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MEMORANDUM OF UNDERSTANDING

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

WITNESSETH

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

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

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

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

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

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

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7 April 27, 1993, which was superseded by another PREDECESSOR MOU on June 8,
8 2004, and again superseded by an another PREDECESSOR MOU on January 6, 2009,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

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

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

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

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

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

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

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

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

10 I. PURPOSE AND STRUCTURE OF THE MOU:

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

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

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

1 mechanism to serve this purpose under the provisions of this MOU.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Section XII. ///

2 For this vote to be a valid, all three (3) of the following conditions must be
3 met:

4 a. The ballot must be received by all of the Delegates in a timely
5 manner.

6 b. To be counted, the ballots must be returned to the Chairperson
7 by the deadline cited in the request.

8 c. A majority of the total Delegates, in attendance for that vote,
9 must return their ballots to approve Committee related business.

10 F. Committee meetings:

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

1 so waives the respective Jurisdiction's right to serve until that Jurisdiction's next turn.
2 The Chairperson and Vice-Chairperson shall have all of the standard powers and duties
3 that are normally vested in the office of a committee chairperson relating to the
4 scheduling and conduct of the Committee's meetings.

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

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

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

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

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

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

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

13 II. REPORTING ON AB 939 PROGRAMMING AND RELATED WASTE
14 MANAGEMENT.

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

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

26 B. At least once during each Fiscal Year, 1) the Lead Agency will review and,
27 when appropriate, recommend to the Committee, changes to the R List; and 2) the
28 Committee shall act upon that recommendation, voting to request that the Lead Agency

1 revise the current R List as the Committee deems appropriate. When adopted by the
2 Committee, the most recently amended R List shall supersede the previous R List.

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

7 III. AB 939 ANNUAL WORK PLAN:

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

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

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

22 IV. SOURCE AND USE OF FUNDS:

23 A. The Jurisdictions agree that the appropriate mechanism for financing the
24 programs and services defined in the AWP is through a surcharge on each ton of
25 landfilled solid waste generated in Fresno County, hereinafter identified as the "AB 939
26 Surcharge". This provision does not preclude the use of funds from other sources, such
27 as a grant or program service fees (e.g., solar panel drop-off fees), if such alternative
28

1 funding: (1) does not increase the financial obligation of the Jurisdictions under this
2 MOU; and (2) is approved by a majority vote of the Delegates.

3 B. It is hereby agreed by all of the Jurisdictions that the AB 939 Surcharge
4 shall remain in place throughout the Term, as defined in Section VI, of this MOU, or until
5 such time as the amount of the AB 939 Surcharge changes pursuant to Section V.B,
6 Section V.C, and/or the MOU is superseded/terminated as set forth in Section VII.

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

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

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

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

28 3. Under no circumstances shall the total of actual program-related

1 expenditures exceed the total expenditures authorized in the AWP. This provision does
2 not prohibit expending more than the amount budgeted for a specific line item, if said
3 additional expenditure is fully offset by a reduced expenditure(s) in one or more other
4 line items. In the event of unanticipated revenue (e.g., grant award(s) or actual
5 surcharge revenues in excess of the amount projected), the Lead Agency may propose
6 and request the Committee, thorough its Delegates, to approve an amendment to the
7 budget in the current AWP and if required, to request the COUNTY's Board to amend
8 any associated COUNTY budget line items.

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

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

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

19 H. Collection of AB 939 Surcharge Revenues

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

26 a. Collect and submit monthly data to the COUNTY indicating
27 the type of Material collected and the origin, amount and destination (initial and final) of
28 all said Material that the Jurisdiction's Hauler collected and managed during each

1 month. The Jurisdiction shall require that the Jurisdiction's Hauler use the Haulers' Report form provided by the COUNTY, that said report provide all the data requested by the COUNTY and that said report be submitted to the COUNTY in a timely manner and at the intervals specified by the COUNTY. (It is anticipated that the COUNTY shall request that the Jurisdiction's Hauler submit the Hauler's Report on a quarterly basis.)

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

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

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

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

1 a. If the initial destination of the Material collected by the
2 Jurisdiction's Hauler is a County-operated landfill, the Jurisdiction's Hauler is not
3 required to remit the AB 939 Surcharge to the COUNTY. As a component of the landfill
4 tipping fee, the AB 939 Surcharge shall automatically be collected from all Jurisdictions'
5 Haulers entering a COUNTY-operated landfill to dispose of Material. The funds so
6 collected shall be deposited in the Solid Waste Surcharge Trust Fund.

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

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

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

25 (i) Provide documentation of the number of tons of the
26 Material that will/have been buried in any landfill (whether located inside or outside of
27 Fresno County) that is not operated by Fresno County or the City of Clovis; and
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1 (ii) Provide documentation of the number of tons of the
2 Material that will/have been buried in a landfill that is operated by Fresno County or the
3 City of Clovis; and

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

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

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

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

22
23 V. AMOUNT OF AB 939 SURCHARGE

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

26 1. On May 19, 1987, the Fresno County Board of Supervisors passed a
27 Resolution, which amended the Master Schedule of Fees, Charges
28 and Costs Recovery, adding section 2806, of Section 2800, and
adopted a \$.50, per ton, Waste Management Surcharge.

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2. On December 11, 1990, the Fresno County Board of Supervisors amended the Master Schedule of Fees, Charges and Costs Recovery, increasing the County Solid Waste Management Fee by \$.65 per ton, to require a \$1.15 County Solid Waste Management Fee.
3. On January 5, 1993, The Fresno County Board of Supervisors amended the Master Schedule of Fees, Charges and Costs Recovery, increasing the County Solid Waste Management Fee by \$.51 per ton, to require a \$1.66 County Solid Waste Management Fee.
4. On January 13, 2009, the Fresno County Board of Supervisors amended the Master Schedule of Fees, Charges and Recovered Costs for Fresno County, putting in place a method whereby the County Solid Waste Management Fee would be increased by \$.35 every year for five years.
5. As a result of the foregoing actions, amendments, resolutions, and other Board actions, the current Solid Waste Management Fee is \$3.41 per-ton.

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

B. Amendment Process

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

1 2. In consultation with the Committee, the Lead Agency shall prepare,
2 and provide to each of the other Jurisdictions a draft resolution and/or ordinance relating
3 to the desired AB 939 Surcharge amendment, suspension, revision, change, or other
4 modification. The draft resolution and/or ordinance shall indicate a Target Date and a
5 Target Period for implementation. While it is anticipated that the dollar amount of the
6 AB 939 Surcharge will be maintained at the level indicated in Section V of this MOU, the
7 Lead Agency may recommend and the Delegates of the Committee may authorize, at
8 the time the Lead Agency prepares the draft resolution and/or ordinance, recommended
9 changes in the timing and/or the dollar amount of the AB 939 Surcharge.

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

15 4. If and when all Jurisdictions' respective Boards (with the exception
16 of COUNTY's Board) or Councils adopt resolutions proposing changes to the AB 939
17 Surcharge, the Lead Agency shall prepare an agenda item and appropriate resolution(s)
18 and/or ordinance requesting that the COUNTY's Board approve and implement the
19 proposed amendment, suspension, revision, change, or other modification, to the AB
20 939 Surcharge by adoption of the COUNTY's resolutions and/or ordinance.

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

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

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

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8 C. Solid Waste Surcharge Trust Fund Account Cap.

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

- 20 1. Using and following the Amendment Process in Section V.B, the Lead
21 Agency will draft any necessary resolution and/or ordinance, to present
22 to the Fresno County Board of Supervisors, for purposes of amending,
23 suspending, revising, changing, or modifying, the component portions
24 of the AB 939 Surcharge for (1) the Household Hazardous Waste
25 Facility Fee (\$1.75/ton) and (2) the State-Mandated AB 939 Integrated
26 Waste Management Plan Fee (\$0.65/ton), so as to result in the
27 foregoing component portions being reduced to \$0.00/ton.

1 2. If Section V.C.1 is ever successfully implemented, and results in any
2 reduction in the total AB 939 Surcharge, the Jurisdictions agree,
3 promise, and covenant, that in the event that the sum total of the Solid
4 Waste Surcharge Trust Fund drops below \$6.0 million, that the Lead
5 Agency, using and following the Amendment Process in Section V.B,
6 will draft any necessary resolution and/or ordinance to present to the
7 Fresno County Board of Supervisors to increase the component
8 portions of AB 939 Surcharge for (1) the Household Hazardous Waste
9 Facility Fee and (2) the State-Mandated AB 939 Integrated Waste
10 Management Plan Fee.

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

16 4. Under no circumstances, shall anything in this Section V.C, compel the
17 Jurisdictions to amend, suspend, revise, change, or modify, the
18 component portions of the AB 939 Surcharge (for the Department of
19 Health Service Fee and the Solid Waste Management Fee), which total
20 \$1.01 per ton.

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

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

26 All programs, revenues, and reserves associated with the AB 939 Surcharge will
27 undergo an audit no less than once every five (5) years of the Term of the MOU,
28 calculated from the date this MOU is fully executed, including the five (5) year

1 extension, if applicable. The audit will be completed by a third party consultant hired by
2 Fresno County and billed to the AB 939 Solid Waste Surcharge Trust Fund Account.
3 Results of the audit will be shared with the Jurisdictions within thirty (30) days of the
4 Lead Agency's receipt of the final and complete audit.

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

6 The Committee will conduct an annual review of the amounts in the Solid Waste
7 Surcharge Trust Fund Account during the last Committee meeting of every fiscal year.
8 Thirty (30) days prior to the review, the Lead Agency will provide the Committee
9 Members with all data and information related to the current state of the Solid Waste
10 Surcharge Trust Fund Account.

11 VI. TERM:

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

17 B. Renewal Option

18 1. Each of the CITIES' governing bodies hereby authorizes its
19 respective CITY manager or equivalent officer, or respective CITY manager's or
20 equivalent officer's designee, and the COUNTY hereby authorizes the Director of the
21 Public Works and Planning Department or their designee, upon receipt of a Renewal
22 Option Ballot, delivered pursuant to the notice provisions in Section XII, as the
23 respective authorized agents of each such Jurisdiction, to complete and to submit said
24 ballots on behalf of their respective CITIES and COUNTY, voting to either approve or
25 reject the Renewal Option.

26 2. Renewal Option Ballots may be submitted by mail, fax or in person,
27 but must be received by the Chairperson before the Renewal Option meeting is called
28 to order. At that special meeting, the Chairperson shall count the valid Renewal Option

1 Ballots submitted. To be valid, a Renewal Option Ballot must have been signed by that
2 governing body's authorized agent, as specified in the immediately preceding Section
3 VI.B.1, and be received before the submittal deadline. If a simple majority of the valid
4 Renewal Option Ballots received by the Chairperson is in support of the Renewal
5 Option, this MOU shall automatically be extended an additional five (5)-year period as
6 provided in Section VI, Subsection A.

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

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

16 VII. TERMINATION:

17 A. Options for Changing the Term

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

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

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

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

27 Should the Jurisdictions choose not to renew, extend or amend the term of this
28 MOU, and no Successor MOU has been approved or is approved six (6) months after

1 this MOU expires, then the Lead Agency shall calculate and disburse the cash balance
2 in the Solid Waste Surcharge Trust Fund (AB 939 Surcharge) Account. For purposes of
3 this Section VII.B, the only amounts that may be disbursed out of the Trust Fund, will be
4 amounts paid into the Trust Fund as a result of (1) the Household Hazardous Waste
5 Facility Fee and (2) the State-Mandated AB 939 Integrated Waste Management Plan
6 Fee (at the time of this MOU's execution, these component portions of the AB 939
7 consisted of \$2.40 out of every \$3.41 AB 939 Surcharge Fee). Unless the Jurisdictions
8 unanimously pass a resolution within thirty (30) days before the MOU's termination
9 date, defining and implementing an alternative method for calculating and distributing
10 the cash balance in the AB 939 Surcharge Account (Option Two), the Lead Agency
11 shall proceed in accordance with Option One:

12 1. Option One: Proportional Disbursement.

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

14 a. Lead Agency will make an accounting of the Trust Fund,
15 including a determination regarding the total disburseable amount
16 in the Trust Fund, as well as any outstanding debts or other
17 monetary obligations, and determine the total amount that may
18 be disbursed. Lead Agency will set aside sufficient money to
19 satisfy any and all debts and obligations and then calculate the
20 then remaining total disburseable amount in the Trust Fund. This
21 remaining total will be the amount that will be disbursed
22 pursuant to this Option One.

23 b. Lead Agency will take the total disburseable amount and divide it
24 into two equal halves. Each half will be disbursed as delineated
25 below.

26 c. Lead Agency will send a request, delivered pursuant to the
27 notice provisions in Section XII, for documentation and proof to
28 each Jurisdiction. This Request shall request proof of all

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amounts each such Jurisdiction paid into the Trust Fund during the ten (10) years preceding the request for documentation, as well as information regarding the Jurisdiction's respective population at the time of the request.

d. Within thirty (30) days of the Lead Agency's request, all Jurisdictions wishing to seek a portion of any disbursement will provide Lead Agency with documentation proving all amounts the respective Jurisdictions paid into the Trust Fund during the preceding ten (10) years, as well as their populations at the time of the request. It is and will be each Jurisdictions' responsibility to prove the foregoing.

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

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

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- g. After calculating the foregoing amounts, the second half of the disburseable amount in the Trust Fund will be divided amongst the Jurisdictions entitled to a disbursement by multiplying the ratio of each such Jurisdiction's population compared to the total population provided by all entitled Jurisdictions by the second half of the disburseable amount. The resulting numbers will equal the second portion of the respective Jurisdiction's disbursement. For example, if there is \$100,000.00 in the second half of the disburseable amount, and a Jurisdiction's population represents five-percent (5%) of the total reported population, that Jurisdiction will be entitled to \$5,000.00.
- h. Within ninety (90) days of completing the foregoing calculations, the Lead Agency will give notice, pursuant to Section XII, to all Jurisdictions regarding the foregoing requests, responses, and calculations, and the Lead Agency will disburse the amounts owing to each Jurisdiction.
- i. Any Jurisdiction that fails to provide documentation or proof of amounts paid, including those that provide inadequate documentation or proof of amounts paid, or proof of the population of the Jurisdiction, pursuant to this Option One, will not be entitled to any disbursement.
- j. For purposes of this Option One (1), in the event that there are any Jurisdictions that are not entitled to a disbursement, as delineated above, those Jurisdictions' populations will not be taken into account for purposes of any of the calculations in this Option One (1).

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

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

6 VIII. AMENDMENTS

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

9 1. With the exception of certain MOU provisions governing the
10 Committee's scope of work as expressly specified above, (i.e., those provisions related
11 to the R List, the AWP and the Committee Policies and Procedures), the approval of
12 any proposed amendment of any other provision of this MOU requires that an
13 appropriate amendment resolution and accompanying amendment to this MOU be
14 executed by the governing body of each and every one of the Jurisdictions.

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

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

24 4. If and when an amendment resolution has been executed and
25 provided by all of the Jurisdictions, the Lead Agency shall prepare an agenda item and
26 appropriate resolution requesting the COUNTY's Board to execute the COUNTY's
27 amendment resolution and to execute a counterpart original signature page of the
28 requested amendment to the MOU.

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

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

10 2. A majority of Delegates must participate, in person or by proxy.
11 (Any Delegate submitting a valid abstention shall be counted as a participant.) The
12 votes shall be calculated by adding the number of valid proxy ballots (received from
13 Delegates not physically present at the meeting) to the number of votes cast by those
14 Delegates in attendance at the meeting.

15 IX. PURPOSE OF THE LTF SUBCOMMITTEE

16 A. The Jurisdictions approved the restructuring of the LTF designating the
17 Committee to serve in the capacity and perform the functions of the LTF. The
18 Committee formed a separate Subcommittee (LTF Subcommittee) to perform these LTF
19 functions developing its own separate set of guidelines and rules to govern itself and
20 conduct business. The LTF Subcommittee guidelines include rules regarding the LTF
21 formation, authority of the LTF, membership, meetings, designation of officers,
22 responsibilities, voting, and other related items. The duties and responsibilities of the
23 LTF Subcommittee are defined in Public Resources Code Section 40950, subdivision
24 (c) as, "To ensure coordinated and cost-effective regional recycling system, the task
25 force shall do all of the following:

26 1. Identify solid waste management issues of countywide or regional
27 concern.
28

- 1 2. Determine the need for solid waste collection and transfer systems,
2 processing facilities, and marketing strategies that can serve more than
3 one local jurisdiction within the region.
- 4 3. Facilitate the development of multijurisdictional arrangements for
5 marketing of recyclable materials.
- 6 4. To the extent possible, facilitate resolution of conflicts and inconsistencies
7 between or among city and county source reduction and recycling
8 elements.”

9 B. As established under Public Resources Code Section 40950, subdivision
10 (d), “The task force shall develop goals, policies and procedures which are consistent
11 with guidelines and regulations adopted by the board (CalRecycle), to guide the
12 development of the siting element of the countywide integrated waste management
13 plan.”

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

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

20 X. [Intentionally Omitted]

21 XI. HOLD HARMLESS:

22 A. The COUNTY hereby agrees to indemnify and hold harmless each of the
23 signatory CITIES and their respective agents and employees, from and against all loss
24 or expense (including reasonable costs and attorney’s fees) by reason of liability
25 imposed by law upon such signatory CITY for damages because of bodily injury,
26 including death at any time resulting therefrom, sustained by any person or persons or
27 on account of damage to property, including loss of use thereof, arising out of or as a
28 consequence of the performance of this work. Provided, however, that the duty

1 imposed by this Paragraph shall be binding upon the COUNTY only if, and only to the
2 extent, that such injury to persons or damage to property is due to negligence of the
3 COUNTY.

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

13 XII. NOTICE

14 Unless it is provided otherwise, for purposes of this MOU, each Jurisdiction's
15 Delegate or the Delegate's designee shall be provided with notice for any and all matters
16 regarding or relating to this MOU, as provided in this Section.

17 The Jurisdiction's Delegates or their designees shall serve as the persons to
18 receive any and all notice, as required by this MOU, or in any way related to this MOU.
19 Each Jurisdiction, as applicable, may request that notice be sent to their Alternate
20 Delegate, if any, in addition to the notice that is sent to the Jurisdiction's Delegates. Each
21 Jurisdiction will provide contact information for their Delegates, and Alternate Delegates if
22 so desired, as follows:

- 22 1. Telephone number;
- 23 2. Email address;
- 24 3. Physical address capable of receiving all forms of mail, delivery,
25 etc.

26 All notices between the Jurisdiction's provided for or permitted under this MOU must be in
27 writing and delivered either by personal service, by first-class United States mail, by an
28 overnight commercial courier service, or by e-mail transmission. A notice delivered by
personal service is effective upon service to the recipient. A notice delivered by first-class

1 United States mail is effective three COUNTY business days after deposit in the United
2 States mail, postage prepaid, addressed to the recipient. A notice delivered by an
3 overnight commercial courier service is effective one COUNTY business day after deposit
4 with the overnight commercial courier service, delivery fees prepaid, with delivery
5 instructions given for next day delivery, addressed to the recipient. A notice delivered by
6 e-mail is effective when transmission to the recipient is completed (but, if such
7 transmission is completed outside of COUNTY business hours, then such delivery shall be
8 deemed to be effective at the next beginning of a COUNTY business day), provided that
9 the sender maintains a read-receipt of the completed transmission. For all claims arising
10 out of or related to this MOU, nothing in this section establishes, waives, or modifies any
11 claims presentation requirements or procedures provided by law, including but not limited
12 to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning
13 with section 810).

14 XIII. SEVERABILITY:

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

20 XIV. COUNTERPARTS:

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

24 XV. ENTIRE AGREEMENT:

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

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ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By _____
Deputy

FOR ACCOUNTING USE ONLY:
ORG No.: 9015
Account No.: N/A
Requisition No.: N/A