

City of Santa Rosa  
Application for  
Non-Exclusive Construction and Demolition Debris Box  
Collection Franchise



City of Santa Rosa  
100 Santa Rosa Avenue, Room 10  
Santa Rosa, CA 95404



# Request for Applications for Non-Exclusive Construction and Demolition Debris Box Collection Franchise

## **PURPOSE**

The City requires that all vendors providing construction and demolition debris box collection service within the City limits obtain a non-exclusive franchise. The City has authority under Public Resources Code 49300 to contract for construction and demolition debris box collection services on a non-exclusive basis. All qualified vendors will be granted a non-exclusive franchise for construction and demolition debris box collection service. Under the terms of the franchise agreement, the franchisee will be required to recycle 50 percent of all C&D collected from its customers in the City. The franchisee will also be required to pay a 9 percent franchise fee on all gross revenues for services provided under the terms of this franchise within the city limits of Santa Rosa.

## **APPLICATION REQUIREMENTS**

Vendors are required to provide all of the information listed in this section.

## **QUALIFICATIONS**

1. **Vendor qualifications.** Company qualification information should be provided to demonstrate the vendor's experience providing construction and demolition debris box service in the City or in comparable jurisdictions.
2. **Proof of Insurance.** Provide proof of insurance in the amounts specified in the attached Franchise Agreement.
3. **References.** Provide a minimum of three customers that the City may contact to conduct a reference check. Include the name, title, and phone number for each reference.

## Request for Applications

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### **OPERATIONS INFORMATION**

1. **Equipment description.** Provide a description of the vehicles and containers to be used in providing service. Please include the make, model and year of each vehicle and the number and size of the containers to be used.
2. **Invoicing and bill collection.** Describe procedures for billing account customers, maintaining accuracy of database, recording payments, ensuring timely collection of outstanding bills.
3. **Customer service.** Describe your firm's customer service procedures. Identify the address of your firm's local office and toll free number that will be available to customers within the City.
4. **Recycling plan.** Describe your firm's plan to recycle 50 percent of all C&D collected from customers in the City. Provide a list of facilities to be used for processing C&D and the markets for C&D materials.

### **APPLICATION INFORMATION**

**Step 1: Signed Franchise Agreement.** Provide a signed copy of the attached Franchise Agreement, including original signatures executed by two officers of the vendor who are duly authorized to bind the vendor to the terms of the Franchise Agreement.

#### **Step 2: Submittal Requirements**

Submit two double-sided copies of your response to questions on recycled-content paper to the City. Applications should be sealed and marked "City of Santa Rosa, Application for Non-

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## Non-Exclusive Construction and Demolition Debris Box Collection

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Exclusive Construction and Demolition Debris Box Collection Franchise.” Applications should be mailed to:

Jennifer Phillips, Assistant City Manager  
City of Santa Rosa  
100 Santa Rosa Avenue, Room 10  
Santa Rosa, CA 95402

Fax submittals will not be accepted.

### **Step 3: Submission of Insurance Certificates**

The vendor will be required to submit required insurance certificates to the City prior to approval of the Agreement.

### **RESPONSE CONTENT**

All applications should consist of the following:

1. A cover letter providing:
  - Name, address, telephone and fax numbers, and e-mail address of vendor and key contact person.
  - Description of type of organization (e.g., corporation, partnership) submitting application.

## Request for Applications

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- Name of entity that would sign a contract if one is negotiated for this project.
  
  - A written statement warranting that the vendor has reviewed the requirements of the franchise as described in this request, its enclosures, reference documents, and all addenda and written clarification. A list of all addenda/written clarification and dates received should be included.
  
  - Signature of an officer or agent of the vendor who is duly authorized to bind the vendor to the application.
2. Responses to all information requested, including the following components:
- Qualifications information
  
  - Operations information
  
  - Application information

Additional information or data relevant to the application is optional and may be included in an attachment. Failure to provide all required information may be grounds for rejection of your application.

### **ACCURACY IN REPORTING REQUESTED INFORMATION**

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## **Non-Exclusive Construction and Demolition Debris Box Collection**

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Information submitted as part of the application will be subject to verification. Inaccurate or misleading information will be grounds for rejection of any application. Should a vendor providing false information be awarded any franchise as a result of this request, such inaccurate or misleading information will be grounds for termination.

**CONSTRUCTION AND DEMOLITION DEBRIS BOX COLLECTION  
FRANCHISE AGREEMENT BETWEEN THE CITY OF SANTA  
ROSA AND \_\_\_\_\_**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF SANTA ROSA, a municipal corporation of the State of California ("CITY"), and \_\_\_\_\_ ("FRANCHISEE").

**R E C I T A L S**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, the CITY has determined that the public health, safety and welfare require that non-exclusive franchises be awarded to qualified companies for the collection, transport, recycling and disposal of Construction and Demolition Debris in the CITY; and

**WHEREAS**, AB 939 requires the CITY to meet a fifty percent (50%) diversion rate; and

**WHEREAS**, the CITY has determined that to meet the fifty percent (50%) diversion requirement it must regulate construction and demolition debris box collection service; and

**WHEREAS**, the Legislature has found and declared in Section 49510 of the Public Resources Code that it is in the public interest to foster and encourage solid waste enterprise so that, at all times, there will continue to be competent enterprises willing and financially able to furnish needed solid waste handling service; and

**WHEREAS**, one of the purposes of this Agreement is to regulate such franchises in order to ensure the orderly collection, recycling, and disposal of Construction and Demolition Debris in the CITY and to minimize the potential for adverse effects it may have on the local environment; and

**WHEREAS**, the CITY requires all haulers providing construction and demolition debris box services in the CITY to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation and to minimize the potential for adverse effects it may have on the local environment; and

**WHEREAS**, FRANCHISEE has applied to the CITY for a Construction and Demolition Debris Box Collection Franchise; and

**WHEREAS**, the City Manager has reviewed FRANCHISEE's application for the purpose of determining whether FRANCHISEE meets the requirements for the granting of such Franchise; and

**Construction & Demolition Debris Franchise Agreement**

**WHEREAS**, the CITY has determined that the grant of such Franchise to FRANCHISEE is in the public interest; and

**WHEREAS**, FRANCHISEE intends to the use public right of ways and infrastructure to provide construction and demolition debris box collection service; and

**WHEREAS**, the CITY intends to receive value for the Franchise issued; and

**WHEREAS**, FRANCHISEE agrees to and acknowledges that it shall arrange for the proper recycling and disposal of all Construction and Demolition Debris collected in the CITY and the CITY is not instructing FRANCHISEE how to collect, transport, recycle or dispose of Construction and Demolition Debris so long as its operation is consistent with City Code and applicable laws; and

**WHEREAS**, the CITY and FRANCHISEE desire to enter into a Construction and Demolition Debris Box Collection Franchise Agreement in order that FRANCHISEE may perform Construction and Demolition Debris collection, recycling and disposal services in the CITY.

**NOW, THEREFORE**, based on the mutual promises contained herein, the parties agree as follows:

**Section 1. Grant of Franchise.**

a. The CITY hereby grants to FRANCHISEE a non-exclusive Construction and Demolition Debris Box Collection Franchise (“Franchise”) authorizing FRANCHISEE to engage in the business of collecting, recycling, and disposing of Construction and Demolition Debris placed in debris boxes by residential or commercial generators in the CITY.

b. This grant is pursuant to FRANCHISEE's application for the Franchise, which application is incorporated herein by this reference.

c. “Construction and Demolition Debris” or “C&D” means used or discarded materials resulting from construction, remodeling, repair or demolition operations on any pavement, house, commercial building, or other structure and such other materials as may be removed during the normal cleanup process of such construction, remodeling, repair, or demolition operations.

d. “Construction and Demolition Debris Box” means a debris box, used for the collection of Construction and Demolition Debris, located on or adjacent to the property where the Construction and Demolition Debris is generated.

e. The CITY reserves the right to rescind this grant of Franchise should the CITY determine that it is in the CITY’s best interest to do so.

## **Construction & Demolition Debris Franchise Agreement**

### **Section 2. Acceptance of Franchise.**

a. FRANCHISEE hereby accepts the Franchise on the terms and conditions set forth in this Agreement, City Code, and all related ordinances and resolutions. Execution of this Agreement shall constitute the notification to FRANCHISEE as may be required by Public Resources Code Section 49520 which may require a five year notice period should the CITY wish to enter into an exclusive franchise or contract for construction and demolition debris collection services in the future.

b. FRANCHISEE shall notify the CITY in writing of any non-franchised Construction and Demolition Debris haulers known to be operating within the CITY without a non-exclusive Construction and Demolition Debris box Franchise.

### **Section 3. Exceptions to Franchise.**

The following services are expressly excluded from this Franchise:

a. Self haul materials, which are generated by a residential or commercial entity and delivered by that entity directly to a recycling facility, transfer station or disposal facility.

b. Recyclables collection services, provided that at least ninety (90) percent of each load is actually recycled, and not disposed of.

c. Removal of materials from a premises by a contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that contractor rather than as a hauling service, provided that the hauling is performed by the contractor itself and not a subcontracted hauling company.

d. Removal of Construction and Demolition Debris from a construction site by the construction contractor, provided that the hauling is performed by the contractor itself and not a subcontracted hauling company.

The provisions of this Franchise shall not preclude or prohibit the CITY or any officer or employer there of or any employee of the State, or any governmental subdivision there of, from collecting, removing, recycling, and disposing of Construction and Demolition Debris from the CITY or State facilities.

### **Section 4. Term of Franchise.**

a. Subject to Sections 12, 24 and 37 of this Agreement, the term of the Franchise granted to FRANCHISEE shall commence on the date first indicated above and terminate no later than February 28, 2013.

b. Thereafter, this Agreement and the Franchise granted herein shall automatically renew its term for a one-year period unless:  
(1) FRANCHISEE is in material default under this Agreement or  
(2) The CITY determines to change the non-exclusive franchise system.

## **Construction & Demolition Debris Franchise Agreement**

c. If the CITY determines to change the non-exclusive franchise system to an exclusive franchise system, the CITY shall provide notice of such change to FRANCHISEE one hundred and twenty (120) days prior to the end of the initial term or one hundred and twenty (120) days prior to the end of each one-year term if extended.

d.

No later than one hundred and twenty (120) days prior to the end of the initial term or each one-year term if extended, FRANCHISEE shall provide the CITY with updated application information identifying all material changes since the submission of the initial application or the last application update. No later than one hundred twenty (120) days prior to the end of the initial term or one hundred and twenty (120) days prior to the end of each one-year term if extended, either the CITY or FRANCHISEE may give notice of a desire to negotiate material changes to this Agreement.

### **Section 5. Conditions for Effectiveness.**

The effectiveness of this Agreement is subject to FRANCHISEE's satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by the CITY.

a. Accuracy of Representations. The representation and warranties made by FRANCHISEE in its Application for Franchise are true and correct on and as of the effective date.

b. Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

c. Furnishing of Insurance. FRANCHISEE has furnished evidence of the Insurance required by Section 15 of this Agreement.

### **Section 6. Limitations on Scope of Franchise.**

Under the terms of this Franchise, the FRANCHISEE has the non-exclusive authority to provide construction and demolition debris box service to all generators in the CITY, except for those that have been specifically exempted pursuant to Section 3.

### **Section 7. Franchise Fees.**

a. During the term of the Franchise, FRANCHISEE shall pay to the CITY franchise fees for the use of the streets and right of ways and the right to engage in the business of collecting, recycling and disposing of Construction and Demolition Debris kept, accumulated or generated in the CITY.

b. Franchise fees shall be payable on all gross construction and demolition debris box collection revenues received from customers located within the CITY. The franchise fee shall be calculated based on gross collection revenues prior to FRANCHISEE imposing the franchise fee on its customers. The initial franchise fee shall be nine percent (9%) of such received revenue.

## **Construction & Demolition Debris Franchise Agreement**

c. The CITY reserves the right to modify the amount of the franchise fees and manner of payment at any time during the term of this Agreement by a resolution of the CITY.

d. The franchise fees shall not be owed by FRANCHISEE for revenues received from federal, state and local governments.

### **Section 8. Franchise Fee Payment.**

a. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the fifteenth (15<sup>th</sup>) day of the month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of this Agreement.

b. Each franchise fee payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the CITY may require and such other information as the CITY may determine is material to a determination of the amount due.

c. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the CITY from collecting by appropriate action the sum that is actually due and payable.

d. If franchise fees are not paid by the FRANCHISEE at the times required by this Section, then in addition to the franchise fees, the FRANCHISEE shall pay a late payment charge as set forth in Section 23 of this Agreement.

e. FRANCHISEE shall pay all required franchise fees to:

City of Santa Rosa  
100 Santa Rosa Ave.  
Santa Rosa, CA 95404

f. If FRANCHISEE remits franchise fees by personal delivery to the CITY, such franchise fees shall be deemed timely paid only if delivered on or before the due date. If FRANCHISEE remits franchise fees by mail or other delivery service, such franchise fees shall be deemed timely only if (1) the envelope containing the franchise fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date or (2) FRANCHISEE submits proof satisfactory to the City Manager that the franchise fee payment was in fact deposited in the mail or sent on or before said due date.

g. In the event FRANCHISEE believes that it has paid franchise fees in excess of the fees due to the CITY, FRANCHISEE may submit a request for refund to the City Manager on a form provided by said City Manager. If proof of overpayment is satisfactory to the City Manager, the City Manager shall authorize the CITY to refund to FRANCHISEE any overpayment. FRANCHISEE shall not apply any overpayment as a

## **Construction & Demolition Debris Franchise Agreement**

credit against any franchise fees or other amounts payable to the CITY unless specifically so authorized by the City Manager in writing.

### **Section 9. Ownership of Construction and Demolition Debris.**

The CITY does not gain any ownership or right to possess Construction and Demolition Debris collected by FRANCHISEE pursuant to this Agreement. Subject to the provisions of this Agreement and the requirements of the CITY's municipal code, FRANCHISEE shall have title to and may retain, recycle, process, dispose of, or use the Construction And Demolition Debris which it collects.

### **Section 10. Disposal of Construction and Demolition Debris.**

FRANCHISEE shall dispose of Construction and Demolition Debris collected or transported by FRANCHISEE only by taking such Construction and Demolition Debris to a landfill, transfer station, recycling facility or materials recovery facility which is lawfully authorized to accept such material. FRANCHISEE shall not dispose of such Construction and Demolition Debris by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

### **Section 11. Recycling Requirement**

a. FRANCHISEE shall recycle fifty percent (50%) by weight of all Construction and Demolition Debris collected within the CITY during each calendar year beginning January 1, 2003. In the event CITY determines that appropriate diversion facilities are not available to the FRANCHISEE during any portion of calendar year 2003, CITY may, at its sole discretion postpone the implementation of this Section 11 a. by providing written notice to FRANCHISEE as set forth in Section 26 of this Franchise Agreement.

b. FRANCHISEE shall provide a printed list that specifies the materials that may be placed in the Construction and Demolition Debris Box. FRANCHISEE shall specifically notify its customers that putrescible wastes in excess of ten percent (10%) of each load and liquid wastes in total are prohibited. FRANCHISEE shall also label the Construction and Demolition Debris Box with such notification of restrictions.

### **Section 12. Reports**

a. FRANCHISEE shall file with the City Manager an annual report of the quantities of Construction and Demolition Debris collected, transported, recycled, and disposed. Such report shall be in such form and detail as required by the City Manager. A sample Construction and Demolition Debris reporting form is included as Attachment 1. The report shall contain, but not be limited to, the following information:

- (1) The Construction and Demolition Debris tonnage collected and removed within the CITY during the previous year;
- (2) The Construction and Demolition Debris tonnage collected and removed during the previous year within the CITY that was recycled and the location of the facility where such Construction and

## **Construction & Demolition Debris Franchise Agreement**

Demolition Debris was recycled (weight tickets shall be retained by the FRANCHISEE and made available to the CITY upon request for up to three years after the date first issued);

- (3) The Construction and Demolition Debris tonnage collected and removed within the CITY that was disposed of during the previous year and the location of the disposal facility where the disposal of such Construction and Demolition Debris occurred (weight tickets shall be retained and made available to the CITY upon request for up to three years after the date first issued).
- (4) Gross revenues earned during previous year on all construction and demolition debris box collection services provided to customers located within the CITY.
- (5) Changes to recycling plan
- (6) Updated insurance certificates.

b. FRANCHISEE shall maintain customer records containing such information as may be required by the City Manager pertaining to the number and types of accounts served by the Franchisee. The CITY reserves the right to prescribe the format for providing this information. This information shall be provided to the City Manager upon request.

c. The City Manager shall establish guidelines, forms and other appropriate material to assist FRANCHISEE in preparing the reports required by this Section. A FRANCHISEE's failure to file the reports required by this Section shall constitute cause for termination or suspension of its Franchise.

d. Each annual report shall be submitted on or before February 28<sup>th</sup> of each year to:

City Manager  
City of Santa Rosa  
100 Santa Rosa Avenue  
Santa Rosa, CA 95402

e. If the annual report required under subsection a. is not filed by the due date, the report shall be deemed delinquent, and the FRANCHISEE shall pay to the CITY a delinquent report charge in the amount of fifty dollars (\$50.00). If the report remains delinquent for more than fifteen (15) days, the FRANCHISEE shall pay to the CITY a delinquent report charge in the amount of one hundred dollars (\$100.00). Such delinquent report charge shall be in addition to any franchise fees or other charges payable by the FRANCHISEE for the same period of time.

f. Upon the reasonable request of the City Manager, FRANCHISEE shall submit to the CITY monthly reports including a listing of each debris box size in the CITY from which FRANCHISEE collected Construction and Demolition Debris during the reportable month; the number of collections of each listed debris box during the reportable month; the total volume of Construction and Demolition Debris collected in the CITY during the reportable month; the total weight (in tons) of Construction and Demolition Debris disposed of by FRANCHISEE at landfills and transfer stations during the reportable month; the total weight and the weight by material category (in tons) of Construction and Demolition Debris disposed of by FRANCHISEE at recycling and materials recovery facilities during the reportable month; the total weight and the weight

## **Construction & Demolition Debris Franchise Agreement**

by material category (in tons) of disposed of by FRANCHISEE at recycling and materials recovery facilities during the reportable month; the number of service locations by volume (cubic yards) of service provided; FRANCHISEE's gross receipts for collection services provided in the CITY during the reportable month; and such additional information as may be required by the City Manager. Such monthly reports shall be prepared in a form as required by the City Manager.

### **Section 13. Inspection Authority.**

a. FRANCHISEE shall at all times maintain accurate and complete accounts of the following records.

- (1) All revenues and income arising out of its operations under the Franchise granted pursuant to this Agreement.
- (2) Any service complaints received and how they were resolved.
- (3) All Construction and Demolition Debris collected, recycled and/or disposed of; the source of such construction and demolition debris; and the final destination of such Construction and Demolition Debris in such form and detail as may be required by the City Manager.
- (4) FRANCHISEE's books, accounts and records reasonably necessary for the enforcement of this Agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the CITY.
- (5) The CITY shall provide FRANCHISEE written notice at least three (3) business days prior to any inspection, audit or examination of these records.

b. In the event any audit conducted by the CITY or by the CITY's representative discloses that FRANCHISEE has made any intentional misrepresentation with respect to the franchise fees or its diversion amounts to the CITY or discloses that FRANCHISEE has underpaid franchise fees due to the CITY in an amount greater than One Thousand Dollars (\$1,000) or ten percent (10%) of the franchise fees payable to the CITY during the period covered by the audit, whichever amount is greater, then in addition to any other remedies available to the CITY, FRANCHISEE shall reimburse the CITY for the CITY's costs incurred in the performance of the audit. Such reimbursement shall be paid by FRANCHISEE, along with any underpaid franchise fees, late payments and interest, within thirty (30) days of the date the CITY notifies FRANCHISEE of the amount of the CITY's costs.

### **Section 14. Service Fees**

FRANCHISEE shall set its own service fees for construction and demolition debris collection services, provided that the CITY determines that there is reasonable free market competition and that service fees are fair to the construction and demolition debris box collection service customers. The CITY reserves the right to establish maximum service fees for construction and demolition debris box collection service with one hundred and twenty (120) days notice to FRANCHISEE. Such maximum service fees, should they be established, will be adjusted annually as determined by the CITY, at its sole discretion.

### **Section 15. Insurance Requirements.**

## **Construction & Demolition Debris Franchise Agreement**

FRANCHISEE shall obtain and shall maintain throughout the term of this Agreement, at FRANCHISEE's sole cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by FRANCHISEE, its agents, representatives, employees or contractors.

a. Minimum Scope and Limits of Insurance. FRANCHISEE shall maintain at least the following minimum insurance coverages:

- (1) *Comprehensive General Liability:* \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (2) *Automobile Liability:* \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
- (3) *Workers' Compensation and Employers Liability:* Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by the CITY's Risk Manager. FRANCHISEE shall be responsible for payment of all deductibles or self-insured retentions.

c. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:

- (1) *General Liability and Automobile Liability Coverages.*
  - (a) The CITY, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of FRANCHISEE; products and completed operations of FRANCHISEE; premises owned, leased or used by FRANCHISEE; and automobiles owned, leased, hired or borrowed by FRANCHISEE. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, employees and agents and contractors.
  - (b) FRANCHISEE's insurance coverage shall be primary insurance as respects the CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the CITY, its officers, employees, agents or contractors shall be excess of FRANCHISEE's insurance and shall not contribute with it.

## **Construction & Demolition Debris Franchise Agreement**

- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, employees, agents or contractors.
- (d) Coverage shall state that FRANCHISEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (2) *All Coverages.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the CITY.

d. Placement of Insurance. Insurance shall be placed with insurers acceptable to the CITY's Risk Manager. FRANCHISEE must place insurance with a current A.M. Best rating of no less than A:VII. The CITY's Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the CITY and the general public are adequately protected.

e. Proof of Insurance. FRANCHISEE shall furnish the CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the address provided in Section 26 of this Agreement.

FRANCHISEE acknowledges that the Construction and Demolition Debris Box Collection Franchise granted to FRANCHISEE will not become effective, and FRANCHISEE will have no authority to perform construction and demolition debris collection in the CITY, unless FRANCHISEE provides satisfactory proof of insurance PRIOR TO BEGINNING OPERATIONS AS A FRANCHISEE.

### **Section 16. Indemnity.**

FRANCHISEE agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless the CITY, and its agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the CITY's employees, agents or officers which arise from, or are connected with, or are caused by willful or negligent acts or omissions of FRANCHISEE, or its agents, officers or employees, in the performance of the non-exclusive Franchise or this Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that FRANCHISEE's duty to indemnify and hold harmless shall not include any claims or liability arising solely from the negligence or willful misconduct of the CITY, its agents, officers, servants and employees.

### **Section 17. Collection Equipment.**

## **Construction & Demolition Debris Franchise Agreement**

a. Containers shall be covered during transportation to prevent Construction and Demolition Debris from escaping from the container.

b. All equipment used or provided by FRANCHISEE shall be kept in a safe and sanitary condition. Vehicles shall be cleaned and painted, as needed, to maintain a clean and sanitary appearance.

c. Vehicles will be subject to periodic, unscheduled inspections by the CITY and determination as to sanitary condition shall be made by the CITY.

d. City shall have the right to prohibit the use of any vehicle that fails to comply with the provisions set forth herein.

e.. Violations of this provision shall subject the FRANCHISEE to liquidated penalties as set forth in Section 23 of this Agreement.

### **Section 18. Abandoned Containers.**

a. If FRANCHISEE abandons any container used to provide construction and demolition debris services under this Franchise, the CITY may remove the container and/or dispose of the contents of the container.

b. If the CITY removes a container abandoned by FRANCHISEE and/or disposes of the contents of any container abandoned by FRANCHISEE, the CITY may charge FRANCHISEE for the CITY's costs incurred in such removal/disposal and for the CITY's costs of storage of the container. FRANCHISEE shall reimburse the CITY for such costs within ten (10) days of the date of the CITY's invoice for such costs.

c. For the purposes of this Section, "abandoned" includes:

- (1) FRANCHISEE's failure to remove the container within 30 days upon termination of the Construction and Demolition Debris Box Collection Franchise or such additional time as granted in writing by the CITY;
- (2) FRANCHISEE's failure to remove the container within a reasonable period after the expiration of the Franchise granted to FRANCHISEE, except in the case where FRANCHISEE has been granted an extension of the term of said Franchise or FRANCHISEE has been granted a subsequent Construction and Demolition Debris Box Collection Franchise authorizing FRANCHISEE to collect and transport the type or types of Construction and Demolition Debris for which the container was used pursuant to this Agreement.
- (3) FRANCHISEE's failure to dispose of the contents of the container within five (5) days after the City Manager issues written notice to FRANCHISEE to dispose of the contents.

## **Construction & Demolition Debris Franchise Agreement**

### **Section 19. FRANCHISEE Provided Construction and Demolition Debris Containers**

- a. General. Containers used for storage and transportation of Construction and Demolition Debris shall be painted and shall prominently display the name of the FRANCHISEE (as listed in this Agreement), FRANCHISEE's customer service telephone number, and the number of the container.
- b. Cleaning, Painting, Maintenance. FRANCHISEE shall make reasonable efforts to replace, clean or repaint all containers as needed so as to present a clean appearance.
- c. Inspections by CITY. Containers will be subject to periodic, unscheduled inspections by the CITY and determination as to sanitary condition shall be made by the CITY.
- d. CITY shall have the right to prohibit the use of any container that fails to comply with the provisions herein.
- e. Violations of this provision shall subject the FRANCHISEE to liquidated penalties as set forth in Section 23 of this Agreement.

### **Section 20. Personnel**

- a. Driver Qualifications. FRANCHISEE agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- b. Safety Training. FRANCHISEE shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of Construction and Demolition Debris, or who are otherwise directly involved in such collection.

### **Section 21. Compliance With Law.**

FRANCHISEE shall perform all collection, recycling and disposal operations in accordance with applicable federal, state, and local law, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

### **Section 22. Permits and Licenses.**

FRANCHISEE shall obtain and maintain, at FRANCHISEE's sole cost and expense, all permits and licenses applicable to FRANCHISEE's operations under the Franchise required of FRANCHISEE by any governmental agency.

### **Section 23. Liquidated Penalties**

- a. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance, and to serve as a specific measure of successful performance under this Agreement. The Parties further recognize that if FRANCHISEE fails to perform its obligations, CITY and customers within the CITY will suffer damages that are and will be impractical and

## **Construction & Demolition Debris Franchise Agreement**

extremely difficult to ascertain and determine. The Parties agree that the Liquidated Penalty amounts provided in this Section represent a reasonable estimate of the amount of such damages for the specified breaches, without prejudice to CITY's right to treat uncorrected non-performance as an event of default under Section 24. The CITY may determine the occurrence of events giving rise to Liquidated Penalties through the observation of its own employees or representatives, or by investigation of a customer or customer complaints.

b. Upon delivery of written notice to the FRANCHISEE, the CITY may impose the following Liquidated Penalties upon the FRANCHISEE, in addition to any other available remedies the CITY may have.

- (1) Failure to maintain public containers or vehicles in clean and sanitary condition as required by this Agreement: \$100.00 per day per incident.
- (2) Failure to label containers with FRANCHISEE's name (as listed in this Agreement), FRANCHISEE's customer service telephone number, and the number of the container: \$500 per day per incident.
- (3) Failure to achieve and maintain a minimum of fifty (50%) percent diversion per calendar year or such other period as may be determined by CITY as set forth in Section 11 of this Agreement: ten percent (10%) of all gross construction and demolition debris box collection revenues for services provided within the city limits of the CITY.
- (4) Failure to remit franchise fee to CITY by the fifteenth (15<sup>th</sup>) of the month as required in Section 8: \$100.00 per occurrence plus late fees of two percent (2%) per month for every month thereafter until paid.
- (5) Failure to maintain or submit documents and reports as required under the terms of this Agreement after ten (10) days notice: \$100.00 per incident per day.
- (6) Failure to perform any other requirements of this Agreement not specifically stated in this Section, and not corrected or in the process of correction within twenty-four (24) hours of notice from the CITY: \$200.00 each incident each day.

c. Above amounts may be adjusted by the CITY on each January 1, beginning with January 1, 2004 to reflect changes in the Consumer Price Index, All Urban Consumers, Series ID: CUURA422SAO, San Francisco-Oakland-San Jose, CA, Not Seasonally Adjusted for the preceding twelve (12) month period.

### **Section 24. Default, Termination**

a. Default. The CITY shall provide written notice of a default or failure to comply with any obligation or duty imposed on FRANCHISEE under this Agreement or CITY ordinance. The City Manager and FRANCHISEE shall thereupon meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the City Manager shall have the right to terminate this Agreement.

## **Construction & Demolition Debris Franchise Agreement**

Whereupon, FRANCHISEE shall be suspended from providing Construction and Demolition Debris Box Collection for a period of five (5) years from the date of the termination. After five (5) years, should the FRANCHISEE provide proof that the event causing the FRANCHISEE to default has been corrected, and at the sole and complete discretion of the CITY, the FRANCHISEE may be reinstated upon reapplication.

b. A default under this Agreement shall include, but not be limited to, any of the following:

- (1) *Misrepresentation.* Any misrepresentation made to the CITY by the FRANCHISEE or failure to disclose required information any reports submitted to the CITY, in FRANCHISEE's application to enter into this Agreement or, in Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- (2) *Fraud or Deceit.* If the FRANCHISEE practices, or attempts to practice, any fraud or deceit upon the CITY or its customers.
- (3) *Failure to Maintain Coverage.* If the FRANCHISEE fails to provide or maintain in full force and effect the Worker's Compensation or liability, coverage as required by this Agreement.
- (4) *Violations of Regulation.* If the FRANCHISEE violates any regulations, permits, orders or filing of any regulatory body having jurisdiction over the FRANCHISEE which violation or non-compliance materially affects the FRANCHISEE'S ability to perform under this Agreement, provided that the FRANCHISEE may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent the FRANCHISEE is able to adequately perform during that period.
- (5) *Acts or Omissions.* Any other act or omission by FRANCHISEE which materially violates the terms, conditions, or requirements of this Agreement, City Code, AB 939, as it may be amended from time to time, or any order, directive, rule, or regulation issued hereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notices, if the FRANCHISEE should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- (6) *Failure to Recycle Fifty Percent (50%).* If the FRANCHISEE fails to recycle fifty percent (50%) of the Construction and Demolition

## **Construction & Demolition Debris Franchise Agreement**

Debris collected in the City, as required by Section 11 of this Agreement.

- (7) *Failure to Pay Franchise Fees.* If the FRANCHISEE fails to pay the franchise fees in the amount owed to the CITY pursuant to Section 7 according to the schedule specified in Section 8.

c. Termination. If the City Manager determines, at his sole discretion, that the FRANCHISEE has defaulted under the terms of this Agreement, failure to cure will result in suspension, penalties, or a notice of termination of this Agreement by the CITY in accordance with subsection e.

d. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. FRANCHISEE shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if FRANCHISEE's performance is prevented or delayed by Force Majeure. Force Majeure means acts of God including landslides, lightening, forest fires, storms, floods, freezing and earthquakes, civil disturbances, lockouts, wars, blockades, public riots, explosions, or government restraint.

e. The City Manager shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of the FRANCHISEE and the FRANCHISEE shall cease operation under its FRANCHISE within ten (10) days after receipt of said notice unless FRANCHISEE has requested an appeal hearing before the CITY prior to the expiration of the ten (10) day period. In the event FRANCHISEE requests such an appeal hearing, said FRANCHISEE may continue collecting, transporting, recycling and disposing of Construction and Demolition Debris until the CITY has rendered its decision on the termination of the Franchise.

f. Any FRANCHISEE whose Franchise has been terminated has the right to an appeal hearing before the CITY COUNCIL. FRANCHISEE shall request such a hearing in writing to the City Clerk within ten (10) calendar days after receipt of notice of termination, and the CITY COUNCIL shall hold the appeal hearing not later than thirty (30) days following the receipt of the written request if requested by FRANCHISEE. The Clerk shall give written notice of the time, date and place of the appeal hearing to FRANCHISEE and the City Manager. The CITY COUNCIL shall render its decision after the close of the appeal hearing and its decision shall be final; provided, however, that nothing herein shall limit FRANCHISEE's right to seek judicial review or remedies.

### **Section 25. Conditions Upon Termination.**

a. In the event the Construction and Demolition Debris Box Collection Franchise is terminated:

- (1) FRANCHISEE shall have no right or authority to engage in Construction and Demolition Debris collection, recycling or disposal operations in the CITY for a period of five (5) years from the date of the termination. After five (5) years, should the FRANCHISEE

**Construction & Demolition Debris Franchise Agreement**

provide proof that the event causing the FRANCHISEE to default has been corrected, and at the sole and complete discretion of the CITY, the FRANCHISEE may be reinstated upon reapplication.

- (2) FRANCHISEE shall, however, remain liable to the CITY for any and all franchise fees that would otherwise be payable by FRANCHISEE, for any and all late payment charges and interest assessed pursuant to Section 8 of this Agreement, for any and all delinquent report charges assessed pursuant to Sections 12 and 23 of this Agreement, and for any indemnity obligations under Section 16 of this Agreement.
- (3) FRANCHISEE shall have a continuing obligation to submit to the CITY all reports required by Section 12 of this Agreement which relate to Construction and Demolition Debris activities performed by FRANCHISEE up to and including the date of termination.
- (4) FRANCHISEE shall allow the Construction and Demolition Debris generators served by FRANCHISEE to arrange for construction and demolition debris collection services with a collector authorized to perform such services, without penalty or liability for breach of contract on the part of the generators.

b. In the event the Franchise is terminated, then within the time period specified by the CITY and if directed by the City Manager, FRANCHISEE shall remove all of FRANCHISEE’s construction and demolition debris box containers from all of FRANCHISEE’s collection service locations and shall properly recycle or dispose of all Construction and Demolition Debris in such containers.

**Section 26. Notices.**

Except as otherwise provided in this Agreement, all notices required by this Agreement or by the Construction and Demolition Debris Box Collection Franchise shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To CITY:                      Assistant City Manager  
    City of Santa Rosa  
    100 Santa Rosa Avenue, Room 10  
    Santa Rosa, CA 95404

To FRANCHISEE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Notice shall be deemed effective on the date personally served or, if mailed, three (3) days after the date deposited in the mail.

## **Construction & Demolition Debris Franchise Agreement**

### **Section 27. Relationship of Parties**

The parties intend that the FRANCHISEE shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of the CITY nor as a partner of or joint venturer with the CITY. No employee or agent of the FRANCHISEE shall be deemed to be an employee or agent of the CITY. Except as expressly provided herein, the FRANCHISEE shall have the exclusive control over the manner and means of conducting the construction and demolition debris collection services performed under this Agreement and all persons performing such services. FRANCHISEE shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of the CITY by virtue of their employment with the CITY.

FRANCHISEE agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, franchisee, association, organization, or corporation. FRANCHISEE has not directly or indirectly colluded, conspired, connived or agreed with any person, partnership, FRANCHISEE, association, organization, or corporation to secure any advantage against the CITY.

### **Section 28. Compliance with Law**

In providing the services required under this Agreement, FRANCHISEE shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, the CITY and other states, cities or counties which may have jurisdiction over any service provided in this Agreement and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the term of this Agreement.

### **Section 29. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

### **Section 30. Jurisdiction**

The parties agree that this Agreement is made in and will be performed in the CITY and any lawsuits between the parties arising out this Agreement shall be filed in Sonoma County.

### **Section 31. Assignment**

a. FRANCHISEE acknowledges that this Agreement involves rendering a vital service to the businesses within the CITY, and that the CITY has Franchised FRANCHISEE to perform the services specified herein based on (1) FRANCHISEE's experience, skill and reputation for conducting its construction and demolition debris collection in a safe, effective and responsible fashion, at all times in keeping with

## **Construction & Demolition Debris Franchise Agreement**

applicable waste management laws, regulations and good waste management practices, and (2) FRANCHISEE's financial resources to maintain the required equipment and to support its indemnity obligations to the CITY under this Agreement. The CITY has relied on each of these factors, among others, in choosing the FRANCHISEE to perform the services to be rendered by the FRANCHISEE under this Agreement.

b. Any Franchise granted is a privilege to be held in trust by the original FRANCHISEE. A Franchise issued by the CITY shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the written prior approval of the CITY. This restriction includes the transfer of ownership of the Franchise, or a majority of the ownership or control of the FRANCHISEE, or the conveyance of a majority of the FRANCHISEE's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by the FRANCHISEE. The CITY shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee meets all of the requirements established by the CITY for the granting of this Franchise and is qualified to perform its obligations as required by this Franchise Agreement.

c. FRANCHISEE shall promptly notify the City Manager in writing in advance of any proposed assignment, sale, or transfer. In the event the CITY approves of any assignment, sale, or transfer, said approval shall not relieve FRANCHISEE of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

### **Section 32. Binding on Successors**

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

### **Section 33. Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Agreement.

### **Section 34. Notice of the CITY's Right to Grant Exclusive Franchise**

The parties agree that in the event the CITY determines to change the system from a non-exclusive franchise system to an exclusive franchise system, FRANCHISEE shall be entitled to notice of one hundred and twenty (120) days prior to the expiration of this Agreement. The parties acknowledge that this Agreement fulfills the CITY's obligation, if any, under Section 49520 through 49524 of the Public Resources Code to provide five (5) years notice to solid waste enterprises operating within the CITY of CITY's right to grant exclusive Franchise for construction and demolition debris box collection.

## **Construction & Demolition Debris Franchise Agreement**

### **Section 35. Entire Agreement**

This Agreement, including the Attachments, represents the full and entire Agreement between the parties with respect to the matters covered herein.

### **Section 36. Interpretation**

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

### **Section 37. Amendment**

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the parties.

### **Section 38. Severability**

If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**Construction & Demolition Debris Franchise Agreement**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

City of Santa Rosa, a municipal corporation

By \_\_\_\_\_  
City Manager, City of Santa Rosa

(SEAL)

ATTEST: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

FRANCHISEE

By \_\_\_\_\_

Title \_\_\_\_\_

And

By \_\_\_\_\_

Title \_\_\_\_\_

Company \_\_\_\_\_