WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF TULARE, CALIFORNIA

and
the

CITY OF Reedley, CALIFORNIA

Dated May , 2016

County Authorization Date:

_____

County Notice Address:

Director
Solid Waste Department
5961 S Mooney Blvd, Visalia, CA
Visalia, CA 93277

City Authorization Date:

City Notice Address:

Public Works Director
City of Reedley
1733 Ninth St.
Reedley, CA 93654

TULARE COUNTY AGREEMENT NO. 27707

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WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and dated as of _____, 2016, between the County of Tulare, a political subdivision of the State of California (the "County"), and the City of Reedley, A California Municipal Corporation (the "City").

RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of solid waste generated within and outside the limits of the County (the "Disposal System").

The Disposal System includes two active landfill sites, the Visalia site and the Teapot Dome site.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The City owns, manages and operates a collection system for the disposal of municipal solid waste generated within the City pursuant to the City's charter.

The City and the County desire to enter into this agreement.

The City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City's residents by providing greater disposal rate stability, promote more predictable and reliable long-term disposal service costs and promote sound environmental management.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis.

It is, therefore, agreed as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.

"Acceptable Waste" means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law, and that is not Unacceptable Waste as defined herein below.

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

"Agreement" means this Waste Disposal Agreement between the County and the City as the same may be amended or modified from time to time in accordance herewith.

"Appendix" means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof

"Applicable Law" means the Act, the Tulare County Code, Visalia Municipal Code, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

"CalRecycle" means the California Department of Resources Recycling and Recovery.

"CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 *et seq*. as amended or superseded, and the regulations promulgated thereunder.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq*., as amended or superseded, and the regulations promulgated thereunder.

"Change in Law" means any of the following events or conditions which has a material and significant effect on the performance by the parties of their respective obligations under this Agreement (other than any payment at the time due and owing), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System or other matters to which Applicable Law applies:

(1) enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);

(2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

(4) any new or revised requirements imposed by Law upon the Department after the Commencement Date of this Agreement relating to the funding or provision of disposal services, including but not limited to any regulations for disposal operations or activities associated with the remediation, closure, funding or monitoring of closed sites with respect to facilities comprising the Disposal System, or facilities which the County previously utilized to provide waste disposal, transfer, recycling, processing or other waste related activities.

"City" means, as applicable, the City of Reedley.

"City Acceptable Waste" means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residual from the foregoing wherever produced, whether within or outside the City (or Tonnage equivalencies of such Residuals, as and to the extent provided in subsection 3.1(C) hereof).

"Commencement Date" means the date on which the obligations of the parties hereto commence, established as provided in Section 6.2(A) hereof.

"Contract Date" means the first date on which this Agreement has been executed by both parties hereto.

"Contract Rate" has the meaning specified in Section 4.2 hereof.

"Contract Year" means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

"Controllable Waste" means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefore and which

is: (1) Non-Recycled City Acceptable Waste;

(2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate.

"County" means the County of Tulare, a political subdivision of the State of California and party to this Agreement.

"County Plan" means the integrated waste management plan of the County approved by the CalRecycle pursuant to the Act as in effect from time to time.

"County Solid Waste Enterprise Fund" means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Disposal System.

"Department" means Tulare County Solid Waste Department, and any agency, department or other Governmental Body which succeeds to the duties and powers thereof.

"Disposal Services" means the solid waste disposal services to be provided by the County pursuant to the Service Covenant and otherwise hereunder.

"Disposal System" means the Tulare County Visalia landfill.

"Corrective Action Fund" means the fund or funds held by the County to pay unanticipated costs of environmental mitigation, remediation or liability.

"Governmental Body" means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"Hazardous Substance" has the meaning given such term in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder.

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a

substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40.

"Initial Term" has the meaning specified in Section 6.1(A) hereof.

"Law" means the statutes adopted by the legislative bodies and signed into law by the President or Governor, respectively, of the United States of America (Federal) or by the State of California (State); Federal and State administrative laws; final decisions by Federal or State Appellate and Supreme Courts.

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement or the matters covered hereby.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

"Non-Recycled City Acceptable Waste" means all City Acceptable Waste other than Recycled City Acceptable Waste.

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State or 1% per month whichever is lower.

"Posted Disposal Rate" means the per ton tipping fee charged by the County for the disposal of solid waste at the Disposal System by parties which are not entitled to disposal service at the Contract Rate pursuant to this Agreement, or any other agreements that may be in place.

"Prohibited Medical Waste" means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Disposal System.

"Qualified Household Hazardous Waste" means waste materials discarded from households as opposed to businesses determined by the Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be any of the following:

(1) Of a nature that they must be listed as hazardous in State statutes and regulations;

(2) Toxic/ignitable/corrosive/reactive;

(3) Carcinogenic/mutagenic/teratogenic;

. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

"Recycled City Acceptable Waste" means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "recycled" within the meaning of

Section 40180 of the Public Resources Code, as it may be amended from time to time. Recycled City Acceptable Waste includes compostable waste or green waste that is diverted to a composting or green waste recycling program.

"Renewal Term" has the meaning specified in Subsection 6.1(B) hereof.

"Residual" means any material remaining from the processing, by any means and to any extent, of City Acceptable Waste or Recycled City Acceptable Waste; provided, however, that Residual shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 10% of the amount of such City Acceptable Waste or Recycled City Acceptable Waste prior to processing).

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq.*, as amended and superseded.

"Self-Hauled Waste" means City Acceptable Waste collected and hauled by Self-Haulers.

"Self-Hauler" means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

"Service Covenant" means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

"State" means the State of California.

"Term" shall mean the Term of this Agreement.

"Ton" means 2,000 pounds.

"Transfer Station" means any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for processing before disposal in the Disposal System.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Disposal System, the County, the City, or contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (other than any payment at the time due and owing), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Examples of Uncontrollable Circumstances are:

(1) landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and

(2) a Change in Law; and

(3) a strike or labor action taken against either party by a local public employee organization under the provisions of Government Code section 3500, et. Seq (the Meyers-Milias-Brown Act) that effects either party's ability to perform under the Agreement.

"Unincorporated Area" means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

"Waste Disposal Covenant" means the covenants and agreements of the City and County set forth in Sections 3.1and 3.2 hereof.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

(F) Applicable Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of California.

(G) Conflict With Laws Or Regulations/Severability: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

(H) Recitals. The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence. The City is a municipal corporation validly existing under Constitution and laws of the State.

(B) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

(B) Due Authorization. The County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County.

ARTICLE III
DELIVERY AND ACCEPTANCE OF WASTE AND PROVISION OF DISPOSAL SERVICE

SECTION 3.1 DELIVERY OF WASTE.

(A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith that is not subject to any other agreements or regulations.

(B) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation or recycling program shall cause the City any liability hereunder and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station. All Residuals from any processing of Controllable Waste by materials recovery, composting, recycling or other means, wherever performed, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Where City Acceptable Waste is processed at a facility which concurrently processes other Acceptable Waste in a manner which produces commingled Residuals which cannot be traced to a geographic source, generic Residuals from such facility in Tonnage equal to the Residueals that would have been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant.

(D) Waste Flow Enforcement. The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to the amount that the City would have been required to pay to the County had the Waste Disposal Covenant not been breached, which shall be calculated by (x) subtracting the number of tons actually delivered during the month(s) of the breach from the number of tons that were delivered during the same month(s) closest in time when there was no such breach, even if such month(s) closest in time was prior to the Term, and (y) multiplying such amount by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 7.14).

(E) Waste Information System. The City shall cooperate with the Department in collecting information in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of, Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Department in connection with this Agreement.

(F) City Actions Affecting County. The City agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as not to prevent or unreasonably interfere with the County's compliance with any covenants and agreements with the State. In particular, the City agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. Notwithstanding the foregoing, the City shall not be required to deny any permit or license or refuse to grant any approval while exercising its police powers.

(G) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Disposal System of Acceptable Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste to the County hereunder, and shall not permit any Acceptable Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste for any purpose hereunder.

(H) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

SECTION 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY.

(A) County Disposal Services. In providing Disposal Services, the County shall: (1) provide safe, stable, all weather surfaces for travel ways and tipping areas on County landfill property so that City vehicles will not get stuck or risk tipping over during delivery operations of waste; (2) provide a gate, scale, travel path, tipping location and exit path at County landfill property that allows for efficient unloading of trucks. no more than 25 minutes, excluding truck time at recyclable tipping pad. If trucks are unable to offload at Visalia Landfill within a reasonable time, City is to notify County in writing within five (5) business days of issue at Landfill. County will have thirty (30) days from time of City notification to cure issue hindering reasonable drop off of waste by City. If these items are not cured within the time frame, the City has the right to terminate the contract with 30 day' s notice. The County shall also provide the City with its safety protocols for the operation of the disposal system that affect City vehicles and drivers.

(B) Service Covenant. Commencing on the Commencement Date, the County shall provide or cause the provision of the service of (1) receiving and disposing of all Controllable Waste at the Disposal System, (2) disposing in accordance with subsection 3.2(C) hereof of Controllable Waste which, at any time and for any reason, is in excess of the disposal capacity of the Disposal System, and (3) in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Disposal System. The County, to the maximum extent permitted under Applicable Law, shall use its best efforts to keep the Visalia Landfill open for the receipt of waste for disposal of Controllable Waste pursuant to this Agreement. The County shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

(C) Reasonable Cooperation. The parties agree that each is operating a component necessary for City to operate a Municipal Solid Waste System. To this end, the parties agree to reasonably accommodate special circumstances within the other's operations whenever practicable and when such reasonable accommodation will not cause the accommodating party to bear additional costs.

SECTION 3.3 COUNTY RIGHT TO REFUSE WASTE.

(A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse acceptance of:

(1) Unacceptable Waste;

(2) Controllable Waste delivered at hours other than those provided in Section 3.4 hereof;

(3) Waste that does not constitute Controllable Waste;

(4) Identification of Unacceptable Waste. The Department shall have the right (but not the duty or the obligation) to inspect the vehicles delivering material to the Disposal System, and may require that the City remove any Unacceptable Waste from such vehicle before it is unloaded. If the Department determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the City is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Department may reject the entire vehicle, and the City shall forthwith remove or cause the removal of the entire delivery from the Disposal System. The Department may take all reasonable measures to prevent waste from being blown or scattered before and during unloading.

(B) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Disposal System has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

(C) Disposal of Unacceptable Waste. If Unacceptable Waste is discovered in a City vehicle at any landfill within the Disposal System, the driver of the City vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a landfill within the Disposal System Department personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Hazardous Waste is detected at any landfill within the Disposal System, the Department shall take immediate action in accordance with Applicable Law.

SECTION 3.4 MISCELLANEOUS OPERATIONAL MATTERS.

(A) Operating Hours. The County shall keep the Visalia Landfill open for the receiving of Controllable Waste Monday through Friday from 6:00 a.m. to 4:00 p.m. and Saturday 8:00 a.m. to 4:00 p.m. The County shall keep the Teapot Dome Landfill open for the receiving of Controllable Waste 7 a.m. to 4 p.m. Monday through Friday and 8 a.m. to 4 p.m. Saturday. Both landfills will be closed on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

(B) Scales and Weighing. The Department shall operate and maintain permanent scales at the Disposal System. The Department shall weigh all vehicles delivering waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

SECTION 3.5 OTHER USERS OF THE DISPOSAL SYSTEM.

(A) Other City Agreements. The County shall have the right to enter into waste disposal agreements with other parties, including Tulare County cities with respect to Acceptable Waste. In no event shall the Posted Disposal Rate be equal to or less than the Contract Rate

(B) Receipt of Acceptable Waste on a Contract Basis. The County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the City. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the City in accordance with the applicable Disposal Agreements.

(C) Self Haulers. The City and the County acknowledge that Self-Haulers shall be entitled to deliver Self-Hauled Waste to the Disposal System, on a non-contract basis, at the Posted Disposal Rate. Such Self-Haulers shall not be entitled to dispose of Acceptable Waste for the Contract Rate.

ARTICLE IV
CONTRACT RATE

SECTION 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE.

The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance and disposal of Controllable Waste delivered to the Disposal System by the City. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates.

SECTION 4.2 CONTRACT RATE.

(A) Establishment of Contract Rate. The Contract Rate payable by the City shall be $26.00 per ton from the Commencement Date through the Term of this agreement, subject to reasonable adjustments due to the following:

(i) changed costs incurred by the County due to the occurrence of one or more Uncontrollable Circumstances, and

(ii) adjustments due to changes in costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Changes in Law.

(B) Special Charges. Notwithstanding Section 4.2(A), the County shall have the right to impose special charges for the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tree stumps and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials.

(C) Adjustment Resulting from Changed Fees. In addition to the other adjustments specified herein, the Contract Rate shall be adjusted to reflect the imposition of new fees or changes in existing fees relating to the disposal of Controllable Waste imposed by state, federal or other agencies (i.e., the State's Integrated Waste Management fee, which is currently $1.40 per ton). The adjustment shall be equal to the amount of any new or changed fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any change pursuant to Section 4.2(D) as soon as practicable after becoming aware of the imposition of any fees described above.

(D) Procedure for Rate Adjustments. Beginning July 1, 2017 and annually on each July 1 thereafter during the Term of this Agreement, the County component of the Contract Rate shall be adjusted by eighty percent (80%) of the average monthly change in the U.S. Bureau of Labor Statistics (BLS) Consumer Price Index (Urban Wage Earners and Clerical Workers for the Los Angeles-Anaheim-Riverside area)(CPI). The average monthly change in the CPI shall be calculated by comparing the most recent twelve months that are available to the same period one year prior (e.g., May 2016 would be compared to May 2015). The comparison shall calculate the percentage change between the current period and the prior period for each available month in the twelve (12) month period. The twelve (12) comparison values, or six (6) if a bi-monthly index period is used by the BLS, shall be averaged together using a simple average of the values to determine the average monthly charge.

The initial Contract Rate presented by the County shall be valid until June 30, 2017.The first adjustment to the Contract Rate shall begin on July 1, 2017. This adjustment shall be annually performed by the County, and a copy of such computation shall be provided to the City no later than April 1 of each year for the Contract Rate to be effective July 1 of that same year.

In no event shall the Contract Rate be increased by more than three percent (3%) in any one year. In the event the percentage increase in the Contract Rate in any year exceeds three (3%) such excess shall be carried forward to the next and succeeding years and applied toward a subsequent increase in the Contract Rate, but only to the extent that any percentage increase in the Contract Rate in that later year is less than three percent (3%). This provision shall be effective in this manner, as long as the index mentioned above is published by government authorities in the same form and based on the same type data being used on the Commencement Date of the Agreement and shall be redefined by the City in the event of any change in form and/or basis of indices, to a reasonably comparable standard. Each adjustment computation by the City is herby incorporated by reference herein.

County shall be entitled to the automatic pass-through of any new fees which impact the State's Integrated Waste Management fee component of the Contract rate. City shall review and approve any such required changes prior to any change being applied to the Contract Rate or any invoices submitted to the City.

County shall give City 30 days advance written notice of any changes to the Contract Rate or any other charges to be imposed upon City under this Agreement. The written notice given by County shall include an explanation of the reasons for the change in charges, provide schedules or computations showing the incremental changes in any charges, and provide City with 10 days to request clarification or dispute any adjustment to the charges imposed under this Agreement.

(E) Termination in Case of Change in Contract Rate. Notwithstanding any other provision of this contract, City shall have the right to terminate this contract without any further obligation in the event of an increase in the Contract Rate during the term hereof.

SECTION 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE.

(A) Payment by City. The City shall take all budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by the City to provide for such payment, the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use its best efforts in accordance with Applicable Law to levy and impose all such fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law.

(B) Disputes. If the City disputes any amount billed by the County in any billing statement, the City shall pay the undisputed portion of the billed amount and shall provide the County with written objection within 30 days of the receipt of such billing statement indicating the amount that is being disputed and providing all reasons then known to the City for any objection to or disagreement with such amount. If the City and the County are not able to resolve such dispute within 30 days after the City's objection, either party may pursue appropriate legal remedies as to the disputed amount. Pending resolution of such dispute, City's failure to pay the amount in dispute shall not be a breach of this Agreement justifying termination by either party

SECTION 4.4 BILLING OF THE CONTRACT RATE. The County shall continue to bill Contract Rate after the Commencement Date, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

ARTICLE V
BREACH, ENFORCEMENT AND TERMINATION

SECTION 5.1 BREACH. The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither party shall have the right to terminate this Agreement except as provided in Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

SECTION 5.2 TERMINATION WITH CAUSE.

(A) This Agreement may be terminated by either party should the other party:

(1) be adjudged a bankrupt, or

(2) become insolvent or have a receiver appointed, or

(3) make a general assignment for the benefit of creditors, or

(4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or

(5) materially breach this Agreement.

(B) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

(C) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of County for which City's services are to be performed, may immediately suspend performance by City, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by City to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

SECTION 5.3 NO WAIVERS. No action of the County or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

SECTION 5.4 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Disposal System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California having appropriate jurisdiction.

ARTICLE VI
TERM

SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the County from the Commencement Date and shall continue in full force and effect for thirty-six months, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination. Agreement shall expire on May 4, 2019.

(B) Survival; Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E), 5.1, 5.3, , 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, and 7.10 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

SECTION 6.2 COMMENCEMENT DATE.

(A) Commencement Date. The Commencement Date for the Agreement shall be May 5, 2016.

ARTICLE VII GENERAL PROVISIONS

SECTION 7.1 OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM. The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or caused to be operated, the Disposal System in accordance with Applicable Law and the operating rules and regulations of the Department.

SECTION 7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore, reduce costs and resume performance under this Agreement. While the delay continues, the County or City shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to either party of meeting its obligations hereunder and providing Disposal Services to the City or the City's delivery of its Controllable Waste to the Disposal System in accordance herewith, the adversely affected party shall be entitled to an adjustment in the Contract Rate as provided in Section 4.2 herein equal to the amount of the increased cost a result thereof. Any cost reductions achieved through the mitigating measures undertaken by the adversely affected party pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Contract Rate would have otherwise been adjusted or shall serve to adjust the Contract Rate to reflect such mitigation measures, as applicable.

SECTION 7.3 INDEMNIFICATION.

(A) To the extent permitted by law, the City agrees that it will protect, indemnify, defend and hold harmless the County from and against all activities arising from the City's activity pursuant to this Agreement. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement, and shall, as a condition to this indemnity, coordinate fully with the County in the defense.

(B) To the extent permitted by law, the County agrees that it will protect, indemnify, defend and hold harmless the City from and against all activities arising from the County's activity pursuant to this Agreement. The County acknowledges the City's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. The County acknowledges the City's legitimate interest in actively participating in any defense, litigation or settlement, and shall, as a condition to this indemnity, coordinate fully with the City in the defense.

SECTION 7.4 LIMITED RECOURSE.

(A) To the County. No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the

County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(B) To the City. No recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the County for all such amounts shall be to the funds held in the City Solid Waste Enterprise Fund in accordance with the terms of this Agreement. The City shall make adequate provision in the administration of the City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder

SECTION 7.5 PRE-EXISTING RIGHTS AND LIABILITIES. Nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any party hereto may have to or against the other party as of the Commencement Date relating to the disposal of waste in the Disposal System or any other related matter.

SECTION 7.6 NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Disposal System by reason of this Agreement.

SECTION 7.7 LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting Acceptable Waste or processing it for diversion from landfill shall be its sole liability, except as expressly otherwise provided herein.

SECTION 7.8 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 7.9 NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.10 FURTHER ASSURANCES. At any and all times the City and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.11 ASSIGNMENT OF AGREEMENT. (A) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion. Notwithstanding the foregoing, either party may assign this Agreement to another public entity, subject to the reasonable consent of the other party. In such circumstances the party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning party.

SECTION 7.12 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

SECTION 7.13 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder.

SECTION 7.14 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF TULARE

Date 5/3/16

By _____
Chairman, Tulare County Board of Supervisors

Date 5/3/16

By _____
Deputy Clerk, Tulare County Board of Supervisors

BOARD OF SUPERVISORS TULARE COUNTY, CAL.

CITY OF REEDLEY

Date 4/26/16

By _____
Nicole Zieba
City Manager
City of Reedley

Date 4/26/16

By _____
Russ Robertson
Director of Public Works
City of Reedley

APPROVED AS TO FORM:
COUNTY COUNSEL
TULARE COUNTY, CALIFORNIA
By _____
Date 4/28/16

Scott G. Cross

CITY ATTORNEY
By _____
Date 4/26/16