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**WASTE DISPOSAL AGREEMENT**

**Between**

**COUNTY OF TULARE, CALIFORNIA**

**And**

**PEÑA'S DISPOSAL INC.**

**Dated as of August \_\_, 2020**

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County Authorization Date:  
\_\_\_\_\_, 2020

Peña's Disposal Inc. Authorization Date:  
8-4-\_\_\_\_\_, 2020

County Notice Address:

Peña's Disposal Inc. Notice Address:

Director  
Tulare County Solid Waste Department  
5955 S Mooney Blvd.,  
Visalia, CA 93227

Art Peña, President  
Peña's Disposal Inc.  
12094 Avenue 408  
Cutler, CA 93615

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I</b>	
<b>DEFINITIONS AND INTERPRETATION</b>	
1.1	DEFINITIONS ..... 1
1.2	INTERPRETATION..... 7
<b>ARTICLE II</b>	
<b>REPRESENTATIONS AND WARRANTIES</b>	
2.1	REPRESENTATIONS AND WARRANTIES OF THE COMPANY..... 7
2.2	REPRESENTATIONS AND WARRANTIES OF THE COUNTY..... 7
<b>ARTICLE III</b>	
<b>DELIVERY AND ACCEPTANCE OF WASTE AND PROVISION OF DISPOSAL SERVICE</b>	
3.1	DELIVERY OF WASTE. .... 8
3.2	PROVISION OF DISPOSAL SERVICES BY THE COUNTY. .... 9
3.3	COUNTY RIGHT TO REFUSE WASTE. ....10
3.4	MISCELLANEOUS OPERATIONAL MATTERS. ....10
3.5	OTHER USERS OF THE DISPOSAL SYSTEM. ....11
<b>ARTICLE IV</b>	
<b>CONTRACT RATE</b>	
4.1	CHARGING AND SECURING PAYMENT OF CONTRACT RATE.....12
4.2	CONTRACT RATE.....12
4.3	RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE. ....13
4.4	BILLING OF THE CONTRACT RATE .....13
<b>ARTICLE V</b>	
<b>BREACH, ENFORCEMENT AND TERMINATION</b>	
5.1	BREACH .....13
5.2	TERMINATION WITH CAUSE.....13
5.3	NO WAIVERS.....14
5.4	FORUM FOR DISPUTE RESOLUTION.....14
<b>ARTICLE VI</b>	
<b>TERM</b>	
6.1	EFFECTIVE DATE AND TERM. ....14
6.2	COMMENCEMENT DATE.....15

**ARTICLE VII  
GENERAL PROVISIONS**

7.1	OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM .....	15
7.2	UNCONTROLLABLE CIRCUMSTANCES GENERALLY. ....	15
7.3	INDEMNIFICATION.....	16
7.4	LIMITED RECOURSE. ....	16
7.5	PRE-EXISTING RIGHTS AND LIABILITIES.....	16
7.6	NO VESTED RIGHTS .....	16
7.7	LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING.....	16
7.8	AMENDMENTS .....	16
7.9	NOTICE OF LITIGATION .....	17
7.10	FURTHER ASSURANCES.....	17
7.11	ASSIGNMENT OF AGREEMENT. ....	17
7.12	INTEREST ON OVERDUE OBLIGATIONS .....	17
7.13	BINDING EFFECT .....	17
7.14	NOTICES.....	17
7.15	DISPUTES AND DISPUTE RESOLUTION .....	17
7.16	COUNTERPARTS .....	17
	SIGNATURES .....	18

## WASTE DISPOSAL AGREEMENT

This **WASTE DISPOSAL AGREEMENT** ("Agreement") is made as of August \_\_, 2020, between the **County of Tulare**, a political subdivision of the State of California ("County") and **PEÑA'S DISPOSAL INC.**, a California Corporation ("Company"). County and Company are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following Recitals:

### RECITALS

1. The County owns, manages, and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System").
2. The Disposal System includes two active landfill sites, the Visalia site, and the Teapot Dome site.
3. The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").
4. The Company has entered into a franchise or other agreement for the collection and disposal of municipal solid waste generated within various cities throughout and near the County as well as unincorporated areas of the County.
5. Company and the County desire to enter into this Agreement.
6. The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis.

**THEREFORE, THE PARTIES** agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

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



**“Agreement”** means this Waste Disposal Agreement between County and Company as the same may be amended or modified from time to time in accordance herewith.

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

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

**“CalRecycle”** means the California Department of Resources Recycling and Recovery.

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

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

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

- (1) enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);
- (2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or
- (3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error

or omission or a lack of reasonable diligence of the County, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

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

**“Commencement Date”** means the date on which the obligations of the Parties hereto commence, established as provided in section 6.2(A) hereof.

**“Company”** means Peña’s Disposal Inc..

**“Contract Area”** means the cities of Dinuba, Orange Cove, Company’s current unincorporated franchise area within Fresno County, Tulare County unincorporated hauler Area B, and Company’s Recycling and Transfer facility located at 12094 Avenue 408, Cutler, California.

**“Contract Date”** means the first date on which this Agreement has been executed by both Parties hereto.

**“Contract Rate”** has the meaning specified in section 4.2 hereof.

**“Contract Year”** means the fiscal year commencing on the commencement date of this Agreement in any year and ending on June 30 of the following year.

**“Controllable Waste”** means all Acceptable Waste with respect to which Company has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Recycled Acceptable Waste;
- (2) Not generated from the operations of the Governmental Bodies that, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate.

**“County”** means the County of Tulare, a political subdivision of the State of California.

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

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

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



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

**"Disposal System"** means the Tulare County Visalia or Tea Pot Dome landfill, as applicable to the Company.

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

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

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

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

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

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

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

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

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

“Non-Recycled Acceptable Waste” means all Acceptable Waste other than Recycled Acceptable Waste.

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

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

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

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

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive;
- (3) Carcinogenic/mutagenic/teratogenic;

Qualified Household Hazardous Waste shall not include Unacceptable Waste.

“**Recycled Acceptable Waste**” means any otherwise Controllable Waste that is separated from Acceptable Waste by the generator thereof or by processing and which is “recycled” within the meaning of Section 40180 of the Public Resources Code, as it may be amended from time to time. Recycled Acceptable Waste includes compostable waste or green waste that is diverted to a composting or green waste recycling program.

“**Renewal Term**” has the meaning specified in Subsection 6.1(B) hereof.

“**Residue**” means any material remaining from the processing, by any means and to any extent, of Acceptable Waste or Recycled Acceptable Waste; provided, however, that Residue shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 20% of the amount of such Acceptable Waste or Recycled Acceptable Waste prior to processing).

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

“**Self-Hauled Waste**” means Acceptable Waste collected and hauled by Self-Haulers.

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

“**Service Covenant**” means the covenants and agreements of the County set forth in sections 3.2 and 3.3 hereof.

“**State**” means the State of California.



**“Term”** shall mean the Term of this Agreement.

**“Ton”** means 2,000 pounds.

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

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

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

- (1) Landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and
- (2) A change in applicable law to this WASTE DISPOSAL AGREEMENT; and
- (4) A strike or labor action taken against either Party by a local public employee organization under the provisions of Government Code section 3500, et seq. (the Meyers-Milias-Brown Act) that effects either Party’s ability to perform under the Agreement.

**“Unincorporated Area”** means those portions of the County that are not contained within the jurisdictional boundaries of incorporated cities.

**“Waste Disposal Covenant”** means the covenants and agreements of Company and County set forth in sections 3.1 and 3.2 hereof.

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

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

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

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

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

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

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

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

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

## ARTICLE II REPRESENTATIONS AND WARRANTIES

**2.1 REPRESENTATIONS AND WARRANTIES OF COMPANY.** Company represents and warrants that:

(A) **Existence.** Company is a California corporation validly existing under the Constitution and laws of the State of California.

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

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

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

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



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

**3.1 DELIVERY OF WASTE.**

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

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

(C) **Waste Delivered to Transfer Station.** All Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, performed within Tulare County, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant.. Company shall not be required to deliver Residue resulting from the processing of source-separated Recyclable Materials received at an out of county County- Approved Recyclable Materials Processing Facility. The County may condition its approval of an out of county Recyclable Materials Processing Facility on a full accounting of all materials received at such facility and/or an assurance that residue from such facility will be delivered to the County.

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

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



(F) **Company Actions Affecting County.** Company agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as to permit full and timely compliance by the County with its covenants and agreements with the State. In particular, Company agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance.

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

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

### 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY.

(A) **County Disposal Services.** In providing Disposal Services, the County shall: (1) provide safe, stable, all weather surfaces for travel ways and tipping areas on County landfill property so that Company vehicles will not get stuck or risk tipping over during delivery operations of waste and;(2) provide a gate, scale, travel path, tipping location and exit path at County landfill property that allows for efficient unloading of trucks. The County shall also provide Company with its safety protocols for the operation of the disposal system that affect Company vehicles and drivers.

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



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

### 3.3 COUNTY RIGHT TO REFUSE WASTE.

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

- (1) Unacceptable Waste;
- (2) Controllable Waste delivered at hours other than those provided in section 3.4 hereof;
- (3) Waste that does not constitute Controllable Waste.

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

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

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

### 3.4 MISCELLANEOUS OPERATIONAL MATTERS.

(A) **Operating Time.** The County shall keep the Visalia Landfill open for the receiving of Controllable Waste Monday through Friday from 6:00 a.m. to 4:00 p.m. and Saturday 8:00 a.m. to 4:00 p.m. The County shall keep the Teapot Dome Landfill open for the receiving of Controllable Waste 7 a.m. to 4 p.m. Monday through Friday and 8 a.m. to 4 p.m. Saturday. Both landfills will be closed on the follow-



ing holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. The County plans to close the Teapot Dome Landfill on or about June 30, 2021, and intends to open the Woodville Landfill on or about July of 2022.

(B) **Scales and Weighing.** The Department shall operate and maintain permanent scales at the Disposal System. The Department shall weigh all vehicles delivering waste by or on behalf of Company (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery. Weighing shall include two weights for split trucks as required.

### **3.5 OTHER USERS OF THE DISPOSAL SYSTEM.**

(A) **Other Company Agreements.** The County shall have the right to enter into waste disposal agreements with other companies with respect to Acceptable Waste. In no event shall the Posted Disposal Rate be equal to or less than the Contract Rate. In the event a lower Contract Rate is agreed to with any other entity for disposal of Acceptable Waste generated by that entity within Tulare County, the Contract Rate provided in this Agreement shall be adjusted to match such lower Contract Rate.

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

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

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## **ARTICLE IV CONTRACT RATE**

### **4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE.**

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

### **4.2 CONTRACT RATE.**

(A) **Establishment of Contract Rate.** The Contract Rate payable by Company shall be \$28 per ton for the period from the Commencement Date through the fourth anniversary of the Commencement Date (the "initial Contract Rate"), and \$34 dollars per ton thereafter. The Contract rate is subject to reasonable adjustments due to the following:

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



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

(B) **Special Rates.** The Contract Rate payable by Company per ton is further specified as to the following:

(1) The Contract Rate for waste collected from the city of Dinuba shall be \$28 for five years;

(2) \$21.50 for five years for all out of County Contract Acceptable Waste

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

(D) **Adjustments.** In addition to the other adjustments specified herein, the Contract Rate shall only be adjusted in conjunction to a similar adjustment universally applied to the posted gate Rates established by the County.

(E) **Procedure for Rate Adjustments.** In addition to the rate adjustments authorized above, beginning July 1, 2020 and annually on each July 1 thereafter during the Term of this Agreement, the County Contract Rate may be adjusted for inflation by averaging the percentage change in two Consumer Price Indices, as published by the U.S. Bureau of Labor Statistics (BLS): i) Consumer Price Index, series CUUSA422SA0 San Francisco-Oakland-San Jose, CA, all items, not seasonally adjusted; and ii) Consumer Price Index, series CUUSA421SA0, Los Angeles-Riverside-Orange County, CA, all items, not seasonally adjusted.. The average monthly change in each index shall be calculated by comparing the most recent twelve month period with the corresponding prior twelve month period (e.g., May 2019 would be compared to May 2020). The comparison shall calculate the percentage change between the current period and the prior period for each index. The twenty four (24) comparison values shall be averaged together using a simple average of the values to determine the percentage change.

The initial Contract Rate presented by the County shall be valid through June 30, 2020. The first adjustment to the Contract Rate shall begin as of July 1, 2020. This adjustment shall be annually performed by County, and a copy of such computation shall be provided to the Company no later than April 1 of each year for the Contract Rate to be effective July 1 of that same year.

In no event shall the Contract Rate be increased by more than three percent (3%) in any one year nor shall the Rates decrease below zero percent (0%) causing a reduction in current rates. In the event the percentage increase in the Contract Rate in any year exceeds three (3%) such excess shall be carried forward to the next and succeeding years and applied toward a subsequent increase in the Contract Rate, but only to the extent that any percentage increase in the Contract Rate in that later year is less than three percent (3%). This provision shall be effective in this manner, as long as the index mentioned above is published by government authorities in the same form and based on the same type data being used on the Commencement Date of the Agreement and shall be redefined by County in the event of any change in form and/or basis of indices, to a reasonably comparable standard. Each adjustment computation by County is hereby incorporated by reference herein.

County shall not be entitled to the automatic pass-through of any new fees that affect the State's Integrated Waste Management fee component of the Contract Rate. Any new State or Regulatory fees would require universal application to all Rates set by the County and Company shall review and



approve any such required changes prior to any change being applied to the Contract Rate or any invoices submitted to Company, and such approval shall not be unreasonably withheld, delayed, or conditioned. The adjustment shall be equal to the amount of any new or changed fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any change pursuant to this section 4.2(D) as soon as practicable after becoming aware of the imposition of any fees described above.

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

(F) **Termination in Case of Change in Contract Rate.** Notwithstanding any other provision of this Agreement, Company shall have the right to terminate this Agreement without any further obligation in the event of an increase in the Contract Rate not specifically outlined in this Agreement during the Term hereof.

#### **4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE.**

(A) **Payment by Company.** Company shall take all budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by Company to provide for such payment, the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal.

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

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

### **ARTICLE V BREACH, ENFORCEMENT AND TERMINATION**

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



## 5.2 TERMINATION WITH CAUSE.

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

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

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

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

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

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

## ARTICLE VI TERM

### 6.1 EFFECTIVE DATE AND TERM.

(A) **Initial Term.** This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon Company and the County from the Commencement Date and shall continue in full force and effect for sixty months, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination, or renewed for the Renewal Term as provided below.



(B) **Option to Renew.** This Agreement shall be subject to renewal by mutual agreement of the Parties, on or before June 30, 2025, for an additional term of five (5) years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. There will be one five-year renewal option. Absent renewal, the Agreement shall expire on June 30, 2025.

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

**6.2 COMMENCEMENT DATE.** The Commencement Date for the Agreement shall be July 1, 2020.

## **ARTICLE VII GENERAL PROVISIONS**

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

### **7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.**

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

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

(C) **Impact on Contract Rate.** If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to either Party of meeting its obligations hereunder and providing Disposal Services to Company or Company's delivery of its Controllable Waste to the Disposal System in accordance herewith, the adversely affected Party shall be entitled to an adjustment in the Contract



Rate as provided in section 4.2 herein equal to the amount of the increased cost a result thereof. Any cost reductions achieved through the mitigating measures undertaken by the adversely affected Party pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Contract Rate would have otherwise been adjusted or shall serve to adjust the Contract Rate to reflect such mitigation measures, as applicable.

### **7.3 INDEMNIFICATION.**

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

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

### **7.4 LIMITED RECOURSE.**

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

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

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

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

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

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



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

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

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

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

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

**7.17 DISPUTES AND DISPUTE RESOLUTION:** If a dispute arises between the Parties out of or relating to this Agreement, or the breach of the Agreement, then the Parties shall continue with their responsibilities under this Agreement while attempting in good faith to resolve the dispute. If the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, or such other time period as the Parties may agree upon, then either Party may pursue litigation to resolve the dispute.

**7.16 COUNTERPARTS:** The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]





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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

PEÑA'S DISPOSAL INC.

COUNTY OF TULARE

By [Signature]  
Its VICE PRESIDENT

By \_\_\_\_\_  
Chairman, Tulare County Board of Supervisors

ATTEST: JASON T. BRITT, County Administrative Officer/Clerk of the Board of Supervisors

By [Signature]  
Its Corporate Secretary

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form  
County Counsel

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

By [Signature]  
Deputy

DocuSigned by:  
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Matter # 2019798

AZ/JLK/10-23-2019/2019798/1392476