

CHESTER PUBLIC UTILITY DISTRICT

FRANCHISE AGREEMENT FOR COLLECTION OF REFUSE AND RECYCLABLE MATERIALS, DISPOSAL OF REFUSE, AND RECYCLING OF RECYCLABLE MATERIALS

This Franchise Agreement is made as of this 12th day of May, 2020 by and between the Chester Public Utility District, a State of California Special District (District), and Feather River Disposal, Inc. d/b/a Waste Management (Franchisee).

Recitals

1. The State of California has, through enactment of the California Integrated Waste Management Act of 1989 (Act), determined each of the following:
 - A. That management of solid waste and recyclable materials is a shared responsibility of the State and local governments.
 - B. That it is in the public interest for local governments to be authorized and required to provide adequate handling services for solid waste and recyclable materials.
 - C. That the amount of solid waste generated in California, coupled with diminishing landfill space, potential adverse environmental impacts from burying solid waste in landfills, and the need to conserve natural resources have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program.
2. The State of California, through the Act, has directed CalRecycle (formerly the California Integrated Waste Management Board) and all local agencies to maximize the use of feasible waste reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of in landfills.
3. Both District and Franchisee are mindful of the Act and all other provisions of local, State and federal laws governing the safe collection, processing, re-use, recycling and disposal of solid waste and recyclable materials.
4. District, through its Board of Directors, recognizes that the responsibility for local solid waste management is a "shared responsibility between the State and local governments" per Section 40001(a) of the California Public Resources Code.
5. Franchisee, for a substantial period of years prior to the commencement of this agreement, has provided solid waste collection and related services to District under a previous contract with District. On the basis of the satisfactory history of Franchisee's ability to provide these services, and in accordance with the District's Code of Ordinances, District has determined that it is in the best interests of its residents to enter into this agreement with Franchisee in order to further District's goal of regulatory compliance as set forth in the Act.

6. District has independently evaluated Franchisee's past performance and has determined that Franchisee is qualified and capable of providing solid waste handling services including the collection and processing of recyclable materials in accordance with District. Such services shall be accomplished in a manner and on terms which are in the best interests of District, its residents and businesses, taking into account the qualifications and experience of Franchisee and the cost of providing such services.

7. Franchisee has participated in the development of this agreement and is familiar with its content and preparation, and the work to be performed by Franchisee under the agreement. This agreement accurately and fairly represents the intentions of Franchisee, and Franchisee enters into this agreement on the basis of its independent analysis.

NOW, THEREFORE, in consideration of the mutual promises contained in this agreement, and for other good and valuable consideration, District and Franchisee mutually agree to the following terms and conditions:

Section 1. Definitions and Terms.

- a. "Applicable law" means any law, regulation, requirement, or order of any federal, state or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Franchise Agreement.
- b. "District" shall mean the Chester Public Utility District, County of Plumas, California.
- c. "District Board" shall mean the governing body of the District.
- d. "Franchisee" shall mean Feather River Disposal, Inc., a Waste Management company.
- e. "Garbage" is all putrescible waste and animal, or vegetable waste or residue produced or accumulated from the preparation, processing, handling or consumption of food stuffs.
- f. "Green Waste" means vegetative matter resulting from normal yard and landscaping maintenance, such as palm, yucca and cactus, grass clippings, leaves, pruning's, weeds, branches, brush, and other forms of vegetative waste. For purposes of clarification, collection of source-separated green waste is not within the scope of this agreement.
- g. "Refuse" is both garbage and rubbish as defined herein. Refuse does not include segregated recyclable materials, "green waste", items too large to be handled by the Franchisee's collection trucks, or items customarily or traditionally self-transported by the customer to the disposal site or transfer station.

- h. "Recyclable materials" means the materials described as such in Exhibit B.
- i. "Rubbish" is non-putrescible waste, discarded or abandoned material, including but not limited to, paper, cardboard, rugs, rags, clothing, straw, wood, crockery, glass, rubber, metal, plastic, and construction debris.
- j. "Unacceptable Waste" means any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Franchisee pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Franchisee's equipment of facilities, or present a substantial endangerment to the health or safety of the public or Franchisee's employees. Title to and liability for Unacceptable Waste shall remain with the generator at all times.

Section 2. Nature and Term of Franchise.

- a. Franchisee shall have the exclusive right and duty to collect and remove refuse and recyclable materials from all residential, commercial, and industrial sources within the territorial boundaries of the District for a term beginning on July 1, 2020 and ending on June 30, 2025 (the "Term"). The District hereby grants to Franchisee an option to renew this Franchise Agreement, which shall be for a term of five (5) years, commencing on July 1, 2025, and ending on June 30, 2030. Notice of intent to exercise this option shall be the responsibility of the Franchisee and shall be given to the District in writing no earlier than eight (8) months before the commencement of the renewal period and no later than six (6) months before the commencement of the renewal period. This renewal option will be approved by the District only if the Franchisee is in compliance with the terms and conditions of the Franchise Agreement both at the time that the option is exercised and, on the day, that the renewal term is to commence.
- b. Franchisee shall furnish all labor, material, and equipment necessary and shall provide the service for the collection, transportation and disposal of refuse collected within the District.
- c. Franchisee is not authorized and is not required hereunder to collect and transport any hazardous waste or restricted or other waste that is not acceptable or permitted for disposal at the transfer station or disposal site. In addition, Franchisee shall not be required to collect containers that are not properly set out or filled in accordance with the collection requirements provided by Franchisee.

Section 3. Disposal Site.

The District shall not be under any obligation to make a solid waste landfill site or other

disposal area available for the use of the Franchisee. Further, this Franchise is expressly conditioned upon the County continuing to make available to the District the present transfer disposal site located at 3 Chester Dump Road, Chester, CA, or, in the alternative, the County of Plumas making available without charge to the District a comparable disposal site within fifteen (15) miles from Chester under similar terms and conditions. In the event that the County of Plumas does not continue to make available such comparable disposal site, then either the Franchisee or the District shall have the right, upon giving the sixty (60) days' written notice, to renegotiate the terms of the Franchise. If the parties are unable to renegotiate terms that are mutually acceptable at least 90 days prior to such comparable disposal site being available, then Franchisee may terminate this agreement with 30 days' notice to District.

Section 4. Equipment and Sanitation.

- a. All refuse collection shall be made with vehicles and equipment of a design reasonably approved by the District. Noise abatement shall be a consideration of vehicle and equipment inspection and approval.
- b. Franchisee shall not litter any private premises or public property in making collection of refuse, nor shall any refuse be allowed to leak, blow or fall from collection vehicles. However, if in spite of normal precautions against spillage or leakage, a litter is made on any private premises or public property, Franchisee shall immediately remove the same and clean up the area of spillage.
- c. Franchisee's personnel shall make all collections in a reasonably quiet and orderly manner.
- d. All trucks of the Franchisee shall be clean, sanitary and well-painted, by industry standards. Vehicles used in transporting garbage shall be disinfected as necessary to maintain sanitary conditions.
- e. **Overage.** "Overage" is defined as (i) refuse or recyclable materials exceeding its container's intended capacity such that the lid is lifted by at least 10 inches (or would be lifted by at least 10 inches if there was a lid), or (ii) refuse recyclable materials placed on top of or in the immediate vicinity of the container. Franchisee is not obligated to collect Overage, unless caused by Franchisee spillage of non-overloaded containers during collection. If Franchisee elects to collect Overage, it may charge the customer the Overage Rate set forth in Exhibit A. Franchisee will provide photographic evidence of the Overage to customer upon their request. If there have been more than three instances of Overage in any 12-month period for a particular service (i.e., refuse or recyclable materials), and Franchisee has photographic evidence of each instance, Franchisee may increase the customer's service level (i.e., larger container) to mitigate the Overage, and may increase the charges to such customer according to the increased service level.
- f. **Contamination.** Franchisee is not obligated to collect containers which are contaminated. For purposes of this Agreement, a container is contaminated when, based on visual or digital inspection, a recyclable materials container has more than 10% non-recyclable materials

(volume or weight) or any amount of Unacceptable Waste. If Franchisee elects to not collect a contaminated container, it shall notify the customer explaining why. Such notice may be provided by container tag, email or other means of communication. If Franchisee elects to collect a contaminated container, it may charge the customer a Contamination Fee set forth in Exhibit A. Franchisee will provide photographic evidence of the contamination to customer upon their request. The Contamination Fee may be included on the customer's regular invoice or billed separately. Franchisee may dispose of the contents of a contaminated container it elects to collect. If there have been more than three instances of a contaminated container in any 12-month period, and Franchisee has photographic evidence of each instance, Franchisee may (i) discontinue such service and remove the container, (ii) deliver additional or larger refuse container(s), and (iii) charge the customer the applicable rate for the additional or larger refuse container(s) described in Exhibit A. After one year, the customer may petition Franchisee to reinstate such service, in which case they must pay any activation and cart or bin redelivery fees set forth in Exhibit A.

Section 5. Collection Charges.

a. Franchisee will bill the customer and collect the charges for refuse collection.

b. Franchisee shall not charge for refuse collection in excess of the rate established pursuant to Section 8-2.3.1 of the Chester Public Utility District Code and as said ordinance may from time to time be amended by the District Board. The initial rates for service are attached (the "Rates"). The parties agree to utilize the Rate adjustment formula attached as Exhibit A to this Franchise Agreement and incorporated hereto.

c. **Extraordinary Rate Adjustment.** The Rates are calculated to pay certain expenses and costs that are of a contingent and uncertain nature. Therefore, in addition to the annual CPI adjustment provided by Exhibit A, the Rates shall, upon written request of Franchisee, be further adjusted, on an interim basis, to fully capture increased costs and lost revenue associated with performance of the collection, disposal and recycling services hereunder due to any one or more of the following causes:

- i. Force majeure events;
- ii. Change in Applicable Law that is effective after the Effective Date of this Agreement;
- iii. Increase in fees for disposal or processing of solid waste and recyclable materials at facilities owned by a third party;
- iv. Increase in surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities related to the services hereunder;
- v. Increase of at least 10% in the cost of transportation, includes fuel and third-party transportation costs; or
- vi. Other extraordinary circumstances or causes or reasons that are not within the reasonable control of Franchisee.

If Franchisee requests a Rate adjustment pursuant to this Section 5.c, it shall prepare an adjustment request setting forth its calculations of the increased costs/lost revenue and

accompanying adjustment to the Rates necessary to offset such increased costs/lost revenue. The District may request documentation and data reasonably necessary to evaluate such request by Franchisee, and may retain, at its own expense, an independent third party to audit and review such documentation and request. If such third party is retained, the District shall take reasonable steps, consistent with applicable law, to protect the confidential or proprietary nature of any data or information supplied by Franchisee. The District shall approve all properly calculated Rate adjustments within ninety (90) days of Franchisee's request.

Notwithstanding the foregoing, if the request is based upon any new or increased third party fees, taxes, assessments or charges, the District shall approve the interim Rate adjustment within such time period as necessary to ensure that such fees, taxes, assessments or charges are passed on to customers by the date the same are effective.

c. However, except as provided in Exhibit A and subsection b above, no rate adjustment shall be made on the basis of increased cost of doing business if such increased cost is a result of capital expenditures or improvement, unless such capital expenditures or improvements are reasonably necessary for refuse collection in the District.

d. Recyclable materials placed at the curbside for collection shall be deemed the property of Franchisee and Franchisee shall be responsible for all marketing and sale of recyclable materials collected hereunder and shall be entitled to all proceeds therefrom.

e. Franchisee reserves the right upon notice to discontinue acceptance of any category of recyclable material set forth herein as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials. Collected recyclable materials for which no commercially reasonable market exists may be landfilled.

f. If and when SB 1383 regulations are finalized by CalRecycle, Franchisee and District will work together to determine whether Franchisee's services under this Franchise Agreement must be modified. Franchisee will reasonably support District if it wishes to seek a waiver from CalRecycle with respect to certain SB 1383 requirements. Any increased costs incurred by Franchisee related to SB 1383 regulations, or other changes in applicable law, will be recovered by an adjustment to Franchisee's compensation hereunder as provided in Exhibit A.

g. The setting of and adjustment to the rates provided for in Exhibit A shall be the full, entire, and complete compensation due Franchisee for all labor, equipment, materials, and supplies, taxes, insurance, bonds, overhead, disposal, profit, and all other things necessary to perform all the services required by this agreement in the manner and at the times prescribed. Franchisee will not look to District for payment of any sums under this agreement, except as expressly provided herein. Franchisee will perform the responsibilities and duties described in this agreement in consideration of the right to charge and collect from customers for services rendered at rates set forth herein. Nothing in this section is intended to imply that any action of District or Franchisee with regard to adoption, adjustment, imposition or collection of rates is violative of any laws, regulations or provisions of the California Constitution.

h. Potential Rate Constraints. The parties recognize that, as of the date this agreement is entered into, there is no authoritative judicial determination of whether Article 13C and D (Proposition 218) of the California Constitution apply to charges imposed by private enterprises for solid waste handling and recycling services when those charges are regulated by a local government. Until such authoritative judicial guidance is available, District intends to provide notice of proposed rate increases, and an opportunity for public hearing and protest as required by Article 13D, except as specifically exempted under Article 13D. District will not be in default of this agreement if: (i) a successful majority protest under the provisions of Proposition 218 process prevents a proposed rate increase from being adopted, or (ii) a court of competent jurisdiction rules that rates adopted by District are not consistent with Article 13D. However, the District shall ensure that such notice and public hearing process occur early enough so that rate increases occur on the scheduled date (i.e., July 1 for annual CPI/fuel increases). The parties further recognize that various rates and fees may be subject to the provisions of Article 13A of the California Constitution (Proposition 13) and its implementing legislature. The timeframe for any action concerning the adjustment of the rates by either party shall be adjusted as necessary to comply with such requirements.

In the event of a successful challenge to a rate adjustment under the provisions of Proposition 218, or in the event that a court of competent jurisdiction or other regulatory agency sets aside, invalidates or stays all or a portion of the rates or of an adjustment to the rates, District and Franchisee shall meet and confer to address changes in services or service levels that will maintain basic collection services and the profitability of Franchisee. Failure of the Parties to agree to such modifications to services or service levels may be cause for the termination of this agreement upon one hundred and eighty (180) calendar days prior written notice by either Party. In the event of termination of this agreement, each Party shall be entitled to payment of amounts due to them through the date of termination, but shall otherwise have no further obligation to one another pursuant to this agreement after the date of termination.

Section 6. Insurance Policies.

a. Types and Amounts of Coverage.

Franchisee shall procure from an insurance company or companies admitted to do business in the State of California, and shall maintain in force at all times during the Term, the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability.

Franchisee shall maintain Workers' Compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Franchisee shall maintain employer's liability insurance in an amount not less than one million dollars (\$1,000,000) per accident or disease. Franchisee shall not be obligated to carry Workers' Compensation insurance if:

- a. It qualifies under California law and continuously complies with

all statutory obligations to self-insure against such risks;

- b. It furnishes a certificate of permission to self-insure issued by the Department of Industrial Relations; and
- c. It furnishes updated certificates of permission to self-insure periodically to evidence continuous self-insurance.

2. Commercial General Liability.

Franchisee shall maintain commercial general liability insurance with a combined single limit of not less than five million dollars (\$5,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Franchisee's performance of services under this agreement. The insurance required by this subsection shall include:

- a. Premises operations (including use of owned and non-owned equipment);
- b. Personal injury liability with employment exclusion deleted;
- c. Coverage for insured contracts with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);
- d. Broad-form property damage.

The commercial general liability insurance shall be written on an "occurrence" basis (rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Franchisee must arrange for "tail coverage" on a claims-made policy to protect District from claims filed within four (4) years after the expiration or earlier termination of this agreement relating to incidents that occurred prior to such expiration or termination.

3. Automobile Liability.

Franchisee shall maintain automobile liability insurance covering all vehicles used in performing service under this Agreement, with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence for bodily injury and property damage.

- c. Inclusion of District as an additional insured shall not affect the District's rights as respects any claim, demand, suit or judgment brought or recovered against Franchisee. This policy shall protect Franchisee and District in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one Party had been named as an insured.

d. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions contained in the liability policies described above shall be borne entirely by Franchisee. Franchisee remains responsible for the payment of all losses and investigation, claim administration and defense expenses, including those of District.

e. Delivery of Proof of Coverage.

Prior to the commencement of operations, and in the event of any change in the coverage, Franchisee shall furnish District one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder is in force, in form and substance satisfactory to District. Such certificates shall show the type and amount of coverage, Effective Dates and dates of expiration of policies and shall be accompanied by all required endorsements. Franchisee shall furnish renewal certificates to District to demonstrate maintenance of the required coverages throughout the Term.

Section 7. Indemnification.

a. Indemnification of District.

- (1) Franchisee shall protect, defend with counsel reasonably acceptable to the District, indemnify and hold harmless District from and against any and all losses, liabilities, fines, penalties, costs, claims, damages, liabilities and judgments, including attorneys' fees, which are caused by Franchisee's failure to comply with the laws legally binding on Franchisee which are described in Section 1, including but not limited to liabilities, costs, claims and damages described in this Section.
- (2) Franchisee shall protect, defend with counsel reasonably acceptable to District, indemnify and hold harmless District from and against any and all losses, liabilities, fines, penalties, costs, claims, damages, liabilities and judgments, including attorneys' fees, arising out of, or resulting in any way from, Franchisee's performance under this Agreement or exercise of the Franchise, unless such claim is due to the negligence or willful acts of the

District, its officers, employees, agents or contractors, or from District's grant of this Franchise to Franchisee.

- (3) In addition, upon request of the District, Franchisee shall defend with counsel reasonably acceptable to the District, indemnify and hold the District harmless from any and all litigation and claims, damages and liabilities arising therefrom, brought to enforce or to challenge the Franchise Agreement and/or Franchisee's exclusive rights granted thereunder, provided, however, the Franchisee's obligations hereunder extend only to actions brought against or by persons not parties to this Agreement; and provided, further, Franchisee shall be entitled to recover as recoverable costs for rate setting purposes all costs, damages and liabilities incurred in any such proceeding.
- (4) District shall reasonably cooperate with Franchisee's defense efforts under this subsection.

b. Hazardous Substance Indemnification.

Franchisee shall protect, defend with counsel reasonably acceptable to the District, indemnify and hold harmless District from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damages, punitive damages, injuries, costs, responses, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the indemnified District arising from or attributable to any repair, cleanup, or detoxification, or preparation, and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action), concerning the release or threatened release of any Hazardous Substance or Hazardous Waste at any place where Solid Waste is or has been transported, transferred, processed, stored, disposed or has otherwise come to be located by Franchisee, or the activities of Franchisee pursuant to this Agreement result in a release of Hazardous Waste or Hazardous Substance into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response and Liability Act ("CERCLA"), 42 U.S.C. §9607(e), and California Health and Safety Code §25364, to defend, protect and hold harmless and indemnify District from liability. District shall reasonably cooperate with Franchisee's defense efforts. This provision shall survive the termination of this Agreement.

The foregoing indemnity shall not apply with respect to: (1) any Hazardous Waste or hazardous substance generated by the District or its agents and delivered by the District or its agents; (2) any materials delivered by Franchisee to a disposal facility or processing facility designated by the District that is not owned or operated by Franchisee, or (3) the disposal or release of hazardous substances or Hazardous Waste, which disposal or release has resulted from

the negligence or willful misconduct of the District or its agents.

“Hazardous Waste or Materials” means any and all of the following:

- (1) wastes, materials or substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act, as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.) as amended from time to time, or regulations promulgated thereunder;
- (2) waste, materials or substances defined or characterized from time to time as hazardous waste by the principal agencies of the State of California (including, without limitation, the Department of Health Services, the California Water Resources Control Board, and the California Integrated Waste Management Board) having jurisdiction over hazardous waste generated by facilities within the State, and pursuant to any other applicable government regulations;
- (3) wastes, materials or substances, the storage, treatment, transportation or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2654, as amended from time to time, or regulations promulgated thereunder;
- (4) radioactive wastes, materials, substances or items, the storage, treatment, transportation or disposal of which is subject to government regulations; and
- (5) wastes, materials, substances or items which contain polychlorinated biphenyls.

The term “Hazardous Waste” will be construed to have the broader, more encompassing definition where a conflict exists in the definitions employed by two or more governmental entities having concurrent or overlapping jurisdiction over Hazardous Waste.

c. AB 939 Indemnification.

- (1) Franchisee shall protect, defend with counsel reasonably acceptable to the District, indemnify and hold the District harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the District for the District's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder to the extent such failure results from Franchisee's failure to comply with this Franchise Agreement and/or Franchisee's failure to comply with said laws, rules or regulations binding on Franchisee, including but not limited to failing to timely supply to the District the reports and information required by the District in order to comply with AB 939.

4. Pollution (Environmental Impairment) Liability.

Franchisee shall maintain pollution liability insurance coverage of not less than two million dollars (\$2,000,000) per occurrence covering claims for on-site, under-site, or off-site bodily injury and property damage as a result of pollution conditions arising out of its operations under this agreement.

b. Acceptability of Insurers.

The insurance policies required by this Section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category V-II or larger and a rating classification of A or better.

c. Required endorsements.

Without limiting the generality of Section 6(a), the policies shall contain endorsements or provisions in substantially the following form:

1. Commercial General, Automobile Liability Policy, and Pollution Liability Policies.

Thirty (30) days prior written notice shall be given to District in the event of cancellation of this policy, except that ten (10) days' notice applies to cancellation for non-payment of premium. Such notice shall be sent as provided in Section 18, below.

2. Workers' Compensation and Employers Liability Policy.

Insurer waives all right of subrogation against District and its officers and employees for injuries or illnesses arising from work performed for the District.

3. Commercial General, Automobile Liability Policy, and Pollution Liability Policies.

- a. District, its officers, employees, and agents shall be additional insureds on this policy. The additional insured endorsement shall be at least as broad as ISO Form No. CG 20 33 04 13.
- b. These policies shall be considered primary insurance as respects any other valid and collectible insurance maintained by District, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.

- (2) This indemnity obligation is subject to the limitations and conditions in California Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section.

Section 8. Transfer of Franchise.

a. This Franchise Agreement shall not be sold, transferred, leased, assigned, mortgaged, pledged, hypothecated or otherwise encumbered or disposed of in whole or in part, directly, or indirectly, whether voluntarily or by operation of law or through any stock transfer, transfer in trust, change in control, consolidation, or merger, without the prior written consent of the Board of Directors, which shall not be unreasonably withheld. The District Board may grant or deny such a request and may impose such conditions as it may deem to be in the public interest. Any disposition made without such consent shall constitute good cause for the revocation of this Franchise Agreement.

b. Any change of partners or principals, if Franchisee is a partnership or joint venture, or transfer of twenty-five percent (25%) or more of the stock if the Franchisee is a corporation, during the term of the Franchise shall be treated in the same manner as an assignment and shall be subject to the prior approval of the District Board expressed by resolution.

c. Franchisee shall not sub-contract all or any portion of the work or business which it has been franchised to perform without the written consent of the District Board.

d. Any application for a Franchise transfer shall be made in a manner prescribed the District. The application shall include a transfer fee in an amount to be set by the District to cover the reasonable anticipated cost of all direct administrative expenses of District, including consultants and attorneys, necessary to adequately analyze the application and to reimburse District for all direct and indirect expenses. Such transfer fee shall not exceed Five Thousand Dollars (\$5,000.00). District's request for reimbursement shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt. These Franchise transfer fees are over and above any Franchise Fees specified in this Franchise Agreement and shall not be recoverable costs for rate setting purposes.

e. Notwithstanding the foregoing, Franchisee may assign this Agreement to a subsidiary, parent or other corporate affiliate of Franchisee, provided that such affiliate has financial resources at least as great as Franchisee.

Section 9. Rights of District on Revocation of the Franchise.

In the event of the suspension or revocation of the Franchise, or if scheduled refuse collections are discontinued for more than seventy-two (72) hours, the Franchisee shall make the necessary trucks and other equipment available to the District, at a reasonable rental, for the days and hours necessary to collect refuse within the District. For the purposes of this section, "days

and hours necessary to collect refuse within the District” shall mean not less than the following:

- a. Hours: Not less than thirty (30) hours per week during the hours of 7:00 a.m. to 6:00 p.m.
- b. Vehicles and Equipment: One (1) rear loader compactor truck with bin attachment compatible with Garwood rear load containers (or such containers as currently in use in the District) with a capacity of at least 18-20 yards easy-pack. Also, such bins as necessary to serve commercial customers in the District.

In no event shall such trucks and equipment be made available to the District for more than sixty (60) days.

During any period in which the District has assumed the obligations of the Franchisee pursuant to the provisions of this section, the District shall be entitled to the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses, including a reasonable rental for the use of trucks and equipment, applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the District’s General Fund.

District shall protect, defend with counsel reasonably acceptable to Franchisee, indemnify and hold harmless Franchisee from and against any and all losses, liabilities, fines, penalties, costs, claims, damages, liabilities and judgments, including attorneys' fees, arising out of, or resulting in any way from, District’s possession or operation of Franchisee property under this Section 9, unless such claim is due to the negligence or willful acts of the Franchisee, its officers, employees, agents or contractors.

Section 10. Financial Records and Reports.

a. The Franchisee shall maintain detailed records of all rate revenue in the operation of such business. The District’s representative, on the request of the District Board, shall be entitled to inspect and audit such books and records upon reasonable notice during normal business hours at either the Franchisee’s offices or District offices.

b. At the request of the District Board, the Franchisee shall furnish to the District five (5) copies of annual financial statements (Waste Management, Inc.) within sixty (60) days after the end of the operating year. Said statements shall include a comparative balance sheet, comparative operating statement, statement of changes in investments in property and equipment, statement of source and application of funds, and a statement of change in owners’ equity in which shall be set forth the names of the principal officers and stockholders of the corporation, if any, and salaries, if any, paid to such individuals. In the event of requested rate adjustment, at the request of the District, such statements shall be certified by a certified public accountant.

Section 11. Misleading Names, Local Office, Website, Vehicle Identification and

Schedules.

a. The Franchisee shall not use a firm name containing the words "Chester", "Public," "Utility," or "District." or other words implying District ownership.

b. The Franchisee shall establish and maintain an office in Plumas County where service may be applied for and complaints made. Such office shall be equipped with a listed telephone to which calls from District residents may be placed without payment of a toll charge and shall have a responsible person in charge between the hours of 9:00 a.m. and 5:00 p.m. of each day except Saturdays, Sundays and holidays.

c. Franchisee shall maintain and publicize an up-to-date website whereby customers can obtain the information listed below. Franchisee is required to update the website as necessary. At a minimum, the website shall:

1. Provide answers to frequently asked questions including, but not limited to: proper container set-out instructions; list of acceptable recyclable materials; collection days (in response to customer input of service address); billing issues, customer service telephone and e-mail contact information; and the designated transfer station site hours, directions, and acceptable materials.

2. Provide complete list of District-approved rates for all customers.

3. Allow customers to file complaints and receive from Franchisee e-mail responses to complaints.

4. Provide a link to enable customers to email Franchisee.

d. The Franchisee shall have printed or stenciled in a prominent place on the exterior of each vehicle used by him in the collection of refuse the following information in three-inch (3") letters:

Truck #
Refuse Collector (name)

e. The Franchisee shall supply the District with current map schedules of collection routes on the request of the District.

Section 12. Mandatory Pick-Up.

It is understood that the District shall have absolute discretion as to how and when any mandatory pick-up ordinance shall be enforced within the District. The District may, in its sole and absolute discretion, repeal the mandatory pick-up ordinance. The District may, in its sole and absolute discretion, discontinue its regulation of solid waste collection within the District and upon doing so, this Franchise shall terminate and be of no further force or effect, it being the understanding of the parties that solid waste regulation within the District would then be within

the jurisdiction of the County of Plumas. District must give Franchisee at least one years' notice prior to any termination under this Section.

Section 13. Applicable Laws.

The Franchisee shall at all times comply with all applicable ordinances of the District, now in effect or hereafter enacted, as well as any applicable County, State, and Federal regulations.

Section 14. Heirs, Successors, Etc.

The terms, covenants and conditions of this Franchise Agreement shall apply to and shall bind the heirs, successors, executors, administrators, assigns and sub-contractors of the Franchisee.

Section 15. Waivers.

The waiver by the District of any breach or violation of any term, covenant or condition of the Franchise or any provision, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law, or of any subsequent breach of violation of the same or of any other term, covenant, condition, or ordinance or law. The subsequent acceptance by the District of any Franchise Fee or of any other monies which may become due hereunder to the District shall not be deemed to be a waiver of any preceding breach of violation by Franchisee of any term, covenant or condition of the Franchise or of any applicable law or ordinance.

Section 16. Bankruptcy.

Either of the following shall constitute a breach of the Franchise by Franchisee and shall, at the option of the District, terminate immediately the Franchise and privileges granted therein:

- a. The appointment of a receiver to take possession of all or substantially all of the assets of Franchisee; or
- b. A general assignment by Franchisee for the benefit of creditors; or
- c. Any action taken by or suffered by Franchisee under any insolvency or bankruptcy act.

Section 17. Failure to Perform.

In the event the Franchisee fails to perform or violates any term, covenant or condition of the Franchise or any provision, ordinance or law, the District shall serve notice on the Franchisee that if the failure is not corrected within ten (10) days after the service of the notice, the District Board shall have the option to terminate the Franchise and privileges granted herein.

Section 18. Service of Notice.

All notices required or given pursuant to the provisions of the ordinance shall be deemed properly served when deposited, postage prepaid, certified or registered mail, in the United States mail. Notices to the District shall be addressed to the District, P.O. Box 503, Chester, California, 96020. Notices to Franchisee shall be addressed to: Feather River Disposal, Inc., 100 Vassar Street, Reno, Nevada 89502.

Section 19. Franchise Fee.

a. In consideration of the exclusive franchise granted to Franchisee by this agreement, and to reimburse District for costs incurred in administering this agreement, Franchisee shall pay to District a franchise fee of \$5,000 per year, payable in semi-annual installments of \$2,500 year. The franchise fee may be adjusted from time to time by the District Board during the Term of this agreement. Any adjustment shall be considered a pass-through adjustment, and as such shall be recoverable to Franchisee through an adjustment to the rates.

b. On or before the twentieth (20th) Business Day after the end of June and December, Franchisee shall pay to District the amount of the franchise fees due on Gross Receipts during the immediate previous six months. Payment for partial periods shall be prorated beginning with the Effective Date and/or ending with the termination date of this agreement. Franchisee shall provide, concurrently with the payment of the franchise fee, a statement showing the calculation of each fee, including the Gross Receipts from customers. The statement shall be in a format, and contain the level of detail, specified by District. Payments from Franchisee to District shall be made by method authorized by District. If the franchise fee is not paid on time, Franchisee shall pay a late payment charge equal to six percent (6%) of the portion of the franchise fee due for that six-month period. In addition, Franchisee shall pay an additional six percent (6%) on any unpaid balance for each ninety (90) Day period the portion of the franchise fee due remains unpaid. Such "late fee" shall not be recovered through the rates.

Section 20. General Provisions.

a. Severability.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

b. Independent Contractor.

Franchisee is an independent contractor and not an officer, agent, servant or employee of District. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between District and Franchisee. Neither Franchisee nor its officers, employees, agents or subgrantees shall obtain any rights to retirement or other

benefits which accrue to District's employees.

c. Law to Govern/Venue/Judicial Review.

The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Plumas. In the event of litigation in a U. S. District Court, exclusive venue shall lie in the Eastern District of California.

Nothing in this Agreement shall be construed to prevent either Party from seeking redress to the courts for the purposes of legal review of administrative proceedings in regard to rate setting or District's actions taken pursuant to this Agreement, or for the purpose of interpreting or enforcing the provisions contained in this Agreement.

d. Full Agreement.

This Franchise Agreement contains the entire Agreement between the Parties and no promises, representations, warranty or covenant not included in this Agreement have been or are relied upon by either party. This Franchise Agreement is intended to supersede and replace all prior agreements between the parties, except as otherwise specifically provided in this Agreement.

e. 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 events, including but not limited to acts of God, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, acts of terrorism, public riots, breakage, explosions, accident to machinery, equipment or materials, unavailability of required materials or disposal site, governmental restraint or other causes which are not reasonably within the control of Franchisee.

f. Survival of all Indemnification Provisions.

All indemnification provisions of this Agreement shall survive termination or earlier expiration of this Agreement.

Section 21. Right to Alter or Amend.

The District expressly reserves the right to alter or amend this Agreement in any manner necessary for the health, safety or welfare of the public, provided that Franchisee must agree in writing to such alteration or amendment and be compensated for any and all negative financial impacts.

Section 22. Authority; Effective Date; Publication.

This Agreement is made pursuant to Sections 40000 et seq of the Public Resources Code of the State of California, and shall take effect as of July 1, 2020.

[Signatures on following page]

Chester Public Utility District

Dated: May 12, 2020

By *SB Tvo*
President

By *Chester Epler*
Secretary

USA Waste of California, Inc.

Feather River Disposal, Inc.

Dated: 6/23/2020

DocuSigned by:
Barry Skolnick
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Barry Skolnick President