

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND**

This Non-Exclusive Franchise Agreement (“Agreement”) is made and entered into this ____ day of _____, 2016 (“Effective Date”), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 (“City”), and Ferma Greenbox, Inc., a California corporation, with its principal place of business located at 1265 Montecito Avenue, Suite 300, Mountain View, CA 94043 (“Contractor”). City and Contractor may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement”.

RECITALS

Whereas:

- A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”; and
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. “A” definitions

- (1) The term “Alternative Daily Cover” shall mean the layer of compacted material that is placed on top of a day’s deposition of waste at an operational landfill site that provides odor reduction and a firm base to operate large equipment. For reporting purposes of this Agreement, ADC is classified as Garbage.
- (2) The term “Anaerobic Digestion” shall mean a series of processes in which microorganisms break down biodegradable material in the absence of

oxygen to produce biogas.

b. “B” definitions

c. “C” definitions

- (1) The term “Collector” shall mean any exclusive or nonexclusive franchise hauling contractor duly authorized by the City Council to collect, transport and dispose of Refuse under specific contract terms with the City.
- (2) The term “Commercial” shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.
- (3) The term “Composted Material” shall mean organic refuse that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility.
- (4) The term “Composting” shall mean the biological degradation and transformation of organic refuse under controlled conditions designed to promote aerobic decomposition at a solid waste facility.
- (5) The term “Construction and Demolition Debris” covers a broad spectrum of recoverable materials associated with construction and demolition activities including, but not limited to concrete, asphalt, dirt, lumber, roofing materials, sheet rock, green waste, bricks, rock, and metal.
- (6) The term “Container” shall mean all types of receptacles serviced by Contractor under this Agreement, including but not limited to carts, front-load roll-off bins, drop body debris bins, and compactors.

d. “D” definitions

e. “E” definitions

- (1) The term “Exclusive Franchise Area” shall mean all properties in the City not zoned for an “Industrial” use, which can only be serviced by a Collector with an exclusive franchise agreement that is approved by the City Council.

f. “F” definitions

- (1) The term “Food Waste” shall mean unused and discarded solid food products/scrap including, but not limited to vegetables, fruits, meat, fish, shells bones, cheese, bread, paper-based tea bags and coffee grounds. Food Waste is an Organic Waste.

g. “G” definitions

- (1) The term “Garbage” shall mean all materials that are not recycled and are disposed of or used as alternative daily cover in a landfill, or destroyed by incineration.
- (2) The term “Gross Billings” shall mean the total amount of money paid by customer to the non-exclusive franchise hauler during an individual reporting quarter for services provided by Contractor.

h. “H” definitions

i. “I” definitions

- (1) The term “Industrial” shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.
- (2) The term “Industrial Refuse” shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclables, and excluding hazardous wastes.

j. “J” definitions

k. “K” definitions

l. “L” definitions

- (1) The term “Landfill” shall mean a permitted solid waste disposal facility that is used for the disposal of garbage.

m. “M” definitions

- (1) The term “Material Recovery Facility (MRF)” shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling, composting, or anaerobic digestion.
- (2) The term “Mixed Use” shall mean a property zoned for mixed use (MU), master planned community (MC), or planned development (PD) as shown on the official Zoning Map of the City of Santa Clara.

n. “N” definitions

- (1) The term “Non-Exclusive Franchise (NEF) Fee” shall mean a fee paid to the City on a quarterly basis that is calculated as a percentage of gross billings. NEF fee levels are based upon the type of service provided by Contractor and the level of material recovery associated with each type of

service.

o. “O” definitions

- (1) The term “Organic Waste” shall mean organic materials, including, but not limited to, materials generated from tree trimmings, shrubbery, pruning, vegetable garden waste, dead plants, weeds, leaves, grass clippings, Food Waste, non-food vegetative matter, soiled paper and cardboard that decomposes biologically.

p. “P” definitions

- (1) The term “Public and Open Spaces” shall mean designated zoning for agriculture (A) or public or quasi-public (B) as shown on the official Zoning Map of the City of Santa Clara.

q. “Q” definitions

- (1) The term “quarter” shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

r. “R” definitions

- (1) The term “Recoverable Material” shall mean all materials that have the potential to be recovered from refuse containers for recycling, composting, or anaerobic digestion processes. This material includes, but is not limited to: green waste, food waste, plastics, glass, white paper, newspaper, mixed paper, cardboard, electronics, scrap metals, and miscellaneous types of construction and demolition debris.
- (2) The term “Recovery Rate” shall mean the percentage of total incoming refuse to a MRF that is recovered as recyclables.
- (3) The term “Recyclables” shall mean all Recoverable Material that is actually recycled and made into a new product, including compost from composting and biogas from anaerobic digestion processes, as opposed to recoverable material that is disposed of as Garbage.
- (4) The term “Recycling” shall mean the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become garbage and returning them for use or reuse in the form of raw materials for new, used, or reconstituted products.
- (5) The term “Refuse” covers all classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage and recoverable material, and excluding hazardous wastes. The term “refuse” may be used interchangeably with the term “solid waste”.

- (6) The term “Residential” shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.
- (7) The term “Residual” shall mean the left over material that cannot be converted to composted material in a composting operation, to biogas in an anaerobic digestion process, or cannot be recycled at a material recovery facility. The “residual” is garbage for the purposes of this agreement.

s. “S” definitions

- (1) The term “Single-Stream Recycling” shall mean a recycling program offered by the hauler in which customers place multiple types of non-construction and demolition recoverable materials in a single container that is designated specifically for recyclables and is taken to a material recovery facility for processing. Individual single-stream recycling containers must have less than five percent (5%) contamination to be qualified for the three percent (3%) of gross billings NEF Fee level.
- (2) The term “Source Separated Recycling” shall mean recyclable material that is separated by the customer and placed into containers designated for recycling single specific types of recoverable materials, including construction and demolition debris. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the three percent (3%) of gross billings NEF Fee level.

t. “T” definitions

u. “U” definitions

v. “V” definitions

w. “W” definitions

- (1) The term “Waste Audit” shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers who may be required by the City per terms and conditions described herein.

x. “X” definitions

y. “Y” definitions

z. “Z” definitions

2. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

3. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

4. COMMENCEMENT AND COMPLETION OF SERVICES.

- a. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- b. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

6. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on June 30, 2019.

7. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

8. WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

9. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

10. BUSINESS TAX LICENSE REQUIRED.

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

11. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be

construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice (“Notice of Termination”) which clearly expresses that Party’s intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

14. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

15. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

16. NO PLEDGING OF CITY’S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City’s credit by Contractor under this Agreement.

17. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

18. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City Industrial Refuse and Recyclables collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall include customer account name, service address, gross billings and cubic yards of service per week for garbage, recycling, and organics. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional NEF Fee payments are due to City. The costs of this Waste Audit shall be borne by Contractor. Prior to conducting Waste Audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional NEF Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 13, of this Agreement.

21. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

22. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

27. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

28. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

29. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Deputy Director of Public Works
1700 Walsh Avenue
Santa Clara, California 95050
or by facsimile at (408) 988-0237

And to Contractor addressed as follows:

Name:
Address:
or by facsimile at

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 1C of Exhibit A)- \$200.00 per occurrence;
2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 3 of Exhibit A) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 ¼%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 3 of Exhibit A) - \$50.00 per day late.
4. Failure to submit and maintain insurance certificates in full compliance with the requirements set forth in Exhibit "C" (Section 13) -\$100.00 per day out of compliance.
5. Failure to maintain contactor name and phone number on containers or remove graffiti within 48 hours of notification - \$100.00 per occurrence Section 4 of Exhibit A).
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 1a of Exhibit A) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination of Contractor's Agreement with City.

d. Unauthorized Containers

The City shall notify, in writing, any Contractor who violates Section 1a of Exhibit A of Agreement that the prompt and permanent removal of such Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Container. If Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Agreement, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

1. Any Contractor who violates Section 1a of Exhibit A shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Container by the City. Charges for the impounding and subsequent release of any unauthorized Container shall be \$200 plus \$50 per day storage cost. The Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Containers.
2. Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Containers.

e. Failure to Submit Required Waste Audit Reports

Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late, and the immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

f. Failure to Cover Containers During Transport

Failure to cover Containers during transport to a disposal or recycling facility or to clean up litter that has been generated from a collection vehicle (Section 5 – Exhibit A) - \$500.00 per occurrence.

g. Servicing a Customer Account Generating at Least Four Cubic Yards of Garbage Per Week that is in Violation of Mandatory Recycling Requirements

Servicing a customer account generating at least four cubic yards of garbage per week that is in violation of mandatory recycling requirements (Section 7 – Exhibit A) - \$500.00 per occurrence.

h. Failure to Submit the Number of Customer Accounts Subject to the

Mandatory Recycling Requirements

Failure to submit the number of customer accounts subject to the mandatory recycling requirements Contractor is servicing by May 31st (Section 7 – Exhibit A) - \$500.00 per occurrence.

32. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

33. DISPUTE RESOLUTION.

- a. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- b. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- c. The costs of mediation shall be borne by the Parties equally.
- d. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

34. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

35. AFFORDABLE CARE ACT OBLIGATIONS

To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act (“Act”) and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor’s responsibilities under the Act.

36. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

37. PREVAILING WAGES.

- a.** Labor Code Compliance. Contractor must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. Contractor agrees to include prevailing wage requirements in its contracts for the Project.
- b.** Requirements in Subcontracts. Contractor shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement. Subcontracts shall include all prevailing wage requirements set forth in Contractor’s contracts.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

partnership

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: _____

Telephone 887-337-6211 _____

Fax: _____

“CONTRACTOR”

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
INSERT NAME**

SCOPE OF SERVICES

“EXHIBIT “A”

1. CONTRACTOR’S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the purpose of collecting and picking up Industrial Refuse, and to remove and transport said material to its destination from properties zoned for Industrial use in the City of Santa Clara for a period of time commencing on the Effective Date. Contractor shall not enter into individual service agreements with Industrial customers that extend beyond the term of this Agreement. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of Refuse or Recyclables at properties in the Exclusive Franchise Area in the City unless authorized by separate franchise agreement with the City. Contractor may collect only Recyclables from these zoned areas at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any Recyclables set-out for collection must be placed in separately marked containers, and shall not be contaminated by garbage.

c. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut Residential areas, collections shall not commence prior to 7:00 a.m.

d. Zoning Changes

The zoning designation of individual properties is subject to change during the term of this Agreement. In the event that a property changes its zoning designation to a non-Industrial use, Contractor must provide the customer notice that Contractor will discontinue service within thirty (30) days of notice. Customer will be required to subscribe to services provided by the approved Collector for properties in the Exclusive Franchise Area. The terms of this Agreement supercede all terms in an agreement between Contractor and customers.

e. Building Construction Exception

Exceptions in the Exclusive Franchise Area will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for Garbage. Loads of mixed Construction & Demolition Debris must contain less than five percent (5%) Residual, as determined by City to qualify for this exemption. Contractor is required to report the amount of Recyclables collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

2. NON-EXCLUSIVE FRANCHISE (NEF) FEE PAYMENTS TO CITY.

Contractor shall pay to City Non-Exclusive Franchise (NEF) fees for the privilege of engaging in the business of collecting, hauling, and transporting Refuse to its destination, which are dependent upon the type of service provided and the amount of landfill diversion. All Container and equipment rental charges are to be included in the gross billings for each Industrial Customer.

- a.** Eighteen percent (18%) of the total gross billings for customer accounts whose refuse is taken to a landfill and is not processed through an individual or series of Material Recovery Facility (MRF), composting or anaerobic digestion processes with a recovery rate of at least thirty percent (30%).
- b.** Twelve percent (12%) of the gross billings for customer accounts whose refuse is processed through an individual or series of MRF, composting, or anaerobic digestion processes that recover greater than or equal to thirty percent (30%), but less than sixty percent (60%) of incoming materials.
- c.** Eight percent (8%) of the total gross billings for customer accounts whose refuse is processed through an individual or series of MRF, composting, or anaerobic digestion processes that recover at least sixty percent (60%) and less than ninety-five percent (95%) of incoming materials.
- d.** Three percent (3%) of the total gross billings for customer accounts whose refuse is processed through an individual or series of MRF, composting, or anaerobic digestion processes with a recovery rate greater than or equal to ninety-five percent (95%).

3. QUARTERLY AND ANNUAL REPORTING TO CITY.

- a.** Contractor shall file with the City's Director of Finance and forward a copy to the City's Deputy Director of Public Works, for each Quarter's reporting period (or portion thereof), a written statement certifying the total Gross Billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each Quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE

OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)”.

- b.** Each certifying written statement filed with the City’s Director of Finance shall be accompanied by the NEF Fee payment equal to the appropriate percentage of the Gross Billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent NEF Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one Quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 16b, of this Agreement.
- c.** A Contractor with a total reportable Gross Billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor’s records were examined and the quarterly reports were a fair and accurate representation of the Gross Billings and NEF Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor’s fiscal year.
- d.** A Contractor providing Recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit “B”, listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for Recycling service or Container rental.
- e.** City may conduct an audit of Contractor’s Gross Billings to ensure that the correct NEF Fee payments are being paid during specified quarters. Contractor must provide City a summary of customer gross billings within thirty (30) days of request. Customer records to be provided shall include: customer name; billing address, collection address (if different from billing address); gross billings for refuse; NEF franchise fees paid for refuse; weekly refuse service level gross billings for recycling; NEF franchise fees paid for recycling; and weekly recycling service level. Penalties will be assessed in accordance Section 31.c(9) of this agreement for failure to submit information for audit purposes.
- f.** Contractor’s quarterly reporting to City required shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

4. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

- a.** Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All Industrial Refuse

collected by Contractor shall be transported in collection equipment, so constructed and so loaded that there will not be any leakage or dropping of refuse or recyclable material therefrom. Industrial Refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Failure to label and maintain collection vehicles to the standards of this Agreement is subject to a \$100.00 fine per occurrence.

- b. Contractor may furnish City-approved, detachable metal or plastic Containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of Containers. Contractor shall repair, repaint or touch-up such Containers as required, but not less than once every two years, and shall maintain such Containers in a sanitary non-leaking condition. Graffiti must be removed from Containers within forty-eight (48) hours of notification. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Containers designated for Recyclables shall be labeled with the type(s) of material(s) to be placed therein. Failure to label and/or maintain Containers to the standards of this agreement is subject to a \$100.00 fine, per occurrence.

5. COVERED LOADS AND LITTER ASSOCIATED WITH HAULING ACTIVITIES.

Contractor shall be responsible for ensuring all Containers are covered during transportation to a recycling or disposal facility. Contractor shall be responsible for ensuring that trash from its solid waste collection vehicle is being littered during transport. Contractor is required to pick up litter generated from all hauling operations. Failure to adequately pick up litter generated from hauling operations to the standards of this Agreement is subject to a \$100.00 fine, per occurrence.

6. COMPLIANCE WITH AIR RESOURCES BOARD REGULATIONS.

Contractor shall maintain compliance with all applicable air pollution control laws during the entire period of this Agreement.

7. MANDATORY RECYCLING REQUIREMENTS.

Contractor is prohibited from providing garbage service to customers with at least four (4) cubic yards per week that do not have at least 32 gallons of weekly recycling collection in place, or qualify for an approved exception. Contractor is required to submit the number of customer accounts subject to the mandatory recycling requirements it is servicing by May 31st of each year to City. Contractor is required to inform City if it is providing garbage collection service to regulated customers, but not recycling services with the May 31st submittal.

8. MANDATORY ORGANIC WASTE RECYCLING REQUIREMENTS.

Contractor is prohibited from providing garbage service to customers with at least four (4) cubic yards per week that do not have at least 32 gallons of weekly Organic Waste Recycling in place, or qualify for an approved exception. Contractor is required to submit the number of customer accounts subject to the mandatory Organic Waste Recycling requirements it is servicing by May 31st of each year to City. Contractor is required to inform City if it is

providing garbage collection service to regulated customers, but no Organic Waste Recycling services with the May 31st submittal.

9. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE REFUSE.

All Industrial Refuse collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected Industrial Refuse at City's designated Landfill site at City's preferred disposal rate for exclusive franchise Refuse. Capacity at City's designated Landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted Recycling, Composting, Anaerobic Digestion, or Landfill disposal facility.

10. SANTA CLARA COUNTY LANDFILL TIP FEES

Contractor is responsible for paying all applicable Santa Clara County landfill tip fees on Refuse collected in City, even if the Refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate. These fees include, but are not limited to the Solid Waste Planning Fee and the AB 939 Implementation Fee.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND**

INSERT NAME

“EXHIBIT “B”

**CERTIFICATE OF GROSS BILLINGS: NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE
PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE
RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

Mail To: (Certificate and Payment) City of Santa Clara; Accounting Services 1500 Warburton Avenue, Santa Clara, CA 95050	cc: (Certificate Only) City of Santa Clara, Deputy Director of Public Works 1700 Walsh Avenue, Santa Clara, CA 95050
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Company Name: _____ Calendar Year/Reporting Quarter: _____
 Name: _____ Title: _____ Phone Number: _____

PART I – REPORTING QUARTER COLLECTION SUMMARY

A. Landfilled refuse (including non-source separated mixed debris containers not taken to a material recovery facility (MRF) with recovery rate of at least 30%)

1. Landfill used to dispose of refuse: _____
2. Number of customer accounts serviced in the City of Santa Clara: _____
3. Total quantity of refuse collected: _____ tons
4. **Total gross billings for refuse collection service for customers** **\$** _____

B. Refuse taken to a material recovery facility (MRF) for processing that recovers greater than or equal to 30%, but less than 60% of incoming materials

1. MRF used: _____
2. Number of accounts serviced in the City of Santa Clara in which the refuse is processed at an MRF: _____
3. Total quantity of refuse collected: _____ tons
4. MRF recovery rate: _____
5. Quantity of refuse disposed of as Garbage: _____ tons
6. Quantity of recyclables (excluding organics) recovered: _____ tons
7. Quantity of organics (foodwaste and greenwaste) recovered: _____ tons
8. **Total gross billing for all customer accounts whose refuse was taken to an MRF with a recovery rate of at least 30%, but less than 60%** **\$** _____

C. Refuse taken to a material recovery facility (MRF) for processing that recovers between 60% and 95% of incoming materials

1. MRF used: _____
2. Number of accounts serviced in the City of Santa Clara in which the refuse is processed at an MRF: _____
3. Total quantity of refuse collected: _____ tons
4. MRF recovery rate: _____
5. Quantity of refuse disposed of as Garbage: _____ tons
6. Quantity of recyclables (excluding organics) recovered: _____ tons
7. Quantity of organics (foodwaste and greenwaste) recovered: _____ tons
8. **Total gross billing for all customer accounts whose refuse was taken to an MRF with a recovery rate between 60% and 95%** \$ _____

D. Source separated recyclables and organics taken to a material recovery facility (MRF) for processing that recovers 95% or more of incoming materials

1. MRF used: _____
2. Number of accounts serviced in the City of Santa Clara in which the refuse is processed at an MRF: _____
3. Total quantity collected: _____ tons
4. Quantity of recyclables (excluding organics) recovered: _____ tons
5. Quantity of organics (foodwaste and greenwaste) recovered: _____ tons
6. **Total gross billing for all customer accounts whose source separated recyclable and organic materials was taken to an MRF with a recovery rate greater than 95%** \$ _____

E. Exclusive Franchise/Food Scrap Collection (*Mission Trail Waste Systems Only*)

1. MRF used: _____
2. Number of accounts serviced in the City of Santa Clara in which food scrap is collected: _____
3. Total quantity collected: _____ tons
4. MRF recovery rate: _____
5. Quantity of overs disposed of as garbage: _____ tons
6. Quantity of organics (foodwaste and greenwaste) recovered: _____ tons
7. **Total gross billing for all exclusive franchise food scrap accounts** \$ _____

F. Exclusive Franchise Commercial Recycling (*Mission Trail Waste Systems Only*)

1. MRF used: _____
2. Number of accounts serviced in the City of Santa Clara in which the refuse is processed at an MRF: _____
3. Total quantity of refuse collected: _____ tons
4. MRF recovery rate: _____
5. Quantity of refuse disposed of as garbage: _____ tons
6. Quantity of recyclables (excluding organics or food scraps) recovered: _____ tons
7. **Total gross billing for all exclusive franchise commercial recycling customer accounts** \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A.	Gross Billings Amount from Part I, Section A.4	x 18%	\$	
B.	Gross Billings Amount from Part I, Section B.8	x 12%	\$	
C.	Gross Billings Amount from Part I, Section C.8	x 8 %	\$	
D.	Gross Billings Amount from Part I, Section D.6	x 3 %	\$	
E.	Gross Billings Amount from Part I, Section E.7 <i>(Mission Trail Waste Systems Only)</i>	x 5%	\$	
F.	Gross Billings Amount from Part I, Section F.7 <i>(Mission Trail Waste Systems Only)</i>	x 5%	\$	
G.	Total Franchise Fees for Reporting Quarter		\$	

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Date _____ Declarant Signature _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
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AND
INSERT NAME**

“EXHIBIT “C”

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor’s indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 each occurrence
\$1,000,000 general aggregate
\$1,000,000 products/completed operations aggregate
\$1,000,000 personal injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a “pay on behalf” basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara – Public Works Department – Street Division
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
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BY AND BETWEEN THE
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AND
INSERT NAME**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

1 For purposes of this Agreement, the word “Consultant” (whether a person or a legal entity) also refers to “Contractor” and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

2 For purposes of this Agreement, the words “convicted” or “conviction” mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

3 As used herein, “dishonesty” includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

4 Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

5 Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

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BY AND BETWEEN THE
CITY OF SANTA CLARA
AND
INSERT NAME**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled “Ethical Standards” set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of “Contractor” contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said “Contractor” category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Insert Name
a corporation

By: _____
Signature of Authorized Person or Representative

Name: _____

Title: _____

NOTARY’S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public’s acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity’s complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON- EXCLUSIVE HAULING OF INDUSTRIAL
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BY AND BETWEEN THE
CITY OF SANTA CLARA
AND
INSERT NAME**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- Individuals with other type education and experience approved by the City, or
- Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.