

**AGREEMENT BETWEEN HUMBOLDT WASTE MANAGEMENT AUTHORITY
AND
HUMBOLDT SANITATION COMPANY INC.
TO PROVIDE GREEN WASTE TRANSPORTATION SERVICES**

This Agreement is made by and between the Humboldt Waste Management Authority, a joint powers authority (herein “HWMA” and the “Authority”) and Humboldt Sanitation, a California corporation (herein “Humboldt Sanitation” and “Contractor”). This Agreement is effective on January 1, 2019.

RECITALS

WHEREAS, the HWMA owns and operates a municipal solid waste transfer station for the benefit of its member agencies located at 1059 W. Hawthorne St., Eureka, CA 95501 (“Hawthorne Street Transfer Station”); and

WHEREAS, the California Integrated Waste Management Act of 1989 (AB 939) requires the diversion of waste from landfills, and

WHEREAS, Green Waste and other wood waste can be diverted from the landfill and composted or transformed for a beneficial use and result in a financial savings for Authority rate-payers; and

WHEREAS, the Authority has a facility to accept Green Waste from self-haulers and franchise haulers, which is then loaded into bins and transported to a processing facility located in Arcata, Humboldt County; and

WHEREAS, Humboldt Sanitation has the expertise and equipment to transport Green Waste; and

WHEREAS, Humboldt Sanitation holds all required State and local permits or licenses to provide trucking services in California; and

WHEREAS, the Authority wishes to obtain such transportation services, and on July 15, 2018 solicited proposals from interested parties to submit proposals for transportation services of green waste; and

WHEREAS, the HWMA Board of Directors approved Humboldt Sanitation’s service proposal at their regular meeting on October 11, 2018, and directed the development of this agreement; and

NOW THEREFORE, in consideration of the mutual promises, covenants, and representations recited herein and made a material part hereof, the parties agree as follows:

1. DEFINITIONS

Unless otherwise defined in the text, capitalized words will have the meaning set forth as follows:

“Green Waste” means waste tree trimmings, brush, wood that is not treated with preservatives or painted, lawn clippings and other waste foliage.

“Hawthorne Street Transfer Station” means the Authority owned and operated transfer station located at 1059 West Hawthorne Street, Eureka, CA.

“Mad River Compost Facility” means the green waste compost facility operated by Mad River Hardwoods, located at 6360 West End Road, Arcata, CA.

2. SCOPE OF SERVICES

Contractor shall perform Green Waste transportation for the Authority in accordance with this Agreement. The term “Services” shall mean the Services to be performed by Contractor, described in this Section 2 as follows:

- a. **Bins.** Contractor shall provide, at their expense, five (5) top-loading bins, each with a minimum 40-cubic yard capacity, to the Transfer Station (“Bins”). The Authority’s Executive Director or designee, in his or her discretion, may approve the use of different sized bins. All Bins shall be configured to accommodate tarps if needed. Contractor will a minimum of two (2) bins will be located at HWMA’s Transfer Station at all times. Bins will be placed by Contractor as directed by HWMA. .
- b. **Proper loading.** Humboldt Sanitation shall deliver Bins to the Transfer Station ready for loading. HWMA shall load the Bins in accordance with practices developed with Humboldt Sanitation, and shall be liable to Humboldt Sanitation for damage to the Bins that results from loading where HWMA is solely responsible for such damage. HWMA shall pay for the actual cost of repairs as invoiced from Humboldt Sanitation to HWMA, subject to advance review of estimated repair costs. Notwithstanding the above, HWMA shall not be responsible for costs associated with maintenance and repair of the Bins arising from ordinary wear and tear, including without limitation, cosmetic damage that does not impact the structural or functional integrity of the Bin for use as required under this Agreement.
- c. **Bin inspection.** After loading, HWMA will inspect each Bin, clean loose debris from the edges and remove or flatten anything protruding above top of Bins.
- d. **Tarpping.** If requested by Humboldt Sanitation, HWMA staff will assist with tarp covering over loaded Bins prior to their departure from the Transfer Station. HWMA’s assistance is without assumption of liability, and Humboldt Sanitation is responsible to determine that condition of the truck load meets all local and state laws.
- e. **Transportation.** Contractor shall provide the truck and labor necessary to transport the bins, when full of Green Waste for transport from HWMA’s Transfer Station to Mad River Compost Facility. Contractor may not simultaneously haul Green Waste obtained form a source other than the Authority in any Bin transporting Green Waste pursuant to this agreement.
- f. **Frequency:** Contractor shall transport Green Waste Bins from the Transfer Station to the Compost Facility at such a frequency as to prevent overflow of accumulated Green Waste at the Transfer Station and minimize the amount of stored material in the Green Waste bunkers. Bin delivery and transportation schedule shall be directed by HWMA’s Director of Operations, or his/her designee, pursuant to a dispatch protocol developed between HWMA and the Contractor.
- g. **Scales and weight records.** Humboldt Sanitation will record each Bin weight as t both enters and leaves the Hawthorne Street Transfer Station. The parties shall develop light load protocols in a manner sufficient to allow HWMA to accurately track the amount of Green Waste diverted. The parties shall use light load protocols presently in place for such tracking,

to the extent such protocols adequately allow for the tracking required by the Authority to monitor diversion rates. However, in the event such present protocols do not allow the Authority to adequately monitor diversion rates, Humboldt Sanitation shall implement alternate protocols, and the parties shall negotiate in good faith should the alternate protocols cause an actual increase of costs.

- h. **Reporting.** Contractor shall submit by fax or email to HWMA the net weight of every bin hauled by Contractor pursuant to this Agreement within 5 business days of hauling.
- i. **Humboldt Sanitation transportation permits.** Humboldt Sanitation will secure and maintain all necessary permits required for transportation of Green Waste and will promptly supply the Authority with copies of any permits upon request.
- j. **Complying with rules at local facilities.** Humboldt Sanitation will comply with all rules, regulations, protocols, instructions and directions at the HWMA Transfer Station, and the Composting Facility, including but not limited to rules with respect to delivery, weighing, unloading, load checking and removal of materials that cannot be accepted at the Composting Facility.
- k. **Right to inspect operations.** The Authority may, but is not obligated, to observe and inspect operations at Humboldt Sanitation's Facility.

3. TERM OF AGREEMENT. The effective date of this Agreement shall be January 1, 2019 and this Agreement shall terminate on March 15, 2024. The indemnifications of Section 6 shall survive termination of the Agreement.

4. RECORDS AND REPORTING

Humboldt Sanitation shall maintain at its office or other place acceptable to the Authority full and complete accounting books and records, and shall prepare and submit, without additional request, and at no cost to the Authority, records documenting Humboldt Sanitation's proper performance under this Agreement. The Authority may audit such books and records at the Authority's own expense upon three working days' notice.

5. COMPLIANCE WITH APPLICABLE LAW

Humboldt Sanitation will perform all its obligations under this Agreement in accordance with accepted practice for comparable facilities, applicable law and the provisions of this Agreement. Humboldt Sanitation is solely liable for all fines and penalties that may be imposed to the extent that those fines and penalties are the result of Humboldt Sanitation's violations of applicable law. Humboldt Sanitation retains responsibility for all injuries, accidents and other mishaps associated with its performance under this Agreement, including personal injury, or damage to any real or personal property. Humboldt Sanitation will promptly report any such events to the Authority orally, followed by written notice within three working days, including details of any witness statements. In the event of an injury accident or destruction of property the Authority may request that Humboldt Sanitation deploy its emergency operations plan. Contract shall provide a copy of its emergency operations plan to the Authority immediately upon execution of this Agreement. . Said plan shall mitigate and correct hazards that may arise due to accidents or destruction of transportation services, including property damage and traffic disruption, and will include any business plan for emergency response to the release or threatened release of hazardous materials in accordance with applicable law.

6. INSURANCE AND INDEMNITY.

6.1 Insurance. Humboldt Sanitation shall secure and maintain in full force and effect:

- a. **General Liability:** General liability limits with minimum limits of liability per occurrence of One Million Dollars (\$1,000,000); and per aggregate of Two Million Dollars (\$2,000,000);
- b. **Comprehensive automobile liability insurance:**
Humboldt Sanitation shall obtain comprehensive coverage for all vehicles and all motor equipment, owned, leased, hired, borrowed or operated in its performance of this Agreement, and shall obtain uninsured/underinsured motorists liability coverage. Deductibles will be no greater than \$10,000 per loss unless otherwise approved at the sole discretion of the Authority, which deductibles will be the responsibility of Contract. Minimum limits of liability for automobile liability will be One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- c. **Workers' Compensation insurance:** as required by state law.
- d. **Employer's liability insurance:** bodily injury by accident in the amount of One Million Dollars each accident and bodily injury by disease in the amount of One Million Dollars (\$1,000,000) policy limit and One Million Dollars each employee.

Humboldt Sanitation shall ensure that insurance policies are always primary with respect to performance under this Agreement. Humboldt Sanitation will include the Authority and its employees, officials, members, officers, agents, assigns and volunteers by endorsement or otherwise as additional insured under all policies except with respect to employer's liability insurance.

Humboldt Sanitation shall file with the Authority evidence of coverage in force, including endorsements, together with a Certificate of Insurance on an authority-approved form.

6.2 Indemnification.

Humboldt Sanitation shall defend, indemnify and hold harmless the HWMA and its employees, officials, members, officers, agents, assigns and volunteers from and against any and all liability to which any of them may be subjected by reason or resulting directly or indirectly from actions or inactions of Humboldt Sanitation performed or occurring under or in connection with the Agreement, whether or not those liabilities are litigated, settled or reduced to judgment.

7. FEES AND PAYMENT.

7.1 Fees:

a) Base Fees, Hauling.

The Authority shall pay Contractor at the rate of \$344 per load, (\$172.00 per Bin) containing Green Waste that is hauled from the HWMA's Transfer Station to Mad River Compost Facility Pursuant to this Agreement. For purposes of this Agreement, one load is equivalent to two Bins.

b) Annual Adjustment of Fees. The hauling rate specified in Section 7.a shall be adjusted annually on July 1, beginning July 1, 2020, and every year thereafter for the term of the agreement in an amount equal to seventy-five percent (75%) of the annual change in the Consumer Price Index for the U.S. City Average, All Urban Consumer Price Index (CPI-U): 1982-84 = 100, for the month of March, compiled and published by the United States

Department of Labor, Bureau of Labor Statistics of the preceding year multiplied by the then current Base Transportation Rate.

c) Base Fees, Fuel.

The Authority shall pay Contractor a base fuel fee at the rate of \$21.00 per Bin containing Green Waste that is hauled from the HWMA's Transfer Station to Mad River Compost Facility.

d) Base Fuel Rate Adjustment. The base fuel rate shall be adjusted each month by comparing the Fuel Price Index levels with the lesser of:

- (i) Contractor's average cost of diesel fuel for the prior month; or
- (ii) Average California weekly diesel Fuel Price Index for the four weeks prior to the month being invoiced, published by the US Department of Energy (<http://www.eia.gov>).

e) Excessive Wait Time

In the event the Contractor is required to wait at the Transfer Station or the Mad River Compost Facility longer than 15 mins by circumstances that are outside the Contractors control, Humboldt Sanitation shall charge the Authority for said wait time at the rate of \$80 per hour charged in ¼ hour increments.

7.2 Payment terms.

Humboldt Sanitation shall invoice HWMA each month by the twentieth day of the month for services provided the previous month and HWMA shall pay Humboldt Sanitation within twenty (20) days of receipt of each invoice, provided such invoice is undisputed. If HWMA disputes an invoice, it will pay the undisputed amount and provide notice to Humboldt Sanitation of the dispute within ten (10) days receipt of the invoice, together with any request for additional information, identified with reasonable specificity. Within ten (10) days of receiving the HWMA's notice of dispute, Humboldt Sanitation will respond and supply any requested information. If Humboldt Sanitation does not respond within those ten (10) days, it will be deemed to concur with Authority. If the HWMA disagrees with Humboldt Sanitation's response and the HWMA and Humboldt Sanitation cannot reach agreement during a fifteen (15) day working period immediately following the Humboldt Sanitation's response, either party may submit the matter in accordance with dispute resolution procedures established in this Agreement.

Payment by HWMA to Humboldt Sanitation is not deemed a release of the responsibility and liability of Humboldt Sanitation, its employees, contractors, agents and consultants for the services to be performed under this Agreement, nor is payment deemed to be an assumption of responsibility or liability by the Authority for any defect or error in Humboldt Sanitation's services.

8. EVENTS OF DEFAULT.

8.1 Humboldt Sanitation Default. Each of the following constitutes an event of default:

- a. Breach of Agreement – Humboldt Sanitation fails to perform any of its obligations under this Agreement and fails to cure that breach within thirty (30) days of receiving notice from the HWMA specifying the breach.

b. Attachment of any equipment owned by Humboldt Sanitation that is necessary for its ability to provide transportation services is seized, attached, or levied upon and not placed back into service within two business days.

c. Bankruptcy, insolvency, liquidation. Humboldt Sanitation files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator of Humboldt Sanitation for any part of Humboldt Sanitation's operating assets or property.

8.2 HWMA default. Each of the following constitutes an event of default:

a. The HWMA fails to pay the fee in accordance with Article 7.

8.4 Remedies upon default.

a. Authority's remedies. Upon occurrence of a Humboldt Sanitation default, the Authority has the following rights:

- (i) To terminate the Agreement;
- (ii) To suspend the Agreement;
- (iii) All other available remedies to exercise its remedies in accordance with this Agreement in any other available remedies at law and in equity including specific performance.

(b) Humboldt Sanitation's remedies. Upon occurrence of an Authority default, Humboldt Sanitation has the rights to exercise any and all available remedies at law.

8.5 Waiver. Either party's waiver of any breach or default may not be deemed to be a waiver of any other breach or default, including ones with respect to the same obligations under this Agreement. The subsequent acceptance by either party of any damages or other money paid by the other party may not be deemed to be a waiver by that party of any preexisting or concurrent breach or default. Failure to object to breach or event of default is not and may not be construed as a waiver of that provision.

9. DISPUTE RESOLUTION. During the pendency of any dispute hereunder, the Parties shall continue to perform their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner. Following the parties' mutual good faith efforts to resolve disputes for a period of no less than thirty (30) days, the parties may attempt to resolve their dispute through non binding arbitration.

10. INDEPENDENT CONTRACTOR STATUS. The parties intend that Humboldt Sanitation will perform the services required by this Agreement as an independent Contractor engaged by the Authority and not as an officer or employee of the Authority. No employee or agent of Humboldt Sanitation will be deemed to be an employee or agent of the Authority. Humboldt Sanitation will have exclusive control over the manner and means of performing its obligations under this Agreement. Humboldt Sanitation officers, employees or agents will not obtain any rights to retirement benefits, workers compensation or any other benefits that accrue to Authority employees.

11. PARTIES'S REPRESENTATIONS. Humboldt Sanitation represents and warrants as follows:

- a. Humboldt Sanitation has full legal right, power and authority to execute, deliver, and perform its obligations under this Agreement; and
- b. The undersigned is duly authorized to bind Humboldt Sanitation to this Agreement.

12. ASSIGNMENTS. This Agreement may not be assigned in whole or in part without advance written approval from HWMA which approval shall be based on HWMA's assessment, in its discretion, of such factors as whether the prospective assignee has the economic ability to meet the terms of this Agreement, will maintain the levels of insurance required, and is otherwise capable of adequately performing its obligations under this Agreement without increasing HWMA's exposure to liability or insurance premiums.

13. SUBCONTRACTORS. Humboldt Sanitation may use subcontractors only upon the advance written approval of the HWMA. Approved subcontractors shall satisfy all insurance requirements of this Agreement.

14. AMENDMENTS. This Agreement may be amended only upon mutual written agreement duly authorized and executed by both parties.

15. NOTICES. Notices and other communications made under this Agreement shall be in writing, first class postage prepaid or delivered personally to the following address, which may be changed by notice from the parties:

c/o Tasha Eisner
 Humboldt Sanitation
 2585 Central Avenue
 P.O. Box 2812
 McKinleyville, CA 955198

c/o Executive Director
 Humboldt Waste Management Authority
 1059 West Hawthorne Street
 Eureka, CA 95501

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement effective on

HUMBOLDT SANITATION

By _____
 Greg Cain, President

Date _____

HUMBOLDT WASTE MANAGEMENT AUTHORITY

By _____
 Michael Sweeney, Chair

Date _____

Approved As To Form:

 Nancy Diamond, Authority Counsel

Date _____

Insurance Certificates Approved:

By: _____

Date _____