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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Application of)

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SPARTAN ENVIRONMENTAL LLC)

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For a Certificate of Public) DOCKET TG-112025

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Convenience and Necessity to)

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Operate Motor Vehicles in)
Furnishing Solid Waste Collection)
Service)

9

PREHEARING CONFERENCE - VOL. I

10

Pages 1-24

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ADMINISTRATIVE LAW JUDGE MARTIN LOVINGER

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1:30 P.M.

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FEBRUARY 1, 2012

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Washington Utilities and Transportation Commission

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DISPOSAL SERVICES, INC., MURREY'S DISPOSAL, INC., and
PULLMAN DISPOSAL SERVICE, INC.,

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1 OLYMPIA, WASHINGTON FEBRUARY 2, 2012

2 1:30 P.M.

3 JUDGE LOVINGER: Let's go on the record.
4 Good afternoon. It's approximately 1:32 on
5 February 1, 2012, in the Washington Utilities and
6 Transportation Commission's Hearing Room 206 in Olympia,
7 Washington.

8 This is the time and place set for the
9 prehearing conference in Docket No. 112025, In Re:
10 Application of Spartan Environmental, LLC for a Certificate
11 of Public Convenience and Necessity to Operate Motor
12 Vehicles in Furnishing Solid Waste Collection Service.

13 Spartan Environmental has filed with the
14 Washington Utilities and Transportation Commission an
15 application to provide solid waste collection service
16 consisting of biohazardous and biomedical waste in the State
17 of Washington.

18 Notice of the application was published
19 in the Commission's weekly docket on November 30, 2011.
20 Washington Refuse & Recycling Association; Rubatino Refuse
21 Removal, Inc.; Consolidated Disposal Services, Inc.;
22 Murrey's Disposal, Inc.; Pullman Disposal Services, Inc.;
23 Stericycle of Washington, Inc.; and Waste Management of
24 Washington, Inc., doing business as WM Healthcare Solutions
25 of Washington, have all filed protest to this application.

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1 My name is Martin Lovinger. I'm the
2 Administrative Law Judge presiding over these proceedings.

3 I would appreciate it if everyone in the room
4 would please turn off their cell phones, or at least turn
5 them to silent so we can get started.

6 Some of the parties may be appearing on the
7 Committee's conference bridge and not in person. I would
8 ask that you identify yourself each time you speak so that
9 all parties, and especially the court reporter, Ms. Liz
10 Harvey, will know who is speaking. Also please speak as
11 clearly and audibly as possible to make sure that we hear
12 you, because this proceeding is being transcribed by a court
13 reporter. She may interrupt you to let you know she didn't
14 hear what you were saying. Let's try to avoid the necessity
15 of repeating what you've already said.

16 Our first order of business is the taking of
17 appearances. Please state your name and party you are
18 representing. If you have already-- if you have not already
19 given your business card to the court reporter, please do
20 so.

21 We'll start with the Commission staff,
22 please.

23 MS. WOODS: Good afternoon, your Honor. I'm
24 Fronda Woods, Assistant Attorney General for Washington
25 Utilities and Transportation Commission staff. I believe

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1 it's customary when parties make appearances to give their
2 addresses and telephone numbers and everything. So I'm
3 going--

4 JUDGE LOVINGER: Not if you've provided it
5 already, but you're welcome to do so.

6 MS. WOODS: I'll try. My address is 1400
7 South Evergreen Park Drive Southwest, P.O. Box 40128,
8 Olympia, Washington, 98054-0128. My telephone number is
9 area code 360-664-1225. My fax number is area code
10 360-586-5522. My e-mail address is Fwoods@utc.wa.gov.

11 I'm pleased to have with me in the hearing
12 room today Penny Ingram from Commission staff.

13 JUDGE LOVINGER: Thank you very much.

14 Next we'll hear from the applicant, Spartan
15 Environmental LLC.

16 MR. GADBOIS: Greg Gadbois with Spartan
17 Environmental.

18 JUDGE LOVINGER: And the information that you
19 previously provided us is still accurate?

20 MR. GADBOIS: Yes, all the contact
21 information remains the same. I do have a business card.

22 JUDGE LOVINGER: You can provide it to the
23 court reporter. That would be appreciated.

24 Next we'd like to hear from the
25 representative for Washington Refuse & Recycling, and

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1 Rubatino, Consolidated Disposal Services, Murrey's Disposal,
2 and Pullman Disposal Service.

3 MR. SELLS: Thank you, your Honor. If you
4 please, James Sells, Attorney, Private Mail Box 22, 3110
5 Judson Street, Gig Harbor, Washington, 98335; telephone,
6 360-981-0168; e-mail, Jamessells@comcast.net; appearing on
7 behalf of Protestants Washington Refuse & Recycling,
8 Rubatino Refuse Removal Inc., Consolidated Disposal
9 Services, Inc., Murrey's Disposable (sic), Inc., and Pullman
10 Disposable (sic), Inc.-- Disposal, not disposable.

11 JUDGE LOVINGER: Mr. Johnson, I believe
12 you're here on behalf of Stericycle of Washington.

13 MR. JOHNSON: Yes, thank you, your Honor. My
14 name is Stephen B. Johnson. I'm with the law firm of Garvey
15 Schubert Barer. We represent Stericycle of Washington, Inc.
16 in these proceedings. You have the accurate information
17 with respect to my address, my telephone-- general telephone
18 number, my e-mail in the hearing notice for this prehearing
19 conference. To add one, I'll give my direct line as well:
20 206.816.1309. Please feel free to use that one. I don't
21 know why we need to have to go through a receptionist in
22 order to talk on the phone. So I answer that phone
23 regularly.

24 JUDGE LOVINGER: Thank you.

25 MR. VAN KIRK: I'm Jared Van Kirk, also with

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1 Stericycle of Washington Inc. at the same address as Steve.
2 My direct line is 206.816.1372.

3 JUDGE LOVINGER: And I believe, Ms. McNeill,
4 you're representing Waste Management of Washington Inc.?

5 MS. MCNEILL: Thank you, your Honor. That's
6 correct. Polly L. McNeill with Summit Law Group,
7 representing Waste Management of Washington Inc., d/b/a WM
8 Healthcare Solutions of Washington. I have provided my
9 business card. And you have the correct information,
10 including direct dial numbers, in the prehearing conference
11 notes.

12 JUDGE LOVINGER: Thank you.

13 MS. MCNEILL: And with me today is my
14 colleague, Jessica. I'll let her introduce herself.

15 MS. GOLDMAN: Good afternoon, your Honor.
16 Jessica Goldman from Summit Law Group.

17 JUDGE LOVINGER: Welcome.

18 MS. GOLDMAN: Thank you.

19 JUDGE LOVINGER: Is there anybody on the
20 bridge line at this time? Nobody's on UTC's conference
21 line.

22 Is there anybody here who wants to petition
23 to intervene in this matter?

24 With that out of the way, we're to
25 preliminary matters. And I would like to start by asking if

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1 there are any preliminary matters that need to be addressed.
2 Again, I'll turn to Commission staff.

3 MS. WOODS: Your Honor, Fronda Woods for
4 Commission staff. I don't know whether this would fall
5 within the category of a preliminary matter. Mr. Gadbois
6 from the Applicant has indicated that he may be interested
7 in retaining an attorney. So that could affect decisions
8 that we make today. I don't--

9 JUDGE LOVINGER: Do you have a recommendation
10 on that?

11 MS. WOODS: I won't make a recommendation
12 until we hear from everybody else.

13 I'd also like to note that yesterday or the
14 day before, I sent to Spartan and the attorneys for the
15 Protestants copies of prior decisions that the Commission
16 has made in biomedical waste cases, just so we'd all have
17 access to the same information. And your Honor, if you like
18 and if no one objects, I would forward to you those same
19 e-mails so that you have access to those decisions as well.

20 JUDGE LOVINGER: Thank you. I would
21 appreciate that.

22 MR. JOHNSON: Certainly no objection here,
23 your Honor.

24 MR. SELLS: No objection.

25 JUDGE LOVINGER: We'll take it if we don't

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1 hear from everyone that there's no objection. Everyone
2 doesn't have to say "no objection."

3 Mr. Gadbois, I'll turn to you next. We're
4 dealing with preliminary matters. Ms. Woods has raised one
5 sort of on your behalf that might be an important one for us
6 to consider. Can you please tell you us what is
7 transpiring?

8 MR. GADBOIS: Well, the intent was to find
9 out today what steps I was going to need to take before the
10 actual hearing. So I was going to get a list together of
11 everything that I was going to need to collect, evidence
12 that I was going to need to bring, and contact an attorney
13 at that point and go through it with him or her and go from
14 there.

15 JUDGE LOVINGER: You realize that among other
16 things we're going to be setting a schedule for how to
17 proceed in this matter?

18 MR. GADBOIS: Mm-hm.

19 JUDGE LOVINGER: And that may not necessarily
20 coincide with the schedule of the attorney you're hoping to
21 employ.

22 MR. GADBOIS: Right. Yes.

23 JUDGE LOVINGER: We can't tell people how to
24 run their cases.

25 MR. GADBOIS: Right.

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1 JUDGE LOVINGER: So thank you.

2 Are there any other preliminary matters that
3 you wish to raise at this time?

4 MR. GADBOIS: I don't have any, no.

5 JUDGE LOVINGER: Okay. You're next, Mr.
6 Sells.

7 MR. SELLS: I don't, your Honor. Thank you.

8 JUDGE LOVINGER: Thank you.

9 Mr. Johnson and Mr. Van Kirk?

10 MR. JOHNSON: Your Honor, Steve Johnson.
11 It's troubling me a little bit just to think that we're
12 going to set a schedule and then we're going to have a
13 lawyer come in a little later for the Applicant and
14 potentially have to revisit it.

15 So I had thought one possible approach would
16 be to-- and I don't know, your Honor, maybe we need a
17 schedule that we would let the lawyers react to. But one
18 possible approach would be to provide for and schedule a
19 prehearing or a discovery conference with the notion being
20 that Mr. Gadbois would have an attorney selected and present
21 at that discovery conference. We could have a-- as I
22 understand, the rule permits a rather informal discussion of
23 the case and what's involved, permitting then potentially
24 Mr. Gadbois and his attorney to then be in a better position
25 to understand what kind of scheduling and what kind of

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1 discovery activity and what kind of prehearing activity
2 would be required to actually present the case.

3 I don't know whether that's a better idea
4 than just setting a schedule and then reacting to someone
5 coming in later representing Mr. Gadbois, but that's a
6 thought that occurred to me.

7 JUDGE LOVINGER: This is not a complaint
8 matter. So we're not-- certainly not under a situation
9 where we have a-- the only person who is going to be
10 inconvenienced by time obviously would be an applicant by
11 taking more time to handle this matter.

12 I certainly would propose that whatever we
13 do, we set things far enough down the road so that there
14 will be time to handle it.

15 I am interested in the fact, though, that
16 you've raised it as a discovery conference. What discovery
17 do you envision in this matter?

18 MR. JOHNSON: Your Honor, I would envision
19 rather full discovery, including written data requests,
20 perhaps a series of two data requests, followed by
21 depositions potentially. I think that's the kind of
22 procedure we followed in the prior cases involving a broad
23 application for a statewide authority in medical waste.
24 That's been my thinking.

25 JUDGE LOVINGER: Ms. Woods, if I can ask you

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1 Commission staff's position on this?

2 MS. WOODS: I just learned of this proposal
3 for a discovery conference just before the hearing. So we
4 haven't had a chance to discuss what type of discovery or
5 discovery conference might be needed.

6 JUDGE LOVINGER: If we were to take a recess
7 for a few minutes, say ten minutes, would it give you a
8 chance to talk with people and perhaps see if something
9 could be worked out?

10 MS. WOODS: We could try that, your Honor.

11 JUDGE LOVINGER: Thank you. We're going to
12 go to recess. We'll be at recess until five minutes to
13 2:00, give the parties a chance to talk about this.

14 Obviously we weren't any more aware of Mr.
15 Gadbois's proposal than anyone else was. And I would like
16 to see if the parties can work out something in the way of a
17 schedule. We'd be open to whatever the parties can agree
18 to.

19 Mr. Gadbois?

20 MR. GADBOIS: I was going to say it wasn't my
21 intent to throw a wrench into the situation, only that I
22 don't know exactly what is going to be asked before the
23 hearing. So my intent was to gather that information. I
24 don't know that it's going to take a week or that it's going
25 to take a month.

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1 So my plan was to gather the information that
2 I was going to need to come up with for the hearing. I
3 don't know that that's going to take that long. Once I get
4 the list, I'll be able to better gauge what that's going to
5 be. I don't know how long a lawyer is going to take to need
6 to go over it as well. So I wasn't intending to throw a
7 wrench into it. I'm trying to find out what I'm going to
8 need to bring.

9 JUDGE LOVINGER: The discovery process
10 complex is considerably more complex than us providing you
11 with a list of documents you're going to have to provide.

12 MR. GADBOIS: Okay.

13 JUDGE LOVINGER: And according to what Mr.
14 Johnson has indicated, he's looking at the possibility of
15 doing depositions, which will be to some extent like
16 mini-trials in which people are called under subpoena to
17 provide testimony.

18 I don't know that we can provide you with
19 enough information for you to know today.

20 MR. GADBOIS: Okay.

21 JUDGE LOVINGER: All right. However, it's
22 our position to make sure that whatever happens, everyone
23 gets a fair hearing. And that's the important thing for the
24 UTC.

25 Thank you. We'll be at recess.

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1 (Recess taken from 1:47 - 2:25 p.m.)

2 JUDGE LOVINGER: Let's go back on the record.
3 It's now 25 minutes after 2:00. That only took a half hour
4 longer than we originally set.

5 Do we have anything to propose at this
6 time?

7 MR. JOHNSON: Your Honor, Steve Johnson for
8 Stericycle. Speaking for the group, as we tried to come up
9 with a schedule for at least the first phase of things, we
10 have an agreed plan to get started with a schedule. And if
11 I can, I will lay it out for you.

12 JUDGE LOVINGER: Sure. Thank you.

13 MR. JOHNSON: And see how it fits for your
14 Honor.

15 We thought we would try to have a discovery
16 conference at a point where Mr. Gadbois might have an
17 attorney retained and able to attend. So we plan to have
18 that either February 27, 28, or 29, allowing some
19 flexibility there for Mr. Gadbois' counsel.

20 We would attempt at that time to review the
21 case as it might be presented to consider whether there's
22 any way it could be narrowed, consider the kinds of
23 discovery that might be required, and whether there are
24 informal ways to obtain information that would shorten the
25 recovery process.

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1 May 25, which I believe is just before the Memorial Day
2 weekend. So we would get our work done before the holiday.

3 And then we would request your Honor schedule
4 a prehearing conference for the week of June 11 through 15,
5 somewhere in that week, to consider the next phase of the
6 hearing process, whether any additional discovery is needed,
7 whether depositions are needed, whether they will be
8 permitted, to set a schedule for prefiled testimony if the
9 parties and your Honor think that's the way to go, and for
10 the hearing.

11 And that is the extent of the schedule we
12 came up with.

13 JUDGE LOVINGER: Okay. What I would propose
14 is at some point when we reconvene, it's going to be for a
15 status conference rather than a hearing conference. I'm
16 hoping to take care of what we'll need today, but we'll see.

17 Mr. Gadbois, I have a question for you,
18 though. Do you understand the nature of all these
19 discussions?

20 MR. GADBOIS: Yes. Yes. They explained as
21 we were going through it.

22 JUDGE LOVINGER: And do you understand the
23 time that's being set out here?

24 MR. GADBOIS: Yes, I do.

25 JUDGE LOVINGER: And as the Applicant, this

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1 length of time is okay with you?

2 MR. GADBOIS: Yes.

3 JUDGE LOVINGER: At this point, if nobody
4 objects-- I wasn't going to go along with such a lengthy
5 schedule, but if nobody's objecting, at this point you're
6 only asking for data requests. And I see no reason to allow
7 that to proceed (sic).

8 MR. JOHNSON: I'm sorry, your Honor?

9 JUDGE LOVINGER: At this point you're only
10 requesting permission to do data requests. I don't see any
11 reason not to allow that. And Mr. Gadbois seems satisfied
12 with the schedule, so he's not inconvenienced. So I'll
13 agree to the schedule.

14 MR. JOHNSON: Thank you, your Honor.

15 MR. GADBOIS: Do we need to set a specific
16 date or that will come later?

17 JUDGE LOVINGER: We'll set a specific date
18 for a status conference, it looks like in June. And-- but
19 that's all we're going to do today.

20 The other dates are between you and between
21 all the parties here to determine how they're going to go
22 about arranging it.

23 MR. JOHNSON: Your Honor, don't we need to
24 have deadlines for submitting and responding to these
25 discovery requests in order to make sure this thing does

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1 move along?

2 The dates for response, for example, go
3 beyond--

4 JUDGE LOVINGER: You're asking me to put
5 these dates for responding into the prehearing order?

6 MR. JOHNSON: I think that would be
7 appropriate. The dates for issuing requests and for
8 responses, if they were in the prehearing order then we have
9 our marching orders, and we will proceed along that
10 schedule. If we don't have them in there, then we have no
11 structure for proceeding.

12 JUDGE LOVINGER: I'm not going to put
13 something in the order about a discovery conference on the
14 27th, 28th or 29th. I will allow the parties to work that
15 out. You'll be faced with these deadlines. I guess that
16 will be the encouragement for to you arrange that and make
17 it work.

18 MS. WOODS: Your Honor, Fronda Woods for
19 Commission staff. The Commission's procedural rules do
20 permit discovery deadlines to be set for-- in a prehearing
21 order.

22 JUDGE LOVINGER: That's what I'm going to do.

23 MS. WOODS: Thank you.

24 JUDGE LOVINGER: Thank you very much for
25 bringing that to my attention as well.

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1 But I do want it understood at this point,
2 the discovery that's being allowed is being limited to data
3 requests. Everyone understands that? Okay.

4 All right. I will take all this information
5 under advisement, and we'll be sending out a prehearing
6 order unless there's something else that people have to take
7 care of today.

8 MR. SELLS: There's no date today for a
9 status conference, then?

10 JUDGE LOVINGER: Oh, yes. I should get a
11 date for today. I need go down the hall, however, to be
12 able to find out what the schedule is. I did not bring the
13 June calendar with me.

14 Is everyone planning that it will be by
15 conference, or that people be here in person for the status
16 conference?

17 I would suggest people be here in person at
18 that time because there are probably some things we're going
19 to have to set, other dates that we're going to have to set.

20 MS. MCNEILL: Your Honor, Paula McNeill for
21 Waste Management. Yes, I would be personally present for
22 that, either I or Jessica. But counsel will be present for
23 it.

24 JUDGE LOVINGER: Ms. Woods?

25 MS. WOODS: Certainly Commission staff can be

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1 present for status conference.

2 JUDGE LOVINGER: Okay. Do you feel that
3 there's no reason to be?

4 You made that sound a little hesitant.

5 MS. WOODS: I was just having trouble with
6 the microphone, your Honor.

7 JUDGE LOVINGER: We'll go off the record for
8 a few moments. I have to get a calendar.

9 (Pause in proceedings.)

10 JUDGE LOVINGER: Okay. Back on the record.

11 The parties seem to have indicated an
12 interest in having this conference in June. The dates of
13 the 11th and 12th work for the Commission's schedule.

14 MR. JOHNSON: What kind of a day, your
15 Honor, is the 11th? Is that a Monday?

16 JUDGE LOVINGER: It's a Monday.

17 MR. JOHNSON: I think Tuesday would be
18 better.

19 JUDGE LOVINGER: How about Tuesday the 12th
20 at 1:30?

21 MS. MCNEILL: Great.

22 JUDGE LOVINGER: Does anyone believe there
23 would be an advantage at this time to set a hearing in this
24 matter, or is that something that everyone envisions is so
25 up in the air as a result of the planned discovery procedure

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1 that they don't want to do so at this time?

2 MS. MCNEILL: Your Honor, Polly McNeill for
3 Waste Management. I think it would premature to set a date
4 for a hearing.

5 But I would suggest that we all recognize
6 that the hearing could take place very shortly after the
7 status conference. So I would hate to see it sort of start
8 all over again with people's calendars when we reconvene for
9 the status conference.

10 So we all should be sort of thinking about
11 the possibility, anyway, of there being no further discovery
12 and there being no further motions or issues, and the next
13 step would be to prefile the testimony.

14 So I don't think that's anything that needs
15 to be mentioned in your order. I just mention it for all
16 the good of the group, I guess.

17 JUDGE LOVINGER: Anything else from any of
18 the other parties?

19 MR. SELLS: Jim Sells. Your Honor, please,
20 being a bit old-fashioned, I really like to know, roughly at
21 least, when I'm going to have a trial of some sort. And it
22 doesn't certainly have to be set for a day.

23 But I agree with Ms. McNeill that I'd like to
24 have a range of time that we're looking at where there may
25 be, if for no other reason than to let my witnesses know not

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1 to schedule vacations and so forth during that time.

2 JUDGE LOVINGER: I'm going to suggest that we
3 go off the record.

4 (Discussion off the record.)

5 JUDGE LOVINGER: Is there anything else that
6 we have to take care of?

7 Are there any other matters that we need to
8 handle at this time?

9 I'll take all this information under
10 advisement, and you'll receive an order accordingly.

11 Thank you very much. We're adjourned.

12 (Proceeding concluded at 2:48 p.m.)

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C E R T I F I C A T E

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5 STATE OF WASHINGTON

6 COUNTY OF KING

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9 I, Elizabeth Patterson Harvey, a Certified Court

10 Reporter and Notary Public in and for the state of

11 Washington, do hereby certify that the foregoing transcript

12 is true and accurate to the best of my knowledge, skill and

13 ability.

14 IN WITNESS WHEREOF, I have hereunto set my hand and seal

15 this 9th day of February, 2012.

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ELIZABETH PATTERSON HARVEY, CCR RPR

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23 My commission expires:

24 JUNE 2012

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