

**NON-EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION OF
INDUSTRIAL REFUSE
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
FERMA GREENBOX, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Ferma Greenbox, Inc., a California corporation, (Franchisee). City and Franchisee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to grant a franchisee, pursuant to Code of the City of Santa Clara Section 8.25.190, to Franchisee to perform the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Franchisee represents that it has 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 in accordance with City Code; and,
- C. The Parties have specified herein the terms and conditions City will grant a franchise to Franchisee for the non-exclusive right to collect, transport, recycle, process, and dispose Industrial Refuse from properties zoned for Industrial use in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of the Parties for Franchisee to provide the services specified herein for the industrial community, and promote the health, safety, and welfare of all City residents.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Franchisee shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Definitions

Exhibit C – Certificate of Gross Billings

Exhibit D – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. GRANT OF NON-EXCLUSIVE FRANCHISE

City hereby grants to Franchisee a non-exclusive right to collect, transport, recycle, process, and dispose Industrial Refuse from properties zoned for Industrial use in the City of Santa Clara for the period commencing on July 1, 2019 and terminating on December 31, 2021 ("Term"). Franchisee shall not enter into individual service agreements with Industrial customers that extend beyond the Term of this Agreement. Franchisee agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

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

Franchisee shall pay to City Non-Exclusive Franchise (NEF) fees of twelve percent (12%) of Gross Billings ("NEF Fee(s)") for the privilege of engaging in the business of collecting, hauling, and transporting Industrial Refuse to its destination. All Container and equipment rental charges and overweight charges are to be included in the gross billings for each Industrial Customer. Franchisee shall report Gross Billings and Franchise Fee amounts to the City specified in Exhibit C.

4. SCOPE OF SERVICES

Franchisee shall perform those services set forth in the Scope of Services which are attached as Exhibit A hereto and incorporated as though fully set forth herein.

5. PERFORMANCE SCHEDULE

Franchisee shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

6. WARRANTY

Franchisee expressly warrants that (a) 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 set forth in the

Scope of Services; (b) it will perform Services in compliance with all applicable laws and regulations; and (c) it will use qualified personnel to perform Services in a professional and workmanlike manner. Franchisee 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 Franchisee. If Franchisee fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Franchisee for the cost incurred by City.

7. QUALIFICATIONS OF FRANCHISEE - STANDARD OF CARE

Franchisee represents and maintains that it has the necessary expertise and skill to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Franchisee's representations regarding its skills and knowledge. Franchisee shall perform such Services and duties in conformance to and consistent with the highest industry standards.

8. BUSINESS TAX LICENSE REQUIRED

Franchisee 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 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.

9. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than thirty (30) days' prior written notice to Franchisee.
- B. Termination for Default. If Franchisee fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Franchisee.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Franchisee will deliver to City all City information or material that Franchisee has in its possession.

10. ASSIGNMENT AND SUBCONTRACTING

City and Franchisee 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. Franchisee shall not hire sub-franchisees or subcontractors without express written permission from City.

Franchisee 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 Franchisee is for the acts and omissions of persons directly employed by it.

11. 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.

12. AGENCY & CONTROL

Franchisee and all person(s) employed by or contracted with Franchisee to furnish labor and/or materials under this Agreement do not act as agent(s) or employee(s) of City. Franchisee has full rights to manage its employees in their performance of Services under this Agreement.

13. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Franchisee and all other written information submitted to Franchisee in connection with the performance of this Agreement shall be held confidential by Franchisee 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 Franchisee which is otherwise known to Franchisee or becomes generally known to the related industry shall be deemed confidential.

14. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Franchisee 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, Franchisee 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.

15. RIGHT OF CITY TO INSPECT RECORDS OF FRANCHISEE

Franchisee shall keep and maintain full and complete records in Franchisee's local office showing all City Industrial Refuse collection business transacted. Such records shall be available in Franchisee'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. Records shall be provided with an electronic copy of the database in a format that allows to sort, group, and analyze Franchisee's data.

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 City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Franchisee's available records and Franchisee's industrial customers' records to determine if additional NEF Fee payments are due to City ("Waste Audit"). The costs of any Waste Audit shall be borne by Franchisee.

Prior to conducting a Waste Audit, City shall give Franchisee written notice of deficiencies in record keeping and Franchisee 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 Waste Audit and to also recover the cost of the Waste Audit in addition to any unpaid NEF Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest within fifteen (15) days of receipt of Waste Audit report and billing by Franchisee. Failure to maintain adequate records as required constitutes cause for termination of this Agreement.

16. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Franchisee 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 attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Franchisee pursuant to this Agreement – including claims of any kind by Franchisee's employees or persons contracting with Franchisee to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Franchisee's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Franchisee, against City (either alone, or jointly with Franchisee), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

- C. To the extent Franchisee 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, Franchisee 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 Franchisee's responsibilities under the Act.

17. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit D, Franchisee shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit D.

18. WAIVER

Franchisee 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. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed 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.

19. NOTICES

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

City of Santa Clara
Attention: Public Works Department – Environmental Programs
1700 Walsh Avenue
Santa Clara, CA 95050
and by e-mail at: environment@santaclaraca.gov, and
manager@santaclaraca.gov

And to Franchisee addressed as follows:

Ferma Greenbox, Inc.
6647 Smith Avenue, Newark, CA 94560
and by e-mail at harianmanesh@fermacorp.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

20. COMPLIANCE WITH LAWS

Franchisee shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Franchisee's attention is called to

the regulations regarding the Accumulation, Transportation and Disposal of Solid Waste (SCCC Chapter 8.25), Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), and Business Tax Certificate (SCCC section 3.40.060), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Franchisee has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

21. CONFLICTS OF INTEREST

Franchisee certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Franchisee and that no person associated with Franchisee has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Franchisee 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. Franchisee will advise City if a conflict arises.

22. FAIR EMPLOYMENT

Franchisee shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

23. NO USE OF CITY NAME OR EMBLEM

Franchisee 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, website, or on its vehicles or equipment, or other medium without express written consent of City.

24. GOVERNING LAW 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.

25. 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.

26. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

27. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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28. EXECUTION

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:


Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager

"CITY"

FERMA GREENBOX, INC.
a California corporation

Dated: 3/29/2019
By (Signature): 
Name: Don Ferrari
Title: CEO
Principal Place of
Business Address: 6647 Smith ave, Newark CA
Email Address: marianmanesh@ferma-corp.com
Telephone: (650) 641-3080
Fax: ()

"FRANCHISEE"

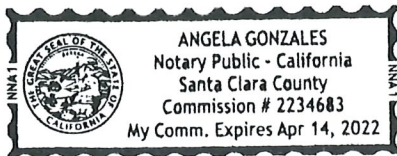
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

Subscribed and sworn to (or affirmed) before me on this 29th
day of March, 2019, by Donald Carlo Ferrari

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Angela Gonzales

EXHIBIT A

SCOPE OF SERVICES

Franchisee's duties and obligations pursuant to any Services it performs under this Agreement are set forth below.

1. MANDATORY SERVICES

- A. Franchisees that provide bin or cart service, compactor service or regular scheduled debris box service must provide Bundled Services that are inclusive of collecting Garbage, Recyclables, and Organic Waste. Customers with less than four (4) cubic yards of solid waste service (Garbage and Recyclables combined) are not required to subscribe to Organic Waste services. The City retains the right to, at any time and in its sole discretion, lower the threshold in response to future CalRecycle action. Franchisee may provide Mixed Waste Processing in lieu of Bundled Services. Franchisee must deliver co-mingled material to a MRF with a Recovery Rate greater than or equal to 50% as measured on the same Quarterly schedule as the NEF Fee payments. Individual customer accounts receiving only Temporary Debris Box services from the Franchisee are exempt from this requirement.
- B. Franchisee must dispose collected materials at facilities meeting the following minimum requirements for each type of collected waste stream:
 - 1) Garbage:
 - a. If collected as a single stream material as part of Bundled Services as described in this agreement may be taken to Landfill.
 - b. If collected as part of a co-mingled stream shall be taken to a Mixed Waste Processing Facility with a Recovery Rate above 50%.
 - 2) Mixed C&D: MRF with a Recovery Rate above 50% for Mixed C&D materials.
 - 3) Source Separated C&D: MRF with a Recovery Rate above 90% for source separated C&D materials.
 - 4) Single-Stream Recyclables: MRF with a Recovery Rate above 75% for source separated materials.
 - 5) Source Separated Recyclables: MRF with a Recovery Rate above 95% for source separated materials.
 - 6) Organic Waste: MRF with a Recovery Rate above 80% including use of non-residual byproducts, such as compost overs and biosolids, for Beneficial Reuse.

- C. Franchisee must follow best management practices for outreach and education of customers including developing and distributing public education and outreach material which include recommendations to increase recycling and decrease landfilling annually. Franchisee must also inform and educate customers on best practices for recycling and waste reduction at the time of service. Franchisee must inform customers of City's mandatory Recycling and Organic Waste Recycling requirements and the requirements of state laws AB 341 and AB 1826, and other applicable state laws and must provide records and examples of outreach by January 31st of each year.
- D. Franchisee shall submit the number of customer accounts subject to City's mandatory Recycling and Organic Waste Recycling requirements by January 31st of each year to City.
- E. Franchisee shall report the total number of Commercial and multi-family dwelling service units subject to AB 341 and AB 1826 serviced and the number of containers, container sizes, and frequency of collection for Garbage, Recycling, and Organic Waste for each of Commercial and multi-family dwelling service units by January 31st of each year to City.

2. FRANCHISEE'S OBLIGATIONS AND HOURS OF OPERATION

A. Restrictions for Exclusive Franchise Area(s) (EFA)

Franchisee shall not charge for the collection and disposal of Refuse or Recyclables at properties in an EFA in the City unless authorized by separate franchise agreement with the City. Franchisee may collect only Recyclables from an EFA 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 provided and owned by the Franchisee, and shall not be contaminated by Garbage.

B. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises that abut Residential areas within 300 feet, collections shall not commence prior to 7:00 a.m.

C. Zoning Changes

The zoning designation of individual properties is subject to change during the term of this Agreement. It is the responsibility of the Franchisee to review the zoning designation for its customers. A map of the industrial-

zoned areas of the City is available at the following web address:
<https://map.santaclaraca.gov/public/index.html?viewer=regional>

In the event that a property changes its zoning designation to a non-Industrial use (as indicated on the aforementioned map), Franchisee must provide the customer notice that Franchisee will discontinue service within thirty (30) days of notice. For properties that are zoned in an EFA, Franchisee will be permitted to provide services if Franchisee is an otherwise approved Collector for the EFA.

D. Conflicts with Franchisee Customer Agreements

If any provision contained in this Agreement conflicts with any provisions contained in an agreement between Franchisee and its customers, the provisions contained in this Agreement shall govern and control.

3. QUARTERLY AND ANNUAL REPORTING TO CITY

- A. Franchisee shall file with City's Director of Finance and forward a copy to City's Environmental Program Manager, for each Quarter's reporting period (or portion thereof), a written statement certifying the total Gross Billings for Industrial 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 C, entitled "CERTIFICATE OF GROSS BILLINGS: NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, TONS/VOLUME COLLECTED, AND RECOVERY RATES", or submitted electronically if such format is made available by City.
- B. Each certifying written statement filed with City's Director of Finance shall be accompanied by the NEF Fee payment equal to twelve percent (12%) of the Gross Billings certified. NEF 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 Exhibit A, Scope of Services, Section 9, Schedule of Penalties, 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 9, Liquidated Damages, of this Agreement.
- C. A Franchisee 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 Franchisees records were examined and the quarterly reports were a

fair and accurate representation of the Gross Billings and NEF Fees owed to City. Said report and opinion shall be filed within one hundred (100) days after the end of the Franchisee's fiscal year.

- D. A Franchisee providing Recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit C, listing the volume or tons diverted from customers within the City and certifying that no charges were made from customers for Recycling service or container rental.
- E. City may conduct an audit of Franchisee's Gross Billings to ensure that the correct NEF Fee payments are being paid during specified quarters. Franchisee must provide City a summary of customer gross billings within thirty (30) days of request. Customer records to be provided shall include:
 - 1) Customer name;
 - 2) Billing address;
 - 3) Collection address (if different from billing address);
 - 4) Gross Billings for all services provided to customers in the Industrial Zone;
 - 5) NEF Franchise Fees paid to City; and
 - 6) Weekly Industrial Refuse service levels including size of container and frequency.
- F. Franchisee will be subject to liquidated damages for failing to comply.
- G. Franchisee's quarterly reporting to City 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 Franchisee shall be explained and documentation provided in a timely manner. Franchisee shall provide quarterly report to City of all Industrial Refuse and recoverable material taken to, and City material/ Industrial Refuse removed from, a transfer station or location where Industrial Refuse is temporally deposited and/or processed before larger vehicles take material to its end destination, MRF, Composting facility, Anaerobic Digestion facility, Landfill, or any other processing facilities(s).

4. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

- A. Franchisee undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and professional manner. All Industrial Refuse collected by Franchisee 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.

- B. Franchisee may furnish City-approved, detachable metal or plastic Containers to customers. Franchisee shall be responsible for the general repair and upkeep of Containers that it furnishes to Customers. Franchisee 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 by City or customer. Franchisee'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. Labels shall be placed on each Container or lid provided to customers and must specify which materials are acceptable and unacceptable in the container in written or graphic form.
- C. Any new Containers provided by Contractor to customers shall follow the following color requirements for entire container and/or bin: green for Organic Waste, blue for Recyclables, and gray for Garbage.

5. COVERED LOADS AND LITTER ASSOCIATED WITH HAULING ACTIVITIES.

Franchisee shall be responsible for ensuring all Containers are covered during transportation to a recycling or disposal facility. Franchisee shall be responsible for ensuring that trash from its solid waste collection vehicle is being littered during transport. Franchisee is required to pick up litter generated from all hauling operations.

6. COMPLIANCE WITH AIR RESOURCES BOARD REGULATIONS

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

7. OWNERSHIP AND DISPOSAL OF INDUSTRIAL REFUSE

All Industrial Refuse collected by Franchisee shall become the property of Franchisee immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Industrial Refuse collected by Franchisee shall be transported to a legally permitted Recycling, Composting, Anaerobic Digestion, or Landfill disposal facility. Nothing in this Agreement shall be construed to grant permission to Franchisee to dispose of collected Industrial Refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise Refuse.

8. LANDFILL TIP FEES

Franchisee is responsible for paying all applicable landfill tip fees on Industrial Refuse collected in City, even if the Industrial 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.

9. LIQUIDATED DAMAGES

It shall be the duty of Franchisee to perform services under this Agreement in such a manner as to implement practices, policies, and procedures designed to achieve the goals set forth in the Agreement. Franchisee agrees its failure to perform the services as set forth in the Agreement would cause City damage. City and Franchisee mutually agree that making a precise determination of the amount of City's damage as a result of Franchisee's failure would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event such a failure, Franchisee shall pay to City as liquidated damages the amounts listed below, in addition to any other rights or remedies available to City to enforce the Agreement. For the purposes of this Section, unless specifically stated, an occurrence refers to a single instance of collection at a particular site.

#	Description	Reference	Amount
1	Failure to collection of industrial areas abutting residential areas	Exhibit A	\$200.00 per occurrence
2	Failure to make NEF Fee payment within prescribed period	Exhibit A, § 3	\$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1.25%) percent per month or part thereof of fee due whichever is greater.
3	Failure to timely submit fully completed quarterly report with payment	Exhibit C	\$200 per day late
4	Failure to submit and maintain insurance certificates in full compliance with the requirements set forth in Section 13 of Exhibit "D"	Exhibit D	\$100 per day out of compliance

5	Failure to maintain contactor name and phone number on containers or remove graffiti within forty-eight (48) hours of notification	Exhibit A	\$200.00 per occurrence
6	Set out and collection of Refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of permitted areas	Exhibit A	<p>First Violation - \$1,000 per occurrence.</p> <p>Second Violation Within a One-Year Period - \$1,500 per occurrence per collection.</p> <p>Third Violation Within a One-Year Period - \$2,000 per occurrence per collection and cause for Immediate Termination of Contractor's Agreement with City.</p>
7	Failure to submit any required documentation for the purposes of compliance review. City shall provide written notice to Franchisee after each thirty (30) day late period extended beyond the due date.	Exhibit A	<p>\$50 per each day late first thirty (30) days</p> <p>\$100 per day 30-60 days late</p> <p>\$150 per day 60-90 days late, and the immediate termination of Contract if report is over ninety (90) days late</p>
8	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	Exhibit A	\$500 per occurrence
9	Failure to Provide Bundled Service of Garbage, Recycling, and Organics to Servicing a Customer Account	Exhibit A	\$1,000 per occurrence

10	Failure to Submit the Number of Customers Subject to the Mandatory Recycling and Mandatory Organic Waste Recycling Requirements and Number of Customers Subject to AB 341 and AB 1826 by January 31 st annually	AB 341 and AB 1826	\$2,000 per occurrence
11	Failure to submit the number of customer accounts subject to City's Mandatory Recycling and Mandatory Organic Waste Recycling requirements and total number of customers subject to by January 31 st annually	AB 341 and AB 1826	\$2,000 per occurrence
12	Failure to educate customers of City's Mandatory Recycling and Mandatory Organic Waste Recycling requirements state laws	AB 341 and AB 1826	\$500 per occurrence

EXHIBIT B

DEFINITIONS

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

1. AB 341. Chapter 476 of the California Public Resources Code that requires businesses generating more than four (4) cubic yards of Solid Waste and all multifamily residential properties to subscribe to a recycling program.
2. AB 1826. Chapter 727 of the California Public Resources Code that requires businesses and multifamily residential properties generating a certain amount of Organic Waste, dependent on varying implementation dates, to subscribe to an organics program.
3. Alternative Daily Cover (ADC). 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.
4. Anaerobic Digestion. A series of processes in which microorganisms break down biodegradable material in the absence of oxygen to produce biogas.
5. Beneficial Reuse. The byproduct materials, such as compost overs and biosolids, from processing at a Material Recovery Facility. Residual is not defined as Beneficial Reuse.
6. Bundled Services. The required service the Franchisee must provide to all regular customers including the collection of Garbage, Recyclables, and Organic Waste. Individual customer accounts receiving only Temporary Debris Box service from the Franchisee are exempt from this requirement.
7. Collector. 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.
8. Commercial. 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.
9. Composting. The biological degradation and transformation of Organic Waste under controlled conditions designed to promote aerobic decomposition at a solid waste facility. For the purposes of this Agreement, composting may also mean the biological degradation of Organic Waste in animal feed.

10. Construction and Demolition Debris (C&D). 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. C&D Debris can further be defined as Mixed C&D wherein all C&D materials are collected in the same container or as Source Separated C&D wherein the individual material described above are collected in separate containers.
11. Container. All types of receptacles serviced by Franchisee under this Agreement, including but not limited to carts, front-load roll-off bins, drop body debris bins, and compactors.
12. Customer. Any persons or company contracted with Franchisee for the collection and processing or disposal of Refuse in the Industrial Zone.
13. Disposal. The act of delivering material to a Landfill or Material Recovery Facility.
14. Exclusive Franchise Area. 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.
15. Food Waste. Unused and discarded solid food products/scraps 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.
16. Garbage. All materials that are not recycled and are disposed of or used as alternative daily cover in a landfill, or destroyed by incineration. Garbage does not include Recoverable Materials.
17. Gross Billings. All revenue amounts charged by Franchisee for the provision of services pursuant to this Agreement. Gross Billings include container rental charges, equipment rental charges, overweight charges, and any charges recovered or collected by Franchisee for the purposes of collecting franchise fees.
18. Industrial. A parcel of real property designated as being located in an industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara. A map of the industrial-zoned areas of the city is available at the following web address:
<https://map.santaclaraca.gov/public/index.html?viewer=regional>
19. Industrial Refuse. 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.

20. Landfill. A permitted solid waste disposal facility that is used for the disposal of Garbage.
21. Material Recovery Facility (MRF). A facility that processes Refuse or mixed debris for the purpose of removing recoverable materials for recycling, composting, anaerobic digestion, or animal feed.
22. Mixed Construction and Demolition Debris. The act of collecting all C&D materials into the same container that is then brought to a Material Recovery Facility for recovery. Mixed C&D achieves a lower Recovery Rate than separating C&D materials into different containers.
23. Mixed Use Zoning. 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.
24. Mixed Waste. Refuse that is collected as a commingled stream of garbage, Organic Waste, and other Recyclables for the purpose of delivery to a Mixed Waste Processing facility.
25. Mixed Waste Processing. A system that accepts a mixed solid waste stream and separates out designated recyclable materials through a combination of manual and mechanical sorting.
26. Non-Exclusive Franchise (NEF) Fee. A fee paid to City on a Quarterly basis that is calculated as twelve percent (12%) of Gross Billings.
27. Organic Waste. 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.
28. Quarter. A three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.
29. Recoverable Material. All materials that have the potential to be recovered from Refuse containers for recycling, composting, anaerobic digestion, or animal feed 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.
30. Recovery Rate. The percentage of total incoming refuse to a Material Recovery Facility that is recovered as recyclables. The term "recovery" may be used interchangeably with the term "diversion".

31. Recyclables. All Recoverable Material that is to be 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.
32. Recycling. 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.
33. Refuse. 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".
34. Residential Zoning. 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.
35. Residual. The left over material that cannot be converted to Composted material at a composting operation, to biogas in an anaerobic digestion process, to animal feed at applicable facilities, or cannot be recycled at a Material Recovery Facility. Residual is Garbage for the purposes of this agreement.
36. Single-Stream Recycling. A recycling program offered by Franchisee 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.
37. Source Separated Construction and Demolition Debris. The act of collecting C&D materials into different containers based on material type that are then brought to a Material Recovery Facility for recovery. Source Separated C&D achieves a higher Recovery Rate than Mixed C&D materials.
38. Source Separated Recycling. 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.
39. Temporary Debris Box Service. Debris box service delivered to one physical address for a period of under 90 days.
40. Waste Audit. Franchisee supplied certified report of amounts of recoverable material and garbage for specific customers who may be required by City per terms and conditions described herein.

EXHIBIT C

CERTIFICATE OF GROSS BILLINGS: NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, TONS/VOLUME COLLECTED, AND RECOVERY RATES AGREEMENT TERM JULY 1 2019 – DECEMBER 31, 2021

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

Please include all amounts billed to the customer for the service provided in calculation of gross billings, including but not limited to, fees charged to the customer, overweight charges, surcharges, etc. Include all tons/volume collected during the reporting quarter including recycling services without charge or compensation or for which customers are paid for materials.

Material	Total Tons or Volume in Cubic Yards	Recovery Rate	Gross Billings
Garbage to landfill		0 %	\$
Garbage as Mixed Waste to MRF (Recovery Rate between 0-50%)		%	\$
Mixed C&D Debris (Recovery Rate >50%)		%	\$
Source Separated C&D Debris (Recovery Rate <90%)		%	\$
Single-Stream Recyclables (Recovery Rate <75%)		%	\$
Source Separated Recyclables (Recovery Rate <95%)		%	\$
Organic Waste (Recovery Rate <80%)		%	\$
Other, Please Specify:		%	\$

Other, Please Specify:		%	\$
Other, Please Specify:		%	\$
Other, Please Specify:		%	\$
Other, Please Specify:		%	\$
Exclusive Franchise/Food Scrap Collection (<i>Mission Trail Waste Systems Only</i>)		%	\$
Exclusive Franchise Commercial Recycling (<i>Mission Trail Waste Systems Only</i>)		%	\$
Total Gross Billings			\$
Penalties			\$
Total			\$

PART II – FRANCHISE FEE PAYMENT CALCULATION

\$ _____ x 12% = \$ _____
 Total Gross Billings for Reporting Quarter 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

EXHIBIT D

INSURANCE REQUIREMENTS

Without limiting the Franchisee's indemnification of City, and prior to commencing any of the Services required under this Agreement, the Franchisee 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:

COMMERCIAL GENERAL LIABILITY INSURANCE

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

Exact structure and layering of the coverage shall be left to the discretion of Franchisee; 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.

The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Franchisee to comply with the insurance requirements of this Agreement:

- Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

- There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

- 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.

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. The Automobile Liability Policy

shall be endorsed to include Pollution Liability coverage. Pollution Liability coverage can be provided pursuant to the contract using form ISO Form CA 99 48 03 06.

WORKERS' COMPENSATION

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.

The indemnification and hold harmless obligations of Franchisee 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 Franchisee or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

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.

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.

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 Franchisee'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.

Primary and non-contributing. Each insurance policy provided by Franchisee 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 Franchisee's insurance.

Cancellation.

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.

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.

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.

ADDITIONAL INSURANCE RELATED PROVISIONS

Franchisee and City agree as follows:

Franchisee 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 Franchisee, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Franchisee 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. Franchisee 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.

Franchisee 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 Franchisee 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.

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

EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Franchisee, 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. Franchisee 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.

EVIDENCE OF COMPLIANCE

Franchisee 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, Franchisee 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
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

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

QUALIFYING INSURERS

All of the insurance companies providing insurance for Franchisee 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 City or its insurance compliance representatives.