

MEMORANDUM OF UNDERSTANDING

1
2 This AB 939 MEMORANDUM OF UNDERSTANDING (MOU), made and entered
3 into this 6th day of January 2008, by and between the County of Fresno, a
4 political subdivision of the State of California, hereinafter referred to as "COUNTY", and
5 the cities of CLOVIS, COALINGA, FIREBAUGH, FOWLER, FRESNO, HURON,
6 KERMAN, KINGSBURG, MENDOTA, ORANGE COVE, PARLIER, REEDLEY, SAN
7 JOAQUIN, SANGER and SELMA, all collectively hereinafter referred to as "CITIES", is
8 the successor agreement to that certain MOU, originally entered into on June 8, 2004
9 (COUNTY Agreement No. 04-245), hereinafter referred to as "MOU 2004", which shall
10 be effectively superseded by the parties' agreement to the provisions set forth herein.

WITNESSETH

11
12 WHEREAS, the Integrated Waste Management Act of 1989 (ACT or AB 939)
13 requires each city and county in the State to prepare and implement jurisdiction-specific
14 plans (PLAN or PLANS) to divert twenty-five percent (25%) of solid waste generated by
15 1995 and fifty percent (50%) by 2000; and

16 WHEREAS, the PLANS identified the Household Hazardous Waste (HHW)
17 Element and Education and Public Information Components of the PLANS as programs
18 best accomplished on a regional basis; and

19 WHEREAS, the ACT authorizes the COUNTY and the CITIES to join together to
20 prepare and implement the required PLANS; and

21 WHEREAS, the COUNTY and the CITIES are hereinafter referenced as the
22 "participating Jurisdictions" when referred to collectively, and as "each participating
23 Jurisdiction" when referenced generally in singular terms; and

24 WHEREAS, the participating Jurisdictions entered into a MOU on April 27, 1993,
25 which was superseded by MOU 2004, for the purpose of joining together to prepare,
26 update and implement the PLANS; and

27 WHEREAS, the ACT authorizes the participating Jurisdictions to pay for AB 939
28 PLAN preparation and implementation through a solid waste surcharge; and

1 WHEREAS, the participating Jurisdictions have designated the County as the
2 lead agency (Lead Agency) to implement and operate AB 939-related
3 programs/services (described in the HHW Element and the Education and Public
4 Information Component of the PLANS) that are best accomplished on a regional basis;
5 and

6 WHEREAS, the participating Jurisdictions previously have determined that a
7 mechanism is needed to enhance their ability to communicate and collaborate on MOU-
8 related issues, and that the appropriate mechanism to serve those purposes is the AB
9 939 MOU Committee that was established by MOU 2004; and

10 WHEREAS the AB 939 MOU Committee shall continue to provide the Lead
11 Agency with input and direction from the participating Jurisdictions on MOU-related
12 programming and budget allocations, as more thoroughly provided hereinbelow.

13 NOW, THEREFORE, it is agreed by the parties hereto as follows:

14 I. PURPOSE AND STRUCTURE OF THE MOU:

15 A. The Lead Agency shall be responsible for the coordination and
16 implementation of countywide programs/services covered under the MOU, including,
17 but not limited to, programs and services described in the HHW Element and the
18 Education and Public Information Component of the PLANS.

19 B. The participating Jurisdictions, through their appointed Delegates, are
20 responsible for identifying the programs to be provided under the MOU and for assisting
21 the Lead Agency with the development and implementation the programs identified.
22 Basic responsibilities of each participating Jurisdiction shall include, but not be limited
23 to, attendance of its Delegate at MOU-related committee meetings and MOU-related
24 workshops, providing local data and/or contact information, providing input/direction on
25 MOU programming and budget proposals, reviewing proposals and reports, referring
26 interested persons residing within its territorial boundaries to MOU programs,
27 referencing MOU programs in that Jurisdiction's promotional materials and other
28 documents as appropriate, and providing meeting/staging sites within their respective

1 located within its territorial boundaries as needed. It is anticipated that any
2 additional/specific responsibilities of the participating Jurisdictions shall be defined in the
3 most current Annual Work Plan (see Section III).

4 C. The participating Jurisdictions previously have determined that successful
5 implementation of the AB 939 PLAN requires a mechanism to enhance communication
6 and collaboration on MOU-related issues among all the participating Jurisdictions
7 located in Fresno County, and it is agreed that continuation of the AB 939 MOU
8 Committee (Committee) established by MOU 2004 is the appropriate mechanism to
9 serve this purpose under the provisions of this successor MOU.

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

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

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

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

21 E. The Committee shall consist of one voting representative (Delegate) from
22 the COUNTY and one from each of the CITIES. The following provisions are not
23 intended to prevent or discourage any interested party from attending or appropriately
24 participating in a Committee meeting:

25 1. A CITY's Delegate shall be designated by, and serve at the
26 pleasure of, the city manager or similar appropriate authority in that Jurisdiction. The
27 COUNTY's Delegate shall be designated by, and serve at the pleasure of, the
28 Resources Division Manager or similar appropriate authority in the COUNTY.

1 2. The designated Delegate of each participating Jurisdiction shall be
2 the official representative of that Jurisdiction, empowered to represent that Jurisdiction's
3 position and to cast that Jurisdiction's vote, on items that come before the Committee.
4 One individual may be designated to serve as the official Delegate for more than one
5 participating Jurisdiction. A Delegate representing more than one Jurisdiction shall be
6 empowered to cast a vote for, and to be accounted for in the quorum count, separately
7 for each participating Jurisdiction that he/she represents.

8 3. It is understood and acknowledged by all parties hereto that the
9 Delegates will represent the interests of the participating Jurisdictions and provide the
10 collective input the Committee needs to provide the Lead Agency with appropriate
11 advisory direction to facilitate its efforts, consistent with the limited purposes set forth
12 herein; and the COUNTY, as Lead Agency, understands and hereby acknowledges that
13 a Delegate's vote is in no way legally binding upon that individual Jurisdiction.

14 4. Once the presence of a quorum has been established, a simple
15 majority of the number of Delegates who are either physically present at said meeting or
16 represented by a proxy vote, is required to approve/authorize actions taken by the
17 Committee, unless the Committee by such a majority vote previously has adopted a
18 policy or procedure establishing some other standard.

19 (a) Nine (9) Delegates, duly assembled and/or represented by a proxy
20 vote, shall constitute the quorum required to transact business on behalf of the
21 Committee.

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

26 5. The Chairperson of the Committee may, at his/her discretion, or
27 when requested by a least two (2) Delegates, request Delegates to vote by mail, fax
28 and/or e-mail, when special conditions/time constraints preclude voting on an issue at a

1 Committee meeting. For this vote to be a valid, all three (3) of the following conditions
2 must be 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
6 by the deadline cited in the request.

7 (c) At least nine (9) Delegates (the equivalent to a quorum) must
8 return their ballots.

9 F. Committee meetings:

10 1. A Chairperson for the Committee shall be elected by the Delegates
11 at the Annual Meeting. Unless a simple majority of the Delegates at a Committee
12 meeting call for a special election, the Chairperson shall serve until the next Annual
13 Meeting or until he/she is no longer an official Delegate, whichever event occurs first.
14 After having served two consecutive fiscal years as Chairperson, a Delegate must wait
15 at least one (1) fiscal year before being eligible for another term. The Chairperson shall
16 have all of the standard powers and duties that generally are vested in the office of a
17 committee chairperson relating to the scheduling and conduct of the Committee's
18 meetings.

19 2. It is the intent of the parties hereto that at least four (4) Committee
20 meetings shall be scheduled each fiscal year. One (1) Committee meeting shall be
21 designated as the Annual Meeting. The Annual Meeting shall be appropriately
22 scheduled to allow for the adoption of an Annual Work Plan (AWP) for the following
23 fiscal year and for the review/update of all activities performed under this MOU since the
24 previous Annual Meeting. The Chairperson, in consultation with the Delegates, shall
25 convene additional meeting(s) of the Committee whenever there is sufficient business to
26 conduct.

27 3. Working closely with the Chairperson, the Lead Agency shall be
28 responsible for making Committee meeting arrangements (e.g., noticing, siting, taking

1 attendance), assisting with the preparation of the agenda, and taking minutes at
2 Committee meetings.

3 4. Any Delegate may call for a vote of the Committee on whether to
4 schedule an additional Committee meeting or to place an item on the agenda. If there
5 is no meeting ongoing at the time of the request, and if no meeting is scheduled within
6 30 days of the request, the Delegate may agree to wait until the next scheduled
7 meeting, or may require the Chairperson to put the question to the Delegates by mail or
8 fax (proxy vote) within ten (10) working days of the request.

9 G. Modification/amendment of Committee policy and procedures:

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

14 2. Any proposed change(s) to any provision of Article I, Sections A
15 through H, must be noticed thirty (30) days in advance. The notice must include a proxy
16 ballot form and a message indicating the date, time and location of the meeting at which
17 the proposed change(s) will be discussed and voted upon.

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

23 II. REPORTING ON AB 939 PROGRAMMING

24 The Lead Agency shall provide to the Delegates, at the initial meeting of the
25 Committee during each fiscal year throughout the term of this MOU, the AB 939 MOU
26 Report List ("R List") for that fiscal year. (For informational purposes, the R List for
27 Fiscal Year (FY) 2008-09 is attached to this MOU as Exhibit "1".)

28 ///

1 A. The R List, as updated and revised from time to time as set forth in Article
2 II, Section B, Item 1, shall : (1) describe briefly the contents of each report to be
3 provided to the Committee Delegates; (2) indicate who is responsible for collecting the
4 data and preparing the report (Reporter); and (3) indicate the frequency with which the
5 report is to be submitted to the Delegates. Each report shall be provided by the due
6 date established in the R List. The Reporter may request, and the Committee
7 Chairperson may grant, additional time to complete a given report when additional time
8 is deemed appropriate.

9 B. At least once during each Fiscal Year, 1) the Lead Agency shall review
10 and, when appropriate, recommend to the Committee, changes to the R List; and 2) the
11 Committee shall act upon that recommendation, voting to request that the County revise
12 the current R List as the Committee deems appropriate. When adopted by the
13 Committee, the most recently amended R List shall supersede the previous R List.

14 C. The R List shall include, but not be limited to, the most current Solid
15 Waste Surcharge Trust Fund #2350 (Surcharge) Account Report, hereafter "Surcharge
16 Account Report".

17 D. The Lead Agency, in accordance with Article III below, shall prepare an
18 Annual Work Plan (AWP). The AWP shall define: (1) the programs/services to be
19 provided and funded under this MOU; and (2) the responsibilities of the participating
20 Jurisdictions related to implementation of the AWP.

21 III. AB 939 ANNUAL WORK PLAN:

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

27 B. The AWP shall be prepared, revised or updated no less than once every
28 fiscal year. The Lead Agency shall prepare the AWP, and any updates or revisions

1 thereof, at the request of and in consultation with the Committee. By a simple majority
2 vote of the Delegates, a new, updated or revised AWP shall supersede the previous
3 AWP, the initial version of which is attached as Exhibit "2" to this MOU.

4 C. The budget in the AWP shall include a proposed allocation of funds for the
5 development and/or operation of a regional permanent HHW facility (HHW Facility) and
6 related programs. Funds allocated to the HHW Facility in the AWP, which are not
7 needed to cover current year expenditures, may be accumulated as Reserves for the
8 future Development/Operation of a Regional Permanent HHW Facility (HHW Facility
9 Reserves).

10 IV. SOURCE AND USE OF FUNDS:

11 A. The participating Jurisdictions agree that the appropriate mechanism for
12 financing the programs/services defined in the AWP is through a surcharge on each ton
13 of landfilled solid waste generated in Fresno County, hereinafter identified as the "AB
14 939 Surcharge". This provision does not preclude the use of funds from other sources,
15 such as a grant or program service fees (e.g., a Cathode Ray Tube drop-off fee for
16 computer monitors), if such alternative funding: (1) does not increase the financial
17 obligation of the participating Jurisdictions under this MOU; and (2) is approved by a
18 majority vote of the Committee.

19 B. It is hereby agreed by all of the participating Jurisdictions that the AB 939
20 Surcharge shall remain in place throughout the term of this MOU as defined in Section
21 VI or until such time as the MOU is amended as set forth in Section VIII and/or is
22 superseded/terminated as set forth in Section VII.

23 C. AB 939 Surcharge revenues shall be used solely for the activities outlined
24 in this MOU, the initial AWP (Exhibit "2" hereto) , and any subsequent revisions of the
25 AWP and/or amendments of the MOU,

26 D. It is anticipated that the COUNTY, as the Lead Agency for development
27 and implementation of regional AB 939-related programs/services, shall be the primary
28

1 provider of programs/services defined in the AWP, with the exception of those
2 programs/services provided by contractors and/or vendors.

3 1. All costs incurred by the COUNTY in meeting its responsibilities as
4 defined in the most current AWP, including MOU-related COUNTY expenditures for
5 labor, overhead, contractors and/or vendors, shall be fully reimbursed to the COUNTY
6 from the AB 939 Surcharge, so long as said reimbursements do not exceed the dollar
7 amounts allocated in the current AWP, as approved by the Committee pursuant to
8 Article III, Section B.

9 2. The Lead Agency shall have the authority to make routine program-
10 related expenditures (e.g., salaries, advertising, printing, premiums, overhead), without
11 specific prior approval of the Committee, so long as said expenditures are: (a)
12 consistent with the expenditure categories and dollar amounts established in the current
13 AWP; and (b) do not require the COUNTY to enter into a contract requiring approval by
14 the Fresno County Board of Supervisors (Board). Details of such routine expenditures
15 shall be reported to the Committee on a regular basis as indicated in the applicable item
16 on the R List.

17 3. Under no circumstances shall the total of actual program-related
18 expenditures exceed the total expenditures authorized in the AWP. This provision does
19 not prohibit expending more than the amount budgeted for a specific line item, if said
20 additional expenditure is fully offset by a reduced expenditure(s) in one or more other
21 line items. In the event of unanticipated revenue (e.g., grant award(s) or actual
22 surcharge revenues in excess of the amount projected), the Lead Agency may propose
23 and request the Committee to approve an amendment to the budget in the current AWP
24 and if required, to request the COUNTY's Board to amend any associated COUNTY
25 budget line items.

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

1 majority vote of the Committee.

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

5 G. Unless specifically budgeted for in the AWP, expenditures incurred by the
6 CITIES while participating in the regional programs/services under this MOU, shall not
7 be reimbursed with AB 939 Surcharge revenues.

8 H. Collection of AB 939 Surcharge Revenues

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

15 a. Collect and submit monthly data to the County indicating the
16 type of Material collected and the origin, amount and destination (initial and final) of all
17 said Material that the Jurisdiction's Hauler collected and managed during each month.
18 The Jurisdiction shall require that the Jurisdiction's Hauler use the Haulers' Report form
19 provided by the COUNTY, that said report provide all the data requested by the
20 COUNTY and that said report be submitted to the COUNTY in a timely manner and at
21 the intervals specified by the COUNTY. (It is anticipated that the COUNTY shall
22 request that the Jurisdiction's Hauler submit the Hauler's Report on a quarterly basis.)

23 b. The Jurisdiction's Hauler must indicate in the Haulers' Report if
24 the initial destination of that Jurisdiction's Material is a landfill (at which the entire load
25 will be buried) or an intermediary facility (e.g., a transfer station, materials recovery
26 facility, recyclery, or a facility that manages green waste or biomass, construction and
27
28

1 demolition debris or a landfill that provides one or more of these services) that will
2 ultimately landfill only a portion of that Jurisdiction's Material.

3 c. Calculate the total dollar amount of the AB 939 Surcharge on
4 every ton of Material generated within the territorial or jurisdictional boundaries of said
5 Jurisdiction, and that the Hauler's Report indicates was landfilled, both within and
6 outside of Fresno County. The tonnage on which the AB 939 Surcharge is calculated
7 shall equal the number of tons that the Jurisdiction's Hauler reports, or causes to be
8 reported, to the California Integrated Waste Management Board (CIWMB), as having
9 been generated within, and subsequently landfilled by or on behalf of, said Jurisdiction.
10

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

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

18 a. If the initial destination of the Material collected by the
19 Jurisdiction's Hauler is a County-operated landfill, the Jurisdiction's Hauler is not
20 required to remit the AB 939 Surcharge to the COUNTY. As a component of the landfill
21 tipping fee, the AB 939 Surcharge shall automatically be collected from all Jurisdiction's
22 Haulers entering a COUNTY-operated landfill to dispose of Material. The funds so
23 collected shall be deposited in the Solid Waste Surcharge Trust Fund.

24 b. If the initial destination of the Material collected by the
25 Jurisdiction's Hauler is the Clovis Landfill, the Jurisdiction's Hauler is not required to
26 remit the AB 939 Surcharge to the COUNTY. The City of Clovis hereby acknowledges
27 and agrees that it will continue to collect and remit to the COUNTY, in accordance with
28

1 Fresno County Ordinance Code Section 8.20.070.A, the equivalent dollar amount of the
2 AB 939 Surcharge Fee for every ton of Material generated in Fresno County that is
3 landfilled at the Clovis Landfill during the applicable time frame.

4 c. If the initial destination of the Material is not a COUNTY-
5 operated landfill or the Clovis Landfill, the Jurisdiction's Hauler shall be required to
6 remit, directly to the COUNTY, the dollar equivalent of the AB 939 Surcharge on every
7 ton of the Material that the Jurisdiction's Hauler takes to said facility, except as provided
8 for in Article IV, Section H, Item 2d (below).
9

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

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

17 (ii) Provide documentation of the number of tons of the
18 Material that will/have been buried in a landfill that is operated by the County or the City
19 of Clovis; and
20

21 (iii) Provide documentation of the number of tons of the
22 Material that will not/ have not been landfilled (e.g., recycled, sent to a biomass plant);
23 and

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

27 3. Unless there are already equivalent provisions in place, each
28 of the participating Jurisdictions hereby agrees to use its best efforts to:

1 (i) Amend any existing instruments authorizing, permitting and/or
2 contracting for such service to include provisions equivalent to those indicated in Article
3 IV, Section H, Items 1 and 2 within two (2) years from the date this MOU is executed;
4 and

5 (ii) Include provisions equivalent to those indicated in Article IV,
6 Section H, Item 1 and Item 2, in any instruments authorizing, permitting and/or
7 contracting for such service entered into (or the term of which is extended by
8 amendment) by any participating Jurisdiction subsequent to the date of such
9 Jurisdiction's execution of this MOU.

10
11 V. AMOUNT OF AB 939 SURCHARGE

12 A. Proposed Increase in the AB 939 Surcharge

13 1. In order to build and operate an HHW Facility and related
14 programs/services, the participating Jurisdictions have requested the Lead Agency to
15 submit to the Board an agenda item proposing that the County Master Schedule of
16 Fees, Charges and Recovered Costs (hereinafter "the Master Schedule") be amended
17 to increase, over a five (5)-year period, the AB 939 Surcharge from the current sixty-five
18 (\$.65) per-ton to two dollars and forty cents (\$2.40) per-ton and that the Board approve
19 a commensurate increase in American Avenue and Coalinga Landfill tipping fees
20 (hereinafter defined as Proposed Amendments).

21 2. If and when the Proposed Amendments are adopted and become
22 effective, the AB 939 Surcharge would be increased to the amounts and in the time
23 increments illustrated in the following table:

24 ///

25 ///

26 ///

27 ///

28 ///

ANTICIPATED AB 939 SURCHARGE INCREASES AND POTENTIAL FISCAL EFFECTS ON COUNTY HOUSEHOLDS

	Current Program	Year One 2008-2009 (beginning January 2009)	Year Two 2009-2010	Year Three 2010-2011	Year Four 2011-2012	Year Five 2013-2014
Proposed Surcharge Increase Per-Ton	N/A	\$.35	\$.35	\$.35	\$.35	\$.35
Surcharge Rate Per-Ton	\$.65	\$1.00	\$1.35	\$1.70	\$2.05	\$2.40
Estimated No. Program Participants	3,000	2,000	8,000	10,000	12,000	14,000
Yearly Program Cost/ CITY Household (Monthly)*	\$.65 (\$.054)	\$1.00 (\$.083)	\$1.35 (\$.113)	\$1.70 (\$.142)	\$2.05 (\$.171)	\$2.40 (\$.200)
Yearly Program Cost/ ESAP Household (Monthly)**	\$1.30 (\$.108)	\$2.00 (\$.167)	\$2.70 (\$.225)	\$3.40 (\$.283)	\$4.10 (\$.341)	\$4.80 (\$.400)

*Based upon an estimated rate of one ton of solid waste landfilled per year.

**Based upon an estimated rate of two tons of solid waste landfilled per year in households located in the Exclusive Service Area Program (ESAP) serving unincorporated areas of Fresno County.

3. As indicated in the table above, it is the intent of participating Jurisdictions that the Proposed Amendments to the Master Schedule, and therefore the initial increase in the AB 939 Surcharge, shall become effective sometime in the third quarter of FY 2008-09, (hereinafter defined as "the Initial Target Period"), on or around, but no earlier than, January 1, 2009, hereinafter defined as "the Initial Target Date".

B. Delays in the Master Schedule Amendment Process

1. Any event/action, or the absence of any event/action, that prevents or precludes the Proposed Amendments from becoming operational within the Initial Target Period, shall be treated as a delay in the Master Schedule amendment process.

2. The participating Jurisdictions have agreed that any delay shall be not interrupt the development/and or operation of the HHW Facility.

3. At the discretion of the Committee, but not less than annually, until such time as the Proposed Amendments to the Master Schedule have been executed by the Board:

1 a. The Lead Agency shall prepare, and the Committee shall
2 approve, a revised AWP/budget providing for the HHW Facility to be operated at a level
3 commensurate with the anticipated funding, based on the fee authorized at that point in
4 time by applicable provisions of the then-current Master Schedule.

5 b. In consultation with the Committee, the Lead Agency shall
6 prepare, and provide to each of the other participating Jurisdictions (i.e., the CITIES), a
7 draft resolution relating to the Proposed Amendments. The draft resolution shall
8 indicate a Revised Target Date and a Revised Target Period to replace the Initial Target
9 Date and Initial Target Period identified in Section V. While it is anticipated that the
10 dollar amounts of the Proposed Amendments will be those indicated in Section V of this
11 MOU, the Lead Agency may recommend and the Committee may authorize, at the time
12 the Lead Agency prepares the draft resolution, changes in the timing and/or the dollar
13 amounts of the Proposed Amendments.

14 c. Based upon the parameters indicated in the draft resolution,
15 (Amendment Resolution) each of the CITIES shall be requested by the Lead Agency to
16 prepare, execute and provide an appropriate resolution, executed by its respective
17 governing body, requesting that the COUNTY's Board execute the Proposed
18 Amendments.

19 d. If and when said Amendment Resolution has been executed
20 and provided by all fifteen (15) of the CITIES, the Lead Agency shall prepare an agenda
21 item and appropriate resolution(s) requesting the COUNTY's Board to execute the
22 COUNTY's Amendment Resolution and to execute the requested amendment(s) to the
23 Master Schedule.

24 4. Until such time as the Master Schedule has been amended
25 consistent with the foregoing provisions of this Article V, resulting in an increased AB
26 939 Surcharge having become operational, the AB 939 Surcharge shall remain at the
27 current \$.65 per-ton of landfilled solid waste generated in Fresno County.

28 C. Future Amendments to the Master Schedule

1 Due to the number and variability of the factors that could significantly impact
2 program funding and costs, the Committee agrees that it is not practical at this time to
3 set the AB 939 Surcharge beyond the five-year period indicated in the table above
4 (Article V, Section A, Items 2). Therefore, during the preparation of the AWP for Fiscal
5 Year Six, the Committee shall re-evaluate the adequacy of the AB 939 Surcharge
6 currently in effect to fund the programs/services authorized under this MOU. This re-
7 evaluation may (but is not required to) include preparation of a cost study. Based upon
8 said re-evaluation, the Lead Agency at that time may recommend, and the Committee
9 may vote to:

- 10 1. Maintain the AB 939 Surcharge in effect at the end of the current
11 year; or
- 12 2. Request that each of the fifteen (15) CITIES execute an appropriate
13 resolution from its decision-making body, requesting that the COUNTY's Board execute
14 an additional change to the Master Schedule associated with an additional adjustment
15 of the AB 939 Surcharge

16 VI. TERM:

17 A. The initial term of this MOU shall be for five (5) years, commencing on the
18 date first indicated above, that this MOU is executed by the Board and shall be
19 automatically renewed for one (1) additional five (5)-year period, unless a majority of the
20 parties hereto vote not to exercise the option for renewal as set forth in Article VI,
21 Section B (Renewal Option).

22 B. Renewal Option

23 1. During the first month of Year Five (5), the Lead Agency shall notify
24 the participating Jurisdictions in writing that the Renewal Option must be voted upon
25 sometime before the end of Year Five. The Chairperson and the Lead Agency shall
26 arrange for and notice a special meeting of the Committee to be held prior to the end of
27 year five (5). The special meeting notice shall include a special ballot, specifically for
28 the renewal option (Renewal Option Ballot).

1 2. Each of the CITIES' decision-making bodies hereby authorizes its
2 respective city manager or equivalent officer, and the COUNTY hereby authorizes the
3 Director of the Public Works and Planning Department or his designee, upon receipt of
4 a Renewal Option Ballot, to complete and to submit said ballot on its behalf, voting to
5 either approve or reject the Renewal Option.

6 3. Renewal Option Ballots may be submitted by mail, fax or in person,
7 but must be received by the Chairperson before the Renewal Option meeting is called
8 to order. At that special meeting, the Chairperson shall count the valid Renewal Option
9 Ballots submitted. To be valid, a Renewal Option Ballot must have been signed by that
10 decision-making body's authorized agent (see Article VI, Section C) and be received
11 before the submittal deadline. Once a quorum has been declared, if a simple majority
12 of the valid Renewal Option Ballots received by the Chairperson is in support of the
13 Renewal Option, this MOU shall automatically be extended through Calendar Year Ten
14 (10) as provided in Article VI, Section A.

15 4. If the majority of the Renewal Option Ballots cast are not in support
16 of the Renewal Option, the MOU shall automatically expire at the end of the initial five
17 (5) -year period.

18 VII. TERMINATION:

19 A. Unless the Committee exercises one of the options in Section B (below),
20 the MOU shall automatically terminate:

21 1. At the end of Year Five (5), if the Renewal Option is not approved;

22 or

23 2. At the end of Year Ten (10), if the Renewal Option was approved.

24 B. Additional Options for Changing the Term

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

26 1. All sixteen (16) participating Jurisdictions pass resolutions
27 authorizing an amendment to the MOU to increase, reduce or end the Term authorized
28 in Article VII, Section A (above); or

1 2. All sixteen (16) participating Jurisdictions pass resolutions
2 authorizing a subsequent successor MOU, in which case this MOU would expire on the
3 date that the such subsequent successor MOU becomes effective.

4 C. Disbursement of Cash Balance in the Solid Waste Surcharge Fund #2350,
5 Subclass #33860 (\$.65 Surcharge) Account

6 Should the participating Jurisdictions choose not to renew, extend or amend the
7 term of this MOU and no Successor MOU has been approved or is approved within six
8 (6) months of the date this MOU expired, then the Lead Agency shall calculate and the
9 COUNTY shall disburse the cash balance in the Solid Waste Surcharge Fund #2350,
10 Subclass #33860 AB 939 Surcharge) Account. Unless the participating Jurisdictions
11 unanimously pass a resolution within thirty (30) days before the MOU's termination
12 date, defining and implementing an alternative method for calculating and distributing
13 the cash balance in the AB 939 Surcharge Account (Option Two), the Lead Agency
14 shall proceed in accordance with the following procedure: .

15 1. Option One: Invoiced Tonnage Method

16 a. Calculate the total number of tons the COUNTY reported to
17 the CIWMB as originating in each participating Jurisdiction during the term of the MOU
18 (Designated Time Period), hereinafter "Individual Jurisdiction's Tons" or "IJT". Tons
19 accepted at a non-County landfill (a) for which the AB 939 Surcharge was remitted to
20 the County (e.g., the City of Clovis) during the Designated Time Period and (b) for which
21 the origin of the waste reported was one of the participating Jurisdictions, shall be
22 included in the IJT for each participating jurisdiction.

23 b. Add together the IJT from all the participating Jurisdictions to
24 determine the cumulative total of tons for all the participating Jurisdictions during the
25 Designated Time Period, hereinafter "Total Tons".

26 c. For each participating Jurisdiction, divide the IJT by the Total
27 Tons to yield the Jurisdiction's Return Percentage, hereafter "JRP".
28

1 d. Calculate the Adjusted Cash Balance of the AB 939
2 Surcharge Account, by making appropriate adjustments for any outstanding bills or
3 other outstanding contractual obligations (including pending or forthcoming invoices for
4 approved work), and for any revenues earned but unaccrued as of the date of
5 termination.

6 e. The Adjusted Cash Balance (as calculated in accordance
7 with the immediately preceding Item 1.d of Article VII, Section C.) shall then be
8 multiplied by the Jurisdiction's JRP, in order to determine the dollar amount of the
9 disbursement by the COUNTY from the AB 939 Surcharge Account to that jurisdiction
10 (hereinafter "Jurisdiction's Refund").

11 2. Option Two: An alternative method defined and adopted by
12 resolution by the governing bodies of all fifteen (15) CITIES and the COUNTY no less
13 than 30 days before the MOU's termination date.

14 VIII. AMENDMENTS

15 A. This MOU may be amended to adjust the amount of the AB 939
16 Surcharge or any other provision.

17 1. With the exception of certain MOU provisions governing the
18 Committee's scope of work as expressly specified above, (i.e., those provisions related
19 to the R List, the AWP and the Committee Policies and Procedures), the approval of
20 any proposed amendment of any other provision of this MOU requires that an
21 appropriate amendment resolution and accompanying amendment to this MOU be
22 executed by the governing body of each and every one of the sixteen (16) participating
23 Jurisdictions.

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

28

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

6 4. If and when an amendment resolution has been executed and
7 provided by all fifteen (15) of the CITIES, the Lead Agency shall prepare an agenda
8 item and appropriate resolution requesting the COUNTY's Board to execute the
9 COUNTY's amendment resolution and to execute a counterpart original signature page
10 of the requested amendment to the MOU.

11 C. The Committee may propose and execute changes or amendments to the
12 R List and/or the AWP (Article II and Article III) and/or Committee Policy and
13 Procedures (Article I), by a simple majority vote of the Delegates casting ballots, so long
14 as:

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

20 2. A total of at least nine (9) eligible voters must participate, in person
21 or by proxy. (Any Delegate submitting a valid abstention shall be counted as a
22 participant.) The votes shall be calculated by adding the number of valid proxy ballots
23 (received from Delegates not physically present at the meeting) to the number of votes
24 cast by those Delegates in attendance at the meeting.

25 D. Each successive revised/amended version(s) of the R List and/or the
26 AWP shall supersede the previous version of these documents as the official exhibits to
27 this MOU.

28 ///

1 IX. HOLD HARMLESS:

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

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

21 X. COUNTERPARTS:

22 This MOU may be executed in any number of counterparts, each of which when
23 so executed and delivered shall be deemed to be an original, and such counterparts
24 together shall constitute one and the same document and MOU.

25 XI. ENTIRE AGREEMENT:

26 This MOU constitutes the entire agreement among the participating Jurisdictions
27 with respect to the subject matter hereof and supersedes all previous negotiations,
28 proposals, commitments, writings, advertisements, publications, and understandings of

1 any nature whatsoever unless expressly included in this MOU.

2 ///

3 ///

4 ///

5 ///

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 G:\4360Resources\KLINE\AmendMOU\2009 Amendment\MOU Distributed.doc
Last printed 11/18/2008 9:39:00 AM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties hereto have caused this Successor MOU to be executed as of the day and year first above written. .

REVIEWED AND RECOMMENDED FOR APPROVAL
BY: Alan Weaver
ALAN WEAVER, DIRECTOR
DEPARTMENT OF PUBLIC WORKS AND PLANNING

COUNTY OF FRESNO
BY: Susan B. Anderson
SUSAN B. ANDERSON, CHAIRMAN
BOARD OF SUPERVISORS

JAN 06 2009

APPROVED AS TO LEGAL FORM:
JANELLE E. KELLEY
INTERIM COUNTY COUNSEL

BY: [Signature]
DEPUTY

APPROVED AS TO ACCOUNTING FORM:
VICKI CROW, C.P.A.
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

BY: [Signature]
DEPUTY

ATTEST:
BY: [Signature]
BERNICE E. SEIDEL
CLERK TO THE BOARD

FOR ACCOUNTING USE ONLY:

FUND: 0701
ORG: 9015
ACCOUNT: N/A
SUBCLASS: N/A