



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** June 20, 2019

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action to adopt, on second reading, Bill No. 104, an ordinance relating to solid waste and recyclable materials, establishing provisions relating to an exclusive Franchise Agreement between Carson City and Waste Management of Nevada, Inc., for the collection and disposal of solid waste and recyclable materials and repealing the former Franchise Agreement for solid waste and recyclable materials. (Rick Cooley, RCooley@carson.org and Todd Reese, TReese@carson.org)

Staff Summary: This will be the second reading of an ordinance to replace the existing franchise agreement. The new agreement was previously approved by the Board of Supervisors on December 20, 2018.

Agenda Action: Ordinance - Second Reading **Time Requested:** 10 Minutes

Proposed Motion

I move to adopt Bill No. 104, on second reading, Ordinance No. _____.

Board's Strategic Goal

Economic Development

Previous Action

November 1, 2018: The Board of Supervisors determined that Waste Management of Nevada, Inc. had proposed the best value for collection services in response to the request for proposals issued June 26, 2018 and directed staff to enter into negotiations with Waste Management of Nevada for a solid waste and recyclable materials exclusive franchise.

December 20, 2018: The Board of Supervisors approved the Franchise Agreement with Waste Management of Nevada, Inc.

June 6, 2019: The first reading of the ordinance. The Board of Supervisors passed the ordinance by a vote of 3 to 2.

Background/Issues & Analysis

Under NRS 244.187 and 244.188 the Board of Supervisors may enter into an exclusive franchise for the collection and disposal of garbage and other waste. The current franchise expires on June 30, 2019. City staff issued a request for proposals on June 26, 2018. Five proposals were submitted and during the Board of Supervisor's meeting of November 1, 2018, the Board determined that Waste Management of Nevada had proposed the best value for collection services in response to the request for proposals and directed staff to enter into negotiations with Waste Management of Nevada for Solid Waste and Recyclable Materials Exclusive Franchise collection services.

During the Board of Supervisor's meeting of December 20, 2018, the Board approved Contract No. 1819-041, a new solid waste and recyclable materials collection services franchise agreement with Waste Management of Nevada.

This ordinance is being proposed: (a) to repeal the prior franchise agreement in CCMC Chapter 5.10 and clean up the Carson City Municipal Code, (b) in the interest of transparency, to act as guide post for members of the public looking for the franchise agreement and directing them to the agreement; and (c) again in the interest of transparency, to notify members of the public of the mandatory nature of single-family dwelling solid waste collection and how to obtain an exemption to mandatory collection, rather than having this language buried in the franchise agreement.

The ordinance merely reflects provisions already in the Franchise Agreement and is being addressed now as the prior Franchise Agreement ends and the new Franchise Agreement becomes effective. No changes are proposed, or can be made, to the Franchise Agreement at this time.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 244.187 and 244.188; Carson City Municiple Code Chapter 5.10.

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: General Fund and Regional Transportation Fund revenue.

Is it currently budgeted? Yes

Explanation of Fiscal Impact: The Franchise Agreement includes a franchise fee of 8%. 5% will continue to be recorded in the General Fund (FY Budget=\$519,000) and 3% for roadway impacts will be recorded in the Regional Transportation Fund. This new 3% fee is estimated to generate \$305,000 annually which will be added to the Regional Transportation Fund FY 20 Budget.

Alternatives

Do not adopt ordinance and provide alternative direction to staff.

Attachments:

[Solid_Waste_Franchise_Ordinance_REVISED.DOCX](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

SUMMARY: An ordinance revising provisions governing a solid waste and recyclable materials franchise.

BILL NO. 12_

ORDINANCE No. 2019-_____

AN ORDINANCE RELATING TO SOLID WASTE AND RECYCLEABLE MATERIALS; AMENDING TITLE 5 (PUBLIC UTILITY FRANCHISES AND REQUIREMENTS), CHAPTER 5.10 (SOLID WASTE AND RECYCLABLE MATERIALS) TO ESTABLISH CERTAIN PROVISIONS RELATING TO AN EXCLUSIVE FRANCHISE AGREEMENT BETWEEN CARSON CITY AND WASTE MANAGEMENT OF NEVADA, INC. FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLABLE MATERIALS; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

The Board of Supervisors of Carson City do ordain:

SECTION I:

That Title 5 (PUBLIC UTILITY FRANCHISES AND REQUIREMENTS), Chapter 5.10 (SOLID WASTE AND RECYCLABLE MATERIALS), Section 5.10.010 (Enactment of Franchise) is hereby amended as follows (**bold, underlined text** is added, ~~stricken~~ text is deleted):

5.10.010 - Enactment of Franchise.

~~_____ [The franchise agreement entered into between Carson City and Capital Sanitation Company, appearing herein as Section 5.10.020 is hereby enacted into law.]~~

1. Pursuant to NRS 244.187 and 244.188, Waste Management of Nevada, Inc. is hereby granted an exclusive franchise to collect and dispose of solid waste and recyclable materials within Carson City under the terms and conditions set forth in the franchise agreement entered into between Carson City and Waste Management of Nevada, Inc., a copy of which may be obtained free of charge from the Public Works Department, 3505 Butti Way, Carson City, Nevada 89701, or from the department Internet website <https://carson.org/government/departments-g-z/public-works>.

2. Except as otherwise provided in this section, the collection of solid waste in Carson City for all single-family residential dwellings, as that term is defined by the franchise agreement, is mandatory and specifically governed by the terms and conditions of the franchise agreement.

3. In accordance with Article 8.4 of the franchise agreement, a person may obtain an exemption to mandatory solid waste collection for a single-family residential dwelling if he or she requests the exemption on the form prescribed by Waste Management of Nevada, Inc. and provides information sufficiently demonstrating the use of a designated landfill during each month for the previous six (6) calendar months in year one of the franchise agreement, or for the previous twelve (12) calendar months in each subsequent year of the franchise agreement. The form described in this subsection may be obtained directly from Waste Management of Nevada, Inc. upon request at the contact information contained in the franchise agreement or in the billing invoice.

SECTION II:

That Title 5 (PUBLIC UTILITY FRANCHISES AND REQUIREMENTS), Chapter 5.10 (SOLID WASTE AND RECYCLABLE MATERIALS), Section 5.10.020 (Text of Franchise) is hereby repealed (**bold, underlined text** is added, ~~stricken~~ text is deleted), with reservation of the section numbers as follows:

5.10.020 [~~Text of franchise.~~] **Reserved.**

SECTION III:

That no other provisions of Title 5 of the Carson City Municipal Code are affected by this ordinance.

SECTION IV:

This ordinance becomes effective:

1. Upon adoption after second reading for the purpose of performing any preparatory administrative tasks to carry out the provisions of this ordinance; and
2. On July 1, 2019, for all other purposes.

PROPOSED on _____, 2019.

PROPOSED by Supervisor _____.

PASSED on _____, 2019.

VOTE: AYES: SUPERVISORS: _____

 NAYS: SUPERVISORS: _____

 ABSENT: SUPERVISORS: _____

Robert Crowell, Mayor

ATTEST:

AUBREY ROWLATT
CLERK/RECORDER

TEXT OF REPEALED SECTIONS

~~[5.10.020 -- Text of franchise.~~

~~SOLID WASTE AND RECYCLABLE MATERIALS FRANCHISE AGREEMENT~~

~~—THIS AGREEMENT is made and entered into this ___ day of _____, 1999, by and between Carson City, Nevada, existing under and by virtue of the laws of the State of Nevada, hereinafter referred to as City, and Capital Sanitation Company, a Nevada corporation, hereinafter referred to as Franchisee or Company,~~

~~WITNESSETH:~~

~~—WHEREAS, this agreement is entered into between the parties heretofore named for the purpose of implementing said franchise and defining the rights and obligations of the parties thereto to the end that said franchise should become fully operative;~~

~~—WHEREAS, Carson City has authority under NRS 244.187 to displace or limit competition for the collection and disposal of garbage and other waste and by granting this exclusive franchise intends to limit competition in the collection of garbage and other waste;~~

~~—NOW, THEREFORE, for and in consideration of the premises and for and in consideration of the granting of said franchise by City to Franchisee and for and in consideration of the premises and for and in consideration of the granting of said franchise by City to Franchisee and for and in consideration of the covenants and agreements hereinafter contained, it is mutually understood and agreed as follows:~~

~~—Article 1. Definitions.~~

~~—For the purposes of this agreement the following words and phrases shall have the meanings as set forth hereinafter unless the context appears otherwise:~~

~~—1. "Board" means the Carson City Board of Supervisors.~~

~~—2. "Can" means a container for solid waste that has a capacity of 40 gallons or less with a maximum weight of seventy five (75) pounds when fully loaded and be equipped with suitable handles for lifting.~~

~~—3. "City" means either the area within the corporate boundaries of Carson City or the legal entity organized as a consolidated municipality, depending on the context.~~

~~—4. "City Accounts" places where solid waste and recyclables are generated by the City.~~

~~—5. "Collect" means to take physical possession of solid waste or recyclables by the Company.~~

~~—6. "Commercial Entity" means any business, retail, office, professional or industrial premises or site, including but not limited to motels, hotels, and multi residential complexes. Such definition includes nonprofit activities such as churches, synagogues, charitable organizations, fraternal, service and social clubs, and any location operated by a governmental entity, including city, county, state and federal buildings, prison, public schools, colleges, hospitals, and public recreational sites.~~

~~—7. "Commercial Location" means the premises or site of a commercial entity.~~

~~—8. "Designated Collection Location" means the physical location where the Franchisee is to collect segregated, recyclable materials.~~

~~—9. "Multi-residential Complex" means any residential building, boardinghouse, apartment building (condominium complex, mobile home park), stock cooperative~~

~~complex, or flats consisting of five (5) or more independent dwelling units that do not receive individual garbage service. "Multi-residential Complex" does not include motels and hotels.~~

~~—10. "Person" means a government, government agency or political subdivision, individual, partnership, association, joint stock company, trust, corporation, tenant, lessee, business, occupant or owner of real property within Carson City.~~

~~—11. "Recyclable Materials" means any one or more of the following categories of materials collected and recycled or salvaged from within Carson City.~~

~~—a. newspapers~~

~~—b. metal and aluminum food and beverage containers~~

~~—c. glass~~

~~—d. graded or sorted plastics~~

~~—12. "Recycling" means the process of sorting, cleansing, treating and reconstituting waste or other discarded materials for the purpose of using the altered form.~~

~~—13. "Residential Unit" means any single-family dwelling, duplex, triplex, apartment house of 4 dwelling units or less, or condominium complex of 4 dwelling units or less. For the purposes of this agreement, each apartment, flat, or dwelling unit of a duplex, triplex, 4 unit or less apartment house, or 4 unit or less condominium complex shall be considered as a separate dwelling, unless the managers or residents of such a complex arrange for centralized disposal which shall be treated as a Commercial Entity.~~

~~—14. "Solid Waste" means all putrescible or non-putrescible solid or semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, demolition and construction waste, discarded household and industrial appliances, manure, vegetable and animal solid and semisolid wastes, yard waste and other solid and semisolid waste. Company is not required to pick up demolition and construction waste or household and industrial appliances that cannot be placed in a 40-gallon can at the curb but customer can make separate arrangements with Company for the disposal of such items. "Solid Waste" does not include hazardous wastes as defined by the State of Nevada, medical wastes, or liquid wastes.~~

~~—Article 2. Grant of Franchise and Franchise Area.~~

~~—1. The right privilege and franchise for the collection and disposal of solid waste and recyclable materials in Carson City, Nevada, is hereby granted to CAPITAL SANITATION COMPANY. Said franchise includes both commercial and residential collection in Carson City, Nevada. This Franchise Agreement is exclusive and Carson~~

~~City shall not make or enter into any other contract for the collection, removal or disposal of solid waste and recyclable material, nor permit any third party to undertake such activity, during the term of this agreement or any extension or renewal thereof, except as set forth in paragraph 2 and 4 of this Article.~~

~~—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 Capital Sanitation Company. 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.~~

~~—2. The Franchisee shall have the exclusive duty, right and privilege to collect, remove and retain all solid waste and recyclable materials originating within the corporate boundaries of Carson City, except as follows:~~

~~—a. This Franchise shall not prohibit any person who collects solid waste and recyclable materials originating outside the corporate boundaries of Carson City from hauling such material over City streets, provided such collectors comply with all applicable State and local laws and ordinances.~~

~~—b. This Franchise shall not prohibit any person who generates solid waste and recyclable materials within the corporate boundaries of Carson City from disposing of such material generated from their own premises. However, such generators may not hire a third party other than the Company to collect such material.~~

~~—c. This Franchise shall not prohibit landscape service providers or construction contractors from disposing of refuse generated during the course of their work. However, such persons may not hire a third party other than the Company to collect such material.~~

~~—3. This agreement confers upon the Franchisee the right and duty during the term of this agreement, to collect, sell, transport, and store recyclable materials generated within the boundaries of Carson City.~~

~~—4. If at any time during the terms of this Agreement, Franchisee shall refuse to continue with its solid waste collection services, City has the right to collect or contract to collect solid waste until such time as any dispute between the City and Franchisee is resolved or the Agreement is terminated as provided for herein.~~

~~—Article 3. Franchise Period.~~

~~—The commercial and residential franchise, including the recycling program hereby granted to Franchisee is granted for a period of fifteen (15) years from July 1, 1999 until July 1, 2014, upon the terms and subject to the conditions hereinafter provided in this~~

~~agreement. Upon expiration of the fifteen (15) year primary term, Franchisee shall have the right to extend the term of the Franchise for an additional five year (5 year) period. Said right and option to extend the primary term for an additional five year (5 year) term shall be exercised by Franchisee giving written notice to Carson City at least one (1) year prior to the termination of the primary term.~~

~~—Article 4. Annual Franchise Fee.~~

~~—1. Franchisee shall pay to Carson City a franchise fee equal to five percent (5%) of its monthly gross receipt payable quarterly. The franchise fee shall be payable to the Carson City Treasurer and each payment shall be accompanied by a verified statement showing total receipts, by month, for the preceding three month period. The term "gross receipts" as used in this Agreement includes all money, cash, receipts, property, or other things of value collected by Franchisee from subscribers in Carson City who use the service of Franchisee under this Agreement.~~

~~—2. Every five (5) years hereafter, within sixty (60) days of the anniversary of the effective date of this Franchise or upon future application for extension, the adequacy and mode of payment of the Franchise Fee under this Franchise shall be reviewed by a designated official or officials of City and by a designated representative or representatives of the Franchise Holder, for the purpose of renegotiation of said Franchise Fee to a just and equitable level for the five (5) year period to ensue.~~

~~—3. That said provision for review and/or renegotiation of fee shall not be construed to require an increase of said franchise fee, it being the purpose of said review to determine the reasonableness of the fee under circumstances then attendant. Any increase in Franchise Fee above five percent (5%) shall be added automatically to the collection rate fee.~~

~~—4. That City may, upon three (3) days' written notice, inspect and audit all the accounts of the Franchisee to verify the computations of the franchise fee to be paid hereunder, provided that said option shall be exercised in such a fashion and at such reasonable times so as not to interfere with or unreasonably impair the business operations of the Franchise Holder. Said audit shall be conducted under the supervision of authorized representatives of the Franchisee.~~

~~—Article 5. Collection Service Territory.~~

~~—Franchisee shall furnish collection service as herein specified in accordance with the provisions of this Agreement and City codes to all persons or organizations who request such service within the territory covered by this franchise, provided however, that such service may not be provided at the option of the Franchisee to anyone further than one-half (1/2) mile from an existing customer and provided further, that such service may be~~

~~withheld during any period in which bills for prior service remain delinquent, such bills becoming delinquent fifteen (15) days after such bill is received for services rendered prior to the time such bill is rendered.~~

~~—Article 6. Collection Rates.~~

~~—Rates charged by the Franchisee are subject to the approval of the Board of Supervisors of Carson City, and any change in said rates, after the effective date hereof, other than the CPI increases set forth herein, shall be submitted to said Board and must be approved by said Board prior to becoming effective.~~

~~—1. Residential Rates and Services.~~

~~—a. The rate for service to a Residential Unit consisting of once per week collection of one can of solid waste is \$9.12. The rate for the same service for each additional can is \$3.41.~~

~~—b. The Company may at its discretion collect only containers of solid waste that are placed by the customer behind the curb or on the edge of an alley on the regular collection day and may require that all bundled solid waste be placed on the curb of nearest street. The Franchisee may, at its option, provide backyard service for an additional charge of \$7.28 per month.~~

~~—c. If containers for solid waste are provided by the customer the Company is only required to collect them if they are of the following types:~~

~~—1. disposable containers not to exceed 75 pounds in weight;~~

~~—2. metal or plastic garbage cans;~~

~~—d. The Company may rent to Residential Unit customers wheeled waste containers ("waste wheelers") that have a capacity of at least ninety (90) gallons. The use of Company supplied wheelers is at the option of the customer.~~

~~—e. Franchisee's service shall provide that the company pick up one can once a week during the entire year and one (1) cubic yard of solid waste once a week. In the event that any residential customer desires that additional solid waste be collected by the Company, the Company will collect said solid waste at the rate of \$3.41 per month for each additional can.~~

~~—2. Commercial Rates and Services. The Company shall charge all commercial customers in accordance with the following rate schedule:~~

~~a. Each can — \$ 8.41 per month for weekly pickup~~

~~b. Each loose yard — \$ 6.02 per yard~~

~~c. Each bulk cubic yard — \$ 10.76 per yard~~

~~d. Container Service — monthly rates for weekly pickup —~~

~~1) One (1) cu.yd. bin \$ 60.32~~

~~2) Two (2) cu.yd. bin \$ 88.64~~

~~3) Three (3) cu.yd. bin — \$109.83~~

~~4) Four (4) cu.yd. bin \$127.22~~

~~5) Six (6) cu.yd. bin — \$190.80~~

~~e. \$39.87 service charge for one time pickup on non-scheduled days: —~~

~~f. Drop box service rates for each pickup: —~~

~~1) Fourteen (14) cu.yd. drop box — \$107.93~~

~~2) Twenty (20) cu.yd. drop box — \$154.25~~

~~3) Thirty (30) cu.yd. drop box — \$231.20~~

~~4) Demurrage fee per week after seven (7) days — \$ 31.99~~

~~5) An additional charge of \$20.00 will be required for any drop box that has a lid. —~~

~~—3. Indexed Rate Increases. The rate increases provided for by this paragraph (paragraph 3) can be instituted without the approval of the Board of Supervisors. Before such an increase can become effective, however, the company shall supply written notice of the proposed increase to the City at least thirty (30) days before the effective date of the increase to permit the City to verify that the increase is in accordance with this agreement.~~

~~—a. Beginning on the first day of March following the effective date of this agreement and the first day of every March thereafter for the term of this agreement, and any extension thereof, the rates for the collection, removal and disposal of refuse may be increased based upon the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) — U.S. City Average, Garbage and trash collection, as published by the Bureau of Labor Statistics, Washington, D.C., commencing with the index for the twelve month period ending December 31, 1999, and each percentage change annually thereafter.~~

~~— b. — In no year shall the adjustment be less than zero or more than six percent (6%). Provided, however, that if the CPI does not provide Franchisee with a fair rate of return. Franchisee has the right to apply to the Board of Supervisors for an additional increase in rates.~~

~~— Article 7. Rental Deposit for Apartment Dwellers.~~

~~— A rental deposit of \$20.00 per rental customer may be required from all new rental customers requesting collection service as herein set forth. Rental customer is defined as a tenant or other person dwelling in a unit but not the owner thereof. Said deposit will be refunded upon termination of said collection service. If the customer has an outstanding bill with Franchise Holder, said deposit money will be applied to the outstanding balance and the difference, if any, will be refunded to the customer.~~

~~— Article 8. Franchisee Duties.~~

~~— 1. — City Accounts. The Franchisee shall not charge City for City Accounts for solid waste. This does not include special or additional waste generated by special events or natural disaster or major construction projects, and does not include sludge or construction and demolition waste, except as provided in Article 8, paragraph 4.~~

~~— 2. — Disposal Site. The Franchisee shall dispose of all solid waste collected pursuant to this Agreement at the Carson City Sanitary Landfill or such other disposal facility directed by the City, which is fully permitted and in compliance with all applicable federal, state and local laws and regulations governing such disposal.~~

~~— During the term of this Agreement and any extension thereof, Franchisee offers to the City, the right to dispose of all of its solid waste at the Lockwood Landfill, located in Storey County, Nevada, and owned and operated by Franchisee's affiliate, REFUSE, INC. (hereinafter "OPERATOR"). The rate, which shall be referred to as the "BASE RATE," for disposal of the City's solid waste FOB at Lockwood Landfill shall commence at \$10.60 per ton for the period of April 1, 1999 through March 31, 2000, and may be adjusted annually commencing April 1, 2000. The rate may be increased based upon the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average. All Items (1967=100) as published by the Bureau of Labor Statistics, Washington, D.C. In no year shall the adjustment be less than zero or more than six percent (6%). Provided, however, that if the CPI does not provide Franchisee with a fair rate of return, Franchisee has the right to apply to the Board of Supervisors for an additional increase in the rate. The BASE RATE shall not include extraordinary costs which include but are not limited to any taxes, fees or other assessments or any increased costs of design or operation, which are imposed on the disposal of solid waste or the Lockwood Landfill by changes in federal, state or local laws or regulations that take effect after the effective date of this Agreement.~~

~~—In the event OPERATOR elects to increase the BASE RATE as a consequence of such extraordinary expenditures, then the OPERATOR shall be required to present credible evidence that such expenditures were required and that the expenditures were made or that a fund must be established for future expenditures.~~

~~—OPERATOR further agrees that increases in the BASE RATE under subparagraphs (c) or (d) shall become effective only after OPERATOR shall have given the City ninety (90) days prior written notice.~~

~~—City shall be responsible only for that portion of such fees or assessments that are levied directly upon the solid waste stream transported by City under this Agreement or which may be levied on a greater volume of solid waste of which City is only a part, and in this event, then City shall only pay its prorata share. In the event of the assessment of such additional fees, then OPERATOR shall act only as a collecting agent for such political entities and shall follow any method for collection and payment required by such political entities.~~

~~—The City may exercise the right to dispose of its solid waste at the Lockwood Landfill pursuant to the terms set forth above by providing written notice to the Franchisee at least ten (10) months prior to the time City desires to begin disposal at the Lockwood facility.~~

~~—3.— New Accounts. The Franchisee shall guarantee delivery of a container to any new residential customer who requests one within their next service day.~~

~~—4.— Special Programs. The Franchisee shall provide dumpsters and disposal service, free of charge, at the City's request for the following special programs: Christmas tree recycling (including curbside pick up for Capital Sanitation customers); Carson Pride Week; organized Carson River and Pinenut Mountain area clean ups or any other City program mutually agreed upon in advance.~~

~~—5.— Spills. The Franchisee shall respond within one (1) hour and clean up a spill of solid waste or recyclables that have been collected by the company or any other fluids or materials spilled on streets or other public or private property by the Franchisee. The Franchisee shall also report the incident to the Environmental Health Department.~~

~~—6.— Compliance with Laws. The Franchisee shall comply with all local, state and federal laws which apply to its duties, operations or equipment.~~

~~—Article 9. Recycling.~~

~~—1.— Recyclables Collection.~~

~~—a.— The Franchisee shall provide recyclable materials collection service to all persons, residences and commercial entities within the boundaries of Carson City that have~~

~~garbage collection service. The recycling services shall be performed in accordance with the provisions of this Agreement and Carson City Municipal Code Chapter 12.12.~~

~~— b. — The Franchisee shall provide suitable and sufficient recycling receptacles to all persons who choose to participate in the Carson City Curbside Recycling Program at no charge. The color, style and markings of the receptacles shall be mutually agreed upon between the City and the Franchisee.~~

~~— c. — The Franchisee shall inform all residential units and commercial entities of:~~

~~— 1) — The availability of recycling, the materials that may be recycled, and the location of recycling receptacles; and~~

~~— 2) Provide flyers describing the City's curbside recycling program to the owners and managers of each multi-residential complex to be distributed among the tenants.~~

~~— d. — The Franchisee shall provide collection service for recyclable materials to participating residents and commercial entities at least once every two weeks on a regularly scheduled collection day.~~

~~— e. — The Franchisee shall maintain a recycling drop-off site at the Carson City Sanitary Landfill for the following materials:~~

~~— 1) — newspapers~~

~~— 2) — metal and aluminum food and beverage containers~~

~~— 3) — glass~~

~~— 4) — plastics~~

~~— 5) — cardboard~~

~~— f. — Franchisee and City agree that the recycling drop-off will allow for the disposal of cardboard only if the following conditions do not occur:~~

~~— 1. — The price for cardboard drops below Fifty and 00/100 Dollars (\$50.00) per ton for three (3) consecutive months.~~

~~— 2. — Franchisee determines after a three (3) month experimental period that the cardboard drop-off is not economically feasible to operate because of the presence of other solid waste with the cardboard, which makes it difficult to separate.~~

~~— In the event either or both of these conditions should occur, Franchisee may refuse to accept cardboard at the Landfill drop-off site.~~

~~—g. The Franchisee shall also maintain a recycling drop off site at 4847 East Nye Lane, Carson City, Nevada, for the following items:~~

~~—1) cardboard, plus all of the items described in Paragraph e.~~

~~—Franchisee may in the future maintain a new recycling drop off site within Carson City, in addition to the drop off site maintained at the Carson City landfill, for all of the above items upon giving the City sixty (60) days written notice of the change.~~

~~—2. Receipt of Charges.~~

~~—a. Program Fee.~~

~~—1) A charge shall be collected by the Franchisee from the customer for each Residential Unit and each Commercial Entity who participates in solid waste service, at rates to be approved by the Board. The City and Franchisee recognize that the Franchisee may request a rate increase or decrease based upon the actual cost of a recycling program after its annual evaluation of the program.~~

~~—2) If the market price for cardboard drops below Seventy and 00/100 Dollars (\$70.00), Franchisee may charge a collection fee of an amount that will equal the difference between the market price and Fifty Dollars (\$50.00).~~

~~—3) The rate for recycling shall be separate and in addition to the rate for residential unit and commercial entity solid waste service.~~

~~—4) The Franchisee shall submit an annual audit report to the City which evaluates the cost and status of the current recycling program and reuse of materials and any other matter related to recycling and reuse which the City deems appropriate.~~

~~—b. Rates for Curbside Recycling. Rates charged by the Franchisee for curbside recycling shall be subject to approval by the Board. Any change in rates shall be submitted to the Board for approval prior to becoming effective.~~

~~—Article 10. Indemnity and Insurance Provisions.~~

~~—1. 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 Franchisee's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, or arising out of the granting of this Franchise, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.~~

~~— 2. Franchisee shall maintain in full force and effect with a carrier or carriers licensed by the State of Nevada selected by Franchisee the following insurance:~~

~~— a. Worker's compensation insurance in compliance with the laws of the State of Nevada.~~

~~— b. Comprehensive general liability insurance against any and all claims, demands and liabilities, including attorney's fees proximately resulting from any operation under such franchise with at least a single combined liability and property damage limit of \$1,000,000.00, which names the City as an additional insured.~~

~~— c. Vehicle insurance with a minimum limit of One Million and 00/100 Dollars (\$1,000,000.00).~~

~~— 3. Each policy of insurance required by this agreement shall provide that it shall not be canceled or materially changed without 30 days prior written notice to the City.~~

~~— Article 11. Miscellaneous Provisions.~~

~~— 1. The franchise hereby granted shall be transferable during its effective period by the Franchisee only with the consent of the Board of Supervisors of Carson City, Nevada. Franchisee reserves the right to assign or transfer its rights hereunder, provided that in such event, Franchisee shall file with the City 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, thirty (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 in writing by the Board of Supervisors.~~

~~— 2. The Board of Supervisors of Carson City hereby reserve that right to alter or amend this Franchise by enacting ordinances pertaining to the collection and hauling of garbage within the franchise area as from time to time may be deemed necessary to protect the interest, safety and welfare and accommodation of the public of city, provided that such ordinances are not inconsistent with the terms and provisions of this Franchise and do not result in an increased economic burden or cost to Franchisee.~~

~~— 3. The officials executing this Agreement hereby warrant and guarantee that they have the authority to act for and bind the respective organizations which they represent.~~

~~— 4. All notices required by this Agreement shall be in writing, must be sent to the addresses provided herein and are deemed effective upon placement in the United States Mail, postage prepaid.~~

~~—5. This Agreement constitutes the entire agreement between the parties. Any modification of this Agreement must be made by a writing signed by both parties. Portions of this Agreement which are held invalid are severable from the rest of this Agreement.~~

~~—6. This Agreement shall be enforced and construed according to the laws of the State of Nevada.~~

~~—7. The prevailing party to any dispute involving this Agreement is entitled to reasonable attorney's fees and costs.~~

~~—8. As used herein, the term "Owner" shall include the plural as well as the singular, and the feminine as well as the masculine and the neuter, this Agreement may be recorded in the office of the Carson City Recorder; the preamble and recitals are hereby made a part of this Agreement; and this Agreement may be executed in any number of counterparts, each of which is deemed an original but together which constitute but one and the same agreement.~~

~~—Article 12. Forfeiture of Franchise.~~

~~—In the event Franchisee should at any time fail, neglect or refuse to comply with any of the provisions or conditions hereof and shall not within ten (10) days after written demand for compliance begin the work of compliance, or if, after such beginning not to prosecute the same with due diligence to completion, City, by and through its Board of Supervisors, may, after a public hearing heard at least fifteen (15) days after the mailing to the owner of this Franchise at its last known mailing address a notice of the time, place and purpose of such hearing, declare this contract forfeited and demand an immediate accounting and compensation satisfaction.~~

~~—Failure to give adequate service and/or failure to comply with all terms of the Franchise Agreement to the residences and business establishments in the area shall be grounds for forfeiture under the above provisions. In this respect, upon petition of not less than Twenty five percent (25%) of the residential and commercial customers in the Franchise area calling to the attention of the Board of Supervisors that adequate service is not being given, the Board of Supervisors shall hold a public hearing to determine the truth of the allegations contained in the petition. If the allegations in said petition are substantiated, then said Franchise shall be forfeited at the option of the Board of Supervisors. The notice required shall be the same as for any other breach of condition of this Franchise.~~

~~—Article 13. Effective Date.~~

~~—The effective date of this Agreement is the later of the following dates: the date the Agreement is signed by the Franchisee, the date this Agreement is signed by all the City officials noted on the signature page, or the date this Agreement is approved by the Board of Supervisors of Carson City.~~

~~—Article 14. Surety.~~

~~—Franchisee shall forthwith furnish to City a bond running to the City in the penal sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) on the condition that said Franchisee shall well and truly observe, fulfill and perform each and every term and condition of this Agreement, which said bond shall provide that in the event of any breach of condition hereof the whole amount of the penal sum herein shall be taken, and recovery from the principal and surety on said bond. Said bond shall be approved by the City and the Board of Supervisors and filed with the City. Such recovery shall not prohibit the City from seeking actual damages due to default or breach of this Agreement.~~

~~—Article 15. 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.]~~