

{All new material is underlined; all material to be deleted is in brackets [].}

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING RENO MUNICIPAL CODE TITLE 5, ENTITLED “PRIVILEGED LICENSES, PERMITS AND FRANCHISES”, CHAPTER 5.90, ARTICLE II, ENTITLED “GARBAGE SERVICES” BY REVISING THE CITY OF RENO’S FRANCHISING OF THE COLLECTION AND TRANSPORTATION OF SOLID WASTE AND RECYCLABLE MATERIALS PURSUANT TO NRS 268.081, AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

THE CITY COUNCIL OF THE CITY OF RENO DO ORDAIN:

SECTION 1. Title 5, Chapter 5.90, Articles II, Sections 5.90.010 to 5.90.090, inclusive, of the Reno Municipal Code is hereby modified and amended to read as follows:

ARTICLE II. - ~~[GARBAGE SERVICE]~~COLLECTION AND TRANSPORTATION OF SOLID WASTE AND RECYCLABLE MATERIALS

Sec. 5.90.005. - Preamble.

The Reno City Council has determined that the health, safety and welfare of its residents require that certain Solid Waste and Recyclable Material Collection Services be provided under one or more exclusive municipal franchise agreements pursuant to NRS 268.081. The franchise agreements shall contain the terms, covenants and conditions required in this Article, as the same may be modified as provided in the franchise agreements, and such other terms, covenants and conditions approved by the Reno City Council.

Sec. 5.90.010. - Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

~~[Curbside recycling means a program whereby recyclable material is separated at the source of the solid waste stream and collected by the franchise holder.]~~

~~[District Board of Health means the District Board of Health of the City of Reno Health District created pursuant to NRS Ch. 439 by the interlocal agreement of the City of Reno, City of Sparks and the County of Washoe, Nevada.]~~

~~[District Health Officer includes and means the person appointed by the District Board of Health who is responsible for the enforcement of state and local health, sanitation and~~

~~nuisance laws and the enforcement of regulations as adopted by the District Board of Health.]~~

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

“Agreement” means a Commercial or Residential franchise agreement for an Exclusive Service Area between the city and a Contractor to collect, haul and/or dispose of Collection Materials.

“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 such additions and changes thereto as become effective by means of their enactment, amendment, issuance or promulgation at any time after the effective date of this ordinance.

“Approved Recyclable Materials” means the Recyclable Materials approved for recycling under an Agreement, and which may be changed from time to time by mutual agreement between Contractor and city, excluding certain materials excluded under the Agreements.

“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 Council” means the governing legislative body of the City of Reno.

“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.

“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 of this ordinance; or

(ii) Order or judgment of any governmental body, issued on or after the effective date of this ordinance, 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 Customers 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 Customers, as applicable, excluding certain materials excluded under the Agreements.

“Collection Services” means the Collection of Collection Materials from Customers in Contractor’s Exclusive Service Area to be provided by a Contractor, excluding certain services excluded under the Agreements.

“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 Agreement” means an Agreement between the city and a Contractor for the collection and transportation of Solid Waste and Recyclable Materials from Commercial Customers in an Exclusive Service Area.

“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.

“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 a party to an Agreement with the city pursuant to this article.

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

“Customer” means the persons or entities receiving Collection Services pursuant to an Agreement.

“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 a long-term 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” means a long term Solid Waste transfer and disposal agreement with a third party, to provide the city with an environmentally sound and cost effective solution for the transfer, processing, handling, recycling, and disposal of all Solid Waste and Recyclable Materials generated within the city, 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.

“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 such geographic territory may change from time to time as provided under an Agreement.

“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 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) above.

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

(a) Garbage; and,

(b) 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 Service shall not limit or amend the obligation of Customers to subscribe to Collection Services under the Agreements. 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 a landscaper or similar 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 the facility identified in the Commercial Agreement.

“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 the Exempted Facility shall be a total annual volume of Exempted Facility Materials under both commercial Agreements in the amount specified and as adjusted as provided in the commercial Agreements.

“Exempted Haulers” means “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.

“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 in a the commercial Agreement;

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, shall be identified in the commercial Agreement.

“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.

“Food Waste” means all Source Separated 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 Hauler Terms” has the meaning 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[. This includes, but is not limited to:-]

~~[(a) Offal, swill, kitchen and table waste, and other organic animal and vegetable waste;]~~

~~[(b) Bottles, cans, cups, plates, utensils, containers, and/or covering of any construction or material that has been in intimate contact with food, confection, and/or beverage;]~~

~~[(c) Any component used in the preparation or manufacture of matter intended for animal or human consumption and;]~~

~~[(d) Such matter and/or materials listed in (a) through (c) above that have been discarded without first being sanitized.], excluding Excluded Materials and Source Separated Food Waste that is actually Recycled. The mixing, addition, or commingling of [garbage]Garbage with rubbish, trash[;] or other waste matter, exclusive of [group I wastes (as determined by regulations of the District Board of Health governing solid waste management)]items i) through viii), inclusive under the definition of Excluded Materials, renders the entire resulting mixture as [garbage and requires the mixture to be handled as garbage.-]Garbage.~~

~~[The District Board of Health may authorize a different treatment of the solid waste stream for materials removed from the solid waste stream as "recyclable material" as defined by Chapter 444A of the Nevada Revised Statutes, and handled in accordance with regulations issued by the State Environmental Commission and the District Board of Health.]~~

~~[Rubbish includes and means non-putrescible solid waste, exclusive of those unsanitized materials that have been in contact with garbage. These wastes include, but are not limited to, ashes, paper, cardboard, wood, glass, crockery, plastics and rubbish.]~~

"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.

"Menu Rates" means the rates listed and identified as Menu Rates on the Scope of Services of an Agreement, which are payable by Customers to Contractor for the Menu Services.

"Menu Services" means the services listed and identified as Menu Services on the Scope of Services of an Agreement.

"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 any Agreement which are made a part thereof and incorporated therein by reference and which shall be applicable to all service providers under the Agreements.

"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.

“Qualified Service Contract” means a binding service contract with a commercial customer for the collection and transportation in the City of Solid Waste or Recyclable Materials, or both, dated on or before September 15, 2012, by any service provider properly licensed to collect and transport such materials in the city.

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

“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.

“Recyclable ~~[material]~~Materials” or “Recyclables” means ~~[solid waste]~~materials that can be processed and returned to the economic mainstream in the form of raw materials or products, ~~[as determined by regulations of the State Environmental Commission and the District Board of Health.]including without limitation materials that become capable of being recycled using new methods, processes or technology developed or implemented after the effective date of this ordinance.~~

~~*[Solid waste or the solid waste stream has the meaning ascribed to it in NRS 444.490 which definition includes all putrescible and not putrescible refuse in solid or semisolid form, including, but not limited to, garbage, rubbish, junk vehicles, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste, solid or semisolid commercial and industrial waste. The term does not include “hazardous” waste as that term is defined by NRS 459.400 to 459.600, inclusive.]*~~

~~*[Waste matter includes and means unwanted or discarded materials resulting from any activity.]*~~

“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.

“Residence” or “Residential” means a living space with a kitchen that is individually rented, leased or owned, including without limitation single family homes, mobile homes, multiple unit facilities with four (4) or fewer units and multiple unit facilities containing five (5) or more units if the units are each served and billed separately under any Agreement, but excluding Multi-Family Complexes.

“Residential Agreement” means an Agreement between the city and a Contractor for the collection and transportation of Solid Waste and Recyclable Materials from Residential Customers in an Exclusive Service Area.

“Residue” 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 portion of an Agreement 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 the Agreements, unless exempted thereunder.

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

“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 an Agreement and of which Contractor is not required to provide Collection under an 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. “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.

“Standard Service(s)” means the services listed and identified on the Scope of Services in the Residential Agreement, which includes the Collection of i) Solid Waste, ii) Source Separated Recyclables and iii) Sticker Materials, as well as Disposal Facility Access.

“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.

“Transition Period” means the period commencing on the effective date of this ordinance 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 a Qualified Service Contract.

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

Sec. ~~[5.90.015.]~~5.90.020. - Granting of franchise.

~~[A franchise for the collection, hauling and disposal of garbage only will be granted and disposed of]~~An Agreement for the Collection of Residential or Commercial Collection Materials will only be granted as provided in this article.

Sec. ~~[5.90.020.]~~5.90.030. - Franchise right.

(a) This article establishes ~~[an exclusive right to collect, haul and dispose of garbage only, and does not include rubbish and waste matter]~~the exclusive right for Contractors to provide Collection Services of Collection Materials pursuant to NRS 268.081, as amended.

(b) ~~[The franchisee, its]~~Contractors, and their respective successors or assigns, shall have the exclusive privilege of [collecting, hauling and disposing of garbage]providing Collection Services of Collection Materials, subject to the limitations [now or hereafter provided by]of any applicable Agreement, and city, state and federal law.

(c) ~~[The]~~Subject to the rights of a Contractor under an Agreement, the city reserves the right to alter and amend this article in any manner necessary for the safety or welfare of the public, or to protect public interests.

Sec. ~~[5.90.030.]~~5.90.040. - Title to the solid waste stream.

~~[The title to all of the solid waste stream and the property rights associated therewith for the collection and disposal of solid waste under this agreement shall be the sole property of the franchisee.]~~

~~[The transfer of title occurs at the time that solid waste is deposited by residential customers in containers and left at the curb for collection by the franchisee, or is deposited by commercial customers in dumpsters or equivalent containers and left for collection by the franchisee.]~~

[Sec. 5.90.040. — Duration of franchise.]

~~[Effective October 1, 1994, the franchise shall be granted for a period of 15 years with option to renew the franchise for an additional term of ten years by giving written notice to the city at least six months prior to the expiration of the primary term and provided that the franchisee is not in default under any duty or obligation on its part to be performed under the franchise agreement.]~~

(a) Residential Agreements. Ownership of all Collection Materials, upon placement in any Container and left Curbside, shall transfer to Contractor and shall become the property of Contractor.

(b) Commercial Agreements. Ownership of all Collection Materials, upon placement in any Container, shall transfer to Contractor and shall become the property of Contractor.

(c) 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.

Sec. 5.90.050. - Written agreement required.

~~[The franchise]~~(a) Any Agreement granted under this article shall be [by written agreement entered into by the franchisee and the city]in writing, and must be approved and executed by the City Council and Contractor.

(b) An Agreement shall grant a Contractor the exclusive right, privilege, franchise and obligation to provide Collection Services pursuant to a Scope of Services to Customers within an Exclusive Service Area.

(c) No person or entity other than Contractor and its subcontractors shall:

- _____ (1) collect Collection Materials in Contractor's Exclusive Service Area;
- _____ (2) transport anywhere in the city Collection Materials in Contractor's Exclusive Service Area; or,
- _____ (3) deliver any Collection Materials Collected in Contractor's Exclusive Service Area to any Disposal, processing, recycling or similar facility, except as expressly provided under an Agreement.

(d) The exclusive right of each Contractor hereunder to provide Residential and Commercial Collection Services shall not apply to Excluded Materials or Special Services. The exclusive right of Contractor hereunder to provide Commercial Collection Services also shall not apply to Excluded Recyclable Materials.

(e) No person or entity other than the service provider under the Disposal Agreement shall accept, handle, process, recycle or dispose of any Collection Materials which are the subject of the exclusive rights granted under any Agreement, except as expressly provided in such agreement.

Sec. 5.90.060. - ~~[Requirements of franchise]~~Obligation to provide collection services; mandatory service; exemption.

~~[The franchisee shall be required to perform as follows:-]~~

~~[(1) Garbage collection:-]~~

~~[a. — Guarantee that garbage service shall be available to the residents of the city at all times and that all garbage within the city shall be removed in an expeditious manner in accordance with the terms of the franchise;-]~~

~~[b. — Collect garbage from all residences, multi-residences, business locations, public places and any other locations wherever situated in the city at least once a week. If a request for additional service, either regular or intermittent, or isolated, is made, the franchisee shall provide such additional regular or intermittent or isolated service. The only exception to the requirement that garbage be collected once a week at residences shall be garbage pickup once a month for those persons who apply with the franchisee for a permit allowing garbage collection only once per month. The permit shall be allowed only upon approval by the District Health Officer;-]~~

~~[c. — Guarantee that in the collection of garbage from any location in the city, care shall be taken to deposit all garbage inside the collection truck, leaving no evidence or bits or pieces of garbage upon any street, alley, or other public place within the city, or any private property used for the collection of garbage;-]~~

~~[d. — Provide at its cost and expense, safe, adequate and clean equipment which is constructed in such a manner to be completely covered so as to prevent the sifting, spilling, dripping or blowing of any of the garbage contained therein upon any of the streets, alleys, or public places in the city. The equipment used by the franchisee shall be modern, up-to-date and reasonably watertight. The outside of the equipment shall be kept free from dirt and inside of carriers of garbage shall be thoroughly cleaned after dumping each haul;-]~~

~~[e. — Provide at its cost and expense other equipment not included in paragraph d., above, and drivers and workers required for the service, operation and maintenance of all equipment for the purpose of providing regular and satisfactory garbage service;-]~~

~~[f. — Diligently exercise supervision and training of its personnel to the end that the public coming into contact with such personnel shall be treated decently and courteously at all times, that all workers employed by the franchisee shall be prohibited from the use of profanity with the public, that no drinking of alcoholic beverages shall be allowed and that employees shall not be allowed to work while under the influence of alcohol, drugs or other stimulants.-]~~

~~[(2) City sanitary landfill: —]~~

~~[a. Franchise shall be required to deposit all solid waste collected at an approved landfill site. An approved landfill site is one holding a valid permit to permanently deposit municipal solid waste in accordance with all applicable laws and regulations of the United States, the State of Nevada, the Nevada Environmental Commission, and the Washoe District Board of Health. The approved landfill must be one open to the public to the end that residents of the City of Reno will have a disposal site for trash and other items of solid waste not collected. It shall be the sole responsibility of franchisee to provide for the permanent deposit of solid waste in accordance with all applicable federal, state and local laws and regulations. Franchisee shall comply with this requirement by operating its own landfill or by entering into an agreement with the operator of a landfill which meets the requirements of this agreement.]~~

~~[b. The rates for dumping rubbish and waste matter by the general public at any and all city sanitary landfills made available from the franchisee shall be as set forth in section 5.90.070. These rates shall be posted at each and every sanitary landfill. There shall be no change in such rates unless first approved by ordinance and then posted at each and every sanitary landfill.]~~

~~[c. The city shall reserve the right to close any and all landfill sites to the public and provide that the transfer stations shall be the only approved location for public dumping. In this event, the rates charged at the transfer station shall be the same as the rates charged at the landfill site prior to closure.]~~

~~[d. The contents of septic tanks shall be dumped in accordance with regulations established by the District Board of Health for the county, and the charge for dumping septic tanks and highly combustible, inflammable, or material requiring special supervision or methods in connection with its disposal shall be charged for as may be agreed upon between the franchisee and the person from whom such rubbish is received, subject to final determination by the City Manager in case of disagreement.]~~

~~[e. The franchise holder shall conspicuously post not only the rates to be charged for the public dumping, but also the hours of operation and the method of determining how rates shall apply to the amount of material delivered for dumping.]~~

~~[(3—Transfer stations:—Franchisee shall be required to utilize an approved transfer station within the city limits of the City of Reno. The transfer station shall provide for the temporary collection and compaction of solid waste so that an economical method of transportation of solid waste to an approved landfill is utilized by franchisee. An approved transfer station is one holding a valid permit for the temporary storage of municipal solid waste in accordance with all applicable laws and regulations of the United States, the State of Nevada, the Nevada Environmental Commission, and the Washoe District Board of Health. The transfer station must be open to the public, with rates for public dumping conspicuously posted, along with the hours of operation and the method of determining how rates will apply to the amount of material delivered for dumping. The operator agrees to pay to the City of~~

~~Reno a "host community fee". The host community fee shall be equal to \$0.29 per ton of all solid waste processed through the transfer station; provided, however, the host community fee shall not be less than \$100,000.00 annually. The host community fee shall be payable monthly. The host community fee shall be subject to annual increases based upon the percentage of change in the Consumer Price Index, All Urban Consumers, U.S. City Average-Other Utilities and Public Services (1982=100) ("CPI") as published by the Bureau of Labor Statistics, Washington, D.C. commencing with the index for June, 1994. The first adjustment for the period June, 1994 to June, 1995, shall be made effective as of October 1, 1995, and the community host fee shall be adjusted annually thereafter. Adjustments in accordance with the CPI shall be subject to the following qualifications:-]~~

~~[a] Rates adjusted in accordance with the CPI shall not be greater than six percent nor less than zero percent in any one year regardless of the percentage change in the CPI; and]~~

~~[b] In the event franchisee obtains a return on revenues that averages more than eight percent per annum, using a three year rolling average then the company will not be entitled to make a cost of living adjustment for the immediately succeeding year, and continually thereafter so long as the three-year rolling average of return on revenues exceeds eight percent. Rates adjusted in accordance with the consumer price index as described herein shall not include the rate for recycling. In the event franchisee utilizes the facilities of more than one transfer station located in the City of Reno then the host community fee shall be computed based on the combined volume of solid waste processed through all such transfer stations; provided, however, that the one hundred thousand dollar minimum shall apply to the combined volume of solid waste so processed and not to individual transfer stations. It shall be the responsibility of franchisee to collect the host community fee and deliver the fee to the City of Reno on a monthly basis. It shall also be the responsibility of franchisee to verify and confirm that the transfer station is using verifiable methods for weighting solid waste processed through the transfer station.-]~~

~~[(4) Keep itemized accounts of all collections received under the privileges of this franchise, including the date the fee was charged, the amount of the fee, the date the fee was collected, and from whom the fee was collected; and allow the city to inspect at reasonable times the books and records pertaining to all business done under the franchise at any time. The franchise holder shall furnish to the city monthly a statement of all of its gross receipts attested as being correct by a representative of the franchise holder duly authorized so to do.-]~~

~~[(5) Guarantee that in the exercise of duties under the franchise, every reasonable and proper precaution to avoid damage or injury to persons or property shall be used and that the franchisee shall at all times and under all circumstances indemnify and hold harmless the City of Reno, the Reno City Council, and the employees of the city for any and all liability from each and all such damage, injury, loss or expenses caused or occasioned by reason of any act, or failure to act of the franchisee, its officers, agents and employees. The franchisee further agrees that if the city is sued~~

~~by any person or business of any kind to recover damages for injury to any person or property on account of actions during performance of duties under the franchise; the franchisee, its successors and assigns, shall defend all such suits and pay all judgments courts may enter in such suits. Further, it shall be required to provide and maintain in full force and effect Commercial General (and Auto) Liability Insurance on an occurrence basis at least at broad as ISO Forms CG 0001 and CA 0002 (Ed 1/87) (any auto). Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.]~~

~~[Limits of liability shall be at least three million CSL (combined single limit) per occurrence. If an aggregate limit is used, the limit is either applied separately to the City of Reno's contract or shall be twice the required occurrence limit.]~~

~~[Workers' compensation coverage to statutory limits and employers' liability of at least one million dollars. Before commencing any work franchisee shall comply with the requirements of NRS 616.280.]~~

~~[Any deductibles or self insured retentions must be approved by the city.]~~

(a) Residential Agreements. Contractor shall make available Collection Services as provided under the Residential Agreement to all Residential Customers within the Exclusive Service Area. Each and every owner of a Residence which generates, produces, or accumulates or causes the generation or accumulation of Solid Waste within the Exclusive Service Area shall subscribe to the Standard Services as required in the Residential Agreement and/or in the Reno Municipal Code and as necessary to properly Collect and Dispose of all Solid Waste generated or accumulated on such premises. It is presumed that every Residence in an Exclusive Service Area generates, produces or accumulates Solid Waste and is required to subscribe to Standard Services under the Residential Agreement. Any owner of a Residence seeking to be exempt from Standard Services hereunder must obtain an exemption from the City. Residential Customers are encouraged, but are not obligated, to Recycle or to subscribe to Menu Services; provided, however, no Residential Customer in an Exclusive Service Area may allow or retain any person or entity other than the designated Contractor to collect, pickup, transport or deliver Approved Recyclable Materials or other Collection Materials that would be a violation of Contractor's exclusive right under the Residential Agreement. With the approval of the owner of a Residence, a tenant or occupant thereof may subscribe for Collection Services, but the owner of the Residence shall remain responsible for compliance with all requirements of the Residential Agreement and the Reno Municipal Code.

(b) Commercial Agreements. Contractor shall make available Collection Services as provided under any Commercial Agreement to all Customers within the Exclusive Service Area. 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 in the Commercial Agreement 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 a Commercial Agreement. 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 the Commercial 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 the Commercial Agreement and the Reno Municipal Code.

(c) Exemption. Any (i) owner of a Residence seeking to be exempt from Standard Services, or (ii) Operator seeking to be exempt from Collections Services of Solid Waste hereunder (collectively, the "Applicant") must obtain an exemption from the City. To obtain the exemption, the Applicant must apply to 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, and ii) the Applicant is not hauling, burying or otherwise disposing of Solid Waste in violation of any Agreement, the Reno Municipal Code or other Applicable Law.

Sec. 5.90.070. – Franchise fees.

(a) Subject to adjustment as provided in any Commercial Agreement during the Transition Period, Contractor shall pay to the City in monthly installments a franchise fee that is set by ordinance as a percentage of the Gross Receipts collected by Contractor under any Agreement (the "Franchise Fee").

(b) The Franchise Fee shall be equal to eight percent (8%) of the Gross Receipts collected by Contractor under any Agreement.

(c) The City Council reserves the right to increase or decrease the Franchise Fee upon ninety (90) days written notice.

(d) The Franchise Fee for each calendar month ("Subject Month") shall be paid by Contractor on or before the 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, a Franchise Fee for such payment, attested to by a representative of Contractor as being true and correct. Any Franchise Fee not paid by the date due shall bear interest at Seven Percent (7%) per annum until paid. Contractor's Gross Receipts, Franchise Fees and the calculation thereof and all related financial matters shall be subject to audit and inspection by the city under the Agreements and Contractor shall cooperate fully in all such audits and inspections.

Sec. 5.90.080. - Business license fees.

With regard to Gross Receipts subject to an Agreement, and in accordance with RMC Sec. 4.04.008, a Franchise Fee shall be in lieu of a city business license fee.

Sec.5.90.090. – Customer Rates and Balancing Adjustment

The compensation to Contractor under the Residential Agreement and Commercial Agreements shall include the Rate Revenues and the compensation to Contractor under the Residential Agreement shall also include the Balancing Adjustment, as provided under the Agreements. The collection of Rate Revenues by Contractor from Customers for Collection Services and the Balancing Adjustment (under the Residential Agreement) shall be Contractors' 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 the Agreements. If a Designated Facility refuses to accept 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.

(a) Residential Rates. Commencing for each Residential Customer on the date Contractor begins the Collection Services to such Residential Customer, Contractor shall charge and collect from Customers for Residential Collection Services the Rates provided on the Scope of Services, which Rates may be adjusted as provided in the Residential Agreement. The Rates include the Standard Rates payable for Standard Services and the Menu Rates payable for Menu Services. Contractor shall not charge more than the Rate specified for each service provided on the Residential Scope of Services.

(1) Standard Rate. Contractor shall charge and collect from Residential Customers the Standard Rates for the Standard Services at the service level provided and Residential Customers shall be obligated to pay the Standard Rates (unless expressly exempted) whether or not the Customer uses all Standard Services offered. Contractor will make the Senior Citizen Rate for Standard Services available to qualified senior citizens upon request and verification of age.

(2). Menu Rate. Contractor shall charge and collect from Residential Customers the Menu Rates for any Menu Services requested by and provided to Residential Customers.

(b) Residential Balancing Adjustment.

(1) City and Contractor acknowledge that the Standard Rates are not sufficient to pay the cost of providing the Standard Services under the Residential Agreement and a reasonable return on investment to Contractor and that a shortfall ("Shortfall") in compensation to Contractor would exist if a Balancing Adjustment is not paid by City to Contractor as provided in this Article. Accordingly, City shall pay to Contractor in monthly installments during the Term of the Residential Agreement a Balancing Adjustment

(“Balancing Adjustment”) equal to Nineteen and 83/100 percent (19.83%) of the Gross Receipts, which Balancing Adjustment is subject to adjustment as provided in the Residential Agreement.

- (2) The Balancing Adjustment for each calendar month (“Subject Month”) during the Term and any extensions of the Term shall be paid by City to Contractor on or before the 25th day of the following calendar month and shall be calculated by Contractor on the basis of the Gross Receipts received and collected by Contractor under the Residential Agreement during the Subject Month. Contractor shall provide to City on or before the 15th day of each calendar month a statement of the Gross Receipts and Balancing Adjustment for such payment, attested to by a representative of contractor as being true and correct. Any Balancing Adjustment not paid by the date due shall bear interest at Seven Percent (7%) per annum until paid and Contractor may deduct and offset such past due amounts from any amounts payable by Contractor to City under the Residential Agreement or any other agreement between Contractor and the City. Contractor’s Gross Receipts, the Balancing Adjustment and the calculation thereof and all related financial matters shall be subject to audit and inspection by the City under the Residential Agreement Contractor shall cooperate fully in all such audits and inspections.

(c) Adjustment of Rates and Balancing Adjustment. The Rates and the Balancing Adjustment shall be subject to adjustment as provided in the Agreements.

Sec 5.90.100. – Obligations and Rights of Contractors

(a) The services to be provided by Contractor under any 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 applicable Scope of Services and Operating Standards.

(b) Each Contractor shall provide the Collection Services in accordance with the terms, covenants and conditions of such Contractor’s Agreement and shall have the rights and remedies provided in such Contractor’s Agreement.

Sec. 5.90.110. - Compliance

Persons generating, producing or accumulating Collection Materials in the city shall comply with the applicable terms, conditions and requirements of this article and the Agreements. No person shall violate or impair the exclusive rights of any Contractor under this article or any Agreement. Contractor shall be entitled to independently enforce against third parties the terms, covenants, conditions and requirements of this and related articles and the Agreements, including without limitation defending challenges thereto

and to prevent violations by third parties thereof (including without limitation the exclusive right and obligation of Contractor to provide the Collection Services).

Sec 5.90.120. – Designated Facilities

City has entered into a Disposal Agreement with a third party. Except as expressly provided in the Agreements, each Contractor shall deliver all Collection Materials (excluding Hazardous Waste and other Excluded Materials) that it collects within its Exclusive Service Area only to a Designated Facility which has been designated by the city pursuant to and in accordance with the requirements of the Disposal Agreement. Contractor will comply with the requirements of the Agreements and the Disposal Agreement applicable to franchised haulers, including without limitation the Franchise Hauler Terms.

Sec 5.90.130. - Insurance

(a) Contractor shall procure and maintain the following minimum insurance coverage:

- _____ (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) The insurance policies shall contain, or be endorsed to contain, the following provisions:

- [The city] _____ (1) City, its officers, officials, employees[, agents] and volunteers are to be covered as [insureds. The franchisee's]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.
- _____ (2) Contractor's insurance coverage shall be primary [as respects the city. Failure to comply with reporting or other provisions of the policy shall not affect coverage provided to the city. Coverage]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.

- (3) Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by the City Representative 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.
- (4) 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; and shall be]'s liability.
- (5) 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) Each insurance policy required by this article shall be occurrence-based or an alternate form as approved by the City Representative and endorsed to state that coverage [will]shall not be suspended, voided, [suspended,]canceled [or]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 [entity.]City.

~~[Franchisee shall furnish the city with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the city. All endorsements are to be received and approved by the city before work commences. As an alternative to the city's forms, the franchisee insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.]~~

(d) Contractor shall furnish City, within thirty (30) days after the effective date of its Agreement and upon request of City thereafter, with original certificates evidencing coverage required under this article.

(e) 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.

~~[Franchisee]~~(f) 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 [herein.]in this article.

~~[(6) Furnish to the city a bond running to the city in the penal sum of \$50,000.00 on the condition that said franchisee shall well and truly observe, fulfill and perform each and every term and condition of the agreement, which said bond shall provide that in the event of any breach of condition, the whole amount of the penal sum shall be taken, and recoverable from the principal and surety on said bond. Said bond shall be approved by the city attorney and filed with the city clerk. Such recovery~~

~~shall not prohibit the city from seeking actual damages due to default or breach of the franchise agreement.-]~~

~~[(7) Agree that in the event the franchisee fails to perform any condition of the franchise, fails to abide by all the laws, rules and regulations pertaining to the franchise, or become bankrupt or insolvent, the city shall have the right to terminate the franchise and agreement so awarded, if the franchisee fails to correct the deficiency if one exists or enter into negotiations with the city for determination of any contested deficiency within 30 days after receipt of written notice from the city. Should a dispute arise between the franchisee and any customer receiving service provided by the franchisee under the franchise agreement and said dispute is not settled to the satisfaction of both parties, the city manager or his/her designee shall review the dispute and make a determination that shall be binding on both parties.-]~~

~~[(8) Agree to file with the city clerk written notice of any contemplated sale, transfer, assignment or lease of the franchise or any part thereof, or of any other rights or privileges granted thereby, 30 days before such sale, transfer assignment or lease is to become effective and agree that no such sale, transfer, or assignment or lease of such franchise, or any part hereof, shall be effective until and unless approved in writing by the city council.-]~~

~~[(9) Notwithstanding the existence of any insurance coverage, agree to hold the city harmless of and from any and all liability, damages, claims and demands of every kind and character, arising out of the granting of the franchise and the execution of the agreement in the event, for any reason whatsoever, the terms thereof shall be challenged or questioned by any person or persons whomsoever.-]~~

~~[(10) Agree to operate the garbage collection and disposal service in accordance with and in conformity to all ordinances, rules and regulations heretofore or hereafter adopted by the city council in the exercise of its police powers and in accordance with the provisions and general laws of the United States or the state relating to or applicable to the whole or any part of such garbage collection and disposal operation and be subject to and obey all rules and regulations adopted by the District Board of Health and all orders, rules and regulations of the District Health Officer.-]~~

~~[(11) Collect and dispose of all garbage, rubbish and waste matter without cost or charge, at all buildings, parks and other facilities owned by the city.-]~~

~~[(12) Agree to allow the public to dispose of rubbish and waste matter free of charge, at the city sanitary landfill site (unless such landfill site has been closed), for a period not to exceed ten days, as a part of the annual "spring cleanup campaign" supported by the city.-]~~

~~[(13) Agree to provide for a special rate for senior citizens upon terms agreeable to the city as set forth in the city ordinances.-]~~

~~[Sec. 5.90.065. Mandatory use of garbage services within the city.]~~

~~[Each individual, firm, association, corporation, partnership, business, or other entity which accumulates or causes the accumulation of garbage, as defined by the Reno Municipal Code, upon any premises within the City of Reno shall subscribe to the collection, hauling and disposal of garbage pursuant to the provisions of the Reno Municipal Code.]~~

~~[For purposes of determining whether garbage must be subscribed to in accordance with the provisions of the Reno Municipal Code, it is presumed that every single-family dwelling, any building containing rooms for sleeping and overnight facility, and every business which permits food and drink to be sold, served or consumed on the premises is accumulating or causing the accumulation of garbage upon the premises. Any owner or occupant of dwelling units or business establishments desiring to be exempt from garbage service or claiming that garbage is not being accumulated upon the premises, must have the written approval of the District Health Officer, which approval shall not be granted except upon the showing that garbage, as defined by section 10.08.010 of the Reno Municipal Code, is not being accumulated upon the premises and that no attempt is being made to haul, bury or otherwise dispose of garbage in violation of Chapter 10.08 of the Reno Municipal Code. The District Health Officer shall determine all questions as to whether waste materials are putrescible and therefore garbage or are rubbish and waste material as defined in section 10.08.010.]~~

~~[Sec. 5.90.070. Annual rate filing.]~~

~~[On an annual basis, and at least 30 days before the changes go into effect, the franchisee shall file with the city clerk an up-to-date rate schedule which sets forth all residential, commercial and industrial rates, charges and fees for all garbage services offered by franchisee to city residents pursuant to this franchise.]~~

~~[(1) Residential collections. All designated containers, as defined by Reno Municipal Code § 10.80.060, shall be located behind the curb or on the edge of the alley by 7:00 a.m. on the regular collection day.]~~

~~[a. The charges for collection shall be set forth in the franchisee's annual rate filing for those senior citizens who have been found eligible for a discount or refund by the Washoe County Assessor under the provisions of NRS 361.800 to 361.877, inclusive, and commonly referred to as the "Senior Citizens' Property Tax Assistance Act." Any such person shall be entitled to the reduced rate by making written application to the franchisee and submitting written proof of the finding of eligibility by the Washoe County Assessor.]~~

~~[b. The franchisee shall collect garbage more than once a week and the public shall be required to subscribe to more frequent service if necessary to prevent unlawful accumulations (as determined by the district health officer) of garbage, rubbish or waste matter as defined in this chapter.]~~

~~[c. When requested, the franchisee shall provide more frequent collections on a regular basis, and the rate for such additional collections shall be as set forth~~

~~in this chapter. The franchise holder shall collect garbage once a month at residences, versus once a week, for those persons who apply with the franchise holder for a permit allowing garbage collection only once per month. The permit shall be allowed only upon approval by the district health officer.]~~

~~[d.—The residential rate includes, at no extra cost, the removal of rubbish and waste matter, provided it does not exceed one cubic yard and is deposited in a designated container or secured in the manner set forth in Chapter 10.08 and placed behind the curb or on the edge of the alley by 7:00 a.m. on the regular collection day.]~~

~~[e.—All multiple dwelling buildings, including but not limited to duplexes, apartments, condominiums, cooperatives, mobile homes and trailer parks, and any other buildings or businesses containing multiple dwelling units but which buildings are not a single family dwelling as defined by Chapter 16.12 of the Reno Municipal Code, shall be charged per month the residential rate for each dwelling unit; provided, however, an owner of a multiple dwelling building or business, by using leaches, dumpsters or equivalent containers may make application to the franchisee to be charged in accordance with the rates for business establishments.]~~

~~[f.—Upon request of a customer, the franchisee will remove garbage receptacles from the customer's yard or area other than curbside. The rates for yard service shall be as set forth in the franchisee's annual rate filing.]~~

~~[1.—Yard service for customers over age 62 or physically disabled with an annual net income over \$8,000.00, shall be as set forth in the annual rate filing (high bracket), in addition to the regular residential rate; and]~~

~~[2.—Yard service for customers over age 62 or physically disabled with an annual net income under \$8,000.00, shall be as set forth in the annual rate filing (Low Bracket), in addition to the regular residential rate.]~~

~~[(2) *Commercial rates.* The rates for commercial services shall be as described in the annual rate filing.]~~

~~[(3) *Application of commercial rate.* The franchisee shall charge the commercial rate for each business establishment, public building or place, and buildings of a commercial nature containing dwelling units or living accommodations of a temporary or transient nature including, but not limited to, motels, hotels, boardinghouses and rooming houses.]~~

~~[(4) *Billing and collection.* The franchisee shall bill for residential service in advance for the charges allowed by the franchise on a quarterly basis, and such charges shall be due and payable on the first day of each billing period. The bill or charge for residential service shall be delinquent if not fully paid on the last day of such quarterly period. The franchisee shall bill for commercial service in advance on a monthly basis, and such charges shall be due and payable on the first day of each billing period. The bill or charge for commercial service shall be delinquent if not~~

~~fully paid on the last day of such monthly period. In case any person shall fail to pay the charges for residential or commercial service within 15 days after the same become delinquent, the franchisee shall be entitled to charge interest on such delinquent accounts at the same rate charged for delinquent sewer fees.]~~

~~[a. — All charges and all penalties provided for in the franchise shall constitute a debt and obligation of the owner or reputed owner of the real property of the single family dwelling, multiple dwelling building, or business establishment as shown by the records of the Washoe County assessor's office.]~~

~~[b. — An owner of real property shown on the Washoe County assessor's records may request that billings be directed to tenants or temporary occupants of premises, but in no event shall such designation relieve the owner of the real property from the primary obligation to pay the debt and obligation for garbage collection service to the premises.]~~

~~[c. — The franchisee shall be authorized to establish procedures for collecting delinquent accounts, including the right to collect security deposits. Such procedures shall be reviewed and approved by the city.]~~

~~[(5) *Rate for uncovered services.* If services are requested for a rate which has not been covered by this Code, the city manager may set the rate for such service after a survey has been made of the service requested. Once such rates have been established, they may be changed only after a public hearing before and approved by the city council.]~~

~~[(6) *Franchise shall provide as a part of its normal residential service under this agreement, a program for curbside recycling for all such residential customers.* The recyclable materials that are to be removed from the solid waste stream that shall be a part of the program furnished by franchisee shall be by mutual agreement of franchisee and City of Reno after due consideration to the cost of removing a particular recyclable material from the solid waste stream and the market for ultimate sale of such material.]~~

~~[Franchise shall be required to make the curbside recycling program described herein available to every residential customer within the City of Reno regardless of whether the service is used or not.]~~

~~[The rate of recycling shall be in addition to the rate for residential service. Although the rate for recycling is separately determined, this amount shall be included with the normal rates charged for collection described herein. Franchisee shall charge a rate for recycling to each individual customer of residential service regardless of whether that customer participates in the program. The rate of recycling shall be determined based on the total recycling program maintained by franchisee. In establishing rates for recycling, franchisee shall include all revenues received from the sale of recyclable materials as an offset to the cost of providing the service. The rate for recycling shall be adjusted and reviewed on a periodic basis.]~~

~~[(7) *Determination of adequate service.* The district health officer, upon application of either the franchisee or any owner requesting service, shall have the power and authority to determine whether the service requested by any resident, multiple-dwelling building, or business establishment, is adequate to prevent a health hazard or nuisance.]~~

~~[(8) *Dumpster requirements.*]~~

~~[a. *General requirements.* Dumpsters and large mobile receptacles shall be kept locked shut except when loading or unloading, must not leak, shall not overflow, shall be kept uniformly painted and free of graffiti, and the area around the container must be kept free of trash and debris. Dumpsters shall be secured to prevent unintentional rolling. Dumpsters with lockable lids shall be made available to all commercial users who request such containers at a special service charge set forth in the rate schedule above.]~~

~~[b. *Permits in public rights-of-way.* Dumpsters or other large mobile receptacles shall not be placed in the public right-of-way unless the user first obtains a permit from the City of Reno.]~~

~~[1. *Application process.* Applications shall be made to the code enforcement division of the community development department. The application shall:]~~

~~[(a) Be upon forms provided by the code enforcement division, which is hereby authorized to require information reasonably necessary to carry out the intendments of this section;]~~

~~[(b) Be accompanied by the full amount of the fees chargeable for such permit.]~~

~~[2. *Approval process.* Following review and investigation, the code enforcement division shall either recommend approval or denial of the application. The code enforcement division may require reasonable conditions on the placement or movement of the dumpster as may be necessary to keep the right-of-way fit for its intended purposes. The code enforcement division thereafter shall either issue a one-year permit or notify the applicant of denial, including the reason for such denial. Notification shall be sent certified mail, return receipt requested, to the address provided on the permit application or by personal service to the applicant.]~~

~~[3. *Grounds for denial.* Any original or renewal application for a permit may be denied for the following causes:]~~

~~[(a) The application or any other document is incomplete or contains false, misleading or fraudulent statements;]~~

~~[(b) The applicant or anyone in privity with the applicant has been subject to disciplinary action with respect to a permit to place a dumpster or other large mobile receptacle in a public right-of-way;]~~

~~[(c) The location of the dumpster or mobile receptacle presents an unreasonable safety or health hazard;]~~

~~[(d) The appurtenant premises has sufficient room, without causing unreasonable expense or interruption, to store the dumpster or large mobile receptacle; or]~~

~~[(e) The appurtenant premises undergoes structural rebuilding or remodeling costing in excess of \$50,000.00.]~~

~~[4. Violations; grounds for suspension or revocation: Violators shall be subject to the provisions of Chapter 1.05 of the Code. In addition, any permit issued pursuant to this title may be revoked, suspended, or summarily suspended by the code enforcement division utilizing the procedures for such discipline set forth in RMC 4.04.190, for any of the following causes:]~~

~~[(a) Material fraud, misrepresentation or false statement contained in the application for a permit;]~~

~~[(b) Any violation of the provisions of this article or the Reno Municipal Code; or]~~

~~[(c) The non-payment of any amounts owed to the city or the franchisee.]~~

~~[5. Appeals. Appeals of denials, suspensions or revocations shall be conducted in conformance with the provisions for appeals set forth in Title 4.]~~

~~[(9) Vacant residences. The application of residential rates shall be collected by the franchise holder whenever there is an accumulation of garbage on the premises as defined by City of Reno ordinances, regardless of the amount of such accumulation. The franchisee shall establish procedures for discounting billings to those premises which may be vacant or unused. Such procedures shall be reviewed and approved by the city.]~~

~~[(10) Rates. The rates in effect as of October 1, 1994, and rates established by the city council hereafter, shall be subject to annual increases based upon the percentage of change in the Consumer Price Index, All Urban Consumers, U.S. City Average-Garbage and Trash (1982=100) ("CPI") as published by the Bureau of Labor Statistics, Washington D.C. commencing with the index for June, 1993, being the base period for purposes of making adjustments.]~~

~~[On an annual basis, rates of the specific business lines may be individually adjusted by franchisee as long as the total increase for residential, commercial and industrial rates, collectively, is less than or equal to the annual increase in the CPI. So, for example, in 2008, franchisee may elect to raise industrial rates by six percent, while electing not to raise residential or commercial rates; provided, however, the total increase for residential, commercial and industrial rates, collectively, is less than or equal to the annual increase in the CPI for 2007 of two and one-half percent.]~~

~~[In addition, adjustments in accordance with the CPI shall be subject to the following qualifications:]~~

~~[a.— Rates adjusted in accordance with the CPI shall not be greater than six percent nor less than zero percent in any one year regardless of the percentage change in the CPI; and]~~

~~[b.— In the event the franchisee obtains a return on revenues (as defined in paragraph 5.4 of the City of Reno Garbage Franchise Agreement adopted August 9, 1994, as amended) that averages more than eight per annum, using a three-year rolling average, then the franchisee will not be entitled to make a cost of living adjustment for the immediately succeeding year, or any year thereafter in which the three year rolling average of return on revenues has exceeded eight percent.]~~

~~[c.— Rates adjusted in accordance with the consumer price index shall not include the rates for recycling.]~~

~~[(11)Rate review. Franchisee's annual rate filing is subject to review and approval by the city manager, or designee, before any changes go into effect. In addition, charges may be reviewed on an annual basis at the request of either the city or the franchisee and may be adjusted so as to allow the franchisee a fair return on revenues as defined in the City of Reno Garbage Franchise Agreement, as amended. Any rate adjustments shall be made after due consideration of both the rights of the public to be served at a fair and reasonable charge and the right of the franchisee to a fair return on revenues.]~~

[Sec. 5.90.080.— Payment to the city by franchisee.]

~~[(a) The franchisee, its successors and assigns, shall pay to the city, in monthly installments each month during the term hereof, a franchise fee in an amount equal to eight percent of the "gross receipts" collected by the franchisee in accordance with the City of Reno Garbage Franchise Agreement. City of Reno reserves the right to increase the amount of the franchise fee, which increase shall be in addition to the rates determined in paragraph 5.4 of the City of Reno Garbage Franchise Agreement adopted August 9, 1994. Provided however, the franchise fee on gross receipts attributable to the franchisee's recycling program under the franchise agreement shall be five percent.]~~

~~[(b) The term "gross receipts" shall include all money, cash, receipts, property or other thing of value collected by the franchisee (exclusive of tipping fees as described above)~~

~~from subscribers in the city who use the service of the franchisee under the franchise agreement.-]~~

~~[Sec. 5.90.085. Additional fees; conditions.-]~~

~~[So long as the franchise fee is paid by franchisee, its successors or assigns, no other general business license fee shall be imposed upon it or them by the city during the term of such franchise; provided, however, such substitution of a franchise fee for other general business license fees shall not eliminate or otherwise modify franchisee's duty and obligation to pay building permit fees and other fees of like nature as ad valorem taxes on franchisee's real and personal property in the city.-]~~

(g) The City Council reserves the right to increase or decrease the insurance requirements upon thirty (30) days written notice.

Sec. 5.90.140. -Instrument for Securing Performance

Not less than thirty (30) days after the effective date of any Agreement, Contractor shall file with city an instrument, in form reasonably acceptable to city, securing such Contractor's faithful performance of Contractor's obligations under the Agreement to which Contractor is a party. 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 of the Agreement. If the instrument is a performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Nevada Department of Insurance and otherwise reasonably acceptable to the City. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude City from seeking additional damages for Contractors default under an Agreement.

Sec. ~~[5.90.090.]5.90.150.~~ - Compliance with other laws.

~~[The]~~Subject to the rights of Contractor under the Agreements, the franchise under this article shall be subject to the provisions of the constitution and the laws of the state and ordinances enacted by the city council.

SECTION 2. This Ordinance shall be in effect from and after its passage, adoption and publication in one issue of a newspaper printed and published in the City of Reno.

SECTION 3. The City Clerk of the City of Reno is hereby authorized and directed to have this Ordinance published in one issue of the Reno Gazette-Journal, a newspaper printed and published in the City of Reno.

PASSED AND ADOPTED this ____ day of _____, 2012, by the following vote of the Council:

AYES: _____

NAYS: _____

ABSTAIN:_____ ABSENT:_____

APPROVED this _____ day of _____, 2012.

ROBERT A. CASHELL SR., MAYOR

ATTEST:

LYNNETTE JONES, City Clerk and Clerk
of the City Council of the City of Reno,
Nevada

EFFECTIVE DATE:_____