SPECIAL MEETING AGENDA
The City Council/Successor Agency of the City of Firebaugh
Vol. No.18/09-05

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622
Date/Time: September 5, 2018/6:00 p.m.

CALL TO ORDER
ROLL CALL
Mayor Felipe Pérez
Mayor Pro Tem Marcia Sablan
Council Member Elsa Lopez
Council Member Freddy Yaldez
Council Member Brady Jenkins

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Andrew Firebaugh Community Center to participate at this meeting, please contact the Deputy City Clerk at (559) 659-2043. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Andrew Firebaugh Community Center.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall, in the Deputy City Clerk’s office, during normal business hours.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

CONSENT CALENDAR
Items listed on the calendar are considered routine and are acted upon by one motion unless any Council member requests separate action. Typical items include minutes, claims, adoption of ordinances previously introduced and discussed, execution of agreements and other similar items.

1. APPROVAL OF MINUTES – The City Council regular meeting on August 6, 2018.

2. APPROVAL OF MINUTES – The City Council regular meeting on August 20, 2018.

NEW BUSINESS


   Recommended Action: Council receives public comment & approves Res. No. 18-45.

4. RESOLUTION NO. 18-46 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING AND AUTHORIZING EXECUTION OF MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF FRESNO AND CITIES OF CLOVIS, COALINGA, FOWLER, FRESNO, HURON, KERMAN, KINGSBURG, MENDOTA, ORANGE COVE, PARLIER, REEDLEY, SAN JOAQUIN, SANGER AND SELMA.

   Recommended Action: Council receives public comment & approves Res. No. 18-46.
5. **RESOLUTION NO. 18-47 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING ACCEPTANCE OF EASEMENT DEED FOR PUBLIC UTILITY PURPOSES.**

   **Recommended Action:** Council receives public comment & approves Res. No. 18-47.

6. **RESOLUTION NO. 18-48 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING ACCEPTANCE OF RECYCLED WATER FOR CLEAN WATER STATE REVOLVING FUND (CWSRF) FUNDING PROPOSAL BY ENVIRONMENT & WATER, INC. (EKI).**

   **Recommended Action:** Council receives public comment & approves Res. No. 18-48.

7. **RESOLUTION NO. 18-49 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ESTABLISHING FEES TO BE CHARGED FOR THE COMMERCIAL CANNABIS BUSINESS APPLICATION.**

   **Recommended Action:** Council receives public comment & approves Res. No. 18-49.

**STAFF REPORTS**

**PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY**

**CLOSED SESSION**

**ANNOUNCEMENT AFTER CLOSED SESSION**

**ADJOURNMENT**

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**Certification of posting the Agenda**

I declare under penalty of perjury that I am employed by the City of Firebaugh and that I posted this agenda on the bulletin boards at City Hall, August 31, 2018 at 5:00 p.m. by Rita Lozano Deputy City Clerk.
MEETING MINUTES
The City Council/Successor Agency of the City of Firebaugh
Vol. No. 18/08-06

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622
Date/Time: August 6, 2018/6:00 p.m.

CALL TO ORDER
Meeting called to order by Mayor Perez at 6:00 p.m.

ROLL CALL PRESENT:
Mayor Felipe Pérez
Mayor Pro Tem Marcia Sablan
Council Member Elsa Lopez
Council Member Freddy Valdez
Council Member Brady Jenkins

ABSENT:
City Attorney Meggin Boranian; City Manager/Acting Public Works Director, Ben Gallegos; Deputy City Clerk, Rita Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza; Fire Chief, John Borboa; Wanda Breshears, David & Mary Van Pelt, George Conklin & others.

PLEDGE OF ALLEGIANCE: Council Member Valdez led pledge of Allegiance.

PUBLIC COMMENT

CONSENT CALENDAR:

1. APPROVAL OF MINUTES – The City Council regular meeting on July 16, 2018.

Motion to approve minutes by Council Member Valdez, second by Council Member Jenkins; motion pass by unanimous 5-0 vote.

NEW BUSINESS

Motion to approve discuss agenda item #2 to the end of the meeting by Council Member Valdez, second by Council Member Sablan; motion pass by unanimous 5-0 vote.

3. RESOLUTION NO. 18-41 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A CONSULTING AGREEMENT FOR LED LIGHTING WITH ADVANCED LIGHTING SERVICES, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT.

Motion to accept Res. No. 18-41 by Council Member Sablan, second by Council Member Jenkins; motion pass by unanimous 5-0 vote.


Motion to accept Res. No. 18-42 by Council Member Valdez, second by Council Member Jenkins; motion pass by unanimous 5-0 vote.

5. RESOLUTION NO. 18-43 - THE CITY COUNCIL OF THE CITY OF FIREBAUGH HEREBY AUTHORIZES THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE HOME INVESTMENT PARTNERSHIPS PROGRAM; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND OF ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOME INVESTMENT PARTNERSHIPS PROGRAM.

Motion to accept Res. No. 18-43 by Council Member Valdez, second by Council Member Lopez; motion pass by unanimous 5-0 vote.
2. THE CITY COUNCIL OF THE CITY OF FIREBAUGH CONSIDER A RESOLUTION OPPOSING THE CITIZENSHIP QUESTION ON THE 2020 CENSUS.

The United States Department of Justice has proposed to include a citizenship question on the 2020 Census form, which may dampen participation rates in immigrant communities because of the current federal emphasis on deportation and border security. The concern with adding this question, is that folks that are not citizens may not complete census, which will affect the results of population and possibly grant funding. Mr. Samuel Molina, attended the meeting to answer any questions on this matter, and stated the census & citizenship question could lead to an undercount and loss of funding for cities. Mr. Molina added, “Tomorrow is the last day to leave comments on website: www.censuscount.org” Committees, individuals and cities must promote outreach and importance of filling out the census in their communities. Committees will work with cities, school, and libraries for do outreach to communities for the 2020 census to try and count everyone.

Informational Item.

STAFF REPORTS

- **Police Chief Sal Raygoza** – No problems at the Round-up, more attendance this year than last year, there was a small disturbance between a wife and husband at their home.

- **Fire Chief, John Borboa** – Reported 4 wrecks, 11 victims, 1 fatality, 12 medical and 2 fire calls. Still working on the new Fire Truck, but did use it on a call.

- **Finance Director, Pia Martin** – Working on year-end and rate study with Tuckfield, signed Audit services contract with Jolley. Reported more tickets sales for the carnival because we sold an extra day, about $90,000, still waiting to get a total on expenses, estimating a higher profit since expenses remained the same but ticket revenue was higher.

- **City Manager Ben Gallegos** – Thanked staff for the work with the round-up, received a lot good comments about the event and on Kid Day reptile exhibit with free admission. Demo Work is going on throughout the city, and code enforcement. Q St project hopefully will go to bid in September, trying to get some power underground on 8th St. Burger King still waiting for the contractor, joint School Board meeting update: they are interested in selling all of their property on Thomas Conboy.

- **Attorney Boranian** – There are various training on Medical marijuana and legal updates. Las Deltas Water District update concerns; Grant options, because of expensive annexation with their financial hardship, and need for a new water system, there are about 110 services.

PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY

Motion to enter closed session by Council Member Valdez, second by Council Member Jenkins; motion pass by unanimous 5-0 vote at 6:57 p.m.

CLOSED SESSION

3. **REAL ESTATE NEGOTIATION – Pursuant to Government Code Section #54956.8.**

Re: APN # 008-071-04 Designative Rep. City Negotiator Ben Gallegos

Motion to enter open session at 7:21 p.m. by Council Member Valdez, second by Council Member Jenkins; motion pass by unanimous 5-0 vote.
ANNOUNCEMENT AFTER CLOSED SESSION: Nothing to report.

Council Member Valdez – Provided an update about the joint School Board Meeting, the following request were made:

- School’s cooperation with adjustments to impact fees, which the board agreed to be flexible per case by case
- School Board recently worked with a developer
- City and School join together with projects, funding sources, they would like the joint first funding project with the city to be a new swimming pool
- Board asked City to have a Joint Participation Agreement (JPA) for the pool project, with the majority of the funding to be carried by the City
- City Manager meet with the Superintendent after the joint meeting for further discussion and was mentioned, if there is a joint partnership, the City will be asked to cover half of all expenses, maintenance, operational cost, life guards and chemicals, Liability with any filed cases brought forward in a possible litigation, etc. – the City will share responsibility. Estimated cost of the project is $5 million, Board is asking the City for $2.5 million

City Attorney Boranian – Provide legal thoughts:

A letter of potential projects and expectations should be writing from the City to the School for a clear understanding of the terms on a JPA.

- A summary of the meeting would be helpful to our Attorney to assist the City with this matter since she was not in attendance. Attorney will request a copy of the transcript or minutes of the meeting and do further search to provide legal advice to the Council at a future meeting.

ADJOURNMENT

Motion adjourn by Council Member Valdez, second by Council Member Jenkins; motion pass by unanimous 5-0 vote at 7:42 p.m.
MEETING MINUTES
The City Council/Sucessor Agency of the City of Firebaugh
Vol. No. 18/08-20

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622
Date/Time: August 20, 2018/6:00 p.m.

CALL TO ORDER
Meeting called to order by Mayor Perez at 6:00 p.m.

ROLL CALL PRESENT:
Mayor Felipe Perez
Mayor Pro Tem Marcia Sablan
Council Member Elsa Lopez
Council Member Freddy Valdez
Council Member Brady Jenkin

ABSENT:

OTHERS: City Attorney Meggin Boranian; Deputy City Clerk, Reta Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza; Fire Chief, John Borboa, Mario Gouveia, Wanda Breshears, David & Mary Van Pelt & others.

PLEDGE OF ALLEGIANCE: Council Member Lopez led pledge of Allegiance.

PUBLIC COMMENT:
Mr. David Van Pelt inquired about an update on the minutes from the last council meeting regarding the joint meeting with the School District and the swimming pool.

CONSENT CALENDAR:

1. APPROVAL OF MINUTES – The City Council regular meeting on August 6, 2018.

Motion to table the minutes by Council Member Sablan, second by Council Member Valdez; motion pass by unanimous 5-0 vote.

2. WARRANT REGISTER – Period starting July 1, and ending on July 31, 2018.

<table>
<thead>
<tr>
<th>Month</th>
<th>General Warrants</th>
<th>Payroll Warrants</th>
<th>Total</th>
</tr>
</thead>
</table>
| July 2018 | #36896 - #37029 | #69771 - #69926  | $ 612,251.43 $329,446.90  
| TOTAL  | $ 941,698.33     |                 |            |

Motion to approve warrants by Council Member Sablan, second by Council Member Valdez; motion pass by unanimous 5-0 vote.

NEW BUSINESS


Motion to accept Res. No. 18-44 by Council Member Valdez, second by Council Member Lopez; motion pass by 4-1 vote, Lopez- No.
STAFF REPORTS

- **Police Chief Sal Raygoza** – There were several accidents in Madera County at W Nees Ave, Police Dept. is still working on the details. A transformer caught fire, which resulted in an electrical outage, it was separate issue then the vehicle accident.

- **Fire Chief, John Borboa** – A party was held in Del Rio, in was announced on Facebook, Flyers and other social media sources, there was an accident on Firebaugh Blvd, an individual tried to flag down someone for help but was hit and killed. Another accident with two girls missed the bridge, crashed and the car caught fire, they were pinned in, both vehicles were a result of the party in Del Rio.

- **Finance Director, Pio Martin** – A report on the festival is enclosed in the agenda packet, working on the year-end reports, working with the auditor and Clayton on the water/sewer rate study. Council Member Sablan asked why the salaries for the festival were higher this year. Finance Director reported it is a result of coding staff to the festival instead of their regular duties, which was done in the past. Staff wanted to try to keep a more accurate account of the expenses of the festival, so if staff was working on the festival their time was charged to that fund.

- **City Engineer Mario Gouveia** – Q St project out to bid, hopefully we’ll see activity in October.

- **Attorney Boranian** – Sent emails to Council on impact fees, options to reduce them by the school, (they can) but generally it’s not done, another option is a development agreement, other schools have done development agreement but ask for more money, not a reduction of impact fees. Spoke with the school district and there is an education code that authorizes school to adjust impact fees. Clovis School District waives all impact fee on all senior housing developments, and joint project is certainly legal, I have other research sources I’m still looking in to. I contacted the School board for a copy of the minutes or transcripts from the joint meeting but I didn’t get access until they are approved at their September meeting. Council Member Sablan asked, “What is the next step in this process, and stated she would like to have another joint meeting with the school board.” Attorney mentioned, the school could apply for grant funding themselves to build the swimming pool, and the city can assist by looking at one of the provided resources, and council should decide what the city would like to do. Some research or marketing to get feedback from the citizens could be helpful. Council Member Jenkins stated, he did research on grant funding for the swimming pool and provided to the school district. If the pool is a community pool, it will still be impossible to offer free service of the pool to the citizens because state law requires one life guard per every 25 people, and someone would have to pay them. Council Member Sablan asked for this item to be placed on the agenda of September 5th Special Council Meeting.

- **Council Member Lopez** – Asked if anyone has reviewed or discussed the following items to be placed on a future agenda: Prop 3 (Supporting Veterans & affordable housing bond act 2018), Approving & Authorizing an MOU between its groundwater sustainability Agency and the San Joaquin River exchange contractor’s groundwater sustainability agency, & Bureau of Cannabis Control Proposed Regulations on marijuana transportation.

PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY

CLOSED SESSION

ADJOURNMENT

*Motion adjourn by Council Member Valdez, second by Council Member Jenkins; motion pass by unanimous 5-0 vote at 6:40 p.m.*
RESOLUTION NO. 18-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING AND AUTHORIZING EXECUTION OF MEMORANDUM OF UNDERSTANDING BETWEEN ITS GROUNDWATER SUSTAINABILITY AGENCY AND THE SAN JOAQUIN RIVER EXCHANGE CONTRACTORS GROUNDWATER SUSTAINABILITY AGENCY

WHEREAS, the Sustainable Groundwater Management Act of 2014, which includes Water Code sections 10720-10736.6 (SGMA) was signed into law on September 16, 2014, and requires that each California groundwater basin or subbasin be managed by a Groundwater Sustainability Agency (GSA) or multiple GSAs, and that such management include an approved Groundwater Sustainability Plan (GSP) or multiple GSPs. GSPs in the Delta-Mendota Subbasin shall be submitted to the California Department of Water Resources by January 31, 2020; and

WHEREAS, the purpose of this Memorandum of Understanding (MOU) is to coordinate SGMA implementation and enforcement between the City and Exchange Contractors GSA; and

WHEREAS, the Exchange Contractors GSA is the exclusive Groundwater Sustainability Agency ("GSA") empowered to implement and enforce SGMA within the Exchange Contractors GSA boundary. The Exchange Contractors GSA boundary is designated in the interactive GSA map maintained by the California Department of Water Resources; and

WHEREAS, the City is the exclusive GSA empowered to implement and enforce SGMA within the City’s GSA boundary. The City’s GSA boundary is designated in the interactive GSA map maintained by the California Department of Water Resources; and

WHEREAS, the City and the San Joaquin River Exchange Contractors, the predecessor of the Exchange Contractors GSA, have for many years jointly and cooperatively studied and successfully managed groundwater in the vicinity of the City; and

WHEREAS, the City Council believes that the attached MOU is reasonable and that it is in the best interests of the City to execute the MOU.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Firebaugh hereby approves the attached Memorandum of Understanding, which is incorporated herein by this reference, and authorizes the City Manager, Benjamin Gallegos, to execute the MOU on behalf of the City.

The foregoing Resolution was approved and adopted at a special meeting of the City Council of the City of Firebaugh held on the 5th day of September 2018, by the following vote:

AYES: 
NOES: 
ABSTAIN: 
ABSENT: 

APPROVED: 

Felipe Perez, Mayor 

ATTEST: 

Rita Lozano, Deputy City Clerk
TO: Mayor Felipe Perez and Council Members  
DATE: September 5, 2018  
SUBJECT: Successor AB 939 Memorandum of Understanding between the County and the City of Firebaugh

Recommended Action

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

The recommended action will allow the County, as lead agency, to continue to implement county-wide AB 939 education, public information and household hazardous waste (HHW) management programs and facilities through utilization of the current AB 939 Surcharge Fee. The AB 939 Surcharge Fee is required to fully-fund the activities covered by the Successor MOU, including operation of the Regional Permanent HHW Facility (HHW Facility) and a local network of HHW drop-off sites (Local HHW Network), and development of additional Facility (ies) as needed. The term of the Successor MOU is ten years, with an option for one-five-year extension.

Discussion

AB 939 requires each county and city in the State to prepare, implement and update solid waste management plans in order to meet State diversion mandates. In addition, the State requires all jurisdictions to properly handle generated HHW, through recycling and/or disposal of these materials at an appropriate facility. The County as Lead Agency continues to provide this service to all jurisdictions within Fresno County through the Successor MOU. The County and the 15 cities within the Fresno County entered into an MOU in 1993, 2004 and again in 2009 to coordinate county-wide implementation of related education and public information and HHW management programs. The current MOU expires on January 5, 2019. In 2009, the County and the 15 cities agreed to increase a portion of the AB 939 Surcharge Fee from $0.65 to $2.40 per disposed ton of Fresno County generated solid waste. This increase was to fully-fund the activities covered by the MOU, including development and operation of the Regional Permanent HHW Facility (HHW Facility) and a local network of HHW drop-off sites (Local HHW Network).

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

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

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

The Successor MOU has an initial term of ten years with an option for one five-year extension. The option will be automatically exercised, unless a majority of the cities and County vote not to exercise the option for renewal. The Successor MOU contains a mutual indemnification clause, as did the previous MOU.

In summary, it is recommended that the City Council approve and authorize the Chairman to execute the Successor MOU between the County and the City of Firebaugh regarding the provision of county-wide education and public information, HHW management programs, and development and operation of the HHW Facility (ies) and the Local HHW Network.
RESOLUTION NO. 18-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH
APPROVING AND AUTHORIZING EXECUTION OF MEMORANDUM OF
UNDERSTANDING WITH THE COUNTY OF FRESNO AND CITIES OF CLOVIS,
COALINGA, FOWLER, FRESNO, HURON, KERMAN, KINGSBURG, MENDOTA,
ORANGE COVE, PARLIER, REEDLEY, SAN JOAQUIN, SANGER AND SELMA.

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; and

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; and

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

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 by 75% by 2025; and

WHEREAS, the County and the Cities may join together to prepare and implement required waste management and other related plans and programs; and

WHEREAS, the County and the Cities are hereinafter referred as the “Jurisdictions” when referred to collectively, and as “Jurisdiction” when referenced generally in singular terms; and

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

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

WHEREAS, the Jurisdictions have designated the County as the lead agency to implement and operate waste management programs/services that are best accomplished on a regional basis; and

WHEREAS, the Jurisdictions previously determined that a mechanism is needed to enhance their ability to communicate and collaborate on MOU-related issues, and that the appropriate mechanism to serve those purposes is the MOU Committee (Committee), which consists of Delegates from each Jurisdiction agreeing to this MOU; and
WHEREAS, California Law requires the creation of a Local Task Force (LTF) to review local and regional plans; and

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

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

WHEREAS, the Committee shall continue to provide the Lead Agency with input and direction from the Jurisdictions on MOU-related programming and budget allocations, as more thoroughly provided in the MOU; and

WHEREAS, the City Council believes that the attached MOU is reasonable and that it is in the best interests of the City to execute the MOU.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Firebaugh hereby approves the attached Memorandum of Understanding, which is incorporated herein by this reference, and authorizes the City Manager, Benjamin Gallegos, to execute the MOU on behalf of the City.

The foregoing Resolution was approved and adopted at a special meeting of the City Council of the City of Firebaugh held on the 5th day of September 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED: __________________________ ATTEST: __________________________

Felipe Perez, Mayor Rita Lozano, Deputy City Clerk
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;
WHEREAS, COUNTY and CITIES may join together to prepare and implement required waste management and other related plans and programs;

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

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

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

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

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

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

WHEREAS the Jurisdictions approved the restructuring of the LTF, based on adopted resolutions demonstrating the concurrence of a majority of the cities which contain a majority of the population of the incorporated areas of the County, in accordance with the provisions of Public Resources Code Section 40950 (b) and designated the Committee to serve in the capacity and perform the functions of the LTF;
WHEREAS, the Committee formed a separate Subcommittee (LTF Subcommittee) to perform the LTF functions, as defined in Section IX of this MOU, including developing its own separate set of guidelines and rules to govern itself and conduct business in order to facilitate the development of waste management related plans and programs;

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

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

I. PURPOSE AND STRUCTURE OF THE MOU:

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

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

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

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

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

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

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

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

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

2. The designated Delegate of each Jurisdiction will have voting rights. A Delegate shall be a representative of their respective Jurisdiction, empowered to represent that Jurisdiction’s position and to cast that Jurisdiction’s vote, on items that come before the Committee. A Jurisdiction’s CITY Manager or other similar appropriate authority in that Jurisdiction, or the COUNTY’s Resources Division Manager or other similar appropriate authority in the COUNTY, may designate an Alternate Delegate with knowledge of the respective Jurisdiction’s solid waste system and/or planning programs and the Alternate Delegate may cast proxy votes on Committee votes. For any votes related to expenditures or finances, the Alternate Delegate must get prior or subsequent
written approval from the Delegate, and provide that approval to the Lead Agency within
30 days of the respective vote. Nothing in this paragraph or MOU shall be interpreted, or
in any way construed, as preventing or prohibiting a Jurisdiction from selecting a Delegate
and/or Alternate Delegate that is not employed by the respective Jurisdiction. For
example, a Jurisdiction, following the designation requirements of this MOU, may
designate a waste hauler to serve as their Delegate and/or Alternate Delegate.

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

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

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

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

5. The Chairperson may, at his/her discretion, or when requested by a least two (2) Delegates, request that a particular vote be by mail, fax and/or e-mail, when special conditions or unusual time constraints preclude voting on an issue at a Committee meeting. Delivery of the request will be pursuant to the notice provisions in Section XII.
For this vote to be a valid, all three (3) of the following conditions must be met:

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

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

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

F. Committee meetings:

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

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

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

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

G. Modification or Amendment of Committee policy and procedures:

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

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

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

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

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

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

B. At least once during each Fiscal Year, 1) the Lead Agency will review and, when appropriate, recommend to the Committee, changes to the R List; and 2) the Committee shall act upon that recommendation, voting to request that the Lead Agency revise the current R List as the Committee deems appropriate. When adopted by the Committee, the most recently amended R List shall supersede the previous R List.
C. The Lead Agency, in accordance with Section III below, shall prepare an Annual Work Plan (AWP). The AWP shall define: (1) the programs and services to be provided and funded under this MOU; and (2) the responsibilities of the Jurisdictions related to implementation of the AWP.

III. AB 939 ANNUAL WORK PLAN:

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

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

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

IV. SOURCE AND USE OF FUNDS:

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

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

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

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

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

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

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

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

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

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

H. Collection of AB 939 Surcharge Revenues

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

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

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.

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.

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.

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.

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

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

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

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

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

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

(iii) Provide documentation of the number of tons of the Material that will not/ have not been landfilled (e.g., recycled, composted); and
(iv) Remit directly to the COUNTY the dollar equivalent of the AB 939 Surcharge for every ton of that Material documented in Section IV, Section H, Item (2)(d)(i) above.

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

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

V. AMOUNT OF AB 939 SURCHARGE

A. History of Fresno County’s Solid Waste Management Fee, i.e. the “AB 939 SURCHARGE.”

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

D. Audits of the Solid Waste Surcharge Trust Fund Account

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

E. Annual Review of Solid Waste Surcharge Trust Fund Account

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

VI. TERM:

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

B. Renewal Option

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

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

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

VII. **TERMINATION:**

A. Options for Changing the Term

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

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

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

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

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

1. Option One: Proportional Disbursement.

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

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

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

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

g. After calculating the foregoing amounts, the second half of the disbursable 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 disbursable 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 disbursable 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).

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

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

VIII. AMENDMENTS

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

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

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

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

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

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

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

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

IX. PURPOSE OF THE LTF SUBCOMMITTEE

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

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

B. As established under Public Resources Code Section 40950, subdivision (d), “The task force shall develop goals, policies and procedures which are consistent with guidelines and regulations adopted by the board (CalRecycle), to guide the development of the siting element of the countywide integrated waste management plan.”
C. The LTF Subcommittee meetings will only be scheduled as needed to address business as required under Public Resources Code Section 40950. These meetings will be scheduled and noticed, pursuant to Section XII, and held at the conclusion of regular Committee meetings.

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

X. [Intentionally Omitted]

XI. HOLD HARMLESS:

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

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

XII. NOTICE

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

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

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

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

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

XIV. COUNTERPARTS:

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

XV. ENTIRE AGREEMENT:

This MOU constitutes the entire agreement among the Jurisdictions with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this MOU.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CITY OF FIREBAUGH

Ben Gallegos, City Manager
City of Firebaugh

COUNTY OF FRESNO

Sal Quintero, Chairperson of the Board of Supervisors of the County of Fresno

ATTEST:
Rita Lozano
Deputy City Clerk
City of Firebaugh

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

Deputy City Clerk

Deputy

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