IN THE SUPREME COURT OF THE STATE OF NEVADA

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Electronically Filed
Jun 08 2017 01:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NEVADA RECYCLING AND SALVAGE, LTD, a Nevada Limited Liability Company; AMCB, LLC, a Nevada Limited Liability Company d/b/a RUBBISH RUNNERS,

Appellants,

vs.

RENO DISPOSAL COMPANY, INC, a Nevada Corporation doing business as WASTE MANAGEMENT; REFUSE, INC., a Nevada Corporation; WASTE MANAGEMENT OF NEVADA, INC., a Nevada Corporation,

Respondents.

Supreme Court Case No.:71467

District Court Case No.: CV15-00497

JOINT APPENDIX

VOLUME 13

JA0002544 – JA002739

Stephanie Rice, Esq.
Rich Salvatore, Esq.
Del Hardy, Esq.
Winter Street Law Group
96 & 98 Winter St.
Reno, NV 89503
(775)786-5800
Attorneys for Appellant

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

Docket 71467 Document 2017-19039

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CV15-00497
2016-05-09 04:41:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5506795 : swolfe

CODE 3860
DEL HARDY, ESQ.(SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
WINTER STREET 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

REQUEST FOR SUBMISSION

IT IS HEREBY REQUESTED that Plaintiffs' Motion to Amend Complaint filed herein on April 15, 2016 and Defendants' Opposition to Motion to Amend Complaint, filed herein on May 2, 2016, and the Reply to Opposition to Plaintiffs' Motion to Amend Complaint filed herein on May 9, 2016, be submitted to this Court for Decision

DATED this 9th day of May, 2016.

STEPHANIE RICE, ESQ.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Winter Street Law Group, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s): **NOTICE OF ENTRY OF 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. – TO LESLIE BRYAN HART, ESQ.

_____ Personal Delivery – TO MARK SIMONS, ESQ. AND SCOTT HERNANDEZ, ESQ.

_____ Facsimile (FAX)

_____ Federal Express or other overnight delivery

__X__ Messenger Service 5-10-16

_____ Certified Mail with Return Receipt Requested

__X__ Electronically filed 5-9-16

addressed as follows:

MARK G. SIMONS, ESQ.
SCOTT HERNANDEZ, ESQ.
THERESE SHANKS, ESQ.
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503

LESLIE BRYAN HART, ESQ.
FENNEMORE CRAIG, P.C.
300 E. Second Street, Suite 1510
Reno, Nevada 89501

AFFIRMATION

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

DATED this 9th day of March, 2016.

EMPLOYEE OF WINTER STREET LAW GROUP

FILED
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CV15-00497
2016-05-10 03:32:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5508600 : csulezic

2200
Mark G. Simons, Esq., NSB No. 5132
Therese M. Shanks, Esq., NSB No. 12890
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msimons@rbsllaw.com and
tshanks@rbsllaw.com

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

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

DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY

Defendants Reno Disposal Company, Inc. ("Reno Disposal"), and Refuse, Inc.

("Refuse"),[1] by and through their counsel of Robison, Belaustegui, Sharp & Low, hereby move for summary judgment on the claim asserted by Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC, dba Rubbish Runners ("RR"), in which Plaintiffs allege that Defendants violated NRS 598A.060(1)(e). This motion is made pursuant to NRCP 56, and is based upon the attached memorandum of points and authorities, exhibits, affidavits, and the pleadings and papers on file herein.

DATED this 10th day of May, 2016.

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

MARK G. SIMONS
THERESE M. SHANKS
Attorneys for Defendants

[1] Collectively referred to as "Defendants," unless individually identified herein.

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. BASIS FOR SUMMARY JUDGMENT.

This dispute involves whether the "pre-approval" and subsequent "formal" approval by the City of Reno ("City") of the assignment of a franchise zone from Castaway Trash Hauling ("Castaway") to Reno Disposal creates liability under NRS 598A.060(1)(e) for anti-competitive behavior by Defendants. As this motion establishes, summary judgment is appropriate as a matter of law because Defendants are immune from any liability for any alleged anti-competitive action.

A. THE CITY CONTEMPLATED, PRE-APPROVED AND FORMALLY APPROVED CASTAWAY'S ASSIGNMENT TO RENO DISPOSAL.

As detailed herein, the City was fully aware of Reno Disposal's potential acquisition of Castaway's franchise zone. This is because the Plaintiffs themselves informed the City of such action. In addition, the City contemplated such action by Reno Disposal and "pre-approved" Reno Disposal's acquisition in the franchise agreement. Thereafter, the City subsequently "formally" approved the acquisition since the acquisition was conducted pursuant to the express terms of the franchise agreements.

Under the City's statutory authority, the City was fully entitled to limit and create a city sanctioned monopoly over the waste collection services in the City. Because Reno Disposal's acquisition of Castaway's zone was ***contemplated, pre-approved*** and ***formally approved*** by contract according to the City's police powers, Reno Disposal is absolutely immune from liability under Plaintiffs' remaining claim for unfair trade practices. Finally, the complained of conduct was not competitive conduct but rather "political" action; therefore, under the Noerr Doctrine and Nevada's anti-SLAPP statutes, Reno Disposal has no liability as a matter of law.

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

B. NEITHER RR NOR NRS WAS QUALIFED TO OBTAIN A FRANCHSE FROM THE CITY.

In addition to the above grounds, summary judgment is also proper as a matter of law in favor of Defendants because it is an undisputed fact that Plaintiffs lack standing to assert their claim under NRS 598A.060(1)(e). This is because Plaintiffs have not sustained an injury-in-fact, and Plaintiffs have not alleged (and cannot prove) an "antitrust injury" sufficient to confer standing upon them to pursue any claim under NRS 598A.060.

The facts establish that the City itself determined: (1) that RR was not qualified to service a franchise zone; (2) that NRS was not qualified to service a franchise zone; **and** (3) neither RR nor NRS independently sought to even be considered by the City to service a franchise zone. Because the City itself determined that neither Plaintiff could be a qualified contractor, then the City itself determined that Plaintiffs could not obtain a franchise zone. As a matter of law, the Defendants have no liability for the City's conduct. Similarly, Reno Disposal and Castaway did nothing to harm the Plaintiffs—it was the City's conduct in determining that the Plaintiffs were unqualified. Because the City determined the Plaintiffs were not qualified to do the very thing the Plaintiffs claim they could do, Plaintiffs have no standing to allege any injury and summary judgment is mandated as requested.

C. SUMMARY OF ARGUMENT.

It is undisputed that the City granted two exclusive franchise agreements for waste collection in the City of Reno. The City itself selected who would be the qualified contractors with whom it would enter into franchise agreements. Only Reno Disposal and Castaway satisfied the City's selection criteria to be approved and qualified franchise solid waste haulers in the City who would receive a franchise agreement from

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

the City.

The City then entered into separate franchise agreements with Reno Disposal and Castaway covering separately designated "zones" established by the City. Reno Disposal was granted a franchise over the area identified as "Zone 1," and Castaway obtained an exclusive franchise over the area identified as "Zone 2." There is no dispute that the City properly exercised its police powers in awarding these franchises covering these two (2) separately identified zones.

Following the award of the franchises, Reno Disposal's parent company acquired Castaway, and, as part of the transaction, Castaway assigned its franchise for Zone 2 to Reno Disposal. **Exhibit 1**, Martinelli Aff., ¶4.[2] As a result, Reno Disposal currently holds a separate franchise agreement right for Zone 1 and a separate franchise agreement right for Zone 2 (as assigned from Castaway). Reno Disposal currently services both zones.

Under the City's franchise agreements, the City expressly contemplated and authorized both Reno Disposal and Castaway to acquire each other's zone. Again, there is no dispute that this contract right to acquire each other's zone is a contractual right that the City is authorized to grant to both Reno Disposal and Castaway under its powers to create a city sanctioned monopoly.

After conducting relevant discovery, it is now glaringly obvious that Plaintiffs' contentions are both legally and factually baseless and Defendants are entitled to judgment as a matter of law. As detailed herein, summary judgment is required in Defendants' favor on any and all of the following grounds:

(1) NRS 598A.040(3) expressly exempts Defendants from liability under NRS 598A.060(1)(e);

[2] The executed Affidavit will be submitted via Errata upon receipt.

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

(2) the City had actual knowledge of Castaway's potential assignment to Reno Disposal (by receiving that information directly from Plaintiffs) prior to entering into the franchise agreements and approved the agreements fully knowing an assignment was likely;

(3) the unambiguous terms of the franchise agreement expressly permitted Castaway's assignment to Reno Disposal regardless of the City's knowledge because the City "pre-approved" the assignment as an appropriate exercise of the City's police powers;

(4) there is no evidence that the City would have granted Plaintiffs Castaway's Zone 2 because neither Plaintiff was selected by the City as a qualified contractor;

(5) Plaintiffs' contention that the City would have changed its vote and not approved the assignment of Castaway's Zone 2 to Reno Disposal is pure speculation and contradicts the express language of the franchise agreements; and

(6) Defendants' conduct is exempt from antitrust liability under the Noerr Doctrine and Nevada's anti-SLAPP statutes because the conduct involves political, and not business, activity.

As an additional basis for summary judgment, Defendant's motion for summary judgment should be granted because Plaintiffs lack standing to assert any claim. This is because Plaintiffs have not suffered an injury-in-fact, and cannot allege an "antitrust injury." The City itself deemed RR a non-qualified hauler and specifically designated RR as an "Exempted Hauler" under the franchise agreements. As an "Exempted Hauler", RR was limited to servicing only RR's "Exempted Hauler Accounts".[3] RR was also allowed under the franchise agreements to collect and haul i) Excluded Materials,[4]

///

[3] **Exhibit 2**, Reno Disposal's Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable Material contract, p. 7. See also Martinelli Aff., at ¶5. The City also entered into a virtually identical franchise agreement with Castaway. See **Exhibit 3**, and Martinelli Aff., at ¶6. These franchise agreements will generally be referred to as "the franchise agreement" and/or "the franchise agreements" unless specifically referenced.

[4] Exh. 2, Art. 1, p. 5. Excluded materials are those items to which the franchise agreement does not apply.

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71 Washington St.
Reno, NV 89503
(775) 329-3151

ii) Exempted Drop Box Materials[4] and iii) Exempted Hauler Account Materials which are materials picked up from the limited number of accounts RR could continue to service as Exempted Hauler Accounts. This action clearly establishes that the City evaluated RR as a hauler and designated RR as a "small hauler" only entitled to service RR's ongoing Exempted Hauler Accounts.

Not only is it undisputed the City never selected RR to be an approved and qualified contractor to receive a franchise area—it is also undisputed that RR never requested that the City consider RR as a potential franchise hauler. Therefore, RR's claim that it was allegedly harmed by the Defendants because RR didn't get a franchise is due to the City not selecting them as a qualified contractor and has absolutely nothing to do with any alleged injury caused by Reno Disposal's and/or Castaway's actions.

Similarly, the undisputed evidence is that NRS could not qualify to be awarded a franchise area because NRS is exclusively only a waste disposal facility and not a commercial waste collector. That means, as a matter of undisputed fact, NRS was not qualified to receive a franchise zone because NRS was not even in the business of waste collecting. Therefore, the Plaintiffs' contentions that they would have received Castaway's franchise Zone 2 from the City is entirely nonsense because the City deemed Plaintiffs as unqualified to even be considered for a franchise zone. Therefore, as a matter of law, Plaintiffs have no standing because no alleged conduct caused them any harm and the remaining claim must be dismissed.

II. BASIS FOR CONTINUANCE OF PRIOR SUMMARY JUDGMENT MOTION.

In its Order dated December 7, 2015, this Court framed the Plaintiffs' remaining contention in this case as follows:

Plaintiffs' remaining contention is that Defendants **hid their plan** to consolidate

[4] Exh. 2, Art. 1, p. 6. Exempted Drop Box Materials apply only to irregular, non-routine waste disposal services focusing on the temporary collection and hauling, based on seasonal needs, special events, single occurrence collection and hauling, and "irregularly scheduled cleanup."

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

> the franchise agreements from the city, and that **if** their true intentions were known, the Reno City Council would never have assented to the terms of the agreements in the first place and that this all violates the [UTPA].

Exhibit 4, Court's December 7, 2015 Order (hereinafter "Order"), p. 2:26-3:4 (emphasis added). In addressing this contention, the Court further analyzed the basis of Plaintiffs' contentions and stated:

> Plaintiffs believe they can overcome the summary judgment motion on the theory that the City of Reno really didn't consent to the assignment of the franchise agreement here, because there was an "undisclosed buyout and secret plan" that the Reno City Counsel never knew about. Plaintiffs alleged that Defendants deliberately and intentionally concealed from the City Council the fact that an agreement was already in place to consolidate the franchise agreements. Plaintiffs further allege that **if** the Reno City Council had known that a consolidation would take place, **then** they would never have entered into this franchise agreements in the first place. . . . **Plaintiffs have very little to support their claim**.

Exh. 4, Order, p. 4:11-24 (footnote omitted) (emphasis added).

In support of Plaintiffs' NRCP 56(f) request, Plaintiffs' expressly represented to this Court that summary judgment should not be granted under NRCP 56(f) because the City officials "are believed to have been surprised by the news of Waste Management buying out Castaway and would have voted differently had they been informed of the Waste Management/Castaway buyout prior to voting on the Franchise Agreements." Opp. to Mot. Sum. J., Exh. 1 (Affidavit of Stephanie Rice), ¶ 7 bullet point 5.

Based upon the representations made by the Plaintiffs in Ms. Rice's Affidavit, this Court granted Plaintiffs' NRCP 56(f) request for summary judgment and permitted Plaintiffs to conduct discovery. This Court further held that Defendants could refile their motion for summary judgment sixty (60) days from the date of this Court's order which time period allowed Plaintiffs to conduct discovery to support their representations to this Court. Exh. 4, p. 5.

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More than sixty days have passed from December 7, 2015. The discovery conducted during this time period demonstrates that the Plaintiffs were well aware that the City did in fact know about the intended acquisition of Castaway—because Plaintiffs themselves told the City about it[5]; and any contention that the City would not have proceeded with the franchise agreements if the City would have known of Reno Disposal's acquisition of Castaway's Zone 2 is total "speculation" and contradicts the express language of the franchise agreements themselves. In addition, as discussed below, the Plaintiffs' contentions as to the City's "intent" are barred by the parole evidence rule. Accordingly, summary judgment is required as a matter of law.

III. UNDISPUTED FACTS.

A. RENO DISPOSAL'S EXCLUSIVE FRANCHISE FOR "GARBAGE".

Since 1994 until the creation of the new franchises in November 2012, Reno Disposal held an exclusive franchise with the City to service all of Reno's "garbage" disposal service requirements. Exh. 1, ¶7. The new franchise agreements were adopted by the City to expand upon the waste to be collected by franchised waste haulers and to implement single stream recycling in the City. Id. at ¶8. Of note, "garbage" is now a subcategory of all "solid waste" that is subject to the new franchise agreements. Id. at ¶9.

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[5] Of troubling note, NRS's NRCP 30(b)(6) representative testified in his deposition that, even ***before*** the City voted on the franchise agreements, NRS expressly told the City that Reno Disposal had acquired Castaway. See SOF ¶F. Accordingly, contrary to the Plaintiffs' counsel's representations to this Court supporting the NRCP 56(f) request, the City wasn't "surprised" at all about Reno Disposal's acquisition of Castaway because Plaintiffs themselves made the very statements and assertions to the City they contend were not said to the City in their NRCP 56(f) motion. This conduct obviously invokes the specter of vexatious litigation. See NRS 7.085.

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B. 2007: CITY'S DESIRE TO PURSUE A COMPREHENSIVE RECYCLING PROGRAM AND TO EXPAND FRANCHISE RIGHTS.

On April 19, 2007, the Reno City Council participated in a "Green Summit" with a break out session to focus on single stream recycling. **Exhibit 5**, City of Reno's November 18, 2013, memorandum of activities ("City Memo of Activities").[6] The purpose of this break out session was because the City wanted to explore the ability to efficiently and cost effectively recapture recyclable products from the stream of waste and to return the "green" recyclable material back into the stream of commerce. Exh. 1, ¶10. In addition, the City wanted to expand the types of waste that would be subject to the City's franchise powers from just garbage to the broad category of solid waste. Id.

From April 19, 2007, until October 10, 2012—a period of almost six (6) years–the City participated in numerous public sessions with waste collectors the City determined were sufficiently capable of implementing the single stream recycling program in the City–as well as the development of a processing facility capable of processing the single stream recycling.[7] In addition to the numerous City Council meetings, City Staff participated extensively in the creation of and implementation of the processes to allow for single stream recycling and the new franchise agreements issued by the City in November, 2012. Exh. 1, Martinelli Aff., ¶11. Accordingly, for almost six (6) years, the City Council and City Staff worked diligently at creating the framework and structure giving rise to the issuance of the November 7, 2012, franchise agreements the City entered into with Reno Disposal and Castaway.

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[6] The City Memo of Activities is admissible as either a City business record under NRS 51.135 or as a public record under NRS 51.155.

[7] Exh. 2, Reno Disposal Franchise Agreement, ¶2.2 ("Prior to the Effective Date, City requested collective advise of certain commercial solid waste haulers meeting the Contractor Qualifications . . . .").

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The franchise agreements also conclusively demonstrate that it was the City who pursued the crafting of the new solid waste franchises for the City and that it was the City who selected those waste haulers that it deemed "qualified" to be the recipient of a franchised area. It is also an undisputed fact, that the City only selected Reno Disposal and Castaway as qualified contractors to receive a franchise agreement. The language employed by the City in the franchise agreements expressly detailed the City's selection of the qualified franchisees as well as the City's full oversight and supervision of the entire franchise process as follows:

> Prior to the Effective Date, City requested collective advice of certain commercial solid waste haulers meeting the Contractor Qualifications . . . . The City established the location and boundaries of each Exclusive Area . . . . Contractor and other qualified service providers participated in the process created by and under the supervision of the City.

Exh. 2, Reno Disposal FA, ¶2.2.

Interestingly, NRS's 30(b)(6) representative contends that the City is lying in the franchise agreements and states: "The City didn't establish the zones. . . [it was] a combination between Waste Management and Castaway. It wasn't the City" **Exhibit 6**, excerpt of NRS 30(b)(6) Deposition Transcript at pp. 82:21-83:1.[8] NRS takes this baseless and unsupported position even though NRS admits that the language of the franchise agreements directly contradict such contention.[9] Not only does the language of the franchise agreements demonstrate that NRS's contentions are baseless, RR's 30(b)(6) representative also admits that the language of the franchise agreements detailing the City's selection of the qualified contractors and the supervision and control

[8] Exh. 1, Martinelli Aff., at ¶12.

[9] Exh. 6, p. 83:10-12 (Q: You can disagree with what's in the contract, but you understand that's what it says? A. Yes.").

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over the establishment of the franchise zones means exactly what it says.[10]

Finally, NRS also freely admits that its purported interpretation of the franchise agreement is directly contrary to the City's, Reno Disposal's and RR's.[11] Based upon the foregoing, summary judgment is required because Plaintiffs' baseless conclusory allegations—which directly contradict the undisputed facts—mandate entry of summary judgment as requested.[12]

C. THE CITY SELECTED RENO DISPOSAL AND CASTAWAY AS THE ONLY QUALIFIED CONTRACTORS TO BE AWARDED A FRANCHISE.

Plaintiffs alleged in this action that they were harmed by Reno Disposal's conduct because the City would have awarded them a franchise zone.[13] However, this contention is again baseless and without any factual support. This is because the City never selected Plaintiffs as qualified contractors to receive a franchise. This fact is undisputed and is fatal to Plaintiffs' claim. Therefore, on this basis alone, summary judgment is required.

Initially, as stated above, the franchise agreements expressly state that it was

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[10] **Exhibit 7**, RR 30(b)(6) Deposition Transcript at pp. 130:20-131:4 ("Q So the City, based upon what you just said was a simple reading of this provision, determined who the potential qualified contractors would be . . . right? A **Yes**. Q And then the City created the process by which the qualified service providers would be selected; right? A **Yes**." (emphasis added)). See also Exh. 1, Martinelli Aff., at 13.

[11] Exh. 6, 99:23-100:6 ("**My [NRS's] interpretation is different than everyone else's**." (emphasis added).

[12] Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996) ("[C]onclusory statements along with general allegations do not create an issue of material fact." . . . . Because Wayment's version of the facts is nothing more than conclusory allegations and general statements unsupported by evidence creating an issue of fact, it will not be accepted as true.").

[13] See Plaintiff's Opp. To Mot. Summary Judgment, dated October 8, 2015, p.3 ("If it would have been disclosed [to City Council Reno Disposal's acquisition of Castaway's zone] . . . then the second [zone] would have been Plaintiffs.")

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the City who selected the franchisees who were qualified contractors with whom the City wanted to do business. Exh. 2, Reno Disposal FA, ¶2.2.

Consistent with the express terms of the franchise agreements, Mr. Aiazzi, a former City Council member who voted to approve the franchise agreements testified that there were no other contractors who qualified for a franchise agreement besides Castaway and Reno Disposal. **Exhibit 8**, excerpts from the Deposition Transcript of Dave Aiazzi ("Aiazzi Depo."), p. 46:9-14. [14]

Dwight Dortch, another former City Council member who also voted to approve the franchise agreements, also confirms that it was the City who selected the qualified contractors to receive a franchise. **Exhibit 9**, Declaration of Dwight Dortch, ¶¶3, 4 and 5. Dispositively, Mr. Dortch testifies that Plaintiffs were never selected by the City as being qualified contractors to receive a franchise. Id.

In addition, Robert Cashell, former City Mayor, who also voted to approve the franchise agreements, also confirms that it was the City who selected the qualified contractors to receive a franchise. **Exhibit 10**, Declaration of Robert Cashell, ¶¶3, 4 and 5. Again, Mr. Cashell testifies that Plaintiffs were never selected by the City as being qualified contractors to receive a franchise. Id.

Accordingly, Plaintiffs' contention that if the City would have known of Reno Disposal's acquisition of Castaway then the Plaintiffs would have received a franchise is absolutely false. The City never selected Plaintiffs as qualified contractors. Consequently, this contention is baseless and unsupported by any evidence and summary judgment is mandated on this ground alone.

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[14] See also Exh. 1, Martinelli Aff., at ¶14.

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D. PLAINTIFFS HAVE NO IDEA WHAT THE SELECTION PROCESS WAS THAT THE CITY EMPLOYED FOR ESTABLISHING QUALIFIED CONTRACTORS.

In addition to the foregoing, given the Plaintiffs' contention that they would have been given Castaway's zone if the City knew that Reno Disposal was acquiring Castaway, discovery ensued as to what evidence the Plaintiffs possessed in order to make the foregoing assertion to the Court. During discovery, both RR and NRS once again freely admitted that they have **no evidence** supporting their contention and have **no idea** what the City based its selection process on for establishing qualified contractors to receive a franchise agreement.[15]

There is absolutely no evidence supporting Plaintiffs contention that if the City would have known of Reno Disposal's acquisition of Castaway's zone then Plaintiffs would have received Castaway's zone. Summary judgment is again mandated because Plaintiffs' contention is pure speculation and conjecture unsupported by any evidence. Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 294, 662 P.2d 610, 618-19 (1983) (non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." (citation omitted)).

E. CITY'S OCTOBER 2012 MEETINGS.

As detailed in the City's Memo of Activities, on October 10, 2012 and October 24, 2012 (the "October Meetings"), the City Council conducted meetings to discuss the franchise agreements and to discuss modification to City ordinances to allow for the implementation of the new franchise agreements designed to address the City's goal of

[15] Exh. 7, RR's 30(b)(6) p. 187:20-23 (""[What was] the City of Reno's criteria used to select those 'Contractors' it deemed qualified... A Do not know."). Exh. 6, NRS's 30(b)(6), pp. 78:24-79:2 ("Do you know any criteria that the City used for selecting those contractors they deemed qualified to be given a franchise agreement? A I don't know.").

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going "green" and implementing single stream recycling. Exh. 1, Martinelli Aff., ¶15. In addition to the formal City Council meetings, City staff conducted "stakeholder" meetings that included City Staff, City Council members as well as Reno Disposal, Castaway and the small haulers like RR. Id. ¶16; Exh. 7, p. 35:12-14. Attached hereto as **Exhibit 11** is a copy of the sign-in sheet for one stakeholder meeting that occurred on October 15, 2012, identifying RR as participating along with RR's legal counsel.[16]

During these stakeholder meetings RR attended and participated along with RR's legal counsel.[17] However, neither RR nor NRS participated in the meetings seeking to obtain a franchise zone. Instead, RR and NRS were fully apprised during these meetings that Reno Disposal and Castaway were the only two (2) qualified contractors selected by the City to receive a franchise zone.[18] RR attended these stakeholder meetings because RR wanted to ensure it was classified as an "Exempted Hauler" under the new franchise agreements and that RR could continue to service its existing customers as "Exempted Hauler Accounts." Specifically, RR's 30(b)(6) representative testified as follows:

> Q Now, when you were attending these meetings in 2012, what was the purpose of your attending these meetings?
>
> A To attempt to negotiate a place for the small haulers to exist and to continue to do business.

Exh. 7, p. 25:17-21.

RR admits it was considered by the City to be a "small hauler" and not a qualified contractor capable of receiving a franchise from the City. Id., p. 36:22-23. RR then

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[16] Exh. 1, Martinelli Aff., at 16.

[17] Exh. 7, p. 34:7-17.

[18] Exh. 7, p. 37:14-38:1.

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actively worked with the City to identify all of its accounts it wanted the City to designate as "Exempted Hauler Accounts". Id. at p. 39:21-42:18.

Plaintiffs undertook their action to ensure its protection of RR's small hauler accounts having read and understood that the franchise agreements expressly allowed Reno Disposal to acquire Castaway's zone. Exh. 7, p. 135:10-13 ("Q So in this document that was approved by the City of Reno, the City of Reno expressly granted Reno Disposal the right to acquire Castaway; right? A Yes.").

In addition, as detailed below, Plaintiffs knew of Reno Disposal's pending acquisition of Castaway and disclosed Reno Disposal's pending acquisition of Castaway to the City. SOF, ¶F. In addition, as discussed below, the City also contemplated and pre-approved Reno Disposal's acquisition of Castaway. SOF, ¶H. Based upon the foregoing, summary judgment is mandated as requested because based upon these undisputed facts, Plaintiffs' claim fails as a matter of law because the City knew of and approved of the very action for which Plaintiffs now complain. Alam v. Reno Hilton Corp., 819 F.Supp. 905, 909 (D. Nev. 1993) ("Where there is a complete failure of proof concerning an essential element of the nonmoving party's case, all other facts are rendered immaterial, and the moving party is entitled to judgment as a matter of law.").

F. PLAINTIFFS NEVER SOUGHT A FRANCHISE ZONE OR TO BE SELECTED AS A QUALIFIED CONTRACTOR.

In addition, RR never even applied for, discussed or even inquired of the City if it could pursue its own separate franchised zone with the City as follows:

Q: So did you complain [to the City] that you didn't get a franchise agreement or a right to enter into your own franchise agreement?

A: Did I say that directly to them? **No, I do not believe I did.**

. . .

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Q: Okay. Did you ever undertake any activity with the City of Reno for Rubbish Runners to be considered a contractor who was qualified to have a franchise zone?

A: **No. It was our understanding that they [Reno Disposal and Castaway] were already selected [by the City].**

. . .

Q: We know it was the City of Reno's right to determine who the City of Reno would enter into franchise agreements with, right?

A: **Yes**.

Exh. 7, RR Depo., p. 114:4-8, 115:6-22 (emphasis added).

Plaintiffs' claim again fails because the Plaintiffs themselves never sought to even obtain a franchise from the City. So, when the Plaintiffs assert that the City would have granted them a franchise if the City was aware of Reno Disposal's acquisition of Castaway, such contention is again pure and utter speculation and summary judgment is required because there is no evidence to support such contention. Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438, 441-442 (1993) (summary judgment required when the evidence establishes that no "reasonable jury could return a verdict for the non-moving party.").

G. PLAINTIFFS' KNOWLEDGE THAT RENO DISPOSAL WAS ACQUIRING CASTAWAY.

Plaintiffs opposed Defendants' prior summary judgment motion contending that they could present evidence that the City did not know of Reno Disposal's acquisition of Castaway prior to approving the franchise agreements and that the City was "surprised" by such information. However, the actual testimony obtained from the Plaintiffs directly contradicts their representations to the Court.

This is because, during the October Meetings and related City staff meetings, Plaintiffs expressly informed the City and City staff that Reno Disposal was in fact purchasing Castaway. Plaintiffs made these statements to the City because the

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Plaintiffs had received this information from other third-party sources. Accordingly, not only did the City contemplate and approve Reno Disposal's acquisition of Castaway (as demonstrated by the City's use of the pre-approval language in the franchise agreements), **the City was informed of Reno Disposal's acquisition of Castaway before the franchise agreements were entered into in November, 2012—by the Plaintiffs!**

In this regard, NRS designated Chris Biesler as NRS's 30(b)(6) representative. Exh. 6, p. 5:4-11. Under the law, NRCP 30(b)(6) imposed the burden upon NRS to present a witness capable of testifying and "binding" NRS with his or her testimony. In Rainey v. American Forest and Paper Ass'n, Inc., 26 F.Supp.2d 82, 94 (D. D.C. 1998), the court addressed this very topic and held the following:

> [T]he Rule states plainly that . . . a designee is not simply testifying about matters within his or her own personal knowledge, but rather is "speaking for the corporation" about matters to which the corporation has reasonable access. . . . By commissioning the designee as the voice of the corporation, **the Rule obligates a corporate party "to prepare its designee to be able to give binding answers" in its behalf. . . . [A] corporation cannot later proffer new or different allegations that could have been made at the time of the 30(b)(6) deposition.**

Id. at 94 (emphasis added). In Great American Ins. Co. of New York v. Vegas Const. Co., Inc., 251 F.R.D. 534, 538 (D. Nev. 2008) the Court held:

> A corporation has a duty under Rule 30(b)(6) to provide a witness who is knowledgeable in order **to provide "binding answers on behalf of the corporation"**.

Id. at 538 (emphasis added). See also Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406, 1418 (D. Nev. 1995) ("In producing representatives for a Rule 30(b)(6) deposition, a corporation must prepare them to give `complete, knowledgeable and

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binding answers.'").[19]

Chris Biesler's binding testimony establishes that NRS was fully aware of Reno Disposal's acquisition of Castaway in September and October 2012--well before the City approved the franchise agreements--and that NRS raised this issue many times to the City as follows:

> Q Now, when did you have this conversation with this woman at amazon.com where she told you that the Waste Management acquisition of Castaway had definitely been completed?
>
> A I don't know if I said definitely completed, but she said, "Watch, it will be completed," or something along those lines. It was probably in September [2012], could have been October [2012], about the same time the Castaway drivers were all telling us the same thing.
>
> Q Okay. I couldn't remember. They might have said that Castaway has definitely been purchased?
>
> A Yes.
>
> Q So September 2012 you're hearing statements from Castaway drivers that Waste Management has already acquired Castaway?
>
> A yes.

Exh. 6, NRS Depo., p. 68:3-18.

Mr. Biesler as NRS's 30(b)(6) representative repeatedly reaffirmed NRS's knowledge of the Castaway acquisition and reaffirmed NRS's repeated comments to the City about the anticipated action as follows:

> Q Okay. So in September 2012 you're having communication with this woman at High Desert Recycling, and part of her responsibilities is to be the account manager for amazon.com?
>
> . . .
>
> A Correct. Yes.

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[19] Ford v. Branch Banking and Trust Co., 353 P.3d 1200, 1202 (Nev. 2015) ("Federal 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 counterpart.'").

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Q And she tells you from her perspective the Waste Management acquisition of Castaway has already taken place?

A Yes.

Q Then in the September-October [2012] time frame you're also hearing from Castaway drivers that Castaway has been acquired by Waste Management?

A Correct.

Exh. 6, p. 69:15-70:7. Mr. Biesler specifically testified NRS informed the Reno City Attorney Jon Shipman about Reno Disposal's pending acquisition of Castaway **prior to** the City's approval of the Franchise Agreements as follow:

Q: **. . . You said that Mr. Shipman [the City attorney] was told numerous times that you believed and were informed that Waste Management was already acquiring Castaway; is that right?**

A: **Yeah.**

Q: **And this all was occurring in the September-October 2012 time frame?**

A: **Yeah. Sounds about right.**

Exh. 6, NRS Depo., p. 72:4-12 (emphasis added).[20] Mr. Beisler states the Plaintiffs' statements to the City that Reno Disposal was in the process of acquiring Castaway went on "deaf ears" at the City. Exh 6., p. 92:16-22.[21]

[20] Of Note, at the time NRS is telling the City about Reno Disposal's impending acquisition of Castaway, NRS's 30(b)(6) representative Chris Biesler was also in a romantic and a business relationship with AnneMarie Carrey, the sole owner and manager of RR and RR's 30(b)(6) representative. Exh. 7, RR Depo., p. 27:8-11.

[21] Obviously the comments went on deaf ears because the City had already considered such action and pre-approved such action because only Reno Disposal and/or Castaway was capable of acting as a qualified contractor under the franchise agreements. Therefore, it was irrelevant to the City if Reno Disposal acquired Castaway because these were the only two businesses capable of performing the waste collection activities for the City and the City had pre-approved Reno Disposal's acquisition of Castaway.

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Given the foregoing undisputed and legally binding testimony, the Plaintiffs' contention that the City was unaware of Reno Disposal's acquisition of Castaway is false. It is also suggested that a modicum of due diligence would have established the assertions made by the Plaintiffs' counsel to oppose the first motion for summary judgment (that the City was not aware of the acquisition) had no basis in fact and was directly contradicted by the Plaintiffs' own 30(b)(6) representative's knowledge and anticipated testimony. This undisputed evidence conclusively establishes that the present lawsuit is nothing more than frivolous and vexatious litigation and summary judgment should be granted as requested.

H. RENO DISPOSAL AND CASTAWAY ARE EACH GRANTED A LEGAL MONOPOLY TO COLLECT AND HAUL COMMERCIAL SOLID WASTE.

On November 7, 2012, the City awarded to Reno Disposal and Castaway two separate exclusive franchise agreements for the collecting and hauling of commercial solid waste. See Exh. 2 (Reno Disposal Franchise Agreement); Exh. 3 (Castaway Franchise Agreement). The grant of these exclusive franchises created two separate zones within the legal monopoly established by the City with Zone 1 being serviced by Reno Disposal and Zone 2 being serviced by Castaway.[22]

Plaintiffs argue that the City created two zones then selected qualified contractors to service those zones. This allegation is also a false representation. The City first selected the qualified contractors who were capable of receiving a franchise from the City. After the City determined there were only two qualified contractors (Reno

[22] See LEGAL MONOPOLY, Black's Law Dictionary (10th ed. 2014) ("The exclusive right granted by government to business to provide utility service that are, in turn, regulated by the government."); see also MONOPOLY, Black's Law Dictionary (10th ed. 2014) ("Control or advantage obtained by one supplier or producer over the commercial market within a given region.").

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Disposal and Castaway), the City then established the franchise zones. Exh. 2, ¶2.2. Exh. 9 (Dortch), ¶¶5, 7; Exh. 10 (Cashell), ¶¶5, 7.

Stated another way, the City did not pre-establish zones then select contractors to service those zones. Exh. 2, ¶2.2; Exh. 9 (Dortch), ¶¶8,9; Exh. 10 (Cashell), ¶¶8, 9. contentions that they would have received Castaway's zone if the City knew of Reno Disposal's acquisition of Castaway is again false. As both Mr. Dortch and Mayor Cashell state: "Any contention that the City pre-established Exclusive Service Areas then selected Qualified franchisees to services those areas is not correct and directly contrary to the express terms of the Commercial Franchise Agreements." Exh. 9 (Dortch), ¶10; Exh. 10 (Cashell), ¶10.

After the City granted Reno Disposal a monopoly in Zone 1 and Castaway a monopoly in Zone 2, Reno Disposal's parent company entered into an agreement to acquire certain assets of Castaway in December 2012. Exh. 1, Martinelli Aff., ¶18. Upon the close of Castaway's acquisition in September 2013, Castaway assigned all of its rights under franchised monopoly for Zone 2 to Reno Disposal. *See* **Exhibit 12** (Assignment). Exh. 1, Martinelli Aff., ¶19.

I. THE CITY EXPRESSLY PRE-APPROVED CASTAWAY'S ASSIGNMENT OF ITS FRANCHISED MONOPOLY TO RENO DISPOSAL.

1. The Express Terms of the Franchise Agreements.

The City expressly pre-approved Castaway's assignment of its monopoly to Reno Disposal in both of the franchise agreements. Paragraph 11.7(B) of the franchise agreements states:

> **Except for Assignments to a Permitted Transferee** . . . Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City . . . .

Exh. 2, ¶ 11.7(B) (emphasis added); Exh. 3, ¶ 11.7(B) (emphasis added). "Permitted

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Transferee" is defined as "a service provider under another Commercial Service Agreement." Id. at p. 9. "Commercial Service Agreement" is defined as the two franchise agreements. Id. at p. 3 (defining "Commercial Franchise Agreement" as "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" (emphasis added)). Therefore, under the Franchise Agreements, the City exercised its police powers and expressly authorized Castaway to assign Zone 2 to Reno Disposal without further involvement by the City, because Reno Disposal was classified by the City as a "Permitted Transferee." Exh. 9 (Dortch), ¶11; Exh. 10 (Cashell), ¶11.

2. Plaintiffs' Admissions.

RR **admits** that the City pre-approved Castaway's right to assign its franchise rights to Reno Disposal under the express terms of the Franchise Agreement:

> Q: So in this document that was approved by the City of Reno, the City of Reno expressly granted Reno Disposal the right to acquire Castaway; right?
>
> A: Yes.

Exh. 7, RR Depo., p. 135:10-13. In addition, the Plaintiffs admitted that the franchise agreements, as drafted and circulated for discussion **prior to approval by the City,** expressly stated that Reno Disposal could acquire Castaway's franchise zone without further City action.[23]

It is also undisputed by the Plaintiffs the **drafts** of the franchise agreements that were circulated for public approval by the City contained the pre-approval language and

[23] **Exhibit 13,** deposition excerpt of William Biesler, ("Biesler Depo."), pp. 20:11-21:7. See also Exh. 1, Martinelli Aff., at ¶20.

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the Plaintiffs knew it. Id. at p. 21:25-22:5 ("Q . . . once you looked over the franchise agreements and saw that Waste Management had the ability to acquire Castaway, your number one customer, was that a concern to you? A Yes. And that was probably in the month before the franchise was adopted.").

3. Mr. Aiazzi's Confirmation that City Pre-Approved Reno Disposal's Acquisition of Castaway.

In addition, Dave Aiazzi, a former councilman for the City who voted to approve and adopt the franchise agreement, testified that the City read the language in paragraph 11.7(B) that expressly permits Castaway's assignment of Zone 2 to Reno Disposal before the City approved the Franchise Agreements:

> Q: Did you read this agreement before you voted on it?
>
> A: Yes.
>
> Q: Do you believe you understood the terms of the agreement before you voted on it and approved it?
>
> A: Yes.
>
> Q: Is it your standard practice when you are asked to vote on a contract, to read it and understand it before you vote one way or another?
>
> A: Yes.

Exh. 8, Aiazzi Depo., p. 39:3-13. Then, Mr. Aiazzi testified that he was fully aware that the City was authorizing Reno Disposal to acquire Castaway's Zone 2 under the express terms of the franchise agreements as follows:

> Q: . . . And you knew at the time you were approving both of these contracts that you were authorizing as part of your vote Reno Disposal Company and/or Castaway to sell their business to another entity or entities should they qualify to do the work.
>
> A: Yes.

Id. at p. 54:2-8.

4. Mr. Dortch's Confirmation that the City Pre-Approved Reno Disposal's Acquisition of Castaway.

Mr. Dortch also confirms that he read, understood and contemplated that Reno

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Disposal could acquire Castaway's franchise zone when the City approved the franchise agreements. Exh. 9, (Dortch), ¶6. Mr. Dortch also confirms that he was aware of the possibility of Reno Disposal acquiring Castaway's zone when the City approved the franchise agreements. Id. at ¶12; see also ¶13 ("I was aware of the possibility of the acquisition of Castaway by Waste Management when I voted to approve the Commercial Franchise Agreements"). Then, Mr. Dortch confirms that: "the City had pre-approved Castaway's assignment of its franchise to Reno Disposal [or vis a versa]." Exh. 9, (Dortch), ¶11. Finally, as Mr. Dortch states, Reno Disposal "did nothing inappropriate in acquiring Castaway or Castaway's franchise rights because this conduct was expressly allowed pursuant to the express terms of the [franchise agreements]." Id. at ¶13.

5. Mayor Cashell's Confirmation that the City Pre-Approved Reno Disposal's Acquisition of Castaway.

Mayor Cashell also confirms that he read, understood and contemplated that Reno Disposal could acquire Castaway's franchise zone when the City approved the franchise agreements. Exh. 10, (Cashell), ¶6. Mayor. Cashell also confirms that he was aware of the possibility of Reno Disposal acquiring Castaway's zone when the City approved the franchise agreements. Id. at ¶12; see also ¶13 ("I was aware of the possibility of the acquisition of Castaway by Waste Management when I voted to approve the Commercial Franchise Agreements"). Then, Mayor Cashell confirms that: "the City had pre-approved Castaway's assignment of its franchise to Reno Disposal [or vis a versa]." Exh. 10, (Cashell), ¶11. Finally, as Mayor Cashell states, Reno Disposal "did nothing inappropriate in acquiring Castaway or Castaway's franchise rights because this conduct was expressly allowed pursuant to the express terms of the [franchise agreements]." Id. at ¶13.

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Thus, it is undisputed that the City contemplated Reno Disposal's acquisition of Castaway, and pre-approved Castaway's assignment of Zone 2 to Reno Disposal as part of the express terms of the franchise agreements. Given that the City had the authority to pre-approve Reno Disposal's acquisition of Castaway as part of the terms of the franchise agreements, the exercise of that authority cannot be challenged by Plaintiffs and Defendants are immune from liability. NRS 598A.040(3)(b) (anti-competitive statutes do not apply to actions taken by a City under ordinances allowing the City to restrict trade by use of franchise agreements).

J. THE CITY FORMALLY APPROVED CASTAWAY'S ASSIGNMENT OF ITS FRANCHISED MONOPOLY TO RENO DISPOSAL.

The City, in addition to pre-approving Reno Disposal's acquisition of Castaway's Zone 2, formally approved Castaway's assignment of Zone 2 to Reno Disposal. Notwithstanding the pre-approval, as a courtesy to the City, Reno Disposal provided formal notice of the Assignment to the City on October 3, 2013, (despite the fact that no consent was required pursuant to Paragraph 11.7(B) of the Franchise Agreement). **Exhibit 14,** October 3, 2013, letter to City.[24]

Despite the pre-approval, the City also undertook to formally approve the assignment and issued a formal letter approving Castaway's assignment to Reno Disposal on October 4, 2013.[25] **Exhibit 16,** October 4, 2013 City letter of formal approval.[26] Obviously, the City's action demonstrates that the City not only pre-

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[24] Exh. 1, Martinelli Aff., at ¶21.

[25] In an August 2013 email chain between the City and Reno Disposal, the City inquired if formal City consent to Castaway's assignment was necessary "[b]ased on 11.7" of the Franchise Agreements. **Exhibit 15** (August 19, 2013 Email from Jason Geddes to Greg Martinelli). Even though the pre-approval existed, the City nonetheless granted its formal approval of the assignment. Exh. 1, Martinelli Aff., at ¶22.

[26] Exh. 1, Martinelli Aff., at ¶23.

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approved the assignment to Reno Disposal but also formally placed its stamp of approval on that transaction. Accordingly, the evidence is undisputed that the City expressly approved Castaway's assignment of Zone 2 to Reno Disposal not once but twice: first in the pre-approval language contained in the franchise agreements, and second, pursuant to the formal approval.

K. PLAINTIFF'S CONTENTION THAT THE CITY WOULD NOT HAVE ENTERED INTO THE FRANCHISE AGREEMENTS *IF* THE CITY WAS AWARE OF THE ASSIGNMENT (WHICH IT WAS) IS PURE SPECULATION.

The undisputed facts demonstrate that the City did not select RR or NRS as qualified contractors to receive a franchise agreement with the City. Instead, the City was aware of RR and designated it a "small hauler" and approved RR as an "Exempt Hauler" under the franchise agreement. See **Exhibit 17** (Exempt Haulers List).[27]

When questioned about what "proof" RR had that the City would have selected RR as a qualified contractor, RR's only response was that it "believed" the franchise agreements "could possibly have looked very different." Exh. 7, p. 52:18-23. Further, when NRS was questioned on this exact topic, NRS's only response was "why wouldn't they" give us a franchise agreement. Exh. 6, NRS Depo., p. 82:1-6.

Unfortunately for Plaintiffs, their belief and speculation as to what the City may or may not have done is not evidence. Further, an answer of "why wouldn't they" give us a franchise is nothing more than a rhetorical question that epitomizes a "gossamer thread of whimsy." As such, Plaintiff's contentions are baseless and summary judgment is again mandated. Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 294, 662 P.2d

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[27] Exh. 1, Martinelli Aff., at ¶24.

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610, 618-19 (1983) (non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." (citation omitted)).

Even more compelling and certainly dispositive of this issue, Mr. Aiazzi, Mr. Dortch and Mayor Cashell all testified that there were no other contractors who qualified for a franchise agreement besides Castaway and Reno Disposal. Thus, Plaintiffs' claim that the City would have granted them a franchise zone is directly contradicted by the undisputed testimony because neither of the Plaintiffs were qualified in the City's eyes to be a qualified contractor.

Furthermore, the sole support that the Plaintiffs relied on in their NRCP 56(f) motion that the City would have not entered into the franchise agreements was an email from former councilman Dave Aiazzi. *See* Opp. to Mot. for Sum. J., Exhibit 2. However, during his deposition, Mr. Aiazzi admitted knowing that the franchise agreement expressly contemplated allowing Reno Disposal to acquire Castaway's zone. Exh. 8, pp. 39:3-13, 53:20-54:8. And, even though Mr. Aiazzi contemplated such acquisition, and even though he may not have been fully aware of Reno Disposal's actual ongoing efforts to acquire Castaway, any contention that his actual knowledge of the acquisition would have altered his vote would be pure speculation as follows:

> Q Okay. You earlier said, if you would have known what was going on by and between Waste Management and Castaway, perhaps it may have altered the agreement. Do you remember making a statement, sort of that phraseology?
>
> A Yes.
>
> Q **Is that, perhaps, more of a speculative concept that you're saying today?**
>
> A **Yes.**"

Id. at 67:9-17 (emphasis added)). Mr. Aiazzi confirmed that any contention that he

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would have changed his vote knowing Reno Disposal was acquiring Castaway's zone is pure speculation.[28] Furthermore, Mr. Aiazzi unequivocally testified that the City was aware of the language in the Franchise Agreement contemplating and approving Castaway's assignment of Zone 2 to Reno Disposal. Id. at p. 54:2-8.

In addition, as stated above, both Mr. Dortch and Mayor Cashell were fully aware of the possibility that Reno Disposal would acquire Castaway and be assigned Castaway's zone when the City approved the franchise agreements. Therefore, the contention that the City did not know of Reno Disposal's anticipated acquisition of Castaway at the time of approval of the franchise agreements is both false and directly contrary to the undisputed evidence that the City did in fact have knowledge of the anticipated transaction.

IV. STANDARD OF REVIEW.

Summary judgment is appropriate when there is no genuine issue of material fact, "and the moving party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted); see also NRCP 56(c). Summary judgment is particularly appropriate to avoid needlessly trying an issue at trial. McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005).

"While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment." Wood, 121 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted).

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[28] Id., p. 13:6-23. (Q Would that have affected your vote that you made on the council when the franchise agreement came forth? . . . A My answer would not be yes or no . . .)

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Instead, the nonmoving party must demonstrate the existence of a genuine issue for trial, and "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." Id. (Internal quotations omitted).

V. SUMMARY JUDGMENT IS APPROPRIATE AS A MATTER OF LAW ON PLAINTIFFS' CLAIM BECAUSE NRS CHAPTER 598A DOES NOT APPLY.

Summary judgment in favor of Defendants is appropriate as a matter of law because: (1) Defendants' conduct is exempted from NRS 598A.060(1)(e) pursuant to NRS 598A.040(3); (2) the City's knowledge of Castaway's acquisition and assignment is irrelevant because the unambiguous terms of the franchise agreement permit the assignment and extraneous evidence of contractual intent is improper; (3) the City did actually know about Castaway's impending assignment, and still voted to approve the franchise agreements; and (4) Defendants' conduct is exempt from antitrust liability under the Noerr Doctrine and Nevada's anti-SLAPP statutes because it involves political, and not business, conduct. As a further ground, Plaintiffs have not and cannot allege any injury because neither of the Plaintiffs were qualified to obtain a franchise zone from the City, regardless of any alleged conduct by and between Castaway and Reno Disposal.

A. CITY'S STATUTORY AUTHORITY TO LIMIT COMPETITION.

NRS 268.081, NRS 268.083 and RMC 5.90.030(b), all expressly authorize the City of Reno to enter into contracts for municipal services to the exclusion of competition as follows:

NRS 268.081(3): states that a City may grant "**displace or limit competition**" in the field of "[c]ollection and disposal of garbage and other waste".

NRS 268.083: provides that a City may adopt ordinances for an exclusive franchise for waste collection and/or **"[g]rant an exclusive franchise** . . .to any person to provide those services within

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the boundaries of the city."

RMC 5.90.030(b): states: "**Contractors, and their respective . . . assigns**, shall have the **exclusive privilege** of providing 'Collection Services of Collection Materials' subject to the limitations of any applicable Agreement, and city, state and federal law." (emphasis added).

Therefore, under Nevada's statutory scheme, the City is fully vested with authority to enter into contracts granting exclusive franchises in the field of waste management and that such contracts may be "assigned" as allowed by the City in the contract.

B. PLAINTIFFS' ADMISSIONS OF CITY'S AUTHORITY.

RR admits that Nevada's laws allow the City to displace competition in the field of waste management and to vest the exclusive rights to private companies such as Reno Disposal and Castaway.[29] Specifically, RR testified as follows:

> **Q . . . [Y]ou understand that the City had the ability to tell people that they didn't have a right to compete with regard to specific topics and items that the City governed by their franchise agreement; right?**
>
> **A Yes.**

Exh. 7, RR Depo, p. 54:23-55:2 (emphasis added). RR also testified that the City properly entered into the franchise agreements with Castaway and Reno Disposal. Id., p. 136:13-16 ("Q: So you're not asserting that the City of Reno by entering into this contract . . . acted improper in any fashion? A: No."). RR further agreed that the City has the power to create monopolies. Id. at p. 105:1-4 ("Q: . . . You understand that the City of Reno has the power to create monopolies? A: I understand that many cities have the power to create monopolies and choose to either do so or not."). NRS also admitted that the franchise agreements are the City's right to create a monopoly in the

[29] Exh. 7, RR Depo, p. 54:1-9 (Q You understand the franchise agreement is an exercise of the City's powers to restrict or to limit competition in a given area? A I believe it says that in one of the paragraphs in the franchise. Q So you understand that? A Yes.").

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area of waste management. Exh. 6, NRS Depo., p. 102:3-4.

C. DEFENDANTS' CONDUCT IS EXEMPTED FROM NRS 598A.060(1)(e) PURSUANT TO NRS 598A.040(3).

Summary judgment is appropriate as a matter of law because NRS Chapter 598A does not apply to Castaway's assignment of its franchise rights for Zone 2 to Reno Disposal. NRS Chapter 598A does not apply to "[c]onduct which is expressly authorized, regulated or approved by . . . [a] statute of this State . . . [or] [a]n ordinance of any city or county of this State." NRS 598A.040(3)(a)-(b).

The City's authorization for Castaway to assign its franchise rights for Zone 2 is permitted by both Nevada statute and Reno City ordinance because the right was granted in a contract that the City authorized and approved. The law allows the City to limit competition and grant certain private entities monopolistic rights as follows: "[t]he governing body of an incorporate city may, to provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, **displace or limit competition** in . . .[c]ollection and disposal for garbage and other waste." NRS 268.081(3) (emphasis added). Furthermore, the City can **"[g]rant an exclusive franchise** to any person to provide" garbage and waste collection within city limits. NRS 268.083(2) (emphasis added). Thus, the City clearly has statutory authority to create an exclusive monopoly within City limits for the collection and hauling of commercial waste and to allow that right to be assigned.

No party disputes that the City acted properly in granting a legal monopoly to Reno Disposal for Zone 1 and Castaway for Zone 2. No party disputes that the franchise agreements creating the monopolies also granted Reno Disposal the right to acquire Castaway's Zone 2. Therefore, Castaway's subsequent assignment of its franchise rights for Zone 2 to Reno Disposal was an act authorized by the City pursuant to statute and municipal code and no liability can be created by Reno Disposal undertaking the very act the City said it could take.

Moreover, under the Reno Municipal Code, the entity granted an exclusive

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franchise may **assign** the franchise. Reno Municipal Code 5.90.030(b) states: "Contractors, and their respective . . . **assigns**, shall have the exclusive privilege of providing 'Collection Services of Collection Materials' subject to the limitations of any applicable Agreement, and city, state and federal law." (Emphasis added). There were no limitations under the franchise agreement that prohibited Castaway's assignment. Paragraph 11.7(B) clearly permitted Castaway to transfer its franchise rights in Zone 2 to Reno Disposal without City consent because Reno Disposal was a "Permitted Transferee." See Exh. 2, at ¶ 11.7(B) (stating that assignments to "Permitted Transferees" do not require prior City approval); see also id. at p. 9 (defining "Permitted Transferee" is defined as "a service provider under another Commercial Service Agreement"); Exh. 2 (Reno Disposal's Commercial Franchise Agreement). Thus, Castaway's assignment was expressly permitted by both RMC 5.09.030(b) and the express terms of the franchise agreement. Thereafter, the City formally approved the assignment again according to the express provisions of the franchise agreements.

There are also no limitations under city, state or federal law that prohibited Castaway's assignment.[30] NRS 268.081(3) expressly permits the City to grant **one** monopoly over waste removal for the entire city. Although Plaintiffs continue to argue that the City intended to grant two monopolies, the City clearly contemplated that these monopolies could be combined **into a single monopoly** because the City waived any consent requirement for the assignment of franchise rights from the holder of one zone to the holder of the franchise rights for the second zone. Exh. 2, ¶ 11.7(B); Exh. 3, ¶ 11.7(B).[31] It is also undisputed that the City is permitted to enter into contracts for waste removal that contemplate and approve the subsequent joinder of the party

[30] Of note, this action does not involve alleged violation of any federal law. Intercity waste removal does not involve interstate commerce and does not implicate the Sherman or Clayton Acts (NRS Chapter 598A's federal counterparts).

[31] See also Exh. 9 (Dortch) ¶¶11-13 (City intended to allow Reno Disposal to acquire Castaway's Zone). Exh. 10 (Cashell), ¶¶11-13 (City intended to allow Reno Disposal to acquire Castaway's Zone).

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servicing the contracts to establish the creation of one legal monopoly within City limits. NRS 268.081(3). Thus, Castaway's assignment of its franchise rights for Zone 2 to Reno Disposal was expressly authorized, regulated and approved by both Nevada statute and Reno City Ordinance. Therefore, NRS Chapter 598A does not and cannot apply to Reno Disposal's acquisition of Castaway's zone and summary judgment in favor of Defendants is appropriate as a matter of law.

D. THE CITY'S KNOWLEDGE OF THE ACQUISITION AND ASSIGNMENT IS IRRELEVANT.

It is also irrelevant whether the City actually knew that Castaway would assign its franchise rights in Zone 2 to Reno Disposal because the City approved the franchise agreements which terms expressly permitted such transfer to occur without prior City consent. Exh. 2, ¶ 11.7(B); Exh. 3, ¶ 11.7(B). The franchise agreements, like all contracts, must "be construed from the written language and enforced as written." Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (internal quotations omitted). For clear and unambiguous contracts, "the court may not admit any other evidence of the parties' intent because the contract expresses their intent." Ringle v. Burton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004).

The franchise agreements clearly and unambiguously state that the City's consent is not required if the contractor chooses to assign its franchise rights for its respective zone to a "Permitted Transferee." Exh. 2, ¶ 11.7(B); Exh. 3, ¶ 11.7(B). Reno Disposal and Castaway are both "Permitted Transferees" under the franchise agreements. See id. at p. 9 (defining "Permitted Transferees" as entities awarded a franchise agreement with the City); Exh. 9 (Dortch) ¶11; Exh. 10 (Cashell) ¶11.

When the parties' intent in a contract is clear, the Court is bound to enforce the contract. Great Am. Airways, Inc. v. Airport Authority of Washoe County, 103 Nev. 427, 42, 743 P.2d 628, 629 (1987) ("The preeminent rule of construction is to ascertain the intention of the contracting parties. . . .If that intention is clear from the text, no construction is required . . . and this court is bound by the language of the agreement. .

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. ."). In the present case, the City's intent is clear that regardless of whether or not Reno Disposal and/or Castaway had some pre-existing relationship, the express terms of the franchise agreements establish that the City contemplated and approved any acquisition of Castaway's zone by Reno Disposal. Because the City was empowered to limit and/or restrict competition by allowing Reno Disposal to acquire Castaway's zone, and because the contract's intent is clear, there cannot be any lability for anti-competitive behavior as a matter of law.

Plaintiffs admit the franchise agreements are unambiguous.[32] In addition, Plaintiffs admit that the only "Permitted Transferees" were Reno Disposal and Castaway. Exh. 7, RR Depo., p. 112:10-21. Plaintiffs then admit that the clear and unambiguous terms of the franchise agreements contemplated Castaway's assignment of its franchise rights for Zone 2 to Reno Disposal. See Exh. 7, RR Depo., p. 135:10-13 ("Q So in this document that was approved by the City of Reno, the City of Reno expressly granted Reno Disposal the right to acquire Castaway; right? A Yes.").

Plaintiffs also admit the City acted properly by approving and signing the franchise agreements. It is well established in Nevada that a party who signs a contract is presumed to have read, understood, and assented to the terms within the agreement. Campanelli v. Conservas Altamira, S.A., 86 Nev. 838, 841, 477 P.2d 870, 872 (1970). Accordingly, the Court must conclude that the City knew and approved the terms of the franchise agreements and that the City was clearly aware of the unambiguous language in the agreements that expressly permitted Castaway to assign its franchise rights in Zone 2 to Reno Disposal.

Plaintiffs ignore these clear mandates of contract law and speculate that the City would have acted differently if the City had known about the alleged collusion. This argument falls flat in the face of the City's clear intent as expressed in the unambiguous terms of the franchise agreements allowing such action to occur. So, the Plaintiffs'

[32] See Plaintiffs' Opposition to Motion to Dismiss, p. 18:11-14 (terms of franchise agreements are unambiguous).

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argument actually devolves into the following nonsensical contention: "even though the City contemplated and expressly allowed Reno Disposal to acquire Castaway's zone, and the City said such activity was exempt from anti-competitive behavior, Reno Disposal did something bad in actually undertaking the very activity that the City contemplated and expressly said Reno Disposal could do." As shown, this contention is meritless, speculative and frivolous. Therefore, it is irrelevant what the City actually knew because the City clearly contemplated and approved Castaway's assignment to Reno Disposal in the franchise agreements.

E. PLAINTIFFS' CLAIM IS BARRED BY THE PAROLE EVIDENCE RULE.

Plaintiffs' arguments are also barred by the parole evidence rule. The parole evidence rule bars any extraneous evidence of a party's intent that seeks to contradict the terms of an unambiguous contract. In the present case, the franchise agreements are unambiguous. Further, the contracts contain the City's express intent to allow Reno Disposal to acquire Castaway's franchise rights. Accordingly, Plaintiffs' contentions that if the City would have known of the acquisition, the City would have done something else is barred as a matter of law because Plaintiffs are precluded from attempting to introduce any oral or extraneous evidence of the City's intent.

The City's intent is clear and unambiguous. The City contemplated and intended that Reno Disposal could acquire Castaway's zone and that such action would be immune from anti-competitive liability. Plaintiffs cannot challenge and/or contest the parties' clear intent as expressed in the franchise agreements. Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 21 P.3d 16, 21 (2001) ("parol evidence may not be used to contradict the terms of a written contractual agreement."); Geo. B. Smith Chemical v. Simon, 92 Nev. 580, 582, 555 P.2d 216, 216 (1976) (where "a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning."). Accordingly, Plaintiffs' contentions as to the City's intent are barred as a matter of law and the Plaintiffs' claim fails and summary judgment is required.

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F. REGARDLESS, THE CITY DID KNOW, AND STILL VOTED TO APPROVE THE ASSIGNMENT.

Even if the City's knowledge were somehow relevant, Plaintiffs have demonstrated **through their own testimony** that the City was, in fact, aware that Castaway was going to be acquired and would be assigning its franchise rights to Reno Disposal prior to the approval of the franchise agreements. NRS's 30(b)(6) testified that Mr. Shipman, the City Attorney, "was told numerous times that [NRS] believed and were informed that Waste Management was already acquiring Castaway" in the September and October 2012 time frame. Exh. 6, NRS Depo., p. 72:4-12. Accordingly, the Plaintiffs' contention that the City didn't know of the Defendants' course of action when the franchise agreements were approved is unsupportable and summary judgment must again be granted as requested.

G. IT IS PURE SPECULATION THAT THE CITY WOULD HAVE VOTED ANY DIFFERENTLY THAN IT DID.

As detailed above, the parole evidence rule precludes the Court from considering "what ifs" because the terms of the contract expressly allowed Reno Disposal to acquire Castaway's franchise zone. However, even if the Court were to consider such extraneous evidence, Mr. Aiazzi testified it would be pure speculation to contend that he would have voted any differently than he did. Mr. Aiazzi is the only former City Council Member Plaintiffs elected to depose in this case and Plaintiffs have elected not to depose any other City official. Accordingly, summary judgment is again mandated as there is also no evidence supporting Plaintiffs' contention that the City would have acted any differently than it did in approving the franchise agreements and such contention is pure speculation.

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H. THE CITY NEVER SELECTED RR OR NRS AS A QUALIFIED CONTRACTOR.

It is also undisputed in this action that RR and NRS were never selected by the City to be a qualified contractor with whom the City wanted to do business. Undisputed Facts, III C, E and J. Therefore, summary judgment must be granted on this basis alone because the entirety of Plaintiffs' claim is that the City would have granted them a franchise. However, the fact that the City would never have granted Plaintiffs a franchise because the City never deemed Plaintiffs to be qualified contractors capable of servicing a franchise agreement is again dispositive of this entire litigation.

I. PURE SPECULATION THAT RR OR NRS WOULD HAVE RECEIVED A FRANCHISE ZONE.

If the Court entirely ignores that neither RR nor NRS was selected by the City as a qualified contractor, and merely considers RR's and NRS's contentions that the City would have granted them a franchise zone, then the Court will again conclude this contention is pure speculation. This is because both RR and NRS admit they have no idea what the City's selection process was or what criteria the City used to select those entities it deemed a qualified contractor. Id., at C. Accordingly, any contention that the City would have granted RR or NRS a franchise zone if the City knew about Reno Disposal's acquisition of Castaway (which the City did because of Plaintiffs' statements), is entirely baseless, without any evidentiary support and pure speculation.

When the City entered into the franchise agreements, the City clearly knew of its own criteria for entities it wanted to do business with and the City clearly understood that there existed no other waste collectors in Reno that it deemed qualified to be issued a franchise except Reno Disposal and Castaway. Undisputed Facts, III J. Therefore, Plaintiffs' contention fails as a matter of law because the Plaintiffs present

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absolutely no evidence that the City would have ever deemed RR or NRS as a qualified contractor and cannot even identify the City's selection criteria.

VI. DEFENDANTS' CONDUCT IS EXEMPT FROM LIABILITY BECAUSE IT INVOLVES POLITICAL, AND NOT BUSINESS, CONDUCT.

A. THE NOERR DOCTRINE IMMUNIZES RENO DISPOSAL FROM LIABILITY.

Summary judgment is also appropriate as a matter of law on Plaintiffs' claim because "antitrust laws also do not regulate the conduct of private individuals who seek anticompetitive action from the government." City of Columba v. Omni Outdoor Advertising, Inc., 499 U.S. 365, 379-80 (1991). This doctrine is known as the Noerr Doctrine. Id.

In Omni, the United States Supreme Court applied the Noerr Doctrine to reverse a lower court decision finding that a private billboard advertising company had engaged in anticompetitive conduct by successfully lobbying and receiving a billboard advertising monopoly from the City of Columbia, South Carolina. Id. at 383-84. The Supreme Court explained that the Noerr Doctrine "rests ultimately upon the recognition that the antitrust laws, 'tailored as they are for the business world, are not at all appropriate for application in the political arena.'" Id. at 380 (quoting E. R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 141 (1961)). Stated another way: anti-trust laws do not apply to political lobbying or free speech rights.

As the Court explained, Noerr is the corollary to the Parker Doctrine, which shields state action from antitrust regulation because state liability for antitrust behavior would have a chilling effect on citizens' constitutional right to petition their government. Id. at 379. Similarly, "[t]o hold that the government retains the power to act in [a] representative capacity and yet hold, at the same time, that the people cannot freely inform the government of their wishes would impute to the [antitrust laws] a purpose to regulate, not business activity, but political activity, a purpose which would have no basis whatever in the legislative history of that Act." Noerr Motor Freight, 365 U.S. at 137. Thus, the law is clear that people and businesses have the right to petition their

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government for political advantage without being subject to anti-trust liability.

All of Plaintiffs' allegations fall within the parameters of the Noerr Doctrine. First, the Noerr Doctrine applies even where the alleged wrongful conduct involved a **conspiracy** to obtain favorable government action. Omni, 499 U.S. at 383. The Supreme Court has noted that it "would be unlikely that any effort to influence legislative action could succeed unless one or more members of the legislative body became 'co-conspirators' is *some* sense with the private party urging such action." Id. (Internal quotations and alterations omitted). If a state actor is a co-conspirator, the alleged conduct is state action; however, "***any* action that qualifies as state action is *ipso facto* exempt from the operation of antitrust laws.**" Id. at 379 (internal quotations and alterations omitted) (emphasis added).

Similarly, the Noerr Doctrine applies where the alleged wrongful conduct involves a private party's intent to defeat competition. As explained by the Supreme Court:

> The right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so. **It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves or a disadvantage to their competitors** . . . Indeed, it is quite probably people with just such a hope of personal advantage who provide much of the information upon which governments must act.

Noerr Motor Freight, 365 U.S. at 139 (emphasis added). Indeed, no antitrust law "prohibit[s] two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." Id. at 136. Thus, "Noerr shields from the [antitrust laws] a concerted effort to influence public officials regardless of intent or purpose." Mine Workers v. Pennington, 381 U.S. 657, 670 (1965).

Finally, the Supreme Court holds that the Noerr Doctrine applies even if the private party **intentionally lies** to the government in order to obtain favorable action. Noerr Motor Freight, 365 U.S. at 145. In Noerr Motor Freight, trucking companies sued a group of railroad owners and operators for anticompetitive conduct which resulted in the passing of a law in Pennsylvania that effectively granted the railroads a monopoly

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over long-distance transportation of heavy freight. Id. at 128. The district court found that the railroad companies had lied to the local government and to public voters for the sole purpose of having the legislation passed and obtaining an effective monopoly. Id. The Supreme Court reversed, and held that this fact was irrelevant. Id. at 145. The Court held that because "the contest itself appears to have been conducted along lines normally accepted in our political system . . . that deception, reprehensible as it is, **can be of no consequence so far as the [antitrust laws are] concerned.**" Id. (Emphasis added).

Here, the Noerr Doctrine directly applies to Plaintiffs' claim. Plaintiffs have alleged that Defendants violated NRS 598A.060(1)(e) by "lobbying" the City without disclosing their intended acquisition of Castaway to the City, and that the City relied "in part on the statements and representations made by" defendants to enter into the franchise agreements. Am. Compl. at ¶¶ 11, 18, 91, 93. In other words, Defendants allegedly violated NRS 598A.060(e) because they petitioned the City to create two franchise zones – one for Defendants, and one for Castaway – without disclosing their true intent. As detailed in Noerr, political conduct directed at obtaining favorable outcome that would effect a restraint of trade is not regulated by anti-trust legislation even if intentional lies are made to the political body.

In the present case, there were no lies. However, there was clear political activity in the City considering and approving anti-competitive conduct. As such, the political conduct is fully exempted under the Noerr Doctrine and no liability can attach for any alleged anti-competitive result.[33] Accordingly, summary judgment in favor of Defendants is appropriate as a matter of law under the Noerr doctrine.

///

[33] "A city is entitled to 'state action' immunity . . . where state statutes clearly articulate and affirmatively express a policy to displace competition with regulation." 54 Am. Jur. 2d Monopolies and Restraints of Trade, § 24 (2016). NRS 268.081(3) clearly and affirmatively articulates a state policy to permit cities to displace competition in the area of waste collection and removal.

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B. NEVADA'S ANTI-SLAPP STATUTES IMMUNIZE RENO DISPOSAL FROM LIABILITY.

The purpose of Nevada's anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes are similar to the purpose behind the Noerr immunity doctrine. John v. Douglas Cty. Sch. Dist., 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009). As the Nevada Supreme Court has stated that according to the Noerr doctrine "those who petition all departments of the government for redress are generally immune from liability." Id. (citation omitted). Further, "[t]he basis of this doctrine is that representative democracy demands that citizens and public officials have the ability to openly engage in discussions of public concern." Id.

Nevada's anti-SLAPP statutes NRS 41.635 through 41.670, grant immunity for good faith communications that are "in furtherance of the right to petition." NRS 41.650. Nevada's anti-SLAPP statutes provide that "[a] person who engages in a good faith communication in furtherance of the right to petition . . . **is immune from any civil action for claims based upon the communication.**" NRS 41.650 (emphasis added). Accordingly, if an entity such as Defendants participates in good faith communications relating to the right to petition before the City Council those entities are absolutely immune from any civil liability.

Defendants allege that the Defendants did not inform the City Council of their intent to acquire Castaway. Because the Plaintiffs' contentions concern communications made to the City of Reno, the contentions fall squarely within the sphere of conduct for which immunity is granted by NRS 41.637. See NRS 41.650 ("A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern **is immune from any civil action for claims based upon the communication.**" (emphasis added)).

Defendants never represented to the City that they were not going to acquire Castaway, there cannot be any basis for liability and Nevada's anti-SLAPP statutes

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absolutely immunizes Defendants from any liability relating to their conduct with the City.[34] Since the contention asserted against Defendants falls squarely within each one of the enumerated categories of immune conduct in NRS 637, as a matter of law Defendants have no liability and are immune from any claim. Accordingly, based upon this entirely independent ground, this action must be dismissed in total against Defendants.

VII. SUMMARY JUDGMENT IS APPROPRIATE AS A MATTER OF LAW ON PLAINTIFFS' CLAIM BECAUSE THEY LACK STANDING.

Summary judgment in favor of Defendants is also appropriate as a matter of law because Plaintiffs lack standing since they have not suffered an injury-in-fact, and cannot allege an "antitrust injury."

A. PLAINTIFFS HAVE NOT SUFFERED AN INJURY-IN-FACT.

Summary judgment is appropriate because Plaintiffs do not have standing to assert their claim since they cannot prove that they have suffered an injury-in-fact. "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." In re AMERCO Derivative Litig., 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted). To pursue a legal claim, an "injury in fact" must exist. Bennett v. Spear, 520 U.S. 154, 167 (1997). This injury must be "actual or imminent," rather than merely "conjectural or hypothetical." Id. This is because "no one has a claim against another without having incurred damages." Boulder City v. Miles, 85 Nev. 46, 49, 449 P.2d 1003, 1005 (1969). Similarly, a party can only bring a private action under NRS Chapter 598A if that party is actually "threatened with injury or damage to his or her business or property," or has been actually "injured or damaged directly or indirectly in his or her property or business." NRS 598A.210(1)-(2).

[34] Plaintiffs' contentions also fail given the City's express knowledge of Reno Disposal's anticipated acquisition of Castaway when the franchise agreements were entered into by the City.

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Thus, in order to have suffered an injury-in-fact under NRS Chapter 598A, Plaintiffs must prove that they would have been awarded a commercial waste franchise for Zone 2 and they were deprived of that right. There is **no** evidence to support such a finding. RR admits that it did not even apply for a franchise or undertake any action to be considered a viable candidate for a franchise. Exh. 7, RR Depo., p. 115:6-22. Further, it is undisputed that the City never selected RR to be a qualified contractor. Therefore, as a matter of law, RR never sustained any injury.

RR further admits that it has no idea what Castaway's business model was, how many clients or equipment Castaway had, or the volume of work that Castaway performed. Id. at pp.118:11-119:8. So when RR contends that it could somehow have done Castaway's job, this contention is a conclusory statement that is insufficient to defeat summary judgment. Wayment v. Holmes, 112 Nev. 232, 912 P.2d 816 (1996) ("conclusory statements along with general allegations do not create an issue of material fact.").

NRS's position is even more dubious. NRS does not, and cannot, collect or transport solid waste. Exh. 6, NRS Depo., pp. 29:3-16, 29:19-22, 32:7. Yet, the collection and transportation of solid waste is the purpose of the franchise agreement. Thus, NRS could not have been awarded Castaway's franchise because NRS does not perform the same functions that Castaway performs.

To avoid these fatal deficiencies, Plaintiffs assert the creative argument that they could have serviced Castaway's zone together if RR and NRS joined forces. This argument completely overlooks the fact that NRS had **no** additional equipment to contribute to RR's insufficient assets for the job. Exh. 6, NRS Depo., pp. 20:11-19, 21:4-13. NRS testified that it had no drivers in 2011 and 2012, that its sole assets were

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its disposal facility, and that it had to hire an outside company (RR) to do hauling. Id. at pp. 20:11-19, 21:4-13, 35:5-9.

More importantly, NRS admits that **it could not have performed Castaway's job in November 2012**:

> Q: . . . So you're contending that Nevada Recycling and Salvage could go out and was capable on November 7, 2012, of servicing every one of Castaway's customers that existed as of that date?
>
> A: Well, NRS could have easily taken on Castaway's zone, if you want that answer, yes. **Could they have done it in one day? No.** . . . I mean, it just takes time, but over time we could have easily handled that Castaway zone, no problem.
>
> Q: How much time?
>
> A: Three to six months max or less.

Id. at p. 75:4-19 (emphasis added).

Plaintiffs attempt to circumvent their obvious inability to service Zone 2 by arguing that **if** they had gotten the franchise, **then** they would have **subsequently** obtained financing to **subsequently** purchase the equipment and employees needed. Id. at p. 76:16-77:24. Again, this argument overlooks the obvious fact that Plaintiffs could not, at the time the franchise for Zone 2 was awarded and was to take effect, physically service Zone 2.

Obviously the City was fully aware of RR's and NRS's business deficiencies and there is no evidence that the City would have entertained RR's and NRS's working together to service a franchise zone. What is also clear from the language of the franchise agreements is the City did not want garbage left on City streets. Therefore, it is again pure speculation that the City would have approved a franchise zone for a small hauler and a waste disposal company while these two companies entered into some kind of joint venture, went out and sought financing from private investors, acquired new equipment and hired new employees to perform a job that was already

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capable of being performed by Reno Disposal or Castaway. Plaintiffs offer no explanation why the City would magically want to do business with them when the City had already deemed RR and NRS incapable of being qualified contractors in the first place.

Finally, Plaintiffs admit that their alleged injury is pure speculation. When NRS was asked why it believed the City would have granted NRS and/or RR a franchise, NRS could not provide any concrete reason aside from "why wouldn't they?" Exh. 6, NRS Depo., p. 82:1-6. RR admits that the City determined who the potential qualified contractors for the franchises would be. Exh. 7, RR Depo., p. 130:20-25 ("Q: So the City . . . determined who the potential qualified contractors would be. . . ; right? A: Yes."). Yet, the City did not find that either RR or NRS were qualified contractors. Accordingly, Plaintiffs cannot prove that they suffered an injury in fact because Plaintiffs cannot prove that they would have been awarded a franchise for Zone 2 and summary judgment in favor of Defendants is appropriate.

B. PLAINTIFFS HAVE NOT ALLEGED AN "ANTITRUST INJURY."

In addition to proving an injury-in-fact, an antitrust plaintiff must also prove that it has suffered an "antitrust injury." Sunbeam Television Corp. v. Nielsen Media Research Inc., 711 F.3d 1264, 1270 (11th Cir. 2013) ("Antitrust standing requires that a party must do more than meet the basic 'case or controversy' or 'injury in fact'" standing requirements.). The purpose of requiring a plaintiff to allege an antitrust injury is to "avoid burdening the courts with speculative or remote claims." Id.

To establish an "antitrust injury," the "plaintiff faces the additional requirement of showing that the actual or threatened injury to plaintiff also constitutes an injury to **competition**." Reilly v. Hearst Corp., 107 F. Supp. 2d 1192, 1195 (N.D. Cal. 2000)

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(emphasis added). This is "because antitrust laws aim to protect competition, **not competitors**[.]" Pennsylvania v. Nat'l Collegiate Athletic Ass'n, 948 F. Supp. 2d 416, 432 (M.D. Pa. 2013) (emphasis added); *see also* Tennessean Truckstop, Inc. v. NTS, Inc., 875 F.2d 86, 88 (6th Cir. 1989) (holding that an antitrust plaintiff must show "that the alleged violation tends to reduce competition in some market"). "[A]bsent a claimed harm to competition, and an injury traceable to its anticompetitive effects, no antitrust case can proceed." Omnicare, Inc. v. Unitedhealth Grp., Inc., 524 F. Supp. 2d 1031, 1041 (N.D. Ill. 2007).

Here, Plaintiffs have not alleged any antitrust injury to overall **competition** in the City of Reno for the collection and hauling of commercial solid waste. It is undisputed that the City properly granted two legal monopolies in Zone 1 and Zone 2. NRS 268.081(3). Plaintiffs admit that the City possesses the power to restrict competition. Exh. 7, RR Depo., p. 105:1-4; Exh. 6, NRS Depo., pp. 45:17-46:1. As fully briefed above, the City clearly and unambiguously contemplated and pre-approved the assignment of one franchise to the other franchisor by waiving any requirement for prior City consent. Exhs. 2, 3, ¶ 11.7(B). Again, this was within the City's power to limit competition. NRS 268.081(3) (allowing the City to completely "displace" competition for garbage services).

Instead of addressing injury to competition, Plaintiffs argue that they should have gotten Zone 2, because they were the largest solid waste/recycling business after Castaway. Opposition to Motion for Summary Judgment, p. 3:21-24. Plaintiffs then allege that Defendants' conduct constituted a "detriment to Plaintiffs." Am. Compl. ¶ 95. Again, Plaintiffs never allege or argue that Defendants' conduct constituted a detriment to overall competition in the market. Even if such allegations were made, Plaintiffs are

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barred from alleging an antitrust injury to competition because there is no competition in the market aside from what the City chooses to grant. The City restricted the competition—not the Defendants. Finally, Plaintiffs' complaint is premised on the theory that, if Plaintiffs prevail, the franchises should be structured so that Plaintiffs have one zone and Reno Disposal has the other. Thus, Plaintiffs claimed harm focuses solely on their speculative harm as an alleged "competitor" and not as to any harm caused "to competition" in the market.

In addition, Plaintiffs cannot circumvent this fatal flaw in this case by now attempting to argue that they are bringing this action to create more competition in the market. This is because the City has regulated the market so that there cannot be any competition. Accordingly, as a matter of law, Plaintiffs cannot allege an antitrust injury because it is the City's conduct creating the monopoly, not Defendants. Therefore, Plaintiffs' do not have standing to assert any claim under 598A. Again, summary judgment in favor of Defendants is warranted as a matter of law.

VIII. CONCLUSION.

For the foregoing reasons, Defendants respectfully request that this Court grant summary judgment in their favor and against Plaintiffs on Plaintiffs' remaining claim.

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71 Washington St.
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(775) 329-3151

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

DATED this 10th day of May, 2016.

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

MARK G. SIMONS
THERESE M. SHANKS
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 **DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY** 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.
WINTER STREET LAW GROUP
Attorneys for Plaintiffs

__X__ by personal delivery/hand delivery addressed to:

Del Hardy, Esq.
Stephanie Rice, Esq.
WINTER STREET LAW GROUP
96 Winter Street
Reno, Nevada 89503
Attorneys for Plaintiffs

____ by facsimile (fax) addressed to:

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

DATED this 10th day of May, 2016.

Employee of Robison, Belaustegui, Sharp & Low

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

EXHIBIT LIST

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FILED
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Jacqueline Bryant
Clerk of the Court
Transaction # 5508600 : csulezic

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF GREG MARTINELLI IN SUPPORT OF DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT RE: LIABILITY

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

I, Greg Martinelli, being duly sworn, depose and state under penalty of perjury the following:

1. I am the area manager for Reno Disposal Company, Inc., dba Waste Management ("Reno Disposal").

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

3. I submit this affidavit in support of Defendants' Second Motion for Summary Judgment re: Liability ("Motion"), to which this Affidavit is attached as Exhibit 1.

4. Following the award of the franchises, Reno Disposal's parent company acquired Castaway, and, as part of the transaction, Castaway assigned its franchise for Zone 2 to Reno Disposal.

5. Exhibit 2 to the Motion is a true and correct copy of Reno Disposal's Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable Material.

6. Exhibit 3 to the Motion is a true and correct copy of Castaway's Exclusive Service Area Franchise Agreement Commercial Solid Waste and Recyclable Material.

7. Since 1994 until the creation of the new franchises in November 2012, Reno Disposal held an exclusive franchise with the City to service all of Reno's "garbage" disposal service requirements.

8. The new franchise agreements were adopted by the City to expand upon the waste to be collected by franchised waste haulers and to implement single stream recycling in the City.

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9. Of note, "garbage" is now a subcategory of all "solid waste" that is subject to the new franchise agreements.

10. The purpose of the April 19, 2007 break out session was because the City wanted to explore the ability to efficiently and cost effectively recapture recyclable products from the stream of waste and to return the "green" recyclable material back into the stream of commerce. In addition, the City wanted to expand the types of waste that would be subject to the City's franchise powers.

11. In addition to the numerous City Council meetings, City Staff participated extensively in the creation of and implementation of the processes to allow for single stream recycling and the new franchise agreements issued by the City in November, 2012.

12. Exhibit 6 to the Motion are true and correct excerpts of Nevada Recycling and Salvage, Ltd.'s 30(b)(6) deposition transcript.

13. Exhibit 7 to the Motion are true and correct excerpts of Rubbish Runners' 30(b)(6) deposition transcript.

14. Exhibit 8 to the Motion are true and correct excerpts of Dave Aiazzi's deposition transcript.

15. As detailed in Exhibit 5 to the Motion, the City's Memo of Activities, on October 10, 2012 and October 24, 2012 (the "October Meetings"), the City Council conducted meetings to discuss the franchise agreements and to discuss modification to City ordinances to allow for the implementation of the new franchise agreements designed to address the City's goal of going "green" and implementing single stream recycling.

16. In addition to the formal City Council meetings, City staff conducted "stakeholder" meetings that included City Staff, City Council members as well as Reno Disposal, Castaway and the small haulers like RR.

17. Exhibit 11 to the Motion is a true and correct copy of the sign-in sheet for one stakeholder meeting that occurred on October 15, 2012, identifying RR as

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participating along with RR's legal counsel.

18. Shortly after the City granted Reno Disposal a monopoly in Zone 1 and Castaway a monopoly in Zone 2, Reno Disposal's parent company entered into an agreement to acquire certain assets of Castaway in December 2012.

19. Exhibit 12 to the Motion is a true and correct copy of the September 30, 2013, Assignment and Assumption.

20. Exhibit 13 to the Motion are true and correct excerpts of William Biesler's deposition transcript.

21. Exhibit 14 to the Motion is a true and correct copy of Gary Duhon's October 3, 2013 letter to the City.

22. Exhibit 15 to the Motion is a true and correct copy of Jason Geddes' August 19, 2013 email to me.

23. Exhibit 16 to the Motion is a true and correct copy of the October 4, 2013 City letter of formal approval.

24. Exhibit 17 to the Motion is a true and correct copy of the Exempt Haulers List.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this ___ day of May, 2016.

GREG MARTINELLI

Subscribed and sworn to me
on this ___ day of May, 2016
by Greg Martinelli.

NOTARY PUBLIC

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Transaction # 5508600 : csulezic

EXHIBIT 2

EXHIBIT 2

11-07-12
G.8.6

EXCLUSIVE SERVICE AREA FRANCHISE AGREEMENT
COMMERCIAL SOLID WASTE AND
RECYCLABLE MATERIALS

THIS AGREEMENT is made and entered into in Reno, Nevada, on this 7th day of November, 2012 ("Effective Date"), between the City of Reno, a political subdivision of the State of Nevada, (hereinafter called "City"), and Reno Disposal Company, Inc., a Nevada corporation (hereinafter called "Contractor"), with reference to the following facts.

WITNESSETH:

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

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

WHEREAS, Chapter 5.90 of the Reno Municipal Code authorizes the City Council to award an exclusive franchise for collection, hauling and disposal of all Solid Waste and Recyclable Material, as defined herein, within the City; and

WHEREAS, the City of Reno City Council has determined that the public health, safety and welfare of its residents require that certain commercial Solid Waste and Recyclable Material Collection Services (as defined herein) be provided under one or more Commercial Franchise Agreements (as defined herein) by current service providers meeting the Contractor Qualifications (as defined in this Agreement), which Commercial Franchise Agreements provide the exclusive right and obligation to Contractor and other service providers to provide Collection Services in Exclusive Service Areas (as defined herein) in the City.

WHEREAS, Contractor has represented and warranted to City that it has the experience and qualifications to provide the Collection Services;

WHEREAS, City declares its intention of maintaining reasonable rates for reliable, proven collection and transportation of Solid Waste and Recyclable Material in an environmentally sound manner, within the City;

WHEREAS, City and Contractor have agreed to enter into this Agreement to set forth the terms, covenants and conditions relating to the provision of the Collection Services by Contractor.

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

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings. To the extent of any inconsistency between the definitions of the following terms provided in this Article and the use or definition of those terms that may appear in related City, County, State or Federal laws, ordinances or regulations, the following definitions shall be used in the interpretation of this Agreement.

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor. "Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

"Agreement" means this Agreement between the City and Contractor, including all exhibits and future amendments.

"Applicable Law" means all Federal, State and local laws, ordinances, regulations, rules, orders, judgments, decrees, resolutions, permits, approvals, or other type of requirement imposed by any governmental agency having jurisdiction over the collection and disposition of Solid Waste or Recyclable Materials, including those that are in force and effective as of the Effective Date, as well as such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the Effective Date and during the Term of this Agreement.

"Approved Recyclable Materials" means the Recyclable Materials approved for recycling under this Agreement, which are listed on Exhibit A attached hereto and which may be changed from time to time by agreement of Contractor and City, excluding Excluded Recyclable Materials.

"Bin" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, having a capacity less than seven (7) cubic yards and that generally has a tight-fitting, attached lid, and is designed to be dumped mechanically into a front-loading or rear-loading Collection vehicle.

"Bulky Items" means all discarded waste matter that is too large to be placed in a Cart, including appliances not containing chlorofluorocarbons, furniture, carpets, mattresses, and similar large items that require special handling due generally to their size, excluding Excluded Materials.

"Cart" means an industry standard, wheeled Container of approximate thirty-five(35), sixty-four (64), and ninety-six (96) gallon capacity provided by Contractor to Customers for Collection of Solid Waste or Recyclables.

"Cart Service" means provision of Collection Services using Carts.

"City Collection Services" means the Collection Services provided by Contractor to City as provided in Section 3.7.

"City Council" means the governing legislative body of the City of Reno.

"Change in Law" means the following events or conditions:

i) Enactment, adoption, promulgation, issuance, modification, or written change or initial public announcement or enforcement in administrative or judicial interpretation of any Applicable Law occurring on or after the Effective Date; or

ii) Order or judgment of any governmental body, issued on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Contractor; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

"Change in Scope" is a material change in the type, extent, or level of Collection Services or the Exclusive Service Area.

"Collection" (and "Collect," "Collected and "Collecting") means the pickup and removal by Contractor from Commercial Customers in the Exclusive Service Area of Solid Waste and Approved Recyclable Materials and transportation and delivery of such material to an appropriate Designated Facility for such materials.

"Collection Materials" means all Solid Waste and Approved Recyclable Materials generated, produced or accumulated by Commercial Customers, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Collection Services" means the Collection of Collection Materials from Commercial Customers in Contractor's Exclusive Service Area to be provided by Contractor hereunder and more fully described in the Scope of Services, excluding i) Excluded Materials, ii) Excluded Recyclable Materials, iii) Exempted Drop Box Materials and iv) Exempted Hauler Account Materials.

"Commercial Activity" means all activity of a business, commercial, industrial, financial, institutional, governmental or similar nature, including without limitation Multi-Family Complexes. Commercial Activity hereunder is intended to be defined and interpreted broadly to include all activities other than residential activities and uses (other than Multi-Family Complexes).

"Commercial Customers" means all non-residential Customers including businesses, institutions, governmental agencies conducting Commercial Activity in Contractor's Exclusive Service Area, including Multi-Family Complexes.

"Commercial Franchise Agreements" means this Agreement and the other similar agreement between the City and the other franchised service provider for the collection and transportation of Solid Waste and Recyclable Materials from Commercial Customers in exclusive service areas in the City.

"Community Collection Location(s)" means an area in which the Contractor has placed a Compactor or Container in a central location to service multiple businesses at the specific request of the City or certain Commercial Customers, and agreed to by Contractor.

"Compactor," "Compactors," "Compactor Service" means any Bin or other Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method.

"Construction and Demolition Debris" means debris resulting from construction, remodeling, repair, renovation, demolition, excavation, dredging, grubbing and related cleanup of residential, commercial or governmental buildings or other structures and pavement, including without limitation construction materials, rubble, bricks, concrete, other masonry materials, soil, rock, lumber, rebar, paving materials and vegetation, including tree stumps. Materials resulting from landscape maintenance are not Construction and Demolition Debris.

"Consumer Price Index" or "CPI" means the Consumer Price Index, All Urban Consumers, U.S. City Average-Item: Garbage and Trash Collection (1982=100) as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index.

"Containers" means Carts, Bins, and Drop Boxes or other containers provided by Contractor and identified on the Scope of Services for use to provide Collection Services.

"Contractor" means the Party identified as Contractor on page 1 of this Agreement.

"City" means the legal entity known as the City of Reno, Nevada, a political subdivision of the State of Nevada.

"City Representative" means the City Manager, or his/her designee, who may be a City official, employee or an agent of City specifically designated to serve as the City Representative and authorized to act on behalf of the City hereunder.

"Customer" means the persons or entities receiving Collection Services.

"Designated Facility" means the transfer station, disposal facility, material recovery facility, eco-center recycling facility or any similar facility designated by the City in accordance with that certain long-term Solid Waste Transfer and Disposal Agreement entered into by the City , pursuant to which the City has provided for the environmentally safe and sound handling, processing, transfer, transport, recycling and Disposal of all Solid Waste and Approved Recyclable Materials generated within the City, and where Contractor shall be required to deliver all Collection Materials.

"Disposal Agreement" is the agreement defined in Section 4.4 of this Agreement, and all amendments, extensions, renewals and replacements thereof.

"Disposal," "Disposing," "Dispose," or "Disposed" means the final landfill disposal of Solid Waste Collected by Contractor, but does not include other beneficial uses such as alternative daily cover.

"Diverted" means the tonnage or percentage of Collected Collection Materials that are not Disposed.

"Drop Box" means an industry standard receptacle for Solid Waste or other materials provided by the Contractor, generally having a capacity equal to or greater than ten (10) cubic yards.

"Effective Date" means the date on which this Agreement is fully executed by the Parties, as reflected on page 1 of this Agreement.

"Excluded Materials" means: (i) Hazardous Waste; (ii) Medical and Infectious Waste; (iii) volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, including without limitation batteries; (iv) waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of Federal, State, or local law, regulation or ordinance, including land use restrictions or conditions; (v) waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; (vi) electronic waste determined by Contractor to be Excluded Materials (including without limitation television sets, computers and computer components); (vii) materials collected and processed at rendering facilities; (viii) Special Waste, (ix) incidental amounts of Self-Haul materials which are delivered by an individual directly to a transfer station, recycling facility or Disposal facility in a manner consistent with City ordinances and codes and other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and Items Contractor determines to be excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States revenue Code Section 501(c) 3 or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

"Excluded Recyclable Materials" means either or both i) Approved Recyclable Materials from Commercial Activity that are a) separated by the generator thereof from all other materials and which contain not less than ninety percent (90%) Approved Recyclable Materials and b) sold by the generator thereof directly to a buyer of Recyclable Material at market price, title to which materials transfers to the buyer upon collection or pickup of such materials, but excluding such materials collected and transported as a service, and ii) any other Recyclable Materials that are not Approved Recyclable Materials.

"Exclusive Service Area" means the geographic territory within the City in which the Contractor shall have the exclusive right and obligation to conduct Collection Services, as described on Exhibit B attached hereto, as such geographic territory may change from time to time as provided under this Agreement. When used in the plural in this Agreement, the term ("Exclusive Service Areas") refers to all such territory within the City considered collectively, within which exclusive Collection Services are to be provided, either by Contractor pursuant to this Agreement, or by another service provider pursuant to another Commercial Franchise Agreement. All the Exclusive Service Areas in the City are described on Exhibit B attached hereto. The Exclusive Service Areas shall be subject to the boundary adjustment process described in Section 3.12 hereof. In addition, if after the Effective Date land is annexed or otherwise added to the City of which is not then in one of the Exclusive Service Areas ("Annexed Land"),

the Annexed Land shall be added to one or more Exclusive Services Areas as follows. If the Annexed Land is contiguous to the Exclusive Service Area of only one service provider under a Commercial Franchise Agreement, then the Annexed Land shall be added to that service providers Exclusive Service area. If the Annexed Land is contiguous to the Exclusive Service Area of more than one service provider, or if the Annexed Area is not contiguous to the City, the Annexed Area shall be divided and added to the respective Exclusive Service Areas in proportion to the respective Proportionate Share of each service provider and City, Contractor and such other service providers will negotiate in good faith to agree on the allocation of the Annexed Area; provided that if such parties cannot agree within 60 days on the allocation of the Annexed Area, the determination of the City in accordance with this Section shall be final.

"Exempted Drop Box" means an industry standard, open top metal roll-off container (also sometimes referred to as a "lugger" or "dino"), equipped for being mechanically rolled onto a vehicle, for collection and transportation of Solid Waste or Recyclable Materials:

(i) With a capacity of not less than ten (10) cubic yards;

(ii) Which is delivered to and left at a Customer's site for deposit therein of Exempted Drop Box Materials, then picked up and transported to a materials processing or disposal facility for emptying; and,

(iii) Excluding a) Compactors, b) Bins, c) containers or receptacles emptied or serviced by front loader vehicles, d) any vehicle into which the materials are deposited at the time of collection at the collection site and e) any other container, receptacle or vehicle not described in subsections (i) and (ii) in this definition above.

"Exempted Drop Box Materials" means Solid Waste and Approved Recyclable Material collected and transported in an Exempted Drop Box using Exempted Drop Box Services, but excludes;

(i) Garbage; and,

(ii) Compacted Solid Waste and compacted Approved Recyclable Materials.

"Exempted Drop Box Services" means the collection and transportation by an Exempted Hauler of Exempted Drop Box Materials, using an Exempted Drop Box, performed as Temporary Service and excluding any collection or transportation that would replace, limit or reduce Permanent Service Collection by Contractor. The provision of Exempted Drop Box Services shall not limit or amend the obligation of Operators or other Commercial Customers to subscribe to Collection Services under Section 3.5 of this Agreement. Examples of Exempted Drop Box Services include (each of which are hereby excluded from the exclusive franchise of Contractor under this Agreement and which may be collected and hauled by Exempted Haulers using Exempted Drop Box Services), in each case by Exempted Haulers using an Exempted Drop Box, i) the collection and transportation of landscaping and related materials generated by landscaping, gardening, pruning, tree trimming and other landscape maintenance service providers ii) the collection and transportation of Exempted Drop Box Materials

generated at special events (but excluding materials which are the subject of Permanent Services at the event location), iii) the collection and transportation of Exempted Drop Box Materials under single occurrence service contracts or arrangements for collection and transportation of Exempted Drop Box Materials and iv) collection and transportation of Exempted Drop Box Materials generated in connection with occasional, irregularly scheduled cleanup and disposal by customers.

"Exempted Facility" means of Nevada Recycling & Salvage, a Nevada limited liability company, and its premises located at 1085 Telegraph Street, Reno, Nevada, or replacement premises thereof ("NRS").

"Exempted Facility Materials" means Collection Materials delivered to and accepted, processed, and recycled or disposed by the Exempted Facility i) in an amount equal to or less than the Exempted Facility Material Limit and ii) excluding Garbage.

"Exempted Facility Materials Limit" for NRS shall be a total annual volume of Exempted Facility Materials from Contractor and the service provider under the other Commercial Franchise Agreement not exceeding One Hundred Twenty Five Thousand 125,000 cubic yards, which limit amount shall be increased annually in proportion to the percentage increase in the GDP. The first annual increase shall occur on January 1, 2014 ("Limit Adjustment Date"). The Exempted Facility Materials Limit shall be increased in proportion to the percentage increase in the GDP over the most recent 12 month period ending on October 1 of the year preceding the Limit Adjustment Date (or the most recently published GDP for a 12 month period ending prior to October 1 of the preceding year). The calculation of the increase shall be provided by the Exempted Facility to the City no later than December 1 of the year preceding the Limit Adjustment Date. For purposes hereof, "GDP" shall mean the Gross Domestic Product for the Reno-Sparks Metropolitan Area, all industries, as published by the U.S. Department of Commerce. The term Exempted Facility Materials Limit as used herein shall mean the Exempted Facility Materials Limit as adjusted by increases in the GDP as determined in accordance with this definition.

"Exempted Haulers" means persons or entities: (i) licensed as of October 24, 2012 by the City and the Washoe County Health District to collect and transport Solid Waste and Recyclable Materials in the City of Reno; and, (ii) actively engaged, as its primary business, in the collection and transportation of Solid Waste and Recyclable Materials in the City of Reno as of October 24, 2012, including Contractor. All Exempted Haulers are listed on Schedule 1 attached hereto.

"Exempted Hauler Account" means a contract or account i) established on or before October 24, 2012 and continuing as of October 24, 2012; ii) under or pursuant to which contract or account an Exempted Hauler has provided collection and transportation of Solid Waste and/or Recyclable Materials from Commercial Activity on a regularly scheduled, recurring basis; iii) to a customer identified on Schedule 1; and iv) approved by the City. All approved Exempted Hauler Accounts of each Exempted Hauler, including the name and address of each customer to which service is provided for each Exempted Hauler Account, is identified on Schedule 1 attached hereto.

"Exempted Hauler Account Material" means Solid Waste and Recyclable Material collected from an identified customer under an Exempted Account and transported by such Exempted Hauler using Exempted Hauler Account Services, but excluding Garbage.

"Exempted Hauler Account Services" means the collection and transportation by an Exempted Hauler of Exempted Hauler Account Materials from an Exempted Hauler Account.

"Extension Term" means one or more extensions of the Term of this Agreement, as provided under Section 3.1(B).

"Food Waste" means all compostable pre-consumer and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and egg shells, and food-soiled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, paper milk cartons or other paper products accepted by the Contractor's selected composting facility or other processing facility and that has been Source Separated and placed in a Container for Recycling. Food Waste shall not include dead animals weighing over 15 pounds, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting or other processing facility. The materials accepted by composting site selected by Contractor may change from time to time and the definition of Food Waste shall change accordingly.

"Franchise Fee" means a uniform fee payable to the City and equal to a percentage of the Gross Receipts collected by Contractor, as established and adjusted by the Reno City Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement.

"Franchise Hauler Terms" means as provided in the Disposal Agreement.

"Garbage" means putrescible animal and vegetable waste resulting from the handling, storage, preparation, cooking and sale and serving of food and beverage, excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of Garbage with rubbish, trash or other waste matter, exclusive of items i) through viii) inclusive under the definition of Excluded Materials, renders the entire resulting mixture as Garbage.

"Green Waste" means Source Separated biodegradable materials including branches (less than three [3] inches in diameter), brush, cut flowers, dead plants, grass clippings, house plants, leaves, pruning's, shrubs, weeds, wood (uncoated and untreated), wood chips, yard trimmings, Christmas trees (placed in Carts/Bins, with no stands, flocking, and/or decorations, and cut into two (2)-foot sections) that has been placed in a Container for Recycling, excluding Excluded Materials.

"Gross Receipts" means the Rate Revenues actually received, including all money, cash, receipts, property or other thing of value collected by Contractor from Customers for the Collection Services described on the Scope of Services, but excluding any revenues, receipts or proceeds from other sources. Gross Receipts does not include proceeds from Special Services or from the sale of Recyclable Materials.

"Hazardous Waste" means hazardous waste as defined in Nevada Revised Statutes 459.430, hazardous substance as defined in Nevada Revised Statute 459.429 and other hazardous or toxic materials as defined under any other local, state or federal law.

"Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

"Multi-Family Complex" means a multiple-unit Residence with five (5) or more units, some of which are attached, which are billed collectively for Collection Services hereunder.

"Operating Standards" means the additional terms and conditions attached to this Agreement as Exhibit C which are made a part hereof and incorporated herein by reference and which shall be applicable to all service providers under all Commercial Franchise Agreements.

"Operative Date" means the date from and after which Contractor shall be responsible to provide Collection Services to Customers in accordance with the terms of this Agreement, which shall be no later than twelve (12) months after the Effective Date. The Operative Date shall be provided in writing by Contractor to City not less than 30 days prior to the estimated Operative Date.

Party" or "Parties" means City or Contractor individually, or City and Contractor, respectively.

"Permanent Services" means Collection Services that generally or usually occur on a regularly scheduled, recurring basis.

"Permitted Transferee" means i) an Affiliate of Contractor and ii) a service provider under another Commercial Service Agreement.

"Paper Shredder Materials" means paper and similar paper products and the products and residue resulting from shredding thereof collected and shredded by properly licensed service providers providing paper shredding services.

"Proportionate Share" of Contractor is Eighty and 50/100 percent (80.50%).

"Qualifications" means the Assignee Qualifications, as defined in Section 11.7 of this Agreement.

"Qualified Service Contract" means as provided in Section 3.13 of this Agreement.

"Rate Revenues" means the revenues from the Rates billed to and collected from Customers by Contractor for provision of Collection Services.

"Rates" or "Rate" means the amount each and all Customers shall be charged by Contractor for Collection Services under this Agreement as provided on the Scope of Services and the Transition Rates applicable during the Transition Period, which Rates or Rate may be adjusted from time to time during the Term as provided under this Agreement.

"Recyclable Materials" or "Recyclables" means materials that can be processed and returned to the economic mainstream in the form of raw materials or products, including without limitation materials that become capable of being recycled using new methods, processes or technology developed or

implemented after the Effective Date, including Source Separated Green Waste and Source Separated Food Waste.

"Recycle", "Recycled", "Recycling" means the process of Collection, sorting, cleansing, treating and reconstituting of Recyclable Materials that would otherwise be disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products.

"Recycling Container(s)" means Containers shown on the Scope of Services, provided and designated by Contractor for use for Recycling of Recyclable Materials, and identified for Recycling use by labels or signs on the Recycling Container specifying Recycling use, by using Recycling Containers or portions thereof of a different color than Containers used for Collection of Solid Waste, or by other means.

"Recycling Facility" means a fully permitted, Designated Facility at which Recycling occurs of Recyclable Materials.

"Residue" or "Residuals" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as contaminated paper, putrescible waste, and other debris.

"Return on Revenue" means as provided in Section 6.2 hereof.

"Scope of Services" means the Scope of Services attached hereto as Exhibit D, which specifies each category or type of Collection Services, the Rates applicable to the Collection Services, certain other charges and fees which may be charged by Contractor, and certain other terms.

"Self-Haul" or "Self-Hauler" means that any generator of Recyclable Materials from Commercial Activity may itself (for a commercial generator, this means performance of all collection and transportation services by an individual listed on its payroll as an employee), but not by or through an agent, contractor or other third party, collect, transport and deliver those Recyclable Materials generated within the City by that generator only; provided, however, all Self-Haul owners and occupants shall be required to subscribe to Collection Services as provided under this Agreement, unless exempted under Section 3.5 of this Agreement.

"Single-Stream Recycling" means the use of a single Container to collect Source Separated Recyclables on a co-mingled basis.

"Snapshot Program" means a photo documentation program used by Contractor to notify Commercial Customers who are producing Collection Materials in excess of their current service level, which subjects the Customer to additional fees and charges for the collection of the excess material.

"Solid Waste" means all putrescible and nonputrescible waste matter in solid or semi-solid form, including but not limited to rubbish, Garbage, ashes, refuse, and Residue, but excluding Excluded Materials.

"Source Separated" means the separation of any material or category of materials from other materials by the generator at the point or place of generation.

"Source Separated Recyclables" means Approved Recyclable Materials that are separated by the generator thereof from all materials other than Approved Recyclable Materials and properly prepared and placed together in a Recycling Container for Collection.

"Special Services" means various collection and other services to which Contractor is not granted the exclusive right of Collection under this Agreement and of which Contractor is not required to provide Collection under this Agreement, but which services Contractor at its option may offer to its Customers and to others anywhere in the City at rates and charges determined by Contractor.

"Special Waste" includes any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste. As defined for purposes of this Agreement, "Special Waste" shall be deemed to include, without limitation, all of the following: flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; fluorescent tubes; and abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires and vehicle batteries.

"Subsidy Fee" means a uniform fee equal to Contractor's Proportionate Share of the Balancing Payment, as defined under the Exclusive Franchise Agreement for Residential Solid Waste and Recyclable Materials between Contractor and City of approximately even date with this Agreement, as the Balancing Payment may be adjusted from time to time.

"Temporary Service" means Exempted Drop Box Service that is: (i) temporary and not recurring; (ii) provided for a period of 60 days or less; and, (iii) excludes Permanent Services.

"Term" means the period provided in Section 3.1(A), as extended by any Extension Terms under Section 3.1(B).

"Transition Period" means the period commencing on the Effective Date and ending on January 1, 2015.

"Transition Rates" means the Rates applicable during the Transition Period to each commercial customer who is a party to Qualified Service Contract, as more fully provided in Section 3.13 of this Agreement.

"Working Days" means, unless otherwise specified, Monday through Friday, excluding legal holidays.

ARTICLE 2
CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Contractor is qualified to transact business in the State of Nevada and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. Each individual signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Contractor, such that this Agreement shall constitute a valid and binding obligation of Contractor enforceable in full accordance with its terms, except only to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights.

C. NO CONFLICT

Contractor warrants and represents that, to Contractor's knowledge, as of the Effective Date neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

D. INFORMATION SUPPLIED BY CONTRACTOR

To Contractor's knowledge the information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's financial information, is true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

E. CONTRACTOR QUALIFICATIONS

Contractor warrants and represents it has the experience, financial capability and operational capability to perform the Contractor's duties and obligations under this Agreement and meets or exceeds the Contractor Qualifications.

2.2 CONTRACTOR QUALIFICATIONS, ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES

Prior to the Effective Date, City requested collective advice of certain commercial solid waste haulers meeting the Contractor Qualifications and then providing solid waste and related hauling services concerning recommended boundaries for the Exclusive Service Areas. The City established the location and boundaries of each Exclusive Service Area in proportion to each qualified service provider's then existing Proportionate Share of the permanent revenues from hauling services collected by all the qualified service providers in Reno. Contractor and the other qualified service providers participated in the process created by and under the supervision of the City. The recommendations of the service providers were strictly advisory and the City reserved full authority to accept, reject or modify the recommendations, to establish Exclusive Service Area boundaries of the City's choosing, or to continue to operate without Exclusive Service Areas consistent with its obligations under applicable law. Contractor stipulates that it participated in the City's process in good faith, and Contactor 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, Contactor 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;

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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^{th}) 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 Contractors 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 changing 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 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 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 Contractors 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 Contractors 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

CITY OF RENO CORPORATE SEAL WASHOE COUNTY, NEVADA

APPROVED AS TO LEGAL FORM:

By:
City Attorney's Office

CONTRACTOR

Reno Disposal Company, Inc., a Nevada corporation

By:

Title: Vice President

Date: 11/16/12

List of Exhibits:

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

EXHIBIT A
List of Approved Recyclable Materials

EXHIBIT A
COMMERCIAL FRANCHISE AGREEMENT
APPROVED RECYCLABLE MATERIALS

1. Newspaper (including inserts, coupons, and store advertisements)
2. Chipboard
3. Corrugated cardboard
4. Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
5. Glass containers (including brown, clear, and green glass bottles and jars)
6. Aluminum (including beverage containers, food containers, small scrap metal)
7. Steel or tin cans
8. Plastic containers classified under Resin Identification Code Nos. 1 through 7, inclusive.
9. Food Waste (only if source separated and placed by the generator in a separate Container designated by Contractor for Food Waste)
10. Any other materials mutually agreed to by the CONTRACTOR and the City.

To qualify as Approved Recyclable Materials, all Recyclable Materials must be reasonably clean and otherwise in a condition acceptable to commercial recycling facilities. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) 10% or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for placement of Contaminated Recyclable Materials in a Recycling Container for Collection, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

Exhibit B
Exclusive Service Area of Contractor

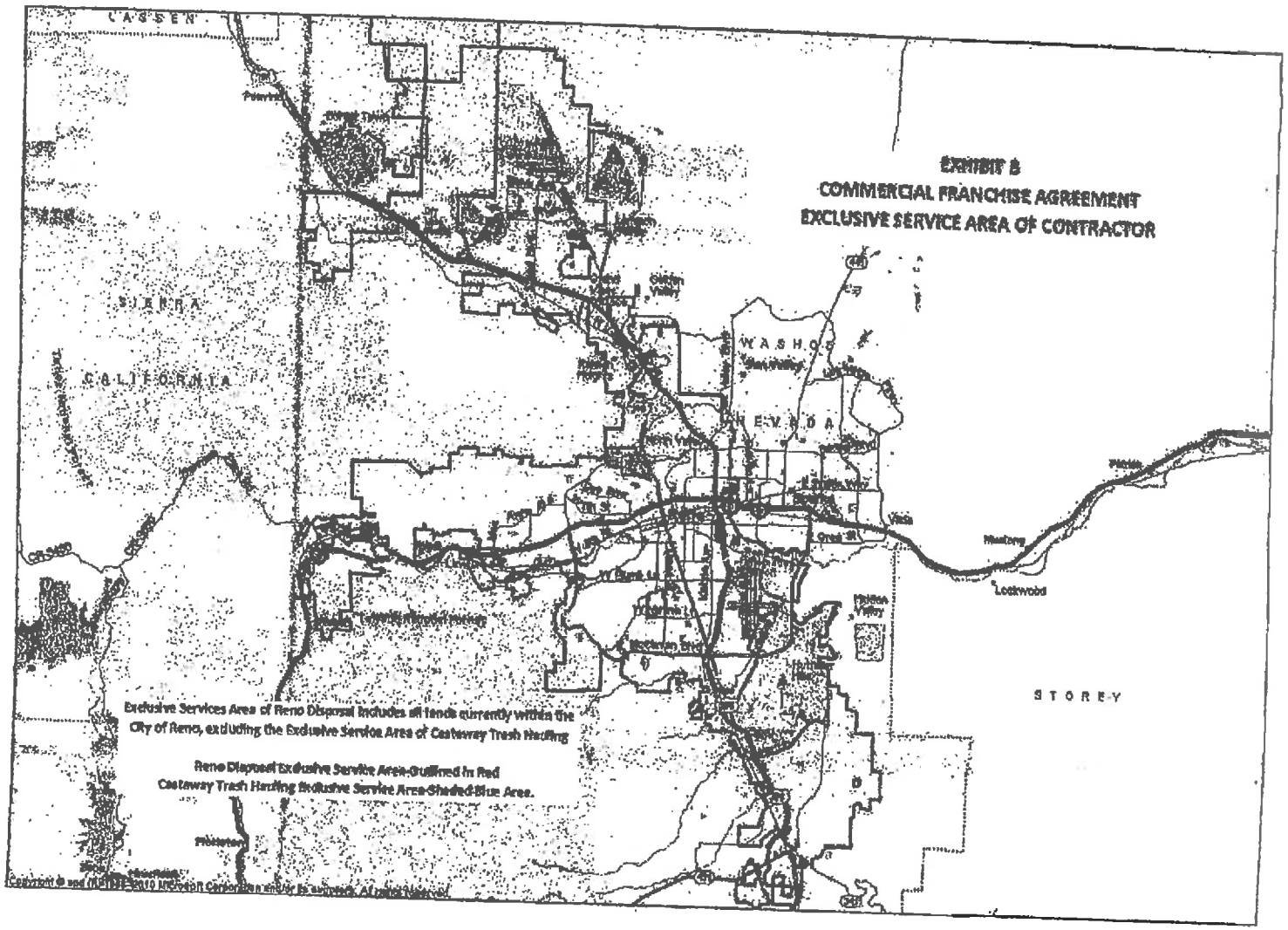
EXHIBIT B
COMMERCIAL FRANCHISE AGREEMENT
EXCLUSIVE SERVICE AREA OF CONTRACTOR
LASSEN
SIERRA
CALIFORNIA
WASHOE
NEVADA
Verdi
Mustang
Lockwood
STOREY
Exclusive Services Area of Reno Disposal Includes all lands currently within the City of Reno, excluding the Exclusive Service Area of Costaway Trash Hauling
Reno Disposal Exclusive Service Area-Outlined in Red
Costaway Trash Hauling Exclusive Service Area-Shaded Blue Area.

WM000057

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

11/11/2012

Bin Collection Services

Bin Collection Services-Solid Waste

Bin Capacity	Monthly Rate by Collection Frequency per Week[1]						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	$ 133.15	$ 224.27	$ 314.48	$ 406.78	$ 496.91	$ 586.91	N/A
3 Cubic Yards	$ 157.62	$ 273.79	$ 386.45	$ 500.69	$ 613.30	$ 729.91	$ 819.85
4 Cubic Yards	$ 187.46	$ 333.13	$ 462.40	$ 594.21	$ 733.67	$ 866.02	$ 1,993.52
6 Cubic Yards	$ 272.32	$ 488.05	$ 674.39	$ 865.29	$ 1,119.79	$ 1,374.29	$ 1,696.90

Bin Collection Services-Approved Recyclable Materials

Bin Capacity	Monthly Rate by Collection Frequency per Week[1]						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	$ 93.21	$ 156.99	$ 220.12	$ 284.75	$ 347.84	$ 410.84	N/A
3 Cubic Yards	$ 110.47	$ 191.65	$ 271.92	$ 350.48	$ 429.71	$ 510.94	$ 643.90
4 Cubic Yards	$ 131.18	$ 226.19	$ 323.68	$ 415.95	$ 513.57	$ 607.61	$ 831.89
6 Cubic Yards	$ 190.62	$ 322.46	$ 472.07	$ 605.70	$ 783.85	$ 962.00	$ 1,187.55

[1] Dumping and replacing the specified capacity Bin the designated frequency per week; monthly charge per Bin

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JA002734

Exhibit D
Commercial Franchise Agreement
Scope of Services

Bin Collection Services (Cont.)

Additional Dump of Container: Solid Waste and Approved Recyclable Materials [2]

[illegible]	[illegible]	[illegible]
2 Yard	$ [illegible]	$ [illegible]
3 Yard	$ [illegible]	$ [illegible]
4 Yard	$ [illegible]	$ [illegible]
6 Yard	$ [illegible]	$ [illegible]

Other Services and Fees

Service	[illegible]
Trip Charge[3]	$ [illegible]
4 Yard Bin Special - Single Service[4]	$ [illegible]
6 Yard Bin Special - Single Service[4]	$ [illegible]

[2] Additional dump of existing Container Bin on regularly scheduled service day and non-service day
[3] Inability to access or service Bin
[4] Delivery and pick up Bin-single service

WM000063

JA002735

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/21/2012

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	$ 29.63	$ 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	$ 49.33	$ 80.69	$ 120.99	$ 161.32	$ 201.65	$ 241.98	$ 282.31
2 - 64 Gal Carts	$ 80.69	$ 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	$ 513.89	$ 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*						
	1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X week
1 - 96 Gal Cart	$ 17.48	$ 34.97	$ 52.46	$ 69.95	$ 87.43	$ 104.92	$ 122.41
2 - 96 Gal Carts	$ 34.97	$ 69.95	$ 104.92	$ 139.90	$ 174.87	$ 209.84	$ 244.82
3 - 96 Gal Carts	$ 52.46	$ 104.92	$ 157.38	$ 209.84	$ 262.30	$ 314.76	$ 367.22
4 - 96 Gal Carts	$ 69.95	$ 139.90	$ 209.84	$ 279.79	$ 349.74	$ 419.69	$ 489.63

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

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JA002736

Exhibit D
Commercial Franchise Agreement
Scope of Services

11/11/2012

Drop Box and Compactor Collection Services

Delivery and Permanent Collection Services of Approved Recyclable Materials and Solid Waste

Drop Box Capacity	Rate per Service*
14 Yard Closed Top	$ 190.65
20 Yard Closed Top	$ 207.00
30 Yard Closed Top	$ 223.35
Drop Box Initial Delivery Fee	$ 75.00

Drop Box Capacity	Rate per Service*
14 Yard Open Top	$ 176.25
20 Yard Open Top	$ 193.58
30 Yard Open Top	$ 209.78
Drop Box Initial Delivery Fee	$ 75.00

Compactor Capacity	Rate per Service*
10 Yard	$ 405.00
12 Yard	$ 420.00
14 Yard	$ 435.00
15 Yard	$ 450.00
16 Yard	$ 465.00
20 Yard	$ 480.00
22 Yard	$ 495.00
24 Yard	$ 510.00
28 Yard	$ 525.00
30 Yard	$ 540.00
35 Yard	$ 555.00
40 Yard	$ 570.00
Delivery charge	$ 75.00

*Pickup, dumping, and replacing the specified capacity Drop Box – single service

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JA002737

Exhibit D
Commercial Franchise Agreement
Scope of Services

10/11/2012

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	$ 14.33	Plastic liner placed inside the Container before material loading
Demurrage/Inactivity	$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning-Rinse	$ 21.00	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 place in the street
Container Relocation	$ 75.00	Relocation of the Container on the Customer's property
Snap Shut fee	$ 75.00	Fee for each occurrence of overloading Container such that lid does not completely close
Authorize/Re-activation fee	$ 40.00	Charge to open a new service or reopen a closed service
Slip Out charge	$ 75.00	Fee for each occurrence to retrieve material lodged in Container
Enclosure/lock fee	$ 7.50	Fee per month for opening enclosure gates or unlocking Container
Locking container	$ 17.00	One time charge to install locking mechanism on container
Container Swap	$ 75.00	Container exchange (Swap fee not incl.)
Will Service letter	$ 65.00	Charge to provide a will serve letter for new development
Food Waste:		
64 gallon Cart	$ 59.41	Rate per service for a Food Waste Recycling Cart
3 yard Bin	$ 107.28	Rate per service for a Food Waste Recycling Bin

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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 and 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.