

1 **AGREEMENT BETWEEN THE COUNTY OF LAKE AND**
2 **CERES ENVIRONMENTAL**
3 **FOR REDWOOD VALLEY FIRE DEBRIS DISPOSAL AND**
4 **REIMBURSEMENT OF COSTS**
5 **AT THE EASTLAKE SANITARY LANDFILL**

6 THIS AGREEMENT, is entered into this _____ day of _____, 2018
7 by and between the County of Lake, hereinafter "COUNTY" and CERES Environmental,
8 hereinafter "CERES".

9 **RECITALS**

10 WHEREAS, between October 8, 2017, and October 9, 2017, the Redwood Valley Fire
11 began burning in Mendocino County, destroying an estimated 545 structures; and

12 WHEREAS, Mendocino County was declared a disaster area by the President due to the
13 effects of the fire; and

14 WHEREAS, the disposal of hazardous and non-hazardous solid waste and debris
15 resulting from the fire is of the utmost importance for the protection of public health and the
16 environment; and

17 WHEREAS, the Federal Emergency Management Agency has assigned the U.S Army
18 Corps of Engineers (USACE) responsibility for Redwood Valley Fire debris removal operations;
19 and

20 WHEREAS, USACE has entered into a contract with Ceres Environmental (Ceres),
21 included as Exhibit "A" herein, to provide debris removal, hauling, and disposal from private
22 properties in Mendocino County; and

23 WHEREAS, CERES desires to dispose of certain debris from the Redwood Valley Fire at
24 COUNTY's Eastlake Sanitary Landfill in Clearlake, CA; and

25 WHEREAS, Chapter 9, Article II, Section 9-15A of the Lake County Code restricts
26 disposal at the Eastlake Landfill to either inhabitants outside of the County of Lake or from any
27 firm or corporation that does not have an established place of business in the County of Lake,
28 except as may be provided by contract or agreement with the Board of Supervisors; and

 WHEREAS, COUNTY has identified that the landfill contains adequate airspace
capacity and operational capabilities to accept no more than the quantity of debris described
herein, and established a specifically prohibited hauling route and appropriate charges which will
reimburse COUNTY for all costs related to the provision of these services, to accept the debris.

 NOW, THEREFORE, in consideration of the mutual covenants, agreements and
conditions herein, and other valuable consideration, COUNTY and CERES agree as follows:

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I.

DEFINITIONS

The following terms shall have the following meanings:

- a) "Acceptable Waste" means fire debris such as ash, contaminated soil, remnant structures, and other debris authorized for disposal at the Eastlake Landfill under its land use entitlements, approvals and permits as they now exist or may hereafter be amended.
- b) "Affiliate" means any person, company, or firm under common control with CERES.
- c) "Landfill" means the Eastlake Sanitary Landfill, located adjacent to the City of Clearlake, California at 16015 Davis Street, Clearlake, CA.
- d) "Unauthorized Waste" means all wastes that are radioactive, flammable, highly volatile, explosive, toxic, or liquid materials, all wastes and substances defined as hazardous waste under Title 42 of the United States Code, Section 6903(5), Sections 25117 and 25316 of the California Health and Safety Code, or the regulations promulgated under such statutes, as amended from time to time; all materials defined as medical waste in California Health and Safety Code Section 25032.2, or the regulations promulgated thereunder, as amended from time to time; tree stumps; pieces of concrete larger than two feet in any dimension; industrial wastes; car and truck tires; electronic waste; white goods (such as washers, dryers, refrigerators); cars; trailers; recreational vehicles; boats with engines; and any other wastes that the Landfill is not authorized to accept for disposal under its land use entitlements, approvals and permits as they now exist or may hereafter be amended.

II.

TERM

The term of the Agreement shall begin on January ____, 2018 (the "Effective Date") and shall end on June 30, 2018, or upon completion of the scope of work assigned to CERES from USACE for the Redwood Valley Fire, whichever occurs first.

III.

REPRESENTATIONS

County warrants and represents to CERES that COUNTY owns and operates the Landfill, and that the Landfill is a fully-permitted, Certified Sub Chapter "D" solid waste disposal landfill and has permitted capacity sufficient to perform its obligation under this Agreement. CERES represents and warrants to COUNTY that CERES is authorized to perform its obligations under this Agreement

IV.

OBLIGATIONS OF COUNTY

Throughout the Term, and subject to the terms and conditions herein, COUNTY shall have the following obligations:

- A. Receipt of Acceptable Waste.** COUNTY shall receive, accept, and safely and lawfully

dispose of, at the Landfill, all Acceptable Waste available for disposal from CERES Redwood Valley Fire debris disposal operation and delivered to the Landfill during the Term, subject to the following conditions:

- 1) COUNTY shall accept no more than 75,000 tons of acceptable waste by United States Army Corps of Engineers debris removal contractors.
- 2) Hours of operation for CERES to dispose of Acceptable Waste at the Landfill shall be 7:00 am to 5:00 pm, Monday through Friday; and 7:30 am to 5:00 pm, Saturday and Sunday.

B. Disposition of Unauthorized Wastes. COUNTY will refuse to accept Unauthorized Waste delivered to the Landfill by CERES. Upon discovery of Unauthorized Wastes delivered to the Landfill by CERES, CERES will be notified to remove and dispose of any Unauthorized Wastes to another disposal or processing site permitted to accept such wastes at CERES's sole expense in a timeframe that is acceptable to the landfill operator and the Environmental Health Department acting as the Local Enforcement Agency.

C. Compliance with Laws. COUNTY shall at all times substantially comply with all applicable laws, permits and approvals pertaining to COUNTY's performance under this Agreement, including, but not limited to environmental laws, permits and approvals applicable to the Landfill as they may be enacted, issued or amended during the Term; provided, however, that nothing in this section shall diminish or modify CERES obligations regarding disposition, indemnification, or responsibility for damage or repairs caused by the delivery of Unauthorized Waste to the Landfill.

V.

OBLIGATIONS OF CERES

Throughout the Term, and subject to the terms and conditions herein, COUNTY shall have the following obligations:

A. Transportation Route. CERES shall not transport waste pursuant to this Agreement using Highway 20 east of the intersection of State Highway 29 and west of State Highway 53.

B. Disposition of Unauthorized Waste. Upon notification by COUNTY, CERES will be responsible for the removal and disposal of any Unauthorized Wastes to another disposal or processing sites permitted to accept such wastes at CERES sole expense in a timeframe that is acceptable to the landfill operator and the Environmental Health Department acting as the Local Enforcement Agency. CERES shall be solely responsible for any and all damages to the landfill facility and/or its assets and/or any injuries to County employees or customers caused by the delivery of Unacceptable Waste.

C. Reports. CERES shall provide to the County Public Services Director or his/her designee weekly written reports listing the properties from which the debris originated, quantities from each property, and a description of the type of debris disposed.

D. Compliance with Rules. CERES shall comply with all work and safety rules in effect at the Landfill, and all transportation requirements for waste disposal.

VI.

INSURANCE REQUIREMENTS

CERES shall not commence work under this Agreement until it has obtained all the insurance required herein and certificate(s) of insurance have been submitted to the COUNTY. The certificate(s) of insurance shall contain a provision that coverage afforded under the policy will not be cancelled until at least twenty (20) days prior written notice has been given to COUNTY.

A. Compensation Insurance. CERES shall procure and maintain, at its sole expense during the term hereof, Workers' Compensation Insurance for all of its employees to be engaged in preparation and transport of waste for delivery to the Eastlake Landfill.

B. Public Liability and Property Damage Insurance. CERES shall procure and maintain, at its sole expense during the term hereof, Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than One Million Dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's insurance.

C. Vehicle Liability Insurance. CERES shall procure and maintain, at its sole expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with the operations associated with the preparation, transport and delivery of refuse to the Eastlake Landfill.

CERES shall require any subcontractor to procure and maintain, during the life of its Agreement, similar insurance as specified in the section, with minimum limits equal to one-half the amounts required by CERES and containing the “Additional Insured Endorsement” as required by Agreement in this section. CERES shall not commence operations under this Agreement, until it has had delivered to County an “Additional Insured Endorsement” naming COUNTY, its officers, employees and agents as additional insured under the aforesaid policy. CERES shall not allow any subcontractor to commence work until the insurance required of the subcontractor has been obtained. Any failure of CERES to maintain the insurance required by this section or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement period. Certificate(s) evidencing the issuance of the following insurance shall be filed with the COUNTY within ten (10) days after the date of execution of this Agreement by CERES:

VII.

1 **DISPOSAL FEES**

2 CERES agrees to pay County the Gate Rate of \$67.62 per ton of Acceptable Waste delivered by
3 CERES to the Landfill and accepted for disposal by County. Every load with more than 25%
4 volume recyclables, as determined by the Landfill Manager or his/her designee, shall be subject
5 to a non-recycling surcharge of double the cost of the load. Every unsecured load will be subject
6 to a \$100 unsecured load surcharge.

7 **VIII.**

8 **BILLINGS AND PAYMENTS**

9 CERES will provide to COUNTY a list of contractor names entitled to charge on the CERES
10 account. The driver of each vehicle will be required to provide a bill of lading with the waste
11 origin of their delivered load. COUNTY will issue a receipt to each driver who delivers a waste
12 load to the Landfill for charges made to the CERES charge account. COUNTY shall submit to
13 CERES a monthly statement for Acceptable Waste delivered by CERES to the Landfill during
14 the prior month. The statement will show the following information: ticket number, date of each
15 delivery; vehicle reference number; quantity of net tons weighed; and total charge per load.
16 Replacement individual tickets will be provided to upon request. COUNTY's statements shall
17 be deemed delinquent if not paid within thirty (30) days from the statement date, and thereafter
18 bear interest on the unpaid balance at a rate not to exceed 1.5% per month. Charges will be
19 suspended automatically if any charges are 60 days or more delinquent or if CERES exceeds the
20 credit limit set for their charge account. Charging privileges can be reinstated only if account
21 balance is no more than 30 days delinquent and/or the account balance is reduced to below the
22 account credit limit. Charges more than 90 days delinquent shall be deemed to constitute a
23 breach of the agreement.

24 **IX.**

25 **INDEMNITIES**

26 **A. Unauthorized Waste Indemnification.** CERES shall indemnify, defend and hold
27 harmless County, its officers, employees and agents, from and against any and all costs,
28 charges, expenses (including reasonable attorneys' fees), suits, actions, claims, judgments
and liabilities directly or indirectly resulting from CERES delivery of Unauthorized
Wastes to the Landfill. The foregoing indemnity is intended to operate as an agreement
pursuant to section 107(e) of the Comprehensive Environmental Response,
Compensation and Liability Act ("CERLA") to defend, protect, hold harmless, and
indemnify COUNTY and its officers and employees from liability. This indemnity shall
survive termination of this Agreement.

B. Landfill Indemnification. County agrees to indemnify, hold harmless and defend
CERES and their respective officers, employees and agents, from and against any and all
costs, charges, expenses (including reasonable attorneys' fees), suits, actions, claims,
judgments and liabilities directly or indirectly resulting from the delivery and disposal of

1 all Acceptable Wastes delivered to the Landfill by CERES, related to the ownership,
2 operation, remediation, closure or postclosure of such Landfill, including, but not limited
3 to, environmental impairment and liability under CERCLA, but excluding liability for
4 Unauthorized Wastes delivered by CERES to the Landfill, if any, or to the extent caused
5 by the negligence or willful misconduct of CERES or their officers, employees,
6 contractors, or agents. This indemnity shall survive termination of this Agreement.

7 **X.**

8 **BREACH OF CONTRACT**

9 COUNTY may terminate its participation in the Agreement if CERES fails to fulfill its
10 obligations under the Agreement through no fault of COUNTY. However, no such
11 determination for cause may be effected unless CERES is given: (1) not less than thirty (30)
12 calendar days written notice (delivered by certified mail, return receipt requested) of the intent to
13 terminate, and (2) an opportunity for consultation with COUNTY and a reasonable opportunity
14 to correct the breach before termination.

15 **XI.**

16 **MODIFICATION**

17 This Agreement may only be modified by a written amendment hereto, executed by both parties.

18 **XIII.**

19 **ASSIGNMENT**

20 This Agreement shall not be assigned expressly, impliedly or by action of law without the prior
21 written consent of COUNTY by its Board of Supervisors. Any attempt at assignment of the
22 rights or obligations of the Agreement, except for those specifically consented to by COUNTY
23 shall be void.

24 **XIV.**

25 **NOTICES**

26 Any and all notices to be given under this agreement, or which either party may desire to give to
27 the other, shall be in writing and transmitted by personal delivery, nationally-recognized
28 overnight courier or registered or certified mail, return receipt requested, postage prepaid. Each
notice so transmitted shall be deemed received when delivered, or on the third day following
deposit in the United States mail as aforesaid. Notices shall be addressed as follows (unless a
different address is provided by notice in accordance with this Section):

If to County: Director
Public Services Department, County of Lake
333 Second Street
Lakeport, California 95453

If to CERES: Ceres Environmental
3825 85th Ave N
Brooklyn Park, MN 55443

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XV.

FORCE MAJEURE

Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an “act of God” (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, acts of any government (including legislative, administrative, or judicial action), strikes, work stoppages or slowdowns, sickouts, picketing, or other concerted job action, or other similar causes which are not the fault of, and beyond the reasonable control of, the party claiming excuse from performance. Notwithstanding the foregoing, labor strikes or unrest by a party’s own employees shall not constitute acts of God forgiving performance hereunder. In the event that the non-performing party does not re-commence performance within thirty (30) days after the occurrence of the event which initially prevented such performance, the other party shall be entitled to terminate this Agreement without further liability to the non-performing party.

XVI.

OVERRIDING LAWS

The obligations of the parties under this Agreement are subject to any and all controlling Federal and state laws and regulations. Should any material obligation or covenant of either party under this Agreement be determined by a court of competent jurisdiction to be unenforceable by reason of any Federal or state law or regulation, then neither party shall be liable to the other party for its failure to perform obligation or covenant; provided, however, that in such event, either party may elect to terminate this Agreement without liability to the other party.

XVII.

MISCELLANEOUS

- A. This Agreement shall bind, and inure to the benefit of, the respective successors and assigns of each party; provided, however, that neither party shall assign its rights under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld.
- B. The waiver by either party of any provision of this Agreement must be in writing, signed by the party to be charged, and no waiver shall be deemed to be a waiver of any other provision nor of any subsequent breach of violation of the same provision.
- C. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties and their representatives, successors and permitted assigns, except as expressly provided herein. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.
- D. The Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements between the parties, whether written or oral, relating to such subject matter. If a court finds any

1 provision of this Agreement invalid or unenforceable as applied to any circumstance, the
2 remainder of this Agreement and the application of such provision to other persons or
3 circumstances shall remain in effect. The parties further agree to replace such void or
4 unenforceable provision with a valid and enforceable provision which will achieve, to the
5 extent possible, the economic, business and other purposes of the void or unenforceable
6 provision.

7 **E.** Time is of the essence of this Agreement

8 **F.** The headings contained in the agreement are for description purposes only. The
9 Agreement shall not be construed for or against either party, it having been prepared by
10 both parties.

11 **G.** This Agreement shall be governed by the laws of the State of California.

12 IN WITNESS THEREOF, the parties have executed this Agreement as of the date first above
13 written.

14 COUNTY OF LAKE

CERES ENVIRONMENTAL

15 By: _____
16 Chair, Board of Supervisors

By: _____
Name:

17
18
19 ATTEST: CAROL J. HUCHINGSON
20 CLERK OF THE BOARD
21 OF SUPERVISORS

APPROVED AS TO FORM:
ANITA GRANT
County Counsel

22 By: _____

By: _____