

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

This Non-Exclusive Franchise Agreement (“Agreement”) is made and entered into this _____ day of _____, 2013 (“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 _____, a California _____, with its principal place of business located at _____ (“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. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, “An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of ‘The Code of the City of Santa Clara, California’ in its entirety and adopting a new Chapter 13, Article III Pertaining to the ‘Accumulation, Transportation and Disposal of Waste Matter’” passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

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. Alternative Daily Cover (ADC)

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.

b. Anaerobic Digestion

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.

c. Commercial

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.

d. Composted Material

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.

e. Composting

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.

f. Construction and Demolition Debris

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. Containers of mixed construction and demolition debris that are sent to a MRF that diverts at least thirty percent (30%) of incoming materials are qualified to pay NEF fees at the ten percent (10%) of gross billings NEF Fee level.

g. Container

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.

h. Garbage

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.

i. Gross Billings

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.

j. Industrial

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.

k. Industrial Refuse

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.

l. Institutional

The term “Institutional” shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

m. Landfill

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

n. Material Recovery Facility (MRF)

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.

o. Non-Exclusive Franchise (NEF) Fee

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.

p. Planned Development

The term “Planned Development” shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

q. Quarter

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. Recoverable Material

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, news paper, mixed paper, cardboard, electronics, scrap metals, and miscellaneous types of construction and demolition debris.

s. Recovery Rate

The term “Recovery Rate” shall mean the percentage of total incoming refuse to a MRF that is recovered as recyclables.

t. Recyclables

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.

u. Recycling

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.

v. Refuse

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”

w. Residential

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.

x. Residual

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.

y. Single-Stream Recycling

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.

z. Source Separated Recycling

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.

aa. Waste Audit

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

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on June 30, 2016.

3. 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 industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 16. 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 in Commercial, Institutional, and Residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from 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 setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in Commercial, Institutional, and Residential zoned properties 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.

d. 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.

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

Contractor shall pay to City 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. Sixteen percent (16%) of the total gross billings for customer accounts whose refuse is not processed through an individual or series of MRF, composting or anaerobic digestion processes that has a residual rate of seventy percent (70%) or greater.

- b. Ten percent (10%) of the gross billings for customer accounts whose refuse is processed through a an individual or series of MRF, composting, or anaerobic digestion processes that yield a residual rate less than seventy percent (70%), but greater than five percent (5%).
- c. Three percent (3%) of the total gross billings for source separated recycling, single-stream recycling, and composting customer accounts that have ninety-five percent (95%) or greater recyclable or compostable materials going into the containers provided by Contractor at a specific site.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Superintendent Solid Waste & Storm Drains, 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)".

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.

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.

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.

6. RECORDS.

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 be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. 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 16b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

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 modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said 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. Contractor's colors and color patterns on

vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics. Failure to label and maintain collection vehicles to the standards of this Agreement is subject to a \$100.00 fine, per occurrence.

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.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected Refuse from Industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. 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.

11. COMPLIANCE WITH AIR RESOURCES BOARD REGULATIONS.

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

12. COMPLIANCE WITH MANDATORY RECYCLING REQUIREMENTS.

Contractor must comply with provisions set forth in Section 8.25.275 of the Santa Clara City Code, which sets forth mandatory recycling requirements similar to AB 341. Contractor is prohibited from providing garbage service to customers with at least four (4) cubic yards per week who 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.

13. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase 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 Non-Exclusive Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit “C”. Failure to maintain certificates of insured as required constitutes cause for termination of this Agreement, per terms of Section 16b, of this Agreement.

14. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

15. 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 MRF, Composting facility, Anaerobic Digestion facility, or Landfill disposal site outside the corporate limits of City.

16. 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.

17. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled “Waste Management”, Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of June 30, 2016.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of “The Code of the City of Santa Clara, California” and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this

Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding NEF Fee payments as required under Section 4 herein.

18. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

19. FAIR EMPLOYMENT.

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

20. HOLD HARMLESS/INDEMNIFICATION.

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, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

21. SERVICE OF NOTICES.

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

City of Santa Clara
Street Department
Attn: Dave Staub
Superintendent of Solid Waste & Storm Drains
1700 Walsh Avenue
Santa Clara, California 95050
Phone Number: (408) 615-3080
Or by facsimile at: (408) 988-0237

And to Contractor addressed as follows:

Company
Attn: _____
Address: _____

City, State, Zip: _____
Phone Number: _____
or by facsimile at _____

22. 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.

23. 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 3d)- \$200.00 per occurrence;
2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 5) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 5) - \$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 contractor name and phone number on containers or remove graffiti within 48 hours of notification - \$100.00 per occurrence (Section 8).

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 3b) - 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 (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 3b of Agreement that the prompt and permanent removal of such Bin, Box, or 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 Bin, Box, or 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 Bin, Box, or 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.

Any Contractor who violates Section 3b shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or 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 Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure to submit, if required, annual independent certified public

accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.

9. 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. 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.

10. 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 10) - \$500.00 per occurrence.

11. Servicing a customer account generating at least four cubic yards of garbage per week that is in violation of mandatory recycling requirements (Section 12) - \$500.00 per occurrence.

12. Failure to submit the number of customer accounts subject to the mandatory recycling requirements Contractor is servicing by May 31st (Section 12) - \$500.00 per occurrence.

24. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

25. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 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).

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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

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

ATTEST:

ROD DIRIDON, JR.
City Clerk

“CITY”

***INSERT CONTRACTOR’S NAME**

*choose one: corporation/partnership/individual

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

Name: _____

Title: _____

Local Address: _____

Telephone () _____

Fax: () _____

“CONTRACTOR”

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

“EXHIBIT “A”

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____, _____.
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Number of customer accounts serviced in the City of Santa Clara in which Refuse is processed at MRF: _____

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Compacted) _____
Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

Roll-Off
(Loose) _____
Quantity (c.y.) tons./cubic yard Weight (tons) Gross Billings

Front-Loaded
(Loose) _____
Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

3. Total quantity of Refuse collected: _____ tons

4. MRF Recovery Rate: _____

5. Amount of Refuse disposed of as Garbage: _____ tons

6. Amount of Refuse recovered as Recyclables: _____ tons

7. **Total gross billings for all customer accounts whose Refuse was taken to a MRF with a recovery rate of at least 30%, but less than 95% (10% of gross billings)** \$ _____

C. Refuse taken to Composting or Anaerobic Digestion facility that has a Residual rate of less than or equal to 70%, but greater than 5% of incoming materials.

1. Composting or Anaerobic Digestion Facility used: _____

2. Number of customer accounts serviced in the City of Santa Clara in which Refuse is processed at a Composting or Anaerobic Digestion Facility: _____

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Compacted) _____
Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

Roll-Off
(Loose) _____
Quantity (c.y.) tons./cubic yard Weight (tons) Gross Billings

Front-Loaded
(Loose) _____
Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

3. Total quantity of Refuse collected: _____ tons

4. Composting or Anaerobic Digestion Facility Residual Rate: _____

5. Amount of Refuse disposed of as Residual (Garbage): _____ tons

6. Amount of Refuse recovered as Composted Material or biogas through Anaerobic Digestion Process: _____ tons

7. **Total gross billings for all customer accounts whose Refuse was taken to a Composting or Anaerobic Digestion facility with a Residual Rate of less than or equal to 70%, but greater than 5% (10% of gross billings)** \$ _____

D. Source Separated and Single Stream Recycling customer accounts with Containers with at least 95% Recyclables

1. Material Recovery Facility (MRF) used: _____

2. Number of Source Separated and Single Stream Recycling customer accounts serviced in the City of Santa Clara: _____

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Compacted) Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

Roll-Off
(Loose) Quantity (c.y.) tons./cubic yard Weight (tons) Gross Billings

Front-Loaded
(Loose) Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

3. Total quantity of Recyclables collected: _____ tons

4. Total gross billings for all customer accounts receiving collection of Source Separated or Single Stream Recyclables (3% of gross billings) \$ _____

E. Composting customer accounts with Containers with a Residual Rate of 5% or less.

1. Composting facility used: _____

2. Number of Compositing customer accounts serviced in the City of Santa Clara: _____

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Compacted) Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

Roll-Off
(Loose) Quantity (c.y.) tons./cubic yard Weight (tons) Gross Billings

Front-Loaded
(Loose) Quantity (c.y.) tons/cubic yard Weight (tons) Gross Billings

3. Total quantity of Compostable collected: _____ tons

4. Total gross billings for all Composting customer accounts: (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from Part I, Section A.4

B. _____ x 10% = \$ _____
Gross Billings Amount from Part I, Section B.7

C. _____ x 10% = \$ _____
Gross Billings Amount from Part I, Section C.7

D. _____ x 3% = \$ _____
Gross Billings Amount from Part I, Section D.4

E. _____ x 3% = \$ _____
Gross Billings Amount from Part I, Section E.4

F. 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.

Executed on _____

Declarant Signature: _____

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

“EXHIBIT “C”

Without limiting the Contractor’s indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase 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.

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.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
*INSERT CONTRACTOR'S 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,

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.

- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
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 purchase 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.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
*INSERT CONTRACTOR'S 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 CONTRACTOR'S NAME**

***choose one: a corporation/partnership/individual**

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 HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND**

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.