

# FIRST AMENDMENT TO FRANCHISE AGREEMENT

BETWEEN THE COUNTY OF INYO

AND

MADERA DISPOSAL SYSTEMS, INC.

D/B/A BISHOP WASTE DISPOSAL

WHEREAS, the County of Inyo, California (hereinafter referred to as "County"), and Madera Disposal Systems, Inc. dba Bishop Waste Disposal (hereinafter referred to a "Franchisee"), have previously entered into a certain Franchise Agreement for Collection of Solid Waste From Residential and Commercial Customers Within Inyo County dated May 1, 2019, hereinafter the "Agreement;" and

WHEREAS, the Parties desire to amend their Agreement in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and in consideration for the County's consent to the transfer of the shares of Preferred Septic and Disposal, Inc., to Franchisee (the "Consent"), the parties agree as follows:

1. So long as the County does not, during the term of this Agreement or any extension thereof, enter into a franchise agreement that grants a Person (that is not directly or indirectly owned or controlled by Franchisee or any parent company of Franchisee) with the franchise, right and privilege to offer to provide any Franchise Services to any Customers within any part of the Franchise Area (a "Competing Franchise"), the changes to the Agreement set forth below in this Section 1 shall be effective. For the avoidance of doubt, in the event that the County grants, during the term of this Agreement or any extension thereof, a Competing Franchise, the changes to the Agreement set forth below in this Section 1 shall automatically, and with no action taken by the County or Franchisee, be rescinded and shall no longer be effective:
  - a. The reference to "floor rates" in Section 5.01(c) and "floor rate" in the third paragraph of Section 6.02(a) of the Agreement are hereby deleted and replaced with, in each instance, "Service Fees".
  - b. The reference to "Section 13.01 (2 iii)" in Section 5.01(c) shall be changed to "Section 12.01".
  - c. ARTICLE 10, Section 10.02(c) regarding "Requested Floor Rate Increase" is hereby deleted in its entirety.
  - d. ARTICLE 12, Section 12.01 of the Agreement is hereby deleted in its entirety and replaced with the following:

**"12.01. Service fees and compensation.**

**a. Setting Rates and Charges**

Franchisee shall provide the Franchise Services described in this Agreement and its exhibits in accordance with the rates set forth in Exhibit "12.01". Exhibit "12.01" specifies the maximum rate to be charged for collection of such materials. All charges for services rendered by Franchisee shall be uniform and non-discriminatory for the type of service provided and reasonably based upon the type and/or number of containers, type of Solid Waste, whether compacted or loose, number of separate pick-up points at any place of collection, placement of container(s) or distance of carry-out, frequency of collection, remote location, terrain, disposal costs, and whether residential, commercial, construction or industrial collection.

**b. [INTENTIONALLY DELETED]**

**c. Annual Service Fee Adjustments.**

On January 1 of each year, the Board of Supervisors will adjust Service Fees set forth on Exhibit 12.01 upward or downward, in the manner described below:

1. *(CPI Adjustment.* Commencing on January 1, 2022 and on the same date annually thereafter (the “Adjustment Date”), the portion of the Service Fee rates not associated with tipping fees will be adjusted to account for annual inflationary increases in an amount equal to the annual percentage change in the Consumer Price Index (CPI) All Urban Consumers, Garbage and Trash Collection Component. This annual cost of living adjustment (the “COLA” adjustment) shall be equal to one hundred percent (100%) multiplied by the average of the month to month change in the CPI for the 12 month period ending nearest, but at least 60 days prior to, the date the COLA adjustment is to take effect.
2. *Pass-Through Costs Adjustment.* At the same time as the CPI Adjustment is considered the Service Fee rates shall also be adjusted to account for Franchisee’s increased or decreased pass through costs as defined in Section 12.01 e 2 during the Term of this Agreement (including, without limitation, increases to the Franchise Fee) such that cost changes shall be “passed-through” to Franchisee’s customers in the form of rate adjustments.

**d. Alternative Service Fee Adjustment**

Prior to December 1 of each year any Franchisee who believes the CPI Adjustments either understates or overstates actual local cost of doing business may request the Board of Supervisors consider adjustments to the Service Fee using the rate-setting model described in Section 12.01 e below in lieu of the CPI Adjustment and Pass-Through Cost Adjustment specified herein. The decision to implement the rate-setting model described Section 12.01 e below shall be made exclusively and solely by the Board of Supervisors at a public meeting. As such, the Franchisee requesting application of the alternative rate-setting model Section 12.01 e should fully substantiate its reasons for making the request at the time the request is filed. The Board of Supervisors may also decide, on its own volition to employ the rate setting methodology described below. If the Board of Supervisors decides to employ the rate-setting methodology described in Section 12.01 e on its own volition or at the request of a Franchisee, no rate increases or decreases will be granted until the County completes its analysis of the cost components described in Section 12.01 e and the Board of Supervisors acts on the increase or decrease in rates.

**e. Rate Setting.** Beginning on January 1, 2022 at any time thereafter, the Board of Supervisors may make Annual Service Fee Adjustments, based on its review and approval of the following cost components. If the County intends to recommend that this rate-setting methodology be employed absent a written request described in Section 12.01(d) above, the County shall provide notice to all Franchisees at least 45 days prior to the end of the calendar year.

1. Operating Costs. Operating costs used to determine rates include solid waste collection, processing, transfer and disposal costs. Operating costs shall include reasonable salaries and bonus compensation for all officers of Franchisee that are actively involved in the management of Franchisee's business activities. Operating costs shall exclude the following:
  - i. Income taxes;

- ii. Payments to affiliates of Franchisee other than reasonable compensation for goods or services rendered;
- iii. Entertainment expenses;
- iv. Fines and penalties;
- v. Cost of repairs due to operator negligence;
- vi. Charitable and political donations;
- vii. Expenses not associated with solid waste operations franchised under this Agreement;
- viii. Unreasonable expenses in kind or amount;
- ix. The principal portion of any loan repayments; and
- x. Any other costs disallowed under the terms of this Agreement.

2. Pass-Through Costs. Pass-through costs shall be allowed as an expense for purposes of setting Franchisee's collection rates, but shall not be included as an eligible cost for purposes of calculating Franchisee's profit margin. The following adjustment shall also be considered at any time upon a request by Franchisee. The Board of Supervisors may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described in this Section. Pass-through costs include the following:

- i. The Franchise Fee set pursuant to this Agreement;
- ii. The cost of any other cost or fee, except for fines and penalties, imposed on Franchisee by the County;
- iii. Cost increases associated with a change and/or increase in the level of service required of Franchisee through this Agreement or change of terms in this Agreement;
- iv. Any changes in law, regulations, taxes or designated disposal sites which change the contractor's expenses; and
- v. Fees, surcharges, and other amounts collected by Franchisee as agent of the County or other federal, state, or local agency.

3. Allowed Profit. The Franchisee shall be entitled to a reasonable profit on its operating costs established in the sole discretion of the Board of Supervisors.

4. If, after negotiating the rate setting mechanism in Section 12.01(d), Franchisee is not satisfied that the rate provides for an adequate profit, Franchisee may terminate the Agreement upon providing the County 45 days' notice.

5. Special Circumstances Service Fee Adjustments. The following adjustment shall also be considered upon a request by Franchisee. The Board of Supervisors may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described below:

The parties acknowledge there may be infrequent extraordinary events which, although they do not prevent either party from performing and thus do not implicate the Force Majeure provisions hereof, nevertheless increase the cost of providing service such that Franchisee's compensation and the rate adjustment mechanism provided in this Agreement result in Franchisee's suffering losses which are substantially outside the commercially reasonable expectations of the parties. The obligation of the parties in such event is to act reasonably toward each other in arriving at an appropriate adjustment in rates. Accordingly, and at its option, the Franchisee may request a special circumstance rate review should an event or circumstance arise which negatively impacts the economics of operating pursuant to this agreement and which is in excess of the rate adjustment resulting from the application of the annual adjustment formula set forth hereinabove. It is understood that the Franchisee shall have the

burden of demonstrating to the reasonable satisfaction of the County the basis for the request. The County may also initiate a special circumstance rate review at its option.

The rate adjustment after a special circumstances rate review may result in a rate increase, a rate reduction or no change in rates. All pertinent information must be submitted to Director for review and subsequent approval by the Board of Supervisors. The costs of a special circumstance rate review shall be borne by the party requesting such review.

If an increase in cost results from the Alternative Service Fee Adjustment Method whether initiated by Franchisee or by the Board of Supervisors, at least 6 weeks prior to the implementation, Franchisee will give written notice of increases to each Customer in a form satisfactory to the County.

**f. Notice of Rate Setting Hearing.**

Franchisee shall provide written notice to each rate payer in a form approved by the County, of the time, date and place of each hearing set by the Board of Supervisors to set rates. Franchisee shall provide said notice at least ten (10) but no more than sixty (60) days prior to such date and the expense therefor shall be included in the rate base.

At least four (4) months before the effective date of any rate increase (other than one based solely on a landfill disposal cost increase) proposed by Franchisee, Franchisee shall submit to the Board of Supervisors a rate application in a form to be determined by the Board of Supervisors, which shall include proposed collection rates and revenues and operating cost and pass-through cost projections for the upcoming two-year period, which projections shall have a reasonable factual basis. Rates shall be set with the intent to reimburse Franchisee for its allowed operating and pass-through costs and allowed profit. The parties recognize that the Board of Supervisors shall use its best judgment and discretion in evaluating Franchisee's projections and may make adjustments, with a reasonable factual basis, in Franchisee's projections of its operating costs and pass-through costs and in setting rates. By this Agreement, neither the County nor its governing body or staff agree, guarantee or warrant that such projections or adjustments will be accurate, or that Franchisee will, in fact, achieve reimbursement of all of its operating costs or pass-through costs, or that Franchisee will achieve its projected profit margin. Franchisee expressly assumes the risk that its costs may be higher than projected in the rate setting process and that its revenues may be lower than projected.”

d. Exhibit 12.01(a) hereby replaces “Exhibit 13.01a”, and is hereby attached to the Agreement with the following terms:

**“Exhibit 12.01**

CHARGES FOR WASTE HAULING  
SERVICES AREAS A & B  
INYO COUNTY  
Effective January 1, 2021

**COMMERCIAL BIN SERVICE - AREA A & B**

<u>Size</u>	<u>1/xWeek</u>	<u>2/xWeek</u>	<u>3/xWeek</u>	<u>4/x Week</u>	<u>5/xWeek</u>	<u>6/xWeek</u>	<u>Ex P/U</u>	<u>Deliverly</u>
2-yard	\$101.20	\$176.12	\$253.84	\$335.33	\$415.11	\$496.61	\$52.94	\$38.66
3-yard	\$151.43	\$264.03	\$380.92	\$503.18	\$622.65	\$744.91	\$79.22	\$38.66
4-yard	\$192.89	\$336.02	\$476.56	\$620.57	\$764.57	\$905.64	\$100.53	\$38.66
6-yard	\$289.41	\$504.03	\$715.03	\$930.86	\$1,146.85	\$1,358.36	\$150.85	\$38.66

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**RESIDENTIAL CURBSIDE CART SERVICE - AREAS A & B**

<u>96 Gallon</u>	<u>Monthly Rnte</u>	<u>Each Extra Cart</u>
1 Cart	\$ 32.66	\$ 23.01

<u>64 Gallon</u>	<u>Monthly Rate only</u>	<u>Incl per household</u>
1 Cart	\$ 29.32	

**RESIDENTIAL CURBSIDE SERVICE (CUSTOMER OWNED CONTAINER) - AREA B- Cartago, Alabama Hills, Olancha, Darwin, Keeler**

**30-40 Gallon Container** (Per month)

<u>1 &amp;/or 2 cans</u>	<u>3-cans</u>	<u>4-cans</u>	<u>5-cans</u>	<u>6-cans</u>
\$ 67.35	\$ 89.40	\$ 109.62	\$ 129.81	

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**ROLL OFF BIN SERVICE**

<u>Size</u>	<u>Area</u>	<u>Full Rate per Compactor</u>	
		<u>Bin*</u>	<u>Roll-Off</u>
20 yard	Bishop	\$293.27	\$366.59
	Big Pine	\$366.59	\$439.91
	Independence	\$454.57	\$527.89
	Lone Pine	\$527.89	\$601.21
	Olancha	\$645.20	\$718.52
	Round Valley	\$366.59	\$439.91
	Starlite	\$366.59	\$439.91
30 yard	Bishop	\$469.23	\$542.56
	Big Pine	\$542.56	\$615.87
	Independence	\$630.54	\$703.85
	Lone Pine	\$703.85	\$777.17
	Olancha	\$821.16	\$894.48
	Round Valley	\$469.23	\$542.56
Starlite	\$469.23	\$542.56	

\*For first 14-day use period. Service includes: delivery, rental & service (landfill fees additional). Full Rate applies after first 14-day period.

These are the minimum allowable rates to be charged.

Hauler may offer a discount of up to 5% to all commercial customers paying in advance or within 30 days of invoice.

All commercial contract proposals must clearly delineate rates both before and after any discount is applied.

Special collection services not specified above shall be negotiated between the customer and the franchised waste hauler.

CURRENT COMMERCIAL BIN SERVICE - AREA A&B

Size	1/xWeek	2/xWeek	3/xWeek	4/xWeek	5/xWeek	6/xWeek	Ex P/U	Delivery
2-yard	\$98.89	\$172.42	\$248.65	\$328.53	\$406.74	\$486.63	\$51.10	\$37.32
3-yard	\$147.98	\$258.49	\$373.14	\$492.97	\$610.11	\$729.93	\$76.47	\$37.32
4-yard	\$188.61	\$329.19	\$467.28	\$608.70	\$750.13	\$888.72	\$97.04	\$37.32
6-yard	\$282.99	\$493.79	\$701.09	\$913.06	\$1,125.18	\$1,332.98	\$145.61	\$37.32

PROPOSED

Size	1/xWeek	2/xWeek	3/xWeek	4/xWeek	5/xWeek	6/xWeek	Ex P/U	Delivery
2-yard	\$101.20	\$176.12	\$253.84	\$335.33	\$415.11	\$496.61	\$52.94	\$38.66
3-yard	\$151.43	\$264.03	\$380.92	\$503.18	\$622.65	\$744.91	\$79.22	\$38.66
4-yard	\$192.89	\$336.02	\$476.56	\$620.57	\$764.57	\$905.64	\$100.53	\$38.66
6-yard	\$289.41	\$504.03	\$715.03	\$930.86	\$1,146.85	\$1,358.36	\$150.85	\$38.66

CHANGE

Size	1/xWeek	2/xWeek	3/xWeek	4/xWeek	5/xWeek	6/xWeek	Ex P/U	Delivery
2-yard	\$2.30	\$3.70	\$5.18	\$6.80	\$8.36	\$9.98	\$1.84	\$1.35
3-yard	\$3.44	\$5.54	\$7.78	\$10.21	\$12.55	\$14.98	\$2.75	\$1.35
4-yard	\$4.28	\$6.83	\$9.29	\$11.87	\$14.45	\$16.93	\$3.49	\$1.35
6-yard	\$6.42	\$10.24	\$13.94	\$17.80	\$21.67	\$25.38	\$5.25	\$1.35

CURRENT RESIDENTIAL	\$31.96
PROPOSED RESIDENTIAL	\$32.66
CHANGE	\$0.70

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2. The parties acknowledge and agree that the term of that certain Franchise Agreement, between Preferred Septic and Disposal, Inc. and the County, dated May 1, 2019, as amended (the “Preferred Franchise Agreement”) will expire on December 31, 2026. The parties acknowledge and agree that, in the event that Franchisee exercises its option to extend the term of the Agreement pursuant to Section 3.01(b) of the Agreement, then the customers under the Preferred Franchise Agreement shall automatically, without any further action by the parties, become customers of Franchisee and shall be governed by the terms of the Agreement.
3. Except as hereinabove set forth, all other terms and conditions of the Agreement shall remain effective and this First Amendment to Franchise Agreement shall not constitute a waiver by either party of any rights or remedies arising thereunder. If a conflict arises between the terms of this First Amendment and the terms of the Agreement the terms of this First Amendment shall control.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed by their duly authorized representatives this First Amendment to Franchise Agreement this 11th day of March, 2021 and such First Amendment shall be effective on the date in which the County provides the Consent.

COUNTY OF INYO:

MADERA DISPOSAL SYSTEMS, INC.

By: *Jeff Biffert*  
Title: Chairperson

By: *Susan L. Vandewater*  
Title: *Division Vice President*