

MEMORANDUM OF UNDERSTANDING

This AB 939 MEMORANDUM OF UNDERSTANDING (MOU), made and entered into this 6th day of November, 2018 by and between the County of Fresno, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and the cities of CLOVIS, COALINGA, FIREBAUGH, FOWLER, FRESNO, HURON, KERMAN, KINGSBURG, MENDOTA, ORANGE COVE, PARLIER, REEDLEY, SAN JOAQUIN, SANGER and SELMA, all collectively hereinafter referred to as "CITIES", is the successor agreement to that certain MOU, originally entered into on April 27, 1993, renewed on June 8, 2004, and again renewed on January 6, 2009; hereinafter referred to collectively as "PREDECESSOR MOU(s)."

WITNESSETH

WHEREAS, California Public Resources Code section 41780, subdivision (a) (added by AB 939, the "Integrated Waste Management Act of 1989," codified at California Public Resources Code section 40000 and following, and referred to herein as "AB 939") requires each city and county in the State to prepare and implement jurisdiction-specific plans to divert twenty-five percent (25%) of solid waste generated by 1995 and fifty percent (50%) by 2000;

WHEREAS, pursuant to California Public Resources Code section 41781.01, subdivision (a), the State of California has established a goal of 75% source reduction, recycling, and composting by 2020;

WHEREAS, required programs that include Source Reduction, Recycling, Composting, Hazardous Waste Management and Public Education are best coordinated on a regional basis;

WHEREAS, new State laws, including Health and Safety Code section 39730.6 and Public Resources Code, Division 30, Part 3, Chapter 13.1, commencing with Section 42652 (Senate Bill 1383, Lara, Chapter 395, Statutes of 2016), are currently being promulgated and will increase the need for regional programs to reduce methane generation by diverting 50% of organics from landfill by 2020 and 75% by 2025;

1 WHEREAS, COUNTY and CITIES may join together to prepare and implement
2 required waste management and other related plans and programs;

3 WHEREAS, the COUNTY and the CITIES are hereinafter referenced as the
4 "Jurisdictions" when referred to collectively, and as "Jurisdiction" when referenced
5 generally in singular terms;

6 WHEREAS, the Jurisdictions entered into a PREDECESSOR MOU, starting on
7 April 27, 1993, which was superseded by another PREDECESSOR MOU on June 8,
8 2004, and again superseded by an another PREDECESSOR MOU on January 6, 2009,
9 for the purpose of joining together to prepare, update and implement waste management
10 plans and programs;

11 WHEREAS, California Law authorizes the local governments and public entities to
12 pay for waste management plans, programs, preparation and implementation through a
13 solid waste surcharge;

14 WHEREAS, the Jurisdictions have designated the COUNTY as the lead agency
15 (Lead Agency) to implement and operate waste management programs/services that are
16 best accomplished on a regional basis;

17 WHEREAS, the Jurisdictions previously determined that a mechanism is needed
18 to enhance their ability to communicate and collaborate on MOU-related issues, and that
19 the appropriate mechanism to serve those purposes is the MOU Committee (Committee),
20 which consists of Delegates from each Jurisdiction agreeing to this MOU;

21 WHEREAS, California Law requires the creation of an Local Task Force (LTF) to
22 review local and regional plans;

23 WHEREAS the Jurisdictions approved the restructuring of the LTF, based on
24 adopted resolutions demonstrating the concurrence of a majority of the cities which
25 contain a majority of the population of the incorporated areas of the County, in accordance
26 with the provisions of Public Resources Code Section 40950 (b) and designated the
27 Committee to serve in the capacity and perform the functions of the LTF;

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1 WHEREAS, the Committee formed a separate Subcommittee (LTF
2 Subcommittee) to perform the LTF functions, as defined in Section IX of this MOU,
3 including developing its own separate set of guidelines and rules to govern itself and
4 conduct business in order to facilitate the development of waste management related
5 plans and programs;

6 WHEREAS, the Committee shall continue to provide the Lead Agency with input
7 and direction from the Jurisdictions on MOU-related programming and budget allocations,
8 as more thoroughly provided herein below.

9 NOW, THEREFORE, it is agreed by the Parties hereto as follows:

10 I. PURPOSE AND STRUCTURE OF THE MOU:

11 A. The Lead Agency shall be responsible for the coordination and
12 implementation of countywide programs/services covered under the MOU.

13 B. The Jurisdictions, through their appointed Delegates, are responsible for
14 identifying the programs to be provided under the MOU and for assisting the Lead Agency
15 with the development and implementation of the programs identified. Basic
16 responsibilities of each Jurisdiction shall include, but not be limited to, attendance of its
17 Delegate at Committee meetings and MOU-related workshops, providing local data
18 and/or contact information, providing input and direction on MOU programming and
19 budget proposals, reviewing proposals and reports, referring interested persons residing
20 within its territorial boundaries to MOU programs, referencing MOU programs in that
21 Jurisdiction's promotional materials and other documents as appropriate, and providing
22 meeting/staging sites within its respective Jurisdiction located within its territorial
23 boundaries as needed. It is anticipated that any additional/specific responsibilities of the
24 Jurisdictions shall be defined in the most current Annual Work Plan (see Section III).

25 C. The Jurisdictions previously determined that successful implementation of
26 AB 939 and waste management plans and programs requires a mechanism to enhance
27 communication and collaboration on MOU-related issues among the Jurisdictions located
28 in Fresno County, and it is agreed that the Committee is the appropriate mechanism to

1 serve this purpose under the provisions of this MOU.

2 D. The duties and responsibilities of the Committee shall include, but not be
3 limited to:

4 1. Serving as the primary forum for discussion of AB 939 compliance-
5 related issues. This provision does not preclude any Jurisdiction from implementing its
6 own local program(s) and/or from participating in, or establishing any additional entities
7 for addressing its own local AB 939 compliance issues.

8 2. Working with the Lead Agency to identify the regional AB 939-related
9 programs/services to be provided under the MOU.

10 3. Endorsing and monitoring implementation, by the Lead Agency, of
11 those MOU-related programming and budget allocations specifically authorized under the
12 MOU, by approval of the Annual Work Plan by a majority of Delegates.

13 E. The Committee shall consist of one Delegate from each Jurisdiction. The
14 following provisions are not intended to prevent or discourage any interested party from
15 attending or appropriately participating in a Committee meeting:

16 1. A CITY's Delegate shall be designated by, and serve at the pleasure
17 of, the CITY Manager or other similar appropriate authority in that Jurisdiction. The
18 COUNTY's Delegate shall be designated by, and serve at the pleasure of, the Resources
19 Division Manager or other similar appropriate authority in the COUNTY.

20 2. The designated Delegate of each Jurisdiction will have voting rights.
21 A Delegate shall be a representative of their respective Jurisdiction, empowered to
22 represent that Jurisdiction's position and to cast that Jurisdiction's vote, on items that
23 come before the Committee. A Jurisdiction's CITY Manager or other similar appropriate
24 authority in that Jurisdiction, or the COUNTY's Resources Division Manager or other
25 similar appropriate authority in the COUNTY, may designate an Alternate Delegate with
26 knowledge of the respective Jurisdiction's solid waste system and/or planning programs
27 and the Alternate Delegate may cast proxy votes on Committee votes. For any votes
28 related to expenditures or finances, the Alternate Delegate must get prior or subsequent

1 written approval from the Delegate, and provide that approval to the Lead Agency within
2 30 days of the respective vote. Nothing in this paragraph or MOU shall be interpreted, or
3 in any way construed, as preventing or prohibiting a Jurisdiction from selecting a Delegate
4 and/or Alternate Delegate that is not employed by the respective Jurisdiction. For
5 example, a Jurisdiction, following the designation requirements of this MOU, may
6 designate a waste hauler to serve as their Delegate and/or Alternate Delegate.

7 3. It is understood and acknowledged that Delegates and Alternate
8 Delegates will represent the interests of their respective Jurisdiction and provide the
9 collective input the Committee needs to provide the Lead Agency with appropriate
10 advisory direction to facilitate its efforts, consistent with the limited purposes set forth
11 herein.

12 4. Once the presence of a Quorum (as defined in Section I.E.4.(a)) is
13 established, a simple majority of the number of Delegates who are either physically
14 present at said meeting or represented by a proxy vote, is required to approve and
15 authorize actions taken by the Committee, unless the Committee by such a majority vote
16 previously has adopted a policy or procedure establishing some other standard.

17 a. A Quorum, which is required to transact business on behalf of
18 the Committee, is established by the presence of a majority of the Delegates or Alternate
19 Delegates, i.e. nine (9) total Delegates, duly assembled or represented by a proxy vote.

20 b. A Delegate unable to attend a meeting may authorize, in
21 writing or by e-mail/fax, a representative to attend the meeting and vote in his/her place.
22 A Delegate's representative shall notify the Chairperson of said authorization prior to the
23 quorum count.

24 5. The Chairperson may, at his/her discretion, or when requested by a
25 least two (2) Delegates, request that a particular vote be by mail, fax and/or e-mail, when
26 special conditions or unusual time constraints preclude voting on an issue at a Committee
27 meeting. Delivery of the request will be pursuant to the notice provisions in Section XII.

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- 1 For this vote to be a valid, all three (3) of the following conditions must be
2 met:
- 3 a. The ballot must be received by all of the Delegates in a timely
4 manner.
 - 5 b. To be counted, the ballots must be returned to the Chairperson by
6 the deadline cited in the request.
 - 7 c. A majority of the total Delegates, in attendance for that vote, must
8 return their ballots to approve Committee related business.

9 F. Committee meetings:

10 1. There will be a Chairperson and a Vice-Chairperson. The current
11 Chairperson and Vice-Chairperson, as of the date that this MOU is first executed, shall
12 remain in their respective positions until the beginning of the first new fiscal year after this
13 MOU is executed. At the first meeting of every new fiscal year, the Chairperson will step
14 down, the Vice-Chairperson will become the next Chairperson and a new Vice-
15 Chairperson will take the Vice-Chairperson position. The terms for the Chairperson and
16 Vice-Chairperson will be one (1)-year, ending at the first meeting of each fiscal year, at
17 which time the then Chairperson will step down, be replaced by the then Vice-
18 Chairperson, and the next Vice-Chairperson will be named. This process will continue
19 until all Jurisdictions have had an opportunity for a Delegate to serve as a Chairperson,
20 and then the process will repeat itself. No Jurisdiction shall hold a position as Chairperson
21 twice until all Jurisdictions have had an opportunity to serve as a Chairperson. Vice-
22 Chairpersons will not be voted into place, and instead will be the Delegate of the
23 successive Jurisdiction, as determined by following order: 1) CLOVIS; 2) COALINGA; 3)
24 FIREBAUGH; 4) FOWLER; 5) FRESNO (City); 6) FRESNO (County); 7) HURON; 8)
25 KERMAN; 9) KINGSBURG; 10) MENDOTA; 11) ORANGE COVE; 12) PARLIER; 13)
26 REEDLEY; 14) SAN JOAQUIN; 15) SANGER; and 16) SELMA. Any Jurisdiction may
27 elect to forgo serving as a Vice-Chairperson or Chairperson, but doing so waives the
28 respective Jurisdiction's right to serve until that Jurisdiction's next turn. The Chairperson

1 and Vice-Chairperson shall have all of the standard powers and duties that are normally
2 vested in the office of a committee chairperson relating to the scheduling and conduct of
3 the Committee's meetings.

4 2. It is the intent of the parties hereto that at least four (4) Committee
5 meetings shall be scheduled each fiscal year. One (1) Committee meeting shall be
6 designated as the Annual Meeting. The Annual Meeting shall be appropriately scheduled
7 to allow for the adoption of an Annual Work Plan (AWP) for the following fiscal year and
8 for the review/update of all activities performed under this MOU since the previous Annual
9 Meeting. The Chairperson or Vice-Chairperson, in consultation with the Delegates, shall
10 convene additional meeting(s) of the Committee whenever there is sufficient business to
11 conduct.

12 3. Working closely with the Chairperson or Vice-Chairperson, the Lead
13 Agency shall be responsible for making Committee meeting arrangements (e.g., noticing,
14 siting, taking attendance), assisting with the preparation of the agenda, and taking
15 minutes at Committee meetings.

16 4. Any Delegate may call for a vote, via a request delivered pursuant to
17 the notice provisions in Section XII, of the Committee on whether to schedule an
18 additional Committee meeting or to place an item on the agenda. If there is no meeting
19 ongoing at the time of the request, and if no meeting is scheduled within 30 days of the
20 request, the Delegate may agree to wait until the next scheduled meeting, or may require
21 the Chairperson or Vice-Chairperson to put the question to the Delegates by mail or fax
22 (proxy vote) within ten (10) working days of the request.

23 G. Modification or Amendment of Committee policy and procedures:

24 1. The Committee may choose to: a) adopt additional, or modify
25 existing, Committee policies and procedures; and/or b) formalize the duties and the
26 responsibilities of the Committee's members beyond those described in this MOU,
27 consistent with the scope of Committee's functions and its advisory role.

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1 2. Any proposed change(s) to any provision of Section I, Subsections
2 A through H, relating to the R List, the AWP and the Committee Policies and Procedures,
3 must be noticed, pursuant to Section XII, thirty (30) days in advance. The notice must
4 include a proxy ballot form and a message indicating the date, time and location of the
5 meeting at which the proposed change(s) will be discussed and voted upon.

6 H. The Lead Agency agrees that, at the request of the Committee, it will take
7 the lead in making arrangements, for such additional MOU-related programming and
8 budget proposals as are not specifically authorized under this MOU, to be brought before
9 the legally constituted governing bodies of each of the respective Jurisdictions for their
10 appropriate consideration.

11 II. REPORTING ON AB 939 PROGRAMMING AND RELATED WASTE
12 MANAGEMENT.

13 The Lead Agency will provide to the Delegates, at the initial meeting of the
14 Committee during each fiscal year throughout the term of this MOU, the AB 939 MOU
15 Report List ("R List") for that fiscal year.

16 A. The R List, as updated and revised from time to time, but at least once every
17 Fiscal Year, shall: (1) describe briefly the contents of each report to be provided to the
18 Committee Delegates; (2) indicate who is responsible for collecting the data and
19 preparing the report (Reporter); and (3) indicate the frequency with which the report is to
20 be submitted to the Delegates. Each report shall be provided by the due date established
21 in the R List. The Reporter may request, and the Committee Chairperson or Vice-
22 Chairperson may grant, additional time to complete a given report when additional time
23 is deemed appropriate.

24 B. At least once during each Fiscal Year, 1) the Lead Agency will review and,
25 when appropriate, recommend to the Committee, changes to the R List; and 2) the
26 Committee shall act upon that recommendation, voting to request that the Lead Agency
27 revise the current R List as the Committee deems appropriate. When adopted by the
28 Committee, the most recently amended R List shall supersede the previous R List.

1 C. The Lead Agency, in accordance with Section III below, shall prepare an
2 Annual Work Plan (AWP). The AWP shall define: (1) the programs and services to be
3 provided and funded under this MOU; and (2) the responsibilities of the Jurisdictions
4 related to implementation of the AWP.

5 III. AB 939 ANNUAL WORK PLAN:

6 A. The AWP, as periodically updated and revised, defines the programs and
7 services to be provided under this MOU. At a minimum, the AWP shall include a
8 description of: (1) the programs to be provided and funded under the MOU; (2) each
9 Jurisdiction's responsibilities under the AWP; and (3) a proposed budget indicating all
10 projected revenues and AWP projected expenditures.

11 B. The AWP shall be prepared, revised or updated no less than once every
12 fiscal year. The Lead Agency shall prepare the AWP, and any updates or revisions
13 thereof, at the request of and in consultation with the Committee. By a simple majority
14 vote of the Delegates, a new, updated or revised AWP shall supersede the previous AWP.

15 C. The budget in the AWP shall include a proposed allocation of funds for the
16 development and/or operation of required and desired facilities, plans and programs.
17 Funds allocated to facilities, plans and programs, which are not needed to cover current
18 year expenditures, may be accumulated as Reserves.

19 IV. SOURCE AND USE OF FUNDS:

20 A. The Jurisdictions agree that the appropriate mechanism for financing the
21 programs and services defined in the AWP is through a surcharge on each ton of landfilled
22 solid waste generated in Fresno County, hereinafter identified as the "AB 939 Surcharge".
23 This provision does not preclude the use of funds from other sources, such as a grant or
24 program service fees (e.g., solar panel drop-off fees), if such alternative funding: (1) does
25 not increase the financial obligation of the Jurisdictions under this MOU; and (2) is
26 approved by a majority vote of the Delegates.

27 B. It is hereby agreed by all of the Jurisdictions that the AB 939 Surcharge
28 shall remain in place throughout the Term, as defined in Section VI, of this MOU, or until

1 such time as the amount of the AB 939 Surcharge changes pursuant to Section V.B,
2 Section V.C, and/or the MOU is superseded/terminated as set forth in Section VII.

3 C. AB 939 Surcharge revenues shall be used solely for the activities outlined
4 in this MOU, the AWP, and any subsequent revisions of the AWP and/or amendments of
5 the MOU.

6 D. It is anticipated that the COUNTY, as the Lead Agency for development and
7 implementation of regional AB 939-related programs and services, shall be the primary
8 provider of programs and services defined in the AWP, with the exception of those
9 programs and services provided by contractors and/or vendors.

10 1. All costs incurred by the COUNTY in meeting its responsibilities as
11 defined in the most current AWP, including MOU-related COUNTY expenditures for labor,
12 overhead, contractors and/or vendors, shall be fully reimbursed to the COUNTY from the
13 AB 939 Surcharge, so long as said reimbursements do not exceed the dollar amounts
14 allocated in the current AWP, as approved by the Delegates of the Committee pursuant
15 to Section III.

16 2. The Lead Agency shall have the authority to make routine program-
17 related expenditures (e.g., salaries, advertising, printing, premiums, overhead), without
18 specific prior approval of the Committee, so long as said expenditures are: (a) consistent
19 with the expenditure categories and dollar amounts established in the current AWP; and
20 (b) do not require the COUNTY to enter into a contract requiring approval by the Fresno
21 County Board of Supervisors (Board). Details of such routine expenditures shall be
22 reported to the Committee on a quarterly basis as determined by the Lead Agency or its
23 designee.

24 3. Under no circumstances shall the total of actual program-related
25 expenditures exceed the total expenditures authorized in the AWP. This provision does
26 not prohibit expending more than the amount budgeted for a specific line item, if said
27 additional expenditure is fully offset by a reduced expenditure(s) in one or more other line
28 items. In the event of unanticipated revenue (e.g., grant award(s) or actual surcharge

1 revenues in excess of the amount projected), the Lead Agency may propose and request
2 the Committee, thorough its Delegates, to approve an amendment to the budget in the
3 current AWP and if required, to request the COUNTY's Board to amend any associated
4 COUNTY budget line items.

5 E. Any MOU-related agreement between the COUNTY and an outside
6 contractor or vendor shall not be submitted to the COUNTY's Board for approval without
7 first having been authorized, in accordance with the provisions hereof, by means of a
8 majority vote of the Delegates.

9 F. The COUNTY shall provide the opportunity for members of the Committee
10 to participate in any Request for Proposal/contract development process related to the
11 MOU.

12 G. Unless specifically budgeted for in the AWP, expenditures incurred by non-
13 COUNTY Jurisdictions while participating in the regional programs/services under this
14 MOU, shall not be reimbursed with AB 939 Surcharge revenues.

15 H. Collection of AB 939 Surcharge Revenues

16 1. Each Jurisdiction in Fresno County that provides, allows, permits
17 and/or contracts for the collection of solid waste and recyclables (Material) generated
18 within its territorial or jurisdictional boundaries, hereby agrees in good faith to use its best
19 efforts to include in any future instrument authorizing, permitting and/or contracting for
20 such service, provisions requiring said service provider(s) (hereinafter to be known as
21 "Jurisdiction's Hauler") to do all of the following:

22 a. Collect and submit monthly data to the COUNTY indicating
23 the type of Material collected and the origin, amount and destination (initial and final) of
24 all said Material that the Jurisdiction's Hauler collected and managed during each month.
25 The Jurisdiction shall require that the Jurisdiction's Hauler use the Haulers' Report form
26 provided by the COUNTY, that said report provide all the data requested by the COUNTY
27 and that said report be submitted to the COUNTY in a timely manner and at the intervals
28

1 specified by the COUNTY. (It is anticipated that the COUNTY shall request that the
2 Jurisdiction's Hauler submit the Hauler's Report on a quarterly basis.)

3 b. The Jurisdiction's Hauler must indicate in the Haulers' Report
4 if the initial destination of that Jurisdiction's Material is a landfill (at which the entire load
5 will be buried) or an intermediary facility (e.g., a transfer station, materials recovery
6 facility, recycling facility, or a facility that manages green waste or biomass, construction
7 and demolition debris or a landfill that provides one or more of these services) that will
8 ultimately landfill only a portion of that Jurisdiction's Material.
9

10 c. Calculate the total dollar amount of the AB 939 Surcharge on
11 every ton of Material generated within the territorial or jurisdictional boundaries of said
12 Jurisdiction, and that the Hauler's Report indicates was landfilled, both within and outside
13 of Fresno County. The tonnage on which the AB 939 Surcharge is calculated shall equal
14 the number of tons that the Jurisdiction's Hauler reports, or causes to be reported, to the
15 Department of Resources Recycling and Recovery (CalRecycle), as having been
16 generated within, and subsequently landfilled by or on behalf of, said Jurisdiction.
17

18 d. Upon request, provide the COUNTY with documentation from
19 the final destination(s) to which the Jurisdiction's Material was taken, indicating the final
20 disposition of that Material.

21 2. The method by which the Jurisdiction's Hauler shall agree to pay to
22 the COUNTY the AB 939 Surcharge (as calculated in accordance with the immediately
23 preceding Section IV Subsection H, Items 1a through c) shall depend upon the initial
24 destination of the Material.

25 a. If the initial destination of the Material collected by the
26 Jurisdiction's Hauler is a County-operated landfill, the Jurisdiction's Hauler is not required
27 to remit the AB 939 Surcharge to the COUNTY. As a component of the landfill tipping
28 fee, the AB 939 Surcharge shall automatically be collected from all Jurisdictions' Haulers

1 entering a COUNTY-operated landfill to dispose of Material. The funds so collected shall
2 be deposited in the Solid Waste Surcharge Trust Fund.

3 b. If the initial destination of the Material collected by the
4 Jurisdiction's Hauler is the Clovis Landfill, the Jurisdiction's Hauler is not required to remit
5 the AB 939 Surcharge to the COUNTY. The City of Clovis hereby acknowledges and
6 agrees that it will continue to collect and remit to the COUNTY, in accordance with Fresno
7 County Ordinance Code Section 8.20.070.A, the equivalent dollar amount of the AB 939
8 Surcharge Fee for every ton of Material generated in Fresno County that is landfilled at
9 the Clovis Landfill during the applicable time frame.

10
11 c. If the initial destination of the Material is not a COUNTY-
12 operated landfill or the Clovis Landfill, the Jurisdiction's Hauler shall be required to remit,
13 directly to the COUNTY, the dollar equivalent of the AB 939 Surcharge on every ton of
14 the Material that the Jurisdiction's Hauler takes to said facility, except as provided for in
15 Section IV, Subsection H, Item 2d (below).

16 d. The amount of the AB 939 Surcharge payment to be remitted
17 to the COUNTY may be adjusted downward by the COUNTY, based on actual tonnage
18 landfilled, if the Jurisdiction's Hauler chooses to, and is able to, meet all of the following
19 conditions:
20

21 (i) Provide documentation of the number of tons of the
22 Material that will/have been buried in any landfill (whether located inside or outside of
23 Fresno County) that is not operated by Fresno County or the City of Clovis; and

24 (ii) Provide documentation of the number of tons of the
25 Material that will/have been buried in a landfill that is operated by Fresno County or the
26 City of Clovis; and

27 (iii) Provide documentation of the number of tons of the
28 Material that will not/ have not been landfilled (e.g., recycled, composted); and

1 (iv) Remit directly to the COUNTY the dollar equivalent of
2 the AB 939 Surcharge for every ton of that Material documented in Section IV, Section H,
3 Item (2)(d)(i) above.

4 3. Unless there are already equivalent provisions in place, each
5 of the Jurisdictions hereby agrees in good faith to use its best efforts to include provisions
6 equivalent to those indicated in Section IV, Subsection H, Item 1 and Item 2, in any future
7 instruments authorizing, permitting and/or contracting for such service entered into (or the
8 term of which is extended by amendment) by any Jurisdiction subsequent to the date of
9 such Jurisdiction's execution of this MOU.

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11 4. It is hereby understood, agreed, promised, by all Jurisdictions,
12 that the AB 939 Surcharges are necessary to provide the services under the MOU, and
13 that Lead Agency may, in its discretion, suspend or terminate the provision of any services
14 provided under this MOU to any Jurisdiction that fails to ensure that payment of that
15 Jurisdiction's AB 939 Surcharges are remitted or otherwise recovered, in accordance with
16 this MOU.

17 V. AMOUNT OF AB 939 SURCHARGE

18 A. History of Fresno County's Solid Waste Management Fee, i.e. the "AB 939
19 SURCHARGE."

- 20 1. On May 19, 1987, the Fresno County Board of Supervisors passed a
21 Resolution, which amended the Master Schedule of Fees, Charges and
22 Costs Recovery, adding section 2806, of Section 2800, and adopted a
23 \$.50, per ton, Waste Management Surcharge.
- 24 2. On December 11, 1990, the Fresno County Board of Supervisors
25 amended the Master Schedule of Fees, Charges and Costs Recovery,
26 increasing the County Solid Waste Management Fee by \$.65 per ton, to
27 require a \$1.15 County Solid Waste Management Fee.
- 28 3. On January 5, 1993, The Fresno County Board of Supervisors amended

1 the Master Schedule of Fees, Charges and Costs Recovery, increasing
2 the County Solid Waste Management Fee by \$.51 per ton, to require a
3 \$1.66 County Solid Waste Management Fee.

4 4. On January 13, 2009, the Fresno County Board of Supervisors amended
5 the Master Schedule of Fees, Charges and Recovered Costs for Fresno
6 County, putting in place a method whereby the County Solid Waste
7 Management Fee would be increased by \$.35 every year for five years.

8 5. As a result of the foregoing actions, amendments, resolutions, and other
9 Board actions, the current Solid Waste Management Fee is \$3.41 per-
10 ton.

11 In order to operate the MOU mandated facilities, programs and services, connected with
12 the activities outlined in this MOU, the Board will maintain the Fresno County Solid Waste
13 Management Fee (AB 939 Surcharge) of three-dollars and forty-one-cents (\$3.41) per-
14 ton of landfilled solid waste generated in Fresno County, as included in the American
15 Avenue Landfill tipping fees.

16 B. Amendment Process

17 1. Should the Committee vote to initiate an amendment, suspension,
18 revision, change, or other modification, of the AB 939 Surcharge, or should an
19 amendment, suspension, revision, change, or other modification of the AB 939 be
20 necessitated by Section V.C of this MOU, the Committee will initiate the Amendment
21 Process.

22 2. In consultation with the Committee, the Lead Agency shall prepare,
23 and provide to each of the other Jurisdictions a draft resolution and/or ordinance relating
24 to the desired AB 939 Surcharge amendment, suspension, revision, change, or other
25 modification. The draft resolution and/or ordinance shall indicate a Target Date and a
26 Target Period for implementation. While it is anticipated that the dollar amount of the AB
27 939 Surcharge will be maintained at the level indicated in Section V of this MOU, the Lead
28 Agency may recommend and the Delegates of the Committee may authorize, at the time

1 the Lead Agency prepares the draft resolution and/or ordinance, recommended changes
2 in the timing and/or the dollar amount of the AB 939 Surcharge.

3 3. Based upon the parameters indicated in the draft resolution and/or
4 ordinance, each of the Jurisdictions shall be requested by the Lead Agency to prepare,
5 execute and provide an appropriate resolution, executed by its respective governing
6 body, requesting that the COUNTY's Board adopt any proposed changes to the AB 939
7 Surcharge.

8 4. If and when all Jurisdictions' respective Boards (with the exception
9 of COUNTY's Board) or Councils adopt resolutions proposing changes to the AB 939
10 Surcharge, the Lead Agency shall prepare an agenda item and appropriate resolution(s)
11 and/or ordinance requesting that the COUNTY's Board approve and implement the
12 proposed amendment, suspension, revision, change, or other modification, to the AB 939
13 Surcharge by adoption of the COUNTY's resolutions and/or ordinance.

14 5. Unless and until such time as the AB 939 Surcharge has been
15 amended, the AB 939 Surcharge shall remain at the current \$3.41 per-ton of landfilled
16 solid waste generated in Fresno County.

17 6. In the event that the amount of the AB 939 Surcharge is amended,
18 suspended, revised, changed, or modified by action of the Fresno County Board of
19 Supervisors, the new total amount of the AB 939 Surcharge will be deemed to replace all
20 references to the \$3.41 AB 939 Surcharge in this MOU, without the need for any formal
21 amendment hereto.

22 7. The Jurisdictions hereby acknowledge their understanding that in the
23 event that the amount of the AB 939 Surcharge is ever decreased, suspended, or in any
24 way reduced below its current amount, that any attempt to later increase, reinstitute, or
25 otherwise revoke the decrease, suspension or reduction thereof, will require further Board
26 action.

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1 C. Solid Waste Surcharge Trust Fund Account Cap.

2 It is the intention of the Jurisdictions that the combined sum of the component
3 portions of the Solid Waste Surcharge Trust Fund Account for (1) the Household
4 Hazardous Waste Facility Fee (\$1.75/ton) and (2) the State-Mandated AB 939 Integrated
5 Waste Management Plan Fee (\$0.65/ton) shall not exceed \$11.5 million prior to the siting,
6 building, and full operation of a new Household Hazardous Waste facility in Fresno
7 County. Accordingly, in the event that the combined sum of the component portions of
8 the Solid Waste Surcharge Trust Fund Account for (1) the Household Hazardous Waste
9 Facility Fee (\$1.75/ton) and (2) the State-Mandated AB 939 Integrated Waste
10 Management Plan Fee (\$0.65/ton) reaches a total in excess of \$11.5 million prior to the
11 siting, building, and full operation of a new Household Hazardous Waste facility in Fresno
12 County, the following will occur:

- 13 1. Using and following the Amendment Process in Section V.B, the Lead
14 Agency will draft any necessary resolution and/or ordinance, to present
15 to the Fresno County Board of Supervisors, for purposes of amending,
16 suspending, revising, changing, or modifying, the component portions of
17 the AB 939 Surcharge for (1) the Household Hazardous Waste Facility
18 Fee (\$1.75/ton) and (2) the State-Mandated AB 939 Integrated Waste
19 Management Plan Fee (\$0.65/ton), so as to result in the foregoing
20 component portions being reduced to \$0.00/ton.
- 21 2. If Section V.C.1 is ever successfully implemented, and results in any
22 reduction in the total AB 939 Surcharge, the Jurisdictions agree,
23 promise, and covenant, that in the event that the sum total of the Solid
24 Waste Surcharge Trust Fund drops below \$6.0 million, that the Lead
25 Agency, using and following the Amendment Process in Section V.B,
26 will draft any necessary resolution and/or ordinance to present to the
27 Fresno County Board of Supervisors to increase the component portions
28 of AB 939 Surcharge for (1) the Household Hazardous Waste Facility

1 Fee and (2) the State-Mandated AB 939 Integrated Waste Management
2 Plan Fee.

3 3. If after implementing and accomplishing an Amendment Process that is
4 compelled by Section V.C.1, the Solid Waste Surcharge Trust Fund
5 drops below \$6.0 million, then the obligations discussed in Section V.C.1
6 will not be mandated again until the Solid Waste Surcharge Trust Fund
7 Account totals more than \$11.5 million.

8 4. Under no circumstances, shall anything in this Section V.C, compel the
9 Jurisdictions to amend, suspend, revise, change, or modify, the
10 component portions of the AB 939 Surcharge (for the Department of
11 Health Service Fee and the Solid Waste Management Fee), which total
12 \$1.01 per ton.

13 5. If at any time after the execution of this MOU and before its termination
14 thereof, a new Household Hazardous Waste facility is sited, built, and
15 fully operational, within Fresno County, Section V.C.1 will be rendered
16 permanently inapplicable.

17 D. Audits of the Solid Waste Surcharge Trust Fund Account

18 All programs, revenues, and reserves associated with the AB 939 Surcharge will
19 undergo an audit no less than once every five (5) years of the Term of the MOU,
20 calculated from the date this MOU is fully executed, including the five (5) year extension,
21 if applicable. The audit will be completed by a third party consultant hired by Fresno
22 County and billed to the AB 939 Solid Waste Surcharge Trust Fund Account. Results of
23 the audit will be shared with the Jurisdictions within thirty (30) days of the Lead Agency's
24 receipt of the final and complete audit.

25 E. Annual Review of Solid Waste Surcharge Trust Fund Account

26 The Committee will conduct an annual review of the amounts in the Solid Waste
27 Surcharge Trust Fund Account during the last Committee meeting of every fiscal year.

28 Thirty (30) days prior to the review, the Lead Agency will provide the Committee Members

1 with all data and information related to the current state of the Solid Waste Surcharge
2 Trust Fund Account.

3 VI. TERM:

4 A. The initial term of this MOU shall be for ten (10) years commencing on the
5 date first indicated above, that this MOU is executed by the Board and shall be
6 automatically renewed for one (1) additional five (5)-year period, unless a majority of the
7 Jurisdictions hereto vote not to exercise the option for renewal as set forth in Section VI,
8 Subsection B (Renewal Option).

9 B. Renewal Option

10 1. Each of the CITIES' governing bodies hereby authorizes its
11 respective CITY manager or equivalent officer, or respective CITY manager's or
12 equivalent officer's designee, and the COUNTY hereby authorizes the Director of the
13 Public Works and Planning Department or their designee, upon receipt of a Renewal
14 Option Ballot, delivered pursuant to the notice provisions in Section XII, as the respective
15 authorized agents of each such Jurisdiction, to complete and to submit said ballots on
16 behalf of their respective CITIES and COUNTY, voting to either approve or reject the
17 Renewal Option.

18 2. Renewal Option Ballots may be submitted by mail, fax or in person,
19 but must be received by the Chairperson before the Renewal Option meeting is called to
20 order. At that special meeting, the Chairperson shall count the valid Renewal Option
21 Ballots submitted. To be valid, a Renewal Option Ballot must have been signed by that
22 governing body's authorized agent, as specified in the immediately preceding Section
23 VI.B.1, and be received before the submittal deadline. If a simple majority of the valid
24 Renewal Option Ballots received by the Chairperson is in support of the Renewal Option,
25 this MOU shall automatically be extended an additional five (5)-year period as provided
26 in Section VI, Subsection A.

27 3. Notice of the results of the Renewal Option Ballots shall be in
28 accordance with Section XII.

1 4. If the majority of the Renewal Option Ballots cast are not in support
2 of the Renewal Option, the MOU shall automatically expire at the end of the initial ten (10)
3 -year period. At such time, it will be each Jurisdictions' responsibility, according to
4 California Code, to comply with the laws, rules, regulations, and requirements of the laws
5 related to waste management, and to provide waste management plans and services,
6 including amending state plans, and administering plans that would otherwise be handled
7 by this Committee.

8 VII. TERMINATION:

9 A. Options for Changing the Term

10 The term of the MOU may be changed using one of the following options:

11 1. All Jurisdictions pass resolutions authorizing an amendment to the
12 MOU to increase, reduce or end the Term authorized in Section VI, Subsection A (above);
13 or

14 2. All Jurisdictions pass resolutions authorizing a subsequent
15 successor MOU, in which case this MOU would expire on the date that such subsequent
16 successor MOU becomes effective.

17 B. Disbursement of Cash Balance in the Solid Waste Surcharge Trust Fund
18 Account (Trust Fund)

19 Should the Jurisdictions choose not to renew, extend or amend the term of this
20 MOU, and no Successor MOU has been approved or is approved six (6) months after this
21 MOU expires, then the Lead Agency shall calculate and disburse the cash balance in the
22 Solid Waste Surcharge Trust Fund (AB 939 Surcharge) Account. For purposes of this
23 Section VII.B, the only amounts that may be disbursed out of the Trust Fund, will be
24 amounts paid into the Trust Fund as a result of (1) the Household Hazardous Waste
25 Facility Fee and (2) the State-Mandated AB 939 Integrated Waste Management Plan Fee
26 (at the time of this MOU's execution, these component portions of the AB 939 consisted
27 of \$2.40 out of every \$3.41 AB 939 Surcharge Fee). Unless the Jurisdictions unanimously
28 pass a resolution within thirty (30) days before the MOU's termination date, defining and

1 implementing an alternative method for calculating and distributing the cash balance in
2 the AB 939 Surcharge Account (Option Two), the Lead Agency shall proceed in
3 accordance with Option One:

4 1. Option One: Proportional Disbursement.

5 For Option One, the following, in the order listed, will occur:

6 a. Lead Agency will make an accounting of the Trust Fund, including
7 a determination regarding the total disbursement amount in the
8 Trust Fund, as well as any outstanding debts or other monetary
9 obligations, and determine the total amount that may be
10 disbursed. Lead Agency will set aside sufficient money to satisfy
11 any and all debts and obligations and then calculate the then
12 remaining total disbursement amount in the Trust Fund. This
13 remaining total will be the amount that will be disbursed pursuant
14 to this Option One.

15 b. Lead Agency will take the total disbursement amount and divide it
16 into two equal halves. Each half will be disbursed as delineated
17 below.

18 c. Lead Agency will send a request, delivered pursuant to the notice
19 provisions in Section XII, for documentation and proof to each
20 Jurisdiction. This Request shall request proof of all amounts each
21 such Jurisdiction paid into the Trust Fund during the ten (10)
22 years preceding the request for documentation, as well as
23 information regarding the Jurisdiction's respective population at
24 the time of the request.

25 d. Within thirty (30) days of the Lead Agency's request, all
26 Jurisdictions wishing to seek a portion of any disbursement will
27 provide Lead Agency with documentation proving all amounts the
28 respective Jurisdictions paid into the Trust Fund during the

1 preceding ten (10) years, as well as their populations at the time
2 of the request. It is and will be each Jurisdictions' responsibility
3 to prove the foregoing.

4 e. No sooner than sixty (60) days after the provision and receipt of
5 all information requested in Section VII.B.1.d, Lead Agency will
6 total all amounts proved by each Jurisdiction into one lump sum.

7 f. The first half of the total disburseable amount will be divided
8 amongst the entitled Jurisdictions based upon the amounts each
9 respective Jurisdiction paid into the Trust Fund over the
10 preceding ten (10) years. For each Jurisdiction entitled to a
11 disbursement, Lead Agency will compare the amount the
12 respective Jurisdiction paid into the Trust Fund over the ten (10)
13 year period, with the total amount paid by all entitled Jurisdictions
14 over the ten (10) period, by dividing the amount the Jurisdiction
15 paid by the total amount paid by all entitled Jurisdictions. The
16 first half of the total disburseable amount in the Trust Fund will be
17 multiplied by the resulting number. The calculated amount will
18 equal the first portion of the respective Jurisdiction's entitlement
19 to disbursement.

20 g. After calculating the foregoing amounts, the second half of the
21 disburseable amount in the Trust Fund will be divided amongst the
22 Jurisdictions entitled to a disbursement by multiplying the ratio of
23 each such Jurisdiction's population compared to the total
24 population provided by all entitled Jurisdictions by the second half
25 of the disburseable amount. The resulting numbers will equal the
26 second portion of the respective Jurisdiction's disbursement. For
27 example, if there is \$100,000.00 in the second half of the
28 disburseable amount, and a Jurisdiction's population represents

1 five-percent (5%) of the total reported population, that Jurisdiction
2 will be entitled to \$5,000.00.

3 h. Within ninety (90) days of completing the foregoing calculations,
4 the Lead Agency will give notice, pursuant to Section XII, to all
5 Jurisdictions regarding the foregoing requests, responses, and
6 calculations, and the Lead Agency will disburse the amounts
7 owing to each Jurisdiction.

8 i. Any Jurisdiction that fails to provide documentation or proof of
9 amounts paid, including those that provide inadequate
10 documentation or proof of amounts paid, or proof of the
11 population of the Jurisdiction, pursuant to this Option One, will not
12 be entitled to any disbursement.

13 j. For purposes of this Option One (1), in the event that there are
14 any Jurisdictions that are not entitled to a disbursement, as
15 delineated above, those Jurisdictions' populations will not be
16 taken into account for purposes of any of the calculations in this
17 Option One (1).

18 2. Option Two: An alternative method defined and adopted by
19 resolution by the governing bodies of all Jurisdictions no less than 30 days before the
20 MOU's termination date.

21 C. Disbursement of Assets acquired using monies from the Trust Fund will be
22 determined by way of Option Two, in Section VII.B.2.

23 VIII. AMENDMENTS

24 A. The Committee may amend any provision of this MOU. Amendments of the
25 AB 939 Surcharge are governed by Sections V.B and V.C.

26 1. With the exception of certain MOU provisions governing the
27 Committee's scope of work as expressly specified above, (i.e., those provisions related
28 to the R List, the AWP and the Committee Policies and Procedures), the approval of any

1 proposed amendment of any other provision of this MOU requires that an appropriate
2 amendment resolution and accompanying amendment to this MOU be executed by the
3 governing body of each and every one of the Jurisdictions.

4 2. Upon the request of and in consultation with the Committee, the Lead
5 Agency shall prepare for this purpose and provide, to the City Manager of each of the
6 CITIES, a draft of an appropriate amendment resolution and accompanying amendment
7 to this MOU.

8 3. Based upon the parameters indicated in the draft amendment
9 resolution, each Jurisdiction shall be asked to prepare, execute and provide the Lead
10 Agency with an executed amendment resolution and an executed counterpart original
11 signature page of the accompanying amendment to this MOU, following approval of same
12 by its respective governing body.

13 4. If and when an amendment resolution has been executed and
14 provided by all of the Jurisdictions, the Lead Agency shall prepare an agenda item and
15 appropriate resolution requesting the COUNTY's Board to execute the COUNTY's
16 amendment resolution and to execute a counterpart original signature page of the
17 requested amendment to the MOU.

18 B. The Committee may propose and execute changes or amendments to the
19 R List and/or the AWP (Section II and Section III) and/or Committee Policy and
20 Procedures (Section I), by a simple majority vote of the Delegates casting ballots, so long
21 as:

22 1. All such proposed changes/amendments to the R List, the AWP and
23 the Committee Procedures and Policies are noticed, pursuant to Section XII, to the
24 Delegates at least thirty (30)-days in advance. The notice must include a proxy ballot
25 form and a message indicating the date, time and location at which the proposed
26 change(s)/amendment(s) will be discussed and voted upon.

27 2. A majority of Delegates must participate, in person or by proxy. (Any
28 Delegate submitting a valid abstention shall be counted as a participant.) The votes shall

1 be calculated by adding the number of valid proxy ballots (received from Delegates not
2 physically present at the meeting) to the number of votes cast by those Delegates in
3 attendance at the meeting.

4 IX. PURPOSE OF THE LTF SUBCOMMITTEE

5 A. The Jurisdictions approved the restructuring of the LTF designating the
6 Committee to serve in the capacity and perform the functions of the LTF. The Committee
7 formed a separate Subcommittee (LTF Subcommittee) to perform these LTF functions
8 developing its own separate set of guidelines and rules to govern itself and conduct
9 business. The LTF Subcommittee guidelines include rules regarding the LTF formation,
10 authority of the LTF, membership, meetings, designation of officers, responsibilities,
11 voting, and other related items. The duties and responsibilities of the LTF Subcommittee
12 are defined in Public Resources Code Section 40950, subdivision (c) as, "To ensure
13 coordinated and cost-effective regional recycling system, the task force shall do all of the
14 following:

- 15 1. Identify solid waste management issues of countywide or regional concern.
- 16 2. Determine the need for solid waste collection and transfer systems,
17 processing facilities, and marketing strategies that can serve more than one
18 local jurisdiction within the region.
- 19 3. Facilitate the development of multijurisdictional arrangements for marketing
20 of recyclable materials.
- 21 4. To the extent possible, facilitate resolution of conflicts and inconsistencies
22 between or among city and county source reduction and recycling
23 elements."

24 B. As established under Public Resources Code Section 40950, subdivision
25 (d), "The task force shall develop goals, policies and procedures which are consistent
26 with guidelines and regulations adopted by the board (CalRecycle), to guide the
27 development of the siting element of the countywide integrated waste management plan."
28

1 C. The LTF Subcommittee meetings will only be scheduled as needed to
2 address business as required under Public Resources Code Section 40950. These
3 meetings will be scheduled and noticed, pursuant to Section XII, and held at the
4 conclusion of regular Committee meetings.

5 D. A quorum, for purposes of the LTF Subcommittee, shall be five (5)
6 Jurisdictions.

7 X. [Intentionally Omitted]

8 XI. HOLD HARMLESS:

9 A. The COUNTY hereby agrees to indemnify and hold harmless each of the
10 signatory CITIES and their respective agents and employees, from and against all loss
11 or expense (including reasonable costs and attorney's fees) by reason of liability imposed
12 by law upon such signatory CITY for damages because of bodily injury, including death
13 at any time resulting therefrom, sustained by any person or persons or on account of
14 damage to property, including loss of use thereof, arising out of or as a consequence of
15 the performance of this work. Provided, however, that the duty imposed by this Paragraph
16 shall be binding upon the COUNTY only if, and only to the extent, that such injury to
17 persons or damage to property is due to negligence of the COUNTY.

18 B. Each of the signatory CITIES hereby agrees to indemnify and hold harmless
19 the COUNTY and its agents and employees, from and against all loss or expense
20 (including reasonable costs and attorney's fees) by reason of liability imposed by law
21 upon the COUNTY for damages because of bodily injury, including death at any time
22 resulting therefrom, sustained by any person or persons or on account of damage to
23 property, including loss of use thereof, arising out of or as a consequence of the
24 performance of this work. Provided, however, that the duty imposed by this Paragraph
25 shall be binding upon a signatory CITY only if, and only to the extent, that such injury to
26 persons or damage to property is due to negligence of such signatory CITY.

27 XII. NOTICE

28 Unless it is provided otherwise, for purposes of this MOU, each Jurisdictions'

1 Delegate or the Delegate's designee shall be provided with notice for any and all matters
2 regarding or relating to this MOU, as provided in this Section.

3 The Jurisdictions' Delegates or their designees shall serve as the persons to receive
4 any and all notice, as required by this MOU, or in any way related to this MOU. Each
5 Jurisdiction, as applicable, may request that notice be sent to their Alternate Delegate, if
6 any, in addition to the notice that is sent to the Jurisdictions' Delegates. Each Jurisdiction
7 will provide contact information for their Delegates, and Alternate Delegates if so desired,
8 as follows:

- 8 1. Telephone number;
- 9 2. Email address;
- 10 3. Physical address capable of receiving all forms of mail, delivery, etc.

11 All notices between the Jurisdictions provided for or permitted under this MOU must be in
12 writing and delivered either by personal service, by first-class United States mail, by an
13 overnight commercial courier service, or by e-mail transmission. A notice delivered by
14 personal service is effective upon service to the recipient. A notice delivered by first-class
15 United States mail is effective three COUNTY business days after deposit in the United
16 States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight
17 commercial courier service is effective one COUNTY business day after deposit with the
18 overnight commercial courier service, delivery fees prepaid, with delivery instructions given
19 for next day delivery, addressed to the recipient. A notice delivered by e-mail is effective
20 when transmission to the recipient is completed (but, if such transmission is completed
21 outside of COUNTY business hours, then such delivery shall be deemed to be effective at
22 the next beginning of a COUNTY business day), provided that the sender maintains a read-
23 receipt of the completed transmission. For all claims arising out of or related to this MOU,
24 nothing in this section establishes, waives, or modifies any claims presentation requirements
25 or procedures provided by law, including but not limited to the Government Claims Act
26 (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

27 XIII. SEVERABILITY:

28

1 Should any part of this MOU be determined to be unenforceable, invalid, or beyond
2 the authority of either party to enter into or carry out, such determination shall not affect
3 the validity of the remainder of this MOU, which shall continue in full force and effect;
4 provided that, the remainder of this MOU can, absent the excised portion, be reasonably
5 interpreted to give effect to the intentions of the parties.

6 XIV. COUNTERPARTS:

7 This MOU may be executed in any number of counterparts, each of which when
8 so executed and delivered shall be deemed to be an original, and such counterparts
9 together shall constitute one and the same instrument and agreement.

10 XV. ENTIRE AGREEMENT:

11 This MOU constitutes the entire agreement among the Jurisdictions with respect
12 to the subject matter hereof and supersedes all previous negotiations, proposals,
13 commitments, writings, advertisements, publications, and understandings of any nature
14 whatsoever unless expressly included in this MOU.

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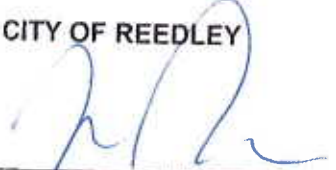
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
2 day and year first hereinabove written.
3
4

5 CITY OF REEDLEY


6
7 
8 Nicole R. Zieba, City Manager
9

COUNTY OF FRESNO

10
11 
12 Sal Quintero, Chairperson of the Board of
13 Supervisors of the County of Fresno
14

15 **ATTEST:**

16 Bernice E. Seidel
17 Clerk of the Board of Supervisors
18 County of Fresno, State of California
19

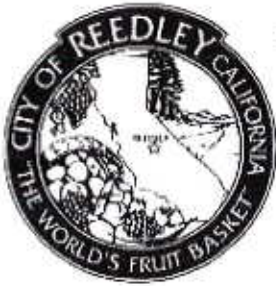
20 By 
21 Deputy
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23
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FOR ACCOUNTING USE ONLY:

ORG No.: 9015

Account No.: N/A

Requisition No.: N/A



REEDLEY CITY COUNCIL

- ☒ Consent Calendar
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 3

DATE: September 11, 2018

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE A SUCCESSOR MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE COUNTY OF FRESNO AND THE CITY OF REEDLEY TO ALLOW FOR THE CONTINUATION OF AB 939 PROGRAMS, FACILITIES, AND PUBLIC EDUCATIONAL ACTIVITIES.

PREPARED BY: Russ Robertson, Public Works Director *RR*

APPROVED: Nicole R. Zieba, City Manager *NZ*

RECOMMENDATION

Approve and authorize the City Manager to execute a successor MOU between the County of Fresno (County) and the City of Reedley (City) to allow for the continued implementation /funding of county-wide AB 939 education, public information, and household hazardous waste (HHW) management programs and the development of new HHW facilities.

EXECUTIVE SUMMARY

The recommended action will allow the County, as lead agency, to continue to implement county-wide AB 939 education, public information and household hazardous waste (HHW) management programs and facilities through utilization of the current AB 939 Surcharge Fee. The AB 939 Surcharge Fee is required to fully-fund the activities covered by the Successor MOU, including operation of the Regional Permanent HHW Facility (HHW Facility) and a local network of HHW drop-off sites (Local HHW Network), and development of additional Facility (ies) as needed. The term of the Successor MOU is ten years, with an option for one-five-year extension. The option will be automatically exercised, unless a majority of the cities and County vote not to exercise the option for renewal. The Successor MOU contains a mutual indemnification clause, as did the previous MOU.

BACKGROUND

AB 939 requires each county and city in the State to prepare, implement and update solid waste management plans in order to meet State diversion mandates. In addition, the State requires all jurisdictions to properly handle generated HHW, through recycling and/or disposal of these materials at an appropriate facility. The County, as Lead Agency,

continues to provide this service to all jurisdictions within Fresno County through the Successor MOU. The County and the 15 cities within Fresno County entered into an MOU in 1993, 2004 and again in 2009 to coordinate county-wide implementation of related education, public information, and HHW management programs. The current MOU expires on January 5, 2019. In 2009, the County and the 15 cities agreed to increase a portion of the AB 939 Surcharge Fee from \$0.65 to \$2.40 per disposed ton of Fresno County generated solid waste. This increase was to fully-fund the activities covered by the MOU, including development and operation of the Regional Permanent HHW Facility (HHW Facility) and a local network of HHW drop-off sites (Local HHW Network).

The Successor MOU will continue to provide for services to: 1) manage the increase in types and volumes of waste required by legislation to be managed as HHW, and 2) respond to requests from residents of Fresno County to have more and better access to HHW management services. This is planned through development, construction and operation of a new relocated HHW Facility, other facilities as needed and expansion of the Local HHW Network.

A new addition to the Successor MOU allows that if the portion of the Trust Fund Reserves allocated to the HHW Facility and associated activities reaches \$11.5 million in total, the MOU Committee will initiate the process to lower the portion of the Surcharge Fee of \$2.40 per disposed ton of Fresno County generated solid waste, to \$0.00. This will continue until a new relocated HHW Facility is constructed and operational or the Trust Fund Reserves falls below \$6.0 million. In addition, a new provision to include a Local Task Force (LTF) as required by the State and previously approved by the County and all the cities within Fresno County was added to the Successor MOU.

The County Department of Public Works and Planning staff and representatives of the 15 cities within Fresno County have been working closely together to prepare the Successor MOU. County staff have held several meetings over the past few months and the recommended Successor MOU reflects a collaborative effort to enhance accountability and program effectiveness.

FISCAL IMPACT

No change to the current AB 939 surcharge fee.

ATTACHMENTS

1. Memorandum of Understanding (AB 939)

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