. and HARDY LAW GROUP, and opposes Non-Party Castaway Trash  
34 Hauling, Inc.'s Motion to Quash Subpoena Duces Tecum and for Protective Order.

35 This Opposition is made and based on the following Memorandum of Points and  
36 Authorities, the pleadings and papers on file herein and any arguments of counsel that may be  
37 presented herein.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### A. Preliminary Procedural Matters

#### a. Standing

The Subpoena Duces Tecum at issue here was served on Dan Reaser in care of his law firm, Fennemore Craig. See, Exhibit 1, attached hereto. The Subpoena Duces Tecum seeks correspondence and documents exchanged between Mr. Reaser (and/ his law firm) and Gary Duhon and Greg Martinelli. *Id.* The Subpoena Duces Tecum does not seek communications between Castaway and others. The Subpoena Duces Tecum was not directed or propounded on Castaway Trash Hauling. In fact, the Subpoena Duces Tecum doesn't even mention Castaway Trash Hauling- yet, the moving party herein purports to be "non-party Castaway Trash Hauling."

As a non-party, Castaway Trash Hauling does not have standing to move to quash a subpoena served on Dan Reaser. NRCP 45(c)(2)(B) states that "*a person commanded to produce and permit inspection and copying may ... serve upon the party or attorney designated in the subpoena written objection.*" [Emphasis added]. Likewise, NRCP 45(c)(3)(A) permits the person commanded by the subpoena to move to quash the subpoena. Here, the subpoena at issue does not command Castaway Trash Hauling; it commands Dan Reaser, who did not file a Motion to Quash. Thus, the instant Motion to Quash should be denied because Castaway Trash Hauling does not have standing to challenge the subpoena for Dan Reaser.

In any event, assuming arguendo, that Castaway Trash Hauling is the appropriate party to be bringing the instant Motion to Quash and Motion for Protective Order, Castaway Trash Hauling is no longer an actual entity. On October 1, 2013, Castaway Trash Hauling, LLC changed its name to CTH Holding Company, LLC. See, Exhibit 2, attached hereto. Then, on December 19, 2014 CTH Holding Company, LLC was formally dissolved. See, Exhibit 3, attached hereto. As such, CTH Holding Company, LLC no longer exists and thus, even if Castaway Trash Hauling was the proper party to bring a Motion to Quash and Motion for

1 Protective Order herein, due to the fact that Castaway Trash Hauling is dissolved and no longer  
2 able to transact business in the State of Nevada and as such, an entity that is no longer exists  
3 obviously cannot be filing a Motion with a Court.

4 **b. Untimely Motion**

5 Non-Party Castaway Trash Hauling, Inc.'s Motion to Quash Subpoena Duces Tecum  
6 should be denied in its entirety because it is untimely. A motion to quash may only be  
7 considered if it is "timely" filed. See NRCP 45(c)(3)(A).

8 NRCP 45 (c)(2)(B) provides in relevant part:

9 (2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to  
10 produce and permit inspection and copying may, *within 14 days after*  
11 *service of the subpoena or before the time specified for compliance if*  
12 *such time is less than 14 days after service, serve upon the party or*  
13 *attorney designated in the subpoena written objection to inspection or*  
14 *copying of any or all of the designated materials or of the premises. ....*

15 [Emphasis Added]. Mr. Reaser was personally served with the Subpoena Duces Tecum at issue  
16 herein on October 28, 2015. That Subpoena commanded Mr. Reaser to produce documents on  
17 or before November 16, 2015. Castaway Trash Hauling failed to make the instant Motion to  
18 Quash and Motion for Protective Order until November 20, 2015- after the deadline set forth in  
19 the Subpoena to produce the requested documents.

20 A motion to quash is only timely if filed before the noticed return date. See *Innomed*  
21 *Labs, LLC v. Alza Corp.*, 211 F.R.D. 237, 240 (S.D.N.Y. 2002); Moore ET AL., § 45.50 (referencing  
22 case law interpreting identical language in Federal Rule 45). A court should deny a motion to  
23 quash that is filed after the deadline for production. See *Allender v. Raytheon Aircraft Co.* 220  
24 F.R.D. 661, 665 (D. Kan. 2004) (holding that the proper recourse is a motion in limine to  
25 exclude irrelevant evidence at trial when a party's motion to quash is untimely). Here, the  
26 return date on the Subpoena Duces Tecum to Dan Reaser was November 16, 2015.

27 Castaway Trash Hauling did not file the motion to quash until November 20, 2015,  
28 clearly after the return date. NRCP 45(c)(3)(A) goes on to provide that "*On timely motion*, the

1 court by which a subpoena was issued shall quash or modify the subpoena if . . ." [Emphasis  
2 Added]. Here, the Motion to Quash is untimely and thus, should not be considered.

3 Similarly, a Motion for Protective Order ordinarily must be obtained before the date set  
4 for the discovery. *See, In re Air Crash Disaster at Detroit Metro. Airport*, 130 F.R.D. 627, 630  
5 (E.D.Mich. 1989);<sup>1</sup> *United States v. International Business Machs. Corp.*, 79 F.R.D. 412, 414  
6 (S.D.N.Y. 1978). *See also*, 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*,  
7 sec. 2035, at 262 (1970). The failure to timely obtain a protective order ordinarily precludes  
8 subsequent objection to the discovery requests. *See, e.g., In re Air Crash Disaster*, 130 F.R.D. at  
9 630; *International Business Machs.*, 79 F.R.D. at 414.

10 Here, there is no dispute that Castaway Trash Hauling's Motion to Quash and Motion  
11 seeking a protective order relative to Mr. Reaser's Subpoena Duces Tecum was not filed until  
12 after the date in which Mr. Reaser was required to produce the requested documents set forth  
13 in the subject Subpoena Duces Tecum.

14 Therefore, because the instant Motion to Quash and request for Protective Order is  
15 untimely, it should summarily be denied and Mr. Reaser be required to produce the requested  
16 documents. However, even if the combined Motion(s) were timely, they should be denied, as is  
17 more fully addressed below.

#### 18 **B. Pending Claims Currently Before this Court**

19 Plaintiffs have alleged that prior to the City of Reno granting Franchise Agreements to  
20 both Waste Management and Castaway Trash Hauling and unbeknownst to the City Council at  
21 the time, Waste Management and Castaway Trash Hauling had already reached a secret  
22 agreement for Waste Management to purchase Castaway Trash Hauling. The reasoning for  
23 keeping this buy out agreement hidden from the City Council members is because the Council  
24

25  
26 <sup>1</sup> *See, Executive Mgmt. v. Tigor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) holding, ("Federal  
27 cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the  
Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" (quoting *Las  
Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990))).

1 Members wanted to have two different Franchisees (effectively two different Franchised  
2 Zones). The largest solid waste/ recycling company in the City of Reno at the time, Waste  
3 Management, was awarded a Franchised Zone; and, the second largest solid waste/ recycling  
4 company in the City of Reno at the time, Castaway Trash Hauling, was awarded the second  
5 Franchised Zone. The allegations are premised on the fact that if it had been disclosed to the  
6 City Council members that Waste Management and Castaway Trash Hauling had reached a  
7 buyout agreement prior to each company being awarded their respective Franchised Zones,  
8 then the second largest solid waste/ recycling business in the City of Reno would have been  
9 Plaintiffs.

### 10 C. Privilege

11 While Castaway Trash Hauling seeks to invoke the "common interest" or "joint defense"  
12 privilege, the moving party has failed to follow the procedural rules for asserting such a  
13 privilege and, in any event, that privilege is inapplicable to the instant circumstances.

14 NRCP 45 (d)(2) provides in relevant part:

15 When information subject to a subpoena is withheld on a claim that it is  
16 privileged or subject to protection as trial preparation materials, the claim  
17 shall be made expressly ***and shall be supported by a description of the  
nature of the documents, communications, or things not produced that  
is sufficient to enable the demanding party to contest the claim.***

18 [Emphasis Added]. To date, Castaway Trash Hauling has failed to produce any sort of privilege  
19 log whatsoever that describes the nature of each document or communication in any manner at  
20 all let alone one sufficient to enable Plaintiffs to contest the claims. What is more disappointing  
21 is that Plaintiffs' counsel pointed this requirement out to Mr. Reaser's counsel prior to the  
22 scheduled date for documents to be produced citing directly to NRCP 45(d)(2) and explaining:

23 Accordingly, your objections are deficient in that pursuant to NRCP  
24 45(d)(2), you are still required to timely produce to this office a privilege  
25 log to support your claimed "privileges" that explicitly describes each  
26 document or communications that you are not producing in sufficient detail  
27 to allow Plaintiffs to be able to determine whether or not the claimed  
28 privilege is valid.

... please ensure Mr. Reaser complies with the Subpoena Duces Tecum's  
requested production of documents and provide all such documents  
requested and a detailed privilege log for all items in which a privilege is

1 being asserted on or before Monday, November 16, 2015 at 10:00 a.m.

2 See, Exhibit 4, attached hereto. However, despite Plaintiffs pointing out this requirement, this  
3 procedural requirement has been completely ignored by Mr. Reaser. As such, the instant  
4 Motion to Quash and Motion for Protective Order should be denied in their entirety as the  
5 moving party has deliberately failed to comply with the procedural requirements of NRCP  
6 45(d)(2).

7 In addition to failing to provide a privilege log in accordance with NRCP 45(d)(2),  
8 Plaintiffs respectfully submit that the "common-interest privilege" does not apply to the instant  
9 case. NRS 49.095(3) addresses the "common interest privilege," which states, "A client has a  
10 privilege to refuse to disclose, and to prevent any other person from disclosing, confidential  
11 communications: Made for the purpose of facilitating the rendition of professional legal  
12 services to the client, by the client or the client's lawyer to a lawyer representing another in a  
13 matter of common interest."

14 To argue that Mr. Reaser in representing Castaway Trash Hauling while Gary Duhon in  
15 representing Waste Management were working together "*in a matter of common interest*" is  
16 disingenuous. In fact, the Subpoena Duces Tecum served on Mr. Reaser requested information  
17 from January 1, 2012 to October 28, 2015. What is most perplexing about Mr. Reaser's  
18 assertion of the "common-interest privilege" is that during the same time frame in which the  
19 documents and communications requested in the Subpoena Duces Tecum, Castaway Trash  
20 Hauling was suing Waste Management ("Reno Disposal Company"). See, Exhibit 5, attached  
21 hereto. In addition, the exact attorney's involved in the instant Motion to Quash and asserting  
22 the "Common Interest Privilege," Dan Reaser and Leslie Bryan Hart, were the lawyers  
23 representing Castaway Trash Hauling in that lawsuit against Waste Management. To represent  
24 to this Court that the "common interest privilege" for the production of communications  
25 between Castaway's then lawyer Dan Reaser and the company it was suing, as well as the  
26 opposing company's then lawyer is, by definition, impossible. When two parties are litigating

1 against each other, they simply cannot be represented by joint counsel- that is a clear and  
2 actual conflict of interest.

3       Additionally, for the common interest doctrine to apply, the parties must share a  
4 common legal interest, rather than a commercial or a financial interest. *Bank Brussels Lambert*  
5 *v. Credit Lyonnaise (Suisse) SA*, 160 F.R.D. 437, 447 (S.D.N.Y.1995); *Walsh v. Northrop Grumman*  
6 *Corp.*, 165 F.R.D. 16, 18 (E.D.N.Y.1996); *Bank of America, N.A. v. Terra Nova Ins. Co. Ltd.*, 211  
7 F.Supp.2d 493, 496 (S.D.N.Y.2002); *Blanchard v. Edgemark Financial Corp.*, 192 F.R.D. 233, 237  
8 (N.D.Ill.2000) ("The common interest must be a legal one, not commercial or financial."). "The  
9 doctrine does not extend the communications about a joint business strategy that happens to  
10 include a concern about litigation. *Walsh*, 165 F.R.D. at 18; *Bank Brussels Lambert*, 160 F.R.D. at  
11 447. Similarly, "sharing a desire to succeed in an action does not create a 'common interest.' "  
12 *Shamis v. Ambassador Factors Corp.*, 34 F.Supp.2d 879, 893 (S.D.N.Y.1999). Finally, even if  
13 parties share a common legal interest, the common legal interest exception requires that the  
14 communication at issue be designed to further that legal effort. *United States v. Bergonzi*, 216  
15 F.R.D. 487, 495 (N.D.Cal.2003)).

16       Under the circumstances, there is really just no way that the "common interest  
17 privilege" can apply. Candidly, the assertion that two companies who are suing each other (and  
18 who have spent the better part of the previous decade in litigation against each other, See,  
19 Exhibit 6, attached hereto) is so absurd, Plaintiffs have been unable to find even a shred of case  
20 law that discusses the application of the "common interest privilege" to two parties who are  
21 actively suing each other.

22       In any event, Castaway Trash Hauling has failed to comply with NRCP 45(d)(2) by failing  
23 to provide a privilege log, despite repeated demands and simply cannot validly assert the  
24 "common interest privilege" to the instant circumstances. As such, Castaway Trash Hauling's  
25 Motion to Quash and Motion for Protective Order should be denied in its entirety.

26 ///





1 party seeking discovery." NRCp 26(b)(1); *see also Harrison v. Falcon Prods.* 103 Nev. 558, 560,  
2 746 P.2d 642, 642 (1987). "It is not ground for objection that the information sought will be  
3 inadmissible at the trial if the information sought a reasonably calculated to lead to the  
4 discover of admissible evidence." *Id.*

5 Pursuant to NRS 48.015, "relevant evidence" means evidence having any tendency to  
6 make the existence of any fact that is of consequence to the determination of the action more or  
7 less probable than it would be without the evidence." Relevance is broadly construed to include  
8 "any matter that bears on, or that reasonably could lead to other matters that could bear on,  
9 any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351  
10 (1978); *see also Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295, 309 (D. Kan. 1996).

11 It is difficult to understand how Castaway Trash Hauling can argue that the documents  
12 and communications requested from Mr. Reaser are irrelevant. Here, Plaintiffs have alleged  
13 that prior to the City of Reno granting Franchise Agreements to both Waste Management and  
14 Castaway Trash Hauling, Waste Management and Castaway had already reached a secret  
15 agreement for Waste Management to purchase Castaway. Plaintiffs further allege that Waste  
16 Management and Castaway intentionally and deliberately agreed to keep this buy out a secret  
17 from the Reno City Council and all others is because the council members wanted to have two  
18 different Franchisees (effectively two different Franchised Zones). The largest solid waste/  
19 recycling company in the City of Reno at the time, Waste Management, was awarded a  
20 Franchised Zone; and, the second largest solid waste/ recycling company in the City of Reno at  
21 the time, Castaway, was awarded the second Franchised Zone. The allegations are premised on  
22 the fact that if it had been disclosed to the City Council members that Waste Management and  
23 Castaway had reached a secret buy out deal prior to each company being awarded their  
24 respective Franchised Zones, then the second largest solid waste/ recycling business in the City  
25 of Reno would have been Plaintiffs.

26 By Castaway's own admission in the Instant Motion to Quash and Motion for Protective  
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1 Order, "In or around February 2012, Waste Management of Nevada, Inc. ("Waste Management"  
2 or "WM"), a corporate affiliate of Defendants Reno Disposal Company, Inc. and Refuse, Inc.,  
3 entered into negotiations with Castaway to acquire certain assets of Castaway (the "Business  
4 Purpose"). See, Motion at 2:15-18. Castaway further admits that during that time, Waste  
5 Management and Castaway entered into a Mutual Non Disclosure Agreement and later an  
6 Agreement for Purchase and Sale of Assets, which also contained non-disclosure and  
7 confidentiality clauses. See, Motion at 2:21-3:21. By these very admissions in Castaway's  
8 instant Motion, these matters are identical and directly on point with the causes of action and  
9 claims asserted against Waste Management by Plaintiffs in this case. To say the information  
10 requested is irrelevant is absolutely ridiculous because it is the exact information that supports  
11 Plaintiffs claims.

12 Further, Castaway Trash Hauling's reliance on purported Mutual Non-Disclosure  
13 Agreement and Agreement for Purchase and Sale of Assets containing some sort of non-  
14 disclosure and confidentiality clauses are of no effect. Just because counsel says something is  
15 true doesn't necessarily make it true. Mr. Reaser refused to produce any documents or  
16 communications requested by the Subpoena Duces Tecum- even the actual Mutual Non-  
17 Disclosure Agreement and Agreement for Purchase and Sale of Assets documents themselves.  
18 Castaway cannot simply hide behind blanket assertions that all of the information exchanged  
19 between Mr. Reaser, Mr. Duhon and Mr. Martinelli are confidential. Again, this just goes back to  
20 the issue of Mr. Reaser's failure to provide a privilege log in accordance with NRCP 45 and  
21 specifically demanded by Plaintiffs. At this moment, Plaintiffs have absolutely no idea what  
22 type of communications and documents are in existence because absolutely nothing has been  
23 provided to Plaintiffs.


24 Mr. Reaser's failure to provide a privilege log also makes it impossible for Plaintiffs to  
25 address the arguments that trade secrets are included in the requested communications  
26 because there is absolutely no breakdown or information about what types of trade secrets or  
27  
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1 protected information any of the communications and documents include. Further, there are  
2 many ways in which to protect trade secrets through the discovery process. Plaintiffs would be  
3 agreeable to the redaction of any specifically identified trade secrets; however, none have been  
4 identified. In addition, there are also methods where information can be produced via a joint  
5 agreement that the information would only be disclosed and permitted to be viewed by  
6 counsel. There really are several ways to deal with the alleged confidentiality issues alleged in  
7 Castaway's Motion. However, due to the fact that Mr. Reaser has failed to comply with the  
8 rules, despite demands to do so, the parties to the instant Motion are unable to even explore  
9 those possibilities.

10 **E. CONCLUSION**

11 Based on the foregoing, Plaintiffs' respectfully request that Castaway Trash Hauling's  
12 Motion to Quash and for Protective Order be denied in their entirety. In addition, and as a  
13 result of Castaway Trash Hauling and Mr. Reaser's failure to comply with the procedural  
14 requirements of NRC 45, by untimely filing the instant Motion to Quash as well as failing to  
15 provide a privilege log as required, Plaintiffs respectfully request that this Court sanction Mr.  
16 Reaser and award Plaintiffs their reasonable legal fees incurred in opposing the instant  
17 Motions.

18 Dated this 4<sup>th</sup> day of December, 2015.

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21 DEL HARDY  
22 STEPHANIE RICE  
23 Attorneys for Plaintiffs  
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**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 Quash and Motion for Protective Order 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 HON. WES AYRES ONLY

☒ Facsimile (FAX) and/or Email: HON. WES AYRES ONLY

☐ EFLEX- Court's Electronic Filing System

☐ Messenger Service

☐ Certified Mail with Return Receipt Requested

addressed as follows:

MARK G. SIMONS, ESQ.  
SCOTT HERNANDEZ, ESQ.  
71 Washington Street  
Reno, Nevada 89503

LESLIE BRYAN HART, ESQ.  
DAN REASER, ESQ.  
300 E. Second Street, Suite 1510  
Reno, Nevada 89501

HONORABLE DISCOVERY WES AYRES  
75 Court Street, Room 125  
Reno, Nevada 89501-1982  
(775) 328-6621 (Courtesy Copy sent via Hand Delivery and fax)

**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 15 day of December, 2015.

  
\_\_\_\_\_  
EMPLOYEE OF HARDY LAW GROUP

**AFFIDAVIT OF STEPHANIE RICE, ESQ.**

I, Stephanie Rice, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
2. That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
3. That I have read the foregoing OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER and know the contents thereof;
4. Based on information and belief that I affirm that the Exhibits attached to such OPPOSITION TO MOTION TO QUASH SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER, above-mentioned, namely Exhibits 1 through 6 are true and correct copies of such documents; and,
5. 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 4<sup>th</sup> day December, 2015.

  
STEPHANIE RICE

SUBSCRIBED and SWORN TO before me  
this 4<sup>th</sup> day of December, 2015.

  
NOTARY PUBLIC



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**IN THE SECOND JUDICIAL DISTRICT COURT**

NEVADA RECYCLING AND SALVAGE, et al  
V.  
RENO DISPOSAL COMPANY, INC. et al

CASE NO. CV15-00497

**OPPOSITION TO MOTION TO QUASH SUBOENA DUCES TECUM AND FOR  
PROTECTIVE ORDER**

**EXHIBIT INDEX**

EXHIBIT #	DESCRIPTION	LENGTH
1	Affidavit of Service	14
2	Amendment to Articles of Organization of Castaway Trash Hauling, LLC	2
3	Dissolution of LLC form for CTH Holding Company, LLC	2
4	Correspondence from Stephanie Rice to Leslie Bryan Hart dated November 13, 2015	4
5	Complaint for Delcaratory Judgment Filed by Castaway Trash Hauling, Inc.	16
6	Case Summary for Case No. CV03-03846; Reno Disposal Co et al v. Castaway Trash Hauling et al	13

FILED  
Electronically  
2015-12-04 03:53:48 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5264916 : mcholica

EXHIBIT "1"

EXHIBIT "1"

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

19 Plaintiffs,

20 vs.

21 RENO DISPOSAL COMPANY, INC., a Nevada  
22 Corporation doing business as WASTE  
23 MANAGEMENT; REFUSE, INC., a Nevada  
24 Corporation; ABC CORPORATIONS, I through X;  
25 BLACK AND WHIT COMPANIES, I through X;  
26 and, JOHN DOES I through X, inclusive  
27

28 Defendants.


CASE NO.: CV15-00497

DEPT. NO.: 7

**AFFIDAVIT OF SERVICE**

21 Attached hereto as **Exhibit 1** is the Affidavit of Dustin Grate, for service of a Subpoena  
22 Duces Tecum for Dan R. Reaser, Esq., on October 28, 2015, in the above-entitled matter. A  
23 copy of that Subpoena Duces Tecum is attached hereto as **Exhibit 2**.  
24

25 DATED this 29<sup>th</sup> day of October 2015.

26   
27 STEPHANIE RICE, ESQ. (SBN 11627)  
28 DEL. HARDY, ESQ. (SBN 1172)  
HARDY LAW GROUP  
Attorneys for Plaintiffs



Hardy Law Group  
Attorneys at Law  
300 West Virginia Street, Suite 200, Reno, NV 89501  
Tel: (775) 322-8888 • Fax: (775) 322-8887  
www.hardylaw.com

**CERTIFICATE OF SERVICE**

Pursuant to NRCF 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:

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 proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 29<sup>th</sup> day of October 2015.

  
AN EMPLOYEE OF HARDY LAW GROUP

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**IN THE SECOND JUDICIAL DISTRICT COURT**

**NEVADA RECYCLING AND SALVAGE, et al**  
**V.**  
**RENO DISPOSAL COMPANY, INC. et al**

**CASE NO. CV15-00497**

**AFFIDAVIT OF SERVICE**

**EXHIBIT INDEX**

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>	<b>LENGTH</b>
1	Affidavit of Dustin Grete	2
2	Subpoena Duces Tecum for Dan R. Reaser, Esq.	8

FILED  
Electronically  
2016-10-29 12:54:54 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5212398 : rkwalkin

EXHIBIT "1"

EXHIBIT "1"

1 STATE OF MISSISSIPPI )  
2 COUNTY OF MISSISSIPPI ) ss.

3 I hereby certify and return that I received the within Subpoena Duces Tecum on the 28<sup>th</sup>  
4 day of October, 20 15, and that I personally served the same upon  
5 DAN R. REASON JR by showing the within to him/her, and delivering  
6 to him/her a copy of the same in Mississippi County, Mississippi, on this  
7 28<sup>th</sup> day of October, 20 15.

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(Affiant) 

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2015-10-29 12:54:54 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5212393 : rkWatkin

## EXHIBIT "2"

EXHIBIT "2"

1 CODE: 4065  
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 **SUBPOENA DUCES TECUM**  
28 **DAN R. REASER, ESQ.**

THE STATE OF NEVADA SENDS GREETINGS TO:

DAN R. REASER, ESQ.  
c/o Fennimore Craig  
300 E. 2<sup>nd</sup> Street, Suite 1510  
Reno, Nevada 89501

You are hereby commanded to appear at the Law Offices of Hardy Law Group, 98 Winter  
Street, Reno, Nevada 89503, on November 16, 2015, at 10:00 a.m.

You are commanded to bring with you the following:

1. Any and all correspondence, including but not limited to: letters,

1 emails, memorandum, and proposals; by and/or between you (and/or  
2 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
3 2012 and October 28, 2015.

4 2. Any and all correspondence, including but not limited to: letters,  
5 emails, memorandum, and proposals; by and/or between you (and/or  
6 any agent of your law firm) and Greg Martinelli between January 1, 2012  
7 and October 28, 2015.

8 3. Any and all documents exchanged by and/or between you (and/or  
9 any agent of your law firm) and Gary Duhon, Esq. between January 1,  
10 2012 and October 28, 2015, including but not limited to: proposals,  
11 contracts, draft documents, agreements, invoices and accountings.

12 4. Any and all documents exchanged by and/or between you (and/or  
13 any agent of your law firm) and Greg Martinelli between January 1, 2012  
14 and October 28, 2015, including but not limited to: proposals, contracts,  
15 draft documents, agreements, invoices and accountings.

16 You may deliver these documents to Del Hardy, Esq., of Hardy Law Group, 98 Winter  
17 Street, Reno, NV 89503 on or before November 16, 2015, at 10:00 a.m., in lieu of appearing  
18 that day.

19 *Any person failing to appear and produce the records may be deemed in*  
20 *contempt of the court and shall be liable to the party injured in the sum of*  
21 *\$100.00, and for such damages as may be sustained by him on account of*  
22 *such neglect or refusal.*

23 DATED this 28<sup>th</sup> day of October, 2015.

24  
25   
26 STEPHANIE RICE, ESQ.  
27 DEL. HARDY, ESQ.  
28 Attorneys for Plaintiffs

**CERTIFICATE OF CUSTODIAN OF RECORDS**

STATE OF NEVADA        }  
COUNTY OF WASHOE        } ss.

\_\_\_\_\_, hereby swears under penalty of perjury and  
certifies the following:

1. That he or she is holds the position title of \_\_\_\_\_  
at \_\_\_\_\_, and in such capacity is the custodian of the records of said  
business;

2. That on the \_\_\_\_ day of \_\_\_\_\_, 2015, the Deponent received  
a Subpoena Duces Tecum for the release of communications, records and/or documents  
relating to Gary Duhon, Esq. and Greg Martinelli, from January 1, 2012 through October 28,  
2015;

3. That the Deponent has examined the original of those records and/ or  
documents and has made a true and exact copy of them and that the reproduction of them  
attached hereto is true and complete; and

4. That the original of those records and/or documents was made at or near the  
time of the acts, events, conditions and opinions recited therein by or from information,  
transmitted by a person with knowledge of the course of the regularly conducted activity of  
the Deponent or the business in which the Deponent is engaged or employed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
(Signature)  
SUBSCRIBED and SWORN to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 on this date I served the foregoing document(s) described as SUBPOENA DUCES TECUM  
4 DAN R. REASER, ESQ. on all parties to this action by:

5 ☒ Placing an original or true copy thereof in a sealed envelope placed for  
6 collection 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 ☐ EFILEX- Court's Electronic Filing System

11 ☐ Messenger Service

12 ☐ Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**

18 Pursuant to NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED this 28 day of October, 2015.

22  
23 David Hardy  
24 EMPLOYEE OF HARDY LAW GROUP  
25  
26  
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28

RULE 45 (c) AND (d) NEVADA RULES OF CIVIL PROCEDURE

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued, shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to the inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to that person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which the subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(3)(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony of material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

1 (d) DUTIES IN RESPONDING TO SUBPOENA.  
2 (1) A person responding to a subpoena to produce documents shall produce them a they  
3 are kept in the usual course of business or shall organize and label them to correspond with the  
4 categories in the demand.  
5 (2) When information subject to a subpoena is withheld on a claim that it is privileged or  
6 subject to protection as trial preparation materials, the claim shall be made expressly and shall be  
7 supported by a description of the nature of the documents, communications, or things not produced  
8 that is sufficient to enable the demanding party to contest the claim.  
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1 STATE OF \_\_\_\_\_  
2 COUNTY OF \_\_\_\_\_ } ss.

3 I hereby certify and return that I received the within Subpoena Duces Tecum on the \_\_\_\_\_  
4 day of \_\_\_\_\_, 20\_\_\_\_, and that I personally served the same upon  
5 \_\_\_\_\_ by showing the within to him/her, and delivering  
6 to him/her a copy of the same in \_\_\_\_\_ County, \_\_\_\_\_, on this  
7 \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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11 (Affiant)

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2015-12-04 03:53:48 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5264916 : mcholino

EXHIBIT "2"

EXHIBIT "2"



ROSS MILLER  
Secretary of State  
204 North Carson Street, Suite 1  
Carson City, Nevada 89701-4520  
(775) 684-6706  
Website: www.nvsos.gov



\*091201\*

**Amendment to  
Articles of Organization**  
(PURSUANT TO NRS 86.221)

Filed in the office of	Document Number
	<b>20130642325-18</b>
Ross Miller Secretary of State State of Nevada	Filing Date and Time <b>10/01/2013 10:10 AM</b>
	Entity Number <b>C31448-2002</b>

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Amendment to Articles of Organization**  
**For a Nevada Limited-Liability Company**  
(Pursuant to NRS 86.221)

1. Name of limited-liability company:

CASTAWAY TRASH HAULING, LLC

2. The company is managed by: ☒ Managers OR ☐ Members  
(check only one box)

3. The articles have been amended as follows: (provide article numbers, if available)\*

Article 1 of the Articles of Organization are hereby amended changing the name of the limited liability company to be  
CTH HOLDING COMPANY, LLC

4. Effective date and time of filing: (optional) Date: \_\_\_\_\_ Time: \_\_\_\_\_  
(must not be later than 90 days after the certificate is filed)

5. Signature (must be signed by at least one manager or by a managing member):

X   
Signature

\* 1) If amending company name, it must contain the words "Limited-Liability Company," "Limited Company," or "Limited," or the abbreviations "Ltd.," "LLC," or "LC." The word "Company" may be abbreviated as "Co."

2) If adding managers, provide names and addresses

**FILING FEE: \$175.00**

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.  
This form must be accompanied by appropriate fees.

Nevada Secretary of State 86.221 LLC Amendment  
Revised: 8-31-11

JA001235

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Electronically  
2015-12-04 03:53:48 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5264916 : mcholino

# EXHIBIT “3”

# EXHIBIT “3”




ROSS MILLER  
Secretary of State  
204 North Carson Street, Suite 1  
Carson City, Nevada 89701-4520  
(775) 684-5708  
Website: [www.nvsos.gov](http://www.nvsos.gov)



\*[30704]

**Dissolution of  
Limited-Liability Company**  
(PURSUANT TO NRS 86.531)

Filed in the office of 	Document Number <b>20140818100-55</b>
Ross Miller Secretary of State State of Nevada	Filing Date and Time <b>12/19/2014 5:58 AM</b>
	Entry Number <b>C31448-2002</b>

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Articles of Dissolution  
for a Nevada Limited-Liability Company**  
(Pursuant to NRS 86.531)

1. Name of the limited-liability company:

CTH HOLDING COMPANY, LLC

2. The company has been or will be dissolved.

3. Effective date and time of the dissolution: Date: 12/19/14 Time: 12:01 a.m.

(must not be later than the effective date  
and time of the articles of dissolution)

4. Signature (must be signed by a manager, or if there is no manager by a member):

X   
Signature (manager or member)

FILING FEE: \$100.00

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

*This form must be accompanied by appropriate fees.*

Nevada Secretary of State NRS 86.531 LLC Dissolution  
Revised: 3-5-14

JA001237



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Electronically  
2015-12-04 03:53:48 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5264916 : mcholino

# EXHIBIT “4”

# EXHIBIT “4”

# Hardy Law Group.com

Attorneys and Counselors at Law

96 & 98 Winter Street, Reno, Nevada 89503  
www.HardyLawGroup.com

Telephone (775) 786-5800  
Fax (775) 322-2303 • Fax (775) 329-8282

Stephanie Rice, Esq.  
[Stephanie@HardyLawGroup.com](mailto:Stephanie@HardyLawGroup.com)

November 13, 2015

Leslie Bryan Hart, Esq.  
Fennemore Craig, P.C.

300 E. Second Street, Suite 1510  
Reno, Nevada 89501

Sent Via Hand Delivery & Email to Avoid Delay: [lhart@fclaw.com](mailto:lhart@fclaw.com); [pcarmon@fclaw.com](mailto:pcarmon@fclaw.com)

Re: Subpoena Duces Tecum- Dan Reaser, Esq. in Case No. CV15-00497

Dear Ms. Bryan Hart,

I am in receipt of your November 11, 2015 correspondence asserting objections based on NRC 45(c)(2)(B) to the Subpoena Duces Tecum that was served on Mr. Reaser on October 28, 2015. Respectfully, the objections set forth therein were either asserted as an honest mistake, not recalling all of the facts of you and Mr. Reaser's representation of Castaway Trash Hauling over the years; or, an inappropriate lodging of clearly inapplicable objections in an effort to prevent Plaintiffs' from obtaining documents they are clearly entitled to through proper channels of discovery. It is my hope the former is the case.

Most concerning is your assertion that "Castaway also objects to the Subpoena to the extent it seeks to invade the attorney-client privilege, work product privilege, and the common interest privilege, and seeks information protected from disclosure by a Mutual Non-Disclosure Agreement entered between Castaway and Waste Management of Nevada, Inc." The undersigned is at a loss as to how the information requested can possibly be subject to the attorney-client privilege when the information requested seeks communications and documents exchanged between Mr. Reaser and Gary Duhon, the then lawyer for Waste Management, as well as Greg Martinelli, a Waste Management employee. It is simply absurd to reasonably believe that an attorney-client privilege exists between Mr. Reaser and/or members of his law firm and Waste Management and/or its employees. As admitted in your correspondence, "Dan R. Reaser" is "Castaway's counsel," not Waste Management's counsel. NRS 49.095 (1) and (2) provides:

A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

1. Between the client or the client's representative and the client's lawyer or the representative of the client's lawyer.
2. Between the client's lawyer and the lawyer's representative.

As such, NRS 49.095 does not provide for an attorney-client privilege protecting communications between a lawyer and another lawyer representing an opposing party or communications between a lawyer and a representative of an opposing party. In addition, NRS 49.105 explains that it is the client that holds the attorney-client privilege, not the attorney. Here, Castaway Trash Hauling not only sold out to Waste Management years ago, but the formal entity itself is completely dissolved as of December 19, 2014. As such, an entity no longer in existence cannot possibly be invoking anything, let alone an attorney-client privilege, because it does not exist.

Your assertion of an objection on the basis of the "common interest privilege" is even more disingenuous. NRS 49.095(3) addresses the so-called "common interest privilege," which states, "A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications: Made for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest." To state that Mr. Reaser was representing Castaway while Gary Duhon was representing Waste Management "*in a matter of common interest*" is a blatant misrepresentation. Might I remind you that during the time frame the subpoena requests communications from, Castaway Trash Hauling, by and through Mr. Reaser and yourself, were directly suing Waste Management ("Reno Disposal Company"). To represent that Mr. Reaser can somehow assert the "common interest privilege" for the production of communications between himself and the company it was suing, as well as the opposing company's then lawyer is by definition impossible.

Your relevance objections are equally inapposite. The entire basis of the claims by Plaintiffs against Waste Management is that Castaway and Waste Management deliberately concealed information from the City of Reno during Franchise negotiations. As such and at the very least, the "Mutual Non-Disclosure Agreement entered between Castaway and Waste Management of Nevada, Inc." is absolutely relevant and discoverable, as is all of the communications between Mr. Reaser and Waste Management's then lawyer Gary Duhon and its representative Greg Martinelli. There was a lawsuit pending in 2012 filed by you and Mr. Reaser on behalf of Castaway and against Waste Management. All of a sudden Castaway withdrew its lawsuit, was awarded a Franchised zone and then immediately sold out to Waste Management. All communications and documents exchanged between Mr. Reaser as counsel for Castaway and Mr. Duhon and Mr. Martinelli from 2012 through October 28, 2015 are relevant in order to determine how Castaway Trash Hauling went from suing Waste Management to changing their tune overnight in order to obtain a Franchised zone to selling out to its long standing and publically hated competitors. That information is reasonably calculated to lead to the discovery of admissible evidence in the above captioned case.

Further, making an objection pursuant to NRCP 45(c)(2)(B), also explicitly subjects you to the provisions of NRCP 45(d)(2) which provides:

***When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.***

[Emphasis Added]. Accordingly, your objections are deficient in that pursuant to NRC 45(d)(2), you are still required to timely produce to this office a privilege log to support your claimed "privileges" that explicitly describes each document or communications that you are not producing in sufficient detail to allow Plaintiffs to be able to determine whether or not the claimed privilege is valid.

The vague objections on the basis of relevance and over breadth, without specificity are inadequate. The suggestion that these items should have instead been requested from Reno Disposal Company is also inapplicable in that with respect to the requests for communications between Mr. Reaser and Mr. Duhon, Mr. Duhon is not representing Reno Disposal in this case and as such, is a non-party just as Castaway is. The privilege objections asserted on behalf of Mr. Reaser are inapplicable and the assertion of such blatantly inappropriate and unsubstantiated objections are particularly alarming given Mr. Reaser's experience with the State Bar of Nevada Disciplinary Board, demonstrating his superior knowledge and understanding of the ethical rules that lawyers are bound by in this State.

Again, it is my hope that these objections were made in error as a result of the time that has passed since you and Mr. Reaser represented Castaway Trash Hauling. With your recollection now refreshed, please ensure Mr. Reaser complies with the Subpoena Duces Tecum's requested production of documents and provide all such documents requested and a detailed privilege log for all items in which a privilege is being asserted on or before Monday, November 16, 2015 at 10:00 a.m. Should Mr. Reaser fail to comply, this office will be filing a Motion to Compel and will seek sanctions against Mr. Reaser for his refusal to comply. Hopefully that can be avoided by Mr. Reaser's compliance.

Sincerely,

  
Stephanie Rice, Esq.

DH/SR

CC: Client; File; Mark Simons & Scott Hernandez, 71 Washington Street, Reno, Nevada 89503 (Via USPS)

Enclosure(s): None.

JA001241

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2015-12-04 03:53:48 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5264916 : mcholino

# EXHIBIT "5"

# EXHIBIT "5"

CV12-01207  
District Court  
Washoe County  
Nevada  
Case No. 12-01207  
Filed 05/02/2012 11:16 AM  
BY: [Signature]  
DEPUTY

1 CODE: ~~11433~~ 1432  
2 Dan R. Roemer, 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.

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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:

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PARTIES

1. CASTAWAY is a duly organized and existing Nevada corporation.

2. 433 LLC is a duly organized and existing Nevada limited liability company.

3. The CITY OF RENO (the "CITY"), is a duly incorporated and existing city and municipal corporation pursuant to and with the powers prescribed by the provisions of Title 21 of the Nevada Revised Statutes (the "NRS"), situate within the county of Washoe, and state of Nevada.

4. The WASHOE COUNTY DISTRICT BOARD OF HEALTH (the "HEALTH BOARD"), is a special local government district and political subdivision of the State of Nevada created and existing pursuant to and with the powers prescribed by NRS Chapter 439.

5. RENO DISPOSAL CO. ("RENO DISPOSAL"), is a duly organized and existing Nevada corporation.

6. CASTAWAY and 433 LLC do not know the true names and capacities of defendants herein named as DOES I-X, inclusive, who may have or claim any interest which would be affected by the declarations sought by this complaint and action, and hereby request leave of this Court to amend this complaint in accordance with Rules 10(a) and 15 of the Nevada Rules of Civil Procedure to include herein the names, capacities and jurisdiction as to the same with appropriate allegations at such time as ascertained.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction of this action under NRS 30.030 and NRS 30.040.

8. Venue is proper in the Second Judicial District Court of the State of Nevada in and for the County of Washoe under NRS 13.040.

SUMMARY OF THE DISPUTE

9. CASTAWAY is in the business of providing the services of (a) collection, hauling and disposal of trash; and, (b) recycling, including the collection and hauling of food waste for recycling at permitted recycling facilities and composting facilities, each or both for 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 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 Claim 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 HEALTH 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.

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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 2<sup>nd</sup> 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.  
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28

**FILED**  
Electronically  
08-01-2012:04:10:03 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3123127

1 CODE: 2585  
2 Dan E. Reaser, Esq.  
3 Nevada State Bar No. 1170  
4 Leslie Bryan Hart  
5 Nevada Bar No. 4932  
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10 Reno, NV 89501  
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12 Attorneys for Castaway Trash Hauling, Inc.  
13 and Four Thirty-Three, LLC.

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

13 CASTAWAY TRASH HAULING, INC., a  
14 Nevada corporation; and, FOUR THIRTY-  
15 THREE, LLC, a Nevada limited liability  
company,

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Plaintiffs,

v.

13 CITY OF RENO, an incorporated city of the  
14 State of Nevada; WASHOE COUNTY  
15 DISTRICT BOARD OF HEALTH, a special  
16 local government district and political  
17 subdivision of the State of Nevada; RENO  
18 DISPOSAL CO., a Nevada Corporation; and,  
19 DOE DEFENDANTS I-X inclusive,

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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 1<sup>st</sup> 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  
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2015-12-04 03:53:48 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5264916 : mcholino

# EXHIBIT "6"

# EXHIBIT "6"



Second Judicial District Court  
State of Nevada  
Washoe County

Electronic Filing

## Case Summary for Case: CV03-03846

RENO DISPOSAL COMPANY VS. CASTAWAY TRASH

<b>Case Number</b>	CV03-03846	<b>Plaintiff</b>	RENO DISPOSAL CO., INC. et al
<b>Case Type</b>	CLASS ACTION "COMPLEX"	<b>Defendant</b>	CASTAWAY TRASH HAULING, INC. et al
<b>Opened</b>	06-18-2003	<b>Judge</b>	HONORABLE SCOTT N. FREEMAN - Division D9
<b>Status</b>	ORD/JUDFLD		

Show/Hide Participants

### File Data

### Case History

08-06-2012	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 3130550 - Approved By: NOREVIEW : 08-06-2012:12:57:43
08-06-2012	Ord Return of Jury Fees Filed Ord Return of Jury Fees Transaction 3130347 - Approved By: NOREVIEW : 08-06-2012:12:56:09
08-06-2012	Ord Return of Appeal Bond Filed Ord Return of Appeal Bond Transaction 3130347 - Approved By: NOREVIEW : 08-06-2012:12:56:09
02-20-2009	Stip & Ord Dismiss W/Prejudice Filed Stip & Ord Dismiss W/Prejudice STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE
02-11-2009 Defendant	Acceptance Offer of Judgment Filed by: MICHAEL B. SPRINGER, ESQ. Acceptance Offer of Judgment - Exhibit 1
02-11-2009 Defendant	Opposition to Mtn Filed by: MICHAEL B. SPRINGER, ESQ. Opposition to Mtn ... FOR ATTORNEYS FEES PURSUANT TO NRS 41.670
02-05-2009	Affidavit in Support Filed Affidavit in Support... AFFIDAVIT OF JOHN W. PHILLIPS IN SUPPORT OF MOTION UNDER NRCP 12(c) AND 56 FOR JUDGMENT ON CASTAWAY'S REMAINING CLAIMS - Exhibit 1 - Exhibit 2 - Exhibit 3
02-05-2009	Affidavit in Support Filed Affidavit in Support... AFFIDAVIT OF GREG MARTINELLI IN SUPPORT OF MOTION UNDER NRCP 12 (c) AND 56 FOR JUDGMENT ON CASTAWAY'S REMAINING CLAIMS - Exhibit 1 - Exhibit 2 - Exhibit 3 - Exhibit 4
02-05-2009 Plaintiff	Mtn Partial Sum Judgment Filed by: FRANK CASSAS, ESQ. Mtn Partial Sum Judgment MOTION UNDER NRCP 12(c) AND 56 FOR JUDGMENT ON CASTAWAY'S REMAINING CLAIMS
02-05-2009 Plaintiff	Affidavit in Support Filed by: FRANK CASSAS, ESQ. Affidavit in Support... AFFIDAVIT OF FRANK CASSAS IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS FEES UNDER NRS 41.670
01-01-2009 Plaintiff	Affidavit in Support Filed by: FRANK CASSAS, ESQ.

	Affidavit in Support... AFFIDAVIT OF KARLY Y. OLSEN IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS FEES UNDER NRS 41.670
02/02/2009 Plaintiff	Affidavit in Support Filed by: FRANK CASSAS, ESQ. Affidavit in Support..
02/07/2009 Plaintiff	Mtn for Attorney's Fee Filed by: FRANK CASSAS, ESQ. Mtn for Attorney's Fee
01/24/2009	Order... Filed Order ... ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS WITH PREJUDICE
01/29/2009	Order... Filed Order ... ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS ALL CLAIMS AGAINST COUNSEL BASED ON COUNSEL'S LETTER; THE REMAINING ARGUMENTS ARE MCOT
01/29/2009	Order... Filed Order ... ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIM FOR DAMAGES DUE TO COURT'S ALLEGEDLY WRONGFUL INJUNCTIONS; CASTAWAY'S CLAIM FOR DAMAGES FOR ALLEGEDLY WRONGFUL INJUNCTION IS DISMISSED WITH PREJUDICE
01/29/2009	Order... Filed Order ... ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CLAIMS OF BREACH OF FRANCHISE AGREEMENTS; THOSE CLAIMS ARE DISMISSED WITH PREJUDICE
01/29/2009	Order... Filed Order ... ORDER GRANTING RENO DISPOSAL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CONSPIRACY CLAIMS; CASTAWAY'S CONSPIRACY CLAIMS ARE DISMISSED WITH PREJUDICE
01/20/2009	Stipulation Filed Stipulation ... STIPULATION REGARDING LENGTH OF REPLY BRIEFS
01/19/2009	Request for Submission Filed Request for Submission DOCUMENT TITLE: MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CLAIMS BASED ON ALLEGED BREACHES OF FRANCHISE AGREEMENTS - Transaction 549580 - Approved By: CGALINDO : 01-20-2009:08:22:50 PARTY SUBMITTING: FRANK CASSAS AND KARL OLSEN DATE SUBMITTED: 01-20-09 SUBMITTED BY: C GALINDO DATE RECEIVED JUDGE OFFICE:
01/15/2009	Request for Submission Filed Request for Submission DOCUMENT TITLE: MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CONSPIRACY CLAIMS - Transaction 549579 - Approved By: CGALINDO : 01-20-2009:08:24:02 PARTY SUBMITTING: FRANK CASSAS AND KARL OLSEN DATE SUBMITTED: 01-20-09 SUBMITTED BY: C GALINDO DATE RECEIVED JUDGE OFFICE:
01/15/2009	Reply Filed Reply... REPLY MEMORANDUM IN SUPPORT OF MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CLAIMS BASED ON ALLEGED BREACHES OF FRANCHISE AGREEMENTS
01/15/2009	Affidavit Filed Affidavit ... AFFIDAVIT OF GREG MARTINELLI IN SUPPORT OF MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CLAIMS BASED ON ALLEGED BREACHES OF FRANCHISE AGREEMENTS
01/15/2009	Reply Filed Reply... REPLY MEMORANDUM IN SUPPORT OF MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CONSPIRACY CLAIMS
	Opposition to Mtn Filed

01-09-2009	<p>Opposition to Mtn ... OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CONSPIRACY CLAIMS</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> </ul>
01-09-2009	<p>Opposition to Mtn Filed</p> <p>Opposition to Mtn ... OPPOSITION TO MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CLAIM BASED UPON ALLEGED BREACHES OF FRANCHISE AGREEMENTS</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> <li>- Exhibit 2A</li> <li>- Exhibit 3</li> <li>- Exhibit 4</li> <li>- Exhibit 5</li> <li>- Exhibit 6</li> <li>- Exhibit 7</li> <li>- Exhibit 8</li> <li>- Exhibit 9</li> </ul>
01-09-2009	<p>Affidavit Filed</p> <p>Affidavit ... NRCP RULE 56 (F) AFFIDAVIT OF MICHAEL B. SPRINGER, ESQ.</p>
01-09-2009	<p>Stip and Order Filed</p> <p>Stip and Order... AMENDED STIPULATED CASE MANAGEMENT ORDER</p>
01-07-2009	<p>***Minutes Filed</p> <p>***Minutes 12/17/08 - STATUS HEARING - Transaction 531468 - Approved By: NOREVIEW : 01-07-2009:15:15:40</p>
12-30-2008	<p>Answer to Counterclaim-Civil Filed</p> <p>Answer to Counterclaim-Civil CASTAWAY TRASH HAULING, INC'S ANSWER TO COUNTERCLAIM TO THIRD PARTY COMPLAINT</p>
12-17-2008	<p>Affidavit In Support Filed</p> <p>Affidavit in Support... AFFIDAVIT OF FRANK CASSAS IN SUPPORT OF MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CONSPIRACY CLAIMS</p>
12-17-2008	<p>Mtn Partial Sum Judgment Filed</p> <p>Mtn Partial Sum Judgment MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CONSPIRACY CLAIMS</p>
12-17-2008	<p>Mtn Partial Sum Judgment Filed</p> <p>Mtn Partial Sum Judgment MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CLAIMS BASED ON ALLEGED BREACHES OF FRANCHISE AGREEMENTS</p>
02-17-2009	<p>Affidavit In Support Filed</p> <p>Affidavit in Support... AFFIDAVIT OF JOHN W. PHILLIPS IN SUPPORT OF (1) MOTION UNDER NRCP 56 FOR PARTIAL SUMMARY JUDGMENT ON CASTAWAY'S CLAIMS BASED ON ALLEGED BREACHES OF FRANCHISE AGREEMENTS</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> <li>- Exhibit 3</li> <li>- Exhibit 4</li> <li>- Exhibit 5</li> <li>- Exhibit 6</li> <li>- Exhibit 7</li> <li>- Exhibit 8</li> </ul>
12-12-2008	<p>Reply Filed</p> <p>Reply... CASTAWAY'S REPLY TO RENO DISPOSAL'S RESPONSE TO SUBMISSION OF SUPPLEMENTAL CASE AUTHORITY</p>
12-10-2008	<p>Affidavit In Support Filed</p> <p>Affidavit in Support... AFFIDAVIT OF COUNSEL IN SUPPORT OF REPLY MEMORANDUM AND POINTS AND AUTHORITIES RE: MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)(5) AND NRS 41.560 - Transaction 494029 -</p>



	Approved By: MPURDY : 12-11-2008:07:45:23
12-15-2008	Response Filed Response... REPONSE TO CASTAWAY TRASH HAULING, INC.'S UNTIMELY SUBMISSION FO SUPPLEMENTAL CASE SAW RELATED TO MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)(5) and NRS 41.660
12-04-2008	Stipulation Filed Stipulation ... REGARDING LENGTH OF REPLY BRIEFS
12-04-2008	Request for Submission Filed Request for Submission DOCUMENT TITLE: PLAINTIFF/THIRD PARTY DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT: MOTION TO DISMISS UNDER NRCP 12(b)(5) AND NRCP 41.660 ALL CLAIMS AGAINST COUNSEL AND BASED UPON COUNSEL'S LETTER; MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)(5) AND NRCP 41.660 PARTY SUBMITTING: FRANK CASSAS, ESQ; KARL Y. OLSEN, ESQ DATE SUBMITTED: 12/04/08 SUBMITTED BY: DJ DATE RECEIVED JUDGE OFFICE:
12-04-2008	Affidavit In Support Filed Affidavit in Support... AFFIDAVIT OF JOHN W. PHILLIPS IN SUPPORT OF (1) MOTION TO DISMISS UNDER NRCP 12(b)(5) AND NRCP 41.660 ALL CLAIMS AGAINST COUNSEL AND BASED UPON COUNSEL'S LETTER, AND (2) MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)(5) AND NRCP 41.660 - Exhibit 1 - Exhibit 2
12-04-2008	Affidavit In Support Filed Affidavit in Support... AFFIDAVIT OF GREG MARTINELLI IN SUPPORT OF (1) MOTION TO DISMISS UNDER NRCP 12(b)(5) AND NRCP 41.660 ALL CLAIMS AGAINST COUNSEL AND BASED UPON COUNSEL'S LETTER, AND (2) MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)(5) AND NRCP 41.660 - Exhibit 1 - Exhibit 2 - Exhibit 3
12-04-2008	Reply Filed Reply... REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS UNDER NRCP 12(b)(5) AND NRCP 41.660 ALL CLAIMS AGAINST COUNSEL AND BASED UPON COUNSEL'S LETTER
12-04-2008	Reply Filed Reply... REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT (DAMAGES DUE TO COURT'S ALLEGEDLY WRONGFUL INJUNCTION)
12-04-2008	Reply Filed Reply... REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)(5) AND NRCP 41.660
11-25-2008	Affidavit Filed Affidavit ... AFFIDAVIT OF ROBERT JAY GARDNER
11-25-2008	Affidavit Filed Affidavit ... AFFIDAVIT OF STEVEN DUQUE
11-25-2008	Opposition to Mtn Filed Opposition to Mtn ... CONSOLIDATED OPPOSITION TO MOTIONS TO DISMISS CASTAWAY'S PETITIONING CLAIMS AND CLAIMS IN COUNSEL'S LETTER UNDER NRCP 12(B) (5) AND NRS 41.600 - Exhibit 1 - Exhibit 2 - Exhibit 3 - Exhibit 4 - Exhibit 5 - Exhibit 6 - Exhibit 7

11-21-2008	<p>Opposition to Mtn Filed</p> <p>Opposition to Mtn ... CASTAWAY TRASH HAULING, INC.'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> <li>- Exhibit 3</li> <li>- Exhibit 4</li> </ul>
11-24-2008	<p>Reply Filed</p> <p>Reply... REPLY TO FIRST AMENDED COUNTERCLAIM TO THIRD PARTY COMPLAINT CASTAWAY TRASH HAULING INC.</p>
11-20-2008	<p>Association of Counsel Filed</p> <p>Association of Counsel John Phillips for Plaintiff</p>
11-18-2008	<p>Motion Filed</p> <p>Motion ... MOTION TO ASSOCIATE COUNSEL</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> <li>- Exhibit 3</li> </ul>
11-17-2008	<p>Application for Setting Filed</p> <p>Application for Setting for STATUS HEARING ON DECEMBER 17, 2008 AT 1:30 P.M. AND JURY TRIAL ON JULY 6, 2009 AT 8:30 A.M.</p>
11-10-2008	<p>Memorandum Filed</p> <p>Memorandum ... PLAINTIFFS AND THIRD PARTY DEFENDANT'S STATUS CONFERENCE MEMORANDUM - Transaction 446628 - Approved By: SSTINCH : 11-10-2008:12:22:35</p>
11-05-2008	<p>Mtn to Dismiss Filed</p> <p>Mtn to Dismiss ... MOTION TO DISMISS CASTAWAY'S PETITIONING CLAIMS UNDER NRCP 12(b)5 AND NRS 41.660.</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> <li>- Exhibit 3</li> </ul>
11-03-2008	<p>Mtn to Dismiss Filed</p> <p>Mtn to Dismiss ... MOTION TO DISMISS UNDER NRCP 12 (b) (5) AND NRS 41.660 ALL CLAIMS AGAINST COUNSEL AND BASED UPON COUNSEL'S LETTER</p>
11-03-2008	<p>Reply Filed</p> <p>Reply... REPLY TO COUNTERCLAIMS; FIRST AMENDED ANSWER TO THRID PARTY COMPLAINT; AND FIRST AMENDED COUNTERCLAIM TO THIRD PARTY COMPLAINT - Transaction 438135 - Approved By: MPURDY : 11-03-2008:17:01:51</p>
11-01-2008	<p>Mtn Partial Sum Judgment Filed</p> <p>Mtn Partial Sum Judgment</p> <ul style="list-style-type: none"> <li>- Exhibit 1</li> <li>- Exhibit 2</li> <li>- Exhibit 3</li> <li>- Exhibit 4</li> <li>- Exhibit 5</li> </ul>
10-24-2008	<p>Motion Filed by: FRANK CASSAS, ESQ.</p> <p>Motion ... MOTION TO VACATE TRIAL SETTING - Transaction 427204 - Approved By: MPURDY : 10-24-2008:16:25:36</p>
10-21-2008	<p>Reply Filed</p> <p>Reply... REPLY TO COUNTERCLAIM</p>
10-13-2008	<p>Summons Filed Filed</p> <p>Summons Filed SERVED:VAN KATZMAN SEPT. 29,2008</p>

09-09-2008	Summons Filed Filed Summons Filed SERVED: VAN KATZMAN SEPT. 29,2008
09-19-2008	Amended Answer Filed Amended Answer SECOND AMENDED ANSWER TO COMPLAINT, COUNTERCLAIM AND FIRST AMENDED THIRD PARTY COMPLAINT (CASTAWAY TRASH HAULING, INC.) - Exhibit 1
09-29-2008	Notice of Entry of Ord Filed Notice of Entry of Ord
09-21-2008	Stip and Order Filed Stip and Order... STIPULATED CASE MANAGEMENT ORDER
10-07-2008	Mtn to Strike Filed Mtn to Strike... CASTAWAY TRASH HAULING, INC.'S MOTION TO STRIKE
09-03-2008	Response Filed Response... RESPONSE OF THIRD PARTY DEFENDANT CITY OF SPARKS TO DEFENDANT AND COUNTERCLAIMANT CASTAWAY TRASH HAULING, INC.'S "MOTION FOR LEAVE TO FILE AMENDED COUNTERCLAIM"
09-22-2008	Application for Setting Filed Application for Setting FOR PRE-TRIAL CONFERENCE (CASE MANAGEMENT CONFERENCE ORDERED BY COURT PURSUANT TO ORDER DATED JUNE 14, 2005 SET FOR JULY 10, 2008 AT 2:30 P.M. (TRIAL SET FOR FEB. 2009)
09-22-2008	Motion Filed Motion ... MOTION FOR LEAVE TO FILE AMENDED COUNTERCLAIM
09-23-2008	Subpoena Duces Tecum Filed Subpoena Duces Tecum
09-24-2008	Subpoena Duces Tecum Filed Subpoena Duces Tecum
09-24-2008	Subpoena Duces Tecum Filed Subpoena Duces Tecum
09-24-2008	Supreme Court Order Affirming Filed Supreme Court Order Affirming SUPREME COURT CASE NO. 44997
09-24-2008	Supreme Court Order Denying Filed Supreme Court Order Denying SUPREME COURT CASE NO. 44997 ORDER DENYING REHEARING AND AMENDING PRIOR ORDER
09-24-2008	Supreme Ct Clk's Cert & Judg Filed Supreme Ct Clk's Cert & Judg SUPREME COURT CASE NO. 44997
09-24-2008	Supreme Court Remittitur Filed Supreme Court Remittitur SUPREME COURT CASE NO. 44997
09-07-2008	Application for Setting Filed Application for Setting APPLICATION FOR SETTING FOR TRIAL ON FEBRUARY 23, 2009 AT 8:30 A.M.
09-24-2008	Notice Filed

	Notice ... NOTICE TO SET TRIAL
02-26-2005	Supreme Court Order Denying Filed Supreme Court Order Denying SUPREME COURT CASE NO. 44997 ORDER DENYING REHEARING AND AMENDING PRIOR ORDER
11-27-2007	Supreme Court Receipt for Doc Filed Supreme Court Receipt for Doc SUPREME COURT CASE NO. 44997
01-13-2007	Supreme Court Order Affirming Filed Supreme Court Order Affirming SUPREME COURT CASE NO. 44997
12-03-2005	Transcript Filed Transcript TRANSCRIPT OF PROCEEDINGS-TRIAL ONGOING DATED NOVEMBER 4, 2003 : this document can only be accessed at the court
05-14-2005	Notice of Entry of Ord Filed Notice of Entry of Ord - Exhibit 1
04-14-2005	Stip and Order Filed Stip and Order... CITY OF SPARKS DISMISSED, TRIAL VACATED, DESIGNATED COMPLEX CASE, PARTIES ORDERED TO SCHEDULE A CONFERENCE PURSUANT TO NRCP 16.1. FURTHER PROVISIONS SET FORTH.
06-09-2005	Ord Granting Mtn Filed Ord Granting Mtn ... REMAINING ISSUES AND CLAIMS ARE STAYED UNTIL SUCH TIME AS THE SUPREME COURT RENDERS ITS DECISION ON PLAINTIFF'S APPEAL
05-23-2005	Order... Filed Order ... ORDER DENYING PLAINTIFF'S MOTION TO STRIKE JURY DEMAND (SKM)
05-16-2005	Request for Submission Filed Request for Submission DOCUMENT TITLE: MOTION TO STAY PROCEEDINGS PENDING APPEAL PARTY SUBMITTING: FRANK CASSAS DATE SUBMITTED: 5/17/05 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
05-16-2005	Request for Submission Filed Request for Submission DOCUMENT TITLE: MOTION TO STRIKE JURY DEMAND PARTY SUBMITTING: FRANK CASSAS DATE SUBMITTED: 5/17/05 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
05-16-2005	Mtn to Dismiss Filed Mtn to Dismiss ... PLAINTIFF'S MOTION TO DISMISS AND/OR SUMMARY JUDGMENT AS TO CASTAWAY'S CLAIMS OF CIVIL CONSPIRACY - Exhibit A
05-10-2005	Joinder Filed Joinder... CITY OF SPARKS' JOINDER IN REPLY TO MOTION TO STAY PROCEEDINGS PENDING APPEAL
05-04-2005	Reply Filed Reply... PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING APPEAL
04-20-2005	Opposition to Mtn Filed Opposition to Mtn ... CASTAWAY TRASH HAULING INC.'S OPPOSITION TO MOTION TO STAY
04-17-2005	Joinder Filed Joinder... CITY OF SPARKS' JOINER IN MOTION TO STAY PROCEEDINGS PENDING APPEAL

04-19-2005	Motion Filed Motion ... MOTION TO STAY PROCEEDINGS PENDING APPEAL
05-04-2005	Supreme Court Receipt for Doc Filed Supreme Court Receipt for Doc SUPREME COURT CASE NO. 44997
05-25-2005	Certificate of Transmittal Filed Certificate of Transmittal
05-29-2005	Certificate of Clerk Filed Certificate of Clerk
06-25-2005	Case Appeal Statement Filed Case Appeal Statement
08-25-2005	Notice/Appeal Supreme Court Filed \$Notice/Appeal Supreme Court
08-11-2005	Summons Filed Filed Summons Filed FAYE MARTIN OF THE OFFICE OF CORPORATION TRUST COMPANY OF NEVADA, RESIDENT AGENT FOR REFUSE, INC., A NEVADA CORPORATION, AUTHORIZED TO ACCEPT, ACCEPTED ON THEIR BEHALF 3/8/05
01-11-2005	Summons Filed Filed Summons Filed FAYE MARTIN OF THE OFFICE OF CORPORATION TRUST COMPANY OF NEVADA, RESIDENT AGENT FOR WASTE MANAGEMENT OF NEVADA, INC., A NEVADA CORPORATION, AUTHORIZED TO ACCEPT, ACCEPTED ON THEIR BEHALF 3/8/05
03-09-2005	Notice of Entry of Ord Filed Notice of Entry of Ord
03-04-2005	Ord Denying Filed Ord Denying ... PLAINTIFFS' REQUEST FOR NEW TRIAL DENIED
03-03-2005	Order... Filed Order ... ORDER DIRECTING CLERK TO RELEASE \$5,000.00 CASH SECURITY DEPOSIT
03-01-2005	Reply Filed Reply... REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE JURY DEMAND
03-01-2005	Opposition to Filed Opposition to ... OPOSITION TO REQUEST FOR SUBMISSION OF MOTION AND REQUEST FOR ORAL ARGUMENT (MOTION FOR NEW TRIAL-MOTION TO STRIKE JURY DEMAND)
03-01-2005	Non-Opposition Filed Non-Opposition ... NON-OPPOSITION TO RELEASE OF SECURITY
02-16-2005	Request for Submission Filed Request for Submission DOCUMENT TITLE: CASTAWAY TRASH HAULING'S MOTION FOR ORDER DIRECTING CLERK TO RELEASE \$5,000.00 SECURITY DEPOSIT TO CASTAWAY TRASH HAULING, INC. PARTY SUBMITTING: MICHAEL SPRINGER DATE SUBMITTED: 2-22-05 SUBMITTED BY: MA DATE RECEIVED JUDGE'S OFFICE:
02-01-2005	Opposition to Mtn Filed Opposition to Mtn ... OPOSITION TO MOTION TO STRIKE JURY DEMAND
	Mtn to Strike

## Case Summary

12/4/15, 12:54 PM

07-13-2005	Filed Mtn to Strike... MOTION TO STRIKE "NOTICE OF SETTING HEARING ON MOTION FOR NEW TRIAL AND REHEARING"
07-15-2005	Request for Submission Filed Request for Submission DOCUMENT TITLE: PLAINTIFF'S MOTION FOR NEW TRIAL AND REHEARING DATED JANUARY 13, 2005, DEFENDANT'S OPPOSITION TO MOTION AND ERRATA FILED JANUARY 25, 2005, AND THE CITY OF SPARKS' NOTICE OF NON-OPPOSITION PARTY SUBMITTING: MICHAEL SPRINGER DATE SUBMITTED: 2-17-05 SUBMITTED BY: MA DATE RECEIVED JUDGE'S OFFICE:
08-10-2005	Application for Setting Filed Application for Setting
08-14-2005	Mtn to Strike Filed Mtn to Strike... JURY DEMAND - Exhibit A - Exhibit B
08-14-2005	Notice to Set Filed Notice to Set NOTICE OF SETTING HEARING ON MOTION FOR NEW TRIAL AND REHEARING
08-27-2005	Association of Counsel Filed Association of Counsel CHESTER H. ADAMS, SPARKS CITY ATTORNEY AND STANLEY H. BROWN, JR., CO-COUNSEL FOR FOR THIRD PARTY DEFENDANTS CITY OF SPARKS
09-25-2005	Opposition to Mtn Filed Opposition to Mtn ... OPPOSITION TO MOTION AND ERRATA LIMITING CHANGES TO PROPERLY IDENTIFYING THE PROPER MOVAN FOR NEW TRIAL AND REHEARING
09-20-2005	Notice Filed Notice ... OF CASE MANAGMENT CONFERENCE
10-20-2005	Motion Filed Motion ... MOTION FOR ORDER DIRECTING CLERK TO RELEASE \$5,000.00 SECURITY DEPOSIT TO CASTAWAY TRASH HAULING, INC.
01-04-2006	Notice to Set Filed Notice to Set FEB. 8, 2005 @ 10:15 AM
01-24-2006	Demand for Jury Filed Demand for Jury
02-16-2006	Notice Filed Notice ... NOTICE OF NON-OPPOSITION
03-16-2006	Motion Filed Motion ... MOTION FOR NEW TRIAL AND REHEARING
03-24-2006	Errata Filed Errata... ERRATA TO MOTION FOR NEW TRIAL AND REHEARING
04-02-2006	Motion Filed Motion ... MOTION FOR NEW TRIAL AND REHEARING
12-05-2006	Decision Filed Decision

10-01-2003	Transcript Filed Transcript OCTOBER 30, 2003 - PRELIMINARY INJUNCTION AND TRIAL ON THE MERITS : this document can only be accessed at the court
10-08-2003	Subpoena Filed Subpoena
10-10-2003	***Minutes Filed ***Minutes - Exhibit List
10-29-2003	Complaint - Civil Filed Complaint - Civil COMPLAINT FOR DECLARATORY RELIEF
10-28-2003	Declaration Filed Declaration DECLARATION OF FRANK CASSAS, ESQ.
10-28-2003	Declaration Filed Declaration SPARKS SANITATION'S TRIAL MEMORANDUM
10-17-2003	Ord Granting Mtn Filed Ord Granting Mtn ... PEAVINE CONTRUCTION, INC.'S, INTERVENOR, MOTION FOR JOINDER PURSUANT TO NRCP RULE 19
10-24-2003	Trial Statement Filed Trial Statement... TRIAL STATEMENT OF CASTAWAY TRASH HAULING, INC.
10-10-2003	Reply to/in Opposition Filed Reply to/in Opposition REPLY TO THIRD-PARTY PLAINTIFFS OPPOSITION TO CITY'S MOTION TO DISMISS
10-10-2003	Request for Submission Filed Request for Submission DOCUMENT TITLE: MOTION TO DISMISS THIRD PARTY COMPLAINT PARTY SUBMITTING: CHET ADAMS DATE SUBMITTED: 10/13/03 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE: 10/13/03
10-10-2003	Opposition to Mtn Filed Opposition to Mtn ... OPPOSITION TO THE CITY OF SPARKS' MOTION TO DISMISS THIRD PARTY COMPLAINT
10-09-2003	Errata Filed Errata... ERRATA TO OPPOSITION TO THE CITY OF SPARKS' MOTION TO DISMISS THIRD-PARTY COMPLAINT
10-12-2003	Motion Filed Motion ... MOTION TO DISMISS THIRD PARTY COMPLAINT - Exhibit A
10-01-2003	Stip and Order Filed Stip and Order... STIPULATION AND CASE MANAGEMENT ORDER
10-24-2003	Withdrawal of Motion Filed Withdrawal of Motion WITHDRAWAL OF MOTION TO DISMISS WASTE MANGEMENT INC, A DELAWARE CORPORATION (RULE 12(B)(2) AND 12(B)(4)
10-09-2003	***Minutes Filed ***Minutes

08-01-2003	Application for Setting Filed Application for Setting Preliminary Injunction Hrg & Trial on Merits - 10/30/03
08-01-2003	Summons Filed Filed Summons Filed HELEN ELLIOTT, OF THE SPARKS CITY CLERK'S OFFICE, AUTHORIZED TO ACCEPT ACCEPTED OBO THE CITY OF SPARKS 8/8/03
08-01-2003	Opposition to Mtn Filed Opposition to Mtn ... THIRD-PARTY PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS
08-13-2003	Request for Submission Filed Request for Submission DOCUMENT TITLE: PEAVINE CONSTRUCTIONS , INTERVENOR, MOTION FOR JOINDER PARTY SUBMITTING: MIKE SPRINGER DATE SUBMITTED: 8/15/03 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:
08-12-2003	Exemption from Arbitration Filed Exemption from Arbitration DECLARATORY AND INJUNCTIVE
08-11-2003	Reply to/in Opposition Filed Reply to/in Opposition REPLY IN SUPPORT OF PEAVINE CONSTRUCTION'S MOTION FOR JOINDER PURSUANT TO NRCP RULE 19
08-04-2003	Opposition to Mtn Filed Opposition to Mtn ... OPPOSITION TO PEAVINE CONSTRUCTION'S MOTION FOR JOIDNER PURSUANT TO NRCP RULE 19
07-22-2003	Affidavit Filed Affidavit ... AFFIDAVIT OF HAND DELIVERY
07-16-2003	Temporary Restraining Order Filed Temporary Restraining Order
07-16-2003	Notice Filed Notice ... NOTICE OF DEPOSIT OF SECURITY - Exhibit A
07-15-2003	Joinder Filed Joinder... PEAVINE CONSTRUCTION, INC.'S, INTEVENOR, MOTION FOR JOINDER - Exhibit A
07-15-2003	Reply to/in Opposition Filed Reply to/in Opposition REPLY TO COUNTERCLAIM, AND ANSWER OF WASTE MANAGEMENT OF NEVADA, INC., AND REFUS, INC. TO THIRD PARTY COMPLAINT
07-15-2003	Mtn to Dismiss Filed Mtn to Dismiss ... MOTION TO DISMISS WASTE MANAGEMENT, INC., A DELAWARE CORPORATION
07-14-2003	Transcript Filed Transcript JULY 10, 2003 - APPLICATION FOR TRO : this document can only be accessed at the court
07-14-2003	Notice Filed Notice ... NOTICE OF CASE MANAGEMENT CONFERENCE
07-14-2003	Order... Filed Order ... ORDER PURSUANT TO IN-CHAMBERS CONFERENCE



07-01-2003	***Minutes Filed ***Minutes
07-02-2003	Answer and Counterclaim Filed Answer and Counterclaim CASTAWAY TRASH HAULING, INC. - ANSWER TO COMPLAINT, COUNTERCLAIM AND THIRD PARTY COMPLAINT
07-03-2003	Memorandum Filed Memorandum ... PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PENDING TRIAL - Exhibit A
07-08-2003	***Minutes Filed ***Minutes
07-09-2003	Application for Setting Filed Application for Setting PRELIM INJUNCTION: 8/6/03
07-03-2003	Affidavit in Support Filed Affidavit in Support... AFFIDAVIT OF CARL ANDERSEN, VICE PRESIDENT, PEAVINE CONSTRUCTION, INC., IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
07-01-2003	Ex-Parte Mtn Filed Ex-Parte Mtn... FOR SETTING OF HEARING AND MOTION SHORTENING TIME FOR REPLY TO SETTING MOTION
06-27-2003	Motion Filed Motion ... MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION PENDING TRIAL (SCANNED IMAGE REFLECTS MANNER IN WHICH DOCUMENT WAS RECEIVED - 9-2-2011- SC) - Exhibit A - Exhibit B - Exhibit C - Exhibit D
06-23-2003	Summons Filed Filed Summons Filed JUDY DUQUE OBO SPIKE DUQUE, R.A. FOR CASTAWAY TRASH HAULING, INC. 6/19/03
06-19-2003	Request Exemption Arbitration Filed Request Exemption Arbitration EXEMPTION FROM ARBITRATION
06-10-2003	Complaint - Civil Filed \$Complaint - Civil - Exhibit A - Exhibit B - Exhibit C - Exhibit D

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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.,

Case No.: CV15-00497

Dept. No.: 7

11 Plaintiffs,

12 vs.

13 RENO DISPOSAL COMPANY, INC.,  
14 a Nevada corporation doing business  
as WASTE MANAGEMENT, et al.,

15 Defendants.  
16  
17

ORDER

18  
19 Before the court is Defendants' *Motion for Summary Judgment*, and *Motion*  
20 *to Stay Discovery*.

21 Procedural History

22 On March 18, 2015, Plaintiffs, NEVADA RECYCLING AND SALVAGE, and  
23 AMCB (doing business as RUBBISH RUNNERS), filed a *Verified Complaint*  
24 against Defendants, RENO DISPOSAL COMPANY, alleging Defamation,  
25 Defamation per se, Breach of Contract, Breach of the Implied Covenant of Good  
26 Faith and Fair Dealing, Unfair Trade Practices/Conspiracy to Restrain Trade, and  
27 Preliminary and Permanent Injunction/Declaratory Relief. On March 25, 2015,  
28 Plaintiffs filed a *Verified First Amended Complaint*, adding a claim for Fraud/Fraud

1 in the Inducement/Fraudulent Misrepresentation. On April 20th, 2015, Defendants  
2 filed a *Motion to Dismiss Verified Amended Complaint*. On August 15, 2015, the  
3 court issued an *Order Granting Defendants' Motion to Dismiss Verified Amended*  
4 *Complaint, In Part, and Denying, In Part*, which left Plaintiffs with only their claim  
5 for Unfair Trade Practices.

6 On August 24, 2015, Defendants filed a *Motion for Summary Judgment* of  
7 Plaintiffs' remaining claim, and submitted the matter for decision. On October 2,  
8 2015, Defendants filed an *Answer to Verified First Amended Complaint*. On  
9 October 8, 2015, Plaintiffs filed an *Opposition to Motion for Summary Judgment*.  
10 On October 16, 2015, Defendants filed a *Reply in Support of Motion for Summary*  
11 *Judgment*. On October 29, 2015, Defendants filed a *Motion to Stay Discovery*,  
12 pending this court's decision on Defendants *Motion for Summary Judgment*. On  
13 November 2, 2015, Plaintiffs filed an *Opposition to Motion to Stay Discovery*.  
14 November 6, 2015, Defendants filed a *Reply In Support of Motion to Stay Discovery*,  
15 and submitted the matter for decision.

16 Relevant Facts

17 This case involves a dispute over franchise agreements granted by the City of  
18 Reno to Defendant, Reno Disposal, and Castaway Trash Hauling in 2012. After the  
19 original agreements were signed, Castaway assigned the rights it held under its  
20 own franchise agreement with the City of Reno to Reno Disposal. As a result, Reno  
21 Disposal now had an exclusive agreement (a monopoly<sup>1</sup>), for commercial waste  
22 disposal for the entire City of Reno. Plaintiffs in this case are two trash disposal and  
23 recycling companies who do business in the Reno area. Plaintiffs originally asserted  
24 seven separate causes of action, but after this court issued an order dismissing most  
25 of Plaintiffs' causes of action, Plaintiffs are left with their claim of Unfair Trade  
26 Practices. Plaintiffs' remaining contention is that Defendants hid their plan to

27 ///

28 <sup>1</sup> "The market condition existing when only one economic entity produces a particular product or provides a particular service." *Black's Law Dictionary*, 1098 (9th ed. 2009).

1 consolidate their franchise agreements from the city, and that if their true  
2 intentions were known, the Reno City Council would never had assented to the  
3 terms of the agreements in the first place, and that this all violates the Nevada  
4 Unfair Trade Practices Act ("UTPA"). Before this court now is Defendants' *Motion*  
5 *for Summary Judgment*, and *Motion to Stay Discovery*.

6 Applicable Law

- 7 • Summary judgment is proper if the pleadings and all other evidence on  
8 file demonstrate that no genuine issue of material fact exists and that the  
9 moving party is entitled to judgment as a matter of law.<sup>2</sup> When deciding a  
10 summary judgment motion, all evidence must be viewed in a light most  
11 favorable to the nonmoving party.<sup>3</sup> General allegations and conclusory  
12 statements do not create genuine issues of fact.<sup>4</sup>
- 13 • "[T]he power to stay proceedings is incidental to the power inherent in  
14 every court to control the disposition of the causes on its docket with  
15 economy of time and effort for itself, for counsel, and for litigants."<sup>5</sup>  
16 Staying discovery when a court is convinced that the plaintiff will be  
17 unable to state a claim for relief furthers the goal of efficiency for the  
18 court and the litigants.<sup>6</sup>
- 19 • NRCP 56(f) states:  
20 "Should it appear from the affidavits of a party opposing the motion  
21 that the party cannot for reasons stated present by affidavit facts  
22 essential to justify the party's opposition, the court may refuse the  
23 application for judgment or may order a continuance to permit  
24 affidavits to be obtained or depositions to be taken or discovery to be  
25 had or may make such other order as is just."

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26 <sup>2</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *see also Celotex Corp. v.*  
27 *Catrett*, 477 U.S. 317 (1986).

27 <sup>3</sup> *Id.*

28 <sup>4</sup> *Id.* at 731, 121 P.3d at 1030-31.

<sup>5</sup> *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163 (1936).

<sup>6</sup> *Little v. City of Seattle*, 863 F.2d, 681, 685 (9th Cir.1988).

1 Analysis

2 Defendants' essential argument is that the assignment of the franchise  
3 agreement to Reno Disposal was done pursuant to an express contractual provision  
4 authorizing and approving the action. Defendants claim that the franchise  
5 agreements are valid contracts, that the City of Reno was authorized to enter into  
6 the franchise agreements, that the franchise agreements expressly contemplated  
7 the occurrence of a single franchise, that the franchise agreements expressly pre-  
8 approved Reno Disposal acquiring Castaway's rights (without further city  
9 approval), and that the City of Reno expressly approved Reno Disposal's acquisition  
10 of Castaway's franchise rights thereby establishing a single franchise situation.<sup>7</sup>

11 Plaintiffs believe they can overcome the summary judgment motion on the  
12 theory that the City of Reno really didn't consent to the assignment of the franchise  
13 agreement here, because there was an "undisclosed buyout and secret plans"<sup>8</sup> that  
14 the Reno City Counsel never knew about. Plaintiffs allege that Defendant  
15 deliberately and intentionally concealed from the City Council the fact that an  
16 agreement was already in place to consolidate the franchise agreements. Plaintiffs  
17 further allege that if the Reno City Council had known that a consolidation would  
18 take place, then they would never have entered in to the franchise agreements in  
19 the first place. To bolster this claim, Plaintiffs cite an email exchange their own  
20 counsel had with former Reno City Councilman David Aiazzi, asking if he was  
21 aware that "[Waste Management] already had cut a deal to buy Castaway when  
22 they went before the city council [and] would you [Mr. Aiazzi] have still supported  
23 [Waste Management] getting the franchise if you had known this?"<sup>9</sup> Beyond this,  
24 however, Plaintiffs have very little to support their claim. Without further  
25 discovery, it would be very difficult for Plaintiff to prove any chance of success on  
26 the merits.

27 <sup>7</sup> Defendants' *Reply in Support of Motion for Summary Judgement*, at 2.

28 <sup>8</sup> Plaintiffs' *Opposition to Motion for Summary Judgment*, at 3.

<sup>9</sup> *Id.*, Exhibit 1.

1 Plaintiffs contend that "at the very least", summary judgement should be  
2 denied to allow for further discovery. Plaintiffs believe that further depositions are  
3 needed to support their claim, and that to grant summary judgment at this time  
4 would be premature. Plaintiffs believe that NRCP 56(f) entitles them to an  
5 opportunity to conduct further discovery. This court agrees. Plaintiffs have fulfilled  
6 the requirements of NRCP 56 by attaching affidavits identifying specific facts that  
7 further discovery would reveal, reasons as to why the information is currently  
8 unavailable, and how those facts could help in precluding summary judgment.  
9 Accordingly, this court finds that entering a summary judgment order at this time  
10 would be premature. Pursuant to NRCP 56, both parties are allowed sixty (60) days  
11 to continue discovery before refiling summary judgment motions.

12 CONCLUSION

13 After reviewing counsel's pleadings, this court concludes that some modicum  
14 of discovery must take place before summary judgment is appropriate. Therefore,  
15 pursuant to NRCP 56, the parties here must conduct discovery for no less than sixty  
16 (60) days before the refiling of these motions. Accordingly, Defendants' *Motion for*  
17 *Summary Judgment* is DISMISSED WITHOUT PREJUDICE.

18 Additionally, Defendants' *Motion to Stay Discovery* is DENIED.  
19 IT IS SO ORDERED.

20 DATED this 7<sup>TH</sup> day of December, 2015.

21  
22   
23 PATRICK FLANAGAN  
24 District Judge  
25  
26  
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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 7<sup>th</sup> day of December, 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

  
Judicial Assistant

1 CODE: 2540  
2 STEPHANIE RICE, ESQ. (SBN 11627)  
3 DEL HARDY, ESQ. (SBN 1172)  
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 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR THE COUNTY OF WASHOE**  
13

14  
15 NEVADA RECYCLING AND SALVAGE, LTD, a  
16 Nevada Limited Liability Company; and,  
17 AMCB, LLC, a Nevada Limited Liability  
18 Company doing business as RUBBISH  
19 RUNNERS,

CASE NO.: CV15-00497

DEPT. NO.: 7

20 Plaintiffs,

21 vs.


22 RENO DISPOSAL COMPANY, INC., a Nevada  
23 Corporation doing business as WASTE  
24 MANAGEMENT; REFUSE, INC., a Nevada  
25 Corporation; ABC CORPORATIONS, I through X;  
26 BLACK AND WHIT COMPANIES, I through X;  
27 and, JOHN DOES I through X, inclusive  
28

Defendants.

**NOTICE OF ENTRY OF ORDER**

29 Notice is hereby given that an Order was entered in the above-entitled matter on  
30 December 7, 2015, a copy of which is attached hereto.

31 DATED this 8<sup>th</sup> day of December 2015.

32  
33   
34 STEPHANIE RICE, ESQ. (SBN 11627)  
35 DEL HARDY, ESQ. (SBN 1172)  
36 HARDY LAW GROUP  
37 Attorneys for Plaintiffs  
38



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, et al.,

Case No.: CV15-00497  
Dept. No.: 7

Plaintiffs,

vs.

RENO DISPOSAL COMPANY, INC.,  
a Nevada corporation doing business  
as WASTE MANAGEMENT, et al.,

Defendants.

ORDER

Before the court is Defendants' *Motion for Summary Judgment*, and *Motion to Stay Discovery*.

Procedural History

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1 in the Inducement/Fraudulent Misrepresentation. On April 20th, 2015, Defendants  
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26 Practices. Plaintiffs' remaining contention is that Defendants hid their plan to  
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28 <sup>1</sup> "The market condition existing when only one economic entity produces a particular product or  
provides a particular service." *Black's Law Dictionary*, 1098 (9th ed. 2009).

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28 <sup>2</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); see also *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

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3 agreement to Reno Disposal was done pursuant to an express contractual provision  
4 authorizing and approving the action. Defendants claim that the franchise  
5 agreements are valid contracts, that the City of Reno was authorized to enter into  
6 the franchise agreements, that the franchise agreements expressly contemplated  
7 the occurrence of a single franchise, that the franchise agreements expressly pre-  
8 approved Reno Disposal acquiring Castaway's rights (without further city  
9 approval), and that the City of Reno expressly approved Reno Disposal's acquisition  
10 of Castaway's franchise rights thereby establishing a single franchise situation.<sup>7</sup>

11 Plaintiffs believe they can overcome the summary judgment motion on the  
12 theory that the City of Reno really didn't consent to the assignment of the franchise  
13 agreement here, because there was an "undisclosed buyout and secret plans"<sup>8</sup> that  
14 the Reno City Council never knew about. Plaintiffs allege that Defendant  
15 deliberately and intentionally concealed from the City Council the fact that an  
16 agreement was already in place to consolidate the franchise agreements. Plaintiffs  
17 further allege that if the Reno City Council had known that a consolidation would  
18 take place, then they would never have entered in to the franchise agreements in  
19 the first place. To bolster this claim, Plaintiffs cite an email exchange their own  
20 counsel had with former Reno City Councilman David Aiazzi, asking if he was  
21 aware that "[Waste Management] already had cut a deal to buy Castaway when  
22 they went before the city council [and] would you [Mr. Aiazzi] have still supported  
23 [Waste Management] getting the franchise if you had known this?"<sup>9</sup> Beyond this,  
24 however, Plaintiffs have very little to support their claim. Without further  
25 discovery, it would be very difficult for Plaintiff to prove any chance of success on  
26 the merits.

27 <sup>7</sup> Defendants' *Reply in Support of Motion for Summary Judgment*, at 2.

28 <sup>8</sup> Plaintiffs' *Opposition to Motion for Summary Judgment*, at 3.

<sup>9</sup> *Id.*, Exhibit 1.

1 Plaintiffs contend that "at the very least", summary judgement should be  
2 denied to allow for further discovery. Plaintiffs believe that further depositions are  
3 needed to support their claim, and that to grant summary judgment at this time  
4 would be premature. Plaintiffs believe that NRCP 56(f) entitles them to an  
5 opportunity to conduct further discovery. This court agrees. Plaintiffs have fulfilled  
6 the requirements of NRCP 56 by attaching affidavits identifying specific facts that  
7 further discovery would reveal, reasons as to why the information is currently  
8 unavailable, and how those facts could help in precluding summary judgment.  
9 Accordingly, this court finds that entering a summary judgment order at this time  
10 would be premature. Pursuant to NRCP 56, both parties are allowed sixty (60) days  
11 to continue discovery before refiling summary judgment motions.

## CONCLUSION

After reviewing counsel's pleadings, this court concludes that some modicum of discovery must take place before summary judgment is appropriate. Therefore, pursuant to NRCP 56, the parties here must conduct discovery for no less than sixty (60) days before the refiling of these motions. Accordingly, Defendants' *Motion for Summary Judgment* is DISMISSED WITHOUT PREJUDICE.

18        Additionally, Defendants' *Motion to Stay Discovery* is DENIED.  
19 IT IS SO ORDERED.

20 DATED this 7<sup>TH</sup> day of December, 2015.

Patrick Flanagan  
PATRICK FLANAGAN  
District Judge

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 17<sup>th</sup> day of December, 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

  
Judicial Assistant

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 **NOTICE OF ENTRY OF ORDER** 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 G. Simons, Esq.  
16 Scott Hernandez, Esq.  
17 Robison, Belaustegui, Sharp & Low  
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 8th day of December 2015.

25   
26 AN EMPLOYEE OF HARDY LAW GROUP  
27  
28

3795  
Leslie Bryan Hart, Esq. (SBN 4932)  
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*Attorneys for Non-Party Castaway Trash Hauling, Inc.*

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,

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.

CASE NO.: CV15-00497

DEPT. NO.: 7

**REPLY IN SUPPORT OF MOTION TO QUASH  
SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER**

**I. Preliminary Procedural Matters**

**A. Castaway has standing to move to quash the subpoena served on its counsel.**

Whether a non-party has standing to participate in litigation depends on whether that non-party can qualify as a real party in interest with respect to the litigation. *See Arguello v. Sunset Station, Inc.*, 127 Nev. Adv. Rep. 29, 252 P.3d 206, 208 (2011) ("The inquiry into whether a party is a real party in interest overlaps with the question of standing."). A non-party is a real party in interest and therefore has standing to participate in litigation when the non-party "possesses the right to enforce the claim and has a significant interest in the litigation." *Id.*

Here, Plaintiffs seek documents and communications from Dan R. Reaser. However, the only reason Mr. Reaser has access to information that may be relevant to this litigation is



1 because he received it from or on behalf of Castaway during his representation of Castaway in or  
2 around February, 2012, when Castaway was negotiating with Waste Management of Nevada,  
3 Inc. ("WM"), a corporate affiliate of Defendants, to sell certain Castaway assets (the "Business  
4 Purpose"). See Motion, p. 2. As part of those negotiations, Mr. Reaser exchanged and received  
5 documents and communications from Gary Duhon, WM's attorney, and Greg Martinelli, WM's  
6 representative. *Id.* These documents and communications are protected by two separate  
7 confidentiality clauses – one in the Mutual Non-Disclosure Agreement (the "NDA"), and one in  
8 the Agreement for Purchase and Sale of Assets (the "APA") – for which Castaway could incur  
9 liability for breach. See *id.* at pp. 2-3. They also constitute "information relating to representation  
10 of a client," and Mr. Reaser is unable to reveal them without his client's informed consent or an  
11 order of the court. See NRPC 1.6.

12 Given that Plaintiffs are seeking from Mr. Reaser Castaway's confidential and  
13 proprietary information, Castaway has the right to protect that information and has a significant  
14 interest in the outcome of this issue. Castaway is therefore a real party in interest in this litigation  
15 and with regard to this subpoena. See *Arguello*, 252 P.3d at 208. Accordingly, Castaway has  
16 standing to object to the subpoena. See *id.*

17 Plaintiffs contention that Castaway lacks standing because NRCP 45 refers only to  
18 subpoenaed persons is unavailing. See *Las Vegas Police Protective Ass'n Metro, Inc. v. Eighth*  
19 *Judicial Dist. Court*, 122 Nev. 230, 240, 130 P.3d 182, 190 (2006) (citing *In re Grand Jury*  
20 *Matter*, 770 F.2d 36, 38 (3d Cir. 1985) for the proposition that in some scenarios, "an individual  
21 or entity claiming a property right or privilege in . . . subpoenaed documents has standing to  
22 contest the denial of a motion to quash the subpoena,' even when the subpoena is not directed at  
23 that individual or entity.'").

24 Plaintiffs argument that Castaway has no standing to move to quash because it is an  
25 allegedly dissolved company should likewise be rejected. First, Plaintiffs have shown some  
26 evidence only that Castaway Trash Hauling, LLC was dissolved, not Castaway Trash Hauling,  
27 Inc. Second, Nevada law provides that both corporations and limited-liability companies may  
28 continue to assert legal remedies for, at minimum, two years after dissolution. See NRS  
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1 78.585(1), 86.505(1). According to Plaintiffs, Castaway Trash Hauling, LLC dissolved on  
2 December 19, 2014. Even if Castaway Trash Hauling, LLC is the same entity as Castaway,  
3 Castaway would still have at least two years from the date of dissolution (until December 19,  
4 2016) to protect its confidential and privileged information. Moreover, Mr. Reaser's obligations  
5 to maintain confidential and privileged information are not relieved simply because of  
6 dissolution. *See, e.g., Red Vision Sys. v. Nat'l Real Estate Info. Servs., L.P.*, 108 A.3d 54, 68 (Pa.  
7 Sup. 2015) (holding that communications can remain privileged after dissolution).

8 **B. Castaway's Motion is not untimely.**

9 Rule 45(c) of the Nevada Rules of Civil Procedure provides that a "written objection" to  
10 a subpoena must be made within 14 days after the subpoena is served. If objection is made, then  
11 "the party serving the subpoena shall not be entitled to inspect and copy the materials ... except  
12 pursuant to an order of the court." NRCP 45(c)(2)(B). To obtain such an order, the party issuing  
13 the subpoena may move for an order to compel production. *Id.* Alternatively, Rule 45(c)  
14 provides that the party receiving the subpoena may file a timely motion to quash. *See* NRCP  
15 45(c)(3)(A). However, the Rule does not require that a motion to quash be filed within a certain  
16 time or even that it be filed at all. It is the issuing party's obligation to obtain an order from the  
17 court compelling production. *See* NRCP 45(c)(2)(B).

18 Rule 26(c), like Rule 45(c), offers a party receiving a subpoena the option of filing a  
19 motion for protective order. As with Rule 45, however, there are no limitations on when a  
20 motion for protective order must be filed or that the motion must be filed at all. Instead, the Rule  
21 requires that before such a motion is filed, the parties take time to engage in a good faith  
22 conference to resolve their dispute. *See* NRCP 26(c).

23 Plaintiffs argue that Castaway's Motion should be denied because it was untimely in that  
24 it was not filed on the same day Castaway's first written objections were due. This argument  
25 fails for two main reasons. First, it presumes that Castaway was required to file its Motion at all,  
26 when Rules 45(c) and 26(c) impose no such requirement. Rule 45(c) clearly states that that it is  
27 Plaintiffs' obligation to obtain an order from the court compelling production. Second, Plaintiffs  
28 presume that Castaway was required to file its motion within a specific time period, when Rules

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1 45(c) and 26(c) again impose no such requirements, and actually do require that the parties take  
2 time to engage in a good faith conference to resolve their dispute prior to filing such motions. If  
3 Castaway's Motion were due the same day its first written objection was due, Castaway would  
4 have had no time to engage in the required conference. Thus, Plaintiffs' argument fails.  
5 Castaway complied with the Rules by making written objection to Plaintiffs on November 11,  
6 2015 (within 14 days after the Subpoena was served); attempting to resolve the dispute with  
7 Plaintiffs; then submitting its Motion on November 20. Castaway's Motion is not "untimely."

8 The cases cited by Plaintiffs are inapposite and distinguishable. None of those cases  
9 discuss the procedure relevant here, namely that it is the issuing party's obligation to obtain an  
10 order from the court compelling production after the subpoenaed party asserts a written objection  
11 pursuant to NRCP 45(c)(2)(B).

12 **II. The information Plaintiffs seek is protected by the common interest privilege.**

13 Plaintiffs assert that the common interest privilege is inapplicable because Castaway did  
14 not provide a privilege log concurrently with its claim for privilege. Opposition, p. 5. However,  
15 Plaintiffs provide no authority supporting such a position, and Rule 45(d)(2) includes no such  
16 requirement.

17 Castaway does not dispute that it must provide a privilege log, but does dispute that a  
18 privilege log is required at the time the claim for privilege is made. A privilege log need not be  
19 provided concurrently with the privilege claim. *See, e.g., Nevada Power Co. v. Monsanto Power*  
20 *Co.*, 151 F.R.D. 118, 121 (D. Nev. 1993) ("[P]rivilege logs must be produced reasonably  
21 promptly following the completion of document production."); *Bullion Monarch Mining, Inc. v.*  
22 *Newmont USA Ltd.*, 271 F.R.D. 643, 649 (D. Nev. 2010) (stating that parties may "seek  
23 assistance from the court to establish a realistic time frame to produce the privilege log – either  
24 in stages or all at once"); *FTC v. AMG Servs.*, 291 F.R.D. 544, 548 (D. Nev. 2013) (allowing a  
25 party 46 days to file a privilege log after that party filed its motion for a protective order).

26 Even if a privilege log were required at the time privilege is asserted, a failure to  
27 immediately provide a privilege log need not result in waiver of the privilege. *See, e.g.,*  
28 *Burlington Northern & Santa Fe Ry. v. United States Dist. Court*, 408 F.3d 1142, 1149 (9th Cir.

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1 2005) (rejecting a per se waiver rule where a party fails to produce a privilege log within the strict  
2 30-day time limit of Rule 34 in an effort to avoid the "tactical manipulation of the rules and the  
3 discovery process"); *White v. Graceland College Ctr. for Prof'l Dev. & Lifelong Learning, Inc.*,  
4 586 F. Supp. 2d 1250, 1266 (D. Kan. 2008) (holding that production of a privilege log 28 days  
5 after producing discovery responses is a "relatively short delay" and "does not justify a finding  
6 of waiver").

7 In response to Plaintiffs' argument that the common interest privilege cannot be asserted  
8 in this case because Castaway and WM were engaged in litigation, and because they shared only  
9 a commercial or financial interest, Castaway incorporates the arguments made and cases cited in  
10 its Motion. *See* Motion, pp. 6-7. Accordingly, the common interest privilege applies.

11 **III. Plaintiffs' requests impose an undue burden and seek information that is not**  
12 **relevant.**

13 Because Plaintiffs' requests lack any kind of subject matter limitation, it is impossible for  
14 Castaway or Mr. Reaser to determine the information that Plaintiffs seek. As is, Plaintiffs are  
15 requesting from Mr. Reaser all documents and communications exchanged between him and the  
16 WM representatives, regardless of whether those documents and communications relate to any  
17 issues relevant to this litigation. Thus, Castaway's first contention is that the request is improper  
18 because it seeks information not relevant to this action.

19 In response, Plaintiffs claim that the discovery sought will give them access to  
20 information regarding the negotiations between Castaway and WM, which is "directly on point  
21 with the causes of action and claims asserted against WM." Opposition, p. 10. That may be, but  
22 as the requests stand now, Plaintiffs are not only seeking information regarding those  
23 negotiations, they are also seeking any other completely unrelated communication or document  
24 sent between Mr. Reaser, Mr. Duhon, and Mr. Martinelli. The requests are thus overly broad and  
25 will lead to the discovery of information that is completely irrelevant to this litigation.

26 Assuming, however, that Plaintiffs did intend to limit the production to relevant  
27 documents and communications only, Plaintiffs have still not adequately explained why they  
28 have not sought (or even attempted to seek) this information from Defendants. Plaintiffs assert

1 that Defendants' "likely response" to such a request would be that defendants' do not have the  
2 information. However, Plaintiffs in fact have no idea what Defendants' response would be,  
3 because Plaintiffs never made the request. Thus, Plaintiffs' requests are improper because they  
4 either seek irrelevant information or information that could be obtained from Defendants.

5 **IV. Plaintiffs reference to the confidentiality provisions of the NDA and APA are**  
6 **proper.**

7 Finally, Plaintiffs assert that Castaway's reference to the confidentiality provisions of the  
8 NDA and APA is improper because Plaintiffs were not provided with a copy of those documents  
9 or a privilege log. Castaway dispute this argument for two reasons. First, Plaintiffs seemingly  
10 ignore the sworn Affidavit of Dan Reaser submitted with the Motion, which states that the APA  
11 excerpts provided in the Motion are true and accurate reproductions of the relevant portions of  
12 the APA. Motion, Exhibit 1, ¶ 7. Second, Plaintiffs provide no authority that a confidentiality  
13 provision is of no effect unless the entire document containing it is produced. Such a rule would  
14 defeat the entire purpose of a confidentiality clause.

15 **CONCLUSION**

16 For the foregoing reasons, Castaway requests that the court grant its Motion and quash  
17 the Subpoena served on Dan R. Reaser, Esq. by Plaintiffs and issue a protective order preventing  
18 the discovery of the information sought.

19 **AFFIRMATION**

20 The foregoing does not contain the social security number of any person.

21 DATED: This 14th day of December, 2015.

22 FENNEMORE CRAIG, P.C.

23 By: /s/ Leslie Bryan Hart  
24 Leslie Bryan Hart, Esq.  
A.J. Hames, Esq.

25 *Attorneys for Non-Party Castaway Trash Hauling,*  
26 *Inc.*

1  
2 **CERTIFICATE OF SERVICE**

3 Pursuant to Nev. R. Civ. P. 5(b) and N.E.F.R. 9(b)(d), I certify that on the 14<sup>th</sup> day of  
4 December, 2015, a true and correct copy of the **NON-PARTY CASTAWAY TRASH**  
5 **HAULING, INC.'S REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA**  
6 **DUCES TECUM AND FOR PROTECTIVE ORDER**, was electronically served via the  
7 court's electronic filing system to the following attorneys associated with this case. If the  
8 following person(s) is not registered with the court's e-filing system, then a true and correct  
9 paper copy of the above-named document was served via U.S. Mail to the following:  
10

11 Mark G. Simons, Esq.  
12 Scott Hernandez, Esq.  
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71 Washington Street  
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14 Del Hardy, Esq.  
15 Stephanie Rice, Esq.  
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96 & 98 Winter St.  
16 Reno, NV 89503

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18 /s/ Pamela Carmon  
Pamela Carmon  
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*Attorneys for Non-Party Castaway Trash Hauling, Inc.*

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,

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.

CASE NO.: CV15-00497

DEPT. NO.: 7

**REQUEST FOR SUBMISSION OF MOTION**

Non-Party Castaway Trash Hauling, Inc. filed its Motion to Quash Subpoena Duces  
Tecum and for Protective Order (the "Motion") on November 20, 2015. Plaintiff Nevada  
Recycling and Salvage, Ltd. filed its opposition to the Motion on December 4, 2015.  
Accordingly, the Motion is ripe for the Court's consideration.

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AFFIRMATION

The foregoing does not contain the social security number of any person.

DATED: This 14th day of December, 2015.

FENNEMORE CRAIG, P.C.

By: /s/ Leslie Bryan Hart  
Leslie Bryan Hart, Esq.  
A.J. Hames, Esq.

*Attorneys for Non-Party Castaway Trash Hauling,  
Inc.*



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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b) and N.E.F.R. 9(b)(d), I certify that on the 14<sup>th</sup> day of December, 2015, a true and correct copy of the **NON-PARTY CASTAWAY TRASH HAULING, INC.'S REQUEST FOR SUBMISSION OF MOTION**, was electronically served via the court's electronic filing system to the following attorneys associated with this case. If the following person(s) is not registered with the court's e-filing system, then a true and correct paper copy of the above-named document was served via U.S. Mail to the following:

Mark G. Simons, Esq.  
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/s/ Pamela Carmon  
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Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No.: 71467  
District Court Case No.: CV15-00497

**VS.**

## Respondents.

## VOLUME 5

JA000857 – JA001095

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CODE: 2175  
DEL HARDY, ESQ. (SBN 1172)  
STEPHANIE RICE, ESQ. (SBN 11627)  
HARDY LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503  
Telephone: (775) 786-5800  
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*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 FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND  
MOTION FOR RECONSIDERATION**

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 ask that this Court grant Plaintiffs leave to file and consider the enclosed  
Motion for Reconsideration and to further grant Plaintiffs' Motion for Reconsideration.

DATED this 1<sup>st</sup> day of October, 2015.

  
STEPHANIE RICE, ESQ.  
DEL HARDY, ESQ.  
*Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to WDCR Rule 12(8) and DCR 13(7), Plaintiffs respectfully request this Court  
4 grant them leave to file and consider the Motion for Reconsideration set forth herein.

5 **II. LEGAL ARGUMENT**

6 **A. Motion for Leave to File and Consider Motion for Reconsideration**

7 Rule 12(8) of the Washoe County District Court Rules provides:

8 The rehearing of motions must be done in conformity with D.C.R. 13,  
9 Section 7. A party seeking reconsideration of a ruling of the court, other  
10 than an order which may be addressed by motion pursuant to N.R.C.P.  
11 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after  
12 service of written notice of entry of the order or judgment, unless the time  
is shortened or enlarged by order. A motion for rehearing or  
reconsideration must be served, noticed, filed, and heard as is any other  
motion. A motion for rehearing does not toll the 30-day period for filing a  
notice of appeal from a final order or judgment.

13 WDCR 12(8). The written Notice of Entry of Order was electronically filed and placed in the  
14 mail for service on September 15, 2015. See, Exhibit 1, attached hereto and incorporated  
15 herein by reference. Accordingly, because this Motion has been filed within ten (10) days after  
16 service of the written Notice of Entry of Order Granting Defendants' Motion to Dismiss Verified  
17 Complaint, in Part, and Denying, In Part, the requests set forth herein are timely.

18 Further, Rule 13(7) of the Nevada District Court Rules reads as follows:

19 No motion once heard and disposed of shall be renewed in the same cause,  
20 nor shall the same matters therein embraced be reheard, unless by leave of  
21 the court granted upon motion therefor, after notice of such motion to the  
adverse parties.

22 DCR 13(7). All that is required to satisfy the above District Court Rules is the consent of this  
23 Honorable Court. *Harvey's Wagon Wheel, Inc., v. MacSween*, 96 Nev. 215, 217 (1980)  
24 ("[r]econsideration of motions is proper if the district judge to whom the first motion was made  
25 consents to a rehearing.") Therefore, Plaintiffs respectfully request that this Court grant the  
26 instant Motion for Leave to File and Consider the Motion for Reconsideration set forth herein.

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1 have a different effect on the mind of the reader from that which the pleaded truth would have  
2 produced.” [Emphasis Added]. *Id.* at 88 n. 17 (Internal Citation(s) Omitted). This is directly  
3 applicable here. As properly plead in Plaintiffs’ Verified Amended Complaint, Defendants made  
4 false, misleading and defamatory statements “*to customers and/or prospective customers of*  
5 *Plaintiffs.*” [Emphasis Added]. See, Verified Amended Complaint, 9:9:2-10; 13:14-21; 14:16-19.  
6 Clearly, when considering the defamatory statements made by Defendants and alleged in  
7 Plaintiffs’ Verified Amended Complaint were made directly to customers and/or prospective  
8 customers, the defamatory effect is significant. When making a statement that, “We [WM] are  
9 the only hauler that’s allowed in Sparks and Reno” directly to a customer or prospective  
10 customer of Plaintiffs, even if that factual statement is partially true, it has a completely false  
11 effect on the mind of the customer because it implies that they absolutely could not use  
12 Plaintiffs under any circumstance, which was Defendants’ intent in making the statements and  
13 which is not accurate.

14 Further, the Court in *Pegasus v. Reno Newspapers, Inc.*, also hold that, “If the published  
15 statements could be construed as defamatory statements of fact, and therefore actionable, then  
16 *the jury should resolve the matter* [Emphasis Added] *Id.*, Citing, *Posadas v. City of Reno*, 109  
17 Nev. 448, 453 n. 2, 851 P.2d 438, 442 n. 2 (1993). “Whether a statement is true or false is an  
18 issue of fact for the jury.” *Williams v. Univ. Med. Ctr. of S. Nevada*, 688 F. Supp. 2d 1134, 1146 (D.  
19 Nev. 2010), Citing, *Fink v. Oshins*, 118 Nev. 428, 49 P.3d 640, 646 (2002).


20 Again, “the truth or falsity of an allegedly defamatory statement is an issue of fact  
21 properly left to the jury for resolution.” *Fink v. Oshins*, 118 Nev. 428, 437, 49 P.3d 640, 646  
22 (2002). By the very terms of this Court’s holding that the alleged defamatory statements set  
23 forth in Plaintiffs’ Verified Amended Complaint are “substantially true,” that means by  
24 definition that those same statements are also partially untrue. As such, whether or not the  
25 alleged defamatory statements set forth in Plaintiffs’ Verified Amended Complaint are  
26 defamatory is a question of fact for the jury. Further, the standard on a Motion to Dismiss

1 requires this Court to view the allegations that have been plead in the light most favorable to  
2 Plaintiffs. Accordingly, this Court should reconsider its ruling on Defendants' Motion to Dismiss  
3 with respect to the First and Second Claims for Relief set forth in Plaintiffs' Verified Amended  
4 Complaint and deny Defendants' Motion to Dismiss with respect to those two claims for relief.

5 **III. CONCLUSION**

6 Based on the foregoing, Plaintiffs respectfully ask this Honorable Court for leave to file  
7 and consider this Motion for Reconsideration, grant Plaintiffs' Motion for Reconsideration and  
8 reinstate Plaintiffs First and Second Claims for Relief as set forth in Plaintiffs' Verified Amended  
9 Complaint with respect to Defamation and Defamation per se.

10  
11 DATED this 1<sup>st</sup> day of October, 2015.

12   
13 STEPHANIE RICE, ESQ.  
14 DEL HARDY, ESQ.  
15 Attorneys for Plaintiffs  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 on this date I served the foregoing document(s) described as **MOTION FOR LEAVE TO FILE**  
4 **AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION**  
5 on all parties to this action by:

6 X Placing an original or true copy thereof in a sealed envelope placed for  
7 collection 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 \_\_\_\_\_ EFLEX- Court's Electronic Filing System  
12 \_\_\_\_\_ Messenger Service  
13 \_\_\_\_\_ Certified Mail with Return Receipt Requested

14 addressed as follows:

15 MARK G. SIMONS, ESQ.  
16 SCOTT HERNANDEZ, ESQ.  
17 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

18 **AFFIRMATION**  
19 **Pursuant to NRS 239B.030**

20 The undersigned does hereby affirm that the preceding document does not contain  
21 the social security number of any person.

22 DATED this 18<sup>th</sup> day of October, 2015.

23   
24 EMPLOYEE OF HARDY LAW GROUP  
25  
26  
27  
28

**AFFIDAVIT OF STEPHANIE RICE, ESQ.**

I, Stephanie Rice, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
  2. That I am one of the attorneys for Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
  3. That I have read the foregoing MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION and know the contents thereof;
  4. Based on information and belief that I affirm that the Exhibit attached to such MOTION, above-mentioned, namely Exhibit 1, is a true and correct copy of that document; and,
  5. 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 1<sup>st</sup> day October, 2015.

  
STEPHANIE RICE

SUBSCRIBED and SWORN TO before me  
this 1<sup>st</sup> day of October, 2015.

  
NOTARY PUBLIC



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**IN THE SECOND JUDICIAL DISTRICT COURT**

**NEVADA RECYCLING AND SALVAGE, et al  
V.  
RENO DISPOSAL COMPANY, INC. et al**

**CASE NO. CV15-00497**

**MOTION FOR LEAVE TO FILE AND CONSIDER  
MOTION FOR RECONSIDERATION AND  
MOTION FOR CONSIDERATION**

**EXHIBIT INDEX**

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>	<b>LENGTH</b>
1	Notice of Entry of Order	18

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Clerk of the Court  
Transaction # 5168975 : csulezic

EXHIBIT “1”

EXHIBIT “1”

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: [mslmons@rbsllaw.com](mailto:mslmons@rbsllaw.com)  
[shernandez@rbsllaw.com](mailto: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 15<sup>th</sup> day of September, 2015 in the above-entitled  
25 matter. A copy of the Order is attached hereto as Exhibit 1.

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

DATED this 15<sup>th</sup> 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

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

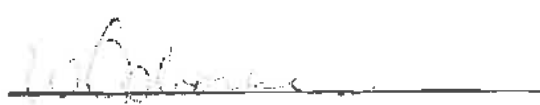
**CERTIFICATE OF SERVICE**

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: 30 day of September, 2015.



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1		EXHIBIT LIST	
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 Sharp & Low  
 71 Washington Street  
 Reno, Nevada 89503  
 (775) 329-3181



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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

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,"<sup>1</sup>  
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 <sup>1</sup> 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.<sup>2</sup> Change  
5 Footnote Numbering  
6

7 The Court has considered the allegations set forth in the Amended Complaint,  
8 the "Agreements"<sup>3</sup> 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.<sup>4</sup>  
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 <sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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           4.     Dismissal is appropriate when the allegations are insufficient to establish  
7     the elements for the claim for relief.

8  
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     482(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           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

- 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, Carolyn 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 16. 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  
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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.

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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

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 in the Amended Complaint lacks 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 and declaratory relief claims, this Court has  
24 previously found that injunctive relief and declaratory relief was inappropriate, because  
25 monetary damages are sufficient to compensate the Plaintiffs for any perceived  
26 damages. The Court reaffirms that ruling.<sup>5</sup>

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

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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

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

1140  
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*Attorneys for Defendants Waste Management of Nevada  
and Refuse, Inc.*

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.

**ANSWER TO VERIFIED FIRST 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 L. Hernandez, of the Law Offices of Robison, Belaustegui,

1 Sharp & Low, hereby respond to Nevada Recycling and Salvage, Ltd. and AMCB, LLC  
2 dba Rubbish Runners' (collectively, the "Plaintiffs") Verified First Amended Complaint  
3 ("Complaint") as follows:

4 **PARTIES**

5 1. Defendants lack sufficient information and belief to admit or deny the  
6 allegations in paragraph 1 of the Complaint, and on that basis deny all allegations in  
7 paragraph 1 of the Complaint.

8 2. Defendants lack sufficient information and belief to admit or deny the  
9 allegations in paragraph 2 of the Complaint and on that basis deny all allegations in  
10 paragraph 2 of the Complaint.

11 3. Defendants admit the allegations in paragraph 3 of the Complaint.

12 4. Defendants admit the allegations in paragraph 4 of the Complaint.

13 5. Defendants lack sufficient information and belief to admit or deny the  
14 allegations in paragraph 5 of the Complaint and on that basis deny all allegations in  
15 paragraph 5 of the Complaint.

16 **GENERAL ALLEGATIONS**

17 6. Defendants lack sufficient information and belief to admit or deny the  
18 allegations in paragraph 6 of the Complaint and on that basis deny all allegations in  
19 paragraph 6 of the Complaint.

20 7. Defendants lack sufficient information and belief to admit or deny the  
21 allegations in paragraph 7 of the Complaint and on that basis deny all allegations in  
22 paragraph 7 of the Complaint.

23 8. Defendants admit Reno Disposal conducts business under the dba Waste  
24 Management. Defendants deny any remaining allegations in paragraph 8 of the  
25 Complaint.

26 9. Defendants admit the allegations in paragraph 9 of the Complaint.

27 10. Defendants admit that Reno Disposal held rights under a previous  
28 franchise agreement with the City of Reno. Defendants deny the remaining allegations

1 in paragraph 10 of the Complaint.

2 11. Defendants deny the allegations in paragraph 11 of the Complaint.

3 12. Defendants admit Castaway Trash Hauling's Complaint says what it says.

4 13. Defendants admit that Castaway Trash Hauling's Complaint says what it  
5 says.

6 14. Defendants deny all allegations in paragraph 14 of the Complaint.

7 15. Defendants deny the allegation in paragraph 15 of the Complaint that  
8 Castaway Trash Hauling and Waste Management reached an agreement on August 1,  
9 2012. Defendants admit that Castaway Trash Hauling voluntarily dismissed its lawsuit  
10 against Waste Management. Defendants admit that Exhibit 2 to the Complaint—Notice  
11 of Voluntary Dismissal, Without Prejudice (Second Judicial District Court of the State of  
12 Nevada, Case No. CV12-01207)—says what it says.

13 16. Defendants lack sufficient information and belief to admit or deny the  
14 allegations in paragraph 16 of the Complaint and on that basis deny all allegations in  
15 paragraph 16 of the Complaint.

16 17. Defendants admit that counsel for Castaway Trash Hauling, Dan Reasor,  
17 spoke at Reno City Council meetings on October 10, 2012 and October 24, 2012 in  
18 support of a Commercial Franchise. Defendants further admit that Mr. Reasor's  
19 statements made at the Reno City Council Meetings on October 10, 2012 and October  
20 24, 2012 speak for themselves. Defendants lack sufficient information and belief to  
21 admit or deny the allegations in paragraph 17 of the Complaint regarding the effect of  
22 Mr. Reasor's statements on anyone.

23 18. Defendants lack sufficient information and belief to admit or deny the  
24 allegations in paragraph 18 of the Complaint and on that basis deny all allegations in  
25 paragraph 19 of the Complaint.

26 19. Defendants admit the allegation in paragraph 19 of the Complaint that  
27 Reno Disposal and the City of Reno entered into a franchise agreement. Defendants  
28 also admit that Exhibit 3 to the Complaint is a partial copy of the Exclusive Service Area



1 Franchise Agreement Commercial Solid Waste and Recyclable Materials, executed by  
2 Reno Disposal and the City of Reno. Defendants further admit that Exhibit 3 says what  
3 it says.

4 20. Defendants admit the allegation in paragraph 20 of the Complaint that  
5 another franchise agreement was executed between the City of Reno and Castaway  
6 Trash Hauling. Defendants deny the allegation in paragraph 20 of the Complaint that  
7 Waste Management formally announced its purchase of Castaway in July, 2013.  
8 Paragraph 20 of the Complaint also asserts legal conclusions to which Defendants are  
9 not required to respond. To the extent paragraph 20 of the Complaint asserts any  
10 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

11 21. Paragraph 21 of the Complaint asserts legal conclusions to which  
12 Defendants are not required to respond. To the extent paragraph 21 of the Complaint  
13 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
14 allegations.

15 22. Defendants admit the allegation in paragraph 22 of the Complaint.

16 23. Defendants admit that Section 3.2 A of the Franchise Agreement says  
17 what it says.

18 24. Defendants admit that Section 3.2 A of the Franchise Agreement says  
19 what it says. Defendants also admit that the Complaint contains a second paragraph  
20 numbered "Paragraph 24." This misnumbered paragraph asserts legal conclusions to  
21 which Defendants are not required to respond. To the extent that either of the  
22 paragraphs numbered "24" asserts any allegations of wrongdoing by Defendants,  
23 Defendants deny all such allegations.

24 25. Defendants admit that Section 4.4 L(1) of the franchise agreement says  
25 what it says.

26 26. Paragraph 26 of the Complaint asserts legal conclusions to which  
27 Defendants are not required to respond. To the extent paragraph 26 of the Complaint  
28 asserts any allegations of wrongdoing by Defendants, Defendants deny all such

1 allegations. Defendants admit that the franchise agreement says what it says.

2 27. Defendants admit that Section 3.2 A of the franchise agreement says  
3 what it says.

4 28. Defendants admit that Section 4.4 L of the franchise agreement says what  
5 it says. Paragraph 28 of the Complaint asserts legal conclusions to which Defendants  
6 are not required to respond. To the extent paragraph 28 of the Complaint asserts any  
7 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

8 29. Defendants admit that the franchise agreement says what it says.  
9 Paragraph 29 of the Complaint asserts legal conclusions to which Defendants are not  
10 required to respond. To the extent paragraph 29 of the Complaint asserts any  
11 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

12 30. Defendants admit that the franchise agreement says what it says.  
13 Paragraph 30 of the Complaint asserts legal conclusions to which Defendants are not  
14 required to respond. To the extent paragraph 30 of the Complaint asserts any  
15 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

16 31. Defendants admit that the franchise agreement says what it says.  
17 Paragraph 31 of the Complaint asserts legal conclusions to which Defendants are not  
18 required to respond. To the extent paragraph 31 of the Complaint asserts any  
19 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

20 32. Defendants admit that the franchise agreement says what it says.  
21 Paragraph 32 of the Complaint asserts legal conclusions to which Defendants are not  
22 required to respond. To the extent paragraph 32 of the Complaint asserts any  
23 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

24 33. Defendants admit that the franchise agreement says what it says.  
25 Paragraph 33 of the Complaint asserts legal conclusions to which Defendants are not  
26 required to respond. To the extent paragraph 33 of the Complaint asserts any  
27 allegations of wrongdoing by Defendants, Defendants deny all such allegations.

28 34. Paragraph 34 of the Complaint asserts legal conclusions to which

1 Defendants are not required to respond. To the extent paragraph 34 of the Complaint  
2 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
3 allegations. Further, Defendants deny the allegations set forth in paragraph 34 on the  
4 grounds that, to the extent that they purport to establish liability, these allegations are  
5 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
6 Dismiss Verified Amended Complaint, in Part, and Denying in Part, filed on September  
7 15, 2015 in the above-entitled case.

8 35. Defendants lack sufficient information and belief to admit or deny the  
9 allegations in paragraph 35 of the Complaint and on that basis deny all allegations in  
10 paragraph 35 of the Complaint.

11 36. Paragraph 36 of the Complaint asserts legal conclusions to which  
12 Defendants are not required to respond. To the extent paragraph 36 of the Complaint  
13 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
14 allegations. Further, Defendants deny the allegations set forth in paragraph 36 on the  
15 grounds that, to the extent that they purport to establish liability, these allegations are  
16 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
17 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
18 15, 2015 in the above-entitled case.

19 37. Paragraph 37 of the Complaint asserts legal conclusions to which  
20 Defendants are not required to respond. To the extent paragraph 37 of the Complaint  
21 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
22 allegations. Further, Defendants deny the allegations set forth in paragraph 37 on the  
23 grounds that, to the extent that they purport to establish liability, these allegations are  
24 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
25 Dismiss Verified Amended Complaint, in Part, and Denying in Part, filed on September  
26 15, 2015 in the above-entitled case.

27 38. Paragraph 38 of the Complaint asserts legal conclusions to which  
28 Defendants are not required to respond. To the extent paragraph 38 of the Complaint

1 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
2 allegations. Further, Defendants deny the allegations set forth in paragraph 38 on the  
3 grounds that, to the extent that they purport to establish liability, these allegations are  
4 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
5 Dismiss Verified Amended Complaint, in Part, and Denying in Part, filed on September  
6 15, 2015 in the above-entitled case.

7 39. Defendants lack sufficient information and belief to admit or deny the  
8 allegations in paragraph 39 of the Complaint and on that basis deny all allegations in  
9 paragraph 39 of the Complaint.

10 40. Paragraph 40 of the Complaint asserts legal conclusions to which  
11 Defendants are not required to respond. To the extent paragraph 37 of the Complaint  
12 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
13 allegations. Further, Defendants deny the allegations set forth in paragraph 40 on the  
14 grounds that, to the extent that they purport to establish liability, these allegations are  
15 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
16 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
17 15, 2015 in the above-entitled case.

18 41. Paragraph 41 of the Complaint asserts legal conclusions to which  
19 Defendants are not required to respond. To the extent paragraph 41 of the Complaint  
20 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
21 allegations. Further, Defendants deny the allegations set forth in paragraph 41 on the  
22 grounds that, to the extent that they purport to establish liability, these allegations are  
23 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
24 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
25 15, 2015 in the above-entitled case.

26 42. Paragraph 42 of the Complaint asserts legal conclusions to which  
27 Defendants are not required to respond. To the extent paragraph 42 of the Complaint  
28 asserts any allegations of wrongdoing by Defendants, Defendants deny all such

1 allegations. Further, Defendants deny the allegations set forth in paragraph 42 on the  
2 grounds that, to the extent that they purport to establish liability, these allegations are  
3 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
4 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
5 15, 2015 in the above-entitled case.

6 43. Paragraph 43 of the Complaint asserts legal conclusions to which  
7 Defendants are not required to respond. To the extent paragraph 43 of the Complaint  
8 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
9 allegations. Further, Defendants deny the allegations set forth in paragraph 43 on the  
10 grounds that, to the extent that they purport to establish liability, these allegations are  
11 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
12 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
13 15, 2015 in the above-entitled case.

14 44. Paragraph 44 of the Complaint asserts legal conclusions to which  
15 Defendants are not required to respond. To the extent paragraph 44 of the Complaint  
16 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
17 allegations. Further, Defendants deny the allegations set forth in paragraph 44 on the  
18 grounds that, to the extent that they purport to establish liability, these allegations are  
19 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
20 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
21 15, 2015 in the above-entitled case.

22 45. Paragraph 45 of the Complaint asserts legal conclusions to which  
23 Defendants are not required to respond. To the extent paragraph 45 of the Complaint  
24 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
25 allegations. Further, Defendants deny the allegations set forth in paragraph 45 on the  
26 grounds that, to the extent that they purport to establish liability, these allegations are  
27 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
28 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September

1 15, 2015 in the above-entitled case.

2 46. Defendants admit that the franchise agreement says what it says.

3 47. Paragraph 47 of the Complaint asserts legal conclusions to which  
4 Defendants are not required to respond. To the extent paragraph 47 of the Complaint  
5 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
6 allegations. Further, Defendants deny the allegations set forth in paragraph 47 on the  
7 grounds that, to the extent that they purport to establish liability, these allegations are  
8 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
9 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
10 15, 2015 in the above-entitled case.

11 48. Paragraph 48 of the Complaint asserts legal conclusions to which  
12 Defendants are not required to respond. To the extent paragraph 48 of the Complaint  
13 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
14 allegations. Further, Defendants deny the allegations set forth in paragraph 48 on the  
15 grounds that, to the extent that they purport to establish liability, these allegations are  
16 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
17 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
18 15, 2015 in the above-entitled case.

19 49. Paragraph 49 of the Complaint asserts legal conclusions to which  
20 Defendants are not required to respond. To the extent paragraph 49 of the Complaint  
21 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
22 allegations. Further, Defendants deny the allegations set forth in paragraph 49 on the  
23 grounds that, to the extent that they purport to establish liability, these allegations are  
24 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
25 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
26 15, 2015 in the above-entitled case.

27 50. Paragraph 50 of the Complaint asserts legal conclusions to which  
28 Defendants are not required to respond. To the extent paragraph 50 of the Complaint

1 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
2 allegations. Further, Defendants deny the allegations set forth in paragraph 50 on the  
3 grounds that, to the extent that they purport to establish liability, these allegations are  
4 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
5 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
6 15, 2015 in the above-entitled case.

7 51. Paragraph 51 of the Complaint asserts legal conclusions to which  
8 Defendants are not required to respond. To the extent paragraph 51 of the Complaint  
9 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
10 allegations. Further, Defendants deny the allegations set forth in paragraph 51 on the  
11 grounds that, to the extent that they purport to establish liability, these allegations are  
12 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
13 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
14 15, 2015 in the above-entitled case.

15 **FIRST CLAIM FOR RELIEF**  
16 **(Defamation)**

17 52. Defendants incorporate the preceding paragraphs as if fully set forth  
18 herein.

19 53. Defendants deny the allegations set forth in paragraph 53 on the grounds  
20 that, to the extent that they purport to establish liability, these allegations are rendered  
21 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
22 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
23 in the above-entitled case.

24 54. Defendants deny the allegations set forth in paragraph 54 on the grounds  
25 that, to the extent that they purport to establish liability, these allegations are rendered  
26 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
27 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
28 in the above-entitled case.

1           55. Defendants deny the allegations set forth in paragraph 55 on the grounds  
2 that, to the extent that they purport to establish liability, these allegations are rendered  
3 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
4 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
5 in the above-entitled case.

6           56. Defendants deny the allegations set forth in paragraph 56 on the grounds  
7 that, to the extent that they purport to establish liability, these allegations are rendered  
8 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
9 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
10 in the above-entitled case.

11           57. Defendants deny the allegations set forth in paragraph 57 on the grounds  
12 that, to the extent that they purport to establish liability, these allegations are rendered  
13 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
14 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
15 in the above-entitled case.

16                                   **SECOND CLAIM FOR RELIEF**  
17                                   **(Defamation Per Se)**

18           58. Defendants incorporate the preceding paragraphs as if fully set forth  
19 herein.

20           59. Defendants deny the allegations set forth in paragraph 59 on the grounds  
21 that, to the extent that they purport to establish liability, these allegations are rendered  
22 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
23 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
24 in the above-entitled case.

25           60. Defendants deny the allegations set forth in paragraph 60 on the grounds  
26 that, to the extent that they purport to establish liability, these allegations are rendered  
27 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
28 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015



1 in the above-entitled case.

2 61. Defendants deny the allegations set forth in paragraph 61 on the grounds  
3 that, to the extent that they purport to establish liability, these allegations are rendered  
4 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
5 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
6 in the above-entitled case.

7 62. Defendants deny the allegations set forth in paragraph 62 on the grounds  
8 that, to the extent that they purport to establish liability, these allegations are rendered  
9 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
10 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
11 in the above-entitled case.

12 **THIRD CLAIM FOR RELIEF**  
13 **(Breach of Contract/Third Party Beneficiary)**

14 63. Defendants incorporate the preceding paragraphs as if fully set forth  
15 herein.

16 64. Defendants deny the allegations set forth in paragraph 64 on the grounds  
17 that, to the extent that they purport to establish liability, these allegations are rendered  
18 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
19 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
20 in the above-entitled case.

21 65. Defendants deny the allegations set forth in paragraph 65 on the grounds  
22 that, to the extent that they purport to establish liability, these allegations are rendered  
23 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
24 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
25 in the above-entitled case.

26 66. Defendants deny the allegations set forth in paragraph 66 on the grounds  
27 that, to the extent that they purport to establish liability, these allegations are rendered  
28 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss

1 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
2 in the above-entitled case.

3 67. Defendants deny the allegations set forth in paragraph 67 on the grounds  
4 that, to the extent that they purport to establish liability, these allegations are rendered  
5 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
6 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
7 in the above-entitled case.

8 68. Defendants deny the allegations set forth in paragraph 68 on the grounds  
9 that, to the extent that they purport to establish liability, these allegations are rendered  
10 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
11 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
12 in the above-entitled case.

13 69. Defendants deny the allegations set forth in paragraph 69 on the grounds  
14 that, to the extent that they purport to establish liability, these allegations are rendered  
15 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
16 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
17 in the above-entitled case.

18 70. Defendants deny the allegations set forth in paragraph 70 on the grounds  
19 that, to the extent that they purport to establish liability, these allegations are rendered  
20 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
21 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
22 in the above-entitled case.

23 71. Defendants deny the allegations set forth in paragraph 71 on the grounds  
24 that, to the extent that they purport to establish liability, these allegations are rendered  
25 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
26 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
27 in the above-entitled case.

28 72. Defendants deny the allegations set forth in paragraph 72 on the grounds

1 that, to the extent that they purport to establish liability, these allegations are rendered  
2 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
3 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
4 in the above-entitled case.

5 73. Defendants deny the allegations set forth in paragraph 73 on the grounds  
6 that, to the extent that they purport to establish liability, these allegations are rendered  
7 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
8 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
9 in the above-entitled case.

10 74. Defendants deny the allegations set forth in paragraph 74 on the grounds  
11 that, to the extent that they purport to establish liability, these allegations are rendered  
12 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
13 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
14 in the above-entitled case.

15 75. Defendants deny the allegations set forth in paragraph 75 on the grounds  
16 that, to the extent that they purport to establish liability, these allegations are rendered  
17 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
18 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
19 in the above-entitled case.

20 76. Defendants deny the allegations set forth in paragraph 76 on the grounds  
21 that, to the extent that they purport to establish liability, these allegations are rendered  
22 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
23 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
24 in the above-entitled case.

25 **FOURTH CLAIM FOR RELIEF**  
26 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

27 77. Defendants incorporate the preceding paragraphs as if fully set forth  
28 herein.

1           78. Defendants deny the allegations set forth in paragraph 78 on the grounds  
2 that, to the extent that they purport to establish liability, these allegations are rendered  
3 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
4 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
5 in the above-entitled case.

6           79. Defendants deny the allegations set forth in paragraph 79 on the grounds  
7 that, to the extent that they purport to establish liability, these allegations are rendered  
8 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
9 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
10 in the above-entitled case.

11           80. Defendants deny the allegations set forth in paragraph 80 on the grounds  
12 that, to the extent that they purport to establish liability, these allegations are rendered  
13 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
14 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
15 in the above-entitled case.

16           81. Defendants deny the allegations set forth in paragraph 81 on the grounds  
17 that, to the extent that they purport to establish liability, these allegations are rendered  
18 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
19 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
20 in the above-entitled case.

21           82. Defendants deny the allegations set forth in paragraph 82 on the grounds  
22 that, to the extent that they purport to establish liability, these allegations are rendered  
23 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
24 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
25 in the above-entitled case.

26                                   **FIFTH CLAIM FOR RELIEF**  
27                                   **(Unfair Trade Practices/Conspiracy to Restrain Trade)**

28           83. Defendants incorporate the preceding paragraphs as if fully set forth

1 herein.

2 84. Defendants admit that NRS 598A.060 says what it says.

3 85. Defendants deny the allegations set forth in paragraph 85 on the grounds  
4 that, to the extent that they purport to establish liability, these allegations are rendered  
5 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
6 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
7 in the above-entitled case.

8 86. Defendants deny the allegations set forth in paragraph 86 on the grounds  
9 that, to the extent that they purport to establish liability, these allegations are rendered  
10 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
11 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
12 in the above-entitled case.

13 87. Defendants deny the allegations set forth in paragraph 87 on the grounds  
14 that, to the extent that they purport to establish liability, these allegations are rendered  
15 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
16 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
17 in the above-entitled case.

18 88. Defendants deny the allegations set forth in paragraph 88 on the grounds  
19 that, to the extent that they purport to establish liability, these allegations are rendered  
20 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
21 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
22 in the above-entitled case.

23 89. Defendants deny the allegations set forth in paragraph 89 on the grounds  
24 that, to the extent that they purport to establish liability, these allegations are rendered  
25 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
26 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
27 in the above-entitled case.

28 90. Defendants deny the allegations set forth in paragraph 90 on the grounds

1 that, to the extent that they purport to establish liability, these allegations are rendered  
2 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
3 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
4 in the above-entitled case.

5 91. Defendants deny the allegations in paragraph 91 of the Complaint.

6 92. Defendants admit the allegations in paragraph 92 of the Complaint.

7 93. Paragraph 93 of the Complaint asserts legal conclusions to which  
8 Defendants are not required to respond. To the extent paragraph 93 of the Complaint  
9 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
10 allegations.

11 94. Paragraph 94 of the Complaint asserts legal conclusions to which  
12 Defendants are not required to respond. To the extent paragraph 94 of the Complaint  
13 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
14 allegations.

15 95. Paragraph 95 of the Complaint asserts legal conclusions to which  
16 Defendants are not required to respond. To the extent paragraph 95 of the Complaint  
17 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
18 allegations.

19 96. Paragraph 96 of the Complaint asserts legal conclusions to which  
20 Defendants are not required to respond. To the extent paragraph 96 of the Complaint  
21 asserts any allegations of wrongdoing by Defendants, Defendants deny all such  
22 allegations.

23 **SIXTH CLAIM FOR RELIEF**  
24 **(Preliminary and Permanent Injunction, Declaratory Relief)**

25 97. Defendants incorporate the preceding paragraphs as if fully set forth  
26 herein.

27 98. Defendants deny the allegations set forth in paragraph 98 on the grounds  
28 that, to the extent that they purport to establish liability, these allegations are rendered

1 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
2 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
3 in the above-entitled case.

4 99. Defendants deny the allegations set forth in paragraph 99 on the grounds  
5 that, to the extent that they purport to establish liability, these allegations are rendered  
6 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
7 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
8 in the above-entitled case.

9 100. Defendants deny the allegations set forth in paragraph 100 on the  
10 grounds that, to the extent that they purport to establish liability, these allegations are  
11 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
12 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
13 15, 2015 in the above-entitled case.

14 101. Defendants deny the allegations set forth in paragraph 101 on the  
15 grounds that, to the extent that they purport to establish liability, these allegations are  
16 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
17 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
18 15, 2015 in the above-entitled case.

19 102. Defendants deny the allegations set forth in paragraph 102 on the  
20 grounds that, to the extent that they purport to purport to establish liability, these  
21 allegations are rendered immaterial pursuant to the Court's Order Granting Defendants'  
22 Motion to Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on  
23 September 15, 2015 in the above-entitled case.

24 103. Defendants deny the allegations set forth in paragraph 103 on the  
25 grounds that, to the extent that they purport to establish liability, these allegations are  
26 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
27 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
28 15, 2015 in the above-entitled case.

1           104. Defendants deny the allegations set forth in paragraph 104 on the  
2 grounds that, to the extent that they purport to establish liability, these allegations are  
3 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
4 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
5 15, 2015 in the above-entitled case.

6           105. Defendants deny the allegations set forth in paragraph 105 on the  
7 grounds that, to the extent that they purport to establish liability, these allegations are  
8 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
9 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
10 15, 2015 in the above-entitled case.

11           106. Defendants deny the allegations set forth in paragraph 106 on the  
12 grounds that, to the extent that they purport to establish liability, these allegations are  
13 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
14 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
15 15, 2015 in the above-entitled case.

16           107. Defendants deny the allegations set forth in paragraph 107 on the  
17 grounds that, to the extent that they purport to establish liability, these allegations are  
18 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
19 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
20 15, 2015 in the above-entitled case.

21           108. Defendants deny the allegations set forth in paragraph 108 on the  
22 grounds that, to the extent that they purport to establish liability, these allegations are  
23 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
24 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
25 15, 2015 in the above-entitled case.

26           109. Defendants deny the allegations set forth in paragraph 109 on the  
27 grounds that, to the extent that they purport to establish liability, these allegations are  
28 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to



1 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
2 15, 2015 in the above-entitled case.

3 110. Defendants deny the allegations set forth in paragraph 110 on the  
4 grounds that, to the extent that they purport to establish liability, these allegations are  
5 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
6 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
7 15, 2015 in the above-entitled case.

8 111. Defendants deny the allegations set forth in paragraph 111 on the  
9 grounds that, to the extent that they establish liability, these allegations are rendered  
10 immaterial pursuant to the Court's Order Granting Defendants' Motion to Dismiss  
11 Verified Amended Complaint, in Part, and Denying in part, filed on September 15, 2015  
12 in the above-entitled case.

13 112. Defendants deny the allegations set forth in paragraph 112 on the  
14 grounds that, to the extent that they purport to establish liability, these allegations are  
15 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
16 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
17 15, 2015 in the above-entitled case.

18 113. Defendants deny the allegations set forth in paragraph 113 on the  
19 grounds that, to the extent that they purport to establish liability, these allegations are  
20 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
21 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
22 15, 2015 in the above-entitled case.

23 114. Defendants deny the allegations set forth in paragraph 114 on the  
24 grounds that, to the extent that they purport to establish liability, these allegations are  
25 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
26 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
27 15, 2015 in the above-entitled case.

28 115. Defendants deny the allegations set forth in paragraph 115 on the

1 grounds that, to the extent that they purport to establish liability, these allegations are  
2 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
3 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
4 15, 2015 in the above-entitled case.

5 **SEVENTH CLAIM FOR RELIEF**  
6 **(Preliminary and Permanent Injunction, Declaratory Relief)**

7 116. Defendants incorporate the preceding paragraphs as if fully set forth  
8 herein.

9 117. Defendants deny the allegations set forth in paragraph 117 on the  
10 grounds that, to the extent that they purport to establish liability, these allegations are  
11 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
12 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
13 15, 2015 in the above-entitled case.

14 118. Defendants deny the allegations set forth in paragraph 118 on the  
15 grounds that, to the extent that they purport to establish liability, these allegations are  
16 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
17 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
18 15, 2015 in the above-entitled case.

19 119. Defendants deny the allegations set forth in paragraph 119 on the  
20 grounds that, to the extent that they purport to establish liability, these allegations are  
21 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
22 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
23 15, 2015 in the above-entitled case.

24 120. Defendants deny the allegations set forth in paragraph 120 on the  
25 grounds that, to the extent that they purport to establish liability, these allegations are  
26 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
27 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
28 15, 2015 in the above-entitled case.

1 121. Defendants deny the allegations set forth in paragraph 121 on the  
2 grounds that, to the extent that they purport to establish liability, these allegations are  
3 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
4 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
5 15, 2015 in the above-entitled case.

6 122. Defendants deny the allegations set forth in paragraph 122 on the  
7 grounds that, to the extent that they purport to establish liability, these allegations are  
8 rendered immaterial pursuant to the Court's Order Granting Defendants' Motion to  
9 Dismiss Verified Amended Complaint, in Part, and Denying in part, filed on September  
10 15, 2015 in the above-entitled case.

11 **AFFIRMATIVE DEFENSES**

- 12 1. Plaintiffs fail to state a claim upon which relief may be granted.  
13 2. Plaintiffs' allegations are barred by statutory exemption under NRS  
14 598A.040.  
15 3. Plaintiffs are estopped from claiming any compensation.  
16 4. Plaintiffs' claims are barred by the Doctrine of Waiver.  
17 5. The terms of the franchise agreements are unambiguous and may not be  
18 altered by parol evidence.  
19 6. Punitive damages cannot be awarded or considered.  
20 7. Plaintiffs have not suffered an antitrust injury.  
21 8. Defendants have not breached any duty to the Plaintiffs.  
22 9. Plaintiffs' claims are barred by the statute of limitations.  
23 10. Plaintiffs' claims are barred by the doctrine of unclean hands.  
24 11. Plaintiffs' claims are barred by the doctrine of laches.  
25 12. All possible affirmative defenses may not have been alleged herein  
26 insofar as sufficient facts were not available after reasonable inquiry upon filing of this  
27 Answer, and therefore Defendants reserve the right to amend this answer to allege  
28

1 additional affirmative defenses if subsequent investigation warrants.


2 WHEREFORE, Defendants respectfully requests the Court enter judgment as  
3 follows:

- 4 1. Dismissing Plaintiffs' Verified First Amended Complaint with prejudice and  
5 that Plaintiffs take nothing thereby;
- 6 2. For Defendants' costs and reasonable attorneys' fees incurred in the  
7 defense of this action; and
- 8 3. For such other and further relief as the Court deems just and proper under  
9 the circumstances.

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

12 DATED this 22 day of October, 2015.

13 ROBISON, BELAUSTEGUI, SHARP & LOW  
14 A Professional Corporation  
15 71 Washington Street  
16 Reno, Nevada 89503

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18 MARK G. SIMONS  
19 SCOTT L. HERNANDEZ  
20 Attorneys for Defendants  
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**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 ANSWER TO VERIFIED FIRST 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:

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

☒ by using the Court's CM/ECF Electronic Notification System:

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 2nd day of October, 2015.

  
Employee of Robison, Belaustegui, Sharp & Low

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 FOR SUMMARY JUDGMENT**

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 Opposes Defendants' Motion for Summary Judgment. This Motion is based on the  
enclosed Memorandum of Points and Authorities, the Affidavits and exhibits attached hereto,  
the pleadings and papers on file herein and any other such matters this Court may wish to  
consider.

DATED this 8<sup>th</sup> day of October, 2015.

  
STEPHANIE RICE, ESQ.  
DEL HARDY, ESQ.  
Attorneys for Plaintiffs

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND AND PROCEDURAL HISTORY**

As of November 7, 2012, when the Franchise Agreement was executed, Castaway Trash Hauling was the second largest solid waste/ recycling business in the City of Reno. Nevada Recycling and Salvage, Ltd., in conjunction with Rubbish Runners, was the third largest. If Waste Management had informed the City of Reno that they had an agreement to purchase Castaway Trash Hauling prior to the signing of the Franchise Agreements, then Nevada Recycling and Salvage, Ltd. and Rubbish Runners would have been awarded the second Franchised Zone ("Castaway's Zone").

**II. LEGAL STANDARD ON SUMMARY JUDGMENT**

Summary judgment is only appropriate where the evidence does not present any issues of material fact and the law requires judgment for the moving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The evidence must be considered in the light most favorable to the non-moving party and the movants have "the burden of demonstrating that there are no genuine issues of material fact." See, *Sustainable Growth Initiative v. Jumpers, LLC and related claims*, 128 P.3d 452, 458 (Nev. 2006).

As discussed herein, there are genuine issues of material fact that exist in this case and therefore, Summary Judgment is not appropriate and Defendants' Motion must be denied.

**III. GENUINE ISSUES OF MATERIAL FACT**

In their Motion for Summary Judgment, Defendants attempt to cloak themselves with the protections of NRS 598A.040(3) which provides that "The provisions of this chapter do not apply to . . . Conduct which is expressly authorized, regulated or approved by a statute of this State or of the United States; an Ordinance of any City or County of this State. . ." Defendants argue that NRS 269.081 and 268.083 explicitly allows a City to displace competition in the solid waste industry by way of a Franchise Agreement. However, Defendants are misplaced in their

1 analysis. The collusion and conspiracy to create a monopoly alleged herein occurred *prior to*  
2 the City of Reno's grant of the Franchises. As such, Defendants do not get to use the protections  
3 of NRS 598A.040(3) as a shield because the alleged conduct that violates the UTPA occurred  
4 before the City of Reno entered into the Franchise Agreements with Waste Management and  
5 Castaway. The undisclosed buyout and secret plans to secure the two separate Franchises, one  
6 for Waste Management and one for Castaway, were done without the knowledge of the City of  
7 Reno. See, Exhibit 1, attached hereto. As such, Defendants cannot claim the protections of NRS  
8 598A.040(3) when the City of Reno- the very council members who voted to approve the  
9 Franchise Agreements had no idea about Waste Management and Castaway's secret buy out  
10 plan and if they had, would not have passed the Franchise Agreements as they are now. See,  
11 Exhibit 1, attached hereto.

12 As set forth in Plaintiffs' Verified Amended Complaint, Plaintiffs have alleged that prior  
13 to the City of Reno granting Franchise Agreements to both Waste Management and Castaway  
14 Trash Hauling and unbeknownst to the City Council at the time, Waste Management and  
15 Castaway Trash Hauling had already reached a secret agreement for Waste Management to  
16 purchase Castaway Trash Hauling. The reasoning for keeping this buy out agreement hidden  
17 from the City Council members is because the Council Members wanted to have two different  
18 Franchisees (effectively two different Franchised Zones). The largest solid waste/ recycling  
19 company in the City of Reno at the time, Waste Management, was awarded a Franchised Zone;  
20 and, the second largest solid waste/ recycling company in the City of Reno at the time,  
21 Castaway Trash Hauling, was awarded the second Franchised Zone. If it had been disclosed to  
22 the City Council members that Waste Management and Castaway Trash Hauling had reached a  
23 buyout agreement prior to each company being awarded their respective Franchised Zones,  
24 then the second largest solid waste/ recycling business in the City of Reno would have been  
25 Plaintiffs.

26 At the time, the City of Reno made it clear that it would be awarding two different



1 Franchised Zones. As such, by deliberately and intentionally concealing from the City Council  
2 Members that Waste Management and Castaway Trash Hauling had already reached an  
3 agreement for Waste Management to buy out Castaway prior to the City's award of the two  
4 separate Franchised Zones, Waste Management specifically took actions, conspired and  
5 colluded to consolidate their business interests in secret so that upon securing the two separate  
6 Franchised Zones within the City of Reno, resulting in a monopolization and substantially  
7 lessening the competition in direct violation of NRS 598A.060(1)(e) and (f). Had Waste  
8 Management disclosed to the City Council that it had reached an agreement to purchase  
9 Castaway Trash Hauling, the City of Reno would not have entered into the Agreements that  
10 they did.

11 In fact, sitting City Council member at the time, David Aiazzi has stated, that he "had no  
12 idea [Waste Management and Castaway] were even in talks with each other and that he does  
13 not "believe the deal would have been passed as it is now." See, Email, attached hereto at  
14 Exhibit 1. As the Franchise Agreements were being executed, Castaway drivers were told by  
15 the owners of Castaway "that Castaway had sold the company, but that they would be forming a  
16 management company so that the drivers could keep their jobs for a period of time." See,  
17 Affidavit, attached hereto at Exhibit 2. The very next month, Castaway filed a Certificate of  
18 Surrender of Right to Transact Interstate Business with the California Secretary of State and  
19 converted Castaway Trash Hauling from a corporation to a limited liability company with the  
20 Nevada Secretary of State and ultimately changed the name to CTH Holding Company, LLC. See,  
21 Exhibits 3 and 4 attached hereto. Then several months later, the Castaway drivers were again  
22 told that Castaway was sold but this time, the owners of Castaway told the drivers that if they  
23 stayed with Castaway until September 30, 2013, and stopped rumors that the company was  
24 actually sold previously, that they would receive a severance package. See, Affidavit, attached  
25 hereto at Exhibit 2.

26 In their Motion for Summary Judgment, Defendants argue that because the City  
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1 ultimately, almost one year after the Franchise Agreements were signed in October 2013,  
2 "consented to the assignment" of Castaway to Waste Management, that Defendants could not  
3 have been in violation of the UTPA. However, Plaintiffs have not alleged that when they  
4 announced the buyout publically in September of 2013, that violated the UTPA. Plaintiffs have  
5 alleged that prior to the execution of the Franchise Agreements, Waste Management and  
6 Castaway Trash Hauling orchestrated a secret buy out deal that they intentionally did not  
7 disclose to the City of Reno until almost one year after the Franchise Agreements were  
8 executed so that Plaintiffs, who upon the buyout became the second largest solid waste/  
9 recycling businesses in Reno, would not be awarded Castaway's zone and Waste Management  
10 would have a complete monopoly, despite the City of Reno's clear intention to create two  
11 separate Franchises. Defendants do not address these allegations at all whatsoever in their  
12 Motion for Summary Judgment. As set forth herein, City Council member at the time the  
13 Franchise Agreements were awarded, David Aiazzi has stated, that he "had no idea [Waste  
14 Management and Castaway] were even in talks with each other and that he does not "believe  
15 the deal would have been passed as it is now." See, Email attached hereto at Exhibit 1.  
16 Accordingly, this collusion on the part of Waste Management and Castaway Trash Hauling  
17 violates the UTPA and caused direct damage to Plaintiffs.

#### 18 **IV. LEGAL STANDARD ON PREMATURE MOTION FOR SUMMARY JUDGMENT**

19 If a motion for summary judgment is filed before a party has even filed an answer to the  
20 complaint, it is uncertain which allegations are in dispute, much less which disputes involve a  
21 genuine issue of material fact. See, *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943, 948 (9th  
22 Cir. 2009). The Nevada Supreme Court has previously held that a motion for summary  
23 judgment is premature when the joint case conference report required by NRCP 16.1 has not  
24 yet been filed and, as a result, the discovery process has not yet begun. See, *Aviation Ventures,*  
25 *Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118-19, 110 P.3d 59, 63 (2005). A party defending against  
26 a summary judgment motion should be given reasonable opportunity to complete discovery

1 and show, if it can, that there is a genuine issue of material fact. NRCP 56(f); See also, *Burlington*  
2 *N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of the Fort Peck Reservation*, 323 F.3d 767, 773-  
3 74 (9th Cir. 2003); *Aviation Ventures*, 121 Nev. at 118-19, 110 P.3d at 63; *Summerfield v. Coca*  
4 *Cola Bottling Co.*, 113 Nev. 1291, 1293, 948 P.2d 704, 705 (1997); *Atwell v. Southwest Sec.*, 107  
5 Nev. 820, 820 P.2d 766 (1991); *Ameritrade, Inc. v. First Interstate Bank of Nev.*, 105 Nev. 696,  
6 782 P.2d 1318 (1989); *Halimi v. Blacketor*, 105 Nev. 105, 770 P.2d 531 (1989); *Harrison v.*  
7 *Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642 (1987); *Collins v. Union Federal Savings & Loan*  
8 *Assn.*, 99 Nev. 284, 662 P.2d 610 (1983); *Ottenheimer v. Real Estate Div. of Nev. Dept. of*  
9 *Commerce*, 91 Nev. 338, 535 P.2d 1284 (1975).

10 A party seeking relief from a premature motion for summary judgment must comply  
11 with NRCP 56(f), which provides:

12 Should it appear from the affidavits of a party opposing the motion that the  
13 party cannot for reasons stated present by affidavit facts essential to justify  
14 the party's opposition, the court may refuse the application for judgment or  
15 may order a continuance to permit affidavits to be obtained or depositions  
16 to be taken or discovery to be had or may make such other order as is just.

17 Essentially, the party seeking denial of the summary judgment motion must demonstrate by  
18 affidavit: (1) the identification of specific facts that further discovery would reveal; (2) the  
19 specific reasons why such evidence is presently unavailable; and (3) how those facts would  
20 preclude summary judgment. See, *Collins*, 99 Nev. at 284, 662 P.2d at 610.

## 21 VI. AT THE VERY LEAST SUMMARY JUDGMENT MUST BE DENIED TO ALLOW 22 DISCOVERY

23 In this case, Defendants filed their Motion for Summary Judgment before they even filed  
24 an Answer to the Complaint. On this basis alone, the Motion for Summary Judgment should be  
25 denied as premature. Additionally, neither party has been entitled to any discovery (including  
26 the exchange of initial disclosures). The discovery period in this case has not yet commenced,  
27 as the parties have not yet participated in a joint case conference. See, NRCP 26(a) (allowing  
28 discovery not sooner than 10 days after the filing of a joint case conference report). Literally,

1 the day that Plaintiffs received Defendants Answer to the Complaint, Plaintiffs immediately  
2 contacted counsel to schedule the NRCP 16.1 early case conference to commence discovery,  
3 which is set to occur next week.

4 However, because Defendants filed their first responsive pleading in this case late, and  
5 then filed a Motion to Dismiss and now a Motion for Summary Judgment, discovery in this case  
6 was delayed. Defendants Motion for Summary Judgment is premature.

7 The Affidavits of undersigned counsel below demonstrate that the depositions of Robert  
8 "Jay" Gardner, Spike Duque, Steven Duque, Brad Capurro, Jessica Sferrazza, David Aiazzi,  
9 Sharon Zadra, Pierre Hascheff and Dan Gustin (at a minimum) are required to establish that  
10 Waste Management and Castaway orchestrated a secret deal to purchase Castaway,  
11 intentionally and intentionally failed to disclose that information to the Reno City Council at  
12 that time for the sole purpose of creating a monopoly by acquiring both Franchises and then  
13 immediately consolidating.

14 The reason why Plaintiffs are not able to present these facts at this time is because  
15 Waste Management and Castaway are in possession of the information and facts surrounding  
16 the secret buyout agreement and plan to hide the buyout from City Council members until after  
17 each had secured a Franchise Agreement. Former Councilman David Aiazzi himself admitted  
18 that he did not have this knowledge prior to awarding the Franchise Agreements to Waste  
19 Management and Castaway Trash Hauling and that if he had, the Agreements would not have  
20 been passed as they are now. See, Exhibit 1, attached hereto. However, in order to get this  
21 information by way of a Deposition and under oath, Plaintiffs will need to subpoena Former  
22 Councilman Aiazzi as well as others, which they cannot do until discovery commences.


23 Plaintiffs genuinely believe that discovery will reveal the foregoing facts and  
24 demonstrate that Waste Management is liable to Plaintiffs for conspiring to create a monopoly  
25 with Castaway in order to obtain both Franchise Agreements and then consolidating in order to  
26 prevent Plaintiffs from obtaining the second City Franchise. Therefore, pursuant to NRCP 56(f)

1 Plaintiffs are entitled to an opportunity to conduct discovery in this case and Defendants  
2 Motion for Summary Judgment must be denied.

3 **VII. CONCLUSION**

4 Based upon the foregoing, Plaintiffs respectfully request that Defendants' Motion for  
5 Summary Judgment be denied. In addition, Plaintiffs respectfully request an award of  
6 reasonable attorneys' fees incurred as a result of being required to oppose Defendants' Motion  
7 for Summary Judgment when it is obviously premature due to the fact that it was literally filed  
8 before Defendants even filed an Answer in this case and prior to the commencement of  
9 discovery.

10 Dated this <sup>12</sup>10 day of October, 2015.

11   
12 STEPHANIE RICE, ESQ.  
13 DEL HARDY, ESQ.  
14 Attorneys for Plaintiffs  
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1  
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
4 on this date I served the foregoing document(s) described as **OPPOSITION TO MOTION FOR**  
5 **SUMMARY JUDGMENT** on all parties to this action by:

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

8 \_\_\_\_\_ Personal delivery

9 \_\_\_\_\_ Facsimile (FAX) and/or Email:

10 X EFLEX- Court's Electronic Filing System

11 \_\_\_\_\_ Messenger Service

12 \_\_\_\_\_ Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**  
18 **Pursuant to NRS 239B.030**

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED this 8th day of October, 2015.

22   
23 \_\_\_\_\_  
24 **EMPLOYEE OF HARDY LAW GROUP**  
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**AFFIDAVIT OF STEPHANIE RICE, ESQ.**

I, Stephanie Rice, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
2. That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
3. That Defendants just filed their Answer to Plaintiffs' Verified Amended Complaint on October 2, 2015, after the filing of their Motion for Summary Judgment;
4. That a 16.1 Early Case Conference has been scheduled for October 14, 2015;
5. As such, in accordance with NRCP 26(a), discovery in this case cannot commence sooner than 10 days after the filing of a Joint Case Conference Report;
6. As a result, no discovery has occurred to date in this case;
7. That the following discovery is needed in order to further show the existence of genuine issues of material facts present in this case:
  - The Deposition of Robert "Jay" Gardner, a former employee and, upon information and belief, shareholder of Castaway Trash Hauling with knowledge of the Waste Management buyout of Castaway Trash Hauling;
  - The Deposition of Spike Duque, one of the owners of Castaway Trash Hauling with direct and specific knowledge of the Waste Management buyout of Castaway Trash Hauling and knowledge of the fact that there was already an agreement in place prior to the execution of the Franchise Agreements;
  - The Deposition of Steven Duque, one of the owners of Castaway Trash Hauling with direct and specific knowledge of the Waste Management buyout of Castaway Trash Hauling and knowledge of the fact that there was already an agreement in place prior to the execution of the Franchise Agreements;
  - The Deposition of Brad Capurro, who is believed to have been a shareholder with Castaway with direct and specific knowledge of the Waste Management buyout of

1 Castaway Trash Hauling and knowledge of the fact that there was already an  
2 agreement in place prior to the execution of the Franchise Agreements; and

- 3 • The Depositions of Jessica Sferrazza, David Aiazzi, Sharon Zadra, Pierre Hascheff and  
4 Dan Gustin, who were all voting members of the Reno City Council who voted on the  
5 Franchise Agreements and who are believed to have been surprised by the news of  
6 Waste Management buying out Castaway and would have voted differently had they  
7 been informed of the Waste Management/ Castaway buyout prior to voting on the  
8 Franchise Agreements.

9 8. Due to the fact that one half of the above-named individuals had previous  
10 ownership interests in Castaway Trash Hauling, it is believed that they are unwilling to assist  
11 with the facts and information sought by Plaintiffs without a formal subpoena;

12 9. Due to the fact that the other half of the above-named individuals are former  
13 and/or current elected officials, the undersigned has had and believes she will continue to have  
14 difficulty obtaining a sworn statement or additional information from them without the formal  
15 discovery process;

16 10. Based on the foregoing, I have been unable to obtain by affidavit additional facts  
17 essential to further justify the Plaintiffs' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;

18 11. That I have read the foregoing OPPOSITION TO MOTION FOR SUMMARY  
19 JUDGMENT and know the contents thereof;

20 12. Based on information and belief that I affirm that the Exhibits attached to such  
21 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, above-mentioned, namely Exhibits 1  
22 through 4 are true and correct copies of such documents; and,

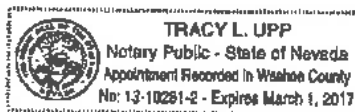
23 13. That the same is true of my knowledge except as to those matters therein stated  
24 information and belief, and as to those matters I believe them to be true.

25 FURTHER YOUR AFFIANT SAYETH NAUGHT.

26 Dated this 8<sup>th</sup> day October, 2015.

27 SUBSCRIBED and SWORN TO before me  
28 this 8 day of October, 2015.

Tracy L. Upp  
NOTARY PUBLIC





**AFFIDAVIT OF DEL HARDY, ESQ.**

I, DEL HARDY, hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I am an attorney licensed to practice law in the State of Nevada;
2. That I am one of the attorneys for the Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. and AMCB, LLC dba RUBBISH RUNNERS in Case No. CV15-00497, in the Second Judicial District Court of the State of Nevada, In and For the County of Washoe, Department 7;
3. That the email attached to Plaintiffs' Opposition to Motion to Dismiss at Exhibit 1, by an between myself and Former Councilman David Aiazzi is a true and correct copy of my communications with Mr. Aiazzi;
4. That I further asked Mr. Aiazzi for an Affidavit containing the information contained in our email transaction and that as of the date of this Affidavit, he has not responded to my request one way or the other; and,
5. 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 8 day October, 2015.

  
DEL HARDY

SUBSCRIBED and SWORN TO before me this 8 day of October, 2015.

  
NOTARY PUBLIC



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**IN THE SECOND JUDICIAL DISTRICT COURT**

**NEVADA RECYCLING AND SALVAGE et. al.**

**v.**

**RENO DISPOSAL COMPANY et. al.**

**CASE NO. CV15-00497**

**OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

**EXHIBIT INDEX**

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>	<b>LENGTH</b>
1	Email correspondence from Dave Aiazzi to Del Hardy	3
2	Affidvit of Cruz Chagolla	2
3	Certificate of Surrender of Right to Transact Intrastate Business for Castaway Trash Hauling Inc.	2
4	Castaway Trash Hauling, Inc. Articles of Conversion and Amendment to Articles of Organization	4

FILED  
Electronically  
2015-10-08 02:37:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5179299 : yvitoria

# EXHIBIT “1”

# EXHIBIT “1”



Del Hardy &lt;del@hardylawgroup.com&gt;

**Waste Management**

Del Hardy <del@hardylawgroup.com>  
To: Rice Stephanie <stephanie@hardylawgroup.com>

Wed, Oct 7, 2015 at 9:35 AM

Del Hardy, Esq.  
Trial Attorney  
Del@HardyLawGroup.com  
775 786 5800  
Fax 329 8282  
98 Winter St  
Reno, Nv 89503

Begin forwarded message:

**From:** Dave Aiazzi <aiazzi@gmail.com>  
**Subject:** Re: Waste Management  
**Date:** October 7, 2015 at 9:30:48 AM PDT  
**To:** Del Hardy <del@hardylawgroup.com>

Hi Del,

Let me be succinct.

1. I had no idea they were even in talks with each other.
2. I don't believe the deal would have passed as it is now. The major issue with Castaway was not "garbage" but other trash (recycling, construction waste, etc). I would think that there would have been much more discussion on how this part of the contract was addresses. We spent a majority of time on this issue alone.

Good Luck

-dave

On Mon, Oct 5, 2015 at 11:34 AM, Del Hardy &lt;del@hardylawgroup.com&gt; wrote:

Hi Dave Hope all is well. Del Hardy here. Rather than bother you with a call, I thought an email would be better. This office is in a battle with Waste Management. I am reaching out to you because you were on the City Council when Waste Management (WM) entered into the Franchise Agreement(s) with the City of Reno. One of the issues is that WM came before the counsel with the support of Castaway, the second largest provider in town. What WM did not tell the City/ Council Members is that at the time, WM already had an agreement to buy out Castaway, leaving it the only provider in the City.

I have two questions:

1. Did you know that WM already had cut a deal to buy Castaway when they went before the City Council?
2. Would you have still supported WM getting the franchise if you had known this?

You can just answer yes or no to each one and I understand you may put I don't know as to Number 2. Just trying to gain an understanding as to what information the Council members did or didn't know at the time.

Thanks man and hope you are doing okay.

Del

Del Hardy, Esq.  
Trial Attorney  
Del@HardyLawGroup.com  
775 786 5800  
Fax 329 8282  
98 Winter St  
Reno, Nv 89503

FILED  
Electronically  
2015-10-08 02:37:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5179299 : yvilorla

# EXHIBIT “2”

# EXHIBIT “2”

**AFFIDAVIT OF CRUZ CHAGOLLA**

I, CRUZ CHAGOLLA hereby affirm under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. That I was employed as a driver for WASTE MANAGEMENT in Reno, Nevada from July 1, 1981 to April of 2011;

2. Approximately one year after the conclusion of my employment with Waste Management, in approximately May of 2012, I began working for CASTAWAY TRASH HAULING as a driver in the Reno area;

3. While employed as a driver with CASTAWAY TRASH HAULING, at the beginning of November 2012, the owners of CASTAWAY TRASH HAULING, SPIKE DUQUE and his son STEVE DUQUE, held a meeting with all of the CASTAWAY drivers, including myself, informing us that CASTAWAY had sold the company, but that they would be forming a management company so that the drivers could keep their jobs for a period of time;

4. In July of 2013, the owners of CASTAWAY TRASH HAULING held another meeting with the drivers, including myself, again informing us that CASTAWAY was sold but this time, SPIKE and STEVE DUQUE stated that if we stayed with CASTAWAY until September 30, 2013, and stopped rumors that the company was actually sold previously, that we would receive a severance package;

5. That I refrained from talking about the early November 2012 meeting or knowledge of a previous sale and worked with CASTAWAY until September 30, 2013 and, in turn, received a severance payment as promised; and,

6. 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 September, 2015.

  
CRUZ CHAGOLLA

SUBSCRIBED and SWORN TO before me this 25 day of September, 2015.

  
NOTARY PUBLIC



FILED  
Electronically  
2015-10-08 02:37:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5179299 : yvilorla

# EXHIBIT “3”

# EXHIBIT “3”



01171123

306395

FILED  
Secretary of State  
State of California

DEC 31 2012

Lee

**CERTIFICATE OF SURRENDER OF RIGHT  
TO TRANSACT INTRASTATE BUSINESS**

On behalf and by authority of:

CASTAWAY TRASH HAULING, INC.

(Name of Corporation)

, a corporation

organized under the laws of Nevada

(State or Place of Incorporation)

the undersigned officer of said corporation does hereby certify and declare:

1. Said corporation hereby surrenders its right and authority to transact intrastate business in the State of California.
2. Said corporation hereby revokes its designation of agent for service of process in California.
3. Said corporation consents that process against it in any action upon any liability or obligation incurred within the State of California prior to the filing of this Certificate of Surrender of Right to Transact Intrastate Business may be served upon the California Secretary of State.
4. The post office address to which the California Secretary of State may mail copies of any process against the corporation that is served upon the Secretary of State is

P.O. Box 51930, Sparks, NV 89435

5. A final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

  
(Signature of Corporate Officer)

Spike Duque, President

(Type or Print Name of Corporate Officer)

FILED  
Electronically  
2015-10-08 02:37:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5179299 : yvlloria

# EXHIBIT “4”

EXHIBIT “4”



ROSS MILLER  
Secretary of State  
264 North Carson Street, Suite 1  
Carson City, Nevada 89701-4520  
(775) 684-6708  
Website: [www.nvssos.gov](http://www.nvssos.gov)



\*140001\*

## Articles of Conversion

(PURSUANT TO NRS 92A.205)

Page 1

Filed in the office of	Document Number
	20120869716-22
Ross Miller Secretary of State State of Nevada	Filing Date and Time 12/27/2012 12:11 PM
	Entity Number C31448-2002

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

### Articles of Conversion (Pursuant to NRS 92A.205)

1. Name and jurisdiction of organization of constituent entity and resulting entity:

Castaway Trash Hauling, Inc.  
Name of constituent entity

Nevada  
Jurisdiction

Corporation  
Entity type \*

and,

Castaway Trash Hauling, LLC  
Name of resulting entity

Nevada  
Jurisdiction

Limited Liability Company  
Entity type \*

2. A plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

3. Location of plan of conversion: (check one)

- ☐ The entire plan of conversion is attached to these articles.
- ☒ The complete executed plan of conversion is on file at the registered office or principal place of business of the resulting entity.
- ☐ The complete executed plan of conversion for the resulting domestic limited partnership is on file at the records office required by NRS 93.330.

\* corporation, limited partnership, limited-liability limited partnership, limited-liability company or business trust.

This form must be accompanied by appropriate fees.

Nevada Secretary of State USA Conversion Page 1  
Revised 8-31-11

JA000928



ROSS MILLER  
Secretary of State  
204 North Carson Street, Suite 1  
Carson City, Nevada 89701-4620  
(775) 884-6708  
Website: www.nvsos.gov

## Articles of Conversion

(PURSUANT TO NRS 92A.205)

Page 2

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4. Forwarding address where copies of process may be sent by the Secretary of State of Nevada (if a foreign entity is the resulting entity in the conversion):

Attn:

c/o:

5. Effective date and time of filing: (optional) (must not be later than 90 days after the certificate is filed)

Date: December 28, 2012

Time: 5:00pm

6. Signatures - must be signed by:

1. If constituent entity is a Nevada entity: an officer of each Nevada corporation; all general partners of each Nevada limited partnership or limited-liability limited partnership; a manager of each Nevada limited-liability company with managers or one member if there are no managers; a trustee of each Nevada business trust; a managing partner of a Nevada limited-liability partnership (a.k.a. general partnership governed by NRS chapter 87).

2. If constituent entity is a foreign entity: must be signed by the constituent entity in the manner provided by the law governing it

Cedarway Trash Hauling, Inc.

Name of constituent entity

X

Signature

*Spide Dugan* President  
Title

12/27/2012

Date

\* Pursuant to NRS 92A.205(4) if the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the constituent document filed with the Secretary of State pursuant to paragraph (b) subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date. This statement must be included within the resulting entity's articles.

FILING FEE: \$350.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause the filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State 92A Conversion Page 2  
Rev. 08-21-11

JA000929




ROSS MILLER  
Secretary of State  
204 North Carson Street, Suite 1  
Carson City, Nevada 89701-4520  
(775) 684-6708  
Website: www.nvsos.gov



"201201"

**Amendment to  
Articles of Organization**  
(PURSUANT TO NRS 86.221)

Filed in the office of	Document Number
 Ross Miller Secretary of State State of Nevada	<b>20130642325-18</b>
	Filing Date and Time
	<b>10/01/2013 10:10 AM</b>
	Entity Number
	<b>C31448-2002</b>

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Amendment to Articles of Organization**  
**For a Nevada Limited-Liability Company**  
(Pursuant to NRS 86.221)

1. Name of limited-liability company:  
CASTAWAY TRASH HAULING, LLC

2. The company is managed by: ☒ Managers **OR** ☐ Members  
(check only one box)

3. The articles have been amended as follows: (provide article numbers, if available)\*

Article 1 of the Articles of Organization are hereby amended changing the name of the limited liability company to be  
CTH HOLDING COMPANY, LLC

4. Effective date and time of filing: (optional) Date: \_\_\_\_\_ Time: \_\_\_\_\_  
(must not be later than 90 days after the certificate is filed)

5. Signature (must be signed by at least one manager or by a managing member):

X   
Signature

- \* 1) If amending company name, it must contain the words "Limited-Liability Company," "Limited Company," or "Limited," or the abbreviations "Ltd.," "LLC," or "LC." The word "Company" may be abbreviated as "Co."  
2) If adding managers, provide names and addresses

**FILING FEE: \$175.00**

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.  
*This form must be accompanied by appropriate fees.*

Nevada Secretary of State 86.221 LLC Amendment  
Revised: 8-31-11

JA000930

ORIGINAL

FILED

2015 OCT 16 PM 3:55

JACQUELINE BRYANT  
CLERK OF THE COURT  
BY: *[Signature]*  
DEPUTY

CV15-00497  
NEV RECYCLING ET AL VS RENO 17 0-592  
District Court 10/16/2015 03:55 PM  
Washoe County  
3785  
MORRIS

3785  
Mark G. Simons, Esq., NSB No. 5132  
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[shernandez@rbsllaw.com](mailto:shernandez@rbsllaw.com)

*Attorneys for Defendants Waste Management of Nevada  
and Refuse, Inc.*

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' REPLY  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendants Reno Disposal Company, Inc., dba Waste Management ("Reno  
Disposal") and Refuse, Inc., (collectively, the "Defendants"), hereby submit their reply  
brief in support of their Motion for Summary Judgment.

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

JA000931

1     **I.     INTRODUCTION**

2             In the opposition filed by Plaintiffs Nevada Recycling and Salvage, Ltd ("NRS")  
3     and AMCB, LLC dba Rubbish Runners ("Rubbish Runners") (collectively the  
4     "Plaintiffs"), they seek to manufacture an issue of material fact that would preclude  
5     dismissal of their remaining claim. As the Court is aware, the sole remaining claim for  
6     relief brought by the Plaintiffs is based upon the allegation that there was a violation of  
7     Nevada's Unfair Trade Practices Act ("UTPA").

8             Plaintiffs' UPTA claim contends that Reno Disposal's negotiations with Castaway  
9     Trash Hauling ("Castaway") to potentially acquire Castaway prior to the City of Reno's  
10    approval and execution of the two franchise agreements<sup>1</sup> was somehow wrongful. Of  
11    critical note, however, Plaintiffs do not dispute the following:

- 12                 1.     That the franchise agreements are valid contracts;
- 13                 2.     That the City of Reno was authorized to enter into the franchise  
14                         agreements;
- 15                 3.     That the franchise agreements and City Ordinance expressly  
16                         contemplated the occurrence of a single franchise;
- 17                 4.     That the franchise agreements expressly pre-approved Reno  
18                         Disposal acquiring Castaway's rights—without any further City  
19                         approval; and
- 20                 5.     That the City of Reno also expressly approved Reno Disposal's  
21                         acquisition of Castaway's franchise rights thereby establishing a  
22                         single franchise hauler situation.

23             The foregoing undisputed and conceded facts are dispositive of Plaintiffs' remaining  
24     claim. This is because Reno Disposal cannot have any liability under the UTPA if the  
25     conduct complained of was expressly approved and ratified. Stated another way, if  
26     

27             <sup>1</sup>See MSJ, Exh. 4, p. 1 (Castaway Commercial Franchise Agreement); Verified First  
28     Amended Complaint ("Amended Complaint" or "Amd. Comp."), Exh. 3, p. 1 (Reno  
   Disposal Commercial Franchise Agreement).

1 Reno Disposal's conduct under the franchise agreements (in acquiring Castaway's  
2 franchise rights) is expressly allowed and contemplated in the franchise agreement,  
3 then Reno Disposal is absolutely immune from any UTPA liability relating to such  
4 conduct.<sup>2</sup>

5 Plaintiffs do not address Reno Disposal's absolute contract right to acquire  
6 Castaway. Plaintiffs also do not address that the franchise agreement expressly  
7 contemplated not only that Reno Disposal would become the sole franchise in the Reno  
8 area, but that the City of Reno pre-approved Reno Disposal to become the sole  
9 franchisee. Plaintiffs' failure to address these clear contract provisions is fatal to the  
10 Plaintiffs' remaining claim and this motion should be granted.

11 In avoiding the foregoing, the Plaintiffs merely argue that the Defendants should  
12 be liable for any negotiations with Castaway that occurred prior to execution of the  
13 franchise agreements, because the City wanted two franchisees and Rubbish Runners  
14 would have got Castaway's franchise area. Again demonstrating the total lack of merit  
15 in this contention, the Plaintiffs do not cite to any evidence supporting their contentions.  
16 Instead, Plaintiffs rely upon pure speculation, conclusory statements and inadmissible  
17 hearsay. Accordingly, the arguments in the Opposition must be disregarded as they  
18 demonstrate no genuine issue of material fact and summary judgment as requested  
19 should be granted.

20 **II. THE PLAINTIFFS' OPPOSITION IS BASED UPON SPECULATION.**

21 "[W]hether a genuine issue of material fact exists is a question of law." Midland  
22 Insurance v. Yanke Plumbing & Heating, Inc., 99 Nev. 66, 68, 657 P.2d 1152, 1153  
23 (1983). "Although evidence presented in support of a motion for summary judgment  
24 must be construed in the light most favorable to the nonmoving party, that party must  
25 set forth facts demonstrating the existence of a genuine issue in order to  
26 withstand a disfavorable summary judgment." Sustainable Growth Initiative Comm.  
27

28 <sup>2</sup> Since Refuse, Inc. did not acquire Castaway's franchise rights, Plaintiffs' UTPA claim  
against Refuse, Inc. should be dismissed.



1 v. Jumpers, LLC, 122 Nev. 53, 61, 128 P.3d 452, 458 (2006) (emphasis added).

2 Speculation does not raise a genuine issue of material fact sufficient to defeat a  
3 motion for summary judgment. See Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.  
4 3d 1026, 1031 (2005). As the Court in Wood v. Safeway, Inc. stated:

5 [The nonmoving] party bears the burden to "do more than  
6 simply show that there is some metaphysical doubt" as to  
7 the operative facts in order to avoid summary judgment  
8 being entered in the moving party's favor. The nonmoving  
9 party "must, by affidavit or otherwise, set forth specific facts  
10 demonstrating the existence of a genuine issue for trial or  
11 have summary judgment entered against him." The  
12 nonmoving party "is not entitled to build a case on the  
13 gossamer threads of whimsy, speculation, and conjecture."

14 Id. (citations omitted). Additionally, "conclusory statements alone with general  
15 allegations do not create an issue of material fact." Michaels v. Sudeck, 107 Nev. 332,  
16 334, 810 P.2d 1212, 1213 (1991); see also Wayment v. Holmes, 112 Nev. 232, 237,  
17 912 P.2d 816, 819 (1996) ("[C]onclusory statements along with general allegations do  
18 not create an issue of material fact.").

19 The Plaintiffs' Opposition can be distilled into the following contentions: (1) "the  
20 City of Reno made it clear that it would be awarding two different Franchised Zones"  
21 (Opp., p. 3:25-4:1); (2) "had Waste Management disclosed to the [Reno] City Council  
22 that it had reached an agreement to purchase Castaway Trash Hauling, the City of  
23 Reno would not have entered into the [Commercial Franchise] Agreements that they  
24 did" (Opp., p. 4:6-10; and (3) if such a disclosure was made "prior to each company  
25 being awarded their respective Franchised Zones, then the second largest solid  
26 waste/recycling business in the City of Reno would have been Plaintiffs," implying that  
27 the Plaintiffs would have received a zone.<sup>3</sup> However, these contentions are all pure  
28 speculation and conjecture unsupported by any facts. In addition, these contentions

<sup>3</sup> The Commercial Franchise Agreements do not reference the term "Franchised  
Zones." Term used is "Exclusive Service Area," which "means the geographic territory  
within the City in which the Contractor shall have the exclusive right and obligation to  
conduct Collection Services . . ." See Commercial Franchise Agreements, p. 2.

1 run contrary to the express terms of the franchise agreements.

2 **A. THE PLAINTIFFS' ARGUMENTS IN SUPPORT OF THEIR OPPOSITION**  
3 **ARE SPECULATIVE.**

4 The so-called facts recited in the Plaintiffs' aforementioned argument are  
5 speculative. Initially, the Plaintiffs' speculate that the disclosure of negotiations  
6 between Reno Disposal and Castaway would have caused the City of Reno not to enter  
7 into the franchise agreements with Reno Disposal and Castaway. Not only is this  
8 statement speculative, this statement runs directly contrary to the actual express terms  
9 of the franchise agreements.

10 The franchise agreements contemplated, called out for and in fact pre-approved  
11 Reno Disposal's acquisition of Castaway. Accordingly, the express intent of the City of  
12 Reno was not only to consider and allow Reno Disposal to acquire Castaway, the City  
13 of Reno went even a step further—they pre-approved Reno Disposal's acquisition  
14 of Castaway without any further City involvement. Accordingly, the contention that  
15 negotiations by and between Reno Disposal and Castaway prior to the acquisition of  
16 Castaway would have any effect on the issuance of the franchise agreements is  
17 complete nonsense and does not create a material issue of fact.

18 Plaintiffs also attempt to rely upon a recent email exchange solicited by Plaintiff's  
19 counsel with a former city council member as "evidence" establishing a question of fact.  
20 However, the Court cannot consider the contents of the email because it is hearsay.  
21 An opposition to a motion for summary judgment cannot rely upon hearsay evidence to  
22 defeat the motion. This is because evidence to defeat a motion for summary judgment  
23 must be admissible. Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 302, 662  
24 P.2d 610, 821 (1983) ("Evidence introduced in support of or opposition to a motion for  
25 summary judgment must be admissible evidence."); Gunlord Corp. v. Bozzano, 95 Nev.  
26 243, 245, 591 P.2d 1149 (1979) ("The facts, as stated, must be admissible in  
27 evidence. When this mandate is not met the court will regard the papers as legally  
28 insufficient."); Adamson v. Bowker 85 Nev. 115, 119, 450 P.2d 796, 799 (Nev. 1969)

1 ("[E]vidence that would be inadmissible at the trial of the case is inadmissible on a  
2 motion for summary judgment.").

3 Not only is the email hearsay, it seeks to present parol evidence. Both hearsay  
4 and parol evidence are inadmissible. NRS 51.065(1) ("Hearsay is inadmissible . . .");  
5 Lowden Inv. Co. V. General Elec. Credit Co., 103 Nev. 374, 379, 741 P.2d 806 (1987)  
6 ("Parol evidence is not admissible . . ."). Accordingly, a recent email exchange  
7 manufactured by Plaintiff's counsel with a former city council member obtained solely in  
8 an effort to avoid the entry of summary judgment is inadmissible and cannot be  
9 considered by the Court so as to defeat summary judgment.

10 Further, the contents of the email exchange do not support the contention  
11 asserted by the Plaintiffs, because the email exchange also ignores the express  
12 provisions in the franchise agreements allowing Reno Disposal to acquire Castaway.  
13 Stated another way, it is pure speculation by a former member of the city council that  
14 the City would not have entered into the franchise agreements if it knew that Reno  
15 Disposal was going to undertake the exact conduct that the City expressly  
16 contemplated, authorized and "pre-approved". Such contention by Plaintiffs to avoid  
17 summary judgment actually achieves the standard of being based upon "gossamer  
18 threads of whimsy, speculation, and conjecture."

19 **B. THE PLAINTIFFS' PRESENT NO EVIDENCE TO SUPPORT OF THEIR**  
20 **CONTENTION THAT THE CITY WOULD HAVE GRANTED THEM A**  
21 **HAULING ZONE.**

22 The Plaintiffs also do not (and cannot) present any evidence that the City  
23 specifically intended to award only two Exclusive Service Areas. See Opp., p. 3:25-4:1.  
24 This is because the Plaintiffs' contention contradicts the express recitals in the  
25 franchise agreements. Specifically, the franchise agreements states that the City  
26 intended to allow "one or more" franchise agreements as follows:

27 WHEREAS, the City of Reno City Council has determined  
28 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

1 under one or more Commercial Franchise Agreements  
2 (as defined herein) by current service providers meeting the  
Contractor Qualifications . . . .

3 See Commercial Franchise Agreements, p. 1.

4 This recital expressly contradicts the Plaintiffs' unsupported contention and  
5 clearly states that the City intent was to enter into as few as one franchise agreement  
6 with a single contractor ~~or more~~ depending upon how many contractors could qualify  
7 under the Contractor Qualifications to perform waste collection services for the City.  
8 See, e.g., Hagene v. Derek Polling Const., 388 Ill. App. 3d 380, 385, 902 N.E.2d 1269,  
9 1274 (2009) ("[W]hile recitals are not [an] operational part of [a] contract between the  
10 parties, they reflect the intent of the parties and influence the way the parties  
11 constructed the contract."); compare West's Ann. Cal. Evid. Code § 622 ("The facts  
12 recited in a written instrument are conclusively presumed to be true . . .").

13 In addition, the franchise agreement specifically detailed the process that the  
14 City undertook to establish the Exclusive Service Areas. In this process, the City  
15 selected the service providers who qualified to haul waste services under the City's  
16 "Contractor Qualification" standards. When Reno Disposal and Castaway were the only  
17 service providers who qualified, the City then created a service area for each provider  
18 based upon the service providers then existing boundaries of service. Specifically,  
19 Paragraph 2.2 of the franchise agreement states:

20 Prior to the Effective Date, City requested collective advice  
21 of certain commercial solid waste haulers **meeting the**  
22 **Contractor Qualifications** and then providing solid waste  
23 and related hauling services concerning recommended  
24 boundaries for the Exclusive Service Areas. **The City**  
25 **established the location and boundaries of each**  
26 **Exclusive Service Area in proportion to each qualified**  
27 **service provider's then existing Proportionate Share of**  
28 **the permanent revenues from hauling services collected**  
**by all the qualified service providers in Reno.**

See Commercial Franchise Agreements, § 2.2 (emphasis added).

In summary, the express language of the franchise agreements detail that the  
City only considered granting franchise rights to haulers who had the requisite

1 Contractor Qualifications. The number of Exclusive Service Areas was, therefore,  
2 equal to the number of qualified haulers, and the City did not select two areas then  
3 picked two contractors to perform services in those areas.

4 In light of the plain language of the Commercial Franchise Agreements, there is  
5 no genuine issue of material fact that the City contemplated as few as one franchised  
6 hauler, not a minimum of two like the Plaintiffs assert. Further, the plain language of  
7 the Commercial Franchise Agreements demonstrates that the City's decision to enter  
8 into franchises was a decision based upon the qualifications of a hauler, nothing else.  
9 Accordingly, the Plaintiffs' conclusory statement that the City wanted to award two  
10 franchise zones contradicts the express language of the franchise agreements and is  
11 not supported by any evidence. Therefore, summary judgment should be granted as  
12 requested.

13 **C. RUBBISH RUNNERS WAS NOT QUALIFIED TO BE A FRANCHISED**  
14 **HAULER.**

15 As noted above, the City selected only Qualified Contractors with whom it would  
16 enter into a franchise agreement. However, Rubbish Runners asserts, without any  
17 factual support, that the City would have granted it a franchise area if the City knew that  
18 Reno Disposal was acquiring Castaway. See Opp., p.2:5-9. While it is recognized that  
19 Rubbish Runners must make this unsubstantiated contention to have any hope of  
20 defeating summary judgment, an analysis of this contention demonstrated that it is  
21 undisputedly false.

22 As stated above, the City solicited qualified contractors with whom it would enter  
23 into franchise agreements. However, to be a qualified contractor, the franchise  
24 agreement defined the qualifications required to be a qualified hauler. Specifically,  
25 there are five separate qualifications set forth in the Commercial Franchise Agreements  
26 to be considered a qualified hauler, however, the only relevant qualification at this time  
27 is as follows:

28 (i) that the proposed assignee has at least five (5) years of

1 Solid Waste and Recyclable Materials collection experience  
2 similar to the Collection Services . . . .

3 See Commercial Franchise Agreements, § 11.7 C.<sup>4</sup> This language makes it abundantly  
4 clear that in order to be a qualified hauler, the entity must have been in existence  
5 conducting hauling services for at least five (5) years.

6 At the time the City entered into franchise agreements on November 7, 2012,  
7 Rubbish Runners had only been in existence since May 5, 2009. See Exhibit 1,  
8 (Nevada Secretary of State, printout). Thus, at the time the franchise agreements were  
9 executed, Rubbish Runners was only in existence for roughly three-and-a-half years, a  
10 year and a half short of the five-year minimum collection experience. In summary,  
11 Rubbish Runners was not qualified to enter into a franchise agreement with the City of  
12 Reno. Therefore, these undisputed facts conclusively establish that Rubbish Runner's  
13 contention it would have received a franchise area from the City of Reno in November,  
14 2012, is absolutely unfounded. Rubbish Runners did not qualify as a franchise hauler  
15 in November 2012, therefore, the City never selected it for a franchise area and could  
16 not regardless of whether or not Reno Disposal acquired Castaway or not.

17 The evidence is therefore undisputed that Rubbish Runners was unqualified to  
18 enter into a franchise agreement with the City. Therefore, it is immaterial what  
19 transpired by and between Reno Disposal and Castaway—because such interaction  
20 had absolutely no impact on Rubbish Runners. Since Rubbish Runners could not enter  
21 into a franchise agreement with the City of Reno based upon the City's own  
22 requirements, Rubbish Runners conclusory statement is baseless in fact and summary  
23 judgment must be granted as requested.

24  
25 <sup>4</sup> Under the franchise agreements, the term "Qualifications" means "the Assignee  
26 Qualifications, as defined in Section 11.7 of this Agreement." See Commercial  
27 Franchise Agreements, p. 9. Thus, while the Section 11.7 discusses the hauler  
28 qualifications in terms of assignees, the Qualifications set forth therein are the same  
Qualifications necessary to enter into a Commercial Franchise Agreement in the first  
place.

1           **D.     NRS HAS NO VIABLE CLAIM.**

2           As an independent basis for granting summary judgment against NRS, the  
3 franchise agreements at issue in this case are for hauling of waste. Plaintiff NRS is not  
4 a hauler and is only "in the business of accepting, processing, recycling and disposing  
5 of materials . . . ." Verified Amd. Comp., ¶7. Thus, there is no genuine issue of  
6 material fact that NRS was also unqualified to be a franchised hauler as it did not meet  
7 the definition of a qualified contractor. Thus, summary judgment should also be  
8 entered as requested against NRS on this independent basis.

9           **III.    THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT THE CITY'S**  
10           **PREAPPROVAL OF THE ASSIGNMENT TO RENO DISPOSAL IS**  
11           **PROTECTED BY NRS 598A.040.**

12           The Plaintiffs argue that there is an issue of material fact based upon the  
13 assertion that a violation of UTPA occurred prior to the execution of the Commercial  
14 Franchise Agreement. See Opp., p. 3:1-5. However, the UTPA does not apply to  
15 "[c]onduct which is expressly authorized, regulated or approved by: (a) A statute of this  
16 State or the United States; [or] (b) An ordinance of any city or county of this State ... "  
17 NRS 598A.040(3). The agreements specifically granting Reno Disposal the unlimited  
18 and unfettered right to acquire Castaway was authorized and approved by City  
19 ordinance. See RMC 5.90.030.

20           It is also undisputed that the City was aware of, considered and pre-approved  
21 Reno Disposal's acquisition of Castaway and the assignment of Castaway's franchise  
22 agreement to Reno Disposal. Pursuant to NRS 598A.040(c), Reno Disposal is immune  
23 from liability for conduct that is expressly approved, regulated, and/or allowed under its  
24 franchise agreement. As such, it is a legal impossibility for Reno Disposal to be liable  
25 for conduct that the City contemplated, that the City was responsible for regulating and  
26 that the City "pre-approved" Reno Disposal's acquisition of Castaway. Therefore,  
27 summary judgment must be granted as a matter of law.

28           Because the franchise agreements unconditionally granted Reno Disposal the

1 right to acquire Castaway's franchise rights, the only consideration that this Court can  
2 undertake is whether the evidence presented establishes that Reno Disposal acquired  
3 Castaway's rights according to the express terms of the franchise agreements. It is  
4 undisputed that Reno Disposal acquired Castaway's franchise rights according to the  
5 express terms of the franchise agreements. Therefore, when and if preliminary  
6 discussion occurred is entirely irrelevant and immaterial. Reno Disposal had the  
7 absolute contractual right to do what it did. Reno Disposal acted in full accord with its  
8 rights under its franchise agreement—which conduct is immune from UTPA liability.

9 Therefore, there is no genuine issue of material fact and as a matter of law,  
10 Reno Disposal cannot have any UTPA liability for conduct that was expressly  
11 contemplated, considered and approved by the City. Therefore, summary judgment  
12 must be granted in Reno Disposal's favor.

13 **IV. THE PLAINTIFFS ARE JUDICIALLY ESTOPPED FROM ATTEMPTION TO**  
14 **INVALIDATE THE COMMERCIAL FRANCHISE AGREEMENTS.**

15 In effect, the Plaintiffs' are seeking to invalidate the immunity granted to Reno  
16 Disposal under the franchise agreements. However, this position is inconsistent with  
17 the prior position taken by the Plaintiffs. In its Verified Amended Complaint, the  
18 Plaintiffs admit that the Commercial Franchise Agreement was approved by the City.  
19 See Amd. Comp., ¶ 100. In their Opposition to Motion to Dismiss Verified Amended  
20 Complaint, the Plaintiffs concede that Reno Disposal's franchise agreement is a valid  
21 contract. See Exhibit 2, p. 33. Accordingly, the principals of judicial estoppel bar the  
22 Plaintiffs from taking this position.

23 In Nevada, judicial estoppel prevents a party from adopting inconsistent positions  
24 when:

25 (1) the same party has taken two positions; (2) the positions  
26 were taken in judicial or quasi-judicial administrative  
27 proceedings; (3) the party was successful in asserting the  
28 first position . . . ; (4) the two positions are totally  
inconsistent; and (5) the first position was not taken as the  
result of ignorance, fraud or mistake.



1 S. Cal. Edison v. First Judicial Dist. Ct., 127 Nev. Adv. Op. 22, 255 P.3d 231, 237  
2 (2011) (citations omitted). As noted above, the Plaintiffs are taking two totally  
3 inconsistent positions regarding the validity and effect of Reno Disposal's franchise  
4 agreement. The agreement cannot be both valid and enforceable (thereby vesting  
5 Reno Disposal with immunity from any UTPA claim) yet at the same time not be valid  
6 and still allow for UTPA liability. The Court has ruled that the franchise agreements are  
7 unambiguous and enforceable. Therefore, judicial estoppel applies, and the Plaintiffs  
8 are barred from contending that the franchise agreements are invalid, allowing for  
9 UTPA liability while previously admitting that the franchise agreements were valid and  
10 enforceable thereby establishing Reno Disposal's immunity for any UTPA claim.

11 **V. NRCP 56(f) DOES NOT PRECLUDE ENTRY OF SUMMARY JUDGMENT IN**  
12 **THIS CASE.**

13 Pursuant to NRCP 56(f), the district court may "grant a continuance when a  
14 party opposing a motion for summary judgment is unable to marshal facts in support of  
15 its opposition." Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 117-18, 110 P.3d  
16 59,62 (2005). However, the party must "express how further discovery will lead to the  
17 creation of a genuine issue of material fact." Id. at 118. The Nevada Supreme Court  
18 reviews a district court's refusal to grant additional time an abuse of discretion. Id. In  
19 JE. Dunn Northwest, Inc. v. Corus Const. Venture, LLC, 127 Nev. Adv. Op. 5, 249 P.3d  
20 2 501 (2011), the district court declined to provide Dunn more time to conduct discovery  
21 because the court determined that the issues identified by Dunn did not pertain to the  
22 ultimate issue in the summary judgment motion.

23 In the present case, the Plaintiffs state that they want to deposition Castaway's  
24 former owners and shareholders regarding the "buyout of Castaway" and whether there  
25 was "already an agreement in place prior to the execution of the [Commercial]  
26 Franchise Agreements." See Opp., Affidavit of Stephanie Rice, Esq., ¶ 7. However, as  
27 described above, Reno Disposal and Castaway's conduct is immaterial to the Reno  
28 Disposal's exercise of its contract rights under the franchise agreements. Accordingly,

1 such discovery is immaterial and irrelevant to whether Reno Disposal has any UTPA  
2 liability. Further, such discovery is made even more irrelevant and immaterial given that  
3 Rubbish Runners has no claim, because it was not a qualified contractor as it did not  
4 have the requisite 5-year existence mandated by the City of Reno. Accordingly,  
5 whether or not Reno Disposal and Castaway had preliminary discussions is  
6 meaningless to Rubbish Runners, because Rubbish Runners could not have entered  
7 into a franchise agreement with the City in any event.

8 The Plaintiffs also claim that they want to depose members of the Reno City  
9 Counsel who voted on the franchise agreements to ascertain their state of mind when  
10 they so voted. See Opp., Affidavit of Stephanie Rice, Esq., ¶ 7. However, as a matter  
11 of law, the City's state of mind is irrelevant because the Court has already ruled that the  
12 franchise agreements are unambiguous. The law requires the Court to enforce the  
13 terms of unambiguous contracts and parol evidence regarding those terms are  
14 inadmissible. Lowden Inv. Co. v. General Elec. Credit Co., 103 Nev. 374, 379, 741 P.2d  
15 806 (1987) ("Parol evidence is not admissible to vary or contradict the terms of a written  
16 agreement."); D.E. Shaw Laminar Portfolios, LLC v. Archon Corp., 570 F.Supp.2d  
17 1262, 1268 -1269 (D.Nev. 2008) ("extraneous evidence cannot be used to explain the  
18 meaning of a contract that is unambiguous on its face.").

19 Because it is undisputed that the City contemplated Reno Disposal's acquisition  
20 of Castaway and "pre-approved" such acquisition, the state of mind of the individual  
21 members of the Council is not only inadmissible, it is irrelevant. The City's intent to in  
22 approving the Castaway's assignment to Reno Disposal is manifest in the plain and  
23 unambiguous language of the franchise agreement. Therefore, this purported  
24 discovery is immaterial and irrelevant to resolution of the issues before the Court.

25 Finally, Plaintiffs argue that summary judgment should be denied because  
26 Defendants' motion is premature. However, NRCP 56(b) states that a defendant may  
27 move for summary judgment "at any time." Accordingly, there is nothing improper  
28

1 about moving for summary judgment and/or obtaining summary judgment in this case.  
2 The issues before the Court are ripe for disposition, the relevant facts are undisputed  
3 and Defendants are entitled to summary judgment as a matter of law. Therefore, the  
4 Plaintiffs' request for a stay under NRCP 56(f) should be denied, and the motion for  
5 summary judgment should be granted.

6 **VI. CONCLUSION**


7 As demonstrated, there is no genuine issue of material fact, and summary  
8 judgment must be granted. The Plaintiffs' opposition is premised upon speculation and  
9 conclusory statements. There is no evidence that the City intended to grant two  
10 franchise zones and/or that Rubbish Runners was a qualified contractor.

11 On the other hand, the evidence is undisputed that the City conducted an  
12 analysis of the qualified haulers (of which Rubbish Runners was not one) and then  
13 entered into franchise agreements with the only two qualified service providers. The  
14 franchise agreements also contemplated, considered, ratified and approved Reno  
15 Disposal acquiring Castaway's franchise rights. Such franchise agreements are  
16 immune from UTPA exposure. Because Reno Disposal acquired Castaway's franchise  
17 rights according to the express terms of the franchise agreements, Reno Disposal's  
18 conduct is immune from UTPA liability as a matter of law. Accordingly, summary  
19 judgment should be granted as requested.

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

22 DATED this 16<sup>th</sup> day of October, 2015.

23  
24 ROBISON, BELAUSTEGUI, SHARP & LOW  
25 71 Washington Street  
26 Reno, Nevada 89503

27   
28 MARK G. SIMONS  
SCOTT L. HERNANDEZ  
Attorneys for Defendants

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' REPLY IN SUPPORT OF 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:

☒ by using the Court's CM/ECF Electronic Notification System:

☐ 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 this 16<sup>th</sup> day of October, 2015.

  
Employee of Robison, Belaustegui, Sharp & Low

STATE OF NEVADA }  
COUNTY OF WASHOE } ss.

JA000946

EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Nevada Secretary of State website (http://nvsos.gov./sosentitysearch/) "AMCB LLC" public information for Plaintiff AMCB, LLC dba Rubbish Runners	-2-
2	Plaintiffs' Opposition to Motion to Dismiss	-44-

CV15-00497 DC-0990070575-024  
WEY RECYCLING ET AL VS RENO 3 Pages  
District Court 10/16/2015 03:55 PM 3795  
Washoe County REPORT

# EXHIBIT 1

# EXHIBIT 1

# AMCB LLC

## Business Entity Information

Status:	Active	File Date:	5/5/2009
Type:	Domestic Limited-Liability Company	Entity Number:	E0260462009-1
Qualifying State:	NV	List of Officers Due:	5/31/2016
Managed By:	Managing Members	Expiration Date:	
NV Business ID:	NV20091308533	Business License Exp:	5/31/2016

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	HARDY LAW GROUP	Address 1:	98 WINTER ST
Address 2:		City:	RENO
State:	NV	Zip Code:	89503
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

## ☒ Officers

☐ Include Inactive Officers

Managing Member - ANNEMARIE CAREY

Address 1:	1085 TELEGRAPH STREET	Address 2:	
City:	RENO	State:	NV
Zip Code:	89502	Country:	USA
Status:	Active	Email:	

## ☒ Actions/Amendments

Action Type:	Articles of Organization		
Document Number:	20090389726-06	# of Pages:	2



File Date: 5/5/2009		Effective Date:	
(No notes for this action)			
Action Type: Initial List			
Document Number: 20090491160-22	# of Pages: 1		
File Date: 6/15/2009	Effective Date:		
2009-2010			
Action Type: Annual List			
Document Number: 20110430931-24	# of Pages: 1		
File Date: 6/9/2011	Effective Date:		
10-11			
Action Type: Annual List			
Document Number: 00003139365-60	# of Pages: 1		
File Date: 6/9/2011	Effective Date:		
11-12			
Action Type: Annual List			
Document Number: 20120713378-34	# of Pages: 1		
File Date: 10/19/2012	Effective Date:		
12-13			
Action Type: Annual List			
Document Number: 20130143387-72	# of Pages: 1		
File Date: 2/28/2013	Effective Date:		
(No notes for this action)			
Action Type: Annual List			
Document Number: 20140456287-19	# of Pages: 1		
File Date: 6/24/2014	Effective Date:		
(No notes for this action)			
Action Type: Amended List			
Document Number: 20140655058-66	# of Pages: 1		
File Date: 9/10/2014	Effective Date:		
(No notes for this action)			
Action Type: Registered Agent Change			
Document Number: 20140766752-20	# of Pages: 1		
File Date: 11/18/2014	Effective Date:		
(No notes for this action)			
Action Type: Annual List			
Document Number: 20150107593-53	# of Pages: 1		
File Date: 3/9/2015	Effective Date:		
15-16			

CV19-00497  
NEW RECYCLING ET AL VS RENO 43 Pages  
District Court 10/18/2018 03:37PM  
Washoe County  
MORRIS

# EXHIBIT 2

# EXHIBIT 2

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 1<sup>st</sup> 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  
28

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," *Brelant 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 4.4L*  
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.

24 " 'Excluded Materials' are defined as:

25 (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile,  
26 corrosive, biomedical, infectious, biohazardous, and toxic substances or  
27 material, including without limitation batteries; (iv) waste that  
28 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



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.

29 "By explicit definition as set forth above and taken directly from the  
30 FRANCHISE AGREEMENT, the definition of 'Excluded Recyclable Materials'  
31 explicitly includes "Approved Recyclable Materials" as long as they are from  
32 commercial activity, separated from non-approved recyclable materials and  
33 contain no less than 90% 'Approved Recyclable Materials' and purchased  
34 by a buyer of recyclable materials. *Id.*" Verified Amended Complaint, 8:15-  
35 19.

36 " 'Exempted Drop Box Materials' are defined as: Solid Waste and  
37 Approved Recyclable Material collected and transported in an Exempted  
38 Drop Box using Exempted Drop Box Services, but excludes; (i) Garbage;  
39 and, (ii) Compacted Solid Waste and compacted Approved Recyclable  
40 Materials.' *Id.* at p. 6." Verified Amended Complaint, 20-23.

41 " 'Exempted Hauler Account Material' is defined as: Solid Waste and  
42 Recyclable Material collected from an identified customer under an  
43 Exempted Account and transported by such Exempted Hauler using  
44 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, Cheryl 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

1                   I.       **Email from Cherolyn Gilletti to Plaintiffs' Customer**

2           In their Verified Amended Complaint, Plaintiffs properly allege that "On October 30,  
3 2014, WM employee, Cherolyn Gilletti, intentionally misrepresented the current FRANCHISE  
4 AGREEMENT to one of Plaintiffs' customers by writing in an email the following: . . .  
5 "Recyclable Material. No business may allow or retain any service provider other than  
6 Reno Disposal Company to collect, pickup, transport or deliver Approved Recyclable  
7 Materials in the City of Reno in violation of the exclusive franchise agreement or the Reno  
8 Municipal Code." Verified Amended Complaint, 11:11-23. Plaintiffs' further allege that this is a  
9 false statement. Verified Amended Complaint, 11:23. Applying the legal standard on a Motion  
10 to Dismiss and accepting these factual allegations that were properly plead in Plaintiffs'  
11 Verified Amended Complaint as true, then Plaintiffs have easily stated a claim for which relief  
12 can be granted. See, *Buzz Stew LLC v. City of North Las Vegas*, 124 Nev. 224, 227-28 (2008).  
13 Thus, Defendants' Motion to Dismiss Verified Amended Complaint as to the first and second  
14 claims for relief for Defamation and Defamation Per Se, must be denied.

15           Inappropriately attempting to plead the merits of the case by way of their Motion to  
16 Dismiss, Defendants argue that Ms. Gilletti's email "is true according to the terms of the  
17 Commercial Franchise Agreement." Motion to Dismiss Verified Amended Complaint, 15:22-23.  
18 With respect to Excluded Recyclable Materials, Defendants argue, without citation to any  
19 specific provision in the FRANCHISE AGREEMENT, "businesses cannot be compelled to have  
20 their Excluded Recyclable Materials collected by Reno Disposal, but if a seller sells materials  
21 which are Approved Recycl[able] Materials, but the materials are sold directly to a buyer at  
22 market rate and there is no collection or hauling involved, then that transaction is exempt  
23 from the City of Reno FRANCHISE AGREEMENT." [Emphasis Added]. Motion to Dismiss Verified  
24 Amended Complaint, 15:28-16:4. This assertion is not accurate.

25           In fact, the FRANCHISE AGREEMENT explicitly states, "In addition to and separate  
26 from Collection Services, Contractor may voluntarily offer certain "Special Services"

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 Repo 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.<sup>1</sup>

26  
27 <sup>1</sup> 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, *Pink 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 haulier" 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." *Pink 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  
rights of such Exempted Hauler under this Section 3.2 D;

7 The exempted facility shall be a third party beneficiary with the right to  
8 enforce, subject to the terms and conditions in this section 4.4 I, the  
rights of the exempted facility under this section 4.4 I;

9 and,

10 The Exempted Facility shall be a third party beneficiary with the right to  
11 enforce, subject to the terms and conditions in this Section 3.2 G, the  
rights of the Exempted Facility under Section 3.2 G.

12 [Emphasis Added]. See, Motion to Dismiss Verified Amended Complaint, 18:11-28. Defendants'  
13 argue that this language limits status as a third party beneficiary. *Id.* However, Defendants are  
14 misplaced in their application of these facts to the law in this area.

15 In their Motion to Dismiss, Defendants misstate both the operative legal principles and  
16 the holding in *Lipshie*. Neither *Lipshie* nor any other case holds a contract must be for the  
17 exclusive or primary benefit of a non-party to create a third party beneficiary. Plaintiffs need  
18 only allege that they are intended third party beneficiaries of some promise contained in a  
19 contract, which Plaintiffs have properly alleged here. The benefit need not be the sole or  
20 primary purpose of the contract. See, *Acoustics, Inc. v. American Surety Co.*, 320 P.2d 626, 627  
21 (1958) ("Where a contract contains a promise for the benefit of one not a party to the contract,  
22 the third party beneficiary has a direct right of action against the promisor.")

23 The Nevada Supreme Court has long held that a third party beneficiary has a direct right  
24 of action against the promisor or an actual party to contract. *Hemphill v. Hanson*, 77 Nev. 432,  
25 436 n. 1, 366 P.2d 92, 94 n. 1 (1961); See also, *Morelli v. Morelli*, 102 Nev. 326, 329, 720 P.2d  
26 704, 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,  
8 attached hereto and incorporated herein.

9 WM has materially breached the FRANCHISE AGREEMENT and its  
10 obligations thereunder to the CITY, its commercial customers and third-  
11 party beneficiaries under the FRANCHISE AGREEMENT, NRS and RR, by  
12 consistently and intentionally failing to charge the "Franchise Rates" as set  
13 forth in and required under the FRANCHISE AGREEMENT.

14 As a representative example, on February 1, 2015, WM billed and charged a  
15 commercial customer located in Reno at 4670 Aircenter Circle and thus,  
16 covered under the FRANCHISE AGREEMENT, \$120.58 for "4 Yard dumpster  
17 service- recycle materials." See, Exhibit 10, attached hereto. However, the  
18 current and applicable "Franchised Rate" for a 4 Yard Bin for Recyclable  
19 Materials, as set forth in Exhibit 8 attached hereto, is \$135.47. Accordingly,  
20 WM and/or its affiliates, are undercharging the commercial customer by  
21 \$14.89, in material breach of the FRANCHISE AGREEMENT and to the direct  
22 detriment of Plaintiffs as licensed competitors authorized to do business in  
23 the CITY.

24 At all times relevant herein, REFUSE and WM, and/ or their affiliates, knew  
25 and/or should have reasonably foreseen that the explicit rights and  
26 provisions set forth in the FRANCHISE AGREEMENT and the DISPOSAL  
27 AGREEMENT relating to Exempted Haulers (RR) and the Exempted Facility  
28 (NRS), was for the benefit of the intended third party beneficiaries  
thereunder, the Plaintiffs herein.

As a direct and foreseeable consequence of WM's actions in materially  
breaching the FRANCHISE AGREEMENT and the DISPOSAL AGREEMENT, as  
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.

See, Verified Amended Complaint, 15:24-16:12 and 17:14-22. Plaintiffs have properly alleged  
that Waste Management has materially breached the FRANCHISE AGREEMENT and its  
obligations thereunder to Plaintiffs by "consistently and intentionally failing to charge the  
'Franchised Rates' as set forth in and required under the FRANCHISE AGREEMENT." *Id.* at

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 **II. Plaintiffs' have Standing to Maintain their Claims for Breach of**  
12 **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  
diligently to ensure as many materials as possible are prepared for  
recycling and returned to the economy.

15 Under the FRANCHISE AGREEMENT, residents and business owners have  
16 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  
20 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.

21 Because the Commercial Recycling Program in Reno subsidizes the rates for  
22 residential services, including the Single Stream Recycling Program,  
23 Plaintiffs' respective costs of doing business have increased. In  
24 addition, as a result of the FRANCHISE AGREEMENTS, which include the  
25 recycling programs, Plaintiffs have been forced to change their internal  
26 operating procedures in order to ensure compliance with the FRANCHISE  
27 AGREEMENTS. With respect to recyclable materials collected, accepted and  
28 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  
form of raw materials for new, reused, repaired, refabricated,  
remanufactured, or reconstituted products." [Emphasis Added].

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  
8 conduct any part of any such activity in this State:

9 (a) *Price fixing, which consists of raising, depressing, fixing, pegging or  
10 stabilizing the price of any commodity or service, and which includes,  
11 but is not limited to:*

12 (1) Agreements among competitors to depress prices at which they will buy  
13 essential raw material for the end product.

14 (2) Agreements to establish prices for commodities or services.

15 (3) Agreements to establish uniform discounts, or to eliminate discounts.

16 (4) Agreements between manufacturers to price a premium commodity a  
17 specified amount above inferior commodities.

18 (5) Agreements not to sell below cost.

19 (6) Agreements to establish uniform trade-in allowances.

20 (7) Establishment of uniform cost surveys.

21 (8) Establishment of minimum markup percentages.

22 (9) Establishment of single or multiple basing point systems for  
23 determining the delivered price of commodities.

24 (10) Agreements not to advertise prices.

25 (11) Agreements among competitors to fix uniform list prices as a place to  
26 start bargaining.

27 (12) Bid rigging, including the misuse of bid depositories, foreclosures of  
28 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].

In the seminal case of *Cargill, Inc. v. Manfort 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

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 *Barnettler 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  
30 Single Stream Recycling Tote in Reno, Nevada on March 10, 2015, was not  
31 recycled or returned to the economy at all. It was dumped in a landfill in  
32 California, where it remains today.

33 Based on the foregoing, WM has expressly breached the FRANCHISE  
34 AGREEMENT and misrepresented that it would be actually recycling the  
35 recyclable materials collected through the Single Stream Recycling  
36 Program, which the Reno City Council relied on in granting WM the  
37 FRANCHISE AGREEMENTS, of which Plaintiffs herein are express Third  
38 Party Beneficiaries.

39 WM intentionally and fraudulently made representations which were  
40 misleading to the CITY, the citizens and business owners of Reno and  
41 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 brings 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

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  
22 citizens and business owners of the City of Reno, Plaintiffs and other small  
haulers.

23 As the actual, direct, and proximate result and cause of the acts of WM, RR  
24 and NRS have been damaged in an amount to be proven at trial but which  
25 exceeds \$10,000.00. In addition, the conduct of the Defendants should be  
26 punished, and an example made of said conduct, to discourage Defendants  
27 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. As a direct and proximate result of the reckless, malicious  
and oppressive conduct of Defendants and the reckless disregard for the  
rights of Plaintiffs herein, Plaintiffs are entitled to an award of punitive  
damages in order to deter Defendants from engaging in such egregious



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,<sup>2</sup> 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. Jafbro 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 The instant case comes before this court in an unusual posture. There has  
23 been no trial on the merits and no finding of liability, nor has the district  
24 court entered a judgment against State Farm. Furthermore, Jafbro has  
25 stipulated to a dismissal of its claims for damages, leaving no prospect for a  
26 future trial.

27 In *Fox v. City of West Palm Beach*, 383 F.2d 189 (5th Cir.1967), the Fifth  
28 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

<sup>2</sup> 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  
27  
28

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  
7 and others in similar positions from engaging in like conduct in the future,  
8 through the award of punitive damages in a just and reasonable amount  
9 for Plaintiffs herein.

10 [Emphasis Added]. Verified Amended Complaint, 27:18-23. Plaintiffs' are not requesting that  
11 an injunction be issued to punish Defendants. As Plaintiffs explicitly allege, Plaintiffs are  
12 requesting injunctive relief to "stop [Waste Management's] deceitful misconduct that continues  
13 to harm Plaintiffs." *Id.* Then, in accordance with NRCP 9(g), Plaintiffs further request that this  
14 Court award punitive damages to punish Defendants for their conduct explicitly requesting, "In  
15 addition, the conduct of the Defendants should be punished, . . . , through the award of  
16 punitive damages." [Emphasis Added]. *Id.*

17 NRCP 9(g) explicitly requires that "when items of special damage are claimed, they shall  
18 be specifically stated," which is exactly what Plaintiffs have done here. Punitive damages  
19 constitute "special damages" and as such, are required to be plead in the body of the complaint.  
20 This is similar to situations, when a party claims it has incurred attorney fees as foreseeable  
21 damages arising from tortious conduct or a breach of contract, such fees are considered special  
22 damages. Under these circumstances, "they must be pleaded as special damages in the  
23 complaint pursuant to NRCP 9(g) and proved by competent evidence just as any other element  
24 of damages." *Sandy Valley Assocs. v. Sky Ranch Estates*, 117 Nev. 948, 956-57, 35 P.3d 964, 971  
25 (2001) *receded from on other grounds in Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988  
26 (2007). "The mention of attorney fees in a complaint's general prayer for relief is insufficient to  
27 meet this requirement." According, Plaintiffs' properly plead additional and special punitive  
28 damages in the body of the Verified Amended Complaint under the claim for injunctive relief in

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

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

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 NRCF 15(a), which "leave shall be freely given when justice so requires."

8  
9 DATED this 7<sup>th</sup> day of May, 2015.

10   
11 STEPHANIE RICE, ESQ.  
12 DEL HARDY, ESQ.  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 on this date I served the foregoing document(s) described as **OPPOSITION TO MOTION**  
4 **TO DISMISS VERIFIED AMENDED COMPLAINT** on all parties to this action by:

5 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for  
6 collection 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 X \_\_\_\_\_ EFLEX- Court's Electronic Filing System

11 \_\_\_\_\_ Messenger Service

12 \_\_\_\_\_ Certified Mail with Return Receipt Requested

13 addressed as follows:

14 MARK G. SIMONS, ESQ.  
15 SCOTT HERNANDEZ, ESQ.  
16 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

17 **AFFIRMATION**  
**Pursuant to NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain  
19 the social security number of any person.

20  
21 DATED this 17th day of May, 2015.

22   
23 **EMPLOYEE OF HARDY LAW GROUP**

ORIGINAL

FILED

2015 OCT 16 PM 3: 56

JACQUELINE BRYANT  
CLERK OF THE COURT  
BY [Signature]  
DEPUTY

2645  
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*Attorneys for Defendants Waste Management of Nevada  
and Refuse, Inc.*

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 PLAINTIFFS' MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR  
RECONSIDERATION AND MOTION FOR RECONSIDERATION**

Defendants Reno Disposal Company, Inc., dba Waste Management ("Reno  
Disposal") and Refuse, Inc. (collectively the "Defendants" unless otherwise specified),

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

JA000996

1 hereby submit the following opposition to the Motion for Leave to File and Consider  
2 Motion for Reconsideration and Motion for Reconsideration filed by Plaintiff Nevada  
3 Recycling and Salvage, Ltd. and AMCB, LLC dba Rubbish Runners (collectively, the  
4 "Plaintiffs").

5 I. INTRODUCTION.

6 On September 15, 2015, the Court entered its Order Granting Defendants'  
7 Motion to Dismiss Verified Amended Complaint, in Part, and Denying, in Part (the  
8 "Order"). Prior to issuing the Order, the Defendant's motion to dismiss was fully briefed,  
9 including the submission of an opposition by the Plaintiffs. On July 29, 2015, the Court  
10 heard oral argument on the motion. In its Order, the Court dismissed the Plaintiffs'  
11 claims for defamation and defamation per. It is these claims that the Plaintiffs are  
12 attempting to revive in the present Motion for Reconsideration.

13 The Motion for Reconsideration fails for two reasons. First, the Plaintiffs' do not  
14 satisfy the standard for such a motion. The Plaintiffs' submit no new law in support of  
15 the motion that was not already briefed in their original Opposition to the Motion to  
16 Dismiss. In effect, what the Plaintiffs seek is not reconsideration—but reargument of  
17 matters that were thoroughly briefed, orally argued, and thoughtfully considered and  
18 resolved by the Court.

19 Second, the Plaintiffs do not and cannot demonstrate that is was clearly  
20 erroneous to dismiss the claims for defamation under NRCP 12(b)(5). This is because  
21 it is well-established law that whether a factual statement is capable of defamatory  
22 implication is an issue of law to be initially decided by the Court. See e.g., 2 Law of  
23 Defamation § 9:96 (2d ed. May 2015) ("Whether the statements giving rise to the action  
24 are capable of being reasonably understood as defamatory statements of fact is initially  
25 a question of law to be decided by the court."); Banka v. Columbia Broad. Co., 63 F.  
26 Supp. 3d 501, 507 (E.D. Pa. 2014) ("Whether a challenged statement is capable of  
27 defamatory meaning is an issue of law for the court to determine in the first instance.").  
28



1 The statements upon which the defamation claims are based relate to the factual  
2 terms of Reno Disposal's franchise agreement. The Court has already determined this  
3 agreement is unambiguous. The Court has also ruled that—as a matter of law—the  
4 statements were substantially true statements of fact. Accordingly, the Court's  
5 determination that allegedly defamatory statements are true and/or substantially true as  
6 a matter of law is not clearly erroneous given it is the Court's duty to analyze whether  
7 the statements were true and/or substantially true thereby obviating any defamatory  
8 content. Accordingly, the Motion for Reconsideration should be denied.

9 **II. THE PLAINTIFFS FAIL TO SATISFY THE STANDARD OF REVIEW FOR**  
10 **MOTIONS FOR RECONSIDERATION.**

11 Reconsideration of a previously disposed motion is only appropriate "in very rare  
12 instances" when a party raises new issues of law or fact that render the Court's prior  
13 holding clearly erroneous. See Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d  
14 244, 246 (1976). While permitted under WDCR 12(8) and DCR 13(7), "[r]ehearings are  
15 not granted as a matter of right, and are not allowed for the purpose of reargument,  
16 unless there is a reasonable probability that the Court may have arrived at an  
17 erroneous conclusion." Geller v. McCown, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947)  
18 (citations omitted).

19 Motions for reconsideration cannot be "utilized as a vehicle to reargue matters  
20 considered and decided in the court's initial opinion." In re Ross, 99 Nev. 657, 659, 668  
21 P.2d 1089, 1091 (1983). Moreover, "[p]oints or contentions not raised in the original  
22 hearing cannot be maintained or considered on rehearing." Achrem v. Expressway  
23 Plaza Ltd. P'ship, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). Only where  
24 substantially different evidence is introduced or the decision is clearly erroneous may a  
25 district court reconsider a previously decided issue. Masonry & Tile Contractors Ass'n  
26 of S. Nev. v. Jolly, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

27 In its motion, Plaintiff cites to several cases in which rehearing was actually  
28 denied. Among the cases cited is Moore v. City of Las Vegas, 92 Nev. 402, 405, 551

1 P.2d 244, 246 (1976). In Moore, as here, the movant failed to demonstrate that the  
2 courts' initial decision was clearly erroneous. In Moore, the Court was asked to address  
3 rehearing of a motion for summary motion. The only difference between the second  
4 motion for rehearing and a prior motion was the citation of additional authorities for a  
5 proposition of law that was already mentioned and adequately supported in the prior  
6 motions. Id. In denying motion for rehearing, the Court held that it is an "abuse of  
7 discretion" for the district court to entertain a motion for rehearing that lacks new issues  
8 of law. Id.

9 Here, as in Moore, Plaintiffs do not cite any case law or identify any issues of law  
10 that they did not cite to and/or rely upon in their original Opposition to Motion to  
11 Dismiss. Indeed, the Plaintiffs even offer the same quotes from the same cases in  
12 support of the motion.<sup>1</sup> Since there are no issues of law raised in the present motion  
13 that were not raised in the Plaintiffs' Opposition to Motion to Dismiss the motion must  
14 be denied.

15 **III. IT WAS NOT CLEARLY ERRONEOUS TO DISMISS THE PLAINTIFFS'**  
16 **DEFAMATION CLAIMS BASED UPON TRUE AND/OR SUBSTANTIALLY**  
17 **TRUE STATEMENTS.**

18 While the Defendants believe that the Motion for Reconsideration should be  
19 denied for the reasons set forth above, as an independent basis for denial, there is also  
20 no substantive basis for reconsideration. While not clearly articulated in the motion,  
21 Plaintiffs appear to seek reconsideration of the limited issue as follows: whether it was  
22 clearly erroneous for the Court to dismiss the Plaintiffs' claims for defamation which  
23 were based upon those statements that the Court determined were substantially true.

24  
25 <sup>1</sup> Compare Motion for Reconsideration, p. 4:20-22 with Opposition to Motion to Dismiss,  
26 p. 12:19-21 ("[T]he truth or falsity of an allegedly defamatory statement is an issue of  
27 fact properly left to the jury for resolution." Fink v. Oshins, 118 Nev. 428, 437, 49 P.3d  
28 640, 646 (2002)); compare Motion for Reconsideration, p. 4:17-19 with Opposition to  
Motion to Dismiss, p. 13:10-12 ("Whether a statement is true or false is an issue of fact  
for the jury." Williams v. Univ. Med. Ctr. of S. Nevada, 688 F.Supp.2d 1134, 1146 (D.  
Nev. 2010)).

1           A.    **THE TRUTH OF REPRESENTATIONS RELATED TO THE TERMS OF**  
2                   **AN UNAMBIGUOUS CONTRACT MAY BE DETERMINED AS A**  
3                   **MATTER OF LAW.**

4           The Plaintiffs continue to cite case authority (that it previously cited in the  
5           Opposition to Motion to Dismiss) for the general proposition that if a statement is  
6           substantially true the question of whether such a statement is defamatory must go to a  
7           jury. However, the Plaintiffs' argument ignores the Court's ruling and controlling  
8           Nevada law and must be denied.

9           Specifically, the Plaintiffs ignore that the Court analyzed the alleged defamatory  
10          statements in relation to the express terms of the franchise agreement.<sup>2</sup> It is  
11          undisputed that the franchise agreement is subject to interpretation by the Court as a  
12          matter of law. See e.g., Whitemaine v. Aniskovich, 124 Nev. 302, 183 P.3d 137, 141  
13          (Nev. 2008) ("a district court's interpretation of a contractual term is a question of law  
14          ...").<sup>3</sup> Therefore, the factual statements upon which Plaintiffs' rely required the Court to  
15          determine, if, as a matter of law, the statements are true and/or substantially true.  
16          Because the statements were true and/or substantially true, as a matter of law the  
17          statements cannot form the basis of a defamation claim. Pegasus v. Reno

18          <sup>2</sup> Banka v. Columbia Broad. Co., 63 F. Supp. 3d 501, 507 (E.D. Pa. 2014) (court should  
19          analyze allegedly defamatory statement "in context.").

20          <sup>3</sup> None of the cases cited by the Plaintiffs in the Motion for Reconsideration involve  
21          contracts or statements of fact involving contract terms. Williams v. University Medical  
22          Center of Southern Nevada, 688 F.Supp.2d 1134 (2010) (statement in National  
23          Practitioner Data Bank representing that physician was under review for "other recent  
24          cases" when no other such recent cases could be identified); Pegasus v. Reno  
25          Newspapers, Inc., 118 Nev. 706, 57 P.3d 82 (2002) (statement in restaurant review  
26          representing that restaurant used canned foods); Fink v. Oshins, 118 Nev. 428, 49 P.3d  
27          640 (2002) (statement made by estate attorney to widow representing that the trustee  
28          of the decedent's trust was hiding assets offshore in order to conceal them from her);  
29          Posada v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993) (statement by police  
30          department in a press release that a police officer under internal personnel investigation  
31          "admitted he lied under oath," when he merely admitted that he lied during an  
32          investigation); Nevada Independent Broadcasting Corp. v. Allen, 99 Nev. 404, 664 P.2d  
33          337 (1983) (statement made by candidate for public office representing that his  
34          opponent was not "honorable").

1 Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (Nev. 2002) (as a matter of law "a  
2 statement [is not] defamatory if it is absolutely true, or substantially true.").

3 Plaintiffs' motion misstates Nevada law. Nevada law is clear that it is the  
4 province of the Court to initially determine if a statement is capable of being  
5 defamatory. This is because to prevail on a defamation claim, a party must show  
6 publication of a false statement of fact. Wellman v. Fox, 108 Nev. 83, 86, 825 P.2d  
7 208, 210 (1992). Whether or not a statement is capable of defamatory construction is a  
8 question of law for the court.<sup>4</sup> Specifically in Branda v. Sanford, 97 Nev. 643, 637 P.2d  
9 1223 (1981), the Nevada Supreme Court clearly stated:

10 It is generally accepted that for both libel and slander it is a question of  
11 law and, therefore, within the province of the court, to determine if a  
12 statement is capable of a defamatory construction. If susceptible of different  
13 constructions, one of which is defamatory, resolution of the ambiguity is a  
14 question of fact for the jury.

15 Id. at 646, 637 P.2d at 1225-26 (emphasis added) (citations omitted).

16 This rule that the Court is to act as a gatekeeper in initially analyzing whether a  
17 statement is capable of defamatory content is well-established in our country's  
18 jurisprudence. See e.g., Russo v. NCS Pearson, Inc., 462 F. Supp. 2d 981, 1002 (D.  
19 Minn. 2006) ("[In addressing] whether a statement may reasonably be construed as  
20 defamatory . . . the analysis begins with an issue of law for the trial judge . . .");  
21 Boladian v. UMG Recordings, Inc., 123 F. App'x 165, 170 (6th Cir. 2005) ("whether a  
22 statement is susceptible to defamatory interpretation is an issue of law for the court to  
23 decide."); Hawkins v. Miller, 301 S.W.3d 507, 509 (Ky. Ct. App. 2009) (whether a  
24 communication is privileged "is an issue of law for the court."); Gray v. St. Martin's

25  
26  
27 <sup>4</sup> K-Mart Corp. v. Washington, 109 Nev. 1180, 1191, 866 P.2d 274, 281-82 (1993)  
28 ("Whether or not a statement is capable of defamatory construction is a question of law  
for the court." (receded from on other grounds Pope v. Motel 6, 121 Nev. 307, 114  
P.3d 277 (2005)).

1 Press, Inc., 221 F.3d 243, 251 (1st Cir. 2000) (whether individual was public figure  
2 under First Amendment principles was issue of law to be resolved by district court).

3 In the present case, it was clearly an issue of law for the Court to determine if the  
4 statements were capable of defamatory content. The Court's analysis interpreted and  
5 applied the unambiguous terms of the franchise agreement. The Court then  
6 determined the statements were not capable of defamatory content as a matter of law  
7 because the statements were factually accurate and supported by the clear language of  
8 the franchise agreements. Compare Northern Nev. Mobil Home Brokers v. Smith, 96  
9 Nev. 394, 397, 610 P.2d 724,726 (1980) ("the legal effect of a document is generally a  
10 question of law for the trial court."); HS Servs., Inc. v. Nationwide Mut. Ins. Co., 109  
11 F.3d 642, 644 (9th Cir. 1997) (the interpretation of a contract is a question of law).

12 Because the statements were factually accurate, as a matter of law they were  
13 not capable of defamatory construction. Based upon the foregoing, the Court's Order  
14 was consistent with and in conformity with the Court's duty to analyze and determine if  
15 the statements were legally capable of defamatory content. Because the statements  
16 were either literally true and/or substantively true, as a matter of law the statements  
17 were incapable of creating liability. Despite Plaintiffs' contentions, a trier of fact does  
18 not get to second guess this Court's determination of an issue of law.

19 **B. THE BASIS OF PLAINTIFFS' ARGUMENTS IS FALSE.**

20 In addition to the foregoing, the basic premise of the Plaintiffs' argument that the  
21 statements were defamatory is the Plaintiffs' contention that they are entitled to haul  
22 Approved Recyclable Materials<sup>5</sup> under the terms of the Commercial Franchise  
23 Agreement. See Opposition Motion to Dismiss, p. 11:16-20. The Court has already  
24 ruled as a matter of law that Plaintiffs' legal interpretation is not correct. Specifically the  
25 Court has ruled:

26  
27 <sup>5</sup> 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 A plain interpretation of the unambiguous language in the passages  
2 above, shows that the Commercial Franchise Agreement was explicitly  
3 designed to create a practical monopoly for the Collection of Solid Waste  
4 and Approved Recyclable Materials within the City of Reno in favor of  
5 Waste Management.

6 See Order, ¶ 15 (emphasis added). The Order again expressly rejected the Plaintiffs'  
7 interpretations of the franchise agreement, ruling that "Excluded Recyclable Materials"  
8 "does not include materials handled as 'a service'." See Order, ¶ 19.

9 All the Plaintiffs' motion does is attempt to reargue that the Court's interpretation  
10 of the franchise agreement is incorrect. Accordingly, the Plaintiffs' continue to pursue  
11 the unfounded contention that they can haul excluded recyclable materials as a service  
12 even though this Court has already ruled they cannot under the express terms of the  
13 franchise agreement. Because the Court's interpretation of the unambiguous terms of  
14 the franchise agreement is a matter of law, the Court's Order was not clearly erroneous  
15 under the standards of NRCP 12(b)(5), and the Motion for Reconsideration should be  
16 denied.

17 **C. THE PLAINTIFFS' RELIANCE ON PEGASUS V. RENO NEWSPAPERS,**  
18 **INC.**

19 Plaintiffs cite Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d  
20 82, 88 (2002) for two propositions: (1) juries should determine whether a "statement  
21 could be construed as defamatory" and (2) a court must determine "whether a  
22 reasonable person would be likely to understand the remark as an expression of the  
23 source's opinion or as a statement of fact." See Opposition Motion to Dismiss, p. 3:19-  
24 24; 4:14-17. Plaintiffs' arguments both fail.

25 As detailed above, Nevada law clearly states that it is the Court's responsibility to  
26 determine if a statement of fact is capable of defamatory construction. Accordingly,  
27 Plaintiffs' first argument is directly contrary to established law.  
28

1 As to the second contention, Plaintiffs again misstate the law. In Pegasus the  
2 primary issue before the Court was whether the statements were statements of fact or  
3 were statements of opinion, which cannot form the basis of defamation claim. See id.  
4 at 715. In analyzing the issue the Pegasus Court held:

5 In determining whether a statement is actionable for the  
6 purposes of a defamation suit, the court must ask "whether a  
7 reasonable person would be likely to understand the remark  
8 as an expression of the source's opinion or as a statement  
9 of existing fact." If the published statements could be  
10 construed as defamatory statements of fact, and therefore  
11 actionable, then the jury should resolve the matter.

12 Id.

13 The Pegasus ruling fully supports the Court's Order and Defendants' arguments  
14 because this case makes clear it is the Court's job to initially determine, if as a matter of  
15 law, the "statement is actionable" in defamation. In undertaking its analysis, the Court  
16 must also determine "[i]f the published statements could be construed as defamatory  
17 statements of fact." If such statements of fact are true and/or substantially true, then—  
18 as a matter of law—the statements are not defamatory and the issue cannot be  
19 submitted to a jury. See e.g., Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715,  
20 57 P.3d 82, 88 (Nev. 2002) (as a matter of law "a statement [is not] defamatory if it is  
21 absolutely true, or substantially true."); K-Mart Corp. v. Washington, 109 Nev. 1180,  
22 1191, 866 P.2d 274, 281-82 (1993) ("Whether or not a statement is capable of  
23 defamatory construction is a question of law for the court.").

24 As detailed herein, the Court has already ruled that the statements were either  
25 literally true statements of fact and/or substantially true statements of fact concerning  
26 the unambiguous terms of the franchise agreement. Because the Court is vested with  
27 determining the interpretation of these agreements as a matter of law, the Court's  
28 finding that the statements are not defamatory statements of fact is also an issue of  
law. Therefore, the Plaintiffs' arguments concerning the application of Nevada law are,  
at best, inapplicable and, at worst, misleading.

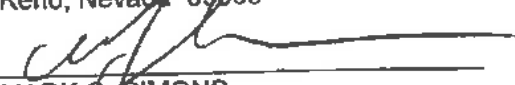
1 **IV. CONCLUSION**

2 For the reasons set forth above, the Plaintiffs' have failed to demonstrate the  
3 Court's Order was clearly erroneous for dismissing the Plaintiffs' claims for defamation  
4 and defamation per se. The Plaintiffs' offers no new legal authority or rules of law that  
5 were not previously submitted to the Court in the Motion to Dismiss. Furthermore, the  
6 Plaintiffs' arguments fail to demonstrate a substantive reason why the Court could not  
7 dismiss the defamation claims as a matter of law since the Court ruled that the  
8 statements were true and/or substantially true statements concerning the terms of the  
9 unambiguous franchise agreement. Therefore, the Motion for Reconsideration should  
10 be denied.

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

13 DATED this 16<sup>th</sup> day of October, 2015.

14 ROBISON, BELAUSTEGUI, SHARP & LOW  
15 A Professional Corporation  
16 71 Washington Street  
17 Reno, Nevada 89503

18   
19 MARK G. SIMONS  
20 SCOTT L. HERNANDEZ  
21 Attorneys for Defendants

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CV15-00497  
NEV RECYCLING ET AL VS RENO 3 Pages  
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*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 for Summary Judgment which  
was filed with this Court on September 24, 2015, be submitted to the Court for decision.

///  
///  
///

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

DATED this 16<sup>th</sup> day of October, 2015.

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

  
\_\_\_\_\_  
MARK G. SIMONS  
SCOTT L. HERNANDEZ  
Attorneys for Defendants

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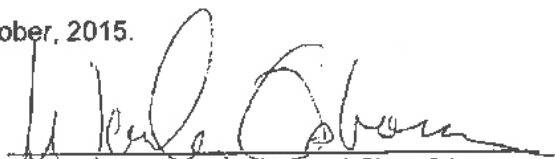
**CERTIFICATE OF SERVICE**

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: 10<sup>th</sup> day of October, 2015.

  
Employee of Robison, Belaustegui, Sharp & Low

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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 **REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR**  
28 **RECONSIDERATION AND MOTION FOR RECONSIDERATION**

29 Plaintiffs, NEVADA RECYCLING AND SALVAGE, LTD. ("NRS") and AMCB, LLC dba  
30 RUBBISH RUNNERS ("Rubbish Runners"), by and through their undersigned counsel of record,  
31 hereby Reply to Defendants' Opposition to Motion for Leave to File and Consider Motion for  
32 Reconsideration and Motion for Reconsideration and again respectfully ask that this Court  
33 grant Plaintiffs' Motion for Reconsideration.

34 As Defendants admit in their Opposition, "A district court may reconsider a previously  
35 decided issue if . . . the decision is clearly erroneous." [Internal Citations Omitted]. *Masonry &*

1 *Tile Contractors Ass'n of S. Nev. v. Jolly, Urga & Wirt, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489  
2 (1997). Here, based on the long-standing precedent of the State of Nevada and as set forth  
3 more fully herein, this Court's dismissal of Plaintiffs' Defamation and Defamation Per Se claims  
4 was "clearly erroneous;" and thus, reconsideration is appropriate.

5  
6 Despite Defendants' citation to cases from Minnesota, Michigan, Kentucky and New  
7 Hampshire holding that whether a statement may be construed as defamatory is a question of  
8 law, that is unequivocally not the law in the state of Nevada. To the contrary, the Nevada  
9 Supreme Court held in *Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 413, 664 P.2d 337, 343  
10 (1983), "Whether a statement is false is generally a question for the jury." [Internal Citation  
11 Omitted]; [Emphasis Added]. See, Exhibit 1, attached hereto.

12 Further, Defendants are misplaced in their arguments that, "the Court's determination  
13 that allegedly defamatory statements are true and/or substantially true as a matter of law is  
14 not clearly erroneous given it is the Court's duty to analyze whether the statements were true  
15 and/or substantially true thereby obviating any defamatory content." See, Opposition, at 3:4-8.  
16 This conclusion is problematic for several reasons; first, based on the Nevada Supreme Court's  
17 holding in *Nevada Indep. Broad. Corp. v. Allen*, the determination of whether a statement is false  
18 is a question for a jury. Second and as Defendants' point out in their Opposition, this Court  
19 based its Order dismissing Plaintiffs' claims only on the language and the exact words set forth  
20 in the Franchise Agreements. See, Transcript, attached hereto at Exhibit 2, at 60:22-65:1; See  
21 also, Opposition at 3:1-8. However, as set forth in *Riggs v. Clark Cnty. Sch. Dist.*, 19 F. Supp. 2d  
22 1177, 1182-1183 (D. Nev. 1998), this Court had the duty to consider all of the circumstances  
23 surrounding the alleged defamatory statements, not just the language itself.

24 In *Riggs*, the Court held that after analyzing the literal words that are alleged to be  
25 defamatory, the fact finder must then examine the following:

26 In its application of the second factor, the court must consider all of the  
27 circumstances surrounding the statements, including the medium by which  
28 the statements are disseminated and the audience to which they are  
published. As the Ninth Circuit has written, "[t]he words alone are not

1 **determinative; the facts surrounding the publication must also be**  
2 **considered."** *Information Control Corp. v. Genesis One Computer Corp.*, 611  
3 F.2d 781, 784 (9th Cir.1980). . . . See *Unelko v. Rooney*, 912 F.2d 1049,  
4 1053-54 (9th Cir.1990) ("we examine the statement in its totality in the  
5 context in which it was uttered or published"); *Chowdhry v. NLVH, Inc.*, 109  
6 Nev. 478, 484, 851 P.2d 459 (1993) (words must be viewed in their context  
7 to determine whether they are susceptible to a defamatory meaning).  
8 Furthermore, when a court is examining "an utterance, publication or the  
9 like, insofar as construction of the language of the purporting offending  
10 statement is concerned, that language should not be interpreted by  
11 extremes, but should be construed as the average or common mind would  
12 naturally understand it." *Barger v. Playboy Enterprises, Inc.*, 564 F.Supp.  
13 1151, 1154, *aff'd* 732 F.2d 163 (9th Cir.1984), *cert. denied* 469 U.S. 853, 105  
14 S.Ct. 175, 83 L.Ed.2d 110 (1984). A reasonable, plain understanding by the  
15 listener, reader, or viewer is the test. *Id.*

16 [Emphasis Added]. *Id.* In addition, while Defendants reliance on the following provision set  
17 forth in *Branda v. Sanford* is also taken out of context and somewhat misplaced, "It is generally  
18 accepted that for both libel and slander it is a question of law and, therefore, within the  
19 province of the court, to determine if a statement is capable of a defamatory  
20 construction. If susceptible of different constructions, one of which is defamatory, resolution  
21 of the ambiguity is a question of fact for the jury." See, Opposition 6:10-13.

22 Similar to the matter before this Court, the Nevada Supreme Court in *Branda v. Sanford*  
23 clearly stated,

24 The trial court was clearly not free to ignore the remaining language in  
25 determining whether the words were defamatory. That language was  
26 favorable to appellant's position, and a trial judge ruling on a motion to  
27 dismiss "must accord every favorable factual intendment to plaintiff.  
28 Reviewing the words and statements in their entirety, we believe that they  
are susceptible of a defamatory meaning which would impute unchastity,  
particularly, "you're no lady," "(profanity) shouldn't bother you," and "f—  
k—g bitch." Of course, the words are equally susceptible to the  
nondefamatory construction indicated by the trial court-as insults and  
epithets, rhetoric which is not generally actionable.


Finding the words ambiguous and susceptible of a defamatory construction,  
we conclude that the trial court erred in not submitting the issue to the jury  
to determine if the time, place, manner and circumstances surrounding the  
statement imputed unchastity and if those hearing understood the words in  
their defamatory sense.

1 *Branda v. Sanford*, 97 Nev. 643, 647, 637 P.2d 1223, 1226 (1981). Here, it is respectfully  
2 submitted that this Court errored in making a determination as to whether or not the alleged  
3 defamatory statements were false, which is more properly a question for the jury. Even,  
4 assuming arguendo, that this Court does have the ability to make determinations of falsity, it is  
5 further respectfully submitted that this Court failed to look at all of the circumstances  
6 surrounding the alleged defamatory statements in order to make such determination.

7  
8 As such, this Court was clearly erroneous in dismissing the First and Second Claims for  
9 Relief for Defamation and Defamation Per Se as set forth in Plaintiffs' Verified Amended  
10 Complaint

11 Based on the foregoing, Plaintiffs respectfully ask this Honorable Court for leave to file  
12 and consider their Motion for Reconsideration and to further grant Plaintiffs' Motion for  
13 Reconsideration and reinstate Plaintiffs' First and Second Claims for Relief for Defamation and  
14 Defamation Per Se as set forth in Plaintiffs' Verified Amended Complaint.

15 DATED this 23 day of October, 2015.

16   
17 STEPHANIE RICE, ESQ.  
18 DEL HARDY, ESQ.  
19 Attorneys for Plaintiffs  
20  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, and that  
3 on this date I served the foregoing document(s) described as **REPLY TO OPPOSITION TO**  
4 **MOTION FOR LEAVE TO FILE AND CONSIDER MOTION FOR RECONSIDERATION AND**  
5 **MOTION FOR RECONSIDERATION** on all parties to this action by:

6  
7 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  
8 ordinary business practices.

9 ☐ Personal delivery  
10 ☒ Facsimile (FAX) and/or Email:  
11 ☒ EFLEX- Court's Electronic Filing System  
12 ☒ Messenger Service  
13 ☐ Certified Mail with Return Receipt Requested

14 addressed as follows:

15 MARK G. SIMONS, ESQ.  
16 SCOTT HERNANDEZ, ESQ.  
17 ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503

18 **AFFIRMATION**  
19 **Pursuant to NRS 239B.030**

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

21  
22 DATED this 25<sup>th</sup> day of October, 2015.

23   
24 **EMPLOYEE OF HARDY LAW GROUP**  
25  
26  
27  
28

1                                   **IN THE SECOND JUDICIAL DISTRICT COURT**

2                                   NEVADA RECYCLING AND SALVAGE, et al  
3   V.  
4                                   RENO DISPOSAL COMPANY, INC. et al

5                                   CASE NO. CV15-00497

6                                   **REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AND**  
7                                   **CONSIDER MOTION FOR RECONSIDERATION AND MOTION**  
8                                   **FOR RECONSIDERATION**

9                                   **EXHIBIT INDEX**

10

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# EXHIBIT “1”

# EXHIBIT “1”

## Nevada Independent Broadcasting Corp. v. Allen

Supreme Court of Nevada, | May 27, 1983 | 99 Nev. 404 | 664 P.2d 337


### Document Details

KeyCite:	KeyCite Yellow Flag - Negative Treatment	Outline
	Declined to Follow by Janklow v. Newsweek, Inc., 8th Cir.(S.D.), April (p.1)	West Headnotes
	10, 1986	Attorneys and Law:
standard Citation:	Nevada Indep. Broad. Corp. v. Allen, 99 Nev. 404, 664 P.2d 337 (1983)	Firms (p.5)
All Citations:	99 Nev. 404, 664 P.2d 337, 37 A.L.R.4th 1070, 9 Media L. Rep. 1769	Opinion (p.5)
		All Citations (p.11)

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April 10, 1986

99 Nev. 404  
Supreme Court of Nevada.

NEVADA INDEPENDENT BROADCASTING  
CORPORATION, a corporation, and  
William H. Hermsdorf, Appellants,  
v.  
William C. ALLEN, Respondent.

No. 13469. | May 27, 1983.

Appeal was taken from judgment of the Eighth Judicial District Court, Clark County, Howard Babcock, J., entered on jury verdict awarding \$675,000 in general damages to gubernatorial candidate who brought defamation action against television broadcasting company, and its majority shareholder, who was also moderator on television program where defamation took place. The Supreme Court, Springer, J., held that: (1) statements that could have injured gubernatorial's reputation as candidate for public office were actionable as slander per se; (2) statement that one of candidate's checks for political advertising was returned to station and wouldn't clear was statement of fact and not merely nonactionable statement of opinion; (3) remark that implied that candidate did not pay his political bills was actionable as factual statement; (4) whether statement which implied that candidate was not "honorable" was question of fact or opinion was properly left to determination of jury; (5) candidate sufficiently established falsity of remark; (6) evidence supported jury's finding of actual malice; (7) candidate was entitled to award of general damages; and (8) award of \$675,000 was excessive.

Affirmed with remittitur.

#### West Headnotes (29)

[1] Libel and Slander

Presumption as to damage; special damages

To constitute slander per se, alleged defamation must be oral and must fall into one of four

categories: that plaintiff committed crime; that plaintiff has contracted loathsome disease; that woman is unchaste; or, allegation must be one which would tend to enter plaintiff in his or her trade, business, profession or office.

4 Cases that cite this headnote

[2] Libel and Slander

Public officers in general

Where at time remarks were made plaintiff bringing defamation suit was political candidate, and statements were such that they could have injured plaintiff's reputation as candidate for public office, statements were actionable as "slander per se."

4 Cases that cite this headnote

[3] Libel and Slander

Executive officers and employees

Assuming that comments that gubernatorial candidate's check was no good, that because candidate did not pay his debts it was questionable how candidate might handle state funds, and that candidate was not honorable candidate were defamatory, taken as whole they clearly implied want of qualities expected of political officer and supported case for "slander per se."

1 Cases that cite this headnote

[4] Libel and Slander

Nature and elements of defamation in general

Statements of opinion as opposed to statements of fact are not actionable.

6 Cases that cite this headnote

[5] Constitutional Law

Freedom of Speech, Expression, and Press

Constitutional Law

False Statements in General

Under First Amendment, there is no such thing as false idea, and societal value of robust debate

mitigates against restriction of expression of ideas and opinions. U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[6] Libel and Slander

Construction of defamatory language in general

Although ordinarily issue of whether statement is opinion or fact is question of law for court, where statement is ambiguous, issue must be left to jury's determination.

9 Cases that cite this headnote

[7] Libel and Slander

Executive officers and employees

Statement that "one of your checks for political advertising for \$697.00 was returned to, to this television station, 'Refer to Maker' and we called the bank and we found that check wouldn't clear today" was statement of fact and not merely nonactionable opinion that check had bounced.

1 Cases that cite this headnote

[8] Libel and Slander

Executive officers and employees

First clause of statement "if the candidate doesn't pay his political bills, what is he going to do with State money?" implied that candidate did not pay his political bills, and therefore, regardless of whether second clause was opinion or speculation, first clause was factual statement and actionable in defamation suit.

3 Cases that cite this headnote

[9] Libel and Slander

Construction of defamatory language in general

Although defamation defendant's remark referring to another political candidate as "honorable" might reasonably be interpreted as statement of opinion, where statement followed defendant's comment that candidate's representatives had requested apology, and immediately followed defendant's query that if

candidate cannot pay his bills how will he handle state funds, whether honorable candidate remark was statement of fact or opinion was ambiguous and issue was properly left to determination of jury.

10 Cases that cite this headnote

[10] Libel and Slander

Presumptions and Burden of Proof

Defamation plaintiff bears burden of proof regarding falsity of statements.

1 Cases that cite this headnote

[11] Libel and Slander

Questions for Jury

Whether statement is false is generally question for jury.

Cases that cite this headnote

[12] Libel and Slander

Falsity

Where gubernatorial candidate was not signatory to bounced check, jury could justifiably have found that candidate was not responsible for bounced check, that candidate bounced no check, and that he was neither dishonorable nor candidate who did not pay his bills; thus, gubernatorial candidate sufficiently established falsity of remarks that he had bounced check, that he did not pay his bills and that he was in fact dishonorable for having eschewed responsibility for bounced check.

Cases that cite this headnote

[13] Libel and Slander

Criticism and Comment on Public Matters; Public Figures

Opinion remarks are now given First Amendment protection; therefore, fair comment doctrine, which arose to protect statements of opinion of newsworthy material, is no longer necessary. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[14] Libel and Slander

• Criticism and Comment on Public Matters; Public Figures

Constitutional protection for media defendant making statement about public figure provides at least as much protection as common-law conditional privilege for statements made in public interest so long as privilege is not abused; thus, there is no longer any need for common-law privilege in media defendant/public figure context. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[15] Libel and Slander

• Intent and malice

Media defendant may not be held liable for damages in defamation action involving public official or public figure plaintiffs unless "actual malice" is pleaded and proved.

Cases that cite this headnote

[16] Libel and Slander

• Criticism and comment on public matters and publication of news

"Actual or constitutional malice" is knowledge of falsity of statement or reckless disregard for truth.

6 Cases that cite this headnote

[17] Libel and Slander

• Existence and Effect of Malice

In contrast to common-law malice, inquiry in actual malice focuses largely on defendant's belief regarding truthfulness of published material rather than on defendant's attitude toward plaintiff.

1 Cases that cite this headnote

[18] Libel and Slander

• Criticism and comment on public matters and publication of news

Because constitutional guaranty is involved, trial court in libel action involving media defendant and public official or public figure plaintiff must first determine whether there is sufficient evidence from which one could conclude that statements were uttered with actual malice. U.S.C.A. Const.Amend. 1.

1 Cases that cite this headnote

[19] Libel and Slander

• Intent, malice, or good faith

Jury's finding of actual malice in defamation action involving media defendant and public figure must be based on clear and convincing evidence.

Cases that cite this headnote

[20] Appeal and Error

• Review of constitutional questions

Because constitutional right is implicated, jury's determination of actual malice in defamation action involving media defendant and public figure is subject to close appellate scrutiny. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

[21] Libel and Slander

• Criticism and comment on public matters and publication of news

In defamation action involving media defendant and public figure, fundamental inquiry is "Did the defendant lie;" test is subjective, with focus on what defendant believed and intended to convey, not what reasonable person would have understood message to be.

Cases that cite this headnote

[22] Libel and Slander

• Intent, malice, or good faith

Evidence of negligence, motive, and intent may be used, cumulatively, to establish necessary

Next

recklessness to prove actual or constitutional malice in defamation action; however, in most instances one factor alone will not establish actual malice by convincing clarity.

4 Cases that cite this headnote

[23] Libel and Slander

→ Intent, malice, or good faith

Evidence in defamation action brought by gubernatorial candidate against broadcasting corporation's majority owner, who was also moderator of political candidate broadcast, including evidence that moderator knew that bounced check was not gubernatorial candidate's own check, but his campaign agency's, and evidence that prior to broadcast, moderator made no demand of gubernatorial candidate for payment to cover show, was sufficient to support jury finding of actual malice in moderator's comments that candidate's check had bounced and implication that candidate did not pay his bills.

2 Cases that cite this headnote

[24] Libel and Slander

→ Questions for Jury

Sufficiency of correction and demand for retraction are questions of fact for jury in defamation action to determine by preponderance of evidence.

2 Cases that cite this headnote

[25] Libel and Slander

→ Elements of Compensation

In defamation action, general damages are those which are awarded for loss of reputation, shame, mortification and hurt feelings. N.R.S. 41.334.

1 Cases that cite this headnote

[26] Libel and Slander

→ Injury to reputation

Libel and Slander

→ Mental suffering and emotional distress

Next

Gubernatorial candidate defamed on live television broadcast by remark that he bounced check and the implication that he did not pay his bills was entitled to compensation for his shame, humiliation and hurt feelings.

Cases that cite this headnote

[27] Libel and Slander

→ Injury to reputation

Although gubernatorial candidate was not entitled to recover for loss of election, he was entitled to recover in defamation action damages for injury to his political reputation which resulted from defamatory statement that he bounced check and implication that he did not pay his bills.

Cases that cite this headnote

[28] Libel and Slander

→ Slander

In public figure slander case against media defendant, added scrutiny must be given to large compensatory damages awards due to their impact on free speech. U.S.C.A. Const. Amend. 1.

1 Cases that cite this headnote

[29] Libel and Slander

→ Slander

Sum of \$50,000 was maximum amount that could reasonably be awarded to gubernatorial candidate defamed on live television broadcast by statement that he bounced check, and implication that he did not pay his bills and was not honorable; thus, jury award of \$675,000 was excessive, not supported by evidence, must have been given under influence of passion or prejudice, and constituted threats to exercise of free speech, Rules Civ.Proc., Rule 59(a)(6); U.S.C.A. Const. Amend. 1.

6 Cases that cite this headnote



#### Attorneys and Law Firms

\*405 \*\*340 Hilbrecht, Jones, Schreck & Bernhard and L.T. Jones, George A. Cromer, Las Vegas, Henry Mark Holzer, Brooklyn, N.Y., for appellants.

Galane & Jimmerson, Rickdall & Shulman, Las Vegas, for respondent.

#### \*408 OPINION

SPRINGER, Justice:

This appeal arises out of a jury verdict and judgment of \$675,000 in general damages awarded to respondent Allen and against appellants (to be called "Hernstadt") for defamation of character.

#### Statement of the Facts

This slander suit arose out of a televised political question-answer program during the 1978 Nevada primary campaign. Allen was running against Robert List in the Republican gubernatorial primary. Allen had contracted with Golden West Advertising Agency, a Las Vegas firm, to handle his campaign. On September 11, 1978, the eve of the primary election, Allen appeared on a program for candidates on the Las Vegas station KVVU-TV (Channel 5). The station is owned by appellant Nevada Independent Broadcasting Corporation (NIBC). Moderator for the candidate's program was appellant William Hernstadt, who held 94 per cent of the stock in NIBC.

During the afternoon prior to the television broadcast, Hernstadt discovered that a check from Allen's advertising agency, Golden West, had been returned to the station because of insufficient funds. The check, in the amount of \$697.00, had been issued to pay for Allen's political advertising. That evening, during a live broadcast, Hernstadt questioned Allen concerning the check and made some additional remarks about the check. Hernstadt's statements were as follows: He initially accused Allen of passing a check with insufficient funds; then he mentioned Golden West, Allen's advertising agency. Later in the program Hernstadt questioned what a political candidate who didn't pay his bills would do if allowed to handle state funds. Finally, he referred to another candidate as "honorable" in a context which would

permit the implication that Allen was not honorable. \*341 These comments are set out in full in the margin<sup>1</sup>: The court has viewed the video tape of the described episode.

During a commercial break, Allen's son, his campaign manager, demanded an apology. Hernstadt acknowledged the \*409 demand to the television audience but did not then make an apology. Later Allen demanded in writing that NIBC publish a correction. After the station and Allen were unable to agree on an appropriate correction, the station issued its own version of a correction.

This suit followed. The case was tried to a jury which returned a verdict for Allen, awarding general damages of \$675,000.00 plus interest and costs. Appellants filed a motion for a new trial, a motion for judgment notwithstanding the verdict, and a motion to amend the judgment. Appellants appeal from denial of these motions.

#### Failure to Prove Slander Per Se

Hernstadt correctly argues that since there was no proof of special damages, Allen's case must be slander *per se* or he has no case. We are of the opinion that Allen has made out a case of slander *per se*.

[1] To constitute slander *per se*, the alleged defamation must be oral and must fall into one of four categories: (1) that the plaintiff committed a crime; (2) that the plaintiff has contracted a loathsome disease; (3) that a woman is unchaste; or, (4) the allegation must be one which would tend to injure the plaintiff in his or her trade, business, profession or office. *Branda v. Sanford*, 97 Nev. 643, 637 P.2d 1223 (1981).

Hernstadt urges that Allen had no basis for claiming slander *per se* on the basis of injury to his professional reputation. Two reasons are stated for this claim. First, at the time of the campaign, Allen's only occupation was that of owner of a mobile home park in Carson City; therefore, since he was a non-incumbent, he had no political career which could have been injured. Second, Hernstadt argues that the "bounced check" charge could not injure Allen's reputation as a mobile home park owner.

[2] We disagree. At the time the remarks were made Allen was a candidate, and the statements were such that they could have injured Allen's reputation as a candidate for public office. They were thus actionable as slander *per se*.

In the case of *Devany v. Quill*, 187 Misc. 698, 64 N.Y.S.2d 733 (N.Y. App.Div. 1946), it was held that defamatory words uttered against a non-incumbent candidate constituted slander *per se* if the words would tend to cause persons not to vote for the candidate. This rule has been followed in Restatement (Second) of Torts § 573 comment b (1977). *Hernstadt* cites no authority to the contrary.

*Hernstadt* urges that Allen could not make a case for slander \*410 *per se* unless Allen first proved that the defamatory comments implied "an habitual course of similar conduct, or the want of the qualities or skill that the public is reasonably entitled to expect ...." See Restatement (Second) Torts § 573 comment d (1977). *Hernstadt* argues that since he alleged only a single act of misconduct, namely, delivery of a bad check, the defamation could not constitute slander *per se*.

[3] There were, of course, three remarks -- that Allen's check was no good, that because Allen did not pay his debts it was questionable how Allen might handle state funds, and that Allen was not an honorable candidate. Assuming at this point that these comments were defamatory, taken as a whole they clearly imply a want of qualities expected of a public officer and support a case for slander *per se*.

#### Fact or Opinion

[4] [5] We agree with appellants that statements of opinion as opposed to statements of fact are not actionable. As stated in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339, 94 S.Ct. 2997, 3006-07, 41 L.Ed.2d 789 (1974), under the first amendment, there is no such thing as a false idea, and the societal \*\*342 value of robust debate militates against a restriction of the expression of ideas and opinions.

[6] Separating factual statements from opinion is thus a critical issue in defamation cases. The rule for making the determination is more easily stated than applied: whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact. See *Mashburn v. Collin*, 355 So.2d 879, 885 (La. 1977). In cases involving political comment, there is a strong inclination to determine the remarks to be opinion rather than fact. R. Sack, *Libel, Slander, and Related Problems* 160 (1980). Although ordinarily the fact/opinion issue is a question of law for the court, where the statement is ambiguous, the issue must be left to the jury's determination. *Good Gov't Group, Inc., v. Hogard*, 22 Cal.3d 672, 150

Cal.Rptr. 258, 586 P.2d 572, 576 (Cal. 1978), *cert. denied*, 441 U.S. 961, 99 S.Ct. 2406, 60 L.Ed.2d 1066 (1979).<sup>2</sup>

\*411 A major difficulty in defamation cases arises when the comment is neither pure fact nor pure opinion. A statement may be a "mixed type," that is, an opinion which gives rise to the inference that the source has based the opinion on underlying, undisclosed defamatory facts. For example, it may be actionable to state an opinion that plaintiff is a thief, if the statement is made in such a way as to imply the existence of information which would prove plaintiff to be a thief. See Restatement (Second) of Torts § 566 (1977).

In the immediate case, the trial court left the decision to the jury to determine whether any of the three mentioned categories of remarks were opinion or fact. This was proper. We will consider these categories in order.

#### The "Bounced Check" Remark.

[7] *Hernstadt* addressed the following remark to Allen: "[O]ne of your checks for political advertising for \$697.00 was returned to, to this television station, 'Refer to Maker' and we called the bank and we found that check wouldn't clear today."

It is contended that the "bounced check" statement was merely a statement of *Hernstadt's* opinion that Allen had bounced a check. The argument is meritless; if such a contention were accepted, any statement of fact could be considered simply the opinion of its maker.

#### The "State Funds" Remark.

[8] *Hernstadt* next argues that, as a matter of law, the following question could not be found to be a statement of fact: "[I]f the candidate doesn't pay his political bills, what is he going to do with State money?" It is conceded that defamation may occur in the form of a question, but the remark is challenged on two other grounds. First, it is contended that it is at worst a statement of opinion; second, it is argued that the remark cannot be defamatory because it is speculative, dealing with future events rather than existing facts.

Using the analysis of the Restatement, which both parties adopt, the remark is susceptible of being interpreted as a

statement of defamatory fact. The first clause of the remark implies that Allen did not pay his political bills. This is the meaning that Hernstadt concedes he intended to convey. Regardless of whether the second clause is opinion or speculation, the first clause is a factual statement and would be actionable under the Restatement.

#### \*412 The "Honorable Candidate" Remark.

[9] Following Hernstadt's comment that Allen's representatives had requested an apology, and immediately following the "State funds" remark, Hernstadt stated, "But getting back to an honorable candidate, Senator Schofield ...."

Hernstadt claims that the "honorable candidate" remark cannot be actionable. \*\*343 The primary basis for this claim is that the remark was at most a statement of opinion.<sup>3</sup> The remark might reasonably be interpreted as a statement of opinion; it appears to be the speaker's conclusion, based on his allegation that Allen bounced a check. It cannot be said as a matter of law that the statement cannot also be interpreted as factual. This remark seems to be precisely the kind of ambiguous comment that should be left to the determination of the jury. See *Good Gov't Group*, above; *Gregory v. McDonnell Douglas Corp.*, 17 Cal.3d 596, 131 Cal.Rptr. 641, 552 P.2d 425 (Cal.1976).

Even if we were to assume that some of the foregoing remarks were not actionable, it nonetheless is reasonable to consider all the comments in context. In any case, the most damaging remarks were the two clearly factual statements.<sup>4</sup> Also, it may be concluded that fact and opinion were "inextricably intertwined" and thus the comments were unprotected. See *Cianci v. New Times Publishing Co.*, 639 F.2d 54, 67 (2d Cir.1980).

#### Falsity

Hernstadt charges that Allen did not sufficiently establish the falsity of Hernstadt's remarks. He claims that Allen must prove falsity by "convincing clarity," citing *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S.Ct. 209, 215-16, 13 L.Ed.2d 125 (1964).

[10] The Supreme Court said in *Garrison* that there can be no liability for defamation without proof of falsity;

the Supreme Court, however, has not fully developed the consequences of its holding. It seems clear that the plaintiff must now bear the burden of proof regarding the falsity of statements. See \*413 Restatement (Second) of Torts § 613 (1977). The degree of proof is yet unclear.<sup>5</sup>

Hernstadt argues that the "bounced check" statement was true because Allen was responsible for Golden West's check. He also asserts that the statement relating to a candidate who "does not pay his bills" was similarly true since Allen was liable for his agent's bad check. Finally, Hernstadt claims that Allen was in fact dishonorable for having eschewed responsibility for Golden West's bounced check.

[11] [12] Whether a statement is false is generally a question for the jury. Restatement (Second) of Torts § 617 (1977). The jury would certainly have been justified in finding that Allen, who was not a signatory to the check, was not responsible for the "bounced" Golden West check. Likewise, the jury could have found that Allen "bounced" no check, and that he was neither dishonorable nor a candidate who did not pay his bills.

#### Privilege

[13] [14] We decline to consider Hernstadt's argument concerning privilege since it appears that the common law privileges have been subsumed in recent constitutional law developments.<sup>6</sup>

#### \*414 \*\*344 *New York Times Co. v. Sullivan*

[15] Under the rule established in *New York Times Co. v. Sullivan*, above, a media defendant may not be held liable for damages in a defamation action involving a public official plaintiff unless "actual malice" is pleaded and proved. This rule was extended to public figure plaintiffs (such as respondent Allen) in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967).

[16] [17] Actual malice (or more appropriately, constitutional malice) is defined as knowledge of the falsity of the statement or a reckless disregard for the truth. *New York Times*, above, at 280, 84 S.Ct. at 726.<sup>7</sup> Reckless disregard for the truth was defined in *Garrison v. Louisiana*, above, a criminal libel suit, as a "high degree of awareness of [the]

probable falsity [of the statement]." *Id.* at 74. In *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968), the stated test was whether there is sufficient evidence to conclude that "the defendant in fact entertained serious doubts as to the truth of [the] publication." *Id.* at 731, 88 S.Ct. at 1325. (Emphasis supplied.) In contrast to common law malice, the inquiry in "actual malice" focuses largely on the defendant's belief regarding truthfulness of the published material rather than on the defendant's attitude toward the plaintiff. See *Greenbelt Coop. Pub. Ass'n, Inc. v. Bresler*, 398 U.S. 6, 10, 90 S.Ct. 1537, 1540, 26 L.Ed.2d 6 (1970).

[18] [19] [20] The standard for appellate review comparable to the method applied in determining the voluntariness of a confession in criminal law. Because a constitutional guaranty is involved, the trial court must first determine whether there is sufficient evidence from which the jury could conclude that the statements were uttered with "actual malice." See *Alioto v. Cowles Communications, Inc.*, 623 F.2d 616 (9th Cir.1980), *cert. denied*, 449 U.S. 1102, 101 S.Ct. 897, 66 L.Ed.2d 827 (1981). A jury's finding of actual malice must be based on "clear and convincing evidence." *New York Times*, above.<sup>8</sup> Because a constitutional right is implicated, the jury determination is subject to close appellate scrutiny.

[21] \*415 The fundamental inquiry, as one court has stated it, is "Did the defendant lie?" See *Pierce v. Capital Cities Communications, Inc.*, 576 F.2d 495, 506 (3rd Cir.1978), *cert. denied*, 439 U.S. 861, 99 S.Ct. 181, 58 L.Ed.2d 170 (1978). The test is subjective, with the focus on what the defendant believed and intended to convey, not what a reasonable person would have understood the message to be. R. Sack, above, at 212-13.

[22] Evidence of negligence, motive, and intent may be used, cumulatively, to establish the necessary recklessness. \*\*345 *Id.* at 214. It is clear that in most instances one factor alone will not establish actual malice by convincing clarity. *Id.* at 217.

Support for the jury's finding of actual malice can be supplied by the following evidence:

(1) Hemstadt's admittedly deliberate decision not to ask Allen about the check until Allen was on live television, see *Alioto*, above, at 1371 (failure to pursue the most obvious source for corroboration); *Rebozo v. Washington Post Co.*, above, (reporter's decision to resolve ambiguity in information

against plaintiff although reporter had contacted witness who could clarify ambiguity);

(2) Hemstadt knew that Allen had not drawn or passed the check in question;

(3) The commonplace word "your," as in "your check," need not be taken to mean "your campaign's [check]," regardless of Hemstadt's testimony as to his meaning, and could well be taken to mean Allen's own check;

(4) Hemstadt's attempt at correction could be taken as a republication since it insinuates the following: (a) that Allen committed a wrongful act short of a felony; (b) that Allen had a dishonorable motive as indicated by his failure to explain why the original agency check was returned; and, (c) that payment "after the fact" of the broadcast was additional proof that Allen was dishonorable; see Restatement (Second) of Torts § 580A comment d (1977) (republication by defendant after notification that plaintiff considers the statement to be false and defamatory may be treated as evidence of reckless disregard);

(5) Several material contradictions exist with regard to \*416 Hemstadt's trial testimony and his previous deposition testimony; these include his admissions at deposition that (a) he told others of his intention to mention the check during the live broadcast and, (b) he intended to convey to the audience that Allen was not honorable, see, e.g., *Holter v. WLCY T.V., Inc.*, 366 So.2d 445, 453 (Fla.App.1978); *Davis v. Schuchat*, 510 F.2d 731, 736 (D.C.Cir.1975) (jury may consider credibility of witnesses in determining issue of actual malice).

Hemstadt's position on the issue of actual malice is essentially that he held a good faith belief in the truth of his comments. Hemstadt testified that he believed the check in issue to be Allen's because it was Allen's campaign check; he further testified that he believed FCC regulations required advance payment for political advertising, and that Allen, therefore, was legally and morally responsible for the bad check. Hemstadt claimed that he bore no ill will toward Allen and that the actual substance of his remarks resulted because the bounced check was "hot news," which did not allow him time to investigate.

[23] Hemstadt knew the check was Golden West's; furthermore, he made no demand of Allen, prior to the show, for payment to cover the check. In light of those facts, it seems

disingenuous for Hernstadt to claim that he believed Allen to be a dishonorable candidate who did not pay his bills. There is enough in the record to support a jury finding of constitutional malice.

#### *Retraction*

[24] The sufficiency of the correction and the demand for retraction are questions of fact for the jury to determine by a preponderance of the evidence. *Boswell v. Superior Court*, 125 Ariz. 307, 609 P.2d 577 (Ariz.1980); see also *Brogan v. Passaic Daily News*, 22 N.J. 139, 123 A.2d 473 (N.J.1956). At common law, a retraction was required to be full and unequivocal to be legally sufficient. *Brogan*, above, see also R. Sack, above, at 377. In the immediate case, the jury could properly conclude that the correction was insufficient.

#### *Instructions*

We have carefully examined the instructions claimed by appellants to be erroneous and find no prejudicial error.

#### *Motion for a New Trial*

We find no abuse of discretion in the court's denial of the motion for new trial.

#### *\*417 \*\*346 Error in Award of Damages*

Hernstadt raises several separate attacks on the award of damages. The jury awarded \$675,000 in general damages; it awarded no special or exemplary damages, though it was instructed in all three areas. The first question raised is whether the award was improper because Allen failed to prove actual damages.

[25] In defamation actions, general damages are those which are awarded for "loss of reputation, shame, mortification and hurt feelings." NRS 41.334.

The parties agree that Allen's testimony was competent to establish his shame, mortification and hurt feelings. Allen testified that the broadcast in issue was "one of the most humiliating experiences" of his life. He described his reaction

during the questioning as one of "shock," stating that he was "stunned," and "in a chaotic state of mind." He felt that people viewed him as an "embezzler" or a "bad check artist."

A substantial amount of testimony was offered by Republican party leaders to establish damage to Allen's reputation. Virtually everyone conceded that Allen had little hope of winning the Republican gubernatorial nomination, but Allen had a growing and favorable political reputation within the party. There was testimony that the public would not quickly forget the bad publicity, that the story would likely resurface if Allen chose to run again for office, and that Allen had been "politically assassinated." It is fair to conclude that Allen's reputation was damaged, and though Allen might previously have been in line for an appointive office, his potential was greatly diminished by the incident.<sup>9</sup>

There was testimony that approximately 7,800 households (with an average of 2.7 members per household) were turned into the station for at least 5 minutes during the average quarter-hour of reported time. One viewer who had watched the show testified that she did not immediately recall whether the bounced check had been attributed to Allen's advertising agency. She stated that she believed Hernstadt had handled the matter poorly, that Allen had been presented poorly, and that as a result, she no longer considered Allen to be a viable candidate.

A political consultant testified as an expert witness that in his opinion Allen's political reputation had suffered as a result of the broadcast, and that Allen's chance for an appointive office had been considerably lessened.

[26] [27] \*418 Allen is entitled to recover general damages. He is entitled to compensation for his shame, humiliation and hurt feelings. Also, although Allen is not entitled to recover for loss of the election, we hold that he is entitled to recover damages for injury to his political reputation. See *Southwestern Publishing Co. v. Horsey*, 230 F.2d 319 (9th Cir.1956); *Houston Printing Co. v. Hunter*, 105 S.W.2d 312 (Tex.Civ.App.1937), aff'd, 129 Tex. 652, 106 S.W.2d 1043 (Tex.1937); *Jenkins v. Taylor*, 4 S.W.2d 656 (Tex.Civ.App.1928). This view is consistent with the Restatement comment which extends slander *per se* to cover candidates for political office.

Hernstadt claims that, assuming Allen did prove any general damages, the award of \$675,000 was excessive and unconstitutional. The award represents approximately <sup>1</sup>/<sub>10</sub>

of Hornstadt's net worth; this suggests that the jury intended to punish Hornstadt. He asks this court to disallow or reduce the award because it appears to have been given under the influence of passion or prejudice. NRCP 59(a)(6).

[28] Several courts have expressed concern that an award of substantial damages in cases of this kind may impinge on first amendment rights if compensatory damages are employed as a vehicle for punishing unpopular ideas. For that reason, a few jurisdictions have eliminated punitive damages altogether in defamation actions; others have imposed a stricter scrutiny in reviewing jury awards for actual damages. \*\*347 See *Kidder v. Anderson*, 345 So.2d 922 (La.App.1977), rev'd, 354 So.2d 1306 (La.1978), cert. denied, 439 U.S. 829, 99 S.Ct. 105, 58 L.Ed.2d 123 (1978); *Stone v. Essex County Newspapers, Inc.*, 367 Mass. 849, 330 N.E.2d 161 (Mass.1975). The United States Supreme Court has not yet held presumed damages or punitive damages unconstitutional so long as "actual malice" is established and has in fact stated that an award need not be limited to out-of-pocket damages. The award must be supported by competent evidence, though not necessarily of the kind that "assigns an actual dollar value to the injury." *Gertz*, above, 418 U.S. at 349-50, 94 S.Ct. at 3011-12. Some courts apparently have read *Gertz* as authorization to apply a traditionally deferential approach in reviewing defamation awards. See, R. Sack, above, at 356. We are of the opinion that in a public figure slander case against media defendants added scrutiny must be given to large compensatory damage awards because of their impact on free speech. As stated in *Gertz*:

Juries [in defamation cases] may award substantial sums \*419 as compensation for supposed damage to reputation without any proof that such harm actually occurred. The largely uncontrolled discretion of juries to award damages where there is no loss unnecessarily compounds the potential of any system of liability for defamatory falsehood to inhibit the vigorous exercise of First Amendment freedoms.

418 U.S. 349, 94 S.Ct. at 3011-12.

We find the potential for inhibiting the vigorous exercise of First Amendment freedom in this case because the damage award far exceeds any conceivable damage that might have been done to Allen's political reputation or damages suffered

as a result of an humiliation or mental suffering brought about by the defamatory material presented in this case.

The parties cite a variety of cases on the issue of damages. Hornstadt relies primarily on the Carol Burnett case (*Burnett v. National Enquirer*, 7 Media L.Rep. 1331) and Joseph Alioto case (*Alioto v. Cowles Communications, Inc.*, above) to establish the excessiveness of damages in the immediate case. A jury awarded Carol Burnett \$300,000 in compensatory damages, of which \$299,750 were awarded for emotional distress. The trial judge reduced the compensatory damages to \$50,000, but also added \$750,000 in punitive damages. Joseph Alioto's suit was tried to the bench; he received general damages in the amount of \$350,000. (The amount of the award was not reviewed on appeal.) Hornstadt argues that Allen was entitled, as a matter of law, to less than these plaintiffs received. We agree.

[29] Reduction of the Carol Burnett compensatory damages from \$300,000 to \$50,000 is very much in line with the views of this court. It is simply beyond the range of reason to conclude that Allen suffered \$675,000 damage to his reputation and sensibilities. We conclude that the award is not supported by the evidence and therefore must have been given under the influence of passion or prejudice. We further conclude that an award of this kind and magnitude may constitute a threat to the exercise of free speech. For these reasons we hold that the sum of \$50,000 is the maximum amount that could be reasonably awarded under these circumstances. Because damages are excessive the judgment will be set aside and a new trial will be ordered on the issue of damages, unless Allen files within fifteen days of the date of filing of this opinion a remittitur damna in which all amounts over \$50,000 are remitted. In the \*420 event of such remission the judgment will be affirmed. See *Miller v. Schnitzer*, 78 Nev. 301, 371 P.2d 824 (1962).

MANOUKIAN, C.J., MOWBRAY and GUNDERSON, JJ.,  
and FONDI, District Judge,<sup>10</sup> concur.

\*\*348 Appendix to Opinion of the Court

The following partial transcript is taken from Plaintiff's Exhibit No. 3 included in the record on appeal:

Announcer: Welcome to TV-5's Political Open House, whereby candidates for various offices on tomorrow's Nevada primary election ballot speak out live.

Next

....  
Now here's your host and moderator.

Hernstadt: Political Open House.... So as a public service, and this is our sixth consecutive year, we are very pleased, as a Channel 5 presentation, to bring this to you.

Allen: Disclosure of campaign contributions before the primary is the only way the voters will know to whom their candidates are indebted. I have made my disclosure to prove that I owe nothing to any special interest group, except you, the voters of Nevada. The candidates who refuse to disclose their contributions are ignoring the voters' right to know. Tomorrow, vote for Bill Allen for action, for Governor.

Hernstadt: Ah, Mr. Allen, did you have some difficulty in raising funds for your campaign?

Allen: Ah ... no difficulty, my campaign is mostly self-financed. Ah ... I've had a few small contributions from close friends. Ah ... nothing over \$200.00.

Hernstadt: The ... reason I ask that question is that, ah, one of your checks for political advertising for \$697.00 was returned to, to this television station, "Refer to Maker" and we called the bank and we found that check wouldn't clear today. Do you have any explanation for that?

Allen: My check?

Hernstadt: Your check. Golden West Advertising Agency. (ALLEN ALSO: Golden West)

\*421 Allen: Well, that ... that is not my check. That is an advertising agency. I have nothing to do with that check.

Davis: We have a question here Mr. Allen. First, I'd like to ask you, number one: by and large it would seem to me an office as important as Governor, generally the participants in seeking that particular office have had some other political background. Do you indeed have that?

Footnotes

- 1 See Appendix to Opinion of the Court.
- 2 Appellants assert that *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 898 (1964) requires that plaintiff prove by "clear and convincing evidence" that the remarks were factual and not opinion. *New York Times*

Hernstadt: Okay. Thank you very much Mr. Bill Allen who is running for Governor of the State of Nevada as Republican.

....  
Hernstadt: Okay. Thank you very much Mort Block, candidate for Sheriff as a Democrat. Our next candidate is Senator Jack Schofield.

....  
Davis: Thank you Senator Schofield. Jack Schofield running on the Democratic ticket for Governor. We have several questions for you, Senator....

COMMERCIAL

Hernstadt: Hi, we're back with Candidate's Open House tonight. I'm Bill Hernstadt.

Judith Hernstadt: I'm Judith Hernstadt.

Hernstadt: And before we go on with questions for Senator Schofield, ah, I did get a demand, from, from one of Mr. Allen's representatives that we apologize for questioning him about the bounced check. I wish to point out that while it was an agency check, from his agency ... (garbled) ... ah, giving an agency authority to act on that candidate's behalf. Now if that agency, ah, fails to pay the candidate's bills then the candidate is legally (and morally responsible) ... (garbled) ... but this is why it was brought up. But I did want to tell you that they had made that request. And, ah, the question of course, that obviously comes to mind that another viewer called in is, if the candidate doesn't pay his political bills, what is he going to do with State money? Bot getting back to an honorable candidate, Senator Schofield, ah, how do you feel ah, are you for or against the right to work law?

All Citations

99 Nev. 404, 664 P.2d 337, 37 A.L.R.4th 1070, 9 Media L. Rep. 1769

- does not stand for that proposition; though the decision does require a higher standard of proof for actual malice and colloquium, at least with respect to public officials.
- 3 Hemstad also claims that Allen failed to establish by clear and convincing evidence that each of the alleged remarks was "of and concerning" Allen. See *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). The context of the remarks would lead one to conclude that all three comments were concerning Allen; secondly, Hemstad himself admitted that he was referring in each instance to Allen.
- 4 Indeed, the questioning of Allen's handling of State funds is really the delamatory sting: it arose from the factual statement that Allen did not pay his bills.
- 5 *Garrison* does not discuss the standard of proof. The higher standard of "convincing clarity" ostensibly applies only to the issues of colloquium (identification of the plaintiff) and "actual malice." See generally, *Rebozo v. Washington Post Co.*, 637 F.2d 375 (5th Cir.1981), cert. denied, 454 U.S. 964, 102 S.Ct. 504, 70 L.Ed.2d 379 (1981). Some courts, however, have applied the convincing clarity standard to the issue of falsity. See, e.g., *Whitmore v. Kansas City Star Co.*, 499 S.W.2d 45 (Mo.App.1973). Practically speaking, it may be impossible to apply a higher standard to "actual malice" than to the issue of falsity.
- 6 The fair comment doctrine arose to protect statements of opinion on newsworthy material. Since *Gertz* now gives first amendment protection to opinion remarks, the fair comment doctrine is no longer necessary. And with respect to the conditional privilege protecting statements made in the public interest, a similar result obtains. The conditional privilege protected statements made in the public interest so long as the privilege was not abused. One method of abusing the privilege was the uttering of statements either with reckless disregard for their truth or with knowledge of their falsity. See *Wright v. Haas*, 588 P.2d 1093 (Okla.1978). The constitutional protection, set forth in *New York Times Co. v. Sullivan* (discussed immediately below), gives at least as much protection as the common law privilege. Thus, in the context of a media defendant and public figure, there is no longer any need for the common law privilege. This view is taken in the Restatement (Second) of Torts § 592A (1977); see also *New York Times*, above, at 376 U.S. 292 n. 30, 84 S.Ct. at 732 n. 30; R. Sack, above, at 331-34.
- 7 Cf. NRS 41.332:  
NRS 41.332 "Actual malice" defined. "Actual malice" is that state of mind arising from hatred or ill will toward the plaintiff and does not include that state of mind occasioned by a good faith belief in the truth of the publication or broadcast.
- 8 The parties disagree on whether the trial judge must first weigh all evidence (including witness credibility) and conclude that "actual malice" has been established by clear and convincing evidence (see, e.g., *Wasserman v. Time, Inc.*, 424 F.2d 920 (D.C.Cir.1970), cert. denied, 398 U.S. 940, 90 S.Ct. 1844, 28 L.Ed.2d 273 (1977)), or whether the judge must simply proceed as with any other motion for summary judgment, drawing all inferences in favor of the non-moving party (plaintiff); see, e.g., *Alioto*, above. Appellants concede that, as a practical matter, this dispute makes no difference.
- 9 There was also some contrary testimony to the effect that the witnesses themselves did not personally think less of Allen nor could they name anyone who did.
- 10 The Governor designated the Honorable Michael E. Fondl, Judge of the First Judicial District Court, to sit in the place of Justice Thomas L. Steffen, who voluntarily disqualified himself. Nev. Const., art. 6, § 4.



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# EXHIBIT “2”

# EXHIBIT “2”

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 APPEARANCES:

2 For the Plaintiff:

3 HARDY LAW GROUP  
4 By: DEL HARDY, ESQ.  
5 By: Stephanie Rice, Esq.  
96 Winter Street  
6 Reno, Nevada

7 For the Defendant:

8 ROBISON, BELAUSTEGUI, SHARP & LOW  
9 By: MARK SIMONS, ESQ.  
By: SCOTT HERNANDEZ, ESQ.  
71 Washington  
Reno, Nevada

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1 RENO, NEVADA, July 29, 2015, 1:45 p.m.

2  
3 --oOo--

4 THE CLERK: CV15-00497, Nevada Recycling, et al.,  
5 versus Reno Disposal, et al.. Matter set for oral arguments  
6 as to defendant's motion to dismiss. Counsel, please state  
7 your appearance.

8 MR. SIMONS: Mark Simons and Scott Hernandez on  
9 behalf of both defendants, your Honor.

10 THE COURT: All right. Thank you.

11 MS. RICE: Good afternoon, your Honor. Stephanie  
12 Rice on behalf of plaintiff's Nevada Recycling and Salvage  
13 and AMCB, LLC, doing business as Rubbish Runners.

14 MR. HARDY: Del Hardy also appearing on behalf of  
15 those parties. Thank you.

16 THE COURT: Thank you very much. In this  
17 particular case, the plaintiffs filed an amended complaint on  
18 March 25th, 2015, alleging defamation, defamation per se,  
19 breach of contract, breach of covenant of good faith and fair  
20 dealing, unfair trade practices, conspiracy to restrain  
21 trade, fraud, and injunctive relief.

22 On April 20th, 2015, the defendants filed their  
23 motion to dismiss verified amended complaint pursuant to NRCP  
24 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