

AMENDED AND RESTATED

GARBAGE AND RECYCLING EXCLUSIVE FRANCHISE AGREEMENT

**BETWEEN THE CITY OF SPARKS
AND
RENO DISPOSAL COMPANY ~~d/b/a~~D/B/A SPARKS SANITATION
AND
WASTE MANAGEMENT OF NEVADA, INC. d/b/a RSW RECYCLING**

This agreement (the “Agreement;”), made effective ~~July 21, 2008,~~ _____, 2015 (the “Effective Date”), is by and between the CITY OF SPARKS, a political subdivision of the State of Nevada, (hereinafter referred to as “City”) and RENO DISPOSAL ~~COMPANY, CO.~~ a Nevada corporation, d/b/a SPARKS SANITATION (hereinafter referred to as “Franchisee”) ~~and WASTE MANAGEMENT OF NEVADA, INC., a Nevada Corporation d/b/a RSW RECYCLING.~~

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;

WHEREAS, Section 7.12.010 of the Sparks Municipal Code authorizes the City Council to award an exclusive franchise for collection, hauling and disposal of all Garbage and Curbside Recyclable Material, as defined herein, within the City; ~~and~~

WHEREAS, Franchisee has represented and warranted to City that it has the experience, responsibility, and qualifications to provide residents, commercial, and industrial institutions in the City, the collection and safe transport to permanent disposal facilities of all Garbage and Curbside Recyclable Material within the community;

WHEREAS, City declares its intention of maintaining reasonable rates for reliable, proven collection, transportation and disposal of Garbage and Curbside Recyclable Material within the City; ~~and~~

WHEREAS, City ~~awarded to~~and Franchisee ~~an exclusive franchise dated February 11, 1991 for the operation of a garbage and refuse collection entered into a July 21, 2008 “Garbage and disposal service for all the areas within~~Recycling Exclusive Franchise Agreement”, and now wish to

modify said ~~City; and~~

~~WHEREAS, Said exclusive franchise provides for a term to expire June 30, 2007, which term has been extended by mutual agreement of the parties; to address implementation of curbside commingled recycling and other matters, as provided herein.~~

~~WHEREAS, City and Franchisee have agreed to enter into a new franchise agreement and wish to set out the terms and conditions of that agreement in writing.~~

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:

1 - DEFINITIONS

As used in this Agreement, the following definitions apply:

1.01 **Code.**- The term Code as used herein refers to the City of Sparks Municipal Code, Chapter 7.08 "Garbage and Refuse Control" and Chapter 7.12 "Collection of Garbage and Refuse"

1.02 Curbside Recyclable Materials. As used in this Agreement means Recyclable Materials generated or coming to exist at residential establishments in the City. As provided in Section 6.02, and unless excluded pursuant to Section 6.03, all such materials shall be placed in a Franchisee-provided cart and set curbside for collection by Franchisee.

1.021.03 Solid Waste.- Has the meaning ascribed to it in NRS 444.490 which definition includes all putrescible and non-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. -Franchisee is under no obligation, and may not service, any containers containing hazardous materials.

1.031.04 Garbage. -The term "garbage" means:

A. 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:

1. Offal, swill, kitchen and table waste, and other organic animal and vegetable waste;
2. 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; and
3. Any component used in the preparation or manufacture of matter intended for animal or human consumption, and;

4. Such matter and/or materials listed in (1) through (3) above that have been discarded without first being sanitized.

~~A. Infectious Waste as defined by § 010.285 of the District Board of Health Regulations Governing Solid Waste Management~~

B. ~~C.~~ Code section 7.08.010(C) provides that the mixing, addition, or commingling of garbage with rubbish, trash, or other waste matter exclusive of Group 1 wastes (as determined by Regulations of the District Board of Health governing solid waste management), renders the entire resulting mixture as garbage and requires the mixture to be handled as garbage. -Any establishment that generates, handles or consumes food products is presumed to be generating garbage and shall be required to have some level of service with the Franchisee unless such establishment obtains an exemption or waiver from the District Health Officer.

1.05 Infectious Waste. Has the meaning ascribed by § 010.285 of the District Board of Health Regulations Governing Solid Waste Management.

1.06 Master Billed Community. As used in this Agreement means a parcel of real property on which more than one dwelling unit is located, where the owner of such parcel elects to receive from Franchisee, and will pay, single invoices for all Refuse collection services at the parcel. However, Master-Billed Communities do not include multi-family complexes.

1.07 Multi-Family Complex. As used in this Agreement, means a parcel of real property on which five (5) or more attached dwelling units are located. Multi-Family Complexes shall be deemed a commercial establishment for purposes of this Agreement.

~~1.04~~1.08 Putrescible Waste. -The term “putrescible” has the meaning ascribed to it in §_7.08.010(E) of the Code and further defined by regulations of the District Board of Health.

~~1.05~~1.09 Refuse.- The term “refuse” as used herein refers generally to all forms of discarded solid waste, including garbage, rubbish as defined in Code §_7.08.010(D) and waste matter as defined in Code §_7.08.010(E).

~~1.06~~1.10 1.06 Recyclable Material. -Has the meaning ascribed to it in NRS 444A.013 and means solid —waste that can be processed and returned to the economic mainstream in the form of raw —materials or products, as determined by regulations adopted by the State Environmental —Commission and by the Washoe County District Board of Health. As of the date of this Agreement, Recyclable Materials are set forth in Exhibit B attached hereto.

~~1.07~~1.11 1.07 District Board of Health. -As used in this Agreement means the Washoe County District —Board of Health created pursuant to Chapter 439 of the Nevada Revised Statutes and by —the interlocal agreement of the City of Reno, City of Sparks, and the County of Washoe, —Nevada.

~~1.081.12~~ ~~1.08~~ — **District Health Officer.** —As used in this Agreement means the person appointed by the ~~——~~ District Board of Health of the Washoe County District Health Department within the ~~——~~ Health District pursuant to the authority of the state and local health laws, ordinances and ~~—~~regulations.

~~1.091.13~~ ~~1.09~~ — **Franchisee.** —As used in this Agreement is Reno Disposal Company, Inc., d/b/a Sparks —Sanitation, which is the entity awarded an exclusive franchise by the Sparks City Council —pursuant to Code §- 7.12.010.

2 GRANT OF EXCLUSIVE GARBAGE FRANCHISE

2.01 **Grant of Exclusive Franchise.** Subject to the terms of this Agreement, the City does hereby grant to Franchisee, and Franchisee does hereby accept, the exclusive duty, right and privilege of collecting, removing, transporting ~~and,~~ disposing, recycling or otherwise handling all Curbside Recyclable Materials (as “Curbside ~~Reeyeling~~” is Recyclable Materials are defined in ~~¶ 6.01 hereof~~ Section 1.02) and all Garbage, generated, ~~deposited and accumulated from or coming to exist at~~ residential, commercial, and industrial establishments within the City, including any area hereinafter annexed by the City.

~~——~~—The term “exclusive” as used herein means that the City has exercised its authority under NRS 268.081 to displace and limit all competition so that Franchisee shall be the sole provider of collection, transport ~~and,~~ disposal, and recycling services for Curbside Recyclable Materials and Garbage under this Agreement and under City ordinances.

Except as provided in section 2.02 below, or where the Washoe County Health Department has issued an exemption from garbage service, all residential, commercial, industrial premises and community activities within the City shall be required to utilize the collection and container services provided by Franchisee for the collection and disposal of Garbage if a level of service and a rate has been established and approved by the City hereunder.

2.02 **Exclusivity.**— This franchise is exclusive in nature, and neither the City nor its residents shall make or enter into any other agreement or arrangement for the collection, transport, removal, ~~or disposal,~~ or recycling of Residential Curbside Recyclable Materials and Garbage from within said City boundaries during the term of this Agreement, or of any extension or renewal thereof.

2.03 **Enforcement of Exclusivity of Franchise.** —All residential premises, commercial, industrial and community activities of every kind and description that generate Garbage and ~~Residential~~ residential Curbside Recyclable Materials shall be required by City to utilize the collection and container services of Franchisee provided for herein. —Pursuant to Code §- 7.08.020 it is unlawful for any person, except Franchisee, to haul or carry or operate or drive a vehicle containing Garbage in the City.

To the extent permitted by law, the City and/or Franchisee shall prohibit any person from providing the same or similar service for the collection, hauling ~~and,~~ disposing, or recycling of Garbage and ~~Residential~~ residential Curbside Recyclable Materials within the City that is in violation of the terms of this exclusive franchise Agreement.

- 2.04 **Term.** ~~This exclusive franchise~~ The term of this Agreement shall commence ~~upon the effective date hereof, on _____~~ and continue in full force and effect for a period of ten (10) years. ~~Upon expiration of the 10-year primary term, provided the expire on _____.~~ The parties ~~are may agree in mutual agreement, Franchisee shall have the right~~ writing to extend the ~~term of the franchise Agreement~~ for two additional five (5) year terms. ~~Franchisee shall give written notice to the City at least 6 months~~ notice prior to the expiration of the then-existing term regarding its desire to extend the term. The City shall give written notice to the Franchisee at least 6 months prior to the expiration of ~~each of the then-existing term regarding its desire to not extend the 5-year extended terms term.~~
- 2.05 **Title To The Solid Waste Stream.** ~~The title to all of the solid waste stream covered by this Agreement (excluding Hazardous Wastes) and the property rights associated therewith for the collection and disposal~~ and recycling of solid waste under this Agreement shall be the sole property of Franchisee. ~~For purposes of this Agreement, 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 Franchisee or is deposited by commercial customers in dumpsters or equivalent containers and left for collection by Franchisee.~~

3 OBLIGATIONS OF FRANCHISE HOLDER

- 3.01 **Equipment.** ~~Franchisee shall at its cost and expense, furnish a sufficient number of trucks and other equipment, including all drivers and workers required for the service, operation, and maintenance of said trucks and other equipment for the purposes of providing a regular and satisfactory solid waste collection and disposal~~ and recycling service in the areas covered hereby.
- 3.02 **Sanitary Operation.** ~~Franchisee shall at all times exercise diligence in the supervision of its personnel to the end that care is taken to deposit all solid waste inside collection vehicles, leaving no garbage or other waste matter upon any street, alley, walkway or other public place within the City, or upon any private property used for the collection of garbage and other waste matter. Collection vehicles shall be safe, adequate and clean, constructed in such a manner to be completely covered so as to prevent the spilling, dripping or blowing of any contents from the vehicle. Franchisee's collection equipment shall be modern, up-to-date, maintained in good repair, and reasonably water tight. The exterior of the equipment shall be kept clean and presentable and the interior shall be thoroughly cleaned after dumping each load.~~
- 3.03 **Public Relations and Customer Service.** The City and Franchisee acknowledge and agree that the Franchise shall at all times in the performance of its duties and responsibilities under this Agreement, maintain good relations with the public and shall promptly respond to customer issues. To this end,
- A. Franchisee shall diligently exercise supervision and training of its personnel so that the public coming into contact with such personnel shall be treated decently and courteously at all times.

- B. Franchisee shall provide an office and telephone number within Washoe County wherein customers can transact business with Franchisee, during regular and posted office hours, which shall be not less than 9 a.m. to 5 p.m., Monday through Friday, except holidays. The office shall accept and administer all requests for service initiations, terminations, and modifications, including special services and complaints.
- C. Franchisee shall maintain a computer log of all oral and written service complaints registered with Franchisee from customers. Franchisee shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints.
- D. Franchisee shall periodically survey its residential and commercial customers, preferably by an independent outside consultant, to determine the level of satisfaction of customers with the service provided by Franchisee. The results of that survey shall be included in the annual report to the City Manager and/or City Council described in subsection F hereof, or sooner as requested by the City.
- E. Franchisee shall maintain and actively pursue public information programs such as the “snapshot program,” to encourage customer compliance with Federal, State, and local laws and ordinances. Franchisee shall support any City public information programs that shall be designed, with input from Franchisee, to promote public adherence to Franchisee’s and City’s policies.
- F. Franchisee shall report annually to the City Manager or City Council, as requested by the City, regarding compliance with its responsibilities under this section.

3.04 **Approved Landfill.** ~~Franchisee shall be required to deposit all ~~solid waste~~Solid Waste collected pursuant to this Franchise Agreement, and not diverted through recycling, at an approved landfill site.~~ For purposes of this Franchise Agreement, 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, and the Nevada Environmental Commission, ~~and the Washoe County District Board of Health.~~

It shall be the sole responsibility of Franchisee to provide for the permanent deposit of municipal solid waste collected pursuant to this Agreement, 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 ~~that~~ meets the requirements of this Agreement.

In the event that technology advances to the point that other options are available for the ultimate disposal of ~~solid waste~~Solid Waste that provides the potential that it may be used as a source of renewable energy or converted to renewable fuel, ~~the Franchisee and such other options are commercially viable and attractive for Franchisee, the Franchisee and the City~~ will work with the regulator to obtain approval to divert solid waste collected under this Franchise Agreement to a facility providing those technologies.

Franchisee shall provide through the operator of the landfill for the residents of the City of Sparks to dispose of refuse and waste matter, free of charge, at the landfill site during a ~~one~~ nine-day period each May that coincides with the Earth Day activities.

- 3.05 **Transfer Station.** -Franchisee shall be required to utilize an approved transfer station-unless it direct hauls material to a landfill or processing facility. The transfer station shall provide for the -temporary collection and compaction of ~~solid waste~~ Solid Waste so that an economical method of transportation of ~~solid waste~~ Solid Waste to an approved landfill is utilized by Franchisee.

For purposes of this Franchise Agreement, 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 State of Nevada, the Nevada Environmental Commission, and the Washoe County District Board of Health.

It shall be the sole responsibility of Franchisee to provide for a transfer station meeting the requirements of this Agreement. -Franchisee may comply with this requirement by operating its own transfer station or by entering into an agreement with the operator of a transfer station which meets the requirements of this Agreement.

4 FRANCHISE FEE

- 4.01 **Franchise Fee.** -Franchisee, its successors and assigns, shall pay to City, in monthly installments during the term hereof, in an amount equal to ~~five~~ eight (8%) percent of the “gross receipts” collected by Franchisee under this Agreement.- City reserves the right to increase the amount of the franchise fee during the term of this Agreement. -In the event the City increases the franchise fee, then collection ~~rates~~ Rates under Section 5 hereof shall be automatically adjusted to reflect the increased franchise fee.

All franchise fees paid by Franchisee to City under this Agreement shall be considered as a reasonable cost of operation for purposes of determining collection rates under ~~paragraph 5.01 hereof~~ Section 5.

- 4.02 **Definition of “Gross Receipts”.** The term “gross receipts” as used in this Agreement includes all money, cash, receipts, property, or other thing of value collected by -Franchisee from both residential and commercial customers who use the service of Franchisee under this Agreement. -Included in gross receipts is all sums collected by any companies operating within City which have cooperating agreements with Franchisee or its assignees, licensees or permittees rendering services for and on behalf of Franchisee under this exclusive franchise Agreement.

- 4.03 **Record Keeping.** During the life of this Agreement, Franchisee shall keep full, true, and correct books, records, and accounts, establishing the identity and number of customers served by it, and the amount of its gross monthly receipts which said books, records, and accounts shall at all times be open to inspection by the duly authorized representatives of City during regular business hours. Further, Franchisee shall furnish to City monthly a statement of all of its gross receipts attested as being correct by a representative of Franchisee duly authorized to do so.

5 GARBAGE COLLECTION RATES AND PROCEDURES

- 5.01 **Establishing Rates For Collection.** –For and in consideration by Franchisee of the obligations on its part to be performed hereunder, Franchisee shall be entitled to recover its reasonable costs of operation, plus a fair return on revenues, by charging its customers a fee or rate for all services rendered hereunder. –Return on revenues is hereby defined as the ratio of net income to gross revenues. –Net income is arrived at by deducting all expenses (including taxes) from gross revenues.
- 5.02 **Rates Adjustment By Cost Of Living Index.** The Rates to be charged by Franchisee to ~~subscribers~~ customers as established by the City as of the effective date of this Agreement are set out in Exhibit “A” and incorporated herein by reference. When any changes occur to the ~~rate~~ Rate structure, Franchisee will forward an updated Exhibit “A” to the City Manager 30 days prior to the effective date of any rate increase.

The ~~Residential rates in effect as of the effective date of this Agreement as~~ Rates set out in ~~Exhibit A shall be subject to an increase in an amount equal to eight and one half percent~~ (8.5%) ~~effective February 1, 2009.~~

~~All Commercial and Industrial rates, set out in Exhibit A in effect as of the effective date of this Agreement, and all rates established thereafter under this Agreement, shall be subject to annual increases based upon the percentage of change in the Consumer Price Index, All Urban Consumers, U.S. City Average- Item: Garbage and Trash Collection (1983=100) (“CPI”) as published by the Bureau of Labor Statistics, Washington, D.C. commencing with the index for November, 20072014 being the base period for purposes of making adjustments. The first adjustment shall be made effective as of February 1, 20092016, and shall be based upon the CPI increase for the period November, 20072014 to November, 20082015, and rates shall be adjusted in the same manner annually thereafter. Rates adjusted in accordance with the CPI shall not be greater than six percent (6%) nor less than zero percent (0%) in any one year regardless of the percentage change in the CPI. The CPI adjustment for residential customers in 2009 will be deferred until May 1, 2009, and then each February thereafter.~~

On an annual basis, ~~rates~~ Rates of the specific business lines may be individually adjusted by ~~franchisee~~ Franchisee as long as the total increase for residential, commercial and industrial ~~rates~~ Rates collectively, is less than or equal to the annual CPI adjustment. – The allocation of the amount of increase to each of the business lines will be determined after consultation with the City Manager’s Office.

Notwithstanding the method of establishing ~~rates~~ Rates described above, Franchisee shall have the right to request an adjustment to rates, and City approval shall not be unreasonably withheld, where unforeseen or extraordinary circumstances results in significantly higher costs of operation that could not be reasonably anticipated. –An example includes increased government fees related to the Solid Waste services.

- 5.03 **Establishing Residential Rates.** –For ~~residential~~ Single Family Residential services, Franchisee shall be entitled to collect a garbage and refuse collection fee based upon the following criteria:–. The base Single Family Residential Rate, as it may be adjusted,

includes the cost of one Refuse cart and one Recyclable Materials cart and the cost for regularly scheduled removal, processing, and disposal (as described is below), and the City's franchise fee.

A. ~~The charge for collection of garbage and refuse for residential areas shall be on a weekly basis and shall include one "designated container". The designated container shall be provided by Franchisee to each owner or person having control of any building, apartment, store, mobile home park, motel or dwelling unit within the City as provided by Code § 7.08.060(A). The designated container~~Franchisee will collect Refuse on a weekly basis. Franchisee will provide each dwelling unit (or has provided) one plastic cart designated for Refuse and an additional cart designated for Curbside Recyclable Materials, which will be collected on a bi-weekly basis. Only residential customers will be provided a Curbside Recyclable Materials cart. Carts provided by the Franchisee shall be a durable plastic container of approximately ninety-six (96) gallons in capacity, which is watertight, fitted with a lid, and equipped with wheels for easy handling. ~~The designated container remains~~Carts for Curbside Recyclable Materials will have a green body with a blue lid. Embossed on the blue lid will be a description of materials acceptable for the Curbside Recyclable Materials program. Carts remain the property of the Franchisee. ~~For each additional designated container~~cart for garbage~~Refuse or Recyclable Materials~~, an additional rate shall be charged by the ~~franchise holder~~Franchisee.

B. ~~The rate for residential service includes, in addition to the designated container, one cubic yard of refuse and waste matter. The one cubic yard of refuse and waste matter may~~All material must be placed inside the designated container, Refuse or consist of six (6) boxes, bundles securely tied, disposal plastic bags, or other suitable containersCurbside Recyclable Materials cart. Excess material generated by a customer would not be allowed outside of the cart unless each of which excess item is "tagged" with a sticker (as provided by Franchisee) and does not exceed fifty (50) pounds in weight and ~~does~~ not exceed ~~four (4)~~3 feet in width and height.

C. ~~Residential customers may request a 64 gallon designated container at a reduced rate as set out~~Twenty (20) stickers per dwelling unit are included in the schedule of rates in Exhibit A. This~~base service shall not include~~level; additionally, during the one cubic yard~~months of refuse~~May and waste matter~~October each year, or as described in § 5.03(B).~~

B. ~~Residential customers shall be entitled to a reduced rate for residential service who qualify under~~otherwise agreed by the provisions of NRS 427A.450 to 427.600, inclusive, and commonly referred to as the "Senior Citizens' Property Tax Assistance Act." ~~Any such person parties, customers 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's Office, allowed to place an additional 6 bags, boxes or bundles outside of their container on their service day without using a sticker.~~

i. Customers in good standing will be allowed 4 free trips per year to the Waste Management transfer station facilities in Reno or the Lockwood Regional Landfill to dispose of up to a standard size pick up (3 cubic

yards) of material. This access will be provided at any time that the facilities are open. Customers must show their proof of residency (i.e., current utility bill with a City address and their driver's license).

- C. Pursuant to Code § 7.08.060(C) it is unlawful for any owner or person in control of property where garbage is generated on the premises to use any containers (other than designated containers) for storage of garbage commonly referred to as “garbage cans” or similar containers, and Franchisee shall not be required to service such containers.
- D. When requested by the customer, the ~~franchise holder~~Franchisee shall provide additional containers or more frequent collections on an on call -basis. The rate for such additional containers or collections shall be set out in Exhibit “A.”
- E. The residential rate charged by the ~~franchise holder~~Franchisee shall require that the designated container be placed behind the curb or on the edge of the alley by 7:00 a.m. on the regular collection day. -The Franchisee does not guarantee that service will be provided at exactly the same time on each service day, as unforeseen circumstances may cause an interruption in service; however, every effort will be made to provide consistency in residential service. -The ~~franchise holder~~Franchisee shall be entitled to collect an additional charge based on a cubic yardage basis for any additional containers of garbage, rubbish or waste matter, which would be in addition to the regular residential service.
- F. Yard service will be provided to disabled or frail elderly customers that (1) are physically unable to move Carts as verified by a medical certificate, and (2) annually sign a sworn statement that they live in a residence with no other residents capable of moving Carts.
- ~~D. All multiple dwelling buildings, including but not limited to, duplexes, apartments, condominiums, cooperatives, mobile homes and trailer parks, and any other building or businesses containing multiple dwelling units which buildings are not a single family dwelling, shall be charged either the commercial or residential rate based on the type of service requested by the owner or tenant, subject to paragraph 5.08(D).~~
- G. It is the responsibility of each customer to provide access to and from the designated container to allow regular collection service of the designated container in accordance with the Franchisee’s normal method of operation. The Franchisee will not be required to service the container where there is a lack of proper access, and no credit will be provided. ~~If a commercial/industrial container cannot be serviced, then a service charge may be applied by Franchisee depending on the circumstances.~~
- H. Customers may request a 64 gallon designated container at a reduced rate as set out in the schedule of rates in Exhibit A.

I. Customers age 70 years and older may request a senior rate that is 85% of the standard rate, and consists of a 64-gallon solid waste container and a 96-gallon recycling container.

J. Customers that previously qualified under the provisions of NRS 427A.450 to 427.600, inclusive, and commonly referred to as the "Senior Citizens' Property Tax Assistance Act" shall have an initial base rate set forth in Exhibit A. Thereafter, every February when the normal price increase is applied, these rates will be increased by an additional 2% until they eventually catch up with the correct senior rate set forth in 5.03(I) above.

5.04 **Commercial and Industrial Rates.** –For commercial and ~~Industrial~~industrial service, Franchisee shall be entitled to collect a fee based upon the following:

~~E.A.~~ Commercial Service is the level of service where a commercial business utilizes 96-gallon to 6-yard container.

~~F.B.~~ Industrial Service is the level of service where a customer utilizes drop box or roll-off services of large industrial containers or compactors from 14 to 40 yards.

~~G.C.~~ Commercial and industrial accounts in the entire franchise area shall be serviced at a rate to be established by the City as of the effective date of this Agreement and set out in Exhibit "A" attached hereto. Commercial and industrial rates shall be adjusted in the same manner as residential rates under paragraph 5.02 hereof.

~~H.D.~~ Commercial and industrial rates shall apply to 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, boarding houses and rooming houses.

5.05 **Rates for New Areas.** ~~It is recognized and agreed, that due to annexation or consolidation of the City limits, that a rate may not be established for garbage and collection services for outlying sparsely populated areas of the City. For such new areas where Franchisee is required or requested to provide collection and disposal services, Franchisee shall be entitled to receive a rate which fairly compensates Franchisee for its reasonable costs in providing the service to new areas in the same manner as rates have been established for various areas of the City. As of the effective date hereof, the current rate structure covers the existing city limits of the City. If the City should annex non-contiguous property, and Franchisee anticipates that provision of Solid Waste services to such areas will be more costly due to less dense routing, greater driving distances, etc., Franchisee may request that new Rates be established to compensate Franchisee for its increased costs. Upon such Franchisee request, the City and Franchisee will work in good faith to establish Rates for Solid Waste services to such new areas.~~

5.06 **Unlawful Accumulations.** In any area of the City where a rate has been established, the District Health Officer, upon application of either the ~~franchise holder~~Franchisee or any owner requesting service, shall have the power and authority to determine whether the

service requested by an individual or business establishment is adequate to prevent the unlawful accumulation of garbage or to prevent a health hazard or nuisance.

The Franchisee may maintain a “Snap Shot” program whereby drivers are able to _____document inadequate service levels by the use of a digital camera. The primary purpose _____of the program is to ensure that customers have adequate service for their needs and that unlawful accumulations of solid waste do not occur. -Fees imposed for collecting this excess waste are set out in Exhibit A.

5.07 **Mandatory Service.** The rates for collection and disposal of garbage as set forth herein have been established upon the condition that mandatory ~~garbage service~~Refuse service for residential establishments (i.e., single-family and master-billed communities) and mandatory Garbage service for commercial establishments will be in effect for the entire area within the boundaries of City and for the entire period that a rate is in effect. It is understood and agreed that in the event that mandatory service is not in force, then the rates set forth herein will be increased in an amount necessary to compensate Franchisee for its increased cost of operation.

5.08 **Collection Procedures.** ~~Franchisee shall be entitled to adopt and enforce the following billing procedures:~~

A. **Single-Family Residences.** Billing ~~for residential service~~ shall be ~~in advance for the charges allowed by City Code~~ on a quarterly basis, and such charges shall be due and payable on the first day of each billing period. -Franchisee shall be authorized to establish procedures for collecting delinquent accounts including the right to collect security deposits. -The bill or charge for residential service shall be delinquent if not fully paid on the last day of each quarterly period.

~~B.~~ ~~The franchise holder shall bill for commercial service in advance on a monthly basis~~**Multi-Family Complexes.** Billing shall be on a monthly basis, in advance of services, and such charges shall be due and payable on the first day of each billing period. The bill or charge for service shall be delinquent if not fully paid on the last day of each monthly period.

~~B-C.~~ **Commercial Establishments (Not Multi-Family Complexes).** Billing shall be on a monthly basis, in advance of services, 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 each monthly period.

~~C-D.~~ **Delinquent Customers.** In case any person shall fail to pay the charges for residential or commercial service, within 15 days after the same become delinquent, the ~~franchise holder~~Franchisee shall be entitled to charge interest on such delinquent accounts at the rate of eighteen percent (18%) per annum. Failure to pay charges as set out herein may result in temporary interruption of service until such charges are paid in full by the commercial or residential customer. In this event, a reactivation fee as defined in ~~Schedule~~Exhibit “A” may be charged by the Franchisee.

~~D-E.~~ **Tenants.** Any owner of real property as shown on the City 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.

5.09 **Service to City Facilities.** Franchisee agrees to collect and dispose of all ~~solid waste~~**Solid Waste** without cost or charge, at all buildings, parks and other facilities owned by City which are open to the public and operating under normal conditions. -This complimentary service provided by Franchisee shall not apply to the collection or disposal of any form of solid waste that requires special handling or equipment, solid waste resulting from natural disasters, businesses operating for profit on City properties under special licensing or franchise agreements, any special community event operated or sponsored by City, or any other types of extra-ordinary burdens that may be placed on Franchisee for removal of solid waste from property owned by City. Additionally, the City will not use ~~it's~~**its** own trucks to collect and dispose of waste at the landfill or a transfer station that is generated by for-profit events. The cost of providing this service shall be considered as a reasonable cost of operation for purposes of determining collection rates under paragraph 5.01 hereof.

~~The current market value of services to City facilities will be capped at \$170,000 per year and will be adjusted annually by the same CPI percentage in the manner described in ¶ 5.02 hereof. It is understood that this applies to garbage and recycling collection operations performed at City facilities by the Franchisee along with Medical Waste Services and garbage or trash disposal by City at Waste Management of Nevada's disposal operations.~~

Franchisee will work with the City during Force Majeure events to provide access to disposal facilities. ~~Exceptions to the annual collection and disposal cap may be available if material generated by a flood event can be used as Alternative Daily Cover (ADC) at the Lockwood Landfill.~~The City may be responsible for obtaining a waste release permit from the Washoe County Health District and ensuring that the material does not exceed the threshold for prohibited contaminants.

5.10 Service to Master-Billed Communities.

A. Each parcel of real property on which more than one dwelling unit is located, excluding Multi-Family Complexes, will make the decision as to whether it will be a Master-Billed Community, or if dwelling units will be responsible for establishing Solid Waste services directly with Franchisee. With regard to the latter, each Dwelling Unit will be a Single-Family Residence.

B. Each dwelling unit in a Master-Billed Community will receive services as described in Section 5.03.

C. The owner of a Master-Billed Community (or its property manager) will be responsible for providing updated information to Franchisee regarding each dwelling unit, including whether they receive a senior rate, and when a dwelling unit becomes vacant.

- D. All Master-Billed Communities shall be charged the Single Family Residential rate for each dwelling unit (with a 10% vacancy allowance, regardless of actual vacancies), and an additional charge for each dwelling unit requesting additional carts or services; provided, however, an owner or manager of a Master-Billed Community, by using bins or drop-box containers, may make application to the Franchisee to be charged in accordance with the rates for business establishments (see Exhibit A for such Rates). No vacancy credit is allowed unless the dwelling unit is actually unable to accommodate a living unit due to administrative action taken to eliminate the lot through the planning process.
- E. Community representatives will need to provide Franchisee with appropriate documentation in the form of any government issued identification in the event they are pursuing the senior rate for a dwelling unit, as well as proper medical documentation and verification from Dwelling Units seeking free yard service. This would require medical certification that they are unable to wheel the container to the curb and no one else living in the household is capable.
- F. Community management is responsible for managing the excess sticker program by picking up stickers each January at the local office of Franchisee for 90% of their available units.
- G. Community management will provide dwelling units with a form that provides them with access to the transfer station or landfill.

6 RECYCLING PROGRAM

6.01 **Definitions.** The following additional definitions apply to the recycling program to be offered as a part of service provided by Franchisee under this Agreement:

- A. “Curbside Recycling” means a program whereby recyclable material (i.e., Curbside Recyclable Materials) is separated at the source of the solid waste stream, or commingled at the source into a single recycling receptacle, and collected by the franchise holder.
- B. “Source-separated” means that recyclable materials have been removed from the solid waste stream by the generator, or by its full time employees, at the generator’s residence.
- C. “Single Stream” means that recyclable materials have been co-mingled at the generators residence into a single container for recyclables only.

6.02 **Recycling Service.** ~~RSW Recycling (“RSW”) shall provide a program of curbside recycling for all residential customers where recycling materials are source separated by the customer. RSW shall provide residential curbside recycling as a part of providing the same recycling services in the City of Reno and the County of Washoe. The recyclable materials that are to be removed from the solid waste stream shall be the same as the recyclable materials removed under the program for the City of Reno and Washoe County.~~ Franchisee will operate a Curbside Recycling program as described in Section 5.03 above. Franchisee-provided containers designated for Curbside

Recyclable Materials shall be used only for storage, placement and collection of Recyclable Materials, and no other materials of any kind may be placed in such containers. City and Franchisee may agree in writing to change the list of Recyclable Materials. Franchisee may refuse to collect materials placed in the Recyclable Materials container which do not conform to the specifications set forth in Exhibit B, and may charge recycling contamination 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 materials placed for collection which contain more than 10% non-Recyclable Materials. No such charge shall be imposed until the third instance after customer has been notified by the placement of a tag (Exhibit C) on their recycling container that they are improperly using the recycling container. After five (5) offenses in a 12 month period of improper use of the recycling container, the container may be removed by Franchisee.

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

~~The Franchisee reserves the right during the term of this franchise to change the method of recycling to a Single Stream procedure after consultation with the City so that the most efficient, cost effective method of gathering the most recyclables is utilized. In the event RSW should implement a Single Stream recycling program in the City, along with the same program in the City of Reno and Washoe County, RSW intends to make substantial improvements to and utilize the Greg Street recycling facility, located in the City of Sparks, as the regional recycling center. In this event, the parties may negotiate in good faith the payment to the City of a "host fee" based on the volume of recyclables processed through this facility. It is understood and agreed that payment of a host fee will be included as a part of the reasonable cost of operations for RSW for the purpose of establishing rates for recycling.~~

6.03 **Exclusions to Recycling Exclusivity**. -The right to collect, transport and -manage Curbside Recyclable Materials is an exclusive right granted to Franchisee ~~and RSW~~ hereunder, with the following exceptions:

- A. Source separated Recyclable Materials that are donated by the generator to youth, civic, charitable, or other nonprofit organizations;
- B. A property owner may personally self-haul and deposit Recyclable Materials at any licensed/permitted recycling facility or one of the recycling centers maintained by Franchisee;
- C. ~~D.~~—Waste material typically collected and processed by licensed rendering companies.

~~**1.02 Rate for Recycling.** The rate for 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 of solid waste as described herein. Franchisee shall charge a rate for curbside recycling to each individual customer of residential service regardless of whether that customer participates in the program. The rate~~

~~is included with the posted rate for residential service and shall be adjusted annually by the method described in paragraph 5.02 hereof.~~

6.04 Rate for Recycling. See Sections 5.03 and 5.08.

~~6.046.05~~ **Title To Recyclable Material.** From the time ~~curbside recyclable materials~~Curbside Recyclable Materials are placed ~~in a container provided by RSW as a part of the recycling program, then the curbside recyclable materials~~for collection, Recyclable Materials are the property of ~~RSW~~Franchisee. Any person engaged in the unauthorized collection of ~~curbside recyclable materials~~Recyclable Materials shall be guilty of a misdemeanor as established by Code.- Each such unauthorized collection constitutes a separate and distinct offense. Notwithstanding any criminal sanction that may apply, ~~RSW~~Franchisee shall have the right to enforce their property rights to curbside ~~recyclable materials~~Recyclable Materials under this Agreement in a civil action commenced for that purpose, and shall be entitled to recover three times the damages caused by the unauthorized collection.

7 SURETY

7.01 **Surety.** Franchisee shall forthwith furnish to City a bond running to City in the penal sum of \$100,000 on the condition that said Franchisee shall well and truly observe, fulfill and perform each and every term and condition of this Agreement. Said bond shall be approved by the City Attorney and filed with the City Clerk.

8 INDEMNITY AND HOLD HARMLESS AGREEMENT

8.01 **General Indemnity.** Franchisee, its assigns or successors, shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with to the extent caused by, or arising from or in connection with the breach of any representations, covenants or warranties of the Franchisee set forth in this Agreement, or any negligent actions or omissions or willful misconduct of the Franchisee, except for any such loss or damage to the extent caused by the sole negligence or willful misconduct of the City, its officers, officials, employees and agents.

8.02 **Environmental Indemnity.** Further, Franchisee shall protect, defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all claims for actual damage, natural resources damages, remediation and removal costs, and losses of every kind and description, arising out of or resulting from any cleanup, removal, remedial, or other plan, concerning the release of any hazardous substance or hazardous waste, as hazardous substance and hazardous waste shall be defined by state and federal laws, as amended from time to time. This indemnity shall not apply with respect to any hazardous waste or hazardous substance generated by the City or its residents or business and delivered by City to Franchisee. The foregoing indemnity is for the exclusive benefit of the City and parties indemnified, and in no event shall such indemnity inure to the benefit of any third party.

- 8.03 **Notice.** Franchisee shall have no obligation to indemnify or defend hereunder unless the City provides written notice to Franchisee of the occurrence of events giving rise to Franchisee's obligation to indemnify hereunder within ninety (90) days after the City knows or should have known of such events. The City shall cooperate in the defense of suit if requested by Franchisee.

9 LIABILITY INSURANCE

- 9.01 **Coverage.** Franchisee shall 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 Sparks, the Sparks 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.

Franchisee shall be required to provide and maintain in full force and effect Commercial General (and Auto) Liability Insurance on an occurrence form, with insurers with a current A.M. Best rating of no less than A: VII.

Limits of liability shall be at least \$3,000,000 combined single limit per occurrence. If an aggregate limit applies, the limit must either apply separately to this agreement or shall be twice the required occurrence limit.

Any deductibles and self-insured retentions must be approved by the city.

The city, its officers, employees, agents, and volunteers shall be named as additional insured. The franchisee's insurance 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 shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability; and shall be endorsed to state that coverage will not be voided, suspended, cancelled or reduced except after 30 days prior written notice, certified mail, return receipt requested has been given to the city. Franchisee shall furnish the city with certificates and original endorsements effecting coverage required by this clause. Endorsements must be signed by a person authorized by that insurer to bind coverage on its behalf.

Pursuant to NRS Chapters 616A through 616D, franchisee shall provide Workers' Compensation insurance to statutory limits and employer's liability of at least \$1,000,000.

Franchisee 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.

10 TRANSFER, ASSIGNMENT AND SUBCONTRACTS

- 10.01 **Franchisee's Right to Assign.** Franchisee reserves the right to assign or transfer its rights hereunder, provide that in such event, Franchisee shall file with the City Clerk written notice of any contemplated sale, transfer, assignment, or lease of such franchise or any part thereof, or of any other rights or privileges granted hereby, 30 days before such sale, transfer, assignment or lease is to become effective. No such sale, transfer, or assignment or lease of such franchise, or any part hereof, shall be effective until and unless approved by the City, which consent and approval shall not be unreasonably delayed or withheld. Notwithstanding the foregoing, Franchisee shall have the right, without seeking or obtaining approval or authority from the City, to assign or transfer this Agreement to any affiliate of Franchisee or its parent corporation.
- 10.02 **Subcontracts.** Franchisee shall have the right to enter into subcontracts for the collection and disposal services required by this Agreement, provided that Franchisee shall remain responsible to City for the complete performance of all terms and conditions of this Agreement by such subcontractors. The term "subcontract" does not include any operations conducted under this Agreement by affiliated companies with Franchisee, including all companies owned or controlled by Franchisee's parent corporation.

All subcontracts require the prior approval of the City, which approval the City agrees shall not be unreasonably withheld. All subcontractors shall be required to fully perform all terms and conditions of this franchise Agreement and the City Codes pertaining to garbage and collection services, and subcontractors shall be required to collect at the rates established by City.

11 DEFAULT; FORCE MAJEURE; CHANGE IN LAW

- 11.01 **Default.** In the event of any material failure or refusal of Franchisee to comply with any obligation or duty imposed on Franchisee under this Agreement, the parties shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. In the event the parties are unable to agree, and the City may declare an event of default hereunder; and in the event of such default, breach or deficiencies are not remedied or cured within 30 days after receipt of written notice of such default, breach or deficiency from the City, the City may, at its option, terminate this Agreement.
- 11.02 **Force Majeure.** The performance of this Agreement may be discontinued or temporarily suspended in the event of circumstances beyond a Party's control, whether or not foreseeable, including, without limitation Force Majeure. Franchisee shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Franchisee's performance is prevented or delayed by circumstances beyond a Party's control, whether or not foreseeable, including, without limitation, Force Majeure or threat thereof.. For purposes of this Agreement, the term "Force Majeure" means acts of God landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, acts of terrorism, public riots, breakage, explosions, accident to machinery, equipment or materials, unavailability of required materials or disposal site,

governmental restraint or other cases, whether of the kind enumerated or otherwise, which are not reasonably within the control of the party affected by the Force Majeure event.

- 11.03 **Changes In Law.** In the event that new or amended local, state or federal laws, rulings or regulations are enacted after the effective date of this Agreement and have the effect of preventing or precluding compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such new or amended local, state or federal laws or regulations, and the parties shall enter into an amendment of this Agreement that reflects the extent to which the provisions hereof have been so modified or suspended.

Nothing in this Agreement shall prohibit Franchisee from obtaining or seeking to obtain modification, reversal or repeal of such law, ruling or regulation or restrict Franchisee's right to legally contest the validity of such law, ruling or regulation. Franchisee shall not be considered in breach of this Agreement during such time as Franchisee is contesting or appealing any notice of violation, ordinance, rule, regulation, ruling or law.

12 MISCELLANEOUS PROVISIONS

- 12.01 **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective successors and permitted assigns.
- 12.02 **Independent Contractor.** Franchisee is an independent contractor and shall not be deemed an employee of the City.
- 12.03 **Additional Fees.** So long as the franchise fee is paid by Franchisee, no other general business license fees shall be imposed upon Franchisee, or any of its affiliated companies, by City during the term of this Agreement for services provided under this Agreement; provided however, that Franchisee shall pay, in the same manner as any other business operating outside this Agreement, any applicable business or licensing fees, real and personal property taxes, building permit fees, and other such fees.
- 12.04 **Amendment.** This Agreement, including any term or provision hereof, may be amended only by an instrument in writing and signed by the parties hereto. However, nothing in this agreement shall prevent the City and Franchisee from reaching mutual agreement on matters that improve the entire franchise, or any part thereof, such as providing more efficient and environmentally friendly methods of waste disposal and recycling that further the sustainability initiatives of both the City and Franchisee.
- 12.05 **Saving Clause and Entirety.** If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.
- 12.06 **Notices.** All notices required or permitted to be given under this Franchise Agreement shall be in writing and shall be personally delivered or sent by telecopier or US certified mail, postage prepaid, return receipt requested, addressed as follows:

To Franchisee: ~~Vice~~ President
~~Waste Management of Nevada~~Reno Disposal Company, Inc.
100 Vassar Street
Reno, NV 89520

To City: City Manager
City of Sparks
City Hall
431 Prater Way
Sparks, -NV 89432

Or to such other address as either party may from time to time designate by notice to the other given in accordance with this paragraph. Notice shall be deemed effective on the date personally served or sent by telecopier or, if mailed, three (3) business days from the date such notice is deposited in the US mail.

~~In Witness Whereof~~

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

CITY OF SPARKS,
a Political Subdivision of the State of Nevada

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

RENO DISPOSAL ~~COMPANY~~CO., a Nevada
corporation d/b/a SPARKS SANITATION

By: _____
~~Greg Martinelli, Vice~~ Barry Skolnick, President

~~WASTE MANAGEMENT OF NEVADA, INC.,~~
~~a Nevada corporation d/b/a RSW RECYCLING~~

—Greg Martinelli, Vice President

By _____