

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

2 RENO DISPOSAL COMPANY, INC., a
3 Nevada Corporation,

4 Petitioner,

5 vs.

6 THE SECOND JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF WASHOE,
8 and THE HONORABLE KATHLEEN
9 DRAKULICH, DISTRICT JUDGE,

10 Respondents.

11 GREEN SOLUTIONS RECYCLING, LLC, a
12 Nevada limited liability company; NEVADA
13 RECYCLING AND SALVAGE, LTD., a
14 Nevada limited liability company; AMCB, LLC,
15 a Nevada limited liability company dba
16 RUBBISH RUNNERS,

17 Real Parties in Interest (Defendants)

18 CITY OF RENO

19 Real Parties in Interest (Counter
20 Defendant)

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**SUPREME COURT CASE
NO: _____**

**Second Judicial District
Court Case No. CV17-00143**

**PETITIONER'S
APPENDIX VOL. 2**

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CHRONOLOGICAL

<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
Order (2 nd Judicial Case No. CV15-00497)	9/19/16	1	PA_0001-0006
GSR's Opposition to Defendants' Motion to Dismiss (Dkt 20)	11/30/16	1	PA_0007-0023
Order (on Motion to Dismiss) (ECF Dkt. #47)	3/27/17	1	PA_0024-0030
GSR's First Amended Complaint (ECF Dkt. #48)	4/26/17	1	PA_0031-0044
GSR's Motion to Stay or in the Alternative Motion to Dismiss	6/30/17	1	PA_0045-0087
Order After Hearing Denying Motion for Stay or in the Alternative Motion to Dismiss	11/13/17	1	PA_0088-0094
GSR's Answer to Complaint and Counterclaim	12/4/17	1	PA_0095-0130
Counterdefendants Reno Disposal's, WMON's and WMNS' Special Motion to Dismiss Counterclaims Pursuant to NRS 41.660	1/30/18	1	PA_0131-0138
Counterdefendant City of Reno's Special Motion to Dismiss Pursuant to NRS 41.660 and Joinder in Other Counterdefendants' Special Motion to Dismiss	2/5/18	1	PA_0139-0184

Joint Case Management Report (Dkt. 92)	2/21/18	1	PA_0185-0195
Reno Disposal's First Amended Verified Complaint	3/9/18	2	PA_0196-0317
Excerpts of the Deposition of Richard C. Lake	7/16/18	2	PA_0318-0332
Order Affirming (134 Nev. Advance Opinion 55)	8/2/18	2	PA_0333-0340
Order Staying All Proceedings Sua Sponte	8/6/18	2	PA_0341-0344
Reno Disposal's Motion to Vacate Order to Stay	1/25/19	2	PA_0345-0394
City of Reno's Notice of Non-Opposition to Motion to Vacate Order to Stay	2/8/19	2	PA_0395-0397
Order Denying Motion to Vacate Stay	4/18/19	3	PA_0398-0403

ALPHABETICAL

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City of Reno's Notice of Non-Opposition to Motion to Vacate Order to Stay	2/8/19	2	PA_0395-0397
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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 12th day of August, 2019, I caused service of a true and correct copy of the above and foregoing **PETITIONER'S APPENDIX VOL. 2** on all parties to this action by the method(s) indicated below:

X 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:

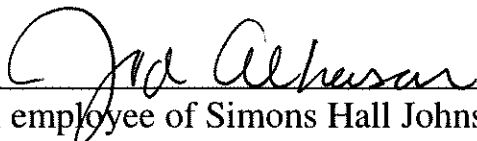
Honorable Kathleen Drakulich
Second Judicial District Court
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DATED this 12th day of August, 2019.


An employee of Simons Hall Johnston PC

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10 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 RENO DISPOSAL COMPANY, INC., a
13 Nevada Corporation,

CASE NO.: CV17-01143

DEPT. NO.: 1

14 Plaintiffs,

15 vs.

16 GREEN SOLUTIONS RECYCLING, LLC,
17 a Nevada limited liability company;
18 NEVADA RECYCLING AND SALVAGE,
19 LTD., a Nevada limited liability company;
20 AMCB, LLC, a Nevada limited liability
21 company dba RUBBISH RUNNERS
22 DOES I through X, inclusive,

23 Defendants.
24 _____/

25 **FIRST AMENDED VERIFIED COMPLAINT**

26 Reno Disposal Company, Inc. dba Waste Management ("Reno Disposal")
27 complains of Defendants and for causes of action as follows:

28 **I. PARTIES.**

1. Reno Disposal is a Nevada corporation properly registered to do business
in Washoe County, State of Nevada.

2. Green Solutions Recycling, LLC, is a Nevada limited liability company
("GSR").

1 3. Nevada Recycling and Salvage, Ltd., is a Nevada limited liability company
2 ("NRS").

3 4. AMCB, LLC, is a Nevada limited liability company doing business as
4 Rubbish Runners ("RR").

5 5. GSR, NRS and RR have common ownership and are affiliated
6 companies.

7
8 6. Plaintiff does not know the true names and capacities of defendants sued
9 herein as DOES 1 through 10, inclusive, and therefore sues these defendants by
10 fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of
11 these fictitiously named defendants are responsible in some actionable manner for the
12 damages herein alleged. Plaintiff requests leave of Court to amend its Complaint to
13 name the defendants specifically when their identities become known.

14
15 7. Upon information and belief, at all times herein mentioned, each of
16 the defendants were the agent and employee of the other defendants and were acting
17 within the course, scope and authority of said agency; each defendant approved,
18 ratified and authorized the acts of each of the other defendants as herein alleged; each
19 defendant was subject to a right of control by the other defendants; each defendant
20 was authorized to act for each and all of the other defendants; and each defendant is a
21 successor in interest to each of the other defendants

22
23 **II. WHAT IS A FRANCHISE.**

24
25 8. A "franchise" is an agreement entered into by and between a municipality
26 and/or state and a service provider that creates a public-sanctioned monopoly. The
27 authority for such franchises arises from a municipality's power to enact laws to protect
28 the safety, health, morals and general welfare of the public.

1 9. It is readily accepted that a local government can grant service providers
2 exclusive rights to provide services to local residents, *i.e.*, a franchise.

3 10. A common franchise is the exclusive right to collect and dispose of waste.

4 11. NRS 444.440 recognizes that it is Nevada public policy to vest
5 municipalities with the right to grant franchises over the collection and disposal of solid
6 waste in the local communities as follows:

7
8 **Declaration of state policy.** It is hereby declared to be the policy of this State
9 to regulate the collection and disposal of solid waste in a manner that will:

- 10 1. Protect public health and welfare.
11 2. Prevent water or air pollution.
12 3. Prevent the spread of disease and the creation of nuisances.
13 4. Conserve natural resources.
14 5. Enhance the beauty and quality of the environment.

15 Id.

16 12. NRS 268.081(3) recognizes and approves that an incorporated city, such
17 as the City of Reno, is statutorily entitled to displace and limit competition in the arena
18 of “[c]ollection and disposal of garbage and other waste”.

19 13. For obvious reasons, Nevada’s Legislature has deemed the collection and
20 waste generated by a city’s inhabitants is of major public import and that the city’s
21 desire to have a unified, efficient and capable service provider providing such critical
22 services to the city inhabitants is of paramount importance. NRS 444.440(1).

23 14. The term “other waste” in NRS 268.081(3) is defined to include “solid
24 waste” and “solid waste” is further defined in NRS 444A.013 to include “recyclable
25 material”.

26 15. Accordingly, pursuant to Nevada law, municipalities are fully authorized
27 and empowered to grant an exclusive franchise to a designated company to hold the
28 rights and obligations to collect and dispose of waste including any waste that is

1 capable of later being recycled.

2 16. Under a franchise, a city typically receives payment from the franchisee
3 relating to the amount of waste collected and receives additional benefits such as free
4 city waste collection services. These financial benefits to a city are significant and often
5 exceed millions of dollars of revenue and/or savings annually.
6

7 **III. PRE-2012 FRANCHISE HISTORY IN THE CITY OF RENO.**

8 17. Since 1994 until the creation of the new franchises in November 2012,
9 Reno Disposal held an exclusive franchise with the City of Reno (the "City") to service
10 all of the City's "garbage" collection and disposal service requirements. In the waste
11 industry, "garbage" is a specialized type of solid waste.
12

13 18. Commencing in or about 2007, the City wanted to expand upon the types
14 of waste to be collected and disposed of to cover more than just "garbage" and the City
15 also wanted to determine if it was possible to implement single stream recycling in the
16 City.
17

18 19. On April 19, 2007, the Reno City Council participated in a "Green Summit"
19 with a break out session to focus on single stream recycling.

20 20. The purpose of the break out session was because the City wanted to
21 explore the ability to efficiently and cost effectively recapture recyclable products from
22 discarded waste and to return these discarded materials back into the stream of
23 commerce.
24

25 21. In addition, the City wanted to expand the types of waste that would be
26 subject to the City's franchise powers from just the limited subcategory of "garbage" to
27 the broad category of "solid waste", since the collection and disposal of "solid waste"
28 included waste materials that were also capable of later being recycled.

1 22. From April 19, 2007, until October 10, 2012, the City participated in
2 numerous public sessions with various waste collectors who the City determined were
3 sufficiently capable of implementing the single stream recycling program in the City as
4 well as the development of a processing facility capable of processing the single stream
5 recycling.
6

7 23. In addition to the numerous City Council meetings, City Staff participated
8 extensively in the creation of and implementation of the processes to allow for single
9 stream recycling and with the crafting of a new franchise structure.
10

11 24. On October 10, 2012 and October 24, 2012 (the "October Meetings"), the
12 City Council conducted meetings to discuss the franchise agreements and to discuss
13 modification to City ordinances to allow for the implementation of the new franchise
14 agreements designed to address the City's goals of expanding waste collection from
15 "garbage" to "solid waste" and of going "green" and implementing single stream
16 recycling.
17

18 25. In addition to the formal City Council meetings, City staff conducted
19 "stakeholder" meetings that included City Staff, City Council members as well as Reno
20 Disposal, GRS, RR and NRS.

21 26. At no time did GSR, RR or NRS seek to qualify themselves with the City
22 to be awarded a franchise for the collection and disposal of solid waste in the City.
23

24 27. Instead, these Defendants were fully apprised during these meetings that
25 Reno Disposal and Castaway Trash Hauling ("Castaway") were the only two (2)
26 qualified contractors selected by the City capable of servicing a franchise zone.

27 28. RR attended these stakeholder meetings seeking to ensure that it would
28 be classified as an "Exempted Hauler" under the new franchise agreements which

1 classification allowed RR to continue servicing its then existing customers as
2 "Exempted Hauler Accounts."

3 29. GSR and NRS also did not seek to obtain a franchise from the City
4 because neither business was properly licensed or capable of collecting and disposing
5 of waste in the City as would be required to service a franchise zone.
6

7 **IV. THE CITY'S NOVEMBER 12, 2012 FRANCHISES.**

8 30. As a result of its five (5) year study, the City elected to create two (2)
9 areas in the City that were subject to separate exclusive franchise rights, i.e., two
10 "zones".
11

12 31. On November 12, 2012, the City approved and entered into a franchise
13 agreement entitled Exclusive Service Area Franchise Agreement – Commercial Solid
14 Waste and Recyclable Materials with Reno Disposal to service one exclusive zone in
15 the City (the "Reno Disposal Franchise Agreement"). A copy of the Reno Disposal
16 Franchise Agreement is attached hereto as **Exhibit 1**.
17

18 32. In addition, contemporaneously the City approved and entered into a
19 franchise agreement entitled Exclusive Service Area Franchise Agreement –
20 Commercial Solid Waste and Recyclable Materials with Castaway to service the second
21 exclusive zone in the City (the "Castaway Franchise Agreement").
22

23 33. Again, the City determined that only Reno Disposal and Castaway were
24 capable of satisfying the City's stringent criteria for receiving a franchise agreement
25 from the City.
26

27 34. The City's requirements included but were not limited to driver
28 qualification, equipment capabilities, creditworthiness and business longevity. Stated
another way, the City did not want to do business with small waste haulers using

1 outdated and/or deficient equipment that would jeopardize the public health, safety or
2 wellbeing.

3 35. It is undisputed that the City itself determined: (1) that GSR was not
4 qualified to service a franchise zone; (2) that RR was not qualified to service a franchise
5 zone; and (3) that NRS was not qualified to service a franchise zone.
6

7 **A. CASTAWAY'S ASSIGNMENT OF ITS FRANCHISE TO RENO**
8 **DISPOSAL.**

9 36. Under the City's franchise agreements with Reno Disposal and Castaway,
10 the City expressly contemplated, pre-approved and authorized both Reno Disposal and
11 Castaway to acquire each other's franchise.

12 37. The City's agreements expressly contemplated such assignments and
13 prior to entering into the franchise agreements the City had actual knowledge of
14 Castaway's potential assignment to Reno Disposal and the City approved the
15 agreements fully knowing such an assignment was likely.
16

17 38. On August 12, 2013, Reno Disposal notified the City that it was acquiring
18 the assets of Castaway and would be assuming all rights and obligations under
19 Castaway's Franchise Agreement as contractually allowed.
20

21 39. Thereafter, on October 3, 2013, Reno Disposal submitted formal notice to
22 the City that Reno Disposal was acquiring Castaway's franchise rights via assignment
23 and that such assignment was expressly allowed under the terms of the two franchise
24 agreements.

25 40. Pursuant to the terms of the two franchise agreements, Reno Disposal
26 and Castaway did not need City approval to conclude such assignment.
27

28 41. Nonetheless, on October 4, 2013 the City provided its formal notice that it
consented to and approved the assignment of the Castaway Franchise Agreement to

1 Reno Disposal.

2 42. The City's formal approval of the assignment of the Castaway Franchise
3 Agreement to Reno Disposal was consistent with and mandated by Reno Municipal
4 Code section 5.90.030(b) which states: "Contractors, and their respective . . . assigns,
5 shall have the exclusive privilege of providing 'Collection Services of Collection
6 Materials' subject to the limitations of any applicable Agreement, and city, state and
7 federal law."

8
9 43. Because the franchise agreements are virtually identical (except for the
10 respective names) and because Reno Disposal currently holds the rights under both
11 franchise agreements and currently services both zones, for ease of reference, both
12 franchise agreements will hereinafter singularly be referred to as the "Franchise
13 Agreement" and all contract references will refer to the terms and conditions contained
14 in the Reno Disposal Franchise Agreement attached hereto as Exhibit 1.
15

16 **B. THE SCOPE OF RENO DISPOSAL'S FRANCHISE RIGHTS.**

17 44. Section 3.2(A) of the Franchise Agreement provides that Reno Disposal is
18 granted the exclusive right to "accept, transfer, and transport" both "Solid Waste" and
19 specifically identified recyclable waste materials.
20

21 45. Because the City wanted to expand its franchise grant to include certain
22 recyclable materials that would be subject to the exclusive franchise authority of the
23 City, specifically designated those types of recyclable materials that would be included
24 in the City's franchise grant as "Approved Recyclable Materials." Exh. 1, Art. 1, p. 2;
25 Exh. A.
26

27 46. The waste Reno Disposal was charged with collecting includes all solid
28 waste including waste materials that can later be recycled like newspapers, cardboard,

1 plastic and glass. Id.

2 47. The City also dictated that the scope of the Franchise Agreement is to be
3 “broadly interpreted” to ensure the franchise granted to Reno Disposal was clear,
4 unambiguous and all-encompassing. The City also dictated that the Franchise
5 Agreement was specifically crafted to prohibit other business from attempting to subvert
6 the City’s franchise grant to Reno Disposal as follows:
7

8 City hereby grants to [Reno Disposal] . . . the exclusive rights, privilege,
9 franchise and obligation . . . to provide Collection Services to Commercial
10 Customers. . . . No other person or entity other than [Reno Disposal] . . .
11 shall i) collect . . . ii) transport . . . or iii) deliver any Collection Materials . . .
12 except as expressly provided under this Agreement. The preceding
13 sentence is intended to be broadly interpreted to preclude . . . any activity
14 relating to the collection or transportation of Collection Materials from
15 Commercial Activities.

16 Id.

17 48. Solid Waste and Approved Recyclable Materials are known as “Collection
18 Materials.” Exh. 1., Art. 1, p. 3.

19 49. The Franchise Agreement, however, does not seek to regulate or impair a
20 person’s ability to segregate and sell any recyclable material that the person sales to a
21 third-party. Id. Art. 1, p. 5.

22 50. If a legitimate sale occurs, then the material is not waste that is subject to
23 the City’s franchise authority but is instead a commodity that the person can sell and
24 the Franchise Agreement specifically identifies this sale transaction as “Excluded
25 Recyclable Materials”. Id.

26 51. The Franchise Agreement therefor specifically calls out that waste
27 materials that are capable of later recycling are “Approved Recyclable Materials” and
28 are encompassed within the scope of the Franchise Agreement. If, however, the
customer separately segregates its recyclable materials from other waste and then sells

1 the material to a third-party (resulting in no out-of-pocket cost to the customer), then the
2 materials are not within the scope of the franchise but are instead excluded as
3 “Excluded Recyclable Materials.”

4
5 52. However, the City, with foresight that certain businesses would likely seek
6 to violate the City’s franchise authority, included specific language in the Franchise
7 Agreements precluding such unscrupulous businesses from implementing any schemes
8 to harm the City and/or its residents by wrongfully collecting waste and/or depriving the
9 City of its franchise fees as follows:

10 [Reno Disposal’s franchise rights preclude] any activity relating to the
11 collection or transportation of Collection materials from Commercial Activities
12 that is solicited, arranged, brokered, or provided by any person or combination of
13 persons in exchange for the payment, directly, indirectly, of a fee, charge, rebate,
discount, commission, or other consideration in any form or account.

14 Id. ¶3.2.A.

15
16 53. This action has become necessary because GSR, NRS and RR are
17 subverting the City’s authority and intentionally breaching the Franchise Agreement by
18 implementing a waste collection scheme to make money at the expense of the City, the
19 City’s residents and businesses and Reno Disposal.

20 **C. THE CITY’S BRIGHT LINE RULE FOR CATEGORIZING “WASTE”.**

21
22 54. Waste is material that has a negative value. This means that if a City
23 resident pays to have material it has generated removed—then the material is waste--
24 regardless of whether or not the waste material is cardboard (recyclable) or sludge (not
25 recyclable).

26
27 55. If on the other hand, someone pays a waste generator money to purchase
28 the material, then the material is not waste because it has a positive value. In this
situation, the waste generator is not paying any money to have its waste collected and

1 disposed of, therefore, the material is not waste.

2 56. The City has implemented a bright-line rule stating that if any waste
3 generator in the City is paying for the materials to be disposed of, even if the overall
4 transaction is disguised as a sham sale transaction, then the material is waste subject
5 to the City's franchise authority and subject to Reno Disposal's exclusive right to collect.
6

7 57. The City's bright-line rule is in full conformance with applicable case law
8 because if a City resident is paying to have materials collected and disposed of for a
9 fee, that activity constitutes the disposal of material which disposal is subject to the
10 City's police powers and therefore, is subject to the City's franchise authority.
11

12 **V. DEFENDANTS' BREACHES OF THE FRANCHISE AGREEMENT.**

13 **A. DEFENDANTS' SCHEME TO VIOLATE THE FRANCHISE**
14 **AGREEMENT.**

15 58. GSR's, NRS's and RR's scheme seeks to collect waste materials that are
16 recyclable for a "fee" and then give the customer a nominal "rebate" back as a
17 purported purchase of the waste.

18 59. The "fee" is greater than the "rebate" so that the customer is always
19 paying to have its waste materials removed, regardless of whether the materials are
20 capable of recycling.
21

22 60. GSR's, NRS's and RR's scheme is as follows. GSR and/or RR rent
23 containers to customers who then store their recyclable materials in them. The
24 customer "pays" GSR and/or RR to use these containers. This is the "fee" charged by
25 GSR and/or RR.

26 61. GSR and/or RR then haul the waste materials to NRS who processes and
27 sells the recyclable materials. NRS then pockets the money made off of selling the
28 recycled waste materials.

1 62. However, in an attempt to disguise their unadulterated breaches of the
2 Franchise Agreement, NRS then purports to enter into a contemporaneous agreement
3 with the customer promising to pay the Customer a "rebate" payment of some nominal
4 sum on a quarterly basis.

5
6 63. In this fashion, GSR, RR and NRS work together to create a sham
7 purchase of the recyclable waste material contending that such sham purchase makes
8 the recyclable waste materials not waste (which are subject to the Franchise
9 Agreement) but is instead Excluded Recyclable Materials (which are not subject to the
10 Franchise Agreement).

11
12 64. The whole purpose of GRS's, NRS's and RR's scheme is to convince
13 customers to pay them less than the mandatory franchise fees the customer has to pay.

14 65. In this fashion, GSR, NRS and RR: (1) charge less than Reno Disposal
15 can charge a customer for the collection of their waste; (2) avoid paying the City
16 franchise fees relating to the collection and disposal of this waste; and (3) make
17 additional profit on the sale of the recyclable materials that NRS ends up selling to
18 some other third-party.

19
20 66. GSR's, NRS's and RR's scheme is designed to maximize profit for these
21 businesses at the expense of the City, Reno Disposal and the residents of the City.

22 **B. CONCLUSIVE EVIDENCE OF SCHEME.**

23 67. Even though the City's Franchise Agreement expressly states that GSR's,
24 NRS's and RR's scheme to undercut the franchise are invalid and illegal, GSR and
25 NRS have freely admitted in other legal proceedings they are conducting this scheme.

26
27 68. GSR has recently admitted in other legal proceedings that its business
28 model with NRS is premised on having a customer pay for the collection and removal of

1 the waste material because that is the only way GSR can stay in business. Stated
2 another way, GSR is admitting it is charging customers to collect and dispose of waste
3 using a cost plus profit methodology.

4
5 **C. THE CITY'S REPEATED NOTIFICATION TO GSR, NRS AND RR THAT**
6 **THEIR SCHEME VIOLATES THE FRANCHISE AGREEMENT.**

7 69. In or about 2015, GSR and NRS provided the City with their proposed
8 business plan to implement their scheme. GSR's business plan admitted that GSR
9 intended to charge a customer a flat fee for the "rental" of a waste container in which
10 recyclable material could be stored.

11 70. After review, the City notified GSR, NRS and RR that any effort to
12 circumvent the scope of the Franchise Agreement by trying to collect and process
13 recyclable waste materials by charging a fee for the rental of containers with a nominal
14 "rebate" from the subsequent sale of the recyclable waste material by NRS violated the
15 terms of the Franchise Agreement.

16
17 71. Specifically, on May 14, 2015, the City issued a letter to GSR and NRS
18 informing these entities that they were not licensed "to collect, transport, process,
19 recycle or dispose of" recyclable materials that had been disposed of by a City resident
20 ("Initial Violation Notice"). **Exhibit 2**, City's Initial Violation Notice dated May 14, 2015

21
22 72. In addition, the City clearly stated that GRS's, NRS's and RR's activities in
23 working together to circumvent the terms of the Franchise Agreement was prohibited
24 and was a clear violation of the Franchise Agreement. In doing so, the City stated:

- 25
26
27
28
- GSR, NRS and Rubbish Runners should be paying the business generating the Excluded Recyclable Materials; ***the generator should not be paying GSR, NRS or Rubbish Runners to accept, process, recycle or dispose of Excluded Recyclable Materials.*** ***If the total amount paid by a generator to GSR, NRS and/or Rubbish Runners (e.g., a "container rental fee") exceeds the total amount received by the generator from GSR, NRS and/or Rubbish Runners (e.g., a "rebate"),

1 the City assumes that the materials are being collected, transported
2 and disposed of in violation of the franchise, i.e., the materials are
3 being collected and transported as a service, and are not Excluded
Recyclable Materials.

4 Id. p.3 (italics in original) (bold added). Accordingly, as of May 14, 2015, GSR, NRS
5 and RR were on specific notice from the City that their business model violated the
6 terms of the Franchise Agreement.

7
8 73. On October 19, 2015, the City issued a formal interpretation of "the scope
9 of 'Excluded Recyclable Materials'" (the "City Interpretation") in response to continued
10 violations of the Franchise Agreements by GSR, NRS, and RR. **Exhibit 3**, City
11 Memorandum dated October 19, 2015. The City stated:

12 ***As a bright line rule, if a generator's net out-of-pocket cost is \$0, the***
13 ***Recyclable Materials are presumed to be Excluded Recyclable Materials. If***
14 ***a generator's net out-of-pocket cost is greater than \$0, the Recyclable***
15 ***Materials are in fact Collection Materials subject to the franchise, and must***
16 ***be collected, transported, processed, disposed of and/or recycled by***
Waste Management pursuant to the Franchise Agreements and Reno
Municipal Code.

17 Holding otherwise will undercut the financial and economic assumptions
18 underpinning the franchise, and will impair the parties' ability to enforce the
19 franchise in the further. This runs directly afoul of the stated intent of the parties
20 in the Franchise Agreements. See, *supra*, Franchise Agreements § 3.2(A), at 14
21 ("[t]he preceding sentence is intended to be broadly interpreted to preclude,
22 without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any
23 activity relating to the collection or transportation of Collection Materials from
Commercial Activities that is solicited, arranged, brokered, or provided by any
24 person or combination of persons in exchange for the payment, directly or
25 indirectly, of a fee, charge, rebate, discount, commission, or other consideration,
26 in any form or amount.").

27 Accordingly, and in order to avoid any code enforcement issues regarding
28 the characterization of Excluded Recyclable Materials, the City will advise
businesses the following:

...

• **The buyer of the Excluded Recyclable Materials should pay the generator for the Excluded Recyclable Materials, not vice versa.** So, for example, if the total amount of consideration paid by the generator to the buyer or a buyer affiliated entity (e.g., a "container rental fee") exceeds the total amount received by ty the

1 generator from the buyer or a buyer affiliated entity (e.g., a
2 "rebate"), the materials are being collected and transported as a
3 service, and are properly characterized as Collection Materials, not
Excluded Recyclable Materials.

4 Id. (emphasis in original).

5 74. Unfortunately, the City Interpretation letter did nothing to stem the flow of
6 GRS's, NRS's and RR's continued breaches of the Franchise Agreement.

7 75. In March, 2016, after still more violations of the Franchise Agreement by
8 GSR, NRS and RR, the City paid for and obtained an outside law firm to examine the
9 Franchise Agreements and provide an independent interpretation of the Franchise
10 Agreements regarding whether or not GRS's, NRS's and RR's business model violated
11 the Franchise Agreements. **Exhibit 4**, Howard & Howard Letter Analysis dated March
12 7, 2016 ("H&H Analysis").

13 76. The City's outside law firm also concluded that GSR's, NRS's and RR's
14 business model, *i.e.*, the scheme, clearly violated the terms of the Franchise
15 Agreement.

16 77. On April 11, 2016, the City reaffirmed its initial findings and analysis
17 contained in the City's prior correspondence and reaffirmed the H&H Analysis, and
18 reiterated that GSR's, NRS's and RR's scheme violated the clear and unambiguous
19 terms of the Franchise Agreements ("City's Final Interpretation"). **Exhibit 5**, City's Final
20 Interpretation letter dated April 11, 2016.

21 78. The City also reiterated that it would be advising all businesses that to
22 avoid code enforcement issues by the City for violating the Franchise Agreements, the
23 businesses needed to comply with the following regarding the disposal of recyclable
24 materials covered by the Franchise Agreement:

1 [I]f the total amount of consideration paid by the generator to the
2 buyer or a buyer affiliated entity (e.g., a “container rental fee”) exceeds the
3 total amount received by the generator from the buyer or a buyer affiliated
4 entity (e.g., a “rebate”), the materials are being collected and transported
as a service, and are properly characterized as Collection Materials, not
Excluded Recyclable Materials.

5 Id. at p. 6 (emphasis added).

6 79. The City’s April 11, 2016, letter clearly held that GRS’s, NRS’s and RR’s
7 rebate scheme violated the terms of the Franchise Agreement.
8

9 80. These Defendants ignored and continue to ignore the City’s Initial
10 Violation Notice, the City’s Formal Interpretation, the H&H Analysis and the City’s Final
11 Interpretation letters.

12 81. Further, and not surprisingly, these Defendants ignored and continue to
13 ignore the City’s and Reno Disposal’s demands to cease and desist from further
14 violations of the Franchise Agreements.
15

16 **D. ONGOING VIOLATIONS OF FRANCHISE AGREEMENT.**

17 82. In addition to notifying GSR, NRS and RR that their actions violate the
18 terms of the Franchise Agreements, the City and Reno Disposal have recently notified
19 various businesses in the City that their ongoing activities with these Defendants violate
20 the Franchise Agreements.
21

22 83. While a number of businesses have complied with the notifications and
23 have come into compliance with the Franchise Agreement’s mandate, a number of
24 businesses have refused to respond and/or are contending that they do not need to
25 come into compliance with the Franchise Agreement.

26 84. GSR, RR and NRS continue to actively seek to violate the terms of the
27 Franchise Agreement.
28

1 85. GSR's, RR's and NRS's actions have deprived Reno Disposal of over \$1
2 million in revenue.

3 86. GSR's, RR's and NRS's actions have deprived the City of over \$80,000 in
4 revenue.
5

6 **VI. ENFORCEMENT OF THE FRANCHISE AGREEMENT.**

7 87. It is undisputed that the City has the authority to displace competition for
8 the collection of recyclable materials that are treated as waste.

9 88. It is also undisputed that the City has the authority to enter into the
10 Franchise Agreement granting Reno Disposal the exclusive right, duty and obligation to
11 collect and dispose of waste within the City.
12

13 89. It is also undisputed that the City has granted Reno Disposal the authority
14 to enforce against any third-party the terms, covenants and conditions of the Franchise
15 Agreement along with all City ordinances related thereto. Exh. 1, ¶10.14.

16 90. It is undisputed that Reno Municipal Code sections 10.08.040 and
17 10.08.090 provides that it is unlawful for GSR, RR and/or NRS to violate the terms of
18 the Franchise Agreement.
19

20 91. It is also undisputed that each violation of the Franchise Agreement
21 and/or Reno Municipal Code is a misdemeanor subject to a fine of up to \$1,000.00 or
22 imprisonment in the City jail not to exceed six months, or be punished by both fine and
23 imprisonment. RMC 1.04.010. Pursuant to RMC 1.04.010(b), each day's violation
24 constitutes a separate and distinct offense.
25

26 92. It is undisputed that GSR, RR and NRS are entering into business
27 transactions whereby they collect fees for collecting and disposing of waste even
28 though the waste may contain recyclable material.

1 **VII. RR'S VIOLATION OF THE EXEMPT HAULER ACCOUNTS.**

2 93. Under the terms of the Franchise Agreement, RR is only allowed to
3 collection waste, including recyclable waste material from specifically identified
4 customers that the City approved under the Franchise Agreement as "Exempted Hauler
5 Account". Exh. 1, Art. 1, p. 7.
6

7 94. RR's only Exempted Hauler Accounts are only those accounts identified
8 on Schedule 1 to the Franchise Agreement which accounts are as follows:

9 Anixter Fastner	990 North Hills Blvd.
10 Burlington Coat Factory	4055 S. Virginia Street
11 Curtis Brothers	572 Reactor Way
12 Griffen Logistics	Gentry Way
13 Harry's Quality Cars3055	Kietzke Way
14 Moana Nursery	1100 W. Moana
15 Moana Nursery	11301 S. Virginia St.
16 Moana Nursery	3260 Yori Ave/316 Gentry Way
17 Selective Real Estate	Multiple

18 Id.

19 95. Reno Disposal is informed and believes that RR has actively expanded its
20 waste collection services to other accounts that are not approved as Exempt Hauler
21 Accounts.
22

23 96. Reno Disposal has requested information from RR regarding a complete
24 list of accounts RR is servicing under the Exempt Hauler Account exemption to the
25 Franchise Agreement which RR has refused to respond.
26

27 **FIRST CLAIM FOR RELIEF**
28 **(Intentional Interference with Contract—GSR, NRS, RR)**

97. Plaintiff incorporates all prior allegations as if fully set forth herein.

98. Reno Disposal and the City are parties to the Franchise Agreement
(defined to include both the Reno Franchise Agreement and the Castaway Franchise
Agreement).

1 99. Pursuant to the terms of the Franchise Agreement, each resident and
2 business in the City must contract with Reno Disposal to provide all of their waste
3 collection and removal.

4 100. The Franchise Agreement's terms are unambiguous.

5 101. The Franchise Agreement and the concurrent contractual relationships
6 created with each City resident and business are valid and existing contracts.
7

8 102. At all times these Defendants have had knowledge of the Franchise
9 Agreement and the concurrent contractual relationships created with each City resident
10 and business.

11 103. As discussed herein, these Defendants have engaged in intentional acts
12 intended and designed to disrupt these contractual relationships.
13

14 104. There has been actual disruption of the contractual relationships.

15 105. Reno Disposal has incurred over \$1 million in damages resulting from
16 these Defendants' conduct.

17 106. These Defendants have been guilty of oppression, fraud or malice,
18 express or implied, and Reno Disposal, in addition to its compensatory damages, is
19 entitled to recover punitive damages against each Defendant for the sake of example
20 and by way of punishing each Defendant.
21

22 107. As a further result of these Defendants' conduct, Reno Disposal has been
23 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
24 recover.
25

26 **SECOND CLAIM FOR RELIEF**
27 **(Intentional Interference with Prospective Economic Advantage—GSR, NRS, RR)**

28 108. Plaintiff incorporates all prior allegations as if fully set forth herein.

 109. Reno Disposal and the City are parties to the Franchise Agreement

1 (defined to include both the Reno Franchise Agreement and the Castaway Franchise
2 Agreement).

3 110. Pursuant to the terms of the Franchise Agreement, each resident and
4 business in the City must contract with Reno Disposal to provide all of their waste
5 collection and removal.
6

7 111. At all times these Defendants have had knowledge of the Franchise
8 Agreement and that each City resident and business must contract with Reno Disposal
9 for Reno Disposal to perform all waste collection and hauling activities, including the
10 collection and hauling of waste material that is recyclable.
11

12 112. As discussed herein, these Defendants have engaged in intentional acts
13 intended and designed to harm Reno Disposal, as well as the City, by preventing City
14 residents and businesses from employing Reno Disposal to perform its franchise duties
15 and obligations.
16

17 113. These Defendants have no privilege or justification to interfere with Reno
18 Disposal's prospective contractual relations.
19

20 114. As a result of these Defendants' conduct, there has been actual disruption
21 of the prospective contractual relationships between Reno Disposal and City residents
22 and businesses.
23

24 115. Reno Disposal has incurred over \$1 million in damages resulting from
25 these Defendants' conduct.
26

27 116. These Defendants have been guilty of oppression, fraud or malice,
28 express or implied, and Reno Disposal, in addition to its compensatory damages, is
entitled to recover punitive damages against each Defendant for the sake of example
and by way of punishing each Defendant.

1 117. As a further result of these Defendants' conduct, Reno Disposal has been
2 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
3 recover.
4

5 **THIRD CLAIM FOR RELIEF**
6 **(Civil Conspiracy—GSR, NRS, RR)**

7 118. Plaintiff incorporates all prior allegations as if fully set forth herein.
8

9 119. As discussed herein, GSR, NRS and RR have agreed and engaged in
10 conduct intending to violate the Franchise Agreement and to interfere with Reno
11 Disposal's contract rights.

12 120. GSR, NRS and RR have agreed and engaged in conduct intending to
13 violate the Franchise Agreement and to interfere with Reno Disposal's contract rights.

14 121. As discussed herein, these Defendants have engaged in intentional acts
15 intended and designed to disrupt these contractual relationships causing harm to Reno
16 Disposal and the City.

17 122. There has been actual disruption of the contractual relationships.

18 123. Reno Disposal has incurred over \$1 million in damages resulting from
19 these Defendants' conduct.

20 124. These Defendants have been guilty of oppression, fraud or malice,
21 express or implied, and Reno Disposal, in addition to its compensatory damages, is
22 entitled to recover punitive damages against each Defendant for the sake of example
23 and by way of punishing each Defendant.
24

25 125. As a further result of these Defendants' conduct, Reno Disposal has been
26 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
27 recover.
28

1 **FOURTH CLAIM FOR RELIEF**
2 **(Civil Aiding and Abetting—GSR, NRS, RR)**

3 126. Plaintiff incorporates all prior allegations as if fully set forth herein.

4 127. As discussed herein, GSR, NRS and RR have agreed and engaged in
5 conduct intending to violate the Franchise Agreement and to interfere with Reno
6 Disposal's contract rights.

7 128. As further discussed herein, each Defendant has acted to breach duties
8 owed to Reno Disposal and the City.

9 129. At all times, each other Defendant has been aware of their role in
10 promoting violations of the Franchise Agreement and interfering with Reno Disposal's
11 contract and prospective contract rights.

12 130. At all times, each other Defendant knowingly and substantially assisted
13 the others in effectuating such wrongful conduct.

14 131. Reno Disposal has incurred over \$1 million in damages resulting from
15 these Defendants' conduct.

16 132. These Defendants have been guilty of oppression, fraud or malice,
17 express or implied, and Reno Disposal, in addition to its compensatory damages, is
18 entitled to recover punitive damages against each Defendant for the sake of example
19 and by way of punishing each Defendant.

20 133. As a further result of these Defendants' conduct, Reno Disposal has been
21 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
22 recover.

23 **FIFTH CLAIM FOR RELIEF**
24 **(Code Violations—GSR, NRS, RR)**

25 134. Plaintiff incorporates all prior allegations as if fully set forth herein.
26
27
28

1 135. The City granted Reno Disposal the authority to enforce against any third-
2 party the terms, covenants and conditions of the Franchise Agreement along with all
3 City ordinances related thereto. Exh. 1, ¶10.14.

4 136. Reno Municipal Code sections 10.08.040 and 10.08.090 provide that it is
5 unlawful for GSR, RR and/or NRS to violate the terms of the Franchise Agreement.
6

7 137. Each violation of the Franchise Agreement and/or Reno Municipal Code is
8 a misdemeanor subject to a fine of up to \$1,000.00 or imprisonment in the City jail not
9 to exceed six months, or be punished by both fine and imprisonment. RMC 1.04.010.

10 138. Pursuant to Reno Municipal Code section 1.04.010(b), each day's
11 violation constitutes a separate and distinct offense subject to fine.
12

13 139. These Defendants have been repeatedly notified that their conduct
14 described herein constitutes a breach of the Franchise Agreement.

15 140. These Defendants have refused to terminate their wrongful conduct.

16 141. Accordingly, Reno Disposal is entitled to judgments of conviction against
17 each named Defendant along with a judgment imposing fines against each Defendant
18 in an amount commensurate with each Defendant's numerous breaches of the
19 Franchise Agreement.
20

21 142. As a further result of these Defendants' conduct, Reno Disposal has been
22 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
23 recover.
24

25 **SIXTH CLAIM FOR RELIEF**
26 **(Breach of Franchise Agreement—GSR, NRS, RR)**

27 143. Plaintiff incorporates all prior allegations as if fully set forth herein.

28 144. The Franchise Agreement is a valid and enforceable contract.

 145. Defendants have breached the Franchise Agreement by servicing

1 customers in violation of the Exempt Hauler Account provisions contained in the
2 Franchise Agreement and by collecting and disposing of waste in the City.

3 146. Defendants' conduct has caused Reno Disposal damages in excess of
4 \$15,000.00.

5
6 147. As a further result of these Defendants' conduct, Reno Disposal has been
7 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
8 recover.

9
10 **SEVENTH CLAIM FOR RELIEF**
(DECLARATORY RELIEF—GSR, NRS, RR)

11 148. Plaintiff incorporates all prior allegations as if fully set forth herein.

12 149. There exists a current justiciable controversy between Reno Disposal and
13 these Defendants concerning the rights and obligations contained within the Franchise
14 Agreement.

15
16 150. Pursuant to NRS 30.030 and 30.040, Reno Disposal is entitled to the
17 following declaratory relief:

18 (a). that the Defendants' scheme is a breach of the Franchise
19 Agreement;

20 (b). that the Defendants are in breach of the Franchise
21 Agreement;

22 (c). that the Defendants must immediately cease and desist their
23 wrongful conduct; and

24 (d). that the Defendants owe Reno Disposal all amounts paid by any
25 City resident or business for every transaction performed in
26 violation of the Franchise Agreement.
27

28 151. This controversy is ripe for adjudication.

1 152. Reno Disposal is entitled to an award of its attorneys' fees and costs in
2 pursuing and protecting its interests.

3 **EIGHTH CLAIM FOR RELIEF**
4 **(Injunctive Relief—GSR, NRS, RR)**

5 153. Plaintiff incorporates all prior allegations as if fully set forth herein.

6 154. Reno Disposal has a reasonable probability of success on the merits of its
7 claims alleged in this Complaint, and is threatened with great and irreparable harm if
8 these Defendants, and each of them, are not enjoined from interfering with Reno
9 Disposal's franchise rights.
10

11 155. Reno Disposal faces irreparable harm in the absence of an injunction as
12 these Defendants are continuing to breach the Franchise Agreement and actively
13 seeking new customers and soliciting them to breach the City's franchise authority and
14 the conditions and terms of the Franchise Agreement.
15

16 156. On a balance of the equities, these Defendants will not be prejudiced by
17 injunctive relief because their actions are wrongful and they are not permitted to ignore
18 the City's franchise authority or the conditions and terms of the Franchise Agreement.
19

20 157. Injunctive relief is also in the public interest because it is Nevada's public
21 policy to enforce franchises for the collection and disposal of waste materials.
22

23 158. Reno Disposal has been forced to retain legal counsel and is entitled to
24 an award of its legal fees and costs incurred in this action.

25 **NINTH CLAIM FOR RELIEF**
26 **(VIOLATION OF NRS 444.585—GSR, NRS, RR)**

27 159. Plaintiff incorporates all prior allegations as if fully set forth herein.

28 160. NRS 444.585 provides that only private recycling business and/or Reno
Disposal are allowed to collect recyclable materials pursuant to the City's solid waste

1 management system implemented pursuant to the provisions of NRS 444.500.

2 161. If the recyclable materials have value, the generator may sell the
3 materials under an arm's length transaction to a third-party recycling company that is
4 properly licensed to perform recycling services in the City of Reno.
5

6 162. If the recyclable materials have no value and the generator of the
7 materials is paying for the disposal of the recyclable materials to the recycling company,
8 the materials are by definition waste and are subject to and governed by the City's
9 franchise authority and Reno Disposal Franchise Agreement.
10

11 163. If the recyclable materials have no value and the generator of the
12 materials is paying for the disposal of the recyclable materials then only Reno Disposal
13 has the right to collect those materials pursuant to NRS 444.585 and as detailed in the
14 Franchise Agreement.

15 164. NRS 444.585(2) provides that unauthorized collection of recyclable
16 materials in violation of NRS 444.585 is a misdemeanor and 444.585(3) allows the City
17 to enforce the provisions of this section against the violator.
18

19 165. In addition, NRS 444.585(3) authorizes Reno Disposal to pursue a private
20 right of action against GRS, NRS and RR for violating the provisions of NRS
21 444.585(1).
22

23 166. As detailed herein, GSR's, NRS's and RR's scheme to circumvent the
24 City's franchise authority and to improperly collect and dispose of waste materials under
25 the guise of "recycling" those materials is wrongful and violates the provisions of NRS
26 444.585, the City's franchise authority and the terms of the City's Franchise Agreement.

27 167. Pursuant to 444.585(3) Reno Disposal is entitled to treble damages
28 against GSR, NRS and RR for the harm caused by their violations of the provisions of

1 NRS 444.585.

2 168. GSR's, NRS's and RR's conduct has caused Reno Disposal harm in
3 excess of \$15,000.00.

4 169. As a further result of these Defendants' conduct, Reno Disposal has been
5 forced to retain legal counsel and has incurred legal fees and costs that it is entitled to
6 recover.
7

8 WHEREFORE, Reno Disposal prays for judgment against GSR, NRS and RR as
9 follows:

10 1. For damages in excess of \$15,000.00 against each named Defendant;

11 2. For punitive damages in excess of \$15,000.00 against each named
12 Defendant;
13

14 3. For treble damages pursuant to NRS 444.585(3);

15 4. For the imposition of fines against each named Defendant in the amount
16 of \$1,000 per day for each violation of the Franchise Agreement;

17 5. For injunctive relief as requested;

18 6. For declaratory relief as requested;

19 7. For reasonable attorney's fees and costs; and
20

21 8. For such other relief as the Court deems just and proper.

22 ///

23 ///

24 ///

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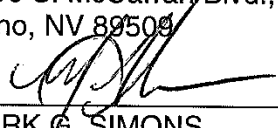
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AFFIRMATION: The undersigned do hereby affirm that the preceding document
does not contain the social security number of any person.

DATED this 9th day of March, 2018.

SIMONS LAW, PC
6490 S. McCarran Blvd., #20
Reno, NV 89509



MARK G. SIMONS
Attorneys for Plaintiff

VERIFICATION

STATE OF NEVADA }
COUNTY OF WASHOE } ss.

GREG MARTINELLI, being first duly sworn, deposes and says under penalty of perjury:

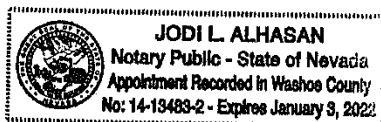
1. That he is a area manager and authorized representative of Reno Disposal Company, Inc. ("Reno Disposal"), the plaintiff named herein, and that he is authorized to execute this verification on Reno Disposal's behalf.

2. That he has read the First Amended Verified Complaint and knows the contents to be true thereof and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters, he believes them to be true.


GREG MARTINELLI

Subscribed and sworn to before me
this 8th day of March, 2018 by
Greg Martinelli at Reno, Nevada.


NOTARY PUBLIC



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS LAW, PC
3 that on this date I caused to be served a true copy of the **FIRST AMENDED VERIFIED**
4 **COMPLAINT** on all parties to this action by the method(s) indicated below:
5

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

9 X by using the Court's CM/ECF Electronic Notification System:

10 Del Hardy, Esq.
11 Stephanie Rice, Esq.
12 Richard Salvatore, Esq.
13 WINTER STREET LAW GROUP
14 Attorneys for NRS and RR

15 John P. Sande, Esq.
16 Attorneys for GSR

17 Matthew L. Jensen, Esq.
18 Attorneys for the City

19 _____ by personal delivery/hand delivery addressed to:

20 _____ by facsimile (fax) addressed to:

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

22 DATED this 9th day of March, 2018.

23 
24 Employee of Simons Law, PC
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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Franchise Agreement	67
2	5/14/15 City's Violation Notice	4
3	10/19/15 City Memorandum	4
4	3/17/16 Howard & Howard Analysis Letter	5
5	4/11/16 City's Final Interpretation	6

EXHIBIT 1

EXHIBIT 1

11-07-12
G-8.6

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE 1

DEFINITIONS

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

"Affiliate(s)" means an entity controlled by, controlling or under common control with Contractor.

"Control" and derivations thereof means the ability to control, through ownership of equity interests or contract, the management and affairs of the entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) With a capacity of not less than ten (10) cubic yards;
- (ii) Which is delivered to and left at a Customer's site for deposit therein of Exempted Drop Box Materials, then picked up and transported to a materials processing or disposal facility for emptying; and,
- (iii). Excluding a) Compactors, b) Bins, c) containers or receptacles emptied or serviced by front loader vehicles, d) any vehicle into which the materials are deposited at the time of collection at the collection site and e) any other container, receptacle or vehicle not described in subsections (i) and (ii) in this definition above.

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

- (i) Garbage; and,
- (ii) Compacted Solid Waste and compacted Approved Recyclable Materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 CONTRACTOR'S REPRESENTATIONS, WARRANTIES

2.1 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants to City as follows:

A. BUSINESS STATUS

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

B. CORPORATE AUTHORIZATION

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

C. NO CONFLICT

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

D. INFORMATION SUPPLIED BY CONTRACTOR

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

E. CONTRACTOR QUALIFICATIONS

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

2.2 CONTRACTOR QUALIFICATIONS, ESTABLISHMENT OF EXCLUSIVE SERVICE AREA BOUNDARIES

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

ARTICLE 3 COLLECTION SERVICES AGREEMENT

3.1 AGREEMENT TERM; EXTENSIONS; PERIODIC REVIEW

A. Term

This Agreement shall be effective during the Term, which shall commence on the Effective Date and shall expire on the date 17 years thereafter on November 1, 2029 ("Expiration Date"), unless extended as provided in Section 3.1 (B) below.

B. Extension Terms; Termination

The initial Term of this Agreement and each Extension Term of this Agreement shall be automatically extended for an additional five (5) year Extension Term unless City or Contractor provides written notice of termination not less than five (5) years prior to the expiration of the initial Term and each Extension Term. Contractor shall be entitled to terminate this Agreement effective anytime during the last 3 years of the initial Term upon not less than twenty four (24) months prior written notice to City.

C. Periodic Review by City and Contractor of Collection Services

1. During the 24 month period ("Review Period") commencing on the date five (5) years after the Effective Date ("First Review Period Commencement Date") and on the date of each successive five (5) year anniversary after the First Review Period Commencement Date during the initial Term and all Extension Terms, each of the City or Contractor may initiate, conduct and complete the review of the operation of the Collection Services under this Agreement, in order to i) assess the effectiveness of the Collection Services and ii) identify areas for possible improvement ("Review"). Either City or Contractor may provide written notice to the other ("Review Notice") stating, in reasonable detail, the nature, scope and specific areas for review, but the provision of the Review Notice shall not be a condition

precedent to the Review and Review Notice contents shall not limit the nature, scope or specific areas of the Review.

2. City and Contractor shall during the Review Period cooperate in good faith to conduct the review of the Collection Services. If as a result of the Review either or both the City or Contractor determine improvements to the Collection Services would be beneficial, i) City and Contractor shall cooperatively prepare a written report reflecting the results of the Review, the aspects of the Collection Services suggested for improvement and any amendments to this Agreement necessary to make such improvements ("Report") and ii) Contractor and the City will conduct, in good faith, discussions and negotiations concerning any improvements to the Collection Services, including any related amendments to this Agreement; provided, however, neither City nor Contractor shall be obligated to agree to any changes to the Collection Services or amendments to this Agreement. The Report shall provide, in reasonable detail, the findings of the Review, together with any recommendations for improvements or changes to the Collection Services and related amendments to this Agreement. If the City and Contractor do not agree on all of the contents of the Report or the recommendations, the Report shall include the positions of both City and Contractor. The Review, preparation of the Report and all discussions and negotiations shall be completed on or before the expiration of the Review Period. If Contractor and City agree to changes to the Collection Services or agree to amend this Agreement, the amendment will be executed on or prior to the expiration of the Review Period and the changes to the Collection Services will be implemented as soon as reasonably possible thereafter.

3.2 COLLECTION SERVICES AGREEMENT

A. Services Provided; Exclusive Right and Obligation; Exceptions to Exclusive Right

City hereby grants Contractor, and Contractor shall have throughout the Term of this Agreement, except as provided in Sections 3.2 D and 4.4 L hereof, the exclusive right, privilege, franchise and obligation within the Exclusive Service Area of Contractor to provide Collection Services to Commercial Customers. No person or entity other than Contractor and its subcontractors shall i) collect Collection Materials in Contractor's Exclusive Service Area, ii) transport anywhere in the City Collection Materials Collected in Contractor's Exclusive Service Area, or iii) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility, except as expressly provided under this Agreement. The preceding sentence is intended to be broadly interpreted to preclude, without limitation and except as provided in Sections 3.2 D and 4.4 L hereof, any activity relating to the collection or transportation of Collection Materials from Commercial Activities that is solicited, arranged, brokered, or provided by any person or combination of persons in exchange for the payment, directly or indirectly, of a fee, charge, rebate, discount, commission, or other consideration, in any form or amount. Notwithstanding any other provision of this Agreement, the exclusive right of Contractor hereunder shall not apply to Excluded Materials, Excluded Recyclable Materials, Exempted Drop Box Materials, Exempted Hauler Account Materials and subject to and as provided in Section 4.4 L, Exempted Facility Material delivered to Exempted Facilities. Contractor and other service providers may collect and transport Excluded Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials (if Contractor has been approved for Exempted Hauler Accounts under Schedule 1) in the

Exclusive Service Area and elsewhere in the City and may charge fees and charges for services as the service provider may elect. Contractor shall only provide under this Agreement Collection Services to Commercial Customers in Contractor's Exclusive Service Area and in no other areas in the City; provided, however, Contractor may provide Special Services to Commercial Customers or other customers anywhere in the City.

B. Compensation to Contractor; Rates

Contractor shall be entitled to charge and collect the Rates from Customers for Collection Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services. However, Contractor shall be entitled to provide and collect fees and charges for Special Services and other services and to charge fees and charges for Customer noncompliance as provided in Section 3.10 and elsewhere in this Agreement.

C. Uniform Commercial Franchise Agreements

City intends to establish a uniform system for the collection, transport and delivery of Collection Materials generated or accumulated as a result of Commercial Activities under this Agreement and the other Commercial Franchise Agreement. Accordingly, the Parties agree this Agreement is and will remain substantially similar to the other Commercial Franchise Agreement, including without limitation the Collection Services and the Rates. Amendments to any Commercial Franchise Agreement must generally be concurrently agreed to and made to all other Commercial Franchise Agreements unless the subject of the amendment relates to a unique or specific feature of the Exclusive Service Area of a particular service provider or a term that is not material. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, Special Services are not intended to be and likely will not be uniform between the Commercial Franchise Agreements or service providers and each service provider under each Commercial Franchise Agreement shall be entitled to offer and charge for any Special Services in the manner, on the conditions and at the rates decided by each such service provider.

D. Exempted Drop Box Services and Exempted Hauler Account Services

1. Subject to the terms and conditions in this Section 3.2 D, the franchised exclusive right and obligation of Contractor hereunder to provide Collection Services shall not include or apply to i) Exempted Drop Box Materials collected and transported by Exempted Haulers using Exempted Drop Box Services, or ii) Exempted Hauler Account Materials collected and transported by Exempted Haulers using Exempted Hauler Account Services.

2. The right of an Exempted Hauler to provide Exempted Hauler Account Services to each of its Exempted Hauler Accounts shall terminate upon the later of i) one (1) year after the Effective Date and ii) either a) termination of the contract or account with the Exempted Hauler for such Exempted Hauler Account or b) the new subscription by the Exempted Hauler Account customer, by contract or account, to Collection Services by the Contractor. Exempted Hauler Account Services may limit the obligation under Section 3.5 hereof of Exempted Hauler Account customers to subscribe to Collection Services;

provided, however, nothing in this Section 3.2 D shall limit the obligation of a Commercial Customer to subscribe to Collection Services by Contractor of Garbage or cause the termination or limitation of any contract or account with any Commercial Customer of Contractor existing as of October 24, 2012.

3. Each Exempted Hauler shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 3.2 D, the rights of such Exempted Hauler under this Section 3.2 D. This Section 3.2 D shall not be amended in a manner that would terminate, limit or restrict any Exempted Hauler from providing Exempted Drop Box Services or Exempted Hauler Account Services under this Section without the prior written consent of such Exempted Hauler, which may not be unreasonably withheld, conditioned or delayed; provided, however, nothing in this Section 3.2 D shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Drop Box Services and Exempted Hauler Account Services.

4. The rights of an Exempted Hauler under this Section 3.2 D may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary to perform such hauling services and an Exempted Hauler owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Hauler. If the Exempted Hauler shall dissolve or otherwise cease business for a period greater than one (1) year, the rights of the Exempted Hauler under this Section 3.2 D shall terminate.

5. The provision of Exempted Drop Box Services and Exempted Hauler Account Services by the Exempted Haulers is a privilege, not a right. Upon the violation by an Exempted Hauler of the exclusive rights of Contractor under this Agreement, upon thirty (30) days written notice of default by City and the failure of the Exempted Hauler to cure such violation, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the termination of the exemption of such Exempted Hauler under this Section to provide Exempted Drop Box Services and/or Exempted Hauler Account Services.

6. Except as expressly provided herein or in the Disposal Agreement, neither this Agreement nor the Disposal Agreement shall limit or preclude Exempted Drop Box Materials collected and transported using Exempted Drop Box Services or Exempted Hauler Account Materials collected and transported using Exempted Hauler Account Services from being delivered by any Exempted Hauler, including Contractor, to any facility for acceptance, processing, recycling, transfer or disposal, including without limitation facilities other than the Designated Facilities.

3.3 FRANCHISE FEES PAYABLE TO CITY

A. Franchise Fees

Subject to adjustment as provided in Section 3.13 of this Agreement during the Transition Period, Contractor shall pay to the City in monthly installments during the Term a Franchise Fee, based on a percentage of Gross Receipts collected by Contractor, as established and adjusted by the Reno City

Council as provided in this Agreement. The Franchise Fee at the Effective Date is equal to eight percent (8%) of the Gross Receipts collected by Contractor under this Agreement. The City Council reserves the right to increase or decrease the Franchise Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Franchise Fee i) the Franchise Fee payable under all other Commercial Franchise Agreements shall be increased to the same extent and ii) the Rates shall concurrently be increased or decreased in the amount of such increase or decrease in the Franchise Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

B. Subsidy Fee

Contractor shall pay the Subsidy Fee to the City in monthly installments during the Term. The City reserves the right to increase or decrease the Subsidy Fee upon ninety (90) days prior written notice to Contractor. In the event City increases or decreases the Subsidy Fee, then: i) the Subsidy Fee payable under all other Commercial Franchise Agreements shall be increased or decreased to the same extent; ii) if the Subsidy Fee is increased, the Rates shall concurrently be increased in an amount necessary to fully compensate Contractor for the amount of such increase in Subsidy Fee, in which event the increase in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the 90 day notice period; and iii) if the Subsidy Fee is decreased, the Rates shall concurrently be decreased in an amount necessary to offset the reduction in cost to Contractor for the amount of such decrease in Subsidy Fee, in which event the decrease in Rates shall be cooperatively determined and agreed to in good faith by the City and Contractor during the ninety (90) day notice period.

C. Payment of Franchise Fees and Subsidy Fee by Contractor to City

The Franchise Fee and Subsidy Fee for each calendar month ("Subject Month") during the Term and any extensions of the Term shall be paid by Contractor on or before the twenty fifth (25th) day of the following calendar month. The Franchise Fee shall be calculated by Contractor on the basis of the Gross Receipts actually received and collected by Contractor during the Subject Month. Contractor shall provide to City along with the monthly payment a statement of the Gross Receipts, Franchise Fee and Subsidy Fee for such payment, attested to by a representative of contractor as being true and correct. Any Franchise Fee or Subsidy Fee not paid by the date due shall bear interest at seven percent (7%) per annum until paid. Contractor's Gross Receipts, the Franchise Fees, the Subsidy Fee and the calculation thereof and all related financial matters shall be subject to audit and inspection by the City under Sections 7.5 and 8.3 below and contractor shall cooperate fully in all such audits and inspections.

D. No Additional Fees or Charges

The Franchise Fee and the Subsidy Fee shall be the only fee or compensation paid by Contractor to City in connection with the Collection Services and this Agreement and no other license, permit, privilege or other fee, tax or charge shall be imposed by City upon Contractor; provided, however, that nothing in this Section shall modify the obligation of Contractor to pay building permit fees and other similar fees.

3.4 PROVISION OF COLLECTION SERVICES

A. General

The services to be provided by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items necessary to perform all Collection Services, and the payment of all related expenses including all transfer and Disposal fees, processing fees for Recyclable Materials, taxes, utility charges, etc. Contractor shall provide Collection Services using standard industry practice for comparable operations, in accordance with the Scope of Services and Operating Standards.

B. Hours of Collection; Collection Frequency

Collection Services under this Agreement may be performed at any time, seven days a week on any day of the calendar year provided, however, that Collection Services performed in or near areas zoned for residential use and which disturbs the residents may be limited, upon request of City, to the hours of 6 AM to 6 PM. Contractor may reasonably elect to extend the hours of Collection Services operation near residential zones for a limited time if necessary to catch up as a result of service disruptions. Collection Services may be provided by Contractor to Customers on any schedule available on the Scope of Services as requested by each Customer; provided, however, Garbage Collection Services shall be provided no-less often than weekly.

3.5 OBLIGATION TO PROVIDE COLLECTION SERVICES; MANDATORY SERVICE

Contractor shall make available Collection Services as provided under this Agreement to all Commercial Customers within its Exclusive Service Area during the Term and any extension of the Term and shall be compensated by the Rates. Each and every person, firm, association, corporation, partnership, business, or other entity conducting any Commercial Activity ("Operator") on or from any premises which generates, accumulates or causes the generation or accumulation of Solid Waste within the Exclusive Service Area of Contractor shall subscribe to the Collection Services of Solid Waste as required herein and/or the Reno Municipal Code and as necessary to properly dispose of all Solid Waste generated or accumulated on such premises. It is presumed that every premises in Contractor's Exclusive Service Area on or from which Commercial Activity is conducted generates, produces or accumulates Solid Waste and is required to subscribe to Collection Services under this Agreement. Notwithstanding anything to the contrary in this Section 3.5, Operators receiving as of October 24, 2012 Exempted Hauler Account Services that constitute Permanent Services shall not be required to subscribe to Collection Services from Contractor, other than collection of Garbage, so long as such Operator shall continue to receive the Exempted Hauler Account Services. Any Operator seeking to be exempt from Collection Services of Solid Waste hereunder must obtain an exemption from the City. To obtain the exemption, the Operator must apply to the Washoe County Health District ("WCHD") and obtain written approval of the WCHD confirming a finding that: i) no Solid Waste, or as to Exempted Hauler Accounts no Garbage, is being generated, produced or accumulated on or from the premises upon which the Operator's Commercial Activity is occurring; and ii) the Operator is not hauling, burying or otherwise disposing of Solid Waste or Garbage in violation of this Agreement, the Reno Municipal Code or other Applicable Law. Commercial Customers are encouraged, but are not obligated, to recycle; provided, however, no Commercial

Customer in Contractor's Exclusive Service Area may allow or retain any person or entity other than Contractor to collect, pickup, transport or deliver Approved Recyclable Materials in violation of Contractor's exclusive right under this Agreement. With the approval of the owner of a premises upon which Commercial Activity is being conducted, a tenant or occupant thereof may subscribe for Collection Services, but the owner shall remain responsible for compliance with all requirements of this Agreement and the Reno Municipal Code.

3.6 OWNERSHIP OF COLLECTION MATERIALS

Ownership of all Collection Materials, upon placement in any Container, shall transfer to Contractor and shall become the property of Contractor. Title to and ownership of all Collection Materials shall transfer from Contractor to the Designated Facility upon delivery of the Collection Materials by Contractor to the Designated Facility and acceptance by the Designated Facility of such Collection Materials.

3.7 CITY COLLECTION SERVICES

The Contractor shall provide the City Collection Services to facilities owned by City at no charge as provided and subject to the limitations in this Section. The City Collection Services shall be provided by Contractor to buildings, parks and similar facilities owned by City for Collection Materials generated in the normal and ordinary course of operation of such facility and does not include: i) Collection of any material that requires special handling, equipment or processing, including without limitation Excluded Materials; ii) Collection from businesses operating for-profit on or from City property; iii) Collection of materials resulting from natural disasters; special events; repair, construction or reconstruction of City facilities or from activities of any subcontractor on City property; iv) access to or disposal at any transfer station, material recovery facility or landfill; or v) any other Collection Services or other services relating to materials generated from any use, activity or cause other than the operation of City owned facilities in the normal ordinary course for such facility. Any Collection Services provided by Contractor to City other than the City Collection Services shall be paid for by City at the established Rates. In the event the cost or value of the City Collections Services exceeds \$712,425 at the Rates specified on the Scope of Services, as adjusted for changes in the CPI, the Rates shall be concurrently increased in an amount necessary to pay the full amount of such increase and City and Contractor shall cooperate in good faith to establish such increase in Rates.

3.8 EMERGENCY SERVICES

In the event that Contractor, for any reason whatsoever, fails, refuses, or is unable to perform the collection, transportation, and delivery requirements of this Agreement for a period of more than five (5) consecutive business days, and if as a result thereof, Solid Waste accumulates in the Exclusive Service Area to such an extent, in such a manner, or for such a time that City reasonably finds that such accumulation endangers or menaces the public health, safety, or welfare, then City shall have the right, but not the obligation, upon twenty four (24) hours prior written notice to Contractor, during the period of such emergency to perform, or cause to be performed, such services itself with its own or other

personnel and equipment without liability to Contractor. Contractor shall collect and shall pay to the City all Rate Revenues applicable to the emergency services provided by City under this Section.

3.9 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.10 CUSTOMER NONCOMPLIANCE

Contractor may refuse to provide some or all Collection Services to Customers and may charge fees and charges as provided herein or the Scope of Services in the event a Customer prevents or impedes Collections or otherwise fails to follow the requirements and procedures under this Agreement or Applicable Law, rules and policies, including without limitation, i) damage caused by Customers to Containers, ii) failure to provide appropriate, unobstructed access to Containers or otherwise position Collection Materials or Containers properly or timely, iii) overloading of Containers or failure of Customer to place Collection Materials solely and completely within the appropriate Container, iv) improper preparation, separation or contamination by Customer of Recyclable Materials, v) mixing by Customer of Excluded Materials with Collection Materials or placing Excluded Materials in a Container for Collection Services; vi) excessive weight or improper Collection Materials placed by Customer in Containers, vii) invalid claims by a Customer of damage caused by Contractor to Customer's property, viii) the need of Contractor to open gates or access long driveway or roadways to provide Collection Services and ix) or other failure of a Customer to comply with the requirements under this Agreement or applicable law, rules and policies. Upon occurrence of such event(s), Contractor may refuse to collect such materials or Container and impose charges or fees, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of such noncompliance and Contractor may take other reasonable actions, including without limitation applying the Snapshot Program and charging a "Snapshot Fee," as described on the Scope of Services. Upon notice by Contractor to Customer and City and failure of Customer to remedy such failure, Contractor may discontinue service to the Customer, in which event Contractor may charge an account deactivation fee (for services including, without limitation, pick up of any containers), and Contractor may impose charges and fees for reactivation of any deactivated accounts. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights and remedies of Contractor or the City under Applicable Law.

3.11 ADOPTION BY CITY OF ORDINANCES AND AMENDMENTS

On or before the Effective Date hereof and thereafter during the Term of this Agreement, City shall adopt and thereafter maintain new or amended ordinances reasonably necessary or appropriate to implement and make enforceable and binding the terms and conditions of this Agreement; provided, however, subject to Contractor's rights under this Agreement, City shall have the right and discretion to adopt and amend ordinances or otherwise exercise its regulatory authority relating to the subject matter of this Agreement.

3.12 ADJUSTMENT OF EXCLUSIVE SERVICE AREAS

On or before the date twelve (12) months after the Effective Date ("Adjustment Termination Date"), in the event Contractor or another service provider under another Commercial Franchise Agreement experiences a deficiency of five percent (5%) or more in permanent Rate Revenues compared to the Contractor's or such service provider's Proportionate Share of total Rate Revenues under all Commercial Franchise Agreements, the Contractor or such other service providers may submit a written request for a one-time Exclusive Service Area boundary adjustment review and adjustment (hereinafter "Request") in accordance with the provisions of this Section 3.12.

A. Requests shall be submitted in writing on or before the Adjustment Termination Date to the City Representative and all service providers under other Commercial Franchise Agreements. The Request shall describe with reasonable specificity the basis on which such Exclusive Service Area boundary review and adjustment is sought. Within fifteen (15) days after the Request, the other service providers will submit in reasonable detail a complete record of their Rate Revenues, Customer lists and all other information requested by the requesting party or City and related to the establishment of the Exclusive Service Area boundaries.

B. Within thirty (30) days after the Request, the City, Contractor and all other service providers will meet and discuss cooperatively and in good faith to determine if the actual permanent Rate Revenues generated in each Exclusive Service Area under the Commercial Franchise Agreements are in proportion to the respective Proportionate Share of Contractor and each other service provider, using the same methodology employed in originally establishing the Exclusive Service Areas. In the event the City Representative determines the actual permanent Rate Revenues of Contractor or other service provider is less than ninety five percent (95%) of the estimated permanent Rate Revenues used to initially establish the Exclusive Service Area boundaries for such party, the City, Contractor and other service providers will negotiate cooperatively and in good faith to adjust the Exclusive Service Area boundaries to accurately provide to each of Contractor and the other service providers their respective Proportionate Share of the total actual permanent Rate Revenues. If the City, the Contractor and other service providers cannot agree within thirty (30) days on an appropriate adjustment of the Exclusive Service Area boundaries, the City Representative shall issue in writing within thirty (30) days thereafter his finding ("Finding") of the appropriate adjustment to the Exclusive Service Area boundaries. The Contractor and other service providers shall have thirty (30) days from the issuance of the Finding to appeal the Finding to the Reno City Counsel. If no appeal is filed with the City Council within such thirty (30) day period, the Finding shall be final and the Exclusive Service Areas will be adjusted as provided in the Finding. The decision by the City Council on appeal under this Section 3.12 shall be final and binding on the Contractor and all other service providers and all such parties hereby waive any right to appeal the decision of the City Council. The failure or refusal of the Contractor or any service provider to participate and cooperate in good faith in the discussion and negotiations required under this Section 3.12 shall not defeat or render invalid the Finding by the City Representative or the decision on appeal to the City council under this Section 3.12, and both shall be binding and enforceable in all respects. In the event an adjustment to the Exclusive Service Area boundaries occurs under this Section 3.12, this

Agreement and other Commercial Franchise Agreements will be amended to reflect such adjustments and the City Representative is expressly delegated the authority to execute such amendments.

3.13 IMPLEMENTATION OF COLLECTION SERVICE AGREEMENTS; TRANSITION; QUALIFIED SERVICE CONTRACTS

Contractor currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in Contractor's Exclusive Service Area and will continue to do so after the Effective Date and until implementation of the Collection Services under this Agreement. Contractor also currently provides certain Solid Waste and Recyclable Materials collection services to commercial customers in areas of the City other than Contractor's Exclusive Service Area. Subject to the commencement of collection services to such customers by other service providers under the other Commercial Franchise Agreements, Contractor will cease collection services in the exclusive service areas of the other service provider under the other Commercial Franchise Agreement. Contractor, City and the service provider(s) under the other Commercial Franchise Agreement will cooperate in good faith to implement the orderly and efficient transfer of accounts and transition to and commencement of exclusive franchise Collection Services under the Commercial Franchise Agreements in the City, as more fully provided in this Section 3.13.

A. Collection Services in Contractor's Exclusive Service Area; Qualified Service Contracts.

Contractor will commence the implementation of Collection Services as required by this Agreement in Contractor's Exclusive Service Area within One Hundred Twenty days (120) days after the Effective Date and will exercise reasonable diligence to complete the implementation of Collection Services on or before the Operative Date. If Commercial Customers in Contractor's Exclusive Service Area are a party to a "Qualified Service Contract" (as defined below) as of the Effective Date, Contractor will provide Collection Services to such customers i) at the lesser of a) the Rate for such service provided under this Agreement or b) the rate or charge provided in the Qualified Service Contract; provided that the rate or charge shall not be less than seventy five percent (75%) of the Rate under this Agreement for the same or similar service ("Transition Rate") and ii) the length of the term of Collection Services provided at the Transition Rate to such Commercial Customers ("Transition Term") shall be the longer of a) the initial or base term provided in the Qualified Service Contract (without renewal, rollover or other extensions of such term) or b) the period ending January 1, 2015. For purposes hereof, a "Qualified Service Contract" means a binding service contract with a commercial customer for the collection and transportation in the City of Solid Waste or Approved Recyclable Materials, or both, dated on or before October 24, 2012, by any service provider properly licensed to collect and transport such materials in the City, excluding Exempted Hauler Accounts.

B. Collection Services in other Exclusive Service Areas

Upon commencement of collection service to a commercial customer by another service provider in the other exclusive service area under the other Commercial Franchise Agreement, Contractor shall cease collection services to such customer. The service provider(s) under the other Commercial Franchise Agreements i) shall commence collection services under such Commercial Franchise Agreements within

one hundred twenty (120) days after the Effective Date and will exercise reasonable diligence to complete the implementation of such collection services on or before the Operative Date and ii) will charge the Transition Rates to each commercial customer located in the service provider's exclusive service area who is a party to a Qualified Service Contract as provided in Section 3.13 (A) above.

C. Temporary Adjustment of Franchise Fees

City and Contractor acknowledge that the Rates provided on the Scope of Services have been established in an amount sufficient to pay Contractor's cost of Collection Services hereunder and that the Transition Rates applicable to Qualified Service Contracts and Transition Accounts, which will be less than the Rates specified on the Scope of Services, will not provide sufficient Rate Revenue to pay the Franchise Fee. Accordingly, City and Contractor agree that no Franchise Fee will be payable by Contractor to City on Rate Revenues derived from Qualified Service Contracts or Transition Accounts.

D. Transition of Collection Services, General Terms

Each service provider under each Commercial Franchise Agreement will be a third party beneficiary of the terms and conditions of this Section 3.13 and similar provisions under the other Commercial Franchise Agreement. Contractor and the other service providers may exchange, borrow or subcontract for the use of the other's Containers during the Transition Period and the Container identification requirements shall not apply to such Containers during such use.

ARTICLE 4

SCOPE OF SERVICES

4.1 SOLID WASTE COLLECTION SERVICES

Contractor shall provide Collection Services of Solid Waste to Commercial Customers in Contractor's Exclusive Service Area and will provide to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of the Collection Services for Solid Waste shall be offered to Customers by Contractor as provided on the Scope of Services; provided, however, that Collection Services of Garbage shall be provided not less often than Weekly.

4.2 SINGLE STREAM RECYCLING COLLECTION SERVICES

Contractor shall offer Collection Services of Single Stream Recycling for Source Separated Recyclables to Commercial Customers in Contractor's Exclusive Service Area on a subscription basis and will offer to Commercial Customers the Containers for such services shown on the Scope of Services and determined appropriate by Contractor for such service. The frequency of Collections Services for Source Separated Recyclables shall be on the request of each Customer. Customers are encouraged to but are not required to subscribe to Collection Services from Contractor of Source Separated Recyclables or other recycling services. Collection Services shall include only Source Separated Recyclables and each

Customer who recycles shall be responsible for separating its Approved Recyclable Material from all other materials, including without limitation Garbage, Excluded Material and Solid Waste other than Approved Recyclable Material, and placing only Approved Recyclable Materials in Recycling Containers provided by Contractor. Recycling Containers shall be used only for Source Separated Recyclables and no other materials of any kind may be placed in Recycling Containers. City, Contractor and other service providers under Commercial Franchise Agreements may agree to change the Recyclable Materials constituting the Approved Recyclable Materials, in which event the Approved Recyclable materials shall change for this Agreement and all other Commercial Franchise Agreements. Contractor may refuse to collect Recyclable Materials not separated and placed for Collection by Customer as required herein and may charge fees or other charges for improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Recyclable Materials placed for Collection which is mixed with more than a de minimis amount of material other than Approved Recyclable Materials.

4.3 FOOD WASTE RECYCLING

The Contractor may at Contractor's election offer Collection Services of Source Separated Food Waste to Commercial Customers within Contractor's Exclusive Service Area, on a subscription basis. If Contractor develops a Source Separated Food Waste Recycling or collection service program, Contractor will have the exclusive right to provide such services in its Exclusive Service Area, at rates to be mutually agreed upon by the Contractor and the City and added to the Scope of Services as an amendment, and Contractor will provide separate Containers suitable for Food Waste as determined appropriate by Contractor for such service. Customers are not required to subscribe to Food Waste Recycling Collection Services. Collection Services of Food Waste shall include only Food Waste and each Customer shall be responsible for properly separating the Food Waste from all other materials, including without limitation other Source Separated Recyclables, Garbage and Excluded Material, and placing the Food Waste only in Recycling Containers designated by Contractor for Food Waste. Recycling Containers designated by Contractor for Food Waste shall be used only for Food Waste and no other materials of any kind may be placed in Recycling Containers designated for Food Waste. Contractor may refuse to collect Food Waste not separated and placed for Collection as required herein and may charge fees or other charges for improperly separated, mixed or placed materials, including without limitation charging the Rate applicable to Solid Waste for Collection of any Food Waste placed for Collection which is mixed with more than a de minimis amount of material other than Food Waste.

4.4 DELIVERY OF COLLECTION MATERIALS TO DESIGNATED FACILITIES; DISPOSAL AGREEMENT

Contractor acknowledges that the City has entered into a long term Solid Waste Transfer and Disposal Agreement with Refuse, Inc., a Nevada corporation ("Designated Facility Owner"), to provide the City with an environmentally sound and cost effective solution for the transfer, processing, handling, recycling, and Disposal of certain Solid Waste and Recyclable Materials (the "Disposal Agreement"). Contractor shall deliver all Collection Materials, excluding Exempted Facility Materials delivered at the election of a Franchised Hauler to the Exempted Facility, that Contractor collects within the Exclusive Service Area to a Designated Facility which has been designated by the City pursuant to and in

accordance with the requirements of the Disposal Agreement. Capitalized terms used but not defined in this Section 4.4 have the meaning provided in the Disposal Agreement. Contractor hereby agrees to the "Franchise Hauler Terms" (as defined in the Disposal Agreement), including without limitation the following terms and conditions in this Section 4.4, which terms and conditions are also included in the Disposal Agreement:

A. Delivery of Approved Disposal Materials

Beginning on the Effective Date and throughout the term of this Agreement, subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor will deliver all Approved Disposal Materials collected, handled or transported under the City Franchise Agreements to the Designated Facilities in accordance with the terms and conditions hereof and the Disposal Agreement. Subject to the exemption for Exempted Facility Materials provided in Section 4.4 L, Contractor shall deliver i) all Solid Waste to the designated Transfer Station, unless the Designated Facility Owner directs the Solid Waste be delivered to another Designated Facility and ii) all Approved Recyclable Material to the MRF, unless the Designated Facility Owner directs the Approved Recyclable Material be delivered to another Designated Facility. No Approved Disposal Materials shall be delivered to the Disposal Site by Contractor without the prior express approval of the Designated Facility Owner. No person or entity other than the Designated Facility Owner shall be allowed or entitled to accept the Approved Disposal Materials for processing, recycling or disposal except as expressly provided under Section 4.4 L and the Disposal Agreement. Notwithstanding anything in this Section 4.4 (A) to the contrary, i) Contractor shall be entitled to deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste to Disposal facilities other than the Designated Facilities, ii) Disposal facilities other than the Designated Facilities shall be entitled to accept from the Contractor (a) Excluded Materials; (b) Exempted Drop Box Materials; (d) Exempted Hauler Account Materials; (e) Food Waste and (f) Green Waste for processing or recycling and iii) Contractor shall be entitled to deliver to the Exempted Facility, and the Exempted Facility shall be entitled to accept, process, recycle and dispose, Exempted Facility Materials. Except as provided in this Section 4.4 A, Contractor may not, directly or indirectly through other persons or otherwise, perform or conduct any processing, sorting, separating, and/or disposal or other activities regarding the Collection Materials, and it is expressly understood that Contractor's Collection Services hereunder are limited to Collecting the Collection Materials and delivering them to the Designated Facilities; provided, however, nothing in this Agreement or the Disposal Agreement shall be interpreted to prohibit or prevent Contractor from directly or indirectly owning and operating a transfer station, disposal facility, materials recovery facility or similar facility that accepts and to which Contractor may collect and deliver (a) Excluded Materials; (b) Exempted Drop Box Materials; (c) Exempted Hauler Account Materials; (d) Food Waste and (e) Green Waste, for processing or recycling.

B. No Excluded Materials; Screening of Materials

Contractor will deliver only Approved Disposal Materials of the type appropriate for the Designated Facility to which the materials are delivered and otherwise in accordance with the terms of the Disposal Agreement. No Excluded Materials will be delivered to any Designated Facility by Contractor except with

the prior written and informed approval of the Designated Facility Owner. The Contractor will exercise Industry standard, reasonable efforts to screen all materials to i) screen and verify only Approved Recyclable Materials are delivered for Recycling and ii) screen and remove all Hazardous Waste and other Excluded Materials from the materials delivered to the Designated Facilities. Except as provided in Section 4.4 F hereof, ownership of Hazardous Waste and other Excluded Materials shall not transfer to the Designated Facility Owner unless the Designated Facility Owner shall expressly and knowingly accept such ownership in writing and the Designated Facility Owner shall not be responsible for any Hazardous Wastes or other Excluded Materials delivered to a Designated Facility in violation of this Agreement.

C. Payment of Rates and Charges by Contractor

The Contractors will pay the Rates (as defined in the Disposal Agreement), as adjusted, and other charges, to the Designated Facility Owner in accordance with the Disposal Agreement.

D. Limited License

Contractor shall have a limited license to enter the Designated Facilities for the sole purpose of unloading Approved Disposal Materials at an area designated, and in the manner directed, by the Designated Facility Owner.

E. Compliance by Contractor

Contractor and its employees, subcontractors, or other agents shall comply with: i) Applicable Law related directly or indirectly to the delivery to and Disposal of materials at the Designated Facilities, including without limitation the ordinances of the City, ii) all rules and regulations of the Designated Facilities of which Contractor has not less than thirty (30) days prior written notice, including without limitation rules relating to safety, acceptance, rejection or revocation of acceptance of materials, hours of operation, measuring and reporting volumes of Approved Disposal Materials delivered to the Designated Facilities and iii) all Franchise Hawier Terms in the Disposal Agreement.

F. Inspection and Rejection of Materials by Designated Facility Owner

The Designated Facility Owner shall have the right to inspect, analyze or test any material delivered by Contractor to any Designated Facility. The Designated Facility Owner shall have the right to reject, refuse or revoke acceptance of any material if, in the reasonable opinion of the Designated Facility Owner, the material or tender of delivery fails to conform to, or Contractor fail to comply with, the terms of the Disposal Agreement, including without limitation as a result of delivery of Excluded Material. In the event the Designated Facility Owner, by notice to Contractor, rejects or within ten (10) business days of receipt revokes acceptance of materials hereunder, the Contractor shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from the Disposal Facilities property or control. If the rejected material is not removed within three (3) days from receipt of notice, the Designated Facility Owner shall have the right and authority to handle and dispose of the rejected material or Excluded Material in any commercially reasonable manner determined by the Designated Facility Owner. The Contractor shall pay and/or reimburse the Designated Facility Owner for any and all costs,

damages and/or fines incurred as a result of or relating to the tender or delivery of the rejected material or Excluded Material or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of the rejected material or Excluded Material. Title to, ownership of and liability for Excluded Material shall transfer to Contractor unless such Excluded Material is rejected or the acceptance of which is timely revoked. Without limiting the foregoing, Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for delivery of Contaminated Recyclable Materials, may charge for and dispose of such Contaminated materials as Solid Waste, and may refuse to accept such Contaminated materials.

G. Franchise Hauler Noncompliance

The Designated Facility Owner may suspend on prior written notice some or all Disposal Services to Contractor in the event Contractor fails to comply with the requirements applicable to Contractor in this Agreement or the Disposal Agreement or otherwise fails to follow the requirements and procedures under this Agreement, the Disposal Agreement or Applicable Law, rules and policies, including without limitation, i) improper preparation, separation or contamination of Solid Waste or Approved Recyclable Materials, ii) delivery of Excluded Materials to a Designated Facility; or iii) other failure of a Contractor to comply with the requirements under this Agreement or Applicable Law, rules and policies of which the Designated Facility Owner has provided Contractor reasonable prior notice. Upon occurrence of such event(s), the Designated Facility Owner may charge fees and charges as provided in the Disposal Agreement or otherwise approved by City, including without limitation charges and fees for special or additional services and otherwise to the extent necessary to pay the direct and indirect costs of and damages from such noncompliance. Upon notice of such a failure by the Designated Facility Owner to the Contractor and the City and failure of the Contractor to remedy such failure within thirty (30) days, the Designated Facility Owner may suspend Disposal Service to Contractor. The Contractor shall be reinstated on the first business day following the date upon which any such failure has been corrected. Nothing in this Section or in any other Section of this Agreement is intended to limit or restrict the rights or remedies of the Designated Facility Owner under this Agreement, the Disposal Agreement or applicable law.

H. Time of Delivery

The Designated Facility Owner shall provide identical access and parity of use to the Transfer Station, the MRF, the Eco-Center, and any alternative facilities designated pursuant to Section 4.4 I for each Franchise Hauler for delivery and unloading of Solid Waste and Approved Recyclable Materials (including incidental residue) at such facilities. Except where either or both the days and hours of operation for such facilities have been changed upon thirty (30) days prior written notice, such facilities shall be open for each and all of the Franchise Haulers every day of the week between the hours of 5:00 AM and 10:00 PM. Subject to compliance with the notice requirements of this Section 4.4 H, operational and delivery hours may be adjusted by the Designated Facility Owner and approved by City. The Designated Facility

Owner shall have the right to adjust the operating hours of the Designated Facilities to the extent reasonably necessary in the event of an emergency.

I. Alternative Facilities

During the Term of this Agreement, the Designated Facility Owner may designate alternative facilities for the receipt, processing, transfer, or disposal of Collection Materials, Green Waste and Food Waste, provided such alternative facilities do not result in an increase in Rates or material increase in costs to Contractor and Contractor will deliver such materials to the alternative facilities as directed by the Designated Facility Owner. If the Designated Facility Owner designates an alternative facility, unless the alternative facility is required to pay the Host Fee to the City, the Designated Facility Owner shall pay or cause to be paid the Host Fee payable under the Disposal Agreement and applicable to any Approved Disposal Materials delivered to the alternative facility. Upon the approval of City, the Designated Facility Owner may cause or allow Disposal Materials to be delivered to the City waste water treatment plant, in which event no Host Fee, tipping fee or other fee will be payable to City for or on such materials. Nothing in this Section 4.4 I shall limit the right of a Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility or the right of the Exempted Facility to accept, process, recycle or dispose of Exempted Materials under Section 4.4 L hereof.

J. Ownership of Disposal Materials

Ownership of all Approved Disposal Materials, upon delivery to and acceptance by a Designated Facility, shall transfer to the owner or operator of the Designated Facility and shall become the property of the Designated Facility Owner.

K. Third Party Beneficiary

The Designated Facility Owner shall be a third party beneficiary of this Agreement with all rights and remedies to enforce the Franchise Hauler Terms and other terms, covenants and conditions under this Agreement.

L. Exemption for Exempted Facility Materials

1. Subject to the Exempted Facility Material Limit and otherwise as provided in this Section 4.4 L, i) the requirement and obligation of the Contractor to deliver all Collection Materials to a Designated Facility shall not include or apply to Exempted Facility Materials delivered by Contractor to the Exempted Facility and accepted by, processed or recycled at or disposed from the Exempted Facility and ii) this Agreement and the Disposal Agreement shall not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials.

2. The Exempted Facility shall file with the City a quarterly report, in form required by the City and certified true, correct and complete by an owner or officer of the Exempted Facility, consistent with the obligations of the Exempted Facility under Section 4.4 L 7 hereof, stating i) the volume of all Solid Waste and Recyclable Materials, including without limitation the type and volume of Exempted Facility

Materials, Exempted Drop Box Materials and Exempted Hauler Account Materials accepted, processed, recycled and disposed during the calendar quarter and ii) such other information the City may require.

3. The Exempted Facility shall be a third party beneficiary with the right to enforce, subject to the terms and conditions in this Section 4.4 L, the rights of the Exempted Facility under this Section 4.4 L. Sections 4.4 L and 3.2 D 6 shall not be amended in a manner that would terminate, limit or restrict i) the right of any Franchised Hauler to deliver Exempted Facility Materials to the Exempted Facility, or ii) the right of any Exempted Hauler to deliver Exempted Drop Box Materials or Exempted Hauler Account Materials to the Exempted Facility as provided under Section 3.2 D 6 hereof, or iii) the right of the Exempted Facility to accept, process, recycle or dispose of the materials delivered under Sections 4.4 L 3 i) and ii) hereof, without the prior written consent of the Exempted Facility, which the Exempted Facility may not unreasonably withhold, condition or delay; provided, however, nothing in this Section 4.4 L shall restrict the ability or right of the City to adopt ordinances or otherwise exercise its regulatory authority relating to the collection, transportation, processing, recycling and disposal of Solid Waste or Recyclable Materials, including without limitation Exempted Facility Materials.
4. The rights of the Exempted Facility under this Section 4.4 L may be sold, assigned or transferred to a third party in whole, but not in part, provided such third party obtains all licenses necessary for the acceptance, processing, recycling and disposal of the Exempted Facility Materials and the Exempted Facility owner shall be entitled to sell, transfer and/or convey an ownership interest, in whole or in part, in the Exempted Facility. If the Exempted Facility shall dissolve or otherwise cease business for a period equal to or more than one (1) year, the rights of the Exempted Facility under this Section 4.4 L shall terminate.
5. The Exempted Facility shall pay to the City in quarterly installments a host fee equal to two and one-tenth cents (\$0.021) for each cubic yard of all Exempted Facility Materials, Exempted Drop Box Materials and Exempted Hauler Materials that are accepted, processed, recycled or disposed at the Exempted Facility. The host fee payable under this Section shall be increased in proportion to changes in the Host Fee payable by the Designated Facility Owner under the Disposal Agreement.
6. The Exempted Facility shall be in default hereunder if the Exempted Facility shall i) fail to timely pay the host fee or fail to timely file with the City the reports, each as required under this Section 4.4 L, ii) accept, process, recycle or dispose of Exempted Facility Materials totaling in excess of one hundred five percent (105%) of the Exempted Facility Materials Limit for the Exempted Facility, iii) accept, process, recycle or dispose of Exempted Facility Materials more than the Exempted Facility Material Limit on two occasions in any consecutive five (5) year period, or iv) otherwise materially fail to comply with this Section 4.4 L. Upon thirty (30) days written notice of default by City and the failure of the defaulting Exempted Facility to cure such default, City shall be entitled to exercise all rights and remedies available to the City, including without limitation the right to terminate the rights under this Section 4.4 L of the defaulting Exempted Facility.
7. The Exempted Facility will exercise industry standard, reasonable efforts to screen materials received from the Exempted Haulers and the Franchised Haulers to identify Exempted Facility Materials,

Exempted Drop Box Materials, Exempted Hauler Account Materials and other materials in order to i) prepare and file the reports required to be filed with the City under this Section 4.4 L, ii) comply with the Exempted Facility Materials Limit, iii) pay the host fee required under this Section 4.4 L and otherwise comply with the requirements of this Section 4.4 L.

4.5 SPECIAL SERVICES

In addition to and separate from Collection Services, Contractor may voluntarily offer certain "Special Services" within the City; provided, however, Contractor shall not violate the exclusive right of another service provider under any other Commercial Franchise Agreement. Contractor is not required under this Agreement to provide Special Services, but may elect to do so. Examples of such optional Special Services include: i) on-call Bulky Items pick-up or side-yard services for Customers; ii) the lease, sale and maintenance of Compactors; iii) provision of Compactors or Containers placed in Community Collection Locations for use of more than one customer on terms agreed to by Contractor and the collection, transportation and delivery of Collection Materials deposited in such Compactors or Containers; and iv) collection, transportation, delivery or other services related to Excluded Materials, Exempted Drop Box Materials and Excluded Recyclable Materials which have been Source Separated from other Solid Waste. It is anticipated that the additional Special Services (if any) that Contractor may elect to offer and the fees and charges for the Special Services will not be uniform with services or fees or charges offered by service providers under the other Commercial Franchise Agreements. Contractor may provide Special Services in the manner and at rates, fees and charges in an amount determined by Contractor, which shall not be included in the Gross Receipts. Contractor shall, however, maintain in full force and effect throughout the term of this Agreement a current business license from the City as it relates to provision of Special Services.

ARTICLE 5 OPERATIONS

5.1 CUSTOMER INFORMATION AND PUBLIC EDUCATION

Contractor is responsible for the distribution, preparation, reproduction and mailing of educational information kits for new Customers which describe Contractor's Collection Services, including without limitation information about the various available Containers, Rates, charges, and Single Stream Recycling of Source Separated Recyclables and related Customer responsibilities. Contractor shall distribute the information kits to Customers and shall provide notice to Customers of its commencement of Collection Services under this Agreement at least thirty (30) days prior to the commencement of Collection Services to the Customer.

5.2 CUSTOMER SERVICE

Contractor shall maintain and provide to all Customers a telephone number for Customer service, and shall provide all telephonic services specified in this Section 5.2. Contractor shall install and maintain telephone equipment, and shall have on staff a sufficient number of dedicated service representatives reasonably necessary to handle customer service calls. Such dedicated customer service representatives

shall be available to answer calls from 8 A.M. to 5 P.M, Monday through Friday. Contractor shall also maintain an after-hours telephone message system to record calls received outside Contractor's normal business hours. Contractor shall provide the City a means of contacting a representative of the Contractor on a twenty-four (24) hour basis.

5.3 SERVICE COMPLAINTS

Contractor shall maintain computer records of all oral and written service complaints registered with Contractor from Customers receiving Collection Services ("Complaint Record"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints as provided in Section 5.4 hereof. Contractor shall record the Complaint in the customer file contained in the Contractor's customer database, noting the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. City has the right under this Agreement to inspect the Complaint's made against Contractor upon written request.

5.4 OMBUDSMAN; COMPLAINT RESOLUTION

- A. Contractor shall designate and maintain an Ombudsman for the duration of this Agreement. Contractor shall notify the City of the name and title of the person serving as Contractor's Ombudsman. The Ombudsman must be a company official who does not directly or indirectly report to any person who manages the Collection Services, or any Customer account, on a day-by-day basis. On an ongoing basis, Contractor shall immediately notify the City when an Ombudsman is replaced.
- B. If, for any reason, a dispute arises between Contractor and a Collection Services customer that is not resolved between Contractor and the Customer to the City's reasonable satisfaction, the City, at its sole option, may i) submit the dispute to the Ombudsman who shall ensure that the matter is formally reviewed, considered, and resolved and/or responded to by the Contractor within seven (7) days or ii) make a determination of the dispute resolution without submitting the Ombudsman. If the Ombudsman shall not resolve the dispute to the City's reasonable satisfaction, the City may make a determination of the dispute resolution. The determination by the City of all Collection Services customer disputes shall be final and binding on Contractor and the customer. This Section 5.4 shall not apply to disputes between Contractor and any customer for customer account obligations or the payment or collection thereof.
- C. This Section 5.4, however, does not in any way legally obligate the City to submit a dispute to the Ombudsman as a condition precedent to enforcing its rights hereunder in law or in equity, including the right to seek damages for breach, a decree of specific performance, injunctive relief or any other remedy that would be available to the City in the event of a breach, or threatened breach, of any provision of this Agreement by the Contractor, or any of the Contractor's successors or assigns.

5.5 HAZARDOUS AND OTHER EXCLUDED MATERIALS; CONTAMINATION OF APPROVED RECYCLABLE MATERIALS

A. General

If Contractor determines that waste placed in any Container for Collection or delivered to any facility is Hazardous Waste, Medical and Infectious Waste, or other Excluded Materials, in addition to all other rights available under this Agreement or at law or equity, Contractor shall have the right to refuse to accept such waste and to proceed as provided under his Agreement. Customer shall be contacted by Contractor and requested to arrange proper disposal. If Customer cannot be reached immediately, Contractor staff shall, prior to leaving the premises, leave a tag on the top of the Container indicating the reason for refusing to collect the waste.

B. Ownership of and responsibility for Hazardous Waste or other Excluded Material

Notwithstanding anything in this Agreement to the contrary, ownership of Hazardous Waste and other Excluded Materials shall not transfer to Contractor unless Contractor shall knowingly accept for collection and contract expressly in writing to accept, collect and transport such material. All such material shall remain the property of the Customer placing or attempting to place such material for Collection or disposal, and such Customer shall remain solely responsible for such materials, the proper and legal transportation and disposal thereof, the retrieval of such materials from any location (including without limitation a location to which Contractor may have transported them), and for any and all damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the generation, transportation, handling, cleanup, remediation or disposal of such materials.

C. Contamination of Approved Recyclable Materials

Approved Recyclable Materials mixed with i) more than a de minimis amount of Garbage, ii) ten percent (10%) or more of materials other than Approved Recyclable Materials, or iii) any amount of Excluded Materials, shall be considered contaminated ("Contaminated"). Contractor may impose a fee or charge for Contaminated Approved Recyclable Materials placed in any Recycling Container, may charge for and disposed of such contaminated materials as Solid Waste, and may refuse to Collect such Contaminated materials.

5.6 PERSONNEL

Contractor shall furnish qualified drivers, mechanical, supervisory, clerical and other personnel as necessary to provide the Collection Services required by this Agreement in a safe and efficient manner and otherwise as provided in the Operating Standards.

5.7 VEHICLES AND EQUIPMENT

Contractor shall procure, maintain and replace a sufficient number of industry standard collection vehicles and other equipment to properly provide the Collection Services. All vehicles used in the performance of Collection Services i) shall be maintained in an operational, clean and sanitary manner to industry standards, ii) shall have appropriate safety markings and lights in accordance with current statutes, rules and regulations, iii) shall not allow liquid wastes to leak from the vehicle, iv) shall be

labeled with signs which clearly indicate the vehicle inventory number and customer service number of Contractor v) shall be painted a uniform color, provided Solid Waste collection vehicles and Recyclable Material collection vehicles may use different paint and color schemes and vi) shall be equipped with properly licensed two-way communication equipment. The Contractor shall maintain a base station or have communication equipment capable of reaching all collection vehicles.

5.8 CONTAINERS

A. Container Requirements and Ownership

The Contractor shall procure, maintain, own and provide to Customers a sufficient quantity of Containers to provide the Collection Services. Without the prior written consent of Contractor, which Contractor may withhold in its sole discretion, Customers shall not provide their own containers and shall use only Containers provided by Contractor for Collection Services; provided, however, Customers may provide Compactors for Collection Services performed by Contractor, which Collection Services may be provided for in the Scope of Services and Rates, provided such Compactors are compatible with Contractor's collection equipment. Contractor shall not be responsible for damage to any Compactors except to the extent caused by the gross negligence or intentional misconduct of Contractor.

Any Container damaged or missing on account of accident, act of nature or the elements, fire, or theft or vandalism by persons other than the Customer such that the Container does not comply with the requirements under this Agreement shall be repaired or replaced by Contractor at Contractor's cost within a reasonable time after request by Customer. Customers shall properly care for Containers provided for Customer's use, shall use reasonable efforts to protect such Containers from graffiti or negligent or intentional misuse, and shall not use such Containers for other than their intended purpose. In the event a Customer damages or requests a replacement Container as a result of Customer's damage, lack of reasonable care or intentional misuse, the Contractor may charge the Customer the reasonable cost of replacement of the Container, including a reasonable pickup and delivery charge. Containers shall be located on the Customer premises in a manner required hereunder and under applicable law, rules and policies and otherwise in a location providing appropriate access to the Container by Contractor and allowing safe and efficient collection by the Contractor. Containers shall not be placed by Contractor or Customer in any City Public Street. Ownership of all Carts and other Containers shall remain with Contractor at all times, except for Compactors provided by Customer.

B. Weight Limits of Containers

Cart weight, including all Collection Materials therein, shall not exceed sixty (60) pounds for the thirty five (35)-gallon size, one hundred-twenty (120) pounds for the sixty four (64)-gallon size and one hundred-eighty (180) pounds for the ninety six (96)-gallon size. No specific weight restrictions apply to Bins or Drop-Boxes, provided, however, the Contractor shall not be required collect, lift or remove any Container i) exceeding the safe working capacity of the collection vehicle as determined by Contractor or ii) which would cause the vehicle carrying the Container to exceed legal road weights.

C. Loading Containers: Access to Containers

All Collection Material must be placed by Customers i) only in Containers provided Contractor, ii) completely within the Containers provided by Contractor, such that the lid or other closure on such Container closes completely and iii) only in Containers designated for the type of Collection Material deposited in such Container. No Collection Materials may be placed for collection by Customer except in a Container provided by Contractor, including without limitation in Customer-supplied or other containers, in bundles or placed outside an appropriate Container. Customer must provide unobstructed, efficient access by Contractor to all Containers in a location approved by Contractor.

5.9 SPILLAGE

Contractor shall exercise reasonable efforts to keep Collection Materials collected by the Contractor completely contained in Containers and collection vehicles. Hoppers and tippers on all collection vehicles shall be operated in a reasonable manner so as to minimize blowing or spillage of materials. Spillage of materials caused by Contractor shall be promptly cleaned up by the Contractor at Contractor's expense to the extent reasonably possible and necessary. However, it is understood that wind conditions in the Truckee Meadows make it impossible for the Contractor to prevent the blowing of all material. All vehicles used for Collection Services shall carry spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials reasonably sufficient to contain, control and, for minor events, appropriately clean-up any spillage or release of wind-blown materials, litter, or leaks of Contractor vehicle fluids or leachate.

5.10 CONTRACTOR PLANNING ASSISTANCE

The Contractor shall, upon request, make available a reasonable amount of site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the Contractors Exclusive Service Area, and shall address the ability of Contractor to provide service in the Collection areas. Contractor will not charge for normal and reasonable site planning services. Contractor may charge a reasonable fee for will-serve letters.

5.11 SAFEGUARDING PUBLIC AND PRIVATE FACILITIES

The Contractor shall exercise reasonable efforts to protect public and private improvements, facilities and utilities whether located on public or private property, including street Curbs. If such improvements, facilities, utilities or Curbs are damaged due to the negligence or intentional misconduct of Contractor, the Contractor shall repair or replace the same. However, Contractor shall not be responsible for damage caused to persons or to public or private property to the extent caused by either or both i) the negligent or intentional acts of a Customer or others and ii) the failure of the Customer property to meet or comply with the requirements of this Agreement and applicable laws, rules and policies, including without limitation the failure of the Container enclosure, approach surface or surrounding area to meet industry standards.

5.12 INCLEMENT WEATHER, CONSTRUCTION AND OTHER SERVICE DISRUPTIONS

When weather, construction or other conditions reasonably prevent or impair Collection Services, Contractor may make reasonable adjustments to the Collection Services, including without limitation postponing Collection until the following regularly scheduled Collection, but shall continue Collection Services to the extent reasonably safe and efficient. No credits or refunds will be provided for missed Collections or other service limitations beyond the reasonable control of contractor. The Contractor shall notify the City of its collection plans and outcomes for each day that severe inclement weather is experienced as soon as practical that same business day.

5.13 VEHICLE DRIVE IN SERVICE

The Contractor shall offer drive-in service, at additional charge, to Customers' property that allows safe access, turn-around space, and clearance for service vehicles. Customers located in an area that does not allow safe access, turn-around or clearance for service vehicles will be provided service if Collection Materials are placed adjacent to the nearest public street or private road that provides safe access in a location approved by Contractor. In the event the Contractor determines a private road or drive cannot be safely negotiated or that providing drive-in service for Customers is impractical due to distance or unsafe conditions, the Contractor will evaluate on-site conditions and make a determination of its preferable approach for providing safe and appropriate service to the Customer. Contractor may require a damage waiver agreement or, upon 30 days prior written notice to the Customer and the City, decline to provide service to Customers where Contractor determines impractical or unsafe.

ARTICLE 6 CUSTOMER RATES

6.1 RATES

A. General Provisions

Contractor shall charge and collect from Customers for Collection Services the Rates provided on the Scope of Services, which Rates may be adjusted as provided in this Agreement. The collection of Rate Revenues by Contractor from Customers for Collection Services shall be Contractor's sole compensation for provision of Collection Services; provided, however, Contractor shall be entitled to charge other fees and charges for Special Services and other services and may charge other fees and charges for Customer noncompliance as provided in Section 3.10. If a Designated Facility refuses to accept Approved Recyclable Materials, Contractor may collect and deliver such materials for Disposal as Solid Waste and may charge the Rate applicable to Solid Waste for such Collection Services.

6.2 ADJUSTMENT OF RATES

A. CPI Rate Adjustment

Subject to the terms, conditions and limitations of this Section 6.2 A, the Rates, excluding Transition Rates, for all Collection Services shall increase annually during the Term and all Extension Terms in proportion to the percentage increase in the CPI over the preceding year, as provided below ("CPI

Adjustment"). Adjustments to the Rates shall be made in units of One Cent (\$0.01) and fractions thereof shall be rounded to the nearest cent.

The first annual CPI Adjustment of the Rates shall occur April 1, 2014 (such date and each anniversary thereof during the Term, an "Adjustment Date"). The Rates shall be increased in proportion to the percentage increase in the CPI over the most recent twelve (12) month period ending on December 31 of the year preceding the Adjustment Date. In determining the CPI increases, Contractor may elect to increase the Rates applicable to particular or specific services or groups of services by more or less than the CPI, so long as the total increase in the Rates for all Collection Services is less than or equal to the increase in the CPI; provided, however, Contractor and City shall cooperate in good faith to determine the exact amount and allocation of such increases. The Contractor's calculations of the CPI Adjustment and the Return on Revenues described below shall be i) based on financial statements of Contractor which form a part of the financial statements of the parent company of Contractor (which parent's financial statements have been audited by an independent certified public accountant or accounting firm), ii) certified true, correct and complete by the Contractor Representative and iii) provided to the City no later than March 15 of the year of the Adjustment Date. The adjusted Rates shall take effect on the Adjustment Date and shall apply for the ensuing year. If the CPI is changed or discontinued, it will be replaced by an index that would achieve as closely as possible to the same result as if the CPI had not been changed or discontinued.

The CPI Adjustment to the Rates shall be subject to the following limitations:

- i) The CPI shall not be less than zero percent (0%) or more than six percent (6%); and
- ii) Commencing with the Adjustment Date occurring on April 1, 2017, in the event the annual Return on Revenue of Contractor for the three consecutive calendar years immediately preceding the Adjustment Date averages more than eight percent (8%) ("Return on Revenue"), using a three year rolling average, no CPI Adjustment shall apply to the Rates for the year in which such Adjustment Date occurs.

For purposes hereof, "Return on Revenues" shall mean net income divided by gross revenues and expressed as a percentage. Net income is determined by deducting from gross revenues all expenses, which expenses include federal income taxes. Return on Revenue shall be calculated by Contractor in accordance with generally acceptance accounting principles, consistently applied, and otherwise in a manner substantially similar to the calculation of rate increases used under the Existing RFA (as defined in Section 11.23 hereof). The Rates of both service providers under both of the Commercial Franchise Agreements shall increase in the amount and at the time the Rates of Reno Disposal increase.

The service provider under the other Commercial Franchise Agreement is a third party beneficiary of this Section 6.2 A as provided in Section 6.2 A i) of the other Commercial Franchise Agreement.

B. Other Adjustments to Rates

Because the Rates are Contractor's sole compensation for the Collection Services, the Rates must be sufficient to pay known and unknown costs that may increase over time. Accordingly, City and Contractor agree that, in addition to the CPI Adjustment and the other adjustments under this Section, the Rates shall be increased ("Rate Adjustment") in an amount necessary to compensate Contractor for:

1. Increases in costs or expenses resulting from a Change in Law, Change in Scope of Services or increase in City Collection Services;
2. Increase in the Franchise Fee, Subsidy Fee or other fees required, initiated or approved by City or another federal, state or local governmental agency;
3. A change in the volume of Solid Waste or Recyclable Materials or other materials collected by Contractor hereunder that causes a material increase to Contractor's costs or expenses or material decrease in Contractor's revenues, including without limitation changes caused by a change to the Exclusive Service Area, changes to the requirement that all Customers in the Exclusive Service Area have mandatory Collection Services as provided under this Agreement and annexation or consolidation of outlying or noncontiguous area in the City included in the Exclusive Service Area;
4. Increase in the fees, expenses or costs to Contractor for the transfer, processing, transportation, recycling, or Disposal of Solid Waste and Recyclable Materials charged by the Designated Facilities under the Disposal Agreement, except to the extent such increase was already factored into the CPI increase; and
5. Any other circumstance, cause or reason not within the reasonable control of Contractor, including without limitation a Force Majeure event, that causes an increase in costs or reduction in revenue of Contractor, such that the Rates do not fairly compensate Contractor for the Collection Services.

Contractor may initiate a Rate Adjustment under this Section 6.2(B) not more than once annually, beginning no earlier than January 1, 2014. To obtain a Rate Adjustment, Contractor shall prepare and submit to the City a rate adjustment statement setting forth the nature of the event causing the increase in costs and a calculation of the increased costs and the Rate Adjustment necessary to offset such increased costs, together with the Return on Revenue. The City may request any and all documentation and data reasonably necessary to evaluate the Rate Adjustment and shall confirm or deny (with detailed written explanation of the reason for any denial and an alternative Rate Adjustment proposal by City) within ninety (90) days of receipt of the statement from Contractor, which confirmation shall not be unreasonably withheld, conditioned or delayed. Rate Adjustments shall include an amount sufficient to pay the increase in costs incurred by Contractor, plus the Return on Revenue. Contractor shall provide written notice of proposed Rate Adjustments to service providers under all other Commercial Franchise Agreements concurrent with submission of the Rate Adjustment proposal to the City.

C. Rate for Outlying or Non-Contiguous Areas

As a result of annexation or consolidation of the City limits occurring after the Effective Date, the Rates may not fairly or accurately reflect the cost of providing Collection Services to Customers in such outlying or non-contiguous areas. In such event, at the City's election, i) the Rates shall be increased to pay the additional cost of providing Collection Services to such areas and otherwise fairly compensate Contractor for providing such Collection Services or ii) a special rate for such areas may be adopted under this Agreement. Contractor may initiate a Rate Adjustment or special rate adoption under this Section using the same procedures provided for Rate Adjustments in Section 6.2 (B) above and the Rate Adjustments under this Section 6.2 shall apply to any special rates established under this Section 6.2 (C).

D. Other Commercial Franchise Agreements

It is the intent of the City to maintain reasonably consistent Rates in the Exclusive Service Areas under all Commercial Franchise Agreements in the City. Therefore, a Rate Adjustment under any Commercial Franchise Agreement shall cause a Rate Adjustment under all other Commercial Franchise Agreements in the amount reasonably necessary to pay the increase in costs or expenses incurred by the service providers under such other Commercial Franchise Agreements. To obtain such Rate Adjustment, the service provider(s) under the other Commercial Franchise Agreements shall submit a statement for confirmation by City within 90 days after notice of confirmation of the initial Rate Adjustment, which statement shall be submitted and processed in the same manner provided in Section 6.2 (B) above. This Section shall not apply to Special Services under Section 4.5 above.

ARTICLE 7

BILLING; COLLECTION AND PAYMENT

7.1 BILLING AND COLLECTION

Contractor is responsible for billing Customers and collecting Rates Revenues for all Collection Services. Billing for all Collection Services other than Drop Box services shall be in advance. Billing for Drop Box services may be in advance or in arrears, as determined by Contractor. All payments shall be due and payable on the first day of each monthly billing cycle and shall be delinquent if not paid on or before the date thirty (30) days thereafter. Contractor shall be entitled to charge a late fee equal to the greater of Twenty Five Dollars (\$25.00) or ten percent (10%) of the delinquent amount and interest at one and one-half percent (1.5%) per month on all delinquent accounts. Contractor shall be entitled to terminate any delinquent Customer's account after thirty (30) day's written notice. Contractor shall be entitled to charge Customers other fees and charges, including without limitation NSF check charges and collections costs, and shall be entitled to require a deposit before provision of Collection Services. All Rates, charges, penalties, interest and other amounts due to Contractor for Collection Services shall constitute an obligation of the owner of the property (as shown in the Washoe County Assessor's Office records) to which such services are being provided or upon which is located any Commercial Activity for which such services are being provided. An owner may request that services be provided and billed to a tenant or other occupant of the property, but owner shall not be relieved from the primary obligation to pay all amounts due for such service and Contractor shall have no obligation to first proceed for

collection against the tenant or other occupant. Contractor shall be entitled to establish rules, procedures and requirements for Customers subscribing to Collection Services and for collecting any amount payable for the Collection Services, including without limitation the right to collect security deposits and to exercise lien rights. Nothing in this Section shall limit any rights or remedies of Contractor, including without limitation the right to enforce the terms of this Agreement, the Reno Municipal Code relating hereto and its customer service agreements or to collect any all amounts due for Collection Services and other services.

7.2 RECEIPT OF PAYMENT

Contractor shall record all amounts received from Customers into an appropriate accounting account. All payments of Customer billings shall be made by Customer check, money order, cashier's check credit card or autopay; provided no cash shall be accepted.

7.3 MONTHLY PAYMENT OF FRANCHISE FEES AND SUBSIDY FEE

On or before the twenty-fifth (25th) day of each calendar month, Contractor shall prepare and submit a monthly statement to City for the prior month, together with the Franchise Fees and Subsidy Fee payable to City for the prior calendar month. The monthly statement shall include the following information and calculations as supporting documentation for the Franchise Fee and Subsidy Fee payment:

A. Reported Revenues

The amount of Rate Revenues for the month, along with detail describing, at a minimum, the total number of accounts for each applicable monthly charge and the total number of Customers billed for each such amount.

7.4 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS

Contractor shall solely bear all expenses and losses related to collecting or failing to collect bad debt from delinquent Customer accounts

7.5 AUDIT OF BILLINGS AND FINANCIAL REPORTS; REVIEW OF COSTS

City may at its sole discretion select a qualified independent firm to perform an audit of Contractor's records and data directly relevant to matters relating to Contractor's performance of its obligations under this Agreement, as set forth in this Article. Contractor shall, upon request of written notification by City, permit the audit and inspection of all of such records and data by the firm specified by City. The frequency and timing of the audits shall be determined at City's discretion, but shall not exceed a maximum of two (2) audits during the Base Term and one (1) during any five year extension of the Term. City shall be responsible for payment of all audits during the Base Term of the Agreement and any Extension of the Agreement. City shall provide Contractor thirty (30) days' notice of each audit. City shall determine the scope of any audits based on the general requirements specified below and may elect to conduct either one or both of the following types of audit:

A. Audit of Billings. The auditor shall review the billing practices of Contractor with relation to delivery of Collection Services. The intent of this audit is to use sampling to verify that Customers are receiving the type and level of service for which they are billed.

B. Audit of Revenue Reporting. The auditor shall review relevant financial reports and data submitted by Contractor pursuant to Article 8. The purpose of this audit is to verify that Contractor is correctly calculating Rate Revenues, and is properly remitting Franchise Fees and Supplemental Franchise Fees.

ARTICLE 8 RECORD KEEPING, REPORTING AND INSPECTION

8.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records and accounts, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles, including without limitation records of all Rate Revenues, Gross Receipts, Franchise Fees and Subsidy Fees. Such records shall be subject to audit, copy, and inspection by City Representative or designee at any time during normal business hours upon reasonable prior written notice. Contractor shall maintain and preserve all cash, billing and Disposal records for a period of not less than five (5) years following the close of each of Contractor's fiscal years.

B. Collection Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste Collected and delivered under the terms of this Agreement; and (ii) Recyclable Materials, by type, Collected or Disposed;

C. Customer Complaint Record

Contractor shall maintain the customer complaint record pursuant to Article 5.

D. Other Records

Contractor shall maintain all other records required under other Sections of this Agreement.

8.2 ANNUAL AND QUARTERLY REPORTING

A. General

Annual and quarterly reports shall be submitted to the City within forty five (45) days after the end of the reporting period which include:

1. A summary of the prior period's Rate Revenues, Franchise Fees and Subsidy Fee;

2. Account data, including the number of accounts, amount and type of materials deposited in each Designated Facility and customer count by type of service;

3. Amount (in tons) and type of materials Collected and amount delivered to each Designated Facility;

4. Amount and type of materials Diverted;

5. Customer count by type of service

8.3 INSPECTION BY THE CITY

City Representative, or designee(s), shall have the right to observe and review any of Contractor's records, operations, and equipment, relevant to a determination of Contractor's compliance with the requirements of this Agreement pertaining to the provision of Collection Services, and to enter premises during normal business hours for the purposes of such observations, and review at any time upon not less than twenty four (24) hours prior written notice. City Representative shall notify Contractor's representative upon arrival. City Representative will comply with all policies and procedures of Contractor when on Contractor's premises. Contractor may condition any such entry in or upon Contractor's premises, by City Representative or designee(s), on the prior execution of a waiver of any liability of Contractor for any injury or damages suffered by City Representative or designee(s), or their respective heirs and assigns, or others claiming by, through or under them, arising out of or relating to such entry.

ARTICLE 9

INDEMNITY, INSURANCE, PERFORMANCE SECURITY

9.1 INDEMNIFICATION OF THE CITY

Contractor agrees to and shall indemnify, defend and hold harmless City its officers, officials, employees, volunteers, agents and assigns (collectively, the "Indemnitees") from and against any and all costs, damages, loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property) to the extent caused by (i) the failure of Contractor to comply with this Agreement and ii) the performance by Contractor, its officers, agents, employees, and subcontractors of the Collection Services or other obligations of Contractor hereunder, except in each case to the extent caused by the default, negligence or intentional misconduct of City. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds, and the Contractor shall be liable hereunder to pay only the amount of damages, if any, that exceeds the total amount that all insurance has paid for the damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

9.2 INSURANCE SCOPE AND LIMITS

- A. During the Term of this Agreement Contractor shall procure and maintain the following minimum insurance coverage, to the extent available:
1. Commercial General Liability: Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per-occurrence basis.
 2. Automobile Liability: Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Million Dollars (\$2,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement.
 3. Worker's Compensation: A policy of Worker's Compensation insurance as may be required by the Nevada Revised Statutes.
- B. Other Insurance Provisions
1. The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - a. City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations.
 - b. Contractor's insurance coverage shall be primary insurance in relation to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer or reduced in scope or amount except after thirty (30) days prior written notice has been given to City.
 - d. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Contractor for City.
 - C. All Coverages. Each insurance policy required by this Article shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- D. Verification of Coverage

Contractor shall furnish City, within thirty (30) days after the Effective Date and upon request of City thereafter, with original certificates evidencing coverage required under this Section 9.2.

E. Acceptability of Insurers

All insurance policies required by this Article shall be issued by admitted insurers in good standing with and licensed to do business in the State of Nevada, and possessing a current A.M. Best, Inc. rating of B+ FSC VIII or better.

F. Subcontractors

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

G. Liability Coverage Amounts

Not more often than every five (5) years during the Term, City shall be entitled to increase the amount of liability insurance coverage required under this Section 9.2 if such coverage is below amounts generally accepted for similar services. In that event, City and Contractor will cooperate in good faith to establish the amount of liability insurance coverage generally accepted for similar services and Contractor will provide such liability coverage amounts.

9.3 INSTRUMENT FOR SECURING PERFORMANCE

Not less than thirty (30) days after the Effective Date, Contractor shall file with City an instrument, in form reasonably acceptable to City, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractor's default under this Agreement.

ARTICLE 10
DEFAULT AND REMEDIES

10.1 DEFAULT BY CONTRACTOR

A. Any of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

1. If Contractor shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless Contractor shall materially cure or remedy such failure within thirty (30) days after written notice by City to Contractor specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such thirty (30) day period, Contractor commences cure or remedy within such 30 day period and diligently prosecutes the same to completion.

2. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, or other similar law, or has an involuntary bankruptcy action filed against it which is not dismissed within 90 days of notice to Contractor; Contractor consents to the appointment of, or taking of possession by, a receiver (or similar official) of Contractor's operating assets or any substantial part of Contractor's property; or Contractor shall make any general assignment for the benefit of Contractor's creditors.

3. Contractor ceases to provide Collection Services as required under this Agreement for a period of five (5) consecutive Working Days or more, for any reason within the reasonable control of Contractor, such cessation poses a material threat to the health, safety and welfare of the public and City shall have provided not less than three (3) Working Days written notice of such default.

10.2 CITY REMEDIES FOR EVENT OF DEFAULT BY CONTRACTOR

A. Upon an uncured Event of Default by Contractor, City shall have the right to:

1. Terminate the Agreement in accordance with Section 10.3.
2. In addition to, or in lieu of termination, exercise all of its remedies in accordance with this Article and any other remedies at law and in equity to which City shall be entitled, including without limitation the right to pursue the performance security under Section 9.3 and make an available claim under any insurance policy.
3. At its discretion waive Contractor's default in full or in part.

10.3 TERMINATION BY CITY

Subject to Dispute Resolution in Section 11.8, City shall only exercise its right to terminate this Agreement through action of the Reno City Council at a regularly scheduled (or special) public meeting of that body. Contractor shall be given reasonable prior notice of such meeting, a written statement of the factual and legal basis of the claimed Event of Default and an opportunity to respond and to offer testimonial and documentary evidence during the hearing of the matter at such meeting and City shall provide to Contractor copies of all records and information in City's possession or control relating to the Event of Default giving rise to such termination.

10.4 CONTRACTOR REMEDIES; TERMINATION

Contractor shall be entitled to terminate this Agreement or pursue specific performance of this Agreement if City shall fail to perform any of the material covenants, conditions and agreements of this Agreement, unless City shall materially cure or remedy such failure within sixty (60) days after written notice by Contractor to City specifying in detail the nature of such default or, if such failure is not reasonably capable of being cured or remedied within such sixty (60) day period, City commences cure or remedy within such 60 day period and diligently prosecutes the same to completion. Contractor shall have the right to terminate this Agreement upon ninety (90) days written notice to City if Applicable Law prohibits, materially limits or makes uneconomical the Collection Services as contemplated in this Agreement. Except as provided in Section 11.8, nothing herein shall limit Contractor's rights and remedies available at law or equity for default by a party under this Agreement.

ARTICLE 11 MISCELLANEOUS AND OTHER AGREEMENTS OF THE PARTIES

11.1 OTHER EXCLUSIVE SERVICE PROGRAMS; RIGHT OF FIRST REFUSAL

In the event City determines that a specific program should be implemented for collection or transportation of Food Waste or Green Waste or for any other Solid Waste or Recyclable Materials, other than as provided in this Agreement, to serve the needs of the public in the City, City will notify Contractor and Contractor and City will discuss and negotiate in good faith to i) develop and implement the program and the franchise fees, rates and other matters related thereto and ii) reach agreement on the terms and conditions of a service agreement relating thereto between the City and Contractor. If Contractor and City are unable to reach agreement on the terms and conditions of the service agreement within 90 days of the City notice, City hereby grants to Contractor the right of first refusal to match and accept a) the terms and conditions of any contract offer by the City to other service providers for such a program ("City Offer") and b) the terms and conditions offered by another service provider to the City that the City is willing to accept relating to such a program ("Third Party Offer"). If the City makes a City Offer or receives a Third Party Offer the City is willing to accept, City shall give Contractor prompt written notice with a copy of thereof. Contractor shall have a period of thirty (30) days to provide written notice to City that Contractor will accept the terms of either the City Offer or the Third Party Offer. If Contractor provides such notice, City and Contractor will enter into a service agreement on the terms and conditions of the offer accepted. If Contractor does not timely provide the acceptance notice, the City shall be free to contract with another service provider on the same terms and conditions as stated in the City Offer or the Third Party Offer, as applicable. In the event the City does not consummate an agreement with another service provider on the same terms and conditions within 120 days of the expiration of the 30 day notice period, then the right of refusal shall revive and Contractor shall have the same right of first refusal to accept any subsequent changed terms and conditions, City Offer or Third Party Offer.

11.2 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Collection Services as an independent contractor engaged by City and not as an officer or employee of City or as a partner of or joint venturer with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Collection Services and all persons performing such services on behalf of Contractor. Neither Contractor nor its officers, employees, subcontractors, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

11.3 FORCE MAJEURE

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, public or private construction activities, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, work stoppages or lockouts, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

11.4 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost (subject to rate adjustment provisions elsewhere in this Agreement), comply with all Applicable Laws, including all permit requirements for Collection Service.

11.5 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

11.6 JURISDICTION AND VENUE

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of Nevada, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in City of Reno.

11.7 ASSIGNMENT

A. Definition

For purposes of this Section 11.7, the term "Assignment" shall include, but not be limited to: (i) a transfer by Contractor to another person or entity of all of Contractor's rights, duties and obligations under this Agreement, including without limitation subcontracting of all or a portion of Contractor's obligations hereunder; (ii) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (iii) a sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of Contractor; (iv) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the value or voting rights in the stock of Contractor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

B. City Consent to Assignment; Written Assignment and Assumption

Except for Assignments to a Permitted Transferee and except as provided in this Article or otherwise in this Agreement, Contractor shall not make an Assignment of this Agreement to any other person or entity without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the assignee shall be deemed suitable and City shall consent to an Assignment if the Assignee meets the Assignee Qualifications (as defined below). A formal written instrument of assignment shall be executed by Contractor and an approved assignee or Permitted Transferee, which shall provide for the assignee's assumption and acceptance of all terms and conditions of this Agreement, including all duties and obligations imposed thereby, and also the assignee's express adoption of the representations of Contractor set forth herein as its own representations. Assignments to Permitted Transferees shall not require the consent of the City.

C. Qualifications of Assignee

A proposed assignee shall be deemed suitable and City shall consent to an Assignment to a proposed assignee upon submission of reasonably satisfactory evidence or support (i) that the proposed assignee has at least five (5) years of Solid Waste and Recyclable Materials collection experience similar to the Collection Services; (ii) that the proposed assignee currently or recently conducted Solid Waste and Recyclable Materials collection on a scale reasonably equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (iii) the proposed assignee conducts its operations in substantial accordance with accepted industry standards (iv) the proposed assignee conducts its Solid Waste and Recyclable Materials management practices in substantial compliance with all applicable Federal, State, and local laws; and (v) the proposed assignee has the reasonable financial capability and other capabilities to perform the obligations of Contractor under this Agreement to industry standards and to otherwise comply with all terms, covenants and conditions of this Agreement applicable to Contractor (collectively, the "Assignee Qualifications").

D. Transition

If City consents to an assignment, Contractor shall cooperate fully with City and subsequent Contractor(s) or subcontractor(s), and shall provide all appropriate assistance to ensure an orderly transition. Such cooperation and assistance shall include, but not be limited to, Contractor providing, to City and the subsequent Contractor(s) or subcontractor(s), all route lists and billing information listing accounts, and using Contractor's reasonable efforts to avoid and minimize any disruption or inconvenience to Customers.

11.8 DISPUTE RESOLUTION

A. Continue Performance

In the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

B. Mediation

Any unresolved dispute arising between the Parties under this Agreement after negotiation in good faith shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. In the absence of judicial jurisdiction to appoint a mediator, mediation will be before a panel composed of a mediator selected by each party and a third mediator selected by the two mediators so selected. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue any right or remedy available at law or equity, except as expressly and specifically limited under this Agreement.

11.9 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

11.10 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

11.11 PARTIES IN INTEREST

Except as expressly provided to the contrary herein, nothing in this Agreement, whether express or implied, is intended or shall be deemed to confer any rights on any persons other than City and Contractor and their representatives, successors and permitted assigns.

11.12 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision, nor of any subsequent breach 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. AIATZ Date 11-07-12
Robert A. Cashell, Sr., Mayor

Attest:

By: Lynnette R. Jones
Lynnette R. Jones, City Clerk



APPROVED AS TO LEGAL FORM:

By: [Signature]
City Attorney's Office

CONTRACTOR

Reno Disposal Company, Inc., a Nevada corporation

By: [Signature]

Title: Vice President
Date: 11/16/12

List of Exhibits:

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

EXHIBIT A
List of Approved Recyclable Materials

113312

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REF_000054

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.

103112

REF_000055

Exhibit B
Exclusive Service Area of Contractor

111312

55

REF_000056

EXHIBIT B
COMMERCIAL FRANCHISE AGREEMENT
EXCLUSIVE SERVICE AREA OF CONTRACTOR

STORY

WASHOE COUNTY, NEVADA
 CALIFORNIA
 TRUCKEE RIVER
 RENO-TAHOE INTERNATIONAL AIRPORT
 CALLAWAY TRASH HAULING SERVICE AREA
 EXCLUSIVE SERVICE AREA OF RENO DISPOSAL INCLUDES ALL LANDS CURRENTLY WITHIN THE CITY OF RENO, INCLUDING THE EXCLUSIVE SERVICE AREA OF CALLAWAY TRASH HAULING

Copyright © and 1987 by RENO DISPOSAL, a subsidiary of RENO TRASH HAULING

Exclusive Services Area of Reno Disposal includes all lands currently within the City of Reno, excluding the Exclusive Service Area of Costway Trash Handling

**Remo Disposal Exclusive Service Area-Outlined in Red
On-Site Trash Hauling Exclusive Service Area-Shaded Blue Area.**

PA_0284

Exhibit C
Operating Standards

111312

56

REF_000058

PA_0285

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

111312

57

REF_000061

11/01/2002

Exhibit D
Commercial Franchise Agreement
Scope of Services

Bin Collection Services

Bin Collection Services-Solid Waste		Monthly Rate by Collection Frequency per Week ¹						
Bin Capacity		1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$	133.15	\$ 234.27	\$ 314.48	\$ 408.78	\$ 488.81	\$ 568.91	N/A
3 Cubic Yards	\$	157.82	\$ 273.78	\$ 368.45	\$ 469.88	\$ 545.30	\$ 629.81	\$ 919.85
4 Cubic Yards	\$	187.48	\$ 323.13	\$ 432.40	\$ 534.21	\$ 633.87	\$ 738.02	\$ 1,093.52
5 Cubic Yards	\$	272.32	\$ 458.85	\$ 674.38	\$ 885.28	\$ 1,119.79	\$ 1,374.29	\$ 1,688.50

Bin Collection Services-Approved Recyclable Materials		Monthly Rate by Collection Frequency per Week ¹						
Bin Capacity		1 X week	2 X week	3 X week	4 X week	5 X week	6 X week	7 X Week
2 Cubic Yards	\$	93.21	\$ 156.98	\$ 228.12	\$ 284.75	\$ 347.84	\$ 418.84	N/A
3 Cubic Yards	\$	110.47	\$ 191.85	\$ 271.92	\$ 350.48	\$ 430.71	\$ 518.94	\$ 843.90
4 Cubic Yards	\$	131.18	\$ 228.19	\$ 323.88	\$ 415.85	\$ 513.57	\$ 607.61	\$ 831.89
5 Cubic Yards	\$	190.82	\$ 322.46	\$ 472.87	\$ 655.75	\$ 783.85	\$ 962.09	\$ 1,187.55

¹ Recycling and replacing the specified bagged Bin the designated frequency per week. Recycling charge per Bin

11/02/2012

Exhibit D
Commercial Franchise Agreement
Scope of Services

Bla Collection Services (Cont.)

Additional Dump of Container: Solid Waste and Approved Recyclable Materials *

Service	Rate	Frequency	Notes
1 Yard	\$25.00	1	
2 Yard	\$30.00	1	
3 Yard	\$35.00	1	
4 Yard	\$40.00	1	
5 Yard	\$45.00	1	
6 Yard	\$50.00	1	

Other Services and Fees	Rate	Frequency	Notes
1 Yard No Special - Single Service	\$25.00	1	
2 Yard No Special - Single Service	\$30.00	1	
3 Yard No Special - Single Service	\$35.00	1	
4 Yard No Special - Single Service	\$40.00	1	
5 Yard No Special - Single Service	\$45.00	1	
6 Yard No Special - Single Service	\$50.00	1	

*Additional dump of existing Customer Site on regularly scheduled service day and non-schedule day
 *Availability in excess of service day
 *Delivery and pick up 60-minute service

3/12/2012

Exhibit D
Commercial Franchise Agreement
Scope of Services

Card Collection Services

Card Collection Services-Field Works

Card 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	\$ 20.83	\$ 41.66	\$ 62.49	\$ 83.32	\$ 104.15	\$ 124.98	\$ 145.81
2 - 35 Gal Carts	\$ 41.66	\$ 83.32	\$ 124.98	\$ 166.64	\$ 208.30	\$ 249.96	\$ 291.62
3 - 35 Gal Carts	\$ 62.49	\$ 124.98	\$ 187.47	\$ 250.00	\$ 312.50	\$ 375.00	\$ 437.50
4 - 35 Gal Carts	\$ 83.32	\$ 166.64	\$ 250.00	\$ 333.33	\$ 416.66	\$ 500.00	\$ 583.33
1 - 44 Gal Cart	\$ 28.55	\$ 57.10	\$ 85.65	\$ 114.20	\$ 142.75	\$ 171.30	\$ 199.85
2 - 44 Gal Carts	\$ 57.10	\$ 114.20	\$ 171.30	\$ 228.40	\$ 285.50	\$ 342.60	\$ 399.70
3 - 44 Gal Carts	\$ 85.65	\$ 171.30	\$ 256.95	\$ 342.60	\$ 428.25	\$ 513.90	\$ 599.55
4 - 44 Gal Carts	\$ 114.20	\$ 228.40	\$ 342.60	\$ 456.80	\$ 571.00	\$ 685.20	\$ 799.40

Card Collection Services-Approved Branches/Maintenance

Card 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	\$ 17.48	\$ 34.97	\$ 52.46	\$ 69.95	\$ 87.43	\$ 104.93	\$ 122.41
2 - 35 Gal Carts	\$ 34.97	\$ 69.95	\$ 104.92	\$ 139.90	\$ 174.87	\$ 209.84	\$ 244.82
3 - 35 Gal Carts	\$ 52.46	\$ 104.92	\$ 157.38	\$ 209.84	\$ 263.30	\$ 314.76	\$ 367.22
4 - 35 Gal Carts	\$ 69.95	\$ 139.90	\$ 209.84	\$ 279.79	\$ 349.74	\$ 419.69	\$ 489.63

*Determine and replace the specified capacity Card the designated frequency per week; monthly charge per card

12/11/2012

Exhibit D
Commercial Franchise Agreement
Scope of Services

Drop Box and Container Collection Services

Garbage and Recyclable Collection Services of Approved Residents: Household and Solid Waste

Drop Box Capacity	Rate per Service
14 Yard Closed Top	\$150.00
20 Yard Closed Top	\$200.00
30 Yard Closed Top	\$300.00
Drop Box Initial Delivery Fee	\$75.00

Drop Box Capacity	Rate per Service
14 Yard Open Top	\$150.00
20 Yard Open Top	\$200.00
30 Yard Open Top	\$300.00
Drop Box Initial Delivery Fee	\$75.00

Container Capacity	Rate per Service
10 Yard	\$100.00
12 Yard	\$120.00
14 Yard	\$140.00
16 Yard	\$160.00
18 Yard	\$180.00
20 Yard	\$200.00
22 Yard	\$220.00
24 Yard	\$240.00
26 Yard	\$260.00
28 Yard	\$280.00
30 Yard	\$300.00
Delivery Charge	\$75.00

*Pickup charges, and replacing the specified capacity Drop Box: Multiple locations

REF_000065

12/11/2012

Exhibit B
Commercial Franchise Agreement
Scope of Services

Other Services and Fees

Service	Rate	Description of Service
Trip Charge	\$ 75.00	Charge to return to customer location for any other reason not specifically identified in Scope of Services.
Container Liner	\$ 14.32	Plastic liner placed inside the Container before material loaded.
Demurrage/Inactivity	\$ 27.77	Charge for Container if service is not provided at least once in any 7 day period.
Container Cleaning - Basic	\$ 23.00	Basic cleaning of Container with water.
Container Heavy Cleaning	\$ 132.45	Heavy cleaning of Container.
Safety Cone Replacement	\$ 17.35	Safety cones required when a Container is placed in the street.
Container Relocation	\$ 75.00	Relocation of the Container on the Customer's property.
Setup Shed fee	\$ 75.00	Fee for each occurrence of overloading Container such that lid does not completely close.
Automatic activation fee	\$ 48.00	Charge to open a new service or reopen a closed service.
On Call charge	\$ 75.00	Fee for each occurrence to remove material located in Container.
Encumbrance fee	\$ 7.50	Fee per month for granting exclusive sales or marketing Container.
Loading equipment	\$ 17.00	One time charge to install loading equipment on container.
Container Repair	\$ 75.00	Container exchanges (Ramp Box and Lin).
Full Service fee	\$ 85.00	Charge to provide a full service letter for new development.
Food Waste:		
54 gallon Can	\$ 50.41	Fee per service for a Food Waste Recycling Can.
3 year fee	\$ 157.28	Fee per service for a Food Waste Recycling Can.

SCHEDULE 1
List of Exempted Haulers and
List of each Exempted Hauler's Exempted Hauler Accounts

Exempted Haulers include:

1. Castaway Trash Hauling, Inc., a Nevada corporation
2. Waste Management of Nevada, Inc., a Nevada corporation, sometimes dba B & L Disposal and RSW Recycling.
3. A Team Trash Hauling, LLC, a Nevada limited liability company
4. Carmen's Cleaning
5. Empire Contractors, Inc., a Nevada corporation and Empire Waste Systems
6. Patrick's Construction Cleanup
7. AMCB, LLC, a Nevada limited liability company, dba Rubbish Runners
8. Trashco
9. Olcese Construction

Exempted Hauler Accounts for Each Exempted Hauler (Provide the Name and Address of the Customer for each Exempted Hauler Account):

1. Castaway Trash Hauling, Inc. (No Exempted Hauler Accounts)
2. Waste Management of Nevada, Inc. (No Exempted Hauler Accounts)

Attach list of Exempted Hauler Accounts for each Exempted Hauler

In the event the Exempted Hauler Accounts for Each Exempted Hauler are not reviewed and approved by the City and listed on this Schedule 1 on the Effective Date of this Agreement, each Exempted Hauler will diligently cooperate in good faith with the City and will within 15 days after request from City provide to the City all information requested by the City and reasonably necessary or appropriate for the City to review, approve and list the Exempted Hauler Accounts on this Schedule 1. The Exempted Hauler Accounts will be approved by the City and listed on this Schedule 1 within 60 days after the Effective Date. Within such 60 day period, the City will obtain the exact legal name of each Exempted Hauler that is an entity or the names of all owners of any Exempted Hauler that is not an entity, along with the dba name for each Exempted Hauler, each of which shall be listed on this Schedule 1. After completion as provided in this paragraph, this Schedule 1 shall be attached to this Agreement and shall become a part hereof.

EXHIBIT 2

EXHIBIT 2

May 14, 2015

Hardy Law Group
Stephanie Rice, Esq.
96 & 98 Winter Street
Reno, NV 89503



*"The Biggest Little City in the World"
offer exceptional quality of life, culture,
and a vibrant, diverse economy.*

Re: Green Solutions Recycling, LLC ("GSR")
Nevada Recycling and Salvage, Ltd. ("NRS")
Rubbish Runners

Dear Ms. Rice,

On October 28, 2014, the City issued a letter stating that Green Solutions Recycling, LLC (GSR), Nevada Recycling & Salvage (NRS) and Rubbish Runners were properly licensed to do business and operate within the City of Reno (the "Licensing Letter"). See, Exhibit A. On the date the City issued the Licensing Letter, the City, Reno Disposal, Rubbish Runners and NRS were parties to that certain Excluded Recyclable Materials Agreement dated July 3, 2014 (the "ERM Agreement"). The ERM Agreement terminated on January 1, 2015.

As of the date of this letter, all three businesses remain in good standing and are properly licensed to do business and operate within the City of Reno.

That being said, the purpose of this letter is to further clarify and qualify the scope of the business licensing for GSR, NRS and Rubbish Runners in light of the termination of the ERM Agreement. This letter supersedes and replaces the Licensing Letter. The Licensing Letter may no longer be used for sales or marketing purposes by GSR, NRS or Rubbish Runners. This letter, in its entirety, may be used for sales or marketing purposes by GSR, NRS and Rubbish Runners. In addition, this letter should be used to verify compliance of service for existing and future customers.

A. Exclusive Franchise Agreements

On November 7, 2012, the City of Reno entered into *exclusive commercial and residential franchise agreements* with Reno Disposal (aka Waste Management) and Castaway Trash Hauling, which provide the exclusive right to collect and transport solid waste and recyclable materials in the City of Reno, except for certain exclusions specified in the agreements. On November 7, 2012, the City of Reno also entered into a disposal agreement with Refuse, Inc., which provides to Refuse, Inc. (Waste Management) the *exclusive right to accept, process, dispose and recycle Solid Waste and Recyclable Materials*, subject to specified exclusions provided under the franchise agreements. *The collection, transportation, processing, disposal or recycling of solid waste or recyclable materials by any other parties, except to the extent expressly authorized under the franchise agreements and the Disposal Agreement, is a violation of the agreements and a violation of the ordinances of the City of Reno by both the service provider and the customer receiving service.*

B. Green Solutions Recycling, LLC

GSR (BL# A129753) is licensed by the City to *rent/place containers for recyclable materials*.

GSR is not licensed to collect, transport, process, recycle or dispose of Solid Waste (including Garbage) or Recyclable Materials, Exempted Drop Box Materials, Excluded Materials, Excluded Recyclable Materials within in the City of Reno.¹

C. Nevada Recycling and Salvage, Ltd.

NRS (BL# 100539) is licensed by the City as an *indoor recycling and reclamation facility*.

Under the franchise agreements, NRS has the legal right to accept, process, recycle or dispose of: (i) ±125,000 cubic yards of franchised Solid Waste and Approved Recyclable Materials per year from Reno Disposal or Exempted Drop Box Materials, and Exempted Hauler Account Materials hauled by Exempted Haulers; (ii) Excluded Materials; and (iii) Excluded Recyclable Materials.

NRS is not licensed to accept, process, or dispose of franchised Solid Waste, including Garbage or Approved Recyclable Materials, in excess of ±125,000 cubic yards per year, or to collect or transport Solid Waste or Recyclable Materials in the City of Reno.

D. Rubbish Runners.

Rubbish Runners (BL# A124714) is licensed to collect and transport Excluded Materials. In addition, Rubbish Runners is licensed as a *hauler of dry waste and commercial recyclables* and is permitted to do business within the City of Reno as an Exempted Hauler licensed to collect and transport Exempted Hauler Account Materials from specified Exempted Hauler Accounts. An Exempted Hauler Account is an 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.² Approved Recyclable Materials are listed in Exhibit B.

Rubbish Runners is also licensed to provide Exempted Drop Box Services. To provide Exempted Drop Box Services:

- (1) The materials must be Solid Waste and Approved Recyclable Material collected and transported in an Exempted Drop Box using Exempted Drop Box Services, excluding: (i) Garbage; and, (ii) Compacted Solid Waste and compacted Approved Recyclable Materials; and,
- (2) The Drop Box must meet Exempted Drop Box definition, specifically, 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

¹ For further definitions, see Summary of Exclusive Franchises for Solid Waste and Recyclable Material Collection, Transportation, Processing, Disposal and Recycling within the City of Reno, Exhibit B.

² The Exempted Hauler Accounts approved for Rubbish Runners, including the name and address of each customer to which service is provided by Rubbish Runners are identified on Schedule 1. See, Exhibit C.

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; and.

- (3) The Drop Box is for temporary service that does not replace, limit or reduce Permanent Service Collection by Waste Management.

Finally, Rubbish Runners is licensed to haul Excluded Recyclable Materials. "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.

In order to avoid any code enforcement issues relating to the collection, transportation and recycling of Excluded Recyclable Materials, the City recommends that generators of Excluded Recyclable Materials:

- DO NOT place or store Excluded Recyclable Materials in the same container. Excluded Recyclable Materials should be source separated and segregated by type, i.e., all corrugated cardboard in one container; all mixed waste paper in a second container; and, all plastic products in a third container; etc.
- GSR, NRS and Rubbish Runners should be paying the business generating the Excluded Recyclable Materials; *the generator should not be paying GSR, NRS or Rubbish Runners to accept, process, recycle or dispose of Excluded Recyclable Materials.* ***If the total amount paid by a generator to GSR, NRS and/or Rubbish Runners (e.g., a "container rental fee") exceeds the total amount received by the generator from GSR, NRS and/or Rubbish Runners (e.g., a "rebate"), the City assumes that the materials are being collected, transported and disposed of in violation of the franchise, i.e., the materials are being collected and transported as a service, and are not Excluded Recyclable Materials.

Except in the limited situations described above, Rubbish Runners is not licensed to collect, transport, process, recycle or dispose of Solid Waste (including Garbage) or Approved Recyclable Materials in the City of Reno.

In closing, except as expressly authorized under the franchise agreement, the collection, transportation, processing, disposal or recycling of Solid Waste or Approved Recyclable Materials by any party other than Reno Disposal, is a violation of the franchise agreement and a violation of the ordinances of the City of Reno by the service provider and by the business to which such services are provided.

If you have any questions regarding the contents of this letter, or need additional clarification on a case by case basis, please contact me at chaumpru@reno.gov or 775-785-5858 or Jonathan Shipman at shipmanj@reno.gov or 775-334-2057.

Best Regards,

Michael Chaump

Michael Chaump
Business Relations Manager

cc: Bill Thomas, Assistant City Manager
John Flansberg, Director of Public Works
Greg Martinelli, Reno Disposal
Karl S. Hall, City Attorney
Jonathan D. Shipman, Assistant City Attorney

EXHIBIT 3

EXHIBIT 3



PUBLIC WORKS

MEMORANDUM

DATE: October 19, 2015
TO: Mayor and City Council
THROUGH: Andrew Clinger, City Manager
Bill Thomas, Assistant City Manager
FROM: John Flansberg, Director of Public Works
SUBJECT: Administrative Interpretation clarifying the scope of "Excluded Recyclable Materials"

The City's solid waste franchise agreements with Waste Management authorize the City Manager or his designee 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 the agreements, so long as such actions do not materially change the scope, nature or exclusivity of the franchise agreements.

Findings of Fact

1. On November 7, 2012, the City of Reno entered into commercial and residential franchise agreements granting Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. the exclusive right to collect and transport Collection Materials in the City of Reno, subject to specified exclusions in the agreements (the "Franchise Agreements").

2. The Franchise Agreements define "Collection Materials" as 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. See, Franchise Agreements, at 3.

3. On the same day, the City of Reno also entered into a disposal agreement granting the exclusive right to accept, process, dispose and recycle Collection Materials to Refuse, Inc., subject to specified exclusions provided under the Franchise Agreements (the "Disposal Agreement").

4. In general, the collection, transportation, processing, disposal and/or recycling of Collection Materials by any business other than Reno Disposal Company, Inc. is a violation of the Franchise and Disposal Agreements and the Reno Municipal Code by both the hauler and the customer receiving service.

5. On July 3, 2014, the City, Reno Disposal, Rubbish Runners and NRS entered into that certain Excluded Recyclable Materials Agreement (the "ERM Agreement").
6. In October 2014, Green Solutions Recycling, LLC ("GSR"), Nevada Recycling and Salvage, Ltd. ("NRS"), and Rubbish Runners requested a letter from the City's Business Licensing Division indicating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.
7. On October 28, 2014, the City issued a letter stating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.
8. On January 1, 2015, the ERM Agreement expired.
9. In light of the termination of the ERM Agreement, on May 14, 2015, the Business License Division issued a revised letter further clarifying and qualifying the scope of the business licensing for GSR, NRS and Rubbish Runners and the definition of "Excluded Recyclable Materials". The letter superseded and replaced the prior letter dated October 28, 2014.
10. On September 9, 2015, City Council directed staff to issue an administrative interpretation clarifying the scope of "Excluded Recyclable Materials".

Administrative Interpretation

The cardinal rule in interpreting contracts is to follow the intention of the contracting parties. Great Am. Airways v. Airport Auth., 103 Nev. 427, 430 (1987) citing Barringer v. Gunderson, 81 Nev. 288, 302, 402 P.2d 470, 477 (1965). Contracts will be construed from their written language and enforced as written. When a contract's language is unambiguous, this court will construe and enforce it according to that language. Power Co. v. Henry, 321 P.3d 858, 863 (Nev. 2014) (citations omitted).

Here, based on the plain language of the contract, the intent of the parties is clear. First and foremost, the parties intended to create an exclusive monopoly in favor of the franchisee, Waste Management, for the collection, transportation, processing, disposal and/or recycling of Collection Materials within the City of Reno. The language is unambiguous; specifically:

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. [Emphasis Added.] See, Franchise Agreements § 3.2(A), at 14.

Moreover, the parties intended that the grant be construed as broadly as possible to eliminate third parties from interfering with, undercutting or impinging on the franchisee:

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. Id.

The parties did not, however, intend the franchise to cover Excluded Recyclable Materials:

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. [Emphasis added.] Id.

The Franchise Agreements define "Excluded Recyclable Materials" as 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. Id. at 5.

The purpose of the Excluded Recyclable Materials exemption is to allow businesses to sell Recyclable Materials on a secondary market. Used cardboard, for example, is a valuable commodity. Big box stores accumulate large quantities of cardboard. Rather than throwing the cardboard into a landfill, a store will bale and sell the cardboard to a third party recycler like NRS. Without the Excluded Recyclable Materials exemption, such a transaction would be illegal because only Waste Management is authorized to collect, transport, process, dispose and/or recycle cardboard—an Approved Recyclable Material—under the Franchise Agreements.

Under the Franchise Agreements and Reno Municipal Code, Excluded Recyclable Materials are distinguished from Collection Materials based upon how the materials are stored and handled.

Taking cardboard again as an example, depending on how a generator of cardboard stores and handles the cardboard, the cardboard will be classified as either Collection Materials (Solid Waste or Approved Recyclable Materials) or Excluded Recyclable Materials.

In the first instance, if a generator of cardboard fails to source separate the cardboard from all other non-recyclable materials, i.e., less than ninety percent (90%) Approved Recyclable Materials, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Accordingly, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Similarly, if a generator of cardboard source separates its cardboard from all other non-recyclable materials, but fails to sell the cardboard directly to a buyer of Recyclable Material at market price, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Thus, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Finally, if a generator of cardboard source separates cardboard from all other non-recyclable materials, sells the cardboard directly to a buyer of Recyclable Material at market price, but the total amount paid by the generator to the buyer or a buyer affiliated entity (e.g., the "container rental fee") exceeds the total amount received by the generator from the buyer or

its affiliated entity (e.g., the "rebate"), the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials, because the cardboard is being collected and transported as a service.

The reasoning behind this final interpretation deserves further explanation.

To avoid violating the franchise, a buyer of cardboard could simply charge the generator an arbitrary fee, e.g., container rental fee, convenience charge, etc... The buyer has complete control over the characterization of that fee. As long as the fee is not expressly tied to the collection or hauling of the cardboard, the characterization of the fee magically transmutes the cardboard into Excluded Recyclable Materials. In actuality, however, the buyer's profit and expenses for collecting and transporting the cardboard off-site are covered by the fee, not the revenue derived from the cardboard as a commodity. In other words, the buyer's purchasing of the cardboard is incidental to the generator's payment of the fee. Viewed in this light, the buyer's core business is collecting and transporting cardboard as a service in exchange for a fee, not purchasing Excluded Recyclable Materials.

As a bright line rule, if a generator's net out-of-pocket cost is \$0, the Recyclable Materials are presumed to be Excluded Recyclable Materials. If a generator's net out-of-pocket cost is greater than \$0, the Recyclable Materials are in fact Collection Materials subject to the franchise, and must be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Holding otherwise will undercut the financial and economic assumptions underpinning the franchise, and will impair the parties' ability to enforce the franchise in the future. This runs directly afoul of the stated intent of the parties in the Franchise Agreements. See, *supra*, Franchise Agreements § 3.2(A), at 14 ("[t]he 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").

Accordingly, and in order to avoid any code enforcement issues regarding the characterization of Excluded Recyclable Materials, the City will advise businesses the following:

- Single stream recycling of Excluded Recyclable Materials is allowed. However, to avoid confusion over whether a storage bin contains less than ninety percent (90%) Approved Recyclable Materials, the City strongly recommends that businesses separate, segregate and store Excluded Recyclable Materials by type, i.e., all corrugated cardboard in one bin; all mixed waste paper in a second bin; and, all plastic products in a third bin; etc.
- The buyer of the Excluded Recyclable Materials should pay the generator for the Excluded Recyclable Materials, not vice versa. So, for example, if the total amount of consideration paid by the generator to the buyer or a buyer affiliated entity (e.g., a "container rental fee") exceeds the total amount received by the generator from the buyer or a buyer affiliated entity (e.g., a "rebate"), the materials are being collected and transported as a service, and are properly characterized as Collection Materials, not Excluded Recyclable Materials.

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EXHIBIT 4

EXHIBIT 4

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City of Reno
c/o Andrew Clinger, City Manager
1 East First Street
Reno, NV 89505

RE: Analysis of Franchise Agreements with Reno Disposal Company, Inc.

Dear Mr. Clinger:

At your request, we have examined the following agreements between the City of Reno (the "City") and Reno Disposal Company, Inc.: (1) the Exclusive Service Area Franchise Agreement, Commercial Solid Waste and Recyclable Materials (the "Commercial Agreement"); and (2) the Exclusive Franchise Agreement, Residential Solid Waste and Recyclable Materials (the "Residential Agreement"). We also examined the Disposal Agreement, Solid Waste and Recyclable Materials between the City and Refuse, Inc. (the "Disposal Agreement"). Collectively, in this memorandum we refer to the Commercial Agreement, Residential Agreement, and Disposal Agreements as the "Agreements."

QUESTIONS PRESENTED

The City has specifically directed us to analyze the following three questions:

1. Whether a hauler other than the Contractor named in the Agreements can collect Excluded Recyclable Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Recyclable Materials.
2. Whether the Agreements allow Nevada Recycling & Salvage ("NRS") to collect and haul up to 125,000 cubic yards of Collection materials directly from Commercial Customers.
3. Whether Refuse, Inc. has defaulted in its obligation for the "Construction of Eco-Center" under the Disposal Agreement by failing to construct the Eco-Center within 28 months.

CONCLUSIONS

Question 1: Under the Commercial Agreement, a hauler other than the Contractor *may not* collect Excluded Recyclable Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Recyclable Materials *unless* those Excluded Recyclable Materials are *not* Approved Recyclable Materials.

Under the Residential Agreement, "Excluded Recyclable Materials" is not a defined term; only "Excluded Materials" is defined. Under that contract, a hauler *can* collect Excluded Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Materials.

Wells Fargo Tower, Suite 1000, 3800 Howard Hughes Parkway, Las Vegas, NV 89169-5980

tel 702.257.1483 fax 702.567.1568

City of Reno
c/o Andrew Clinger, City Manager
March 7, 2016
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Question 2: NRS is permitted only to accept, process, recycle, and dispose of materials that are *delivered* to NRS by Contractor or by Franchised Haulers. NRS is not permitted, under the terms of either the Commercial Agreement or the Disposal Agreement, to *collect or haul* any Collection Materials, including the Exempted Facility Materials.

Question 3: To answer this third question, we will need additional information. In short, Refuse, Inc. is in default of the Disposal Agreement only if the City can show that Refuse, Inc. has not made any effort to commence construction of the Eco-Center, which showing may include one that Refuse, Inc. has not applied for, or attempted to obtain, any of the required approvals from local, regional, or state authorities. If Refuse, Inc. has applied for the required approvals but has failed to prosecute these applications or requests for approval, then Refuse, Inc. would probably be in default of the Disposal Agreement.

ANALYSIS

Questions Can Someone Other than Contractor Collect or Haul Exempted Materials and Charge a Fee for doing so within the Applicable Service Area?

We look at this question under the Commercial and Residential Agreements, below:

Commercial Agreement

Because the defined terms are critical to interpreting the Agreements, we start by examining them.

Section 3.2.A grants to the Contractor the *exclusive* right to provide Collection Services to Commercial Customers within the Exclusive Service Area. Commercial Agreement, §3.2.A. As used in the Commercial Agreement, "Collection Services" means "the Collection of Collection Materials from Commercial Customers in Contractor's Exclusive Service Area . . . excluding . . . Excluded Recyclable Materials." Commercial Agreement, Article 1. "Collection" means pickup, removal, and transportation of Solid Waste and Approved Recyclable Materials within the Exclusive Service Area, and delivery of those materials to an appropriate Designated Facility." *Id.*

The Commercial Agreement broadly prohibits any person or entity other than the Contractor from collecting "Collection Materials" within the Exclusive Service Area. Commercial Agreement, §3.2.A. "Collection Materials" means "all Solid Waste and Approved Recyclable Materials generated, produced, or accumulated by Commercial Customers, excluding . . . Excluded Recyclable Materials." Commercial Agreement, Article 1.

Reading all of these definitions together within the context created for them in Section 3.2.A of the Commercial Agreement, if the specific materials that will be collected are not "Excluded Recyclable Materials," then the Contractor has the *exclusive* right to collect those materials. As a result, it is important to also understand the definition of "Excluded Recyclable Materials."

The definition of "Excluded Recyclable Materials" includes only:

- 1) Approved Recyclable Materials from Commercial Activity from a generator (subject to a contents threshold of 90%) and that are sold "directly to a buyer . . . at market price." How those materials are collected or sold by the buyer is important: items are "Excluded Recyclable Materials" if the title to them "transfers to the buyer upon collection or pickup of such materials, *but not if those materials are collected and transported as a service.*"

Howard E. Howard

Law, For Business

City of Reno
c/o Andrew Clinger, City Manager
March 7, 2016
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2) Any Recyclable Materials that are not Approved Recyclable Materials (in essence, anything that are not part of the agreement between the City and the Contractor).

Commercial Agreement, Article 1 (emphasis supplied).

Interpreting all of these provisions together, it is apparent that Approved Recyclable Materials can be collected and transported by someone other than the Contractor only if the hauler is paying for them. In other words, if the hauler is paying the generator (the customer) for Approved Recyclable Materials, then they are considered "Excluded Recyclable Materials." If, however, the generator is paying the hauler for collecting and transporting the materials, then they are not excluded. Any Recyclable Materials that are not Approved Recyclable Materials, however, are not restricted.

The answer to question 1, then, is that a hauler other than the Contractor may not collect Excluded Recyclable Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Recyclable Materials unless those Recyclable Materials are not Approved Recyclable Materials.

Residential Agreement

Under Section 3.2 of the Residential Agreement, the Contractor is given the exclusive right to provide Collection Services to Residential Customers within the Service Area. The Contractor is not given the exclusive right to provide anything other than the Collection Services. The term "Collection Services" is defined in Article I as specifically "excluding Excluded Materials and Exempted Drop Box Materials." There is no defined term in the Residential Agreement for "Excluded Recyclable Materials;" instead, the Residential Agreement uses the defined term "Excluded Materials."

To further clarify the respective rights of the Contractor, Section 3.1 also specifies that "the exclusive right of Contractor . . . shall not apply to Excluded Materials or Exempted Drop Box Materials," and further states that "Contractor and other service providers" may collect and transport those materials in the Exclusive Service Area" and that they may charge fees and charges for those services.

These provisions all lead to the conclusion that, in answer to question 1, a hauler can collect Excluded Materials and charge a service fee for: (a) renting containers; and (b) collecting and transporting Excluded Materials.

Question 2: Do the Agreements allow NRS to Collect and Haul up to 125,000 Cubic Yards of Collection Materials Directly from Commercial Customers?

First, it's important to understand the definitions of the terms that are used in the Agreements. "Exempted Facility" is defined as NRS's premises located at 1085 Telegraph Street in Reno (or its replacement to those premises). Commercial Agreement, Article 1. "Exempted Facility Materials" are defined as "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." *Id.* (emphasis supplied).

¹ The Commercial Agreement calls for the "Exempted Facility Materials Limit" to be increased annually in proportion to the increase to the Gross Domestic Product for the Reno-Sparks Metropolitan Area, all industries, as published by the U.S. Department of Commerce. The amount was set at 100,000 cubic yards in 2000 and was increased to 125,000 cubic yards in 2005.

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The Disposal Agreement expressly refers to the definitions of "Exempted Materials" and "Exempted Facility Materials" in the Commercial Agreement, and incorporates those definitions by reference. Disposal Agreement, Article 1.

Section 3.2.A of the Commercial Agreement states that the Contractor's exclusive rights within the Exclusive Service Area "shall not apply . . . [to] Exempted Facility Material *delivered to Exempted Facilities*," subject to Section 4.4.L. Commercial Agreement, §3.2.A. In Section 4.4.L, the Commercial Agreement provides that "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*." Commercial Agreement, §4.4.L.1 (emphasis supplied). The Commercial Agreement also says that it will not "limit or preclude the Exempted Facility from *accepting, processing, recycling or disposing of any Exempted Facility Materials*." *Id.* (emphasis supplied).

Section 3.2.G of the Disposal Agreement states that "the requirement and obligation of a Franchised Hauler to deliver all Approved Disposal Materials to a Designated Facility shall not include or apply to Exempted Facility Materials *delivered by a Franchised Hauler to the Exempted Facility and accepted by, processed or recycled or disposed from the Exempted Facility*." Disposal Agreement, §3.2.G (emphasis supplied). The Disposal Agreement also specifies that it will "not limit or preclude the Exempted Facility from accepting, processing, recycling or disposing of any Exempted Facility Materials." *Id.*

Neither the Commercial Agreement nor the Disposal Agreement give to NRS the express right to collect and haul materials directly from commercial customers. Instead, NRS's rights are limited to its accepting, processing, recycling, or disposing of materials that are delivered to NRS. The definition of "Exempted Facility Materials" (which are the only Collection Materials that NRS is permitted to accept) is limited only to Collection Materials that are *delivered to NRS and* are accepted, processed, recycled, or disposed by NRS.

Construing all of these provisions together, it appears that NRS is permitted only to accept, process, recycle, and dispose of materials that are *delivered to NRS* by Contractor or by Franchised Haulers. NRS is not permitted, under the terms of either the Commercial Agreement or the Disposal Agreement, to collect or haul any Collection Materials, including the Exempted Facility Materials.

Question: Has Refuse, Inc. Defaulted on the Disposal Agreement by failing to construct the Eco-Center within 28 months?

Section 3.3.A of the Disposal Agreement requires the Contractor to use "commercially reasonable efforts to commence and diligently prosecute construction of the Eco-Center or other similar facilities that will provide transfer, processing, and disposal of Solid Waste and Recyclables." Disposal Agreement, §3.3.A. The Disposal Agreement also says that the "Contractor's obligations to construct and complete the Eco-Center shall be contingent upon the Contractor's obtaining all necessary permits and approvals from local, regional, or state authorities necessary for the construction and operation of the Eco-Center." *Id.*

2014, with annual increases and adjustments to be made every subsequent year. As a result, the 125,000 cubic yards number is likely larger now, as it would have increased three times, once in 2014, once in 2015, and once again on

Howard E. Howard
law for business

City of Reno
c/o Andrew Clinger, City Manager
March 7, 2016
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Based on the foregoing language, Refuse, Inc.'s obligation to construct the Eco-Center is contingent upon two things:

- (1) Refuse, Inc. must be using "commercially reasonable efforts" to commence and prosecute construction of the Eco-Center; and
- (2) Refuse, Inc. must obtain "all necessary permits and approvals from local, regional, or state authorities" to construct the Eco-Center.

Refuse, Inc. is not in default of the Disposal Agreement simply for having not constructed the Eco-Center. Refuse, Inc. would be in default if it hasn't fulfilled (or used commercially reasonable efforts to attempt to fulfill) its obligations under Section 3.3.A. To answer this question, then—as to whether Refuse, Inc. is in default of the Disposal Agreement—we will need additional information:

Specifically, we need to know: first, what efforts has Refuse, Inc. undertaken to date to commence construction of the Eco-Center? Second, what efforts would be considered "commercially reasonable" under the circumstances? Third, has Refuse, Inc. received the necessary permits and approvals? Fourth, if Refuse, Inc. has not received the necessary permits and approvals, what steps has Refuse, Inc. taken to obtain the necessary permits and approvals?

If the City can show that Refuse, Inc. has not made any effort to commence construction of the Eco-Center or that it has not applied for, or attempted to obtain, any of the required approvals from local, regional, or state authorities, then Refuse, Inc. is in default of the Disposal Agreement. If Refuse, Inc. has applied for the required approvals but has failed to prosecute those applications or requests for approval, then Refuse, Inc. would probably be in default of the Disposal Agreement (because Refuse, Inc. has a duty to act in good faith under the Disposal Agreement, and any failure by the company to prosecute or press its applications or requests for approvals and/or permits would likely be a breach of that duty).

If, on the other hand, Refuse, Inc. can show that it has either: 1) engaged in commercially reasonable efforts to construct the Eco-Facility but has failed to actually construct the Eco-Facility so for some reason outside of its control (or outside the scope of reasons that would be "commercially reasonable" for a company like Refuse, Inc. to proceed with construction); or 2) applied and sought to obtain the required permits or approvals from local, regional, or state authorities but has not been given the required permits or approval despite its having exercised commercially reasonable efforts to obtain those permits or approvals, then Refuse, Inc. would not be in violation of the Disposal Agreement.

CLOSING

We appreciate the opportunity to work with the City on this matter. If you have any follow-up questions about the analysis we present in this letter, please contact me.

Sincerely,
HOWARD AND HOWARD ATTORNEYS PLLC

Matthew J. Keeney

4833-4300-4974, v. 1

Howard & Howard

EXHIBIT 5

EXHIBIT 5



Office of the City Manager

MEMORANDUM

DATE: April 11, 2016
TO: Mayor and City Council
FROM: Andrew Clinger, City Manager
SUBJECT: Administrative Interpretation 16-02 ("Excluded Recyclable Materials")

The City's solid waste franchise agreements with Waste Management authorize the City Manager or his designee 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 the agreements, so long as such actions do not materially change the scope, nature or exclusivity of the franchise agreements.

Findings of Fact

1. To provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, NRS 268.081(3) authorizes the City Council to displace or limit competition in the area of collection and disposal of garbage and other waste.

2. NRS 268.083(2) authorizes the City to grant an exclusive franchise to any person to provide those services within the boundaries of the city.

3. On November 7, 2012, the City of Reno entered into commercial franchise agreements granting Reno Disposal Company, Inc. and Castaway Trash Hauling, Inc. the exclusive right to collect and transport Collection Materials in the City of Reno, subject to specified exclusions in the agreements (the "Franchise Agreements").

4. The Franchise Agreements define "Collection Materials" as 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. See, Franchise Agreements, at 3.

5. On the same day, the City of Reno also entered into a disposal agreement granting the exclusive right to accept, process, dispose and recycle Collection Materials to Refuse, Inc., subject to specified exclusions provided under the Franchise Agreements (the "Disposal Agreement").

6. In general, the collection, transportation, processing, disposal and/or recycling of Collection Materials by any business other than Reno Disposal Company, Inc. is a violation of

the Franchise and Disposal Agreements and the Reno Municipal Code by both the hauler and the customer receiving service.

On July 3, 2014, the City, Reno Disposal, Rubbish Runners and NRS entered into that certain Excluded Recyclable Materials Agreement (the "ERM Agreement").

8. In October 2014, Green Solutions Recycling, LLC ("GSR"), Nevada Recycling and Salvage, Ltd. ("NRS"), and Rubbish Runners requested a letter from the City's Business Licensing Division indicating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.

9. On October 28, 2014, the City issued a letter stating that GSR, NRS and Rubbish Runners were properly licensed to do business and operate within the City of Reno.

10. On January 1, 2015, the ERM Agreement expired.

11. In light of the termination of the ERM Agreement, on May 14, 2015, the Business License Division issued a revised letter further clarifying and qualifying the scope of the business licensing for GSR, NRS and Rubbish Runners and the definition of "Excluded Recyclable Materials". The letter superseded and replaced the prior letter dated October 28, 2014.

12. On September 9, 2015, City Council directed staff to issue an administrative interpretation clarifying the scope of "Excluded Recyclable Materials".

13. In February, 2016, the City Council retained special counsel, Matthew J. Kreutzer from the law firm of Howard & Howard Attorneys in Las Vegas, to independently review the Franchise Agreements, and assist the City in drafting an administrative interpretation clarifying the scope of "Excluded Recyclable Materials".

Administrative Interpretation

The cardinal rule in interpreting contracts is to follow the intention of the contracting parties. Great Am. Airways v. Airport Auth., 103 Nev. 427, 430 (1987) citing Barringer v. Genderson, 81 Nev. 288, 302, 402 P.2d 470, 477 (1965). Contracts will be construed from their written language and enforced as written. When a contract's language is unambiguous, this court will construe and enforce it according to that language. Powers Co. v. Henry, 321 P.3d 858, 863 (Nev. 2014) (citations omitted).

Here, based on the plain language of the contract, the intent of the parties is clear. First and foremost, the parties intend to create an exclusive monopoly in favor of the franchisee, Waste Management, for the collection, transportation, processing, disposal and/or recycling of Collection Materials within the City of Reno. The language is unambiguous; specifically:

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. [Emphasis Added.] See, Franchise Agreements § 3.2(A), at 14.

Moreover, the parties intend that the grant be construed as broadly as possible to eliminate third parties from interfering with, undercutting or impinging on the franchise:

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. Id.

The parties do not, however, intend the franchise to cover Excluded Recyclable Materials.

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. [Emphasis added.] Id.

The Franchise Agreements define "Excluded Recyclable Materials" as either or both i) Approved Recyclable Materials² from Commercial Activity that are a) separated by the generator

"Excluded Recyclable Materials" are not the equivalent of "Excluded Materials." Under the Franchise Agreements, any licensed hauler may collect, haul and dispose of Excluded Materials.

"Excluded Materials" are defined as: (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 other applicable laws; (x) Construction and Demolition Debris; (xi) materials which otherwise would constitute Collection Materials that are removed from premises by landscaping, gardening, cleaning service, appliance sale and service company or construction contractors as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, appliance sale or service or construction or similar service offered by that service provider, using its own personnel and equipment, rather than as a hauling service; (xii) Scrap Metals; (xiii) Paper Shredder Materials; (xiv) Bulky Items and items Contractor determines to be excessively bulky or heavy; and (xv) Source Separated Recyclable Materials donated by the generator to any United States Internal Revenue Code Section 501(c)(3) or other federally recognized non-profit organization, including charities, youth groups and civic organizations, which materials may be transported from the non-profit organization by Self-Haul or by a third party hauler.

² "Approved Recyclable Materials" are defined as:

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,

Administrative Information 16-02 ("Excluded Recyclable Materials")

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. *Id.* at 5.

The purpose of the Excluded Recyclable Materials exemption is to allow businesses to sell Recyclable Materials on a secondary market. Used cardboard, for example, is a valuable commodity. Big box stores accumulate large quantities of cardboard. Rather than throwing the cardboard into a landfill, a store will bale and sell the cardboard to a third party recycler like NRS. Without the Excluded Recyclable Materials exemption, such a transaction would be illegal because only Waste Management is authorized to collect, transport, process, dispose and/or recycle cardboard—an Approved Recyclable Material—under the Franchise Agreements.

Under the Franchise Agreements and Reno Municipal Code, Excluded Recyclable Materials are distinguished from Collection Materials based upon how the materials are stored and handled.

Taking cardboard again as an example, depending on how a generator of cardboard stores and handles the cardboard, the cardboard will be classified as either Collection Materials (Solid Waste or Approved Recyclable Materials) or Excluded Recyclable Materials.

In the first instance, if a generator of cardboard fails to source separate the cardboard from all other non-recyclable materials, i.e., less than ninety percent (90%) Approved Recyclable Materials, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Accordingly, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Similarly, if a generator of cardboard source separates its cardboard from all other non-recyclable materials, but fails to sell the cardboard directly to a buyer of Recyclable Material at market price, the cardboard will be classified as Collection Materials, not Excluded Recyclable Materials. Thus, the cardboard is subject to the franchise, and can only be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Finally, if a generator of cardboard source separates cardboard from all other non-recyclable materials, sells the cardboard directly to a buyer of Recyclable Material at market price, but the total amount paid by the generator to the buyer or a buyer affiliated entity (e.g., the "container rental fee") exceeds the total amount received by the generator from the buyer or its affiliated entity (e.g., the "rebate"), the cardboard will be classified as Collection Materials, not

- 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.

Excluded Recyclable Materials, because the cardboard is being collected and transported as a service.

The reasoning behind this final interpretation deserves further explanation.

To avoid violating the franchise, a buyer of cardboard could simply charge the generator an arbitrary fee, e.g., container rental fee, convenience charge, etc... The buyer has complete control over the characterization of that fee. As long as the fee is not expressly tied to the collection or hauling of the cardboard, the characterization of the fee magically transmutes the cardboard into Excluded Recyclable Materials. In reality, however, the buyer's profit and expenses for collecting and transporting the cardboard off-site are covered by the fee, not the revenue derived from the cardboard as a commodity. In other words, the buyer's purchasing of the cardboard is incidental to the generator's payment of the fee. Viewed in this light, the buyer's core business is collecting and transporting cardboard as a service in exchange for a fee, not purchasing Excluded Recyclable Materials.

As a bright line rule, if a generator's net out-of-pocket cost is \$0, the Recyclable Materials are presumed to be Excluded Recyclable Materials. If a generator's net out-of-pocket cost is greater than \$0, the Recyclable Materials are in fact Collection Materials subject to the franchise, and must be collected, transported, processed, disposed of and/or recycled by Waste Management pursuant to the Franchise Agreements and Reno Municipal Code.

Holding otherwise will undercut the financial and economic assumptions underpinning the franchise, and will impair the parties' ability to enforce the franchise in the future. This runs directly afoul of the stated intent of the parties in the Franchise Agreements. See, *supra*, Franchise Agreements § 3.2(A), at 14. ("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.")

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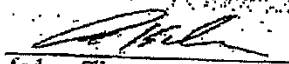
Accordingly, and in order to avoid code enforcement issues regarding the characterization of Excluded Recyclable Materials, the City will advise businesses of the following:

- **Single stream recycling of Excluded Recyclable Materials is allowed.** However, to avoid confusion over whether a storage bin contains less than ninety percent (90%) Approved Recyclable Materials, the City strongly recommends that businesses separate, segregate and store Excluded Recyclable Materials by type, i.e., all corrugated cardboard in one bin; all mixed waste paper in a second bin; and, all plastic products in a third bin; etc.

- **The buyer of the Excluded Recyclable Materials should pay the generator for the Excluded Recyclable Materials, not vice versa.** So, for example, if the total amount of consideration paid by the generator to the buyer or a buyer affiliated entity (e.g., a "container rental fee") exceeds the total amount received by the generator from the buyer or a buyer affiliated entity (e.g., a "rebate"), the materials are being collected and transported as a service, and are properly characterized as Collection Materials, not Excluded Recyclable Materials.

Dated this 11 day of March, 2016.

CITY MANAGER


Andrew Clinger

APPROVED AS TO FORM:


City Attorney's Office

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

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9

10 RENO DISPOSAL COMPANY, INC., Case No. CV17-01143
a Nevada corporation,
11 Plaintiff, Dept. No. 1

12 vs.

13 GREEN SOLUTIONS RECYCLING,
LLC, a Nevada limited
liability company, et al.,
14 Defendants.

15 AND RELATED MATTERS

16

17

18 DEPOSITION OF

19 RICHARD C. LAKE

20 July 16, 2018

21 Reno, Nevada

22

23

24

25 JOB NO. 482264-A

REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR

A P P E A R A N C E S

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ALSO PRESENT:

Greg Martinelli

I N D E X

EXAMINATION

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1 A Correct.

2 Q Does Olcese rent containers?

3 A No, not -- let me restate that.

4 We do not rent a container and charge different fees
5 for pickup and things of that nature.

6 It's a service, and you can either get a certain size
7 can with once a week pickup or several times a week pickup.
8 That's the front-loader.

9 Roll-offs, I guess you can call it a rental. It's a
10 seven-day period, and it's a set charge. The dumpster goes out
11 for X amount of dollars, they fill it up, it goes back to the
12 landfill and back to our yard, and we send them a bill.

13 Q Okay.

14 A But it's by no means like renting a storage container.

15 Q Okay. Now, let's talk about your prior employment.

16 For Olcese, you work with --

17 A Nevada Recycling and Salvage, Rubbish Runners and
18 Green Solutions. And it started in that order.

19 Q Okay. What was your position at that company?

20 A I started out as a laborer in the recycling facility,
21 pulling cardboard, and then was given the opportunity to do
22 outside sales for companies hauling to NRS.

23 And then it developed into going after roll-off boxes
24 and recyclable material using Rubbish Runners, and then they
25 added Green Solutions and the front-loader service.

1 So now I kind of had all the tools that I needed to go
2 out in the marketplace and compete with the national company.

3 Q To compete directly against Waste Management?

4 A Yes, sir.

5 Q Before commencing your employment with NRS, what did
6 you do?

7 A I was an unemployed alcoholic.

8 Q Okay. Did you work in the waste industry prior to --

9 A No. I was an auto body technician.

10 Q Okay. Now let's go -- since that was a nice segue way
11 into your prior history, NRS, do you remember when you started
12 there?

13 A Yeah, it was 7/7/2011.

14 Q Okay. And just for the record, moving forward, I
15 refer to them, and you would probably refer to them as NRS, but
16 that means Nevada Recycling and Salvage.

17 A Yes.

18 Q Okay. And GSR means Green Solutions Recycling.

19 A Recycling, yes.

20 Q So you started out as a laborer for NRS, and then you
21 said you went into sales.

22 Did you have a title when you --

23 A Sales representative.

24 Q Okay. Is that different than director of sales?

25 A I would think so.

1 Q Did you ever hold the title of director of sales?

2 A Not before that, no.

3 Q While you were at NRS?

4 A Yes.

5 Q Okay. Now, what was your job responsibility for NRS
6 as director of sales?

7 A To feed the beast, the sort line, the baler, is to get
8 as much material as I possibly could in that building so that we
9 could process it, find the recyclables, and bale, and then turn
10 them back into the commodity market.

11 Q Okay.

12 A And as far as Chris Bielser was concerned, Rubbish
13 Runners, GSR, the recycling bins, compactors, those were, quote,
14 the vehicle to feed the beast, and I was to use those tools to
15 make it happen.

16 Q Okay. So feed the beast, your understanding, was the
17 processing line of NRS?

18 A Yep.

19 Q All right. As I understood it, and I have a little
20 bit of knowledge about the business, so I'll try to leap ahead,
21 is that the materials people would bring in trucks, dump them
22 within the NRS facility, drive out, and then originally there
23 was a hand-sorting --

24 A Yes.

25 Q -- hand-picking?

1 NRS was the facility, and it really needed materials.

2 So I was allowed to work for Rubbish Runners and
3 expect a salary from them for selling their boxes because they
4 will go to NRS.

5 And then the owners of NRS and Rubbish Runners got
6 together with another partner, and Green Solutions was born.

7 And since I was already doing sales for the other two
8 companies, they just let me -- or transposed me to working for
9 all companies.

10 Q Okay. When did that go down?

11 A The 2013 era.

12 Q Right about the time you went to director of sales?

13 A Uh-huh (affirmative).

14 Q Yes?

15 A Yes.

16 Q When you were working for Rubbish Runners, were you
17 paid by Rubbish Runners?

18 A Yes.

19 Q Separate check?

20 A Yes.

21 Q How were you compensated?

22 A It was just a weekly salary.

23 Q Was that weekly salary in addition to your sales rep
24 salary from NRS?

25 A Yes. Yes. For a while I got paid by all three

1 companies, separate checks.

2 Q And later, GSR would also pay you a separate check?

3 A Right.

4 Q What was that calculated on?

5 A Based on 20 hours a week, X dollars an hour. There's
6 your --

7 Q Were you paid for duplicate hours, or would GSR pay
8 for 20 hours and --

9 A Well, that's why they wouldn't give me 80 hours, or
10 that's why they wouldn't give me 40 hours each, is because they
11 said that was duplicate.

12 So they split my time. 20 hours here, 20 hours there.

13 Q So do you remember the percentage, who paid what
14 percentage of your time?

15 A In the beginning, it was NRS that paid most of it, and
16 Rubbish Runners and GSR paid a small portion.

17 I got into a tiff with AnneMarie, and she took my
18 salary away from Rubbish Runners. So I stopped working for
19 Rubbish Runners, and then was only compensated from GSR and NRS.

20 Q Okay.

21 A And then at that point, that's when AnneMarie,
22 basically, said, NRS is paying for all of this. GSR needs to
23 pay their weight. And that's when, basically, the two companies
24 split.

25 NRS paid me a little higher wage than GSR, but it was

1 A They were when I worked there.

2 Q Okay. And did they all have the same offices?

3 A There was different offices inside the same building.

4 Q Okay. There was an office suite set up and some of
5 the office had Green Solutions work performed, some had Rubbish
6 Runners and some had NRS?

7 A Exactly.

8 Q Did they have the same computer system?

9 A No.

10 Q They all had independent computers, to your knowledge?

11 A To my knowledge. There was something about a server,
12 but -- you know, I'm not a computer guy.

13 Q Sure.

14 What about staff? Did they use the same staff?

15 A Interchangeable.

16 Q So they interchanged staff individuals?

17 A Office staff would wear several hats. Might do the
18 same thing for all three companies, like I provided sales.

19 Q Okay. So you start communicating with Joe O'Connor,
20 and you said you would drop off cards?

21 A Yeah. That had my name on it, sales rep for Rubbish
22 Runners.

23 Q Did you also have a card for sales rep for NRS?

24 A Yes.

25 Q And then later when you started doing GSR, did you

1 have a sales rep for GSR?

2 A Yes. I had three cards.

3 Q Do you have copies of any of those cards?

4 A No.

5 Q Are you going to put that in your memento book? No?

6 So when did Joe step out and AnneMarie take back over?

7 A You know, I'm fuzzy about the dates. 2014, before
8 2014, in that era. This is, like, four years ago.

9 Q Okay.

10 A I just remember because now my, and I knew it, my
11 commission was in jeopardy because I just know how my former
12 boss' mind works.

13 So I was just a little stressed, the fact that she
14 took over Rubbish Runners.

15 Q Okay. So then AnneMarie steps back into the picture
16 running Rubbish Runners.

17 A (Nods affirmatively).

18 Q And after that, you start to have some tension with
19 AnneMarie?

20 A Uh-huh (affirmative).

21 Q That's a yes?

22 A Yes.

23 Q And what was the basis of that tension?

24 A Personalities. I don't know how else to describe it
25 politely.

1 And if I was not there to have them put the phone on
2 hold, and then say, that's a half truth. You have mixed
3 recyclables, which is more than -- you know, that you have got
4 the 90, you have got the ten, you can do this.

5 Get the 96-gallon tote and tell Mr. Waste Management
6 to have a good day, and that's what I did.

7 Q So your job was to try to circumvent the franchise
8 agreement restrictions with the customers?

9 A Yeah.

10 Q And the purpose of making these calls was to try and
11 take the customers that were paying and using service with Waste
12 Management under the terms of the franchise agreement and
13 transfer them over to either NRS or GSR or Rubbish Runners?

14 A Yes, however it fit in the matrix of services.

15 MR. WHITTEMORE: I've got to object to that question.
16 It calls for speculation.

17 BY MR. SIMONS:

18 Q Okay. But you knew at the time that you were making
19 these representations to customers on behalf of NRS, Rubbish
20 Runners and GSR, that the franchise agreement did cover those
21 activities that you were attempting to replace?

22 MR. WHITTEMORE: Objection. Lacks foundation. Calls
23 for speculation. Misstates testimony. Calls for a legal
24 conclusion.

25 ///

1 provide a roll-off at a cheaper rate than what Waste Management
2 could charge?

3 A Yes. And call it a rebate, and do it all on paper.

4 Q What do you mean do it all on paper?

5 A It means no checks involved.

6 Q Okay. So, essentially, the rebate was just a discount
7 that --

8 A For hauling services.

9 Q So there was actually no exchange of money. All NRS
10 would do is say, we're just not going to charge you as much as
11 we normally would?

12 A And call the difference a rebate.

13 Q Do you know why the language of rebate was selected?

14 A Because we had to buy the materials, and I could no
15 longer call it a service. I had to call it a program.

16 Q So you just changed the name of the activity you --
17 the exact same activity from a service to a program?

18 A Yes.

19 Q And you came up with the language rebate to,
20 essentially, pretend that you were buying the material?

21 MR. WHITTEMORE: Objection. Misstates testimony.

22 BY MR. SIMONS:

23 Q Did I misstate?

24 A So, again, this is not all me. This is me working
25 with my bosses and coming up with these, and then going out and

1 executing.

2 Q Absolutely. All my questions are being directed at
3 you as an employee at the time for NRS, GSR or Rubbish Runners.
4 I want to make sure that's clear between you and me.

5 A Okay.

6 Q So all my questions, when I say "you", I'm not
7 referring directly to you, but you in your capacity as director
8 of sales for NRS, GSR and Rubbish Runners, would use the term
9 rebate to, essentially, pretend to buy the material?

10 A Yes.

11 Q And this approach that was being used was approved and
12 authorized by Chris Bielser?

13 A And the partners that owned the companies, yes.

14 Q And those other partners are Pat Pinjuv and Ryan
15 Pinjuv?

16 A When I worked there, yes.

17 Q And was AnneMarie also involved in this plan?

18 A Somewhere along the line. I mean, she owned Rubbish
19 Runners, and as far as I understood, there was a piece of the
20 pie with NRS.

21 MR. SIMONS: Okay. Would this be a good time to take
22 a restroom break?

23 THE WITNESS: Thank you.

24 (A recess was taken)

25 ///

1 for us that allows us to be sustainable.

2 Q Okay. So regardless of the marketing material, the
3 objective was to conduct collection services in the City of Reno
4 at a rate that would be cheaper than what Waste Management could
5 provide under their franchise agreement?

6 A Correct.

7 MR. WHITTEMORE: Objection. Calls for speculation.
8 Calls for a legal conclusion.

9 BY MR. SIMONS:

10 Q And in order to facilitate this plan by GSR and NRS
11 and Rubbish Runners, you factored in -- talked about this rebate
12 idea so that you thought you could take advantage of buying the
13 material under the franchise agreement; is that correct?

14 MR. WHITTEMORE: Objection. Lacks foundation.
15 Misstates testimony.

16 THE WITNESS: So we were instructed at some point that
17 we could not call this a service. That the franchise agreement
18 says that you have to pay more than you charge.

19 So we are going to pay for the materials a little bit,
20 and call this a program.

21 I never physically got any clarification to where,
22 when I said the franchise agreement says that we cannot do this
23 services. How do I combat that with the customer?

24 I got told it's a commodity, you can't franchise it.

25 So as far as my understanding was, was to get the

DEBORAH MIDDLETON GRECO
CCR #113, RDR, CRR

134 Nev., Advance Opinion 55
IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA RECYCLING AND SALVAGE,
LTD., A NEVADA LIMITED LIABILITY
COMPANY; AND AMCB, LLC, A
NEVADA LIMITED LIABILITY
COMPANY, D/B/A RUBBISH
RUNNERS,

Appellants,

vs.

RENO DISPOSAL COMPANY, INC., A
NEVADA CORPORATION, D/B/A
WASTE MANAGEMENT; REFUSE,
INC., A NEVADA CORPORATION; AND
WASTE MANAGEMENT OF NEVADA,
INC., A NEVADA CORPORATION,
Respondents.

No. 71467

FILED

AUG 02 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a district court order granting summary judgment
in an unfair trade practice dispute. Second Judicial District Court, Washoe
County; Patrick Flanagan, Judge.

Affirmed.

Winter Street Law Group and Stephanie R. Rice, Delmar L. Hardy, and
Richard A. Salvatore, Reno,
for Appellants.

Simons Law PC and Mark G. Simons, Reno,
for Respondents.

BEFORE THE COURT EN BANC.

OPINION

By the Court, DOUGLAS, C.J.:

This case arises out of an alleged violation of the Nevada Unfair Trade Practice Act (UTPA). Appellants claim that respondents conspired with a third party to obtain exclusive franchise agreements with the City of Reno for the collection of waste and recyclable materials. According to appellants, this conspiracy precluded them from receiving a franchise agreement with the City of Reno. The question presented in this appeal is whether appellants have been injured in their business and therefore have standing to assert their claim under the UTPA.

We conclude that appellants lack standing to bring an antitrust claim because they were unable to show that they suffered any injuries (i.e., damages).¹ Accordingly, we affirm the district court's order granting summary judgment in favor of respondents.

FACTS AND PROCEDURAL HISTORY

Appellants Nevada Recycling and Salvage, Ltd. (Nevada Recycling) and AMCB, LLC, d/b/a Rubbish Runners (Rubbish Runners), brought this suit in district court under the Nevada Unfair Trade Practice Act for injunctive relief and treble damages. Nevada Recycling operates a facility that accepts, processes, recycles, and disposes of waste and recyclable materials. Rubbish Runners collects, hauls, and disposes of waste and recyclables for commercial accounts within the City of Reno. The gist of the complaint is that respondents Reno Disposal Company, Inc. (Reno Disposal), Refuse, Inc. (Refuse), and Waste Management of Nevada,

¹As this issue is dispositive, we do not reach the additional issues raised in appellants' appeal.

Inc. (Waste Management), who are also collectors, haulers, and disposers of waste and recyclables for commercial accounts within the City of Reno, entered into a conspiracy with nonparty Castaway Trash Hauling (Castaway) for the explicit purpose of monopolizing the waste and recyclables market in the City of Reno.

The City of Reno was looking to implement a single-stream recycling service. Reno Disposal proposed that the City of Reno create exclusive service areas whereby waste haulers would have an exclusive privilege to collect and dispose of waste and recyclable materials within their assigned area. The City of Reno agreed, and it was determined that Reno Disposal and Castaway would each receive exclusive commercial franchise agreements, servicing all of Reno.

Proposed ordinances representing the franchise agreements were drafted and the Reno City Council conducted three public hearings in which the terms and conditions of the ordinances were discussed. At the first reading of the ordinances, Rubbish Runners spoke in opposition to the proposed ordinance, concerned that the ordinances would put it out of business. In addressing Rubbish Runners' concerns, carve-outs and exemptions were included in the ordinances that allowed Rubbish Runners to keep its existing customers upon verification of its customers' contracts. Under the proposed ordinances, Rubbish Runners would not be allowed to expand to new customers and it was not allowed to haul certain types of materials. The ordinances were subsequently approved.

Thereafter, Waste Management purchased Castaway and acquired all of Castaway's rights and duties held under the ordinance. Pursuant to authority granted under the ordinance, Waste Management then assigned its rights and duties held under the ordinance to Reno

Disposal. As a result, Reno Disposal had exclusive rights to collect waste and recyclables in the City of Reno subject to the exemptions made for Rubbish Runners under the ordinance.

Before the district court, appellants argued that respondents conspired with Castaway to create an illegal monopoly for Reno Disposal. Reno Disposal and Refuse moved for summary judgment, and Waste Management filed a joinder to the motions for summary judgment. The district court granted summary judgment in favor of respondents, concluding that the *Noerr-Pennington* doctrine applied because respondents' conduct involved political and not business conduct. See *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965). In addition, the district court concluded that, in terms of damages, appellants lacked standing to assert an UTPA claim because they were not qualified to service a franchise zone, they never sought to be considered for a franchise zone, and the City of Reno determined that they were not qualified waste haulers. This appeal followed.

DISCUSSION

"Antitrust standing is a question of law reviewed de novo." *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. Cal.*, 190 F.3d 1051, 1054 (9th Cir. 1999). Likewise, a district court's order granting summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and

conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Appellants argue that the district court erred in concluding that they lack antitrust standing. We disagree.

The UTPA, codified in NRS Chapter 598A, provides, in relevant part:

Any person injured or damaged directly or indirectly in his or her business or property by reason of a violation of the provision of this chapter may institute a civil action and shall recover treble damages

NRS 598A.210(2). The UTPA “shall be construed in harmony with prevailing judicial interpretations of the federal antitrust statutes.” NRS 598A.050; *see also Boulware v. Nev., Dep’t of Human Res.*, 960 F.2d 793, 800 (9th Cir. 1992) (“[The UTPA] also adopts by reference the case law applicable to the federal antitrust laws.”).

While we have not yet addressed standing under the UTPA, the United States Supreme Court has addressed standing under the federal antitrust counterpart, the Clayton Act. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 521 (1983). The Clayton Act provides that “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained.” 15 U.S.C. § 15(a). The Supreme Court rejected a broad interpretation of the statute, as “[a] literal reading of the statute is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation.” *Associated Gen. Contractors of Cal.*, 459 U.S. at 529. Instead, antitrust standing requires courts to “evaluate the plaintiff’s harm, the alleged wrongdoing by the defendants, and the relationship

between them.” *Id.* at 535. “[I]t [is] virtually impossible to announce a black-letter rule that will dictate the result in every case,” *id.* at 536, thus, certain factors are used to determine antitrust standing:

- (1) the nature of the plaintiff’s alleged injury; that is, whether it was the type the antitrust laws were intended to forestall;
- (2) the directness of the injury;
- (3) the speculative measure of the harm;
- (4) the risk of duplicative recovery; and
- (5) the complexity in apportioning damages.

Am. Ad Mgmt., 190 F.3d at 1054.

“Generally [n]o single factor is decisive.” *Id.* at 1055 (alteration in original) (internal quotation marks omitted). Thus, “a court need not find in favor of the plaintiff on each factor.” *Id.* Instead, the factors should be weighed and balanced, but the courts “give great weight to the nature of the plaintiff’s alleged injury.” *Id.* “In fact, the Supreme Court has noted that [a] showing of antitrust injury is necessary, but not always sufficient, to establish standing under [the Clayton Act].” *Id.* (second alteration added) (internal quotation marks omitted).

Appellants’ purported injury is that respondents’ alleged anticompetitive conspiracy excluded appellants from receiving a franchise agreement with the City of Reno for the collection of waste and recyclable material. The supposed harm here is that appellants lost customers as a result. Appellants claim, “ascertaining the amount of Appellants’ damages is complicated by the fact that different rates were charged to Appellants’ customers over time prior to losing them.”

Here, appellants’ alleged harm is insufficient to demonstrate antitrust standing. The UTPA was intended to preserve competition for the

benefit of consumers. See NRS 598A.030; see also *GAF Corp. v. Circle Floor Co.*, 463 F.2d 752, 758 (2d Cir. 1972) (“[T]he plaintiff must allege and prove that the illegal restraint of trade injured his *competitive position* in the business in which he or she was engaged.”). Nevada Recycling does not collect waste and recyclable materials, and therefore, it is not a competitor as to the franchise agreements. Nevada Recycling has not provided any evidence supporting its contention that the ordinances harmed its business. Even if it did, Nevada Recycling, as a noncompetitor, could not show how any alleged injury is the type the antitrust laws were intended to forestall.

Rubbish Runners, on the other hand, is a competitor, as its services include the collection of waste and recyclable materials. However, Rubbish Runners has not provided any evidence supporting its contention that it lost customers due to the franchise agreements. Pursuant to the franchise agreements, Rubbish Runners was allowed to keep its existing customers upon verification of the customers’ contracts. Thus, any loss in customers was a direct result of Rubbish Runners’ failure to do so.

Based on the foregoing, we conclude that appellants did not make any showing that they suffered any injuries (i.e., damages) from respondents’ alleged conspiracy, and thus, they lack antitrust standing.

Accordingly, we affirm the district court's order granting summary judgment in favor of respondents.

Douglas, C.J.
Douglas

We concur:

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

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

9 **RENO DISPOSAL COMPANY, INC., a**
10 **Nevada Corporation,**

11 **Plaintiff,**

CASE NO.: CV17-01143

12 **v.**

DEP. NO.: 1

13 **GREEN SOLUTIONS RECYCLING, LLC, A**
14 **Nevada Limited Liability Company;**
15 **NEVADA RECYCLING AND SALVAGE, LTD.,**
16 **a Nevada Limited Liability Company, AMCB,**
17 **LLC, a Nevada Limited Liability Company dba**
18 **RUBBISH RUNNERS; DOES I-X, inclusive,**

19 **Defendants.**

20 **GREEN SOLUTIONS RECYCLING, LLC, A**
21 **Nevada Limited Liability Company; et al**

22 **Counterclaimant,**

23 **v.**

24 **RENO DISPOSAL COMPANY, INC., a**
25 **Nevada Corporation, WASTE MANAGEMENT**
26 **OF NEVADA, INC., a Nevada Corporation;**
27 **WASTE MANAGEMENT NATIONAL**
28 **SERVICES, INC., a Connecticut corporation**
And the CITY OF RENO, a political subdivision

Counterdefendants.

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1 ("Franchise Agreement"). In the Order denying the Motion for Stay this Court noted that the parties
2 in this case and the Federal Case are not substantially identical and that the causes of action in the
3 Federal Case are rooted in pre franchise agreement events while the causes of action in this case are
4 based on post franchise agreement events. This has not changed. However, based on the arguments
5 offered by the parties in this case related to the Motion and the additional information that is now
6 available to this Court, this Court finds it is at an impasse in its ability to rule on the Motion until the
7 issues related to the validity of the Franchise Agreement are resolved in the Federal Case. That the
8 decision in the Federal Case has a critical bearing on this case is now far more apparent to this Court,
9 necessitating a resolution of the Federal Case before this state action can proceed.

10 Accordingly, IT IS HEREBY ORDERED that all further proceedings in this case are stayed
11 until the proceedings in the Federal Case have been resolved.

12 DATED this 6th day of August, 2018.

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14 KATHLEEN DRAKULICH
15 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; and that on the 6th day of August, 2018, I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

MATTHEW JENSEN, ESQ.

WILLIAM MCKEAN, ESQ.

MARK SIMONS, ESQ.

JONATHAN SHIPMAN, ESQ.

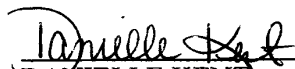
JOHN SANDE IV, ESQ.

RICHARD SALVATORE, ESQ.

STEPHANIE RICE, ESQ.

☒ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

J. CHASE WHITTEMORE, ESQ.
ARGENTUM LAW
6121 LAKESIDE DR., SUITE 208
RENO, NV 89511


DANIELLE KENT
Department One Judicial Assistant

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*Attorneys for Reno Disposal Company, Inc.,
Waste Management of Nevada, Inc., and
Waste Management National Services, Inc.*

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

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation,

CASE NO.: CV17-01143

Plaintiffs,

DEPT. NO.: 1

vs.

GREEN SOLUTIONS RECYCLING, LLC,
a Nevada limited liability company;
NEVADA RECYCLING AND SALVAGE,
LTD., a Nevada limited liability company;
AMCB, LLC, a Nevada limited liability
company dba RUBBISH RUNNERS
DOES I through X, inclusive,

Defendants.

AND RELATED MATTERS. _____

MOTION TO VACATE ORDER TO STAY

Plaintiff/Counterdefendant Reno Disposal Company, Inc. dba Waste
Management ("Reno Disposal"), along with counterdefendants Waste Management of
Nevada, Inc. ("WMON") and Waste Management National Services, Inc. ("WMNS")
(collectively "Waste Management" unless otherwise specified), by and through their
counsel of Mark G. Simons of SIMONS LAW, PC, submit their Motion to Vacate the

1 Court's August 6, 2018, Order Staying All Proceedings Sua Sponte (the "Stay Order").¹

2 DATED this 25th day of January, 2019.

3
4 SIMONS LAW, PC
6490 S. McCarran Blvd., #C-20
5 Reno, Nevada 89509

6
7 

8 MARK G. SIMONS, ESQ.
9 Attorneys for Waste Management

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. BASIS OF THIS ACTION.**

12 This case is about the illegal collection and disposal of waste in violation of the
13 City of Reno's Franchise Agreement by the defendants Green Solutions Recycling, LLC
14 ("GSR"), Nevada Recycling and Salvage, Ltd. ("NRS") and AMCB, LLC dba Rubbish
15 Runners ("RR"). The City of Reno's Franchise Agreement vests Waste Management
16 with the sole and exclusive authority to collect and dispose of waste, including all
17 recyclable waste materials, in the City.²

18 This action is based upon the systematic and intentional violations of the City's
19 Franchise Agreement by GSR, NRS and RR. Specifically, GSR, NRS and RR work
20 individually and cooperatively to collect and dispose of waste, including recyclable
21 waste materials, using a scheme to undercut the rates Reno Disposal is allowed to
22 charge under the City's Franchise Agreement. Stated another way, GSR, NRS and RR
23 charge City customers less than Reno Disposal can charge under the City's Franchise
24 Agreement, causing significant harm to the City, Waste Management and the City's

25
26 ¹ For ease of reference, a copy of the Stay Order is attached as **Exhibit 1**.

27 ² The City's Franchise Agreement actually consists of two (2) separate agreements with
28 Reno Disposal. See Amended Complaint, ¶¶31-32, 38-41. However, for ease of
reference, the City's franchise agreements will be singularly referred to as the
"Franchise Agreement."

1 residents.

2 On August 6, 2018, the Court stayed all proceedings in this action due to the
3 pending Federal Court action titled Green Solutions Recycling, LLC v. Reno Disposal
4 Company, Inc. et al., Case No. 3:16-cv-00334-MMD-VPC, United States District Court
5 – District of Nevada, filed June 16, 2016 (“Federal Case”). Id., p. 2:8-12. This Court
6 felt that this case could not proceed while the Federal Case was pending: “That the
7 decision in the Federal Case has a critical bearing on this case is now far more
8 apparent to this Court, necessitating a resolution of the Federal Case before this action
9 can proceed.” Id., p. 3:6-9. Now that the Federal Case is resolved, the stay should be
10 vacated, and this case can proceed.

11 **II. THE RESOLUTION OF THE FEDERAL CASE: ORDER GRANTING**
12 **SUMMARY JUDGMENT IN CITY’S AND RENO DISPOSAL’S FAVOR.**

13 In the Federal Case, Reno Disposal and the City of Reno filed case-ending
14 motions for summary judgment seeking a judicial determination that the City’s
15 Franchise Agreements were (1) valid and enforceable with regard to collection and
16 disposal of recyclable waste materials, and (2) the City’s definition that waste includes
17 recyclable materials that a customer pays to have collected and disposed is a valid
18 exercise of the City’s authority under NRS 268.081.

19
20 On January 7, 2019, Judge Du entered her Order granting summary judgment in
21 favor of Waste Management and the City and dismissing in total GSR’s claims in the
22 Federal Case (“Du Order”). **Exhibit 2**, Du Order.³ On January 7, 2019, Judge Du then
23 granted judgment in favor of the City and Reno Disposal (“Judgment”). **Exhibit 4**,
24 Judgment.⁴

25
26 Not only does the resolution of the Federal Case now allow this case to proceed,

27
28 ³ See also **Exhibit 3**, Affidavit of Mark G. Simons (“Simons’ Aff.”) at ¶4.

⁴Simons’ Aff. at ¶5.

1 the Du Order answers many questions central to the resolution of this case. The Du
2 Order discussed in detail NRS 268.081's provisions and "the City of Reno's authority to
3 grant a monopoly for the collection and disposal of certain recyclable materials." Exh.
4 2, p. 1:13-14. Judge Du specifically addressed and rejected GSR's argument that the
5 "City had no such authority and unlawfully has restrained trade in violation of Section 1
6 of the Sherman Antitrust Act, 15 U.S.C. §1 ("Act")." Id., p. 1:15-16.

8 Judge Du found that the City's Franchise Agreement "basically grants Reno
9 Disposal the exclusive right to pick up and remove solid waste and certain recyclable
10 materials from commercial entities." Id., p. 2:10-12. Judge Du found that the City had
11 determined that GSR was acting illegally and violating the Franchise Agreement
12 because "[GSR's] customers were essentially paying for [GSR] to remove waste when
13 Reno Disposal had the exclusive rights to remove waste." Id., p. 2:21-23. Judge Du
14 then found that the City's definition of what is or is not waste was within the scope of
15 the City's powers vested in it pursuant to NRS 268.081.

17 Judge Du agreed that GSR was operating illegally and in violation of the City's
18 Franchise Agreement because the City was vested with the authority to determine what
19 is and is not waste. Judge Du addressed an actual example of GRS's illegal activity,
20 whereby GSR charges to collect and dispose of recyclable waste materials in the City
21 by charging a customer and then providing a nominal rebate to create the illusion that it
22 was "purchasing" the customer's waste:

24 [GSR] contracted with various commercial entities in the City to pick up
25 and remove certain recyclable materials from their premises. . . . [GSR]
26 operates by providing its customers with recycling containers in exchange for
27 payment offset by a rebate. . . . For example, [GSR] charged one customer
28 \$440 per bin each month and provided that customer with a rebate of \$2.52 per
bin each month.

Id., p. 2:15-20.

1 Judge Du then examined the City's response to GSR's rebate scheme that GSR
2 employed in an attempt to circumvent the City's Franchise Agreement and the City's
3 authority under NRS 268.081 as follows:

4 The City eventually took the position that [GSR] was violating the
5 Franchise Agreement based on its view that [GSR]'s customers were essentially
6 paying for [GSR] to remove waste when Reno Disposal had the exclusive rights
7 to remove waste. (See ECF No. 113 at 4.) The City informed [GSR]'s counsel
8 that [GSR] could pick up and remove certain recyclable materials without
9 violating the Franchise Agreement only if [GSR]'s customers actually sold the
10 recyclable materials instead of paying for them to be removed. (*Id.*) In other
11 words, [GSR]'s customers were essentially required to realize a net profit from
12 the arrangement, and thus the rebate would have to exceed the container rental
13 charges. (See *id.*) The City informed some of [GSR]'s customers that the
14 customers were violating the Franchise Agreement. (*Id.* at 5.) In addition,
15 counsel for Reno Disposal and WMON sent demand letters to some of [GSR]'s
16 customers asserting that the customers were violating the Franchise Agreement.
17 (ECF No. 113 at 7.)

18 Id., 2: 21-3:6. Judge Du found that all facts contained in her Order were undisputed.

19 Id., fn.2

20 Judge Du concluded as undisputed that collection and disposal of waste is an
21 area of local concern to be regulated and controlled by local government. United
22 Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 344
23 (2007) ("[W]aste disposal is typically and traditionally a local government function."
24 (citation omitted)). Consequently, because the City's regulation over the collection and
25 disposal of waste, including recyclable waste materials, was exclusively a function left
26 to the City, the City's determination that GSR was violating the City's Franchise
27 Agreement was proper and not an anti-trust violation.

28 In granting judgment in the City's and Reno Disposal's favor, Judge Du ruled as
follows:

1. that NRS 268.081 "expressly authorizes anticompetitive behavior."
Id., p. 10:7-9.

- 1 2. that “the City is immune . . . even though the statute authorizing the
2 City to grant a monopoly over the collection and dispose of garbage
3 and other waste does not specifically list all the material that might
 constitute ‘other waste.’” Id., p. 10:25-27.
- 4 3. that “[i]t is clear that the Nevada Legislature contemplated a
5 monopoly for the collection and disposal of garbage and other
6 waste. It was not necessary—and was probably impossible—for
7 the Nevada legislature to list every single thing that might constitute
 waste.” Id., pp. 10:27-11:3.
- 8 4. that “the Court finds that the City and Reno Disposal’s
9 anticompetitive conduct has been articulated and affirmatively
 expressed as state policy.” Id., p. 12:7-8.
- 10 5. GSR’s argument that the City was “price fixing” was not persuasive
11 because “it mischaracterizes Defendants’ activity as price-fixing” and all
12 the City has done is “adopted a definition of waste—that it must—
13 incorporates monetary value to the producer: the City has defined waste
14 as materials that the generator pays someone to take it away.” Id., p.
 11:6-10. Judge Du then found that “[a]ny effect that the City’s definition
 has on the price of recyclable materials is a necessary consequence of
 enforcing the exclusive franchise it is entitled to grant.” Id., p. 11:10-12.

15 Judge Du concluded by ruling as follows:

16 Given that the challenged restraint in this case—the City’s grant of
17 monopoly over the collection of recyclable materials that [GSR] wishes to pick
18 up—is clearly articulated and affirmatively expressed as state policy, state-action
19 immunity applies. Accordingly, the Court grants summary judgment in favor of
 Defendants.

20 Id., p. 13:24-27.

21 Summarizing Judge Du’s Order, Judge Du found that the City’s Franchise
22 Agreement was an approved and valid exercise of the City’s authority under NRS
23 Chapter 268, that the City had the statutory authority to define what is waste, and that
24 the City’s definition that “other waste” includes recyclable materials that a customer
25 pays out-of-pocket to have collected and disposed of is a valid exercise of the City’s
26 authority. Consequently, Judge Du found that GSR’s claims failed as a matter of law
27 because the facts were undisputed and the City’s actions did not create any anti-trust
28

1 liability. Similarly, Judge Du dismissed the claims against Waste Management because
2 these parties were not "engaged in municipal regulation" and were instead private
3 actors acting under the authority of the City. *Id.*, p. 1:9-10; *see also*, pp. 8:27-9:2.⁵

4
5 **III. THE PENDING SPECIAL MOTIONS TO DISMISS GSR'S COUNTERCLAIMS**
6 **PURSUANT TO NRS 41.660.**

7 In this action, GSR asserted counterclaims contending the City's and Waste
8 Management's communications to GSR's customers that GSR was acting illegally was
9 defamatory. The City and Waste Management responded with their special motions to
10 dismiss establishing that the City's determination that GSR was acting illegally and in
11 violation of the City's Franchise Agreement, and any reiteration of that position by
12 Waste Management, was protected speech under the provisions of NRS 41.660. The
13 City and Reno Disposal assert that GSR was illegally collecting and disposing of waste
14 in violation of the City's Franchise Agreement, which only authorized Reno Disposal to
15 perform such services in the City.⁶

16
17
18 ⁵ *See also California Reduction Company v. Sanitary Reduction Works*, 199 U.S. 306,
19 317 (1905) (the regulation of waste through exclusive contracts is a valid exercise of
20 governmental police powers and such "sanitary regulations" were constitutional).

21 ⁶ GSR freely admitted during a preliminary injunction hearing in the Federal Case that it
22 is intentionally violating the City's Franchise Agreement by collecting and disposing of
23 waste (calling the waste a recyclable material) at a substantially cheaper rate than
24 Reno Disposal can charge under the Franchise Agreement. Specifically, Mr. Pinjuv, the
25 president of GSR, testified at the preliminary injunction on this very point as follows:

26 Q And so one of your marketing themes to your customers is
27 you come in and you say, look, we'll rent you this container.
28 We'll give you a rebate. **And it's actually going to be**
cheaper than what you have to pay Reno Disposal under the
Franchise Agreement.
Right?

A **Absolutely.**

Exhibit 5, excerpts of Charles "Pat" Pinjuv's testimony, p. 92:17-23 (emphasis added).

1 Specifically, on January 30, 2018, the Waste Management parties filed their
2 Special Motion to Dismiss pursuant to NRS 41.660 ("Waste Management Special
3 Motion"). On February 5, 2018, the City filed its own Special Motion to Dismiss and
4 Joinder in other Counterdefendants' Special Motion to Dismiss ("City Special Motion").
5 On May 29, 2018, the Court conducted oral argument on both Special Motions to
6 dismiss.

7 On August 6, 2018, this Court entered the Stay Order. At this time both Waste
8 Management's and the City's Special Motions to dismiss pursuant to NRS 41.660
9 remain pending.⁷

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14 In fact, when questioned about GSR's solicitation of customers, GSR admits that
15 it absolutely tries to convince customers to pay GSR less than what Reno Disposal is
allowed to charge for waste collection services as follows:

16 Q Okay. And this is proposal being made to **replace Waste**
17 **Management's collection services with Green Solutions**
18 **Recycling services, right?**

19 A **Absolutely.**

20 Id., pp.100:20-101:1 (emphasis added). GSR further admits it is specifically targeting
Waste Management customers to perform waste collection services as follows:

21 Q **And so you're [GSR] specifically targeting these customers**
22 **because you want to replace their Waste Management dumpster**
23 **service and put yours in its place.**
Is that accurate?

24 A **Yes.**

25 Id., p. 102:11-15. See also Simons' Aff., at ¶6.

26
27 ⁷ On August 6, 2018, immediately after issuance of the Stay Order, this Court then
28 entered its Order vacating the prior August 2, 2018, Order denying the Waste
Management Special Motion to dismiss. **Exhibit 6**, August 6, 2018, Order Vacating its
prior August 2, 2018, *Order After Hearing Denying Counterdefendants Reno Disposal,*
WMON and WMNS's Special Motion to Dismiss.

1 **IV. NOW THAT THE FEDERAL CASE IS RESOLVED, THE STAY OF THIS CASE**
2 **SHOULD BE VACATED.**

3 This Court noted in its Stay Order that GSR originally sought to stay the present
4 proceedings pending resolution of the Federal Case because GSR argued that
5 outcome of the Federal Case would be dispositive of the validity of its claims in these
6 proceedings.⁸ Exh. 1, p. 2:25-28. The Court noted the following:

7 The Motion to Stay was based principally on the fact that the Federal Case was
8 pending and that a decision in that case would determine the validity of the
9 [Franchise Agreement].

10 Id. The Court then identified that because of the arguments and issues raised during
11 oral argument and due to the additional information presented to the Court, the Court
12 found that it was:

13 [A]t an impasse in its ability to rule on the Motion until the issues related to the
14 validity of the Franchise Agreement are resolved in the Federal Case. That the
15 decision in the Federal Case has a critical bearing on this case is now far more
16 apparent to this Court, necessitating a resolution of the Federal Case before this
action can proceed.

17 Id., p. 3:6-9.

18 The Federal Case is now resolved, and the Court should vacate the Stay Order
19 and this action should be allowed to proceed.

20 **V. THE EFFECT OF VACATING THE STAY ORDER.**

21 Once the Stay Order is vacated, the posture of the case will be that this Court
22 will need to rule on:
23

- 24 1. Reno Disposal, WMON and WMNS's Special Motion to Dismiss; and
25

26 ⁸ GSR's Motion to Stay acknowledged that the entire premise of its defense in this case
27 and its federal claims "boil[ed] down to an analysis" of GSR's nominal rebate scheme
28 whereby the customer still paid to have its recyclable waste materials collected and
disposed of and whether that activity violated the City's exclusive Franchise Agreement.
GSR Mot to Stay, p. 5:-9.

1 2. The City's Special Motion to Dismiss.

2 In addition, prior to the entry of the Stay Order, Waste Management had been pursuing
3 discovery activities, and the following motions were in the process of being fully briefed
4 and submitted and/or had previously been submitted but stayed by the Stay Order:

- 5
- 6 3. Motion to Compel: Re GSR. Filed July 7, 2018. Opposition filed July 30,
7 2018. Reply and Request for Submission to be completed.
- 8 4. Motion to Compel: Re NRS and RR and Countermotion for Attorney Fees.
9 Filed July 11, 2018. Opposition and Countermotion filed July 25, 2018.
10 Reply, Opposition to Countermotion and Counterreply and Requests for
11 Submission to be completed.
- 12 5. Motion to Quash Subpoenas. Filed by NRS and RR and joined in by
13 GSR. Fully briefed and submitted on May 21, 2018. The subpoenas
14 seek production of responsive documents between GSR, NRS and RR
15 and customers in the City who have engaged these defendants under
16 their illegal scheme.

17 **VI. CONCLUSION.**

18 Because the Federal Case has concluded, the Court should vacate its Stay
19 Order and allow this action to proceed.⁹

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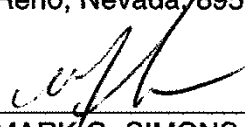
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⁹ Judge Du's Order has res judicata application regardless of whether or not Judge Du's
24 Order and Judgment are subsequently appealed. Hawkins v. Risley, 984 F.2d 321, 324
25 (9th Cir. 1993) ("in federal courts . . . the preclusive effects of a lower court judgment
26 cannot be suspended simply by taking an appeal that remains undecided." (citation
27 omitted)); Tripati v. Henman, 857 F.2d 1366, 1367 (9th Cir. 1988) ("The established
28 rule in the federal courts is that a final judgment retains all of its res judicata
consequences pending decision of the appeal . . ." 18 C. Wright, A. Miller & E.
Cooper, *Federal Practice and Procedure* § 4433, at 308 (1981)To deny preclusion
in these circumstances would lead to an absurd result: Litigants would be able to refile
identical cases while appeals are pending, enmeshing their opponents and the court
system in tangles of duplicative litigation.").

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

3 DATED this 25th day of January, 2019.

4
5 SIMONS LAW
6 6490 S. McCarran Blvd., #C-20
7 Reno, Nevada 89509

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9 _____
10 MARK G. SIMONS
11 Attorneys for Waste Management

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS LAW, PC
that on this date I caused to be served a true copy of the **MOTION TO VACATE**
ORDER TO STAY 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:

John P. Sande, Esq. at john@argentumnv.com
Chase Whittemore, Esq. at chase@argentumnv.com
Attorneys for GSR

Stephanie Rice, Esq. at stephanie@winterstreetlawgroup.com
Richard Salvatore, Esq. at rich@winterstreetlawgroup.com
Attorneys for NRS and RR

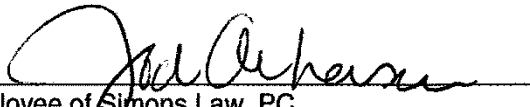
Jonathan Shipman, Esq. at shipmanj@reno.gov
Attorneys for the City

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

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

DATED this 25 day of January, 2019.



Employee of Simons Law, PC

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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	8/6/18 Stay Order	4
2	1/7/19 Du Order	15
3	Simons' Affidavit	2
4	1/7/19 Du Judgment	1
5	11/28/17 Hearing Transcript Excerpts	6
6	8/6/18 Order Vacating 8/2/18 Order	3

EXHIBIT 1

EXHIBIT 1

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

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation,

Plaintiff,

CASE NO.: CV17-01143

v.

DEP. NO.: 1

GREEN SOLUTIONS RECYCLING, LLC, A
Nevada Limited Liability Company;
NEVADA RECYCLING AND SALVAGE, LTD.,
a Nevada Limited Liability Company, AMCB,
LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS; DOES I-X, inclusive,

Defendants.

GREEN SOLUTIONS RECYCLING, LLC, A
Nevada Limited Liability Company; et al

Counterclaimant,

v.

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation, WASTE MANAGEMENT
OF NEVADA, INC., a Nevada Corporation;
WASTE MANAGEMENT NATIONAL
SERVICES, INC., a Connecticut corporation
And the CITY OF RENO, a political subdivision

Counterdefendants.

1 **ORDER STAYING ALL PROCEEDINGS SUA SPONTE**

2 Currently before the Court is the City of Reno's ("the City") *Special Motion to Dismiss*
3 *Counterclaims Pursuant to NRS 41.660 and Joinder in Other Counterdefendants' Special Motion to*
4 *Dismiss* ("Motion") filed February 5, 2018. On February 8, 2018, Green Solutions Recycling, LLC
5 ("GSR" or "Counterplaintiff") filed an *Opposition* thereto. The City filed a *Reply* on February 20,
6 2018 and submitted the matter for consideration. The Court issued an *Order to Set* the matter for
7 hearing on May 9, 2018. The parties appeared before the Court on May 29, 2018 for oral arguments.
8 The Court took the Motion under advisement. In consideration of the Motion, all of the relevant
9 documents in this case that pertain to the Motion, including the transcript from the hearing on May
10 29, 2018, this Court orders all proceedings in this action stayed until such time as Case No. 3:16-cv-
11 00334-MMD-VPC, United States District Court – District of Nevada, filed June 16, 2016 ("Federal
12 Case") proceeds to conclusion.

13 Granting a stay is a matter of judicial discretion depending upon an equitable and practical
14 assessment of the relevant circumstances. Ferguson v. Tabah, 288 F.2d 665, 672 (2d Cir. 1961).
15 The power to stay proceedings is incidental to the power inherent in every court to control the
16 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
17 for litigants. Landis v. N. Am Co., 299 U.S. 248, 254, 57 S.Ct. 163, 166 (1938). How this can best
18 be done calls for the exercise of judgment, which must weigh competing interests and maintain an
19 even balance. Id. In most cases, a court will grant or deny a stay based on whether the particular
20 facts involved warrant a stay. State v. Robles-Nieves, 129 Nev. 537, 306 P.3d 399, 402-03 (2013).
21 Stays are often invoked to preserve judicial economy by temporarily stopping a case pending the
22 occurrence of a certain event; if a related matter is pending that may affect the outcome of the case
23 at issue, courts will often order a stay. Evanston Ins. Co. v. 70 Ltd. P'ship, No. 2:14-CV-01370-RFB,
24 2014 WL 6882415, at *4 (D. Nev. Dec. 5, 2014).

25 GSR previously sought a stay in this case by way of a *Motion for Stay or in the Alternative*
26 *Motion to Dismiss* ("Motion for Stay") filed June 30, 2017, which was denied by this Court as was
27 GSR's *Motion for Reconsideration* filed November 28, 2017. The Motion for Stay was based
28 principally on the fact that the Federal Case was pending and that a decision in that case would
determine the validity of the Exclusive Service Area Franchise Agreement dated November 7, 2012

1 ("Franchise Agreement"). In the Order denying the Motion for Stay this Court noted that the parties
2 in this case and the Federal Case are not substantially identical and that the causes of action in the
3 Federal Case are rooted in pre franchise agreement events while the causes of action in this case are
4 based on post franchise agreement events. This has not changed. However, based on the arguments
5 offered by the parties in this case related to the Motion and the additional information that is now
6 available to this Court, this Court finds it is at an impasse in its ability to rule on the Motion until the
7 issues related to the validity of the Franchise Agreement are resolved in the Federal Case. That the
8 decision in the Federal Case has a critical bearing on this case is now far more apparent to this Court,
9 necessitating a resolution of the Federal Case before this state action can proceed.

10 Accordingly, IT IS HEREBY ORDERED that all further proceedings in this case are stayed
11 until the proceedings in the Federal Case have been resolved.

12 DATED this 6th day of August, 2018.

13 
14 KATHLEEN DRAKULICH
15 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
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EXHIBIT 2

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREEN SOLUTIONS RECYCLING, LLC,	Case No. 3:16-cv-00334-MMD-CBC
Plaintiff,	ORDER
v.	
RENO DISPOSAL COMPANY, INC., <i>et</i>	
<i>al.</i> ,	
Defendants.	

I. SUMMARY

This case is about the City of Reno's authority to grant a monopoly for the collection and disposal of certain recyclable materials. Plaintiff Green Solutions Recycling, LLC ("GSR") contends that the City has no such authority and unlawfully has restrained trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 ("Act"). Before the Court are three motions for summary judgment: (1) Defendants Reno Disposal Company, Inc. ("Reno Disposal") and Waste Management of Nevada, Inc.'s ("WMON") motion for summary judgment regarding lack of subject matter jurisdiction/standing ("Defendants' Jurisdictional Motion") (ECF No. 105); Defendants Reno Disposal and WMON's motion for summary judgment regarding enforceability of franchise agreement ("Defendants' Merits Motion") (ECF No. 106); and Plaintiff's motion for partial summary judgment ("Plaintiff's Motion") (ECF No. 113).¹ The Court has reviewed the relevant briefing (ECF Nos. 120, 121, 122, 123, 124, 126) and held a hearing on these motions on December 18,

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¹The City filed a joinder to Defendants' Jurisdictional Motion and Defendants' Merits Motion. (ECF No. 107, 108.) The City also filed a joinder to Defendants' opposition to Plaintiff's Motion. (ECF No. 127.)

2018 (ECF No. 134). For the following reasons, the Court denies Defendants' Jurisdictional Motion, grants Defendants' Merits Motion, and denies Plaintiff's Motion.

II. BACKGROUND²

Nevada law allows the City to "[g]rant an exclusive franchise to any person" for the "[c]ollection and disposal of garbage and other waste." NRS §§ 268.081, 268.083. Accordingly, the City entered into an exclusive franchise agreement with Reno Disposal on November 7, 2012. (ECF No. 113 at 2; ECF No. 106 at 6.) The City entered into a second exclusive franchise agreement with another entity, but Reno Disposal eventually acquired the franchise rights under that agreement as well. (ECF No. 106 at 6.) The Court refers to both franchise agreements as the "Franchise Agreement." The Franchise Agreement basically grants Reno Disposal the exclusive right to pick up and remove solid waste and certain recyclable materials from commercial entities, although the Franchise Agreement uses a number of terms of art that are defined in the Franchise Agreement itself. (*Id.* at 10; *see also* ECF No. 113-1 at 15.)

Plaintiff contracted with various commercial entities in the City to pick up and remove certain recyclable materials from their premises. (ECF No. 113 at 4.) Plaintiff operates by providing its customers with recycling containers in exchange for payment offset by a rebate. (ECF No. 106 at 12, 17.) For example, Plaintiff charged one customer \$440 per bin each month and provided that customer with a rebate of \$2.52 per bin each month. (*Id.* at 17.)

The City eventually took the position that Plaintiff was violating the Franchise Agreement based on its view that Plaintiff's customers were essentially paying for Plaintiff to remove waste when Reno Disposal had the exclusive rights to remove waste. (See ECF No. 113 at 4.) The City informed Plaintiff's counsel that Plaintiff could pick up and remove certain recyclable materials without violating the Franchise Agreement only if Plaintiff's customers actually sold the recyclable materials instead of paying for them to be removed.

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²The facts recited below are undisputed unless noted otherwise.

1 (Id.) In other words, Plaintiff's customers were essentially required to realize a net profit
2 from the arrangement, and thus the rebate would have to exceed the container rental
3 charges. (See *id.*) The City informed some of Plaintiff's customers that the customers were
4 violating the Franchise Agreement. (*Id.* at 5.) In addition, counsel for Reno Disposal and
5 WMON sent demand letters to some of Plaintiff's customers asserting that the customers
6 were violating the Franchise Agreement. (ECF No. 113 at 7.)

7 Plaintiff asserts five claims for relief in its First Amended Complaint ("FAC"): (1)
8 violation of Section 1 of the Act; (2) violation of the Commerce Clause under 42 U.S.C. §
9 1983; (3) violation of the Nevada Unfair Trade Practices Act, NRS § 598A.060; (4) tortious
10 interference with contractual relationship; and (5) trespass to chattels. (ECF No. 48 at 7-
11 11.) The Court has already dismissed Plaintiff's second claim for relief. (ECF No. 86 at
12 236.)

13 III. LEGAL STANDARD

14 "The purpose of summary judgment is to avoid unnecessary trials when there is no
15 dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
16 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,
17 the discovery and disclosure materials on file, and any affidavits "show that there is no
18 genuine issue as to any material fact and that the moving party is entitled to a judgment
19 as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is
20 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could
21 find for the nonmoving party and a dispute is "material" if it could affect the outcome of the
22 suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
23 Where reasonable minds could differ on the material facts at issue, however, summary
24 judgment is not appropriate. See *id.* at 250-51. "The amount of evidence necessary to
25 raise a genuine issue of material fact is enough 'to require a jury or judge to resolve the
26 parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897,
27 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89
28 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all

1 inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v.*
2 *Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

3 The moving party bears the burden of showing that there are no genuine issues of
4 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the
5 moving party satisfies Rule 56's requirements, the burden shifts to the party resisting the
6 motion to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*,
7 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings but must
8 produce specific evidence, through affidavits or admissible discovery material, to show
9 that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),
10 and "must do more than simply show that there is some metaphysical doubt as to the
11 material facts." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting
12 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere
13 existence of a scintilla of evidence in support of the plaintiff's position will be insufficient."
14 *Anderson*, 477 U.S. at 252.

15 **IV. DEFENDANTS' JURISDICTIONAL MOTION (ECF NO. 105)**

16 Defendants move for summary judgment on two jurisdictional grounds: that the
17 Court lacks subject matter jurisdiction and that Plaintiff lacks standing. The Court finds
18 both grounds unpersuasive for the following reasons and denies Defendants'
19 Jurisdictional Motion.

20 **A. Subject Matter Jurisdiction**

21 "In determining jurisdiction under the Sherman Act, the focus of the inquiry is the
22 defendant's business activities." *Musick v. Burke*, 913 F.2d 1390, 1395 (9th Cir. 1990)
23 (citing *Western Waste Serv. Sys. v. Universal Waste Control*, 616 F.2d 1094, 1097 n.2
24 (9th Cir. 1980)). The plaintiff "must make a showing of a substantial effect on interstate
25 commerce generated either by [the defendant's] general business activities or by the
26 alleged antitrust violations themselves." *Id.* (citations omitted). "To make this showing [the
27 plaintiff] must first identify the relevant aspect of interstate commerce; it is not sufficient to
28 presume an interrelationship of the local activity to some unspecified aspect of interstate

1 commerce." *Id.* (citing *McLain v. Real Estate Bd. of New Orleans, Inc.*, 444 U.S. 232, 242
2 (1980)). Then the plaintiff must demonstrate that the defendant's local activity affects some
3 other appreciable activity demonstrably in interstate commerce. *Id.* (citing *McLain*, 444
4 U.S. at 242). "This effect must be, 'as a matter of practical economics . . . not
5 insubstantial.'" *Id.* (alteration in original) (quoting *McLain*, 444 U.S. at 246). "Whether the
6 defendant's 'activities sufficiently affect interstate commerce to create Sherman Act
7 jurisdiction is a highly fact-based question calling for common sense judgment.'" *Id.* (citing
8 *Mitchell v. Frank R. Howard Mem'l Hosp.*, 853 F.2d 762, 765 (9th Cir. 1988)).

9 Plaintiff argues that Defendants' business substantially affects interstate commerce
10 because Defendants ship all the recyclables they collect in Nevada to a materials recycling
11 facility in California. (ECF No. 120 at 4-5.) As evidence, Plaintiff cites to the testimony of
12 Greg Martinelli—Defendants' employee—at the preliminary injunction hearing. (*Id.* at 5
13 (citing ECF No. 113-18 at 184-85).) Defendants do not dispute this evidence and instead
14 make a number of arguments that the Court finds unpersuasive for the reasons discussed
15 below. Accordingly, the Court finds that it has subject matter jurisdiction over Plaintiff's
16 claim under the Act.

17 Defendants first make several arguments that the Court lacks subject matter
18 jurisdiction because Plaintiff is not implicated in interstate commerce. (See ECF No. 105
19 at 14-27.) But Plaintiff correctly notes that Plaintiff's own activity is irrelevant. (See ECF
20 No. 120 at 6.) Defendants' activity—not Plaintiff's—determines subject matter jurisdiction
21 under the Act. *Musick*, 913 F.2d at 1395 (emphasis added) ("In determining jurisdiction
22 under the Sherman Act, the focus of the inquiry is the *defendant's* business activities.").

23 Defendants' argument to the contrary misstates the record. Defendants assert that
24 the Court initially found that it had subject matter jurisdiction based on Plaintiff's
25 involvement in interstate commerce. (ECF No. 123 at 3 (citing ECF No. 47 at 2).) But in
26 the order Defendants cite, the Court expressly found subject matter jurisdiction because
27 Defendants' alleged conduct—not Plaintiff's—implicates interstate commerce. (ECF No.
28 47 at 3 (emphasis added) ("The Court finds that GSR has satisfied the Court's Order —

1 *Defendants' alleged conduct* under GSR's theory as explained in GSR's Response
2 *implicates interstate commerce.*".)

3 Defendants further argue that the Court lacks subject matter jurisdiction because
4 the Franchise Agreement does not apply to recyclable materials that are commodities in
5 interstate commerce—it only applies to waste. (See ECF No. 105 at 12-14.) However,
6 even if the Franchise Agreement only covers waste, Defendants do not dispute Plaintiff's
7 evidence that Defendants ship recyclable materials out of state. (See ECF No. 105, 123.)
8 Plaintiffs may rely on Defendants' general business activities as opposed to the alleged
9 antitrust violations themselves to make a showing of a substantial effect on interstate
10 commerce for the purpose of establishing jurisdiction. *Musick*, 913 F.2d at 1395.
11 Accordingly, the Court finds Defendants' argument unpersuasive.

12 Defendants further argue that the Court lacks subject matter jurisdiction under the
13 state-action immunity doctrine derived from *Parker v. Brown*, 317 U.S. 341 (1943). (ECF
14 No. 105 at 13.) However, state-action immunity is a defense and does not affect the
15 Court's jurisdiction. See, e.g., *F.T.C. v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216,
16 235 (2013) (referring to Parker immunity as a "state-action defense to price-fixing claims").
17 The Court thus addresses state-action immunity *infra* Section V.

18 Defendants further argue that the only activity at issue in this case is the collection
19 and disposal of waste in the City, which does not implicate interstate commerce or antitrust
20 concerns. (ECF No. 105 at 13.) Again, Defendants have not disputed Plaintiff's evidence
21 that Defendants' general business activities have a substantial effect on interstate
22 commerce. (See *id.*; ECF No. 123.) Accordingly, the Court finds Defendants' argument
23 unpersuasive.

24 **B. Standing**

25 "Article III of the Constitution limits federal-court jurisdiction to 'Cases' and
26 'Controversies.'" *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "[T]o satisfy Article III's
27 standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a)
28 concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2)

1 the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely,
 2 as opposed to merely speculative, that the injury will be redressed by a favorable
 3 decision." *Friends of the Earth, Inc. v. Laidlaw Env't'l Servs. (TOC) Inc.*, 528 U.S. 167, 180-
 4 81 (2000) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). The party
 5 invoking federal jurisdiction bears the burden of establishing these elements. *FW/PBS,*
 6 *Inc. v. Dallas*, 493 U.S. 215, 231 (1990) (citations omitted).

7 1. Injury

8 Defendants argue that Plaintiff has not suffered a legally cognizable injury because
 9 Plaintiff has not obtained a business license from the City of Reno to "legally 'collect,
 10 transport, process, recycle or dispose of' recyclable materials." (ECF No. 105 at 28.)
 11 Defendants contend that Plaintiff cannot suffer injury if it is acting unlawfully. (*Id.*) Plaintiff
 12 argues that it is not required to obtain a license under Reno Municipal Code ("RMC") §
 13 5.90.010 to engage in its business. (ECF No. 120 at 11.) Plaintiff further argues that the
 14 RMC has no specific licensing requirements or specific licenses for the collection, hauling,
 15 transportation, and recycling of recyclable materials. (*Id.*) Defendants do not address
 16 Plaintiff's argument in their reply and have not identified a statute or other source of
 17 authority that requires Plaintiff to obtain a license for the collection, hauling, transportation,
 18 and recycling of recyclable materials. (See ECF No. 123 at 9.) Accordingly, the Court finds
 19 Defendants' argument unpersuasive.

20 2. Prudential Standing

21 Prudential standing "encompasses the general prohibition on a litigant's raising
 22 another person's legal rights, the rule barring adjudication of generalized grievances more
 23 appropriately addressed in representative branches, and the requirement that a plaintiff's
 24 complaint fall within the zone of interests protected by the law invoked." *Freedom Mortg.*
 25 *Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1179 (D. Nev. 2015) (quoting
 26 *United States v. Lazarenko*, 476 F.3d 642, 649-50 (9th Cir. 2007)). "The question of
 27 prudential standing is often resolved by the nature and source of the claim. Essentially,
 28 the standing question in such cases is whether the [statute] on which the claim [relies]

1 properly can be understood as granting persons in the plaintiff's position a right to judicial
2 relief." *Id.* (quoting *The Wilderness Soc'y v. Kane County*, 632 F.3d 1162, 1169 (10th Cir.
3 2011)).

4 Defendants argue that Plaintiff lacks prudential standing because "(1) the City has
5 the authority to regulate the collection, transportation and disposal of recyclable materials
6 that are treated as waste; (2) GSR does not buy or sell recyclable materials but instead is
7 collecting, transporting and disposing of recyclable materials in violation of the City's
8 Franchise Agreement; (3) GSR's activity violates the clear prohibitions in the City's
9 Franchise Agreement and (4) even if GSR's activity did not violate the Franchise
10 Agreement, GSR's activity in the City is illegal since GSR is not licensed or permitted to
11 collect, transport or dispose of recyclable materials in the City." (ECF No. 105 at 30.)

12 Plaintiff argues that its antitrust claim falls within the zone of interests protected by
13 the Act because Plaintiff alleges that the Franchise Agreement is a price fixing scheme.
14 (ECF No. 120 at 15.)

15 The Court agrees with Plaintiff. Defendants' arguments as presented to the Court
16 do not bear on Plaintiff's prudential standing.

17 Accordingly, the Court will deny Defendants' Jurisdictional Motion.

18 **V. DEFENDANTS' MERITS MOTION (ECF NO. 106)**

19 Defendants essentially argue that they are entitled to summary judgment under the
20 state-action immunity doctrine derived from *Parker v. Brown*, 317 U.S. 341 (1943). (See
21 ECF No. 106 at 22 (arguing that the Franchise Agreement does not violate the Act even
22 though it establishes a monopoly because the City may regulate waste as a valid exercise
23 of its police power).) In *Parker*, the Supreme Court held that the Act did not "bar States
24 from imposing market restraints as an act of government" because the Act was not
25 "intended to restrict the sovereign capacity of the States to regulate their economies."
26 *Chamber of Commerce of the United States of Am. v. City of Seattle*, 890 F.3d 769, 781
27 (9th Cir. 2018) (quoting *Phoebe Putney*, 568 U.S. at 224). Following *Parker*, the Supreme
28 Court has extended immunity from federal antitrust laws to "nonstate actors carrying out

1 the State's regulatory program," albeit only "under certain circumstances." *Id.* (quoting
2 *Phoebe Putney*, 568 U.S. at 224-25).

3 "State-action immunity is the exception rather than the rule." *Id.* The doctrine is
4 "disfavored" because it is at odds with "the fundamental national values of free enterprise
5 and economic competition . . . embodied in federal antitrust laws." *Id.* (quoting *Phoebe*
6 *Putney*, 568 U.S. at 225). Thus, the Supreme Court has only recognized state-action
7 immunity "when it is clear that the challenged anticompetitive conduct is undertaken
8 pursuant to a regulatory scheme that is the State's own." *Id.* (quoting *Phoebe Putney*,
9 568 U.S. at 225). "The Supreme Court's narrow take on state-action immunity is all the
10 more exacting when a non-state actor invokes the protective umbrella of *Parker* immunity."
11 *Id.* (citing *Phoebe Putney*, 568 U.S. at 225).

12 "The Supreme Court uses a two-part test, sometimes referred to as the *Midcal* test,
13 'to determin[e] whether the anticompetitive acts of private parties are entitled to immunity.'
14 *Id.* (alteration in original) (quoting *Phoebe Putney*, 568 U.S. at 225). "First, 'the challenged
15 restraint [must] be one clearly articulated and affirmatively expressed as state policy,' and
16 second, 'the policy [must] be actively supervised by the State.'" *Id.* (alteration in original)
17 (quoting *Phoebe Putney*, 568 U.S. at 225).

18 A. The Clear-Articulation Test

19 The "inquiry with respect to the clear-articulation test is a precise one." *Id.* at 782.
20 The relevant question is whether the regulatory structure adopted by the state specifically
21 authorizes the conduct alleged to violate the Act. *Id.* (quoting *Cost Mgmt. Servs., Inc. v.*
22 *Wash. Nat. Gas Co.*, 99 F.3d 937, 942 (9th Cir. 1996)). "The state's authorization must be
23 plain and clear: The relevant statutory provisions must 'plainly show that the [state]
24 legislature *contemplated* the sort of activity that is challenged,' which occurs where they
25 'confer express authority to take action that *foreseeably* will result in anticompetitive
26 effects.'" *Id.* (alteration in original) (quoting *Hass v. Or. State Bar*, 883 F.2d 1453, 1457
27 (9th Cir. 1989)). "The state, in its sovereign capacity, must 'clearly intend[] to displace
28 competition in a particular field with a regulatory structure . . . in the relevant market.'" *Id.*

1 (alteration in original) (quoting *S. Motor Carriers Rate Conference, Inc. v. United States*,
2 471 U.S. 48, 64 (1985)). Once the court determines that there is express state
3 authorization, the court considers the concept of foreseeability, which is used to decide
4 “the reach of antitrust immunity that stems from an already authorized monopoly, price
5 regulation, or other disruption in economic competition.” *Id.* (citation and internal
6 alterations omitted).

7 The statute at issue here expressly authorizes anticompetitive conduct. See NRS
8 § 268.081 (allowing municipalities to displace or limit competition in the collection and
9 disposal of garbage and other waste). Thus, the Court must consider “whether the
10 particular alleged anti-competitive conduct was a foreseeable result of the overall
11 anticompetitive scheme.” *Shames v. Cal. Travel & Tourism Comm’n*, 626 F.3d 1079, 1084
12 (9th Cir. 2010).

13 It is foreseeable that NRS § 268.081 would result in a monopoly over the collection
14 and disposal of materials whose status as “waste” is disputed because the concept of
15 waste is subjective. For example, a commonplace item such as a disposable plastic spoon
16 might have little value to many people but a great deal of value to someone who has no
17 spoons. Moreover, it is not necessary that the state legislature “contemplated the precise
18 action complained of as long as it contemplated the kind of action to which objection was
19 made.” *Mercy-Peninsula Ambulance, Inc. v. San Mateo County*, 592 F. Supp. 956, 962
20 (N.D. Cal. 1984), *aff’d*, 791 F.2d 755 (9th Cir. 1986) (quoting *Benson v. Ariz. State Bd. of*
21 *Dental Exam’rs*, 673 F.2d 272, 276 n.8 (9th Cir. 1982)). In *Benson*, the “defendant medical
22 examining Board was held immune under *Midcal* even though the state statute authorizing
23 the Board to decide the manner in which licensing exams are given ‘did not itself lay down
24 all the requirements that the Board imposed.’” *Id.* (quoting *Benson*, 673 F.2d at 276 n.8).
25 Just as in *Benson*, the City is immune under *Midcal* even though the state statute
26 authorizing the City to grant a monopoly over the collection and disposal of garbage and
27 other waste does not specifically list all the material that might constitute “other waste.” It
28 is clear that the Nevada legislature contemplated a monopoly on the collection and

1 disposal of garbage and other waste. It was not necessary—and it was probably
2 impossible—for the Nevada legislature to list every single thing that might constitute
3 waste.

4 Plaintiff argues that the Nevada legislature could not have foreseen that
5 Defendants would regulate and peg the price of recyclable commodities as a result of NRS
6 § 268.081. (ECF No. 113 at 30.) The Court finds Plaintiff's argument unpersuasive
7 because it mischaracterizes Defendants' activity as price-fixing. Rather than artificially
8 fixing prices for recyclable materials, the City has adopted a definition of waste that—as it
9 must—incorporates monetary value to the producer: the City has defined waste as
10 materials that the generator pays someone to take away. (ECF No. 113-5 at 4.) Any effect
11 that the City's definition has on the price of recyclable materials is a necessary
12 consequence of enforcing the exclusive franchise it is entitled to grant. And even if the
13 Court accepted Plaintiff's characterization of Defendants' activity, Defendants still have
14 not "fixed prices" in the typical sense. "Horizontal price fixing occurs when retail
15 competitors arrange to set prices and thus interfere with free market forces." *Taggart v.*
16 *Rutledge*, 852 F.2d 1290, 1988 WL 79483, at *2 (9th Cir. 1988) (citing *49er Chevrolet, Inc.*
17 *v. General Motors Corp.*, 803 F.2d 1463, 1466 (9th Cir.1986)). "Vertical price fixing occurs
18 when a supplier attempts to fix the prices charged by those who resell his products." *Id.*
19 (citing *Gen. Cinema Corp. v. Buena Vista Distrib. Co.*, 681 F.2d 594, 597 (9th Cir.1982)).
20 Defendants have not engaged in horizontal price fixing because they are not
21 competitors—the City has essentially hired Reno Disposal to manage the City's waste.
22 Defendants also have not engaged in vertical price fixing because the relationship
23 between the City and Reno Disposal does not include a supplier or reseller.

24 Plaintiff further argues that NRS § 268.081—which permits the City to grant an
25 exclusive franchise over the "[c]ollection and disposal of garbage and other waste"—does
26 not authorize the City to limit competition over "non-discarded recyclable materials." (ECF
27 No. 113 at 28.) In support of its argument, Plaintiff notes that the Nevada legislature has
28 not amended NRS § 268.081 to address recyclable materials even though the Nevada

1 legislature defined "recyclable materials" in another statute—NRS § 444A.013. (*Id.*)
2 Plaintiff further notes that "recyclable materials that are not treated as waste" are not "solid
3 waste" within the meaning of another statute—NRS § 444.490—and therefore are not
4 "other waste" within the meaning of NRS § 268.081. (*Id.*) The Court finds these arguments
5 unpersuasive because it is foreseeable that the City would have to define "other waste"
6 for itself in light of the term's subjectivity.

7 Accordingly, the Court finds that the City and Reno Disposal's anticompetitive
8 conduct has been clearly articulated and affirmatively expressed as state policy.

9 **B. The Active-Supervision Requirement**

10 "The active supervision requirement demands . . . that state officials have and
11 exercise power to review particular anticompetitive acts of private parties and disapprove
12 those that fail to accord with state policy." *Chamber of Commerce*, 890 F.3d at 787
13 (alteration in original) (quoting *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101,
14 1112 (2015)). "Because '[e]ntities purporting to act under state authority might diverge
15 from the State's considered definition of the public good' and '[t]he resulting asymmetry
16 between a state policy and its implementation can invite private self-dealing,' the active-
17 supervision requirement 'seeks to avoid this harm by requiring the State to review and
18 approve interstitial policies made by the entity claiming immunity." *Id.* (alterations in
19 original) (quoting *N.C. State Bd. of Dental Exam'rs*, 135 S. Ct. at 1112).

20 However, the active-supervision requirement does not apply when the "challenged
21 activity is within a traditional municipal function." *Grason Elec. Co. v. Sacramento Mun.*
22 *Util. Dist.*, 770 F.2d 833, 838 (9th Cir. 1985) (citing *Golden State Transit Corp. v. City of*
23 *Los Angeles*, 726 F.2d 1430, 1434 (9th Cir. 1984); see also *United Nat'l Maint., Inc. v. San*
24 *Diego Convention Ctr. Corp.*, No. 07CV2172 AJB, 2012 WL 12845620, at *7 (S.D. Cal.
25 Sept. 5, 2012), *aff'd sub nom. United Nat'l Maint., Inc. v. San Diego Convention Ctr., Inc.*,
26 766 F.3d 1002 (9th Cir. 2014) (citing *Golden State*, 726 F.2d at 1434). In addition, the
27 active-supervision requirement does not apply when "the actor is a municipality rather than

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1 a private party." *Chamber of Commerce*, 890 F.3d at 788. Both exceptions to the active-
2 supervision requirement apply here.

3 First, the "challenged activity is within a traditional municipal function." *Grason*, 770
4 F.2d at 838. "[W]aste disposal is both typically and traditionally a local government
5 function." *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550
6 U.S. 330, 344 (2007) (quoting *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste*
7 *Mgmt. Auth.*, 261 F.3d 245, 264 (2d Cir. 2001) (Calabresi, J., concurring)).

8 Second, "the actor is a municipality rather than a private party." *Chamber of*
9 *Commerce*, 890 F.3d at 788. The actor here is the City rather than Reno Disposal and
10 WMON because Reno Disposal and WMON are not engaged in municipal regulation. See
11 *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 46 n.10 (1985) (citing *S. Motor Carriers*,
12 471 U.S. at 61) ("Where state or municipal regulation by a private party is involved,
13 however, active state supervision must be shown, even where a clearly articulated state
14 policy exists."). Unlike in *S. Motor Carriers*, where "four states permitted private rate
15 bureaus, composed of common carriers, to submit rate proposals to their respective state
16 public service commissions for approval or rejection," *id.* (citing *S. Motor Carriers*, 471
17 U.S. at 50-52), Reno Disposal and WMON have no authority to set pricing or in any way
18 regulate the collection and disposal of garbage and other waste. Given that the actor here
19 is the City, "there is little or no danger that it is involved in a private price-fixing
20 arrangement. The only real danger is that it will seek to further purely parochial public
21 interests at the expense of more overriding state goals." *Id.* (quoting *N.C. State Bd. of*
22 *Dental Exam'rs*, 135 S. Ct. at 1112). Consequently, the active-supervision requirement
23 does not apply.

24 Given that the challenged restraint in this case—the City's grant of a monopoly over
25 the collection of recyclable materials that Plaintiff wishes to pick up—is clearly articulated
26 and affirmatively expressed as state policy, state-action immunity applies. Accordingly,
27 the Court grants summary judgment in favor of Defendants.

28 ///

1 **VI. REMAINING STATE LAW CLAIMS**

2 “If the court determines at any time that it lacks subject-matter jurisdiction, the court
3 must dismiss the action.” Fed. R. Civ. P. 12(h)(3). Plaintiff’s FAC contained two claims that
4 raised federal questions. (ECF No. 48 at 7-10.) The Court dismissed one of those claims
5 (ECF No. 86 at 236) and now grants summary judgment on the other. Having resolved the
6 federal claims in this case, the Court declines to exercise supplemental jurisdiction over
7 the remaining state law claims.³ See 28 U.S.C. § 1367(c)(3) (“The district courts may
8 decline to exercise supplemental jurisdiction over a claim under subsection (a) if the district
9 court has dismissed all claims over which it has original jurisdiction.”). Accordingly, the
10 Court will dismiss the state law claims without prejudice.

11 **VII. CONCLUSION**

12 The Court notes that the parties made several arguments and cited to several cases
13 not discussed above. The Court has reviewed these arguments and cases and determines
14 that they do not warrant discussion as they do not affect the outcome of the motions before
15 the Court.

16 It is therefore ordered that Defendants’ jurisdictional motion for summary judgment
17 (ECF No. 105) is denied.

18 It is further ordered that Defendants’ merits motion for summary judgment (ECF
19 No. 106) is granted. The Court grants summary judgment in favor of Defendants Reno
20 Disposal, WMON, and the City of Reno on Plaintiff’s remaining federal claim for violation
21 of Section 1 of the Sherman Antitrust Act (first claim for relief).

22 It is further ordered that Plaintiff’s motion for summary judgment (ECF No. 113) is
23 denied as moot.

24 It is further ordered that the remaining state law claims are dismissed without
25 prejudice.

26 ///

27

28 ³The Court also lacks independent diversity jurisdiction under 28 U.S.C. § 1332
over the remaining state law claims because all parties are citizens of Nevada. (ECF No.
48 at 2.)

1 The Clerk of the Court is instructed to enter judgment in favor of all Defendants and
2 close this case.

3 DATED THIS 7th day of January 2019.

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6 _____
7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE
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EXHIBIT 3

EXHIBIT 3

AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF
MOTION TO VACATE ORDER TO STAY

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

I, Mark Simons, being duly sworn, depose and state under penalty of perjury the following:

1. I am an attorney licensed in Nevada and am counsel representing Defendants Refuse, Inc., Reno Disposal Company, Inc. and Waste Management of Nevada, Inc., in this matter. I am a shareholder with the law firm of SIMONS LAW, PC.

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 the Motion to Vacate Order to Stay ("Motion"), to which this affidavit is attached as Exhibit 3.

4. Exhibit 2 to the Motion is a true and correct copy of the Judge Du's January 7, 2019 Order entered in Green Solutions Recycling, LLC v. Reno Disposal Company, Inc. et al., Case No. 3:16-cv-00334-MMD-VPC, United States District Court – District of Nevada, filed June 16, 2016 ("Federal Case").

5. Exhibit 4 to the Motion is a true and correct copy of the Judgment entered in the Federal Case.

6. Exhibit 5 to the Motion are true and correct excerpts of Charles "Pat" Pinjuv's testimony during the November 28, 2017, hearing in the Federal Case.

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FURTHER AFFIANT SAYETH NAUGHT.

Dated this 25th day of January, 2019.



MARK G. SIMONS

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

Subscribed and sworn to before me
on this 25 day of January, 2019 by
Mark G. Simons at Reno, Nevada.



NOTARY PUBLIC

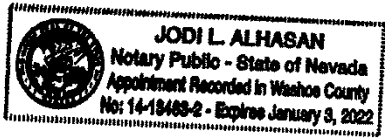


EXHIBIT 4

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREEN SOLUTIONS RECYCLING,
LLC,

Plaintiff,

v.

RENO DISPOSAL COMPANY, INC., et
al.,

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 3:16-cv-00334-MMD-CBC

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Defendants' merits motion for summary judgment (ECF No. 106) is granted. The Court grants summary judgment in favor of Defendants Reno Disposal, WMON, and the City of Reno on Plaintiff's remaining federal claim for violation of Section 1 of the Sherman Antitrust Act (first claim for relief).

IT IS FURTHER ORDERED AND ADJUDGED that judgment is hereby entered in favor of Defendants and this case is closed.

January 7, 2019

Date

DEBRA K. KEMPI

Clerk



/s/ L. Haywood

Deputy Clerk

EXHIBIT 5

EXHIBIT 5

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE MIRANDA M. DU, DISTRICT JUDGE
---o0o---

Green Solutions Recycling, LLC,	:	
	:	
Plaintiff,	:	No. 3:16-cv-334-MMD-VPC
	:	November 28, 2017
-vs-	:	
	:	
Refuse, Inc.; Reno Disposal Company, Inc.; Waste Management of Nevada, Inc., City of Reno, et al.,	:	United States District Court 400 S. Virginia Street Reno, Nevada 89501
	:	
Defendants.	:	

**TRANSCRIPT OF MOTION TO DISMISS
AND MOTION FOR PRELIMINARY INJUNCTION**

A P P E A R A N C E S:

FOR THE PLAINTIFF:	John Sande Jeffrey Whittemore Attorneys at Law
FOR THE DEFENDANT:	Mark Simons Matthew Jensen Andrew Kenefick Attorneys at Law

Proceedings recorded by mechanical stenography produced by
computer-aided transcript

Reported by:	KATHRYN M. FRENCH, RPR, CCR NEVADA LICENSE NO. 392 CALIFORNIA LICENSE NO. 8536
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11:15:25 1 THE COURT: I want to make sure whoever
11:15:27 2 addresses the witness with respect to the direct examination,
11:15:30 3 you can do the objections and you can do the redirect, but I'm
11:15:34 4 not going to have both of you tag team Mr. Simons -- although
11:15:38 5 I know he can handle it.

11:15:40 6 Exhibit 510 is admitted.

11:15:40 7 (Whereupon, Exhibit 510 -- a document, was received
11:15:41 8 in evidence.)

11:15:41 9 MR. SIMONS: Thank you, Your Honor.

11:15:43 10 BY MR. SIMONS:

11:15:44 11 Q On the second page, please, under where it says "Your
11:15:47 12 cargo our concern..." And you say, "We're locally owned and
11:15:53 13 operated and, generally, 30 percent less expensive than
11:15:56 14 competitors."

11:15:58 15 Right?

11:15:58 16 A Yes, that's what it says.

11:16:00 17 Q And so one of your marketing themes to your customers is
11:16:03 18 you come in and you say, look, we'll rent you this container.
11:16:07 19 We'll give you a rebate. And it's actually going to be
11:16:10 20 cheaper than what you have to pay Reno Disposal under the
11:16:14 21 Franchise Agreement.

11:16:14 22 Right?

11:16:14 23 A Absolutely.

11:16:15 24 Q Perfect.

11:16:16 25 Turn to the next page. Under the heading "Our

11:25:42 1 MR. SANDE: No further questions, Your Honor.

11:25:44 2 MR. SIMONS: Just a few follow-up, if I may,
11:25:48 3 Your Honor.

11:25:48 4 THE COURT: Yes.

11:25:48 5 MR. SIMONS: There was a subpoena issued to this
11:25:51 6 witness to bring some documents. I've have the opportunity
11:25:53 7 and I would like to mark one of them that they brought, and
11:26:00 8 question the witness about it.

11:26:01 9 THE COURT: Yes.

11:26:12 10 THE CLERK: 526.

11:26:16 11 (Whereupon, Exhibit 526 -- a document, was marked
11:26:16 12 for identification only.)

11:26:40 13 **RECROSS-EXAMINATION**

11:26:40 14 BY MR. SIMONS:

11:26:41 15 Q Sir, you brought some documents with you today. Do you
11:26:44 16 remember this document?

11:26:46 17 A Let's see.

11:26:58 18 (Witness reviews document.)

11:27:06 19 I do see it, yeah.

11:27:08 20 Q Okay. So this is a proposal to Mike Brown at NCS, which
11:27:12 21 is Nevada Commercial Services, right?

11:27:14 22 A It appears that, yes.

11:27:16 23 Q Okay. And this is proposal being made to replace Waste
11:27:20 24 Management's collection services with Green Solutions
11:27:23 25 Recycling services, right?

11:28:22 1 A They do.

11:28:22 2 Q Yeah, but that's not related to your business with the
11:28:24 3 customer because you're charging a container rental fee and
11:28:27 4 then some type of rebate you kick back, right?

11:28:30 5 A Uh, I disagree.

11:28:32 6 Q Okay. So, let's move on.

11:28:33 7 So Waste Management has more costs that they have to
11:28:37 8 absorb and pay to the customer -- excuse me -- pay to the City
11:28:40 9 that you're able to avoid under your process.

11:28:43 10 A Uh, I disagree.

11:28:44 11 Q Okay. And so your specifically targeting these customers
11:28:51 12 because you want to replace their Waste Management dumpster
11:28:55 13 service and put yours in its place.

11:28:58 14 Is that accurate?

11:28:59 15 A Yes, because we give value to their bottom line.

11:29:04 16 Q I didn't ask you that.

11:29:05 17 I said your objective is trying to replace Waste
11:29:09 18 Management's dumpster service with Green Solutions Recycling's
11:29:12 19 dumpster service, right?

11:29:13 20 A Yes. With the recycling service, we clearly are trying
11:29:17 21 to supply a recycling bin to lower their cost.

11:29:23 22 Q Okay.

11:29:23 23 MR. SIMONS: No further questions.

11:29:25 24 THE COURT: I have a few questions for you.

11:29:28 25 You testified on redirect that, early on, GSR was

-o0o-

I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

\s\ Kathryn M. French

January 18, 2018

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE

KATHRYN M. FRENCH, RPR, CCR
(775) 786-5584

I N D E X

WITNESSES:

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2) **CHRIS BIELSER**

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3) **JOSEPH HENRY**

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4) **LYNNE BARKER**

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5) **MICHAEL CHAUMP**

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6) **GREG MARTINELLI**

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FILED
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CV17-01143
2019-01-25 11:41:03 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7085713 : csulezic

EXHIBIT 6

EXHIBIT 6

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

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation,

Plaintiff,

v.

CASE NO.: CV17-01143

DEP. NO.: 1

GREEN SOLUTIONS RECYCLING, LLC, A
Nevada Limited Liability Company;
NEVADA RECYCLING AND SALVAGE, LTD.,
a Nevada Limited Liability Company, AMCB,
LLC, a Nevada Limited Liability Company dba
RUBBISH RUNNERS; DOES I-X, inclusive,

Defendants.

GREEN SOLUTIONS RECYCLING, LLC, A
Nevada Limited Liability Company; et al

Counterclaimant,

v.

RENO DISPOSAL COMPANY, INC., a
Nevada Corporation, WASTE MANAGEMENT
OF NEVADA, INC., a Nevada Corporation;
WASTE MANAGEMENT NATIONAL
SERVICES, INC., a Connecticut corporation
And the CITY OF RENO, a political subdivision

Counterdefendants.

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; and that on the 16th day of August, 2018, I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

MATTHEW JENSEN, ESQ.

WILLIAM MCKEAN, ESQ.

MARK SIMONS, ESQ.

JONATHAN SHIPMAN, ESQ.


JOHN SANDE IV, ESQ.

RICHARD SALVATORE, ESQ.

STEPHANIE RICE, ESQ.

☒ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

J. CHASE WHITTEMORE, ESQ.
ARGENTUM LAW
6121 LAKESIDE DR., SUITE 208
RENO, NV 89511


DANIELLE KENT
Department One Judicial Assistant

1 Code: 2501
KARL S. HALL
2 Reno City Attorney
WILLIAM J. McKEAN
3 Deputy City Attorney
Nevada State Bar #6740
4 Post Office Box 1900
Reno, NV 89505
5 (775) 334-2050
Email: mckeanw@reno.gov
6 Attorneys for City of Reno

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

9 RENO DISPOSAL COMPANY, Inc., a Nevada
Corporation

Case No.: CV17-01143

Dept. No: 1

10 Plaintiff,

11 vs.

12 GREEN SOLUTIONS RECYCLING, LLC, a
13 Nevada limited liability company; et al.

14 Defendants.

15
16 GREEN SOLUTIONS RECYCLING, LLC, a
17 Nevada limited liability company; et al.

18 Counterclaimant,

19 v.

20 RENO DISPOSAL COMPANY, Inc., a Nevada
Corporation, WASTE MANAGEMENT OF
21 NEVADA, INC., a Nevada Corporation; WASTE
MANAGEMENT NATIONAL SERVICES, inc., a
22 Connecticut corporation and the CITY OF RENO, a
Political subdivision

23 Counterdefendants.
24

25 **CITY OF RENO'S NOTICE OF NON-OPPOSITION TO**
26 **MOTION TO VACATE ORDER TO STAY**
27
28

1 PLEASE TAKE NOTICE that Counterdefendant City of Reno does not oppose
2 Plaintiff/Counterdefendant Reno Disposal Company, Inc. dba Waste Management and
3 Counterdefendants Waste Management of Nevada, Inc. and Waste Management National
4 Service, Inc.'s Motion to Vacate Order to Stay.

5 **AFFIRMATION**

6 Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not
7 contain the social security number of any person.

8 DATED this 8th day of February, 2019.
9

10 KARL S. HALL
11 Reno City Attorney

12
13 By: /s/ William J. McKean
14 William J. McKean
15 Deputy City Attorney
16 Nevada State #6740
17 Post Office Box 1900
18 Reno, Nevada 89505
19 (775) 334-2050
20 *Attorneys for City of Reno*
21
22
23
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY
3 ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on
4 the party(s) set forth below by:

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

8 _____ Personal delivery.

9 X CM/ECF electronic service

10 _____ Facsimile (FAX).

11 _____ Federal Express or other overnight delivery.

12 _____ Reno/Carson Messenger Service.

13 addressed as follows:

14
15 Mark G. Simons, Esq.

16 Richard A. Salvatore, Esq.

17 John P. Sande IV, Esq.

18 Chase Whittemore, Esq.

19
20 Stephanie Rice, Esq.

21 DATED this 8th day of February, 2019.

22
23 /s/ Jill Zarker

24 Jill Zarker