

**AGREEMENT BETWEEN
THE HUMBOLDT WASTE MANAGEMENT AUTHORITY
AND
CITY OF ARCATA
FOR GREENWASTE DROP-OFF & PROCESSING SERVICES**

THIS AGREEMENT is made this 12th day of November, 2020, by and between the Humboldt Waste Management Authority (“Authority” or “HWMA”), a joint powers authority, 1059 West Hawthorne Street, Eureka, CA 95501, and the City of Arcata (“City”), a municipal corporation, 736 F Street, Arcata, CA 95521.

WHEREAS, the California Integrated Waste Management Act of 1989 (AB939) requires the diversion of waste from landfills, and greenwaste and other organic materials make up approximately 20% of the Authority’s landfill disposed waste; and

WHEREAS, in 2015 the California State Legislature passed the Mandatory Commercial Organics Recycling Act (AB 1826) requiring diversion of organic materials generated by commercial and multifamily residential dwelling units depending on the amount of waste they generate per week; and, local government is responsible for identifying generators, assisting in the education, and reporting of organic diversion activities; and

WHEREAS, in 2006 the Authority assisted in the development of a facility to accept greenwaste and to compost and otherwise process said materials at a site located at 6360 West End Road, Arcata, CA, (“Facility”) with two entities who operated under contract with the Authority: Mad River Hardwoods, Inc. to operate the drop-off portion of the Facility and GESS Environmental to process the materials accepted at the drop-off site, which was assigned to Mad River Hardwoods, Inc. on June 6, 2011; and

WHEREAS, HWMA and Mad River Hardwoods, Inc. (“MRH”) entered into a 10-year agreement for “Greenwaste Drop-off and Processing Services” effective July 13, 2017 (“MRH Greenwaste Agreement”); and

WHEREAS, on December 19, 2007 the City and HWMA entered into an agreement for “Greenwaste Drop-Off Service,” for the acceptance and processing of greenwaste at the Facility (“Prior Agreement”); and

WHEREAS, since entering into the Prior Agreement, Arcata residents have been able to divert greenwaste from the landfill and compost it for beneficial use, resulting in a financial savings to the Authority and Arcata rate-payers; and

WHEREAS, the MRH Greenwaste Agreement allows City residents to drop-off greenwaste at the Facility; and

WHEREAS, under the Prior Agreement, the City pays HWMA for actual tonnage of greenwaste delivered by Arcata residents who are customers of the City’s solid waste franchise hauler without an additional greenwaste processing charge; and

WHEREAS, the Prior Agreement expired in December 31, 2013, however the City and the Authority have continued to provide for uninterrupted greenwaste drop off and processing services for the benefit of City residents who receive franchise solid waste disposal and curbside recycling services, invoiced and paid between the City and the Authority; and

WHEREAS, the City and the Authority desire to enter into a new agreement for greenwaste drop-off services to replace the Prior Agreement.

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

1. Definitions. The following terms shall have the following definitions:

Acceptable Materials is defined in Section 6.

Arcata Contract Registered Self-Haul Delivery is defined in Section 4(A).

City Customer is defined in Section 4(A).

Contaminated Materials means containing more than 10% unacceptable or unpermitted material, or containing a level of unacceptable material such that material cannot be reasonably cleaned, or containing hazardous material at any concentration.

Commencement Date is defined in Section 3.

Contractor means Mad River Hardwoods, Inc, and its successors and assigns to the MRH Greenwaste Agreement.

Effective Date means the date on which this Agreement first becomes effective and is the date set forth in the preamble above.

Facility means the Greenwaste drop-off and processing facility located at 6360 West End Road, Arcata, CA.

Greenwaste means waste tree trimmings, brush, wood that is not treated with preservatives or painted, lawn clippings, etc.

MRH Greenwaste Agreement means that certain agreement between HWMA and Mad River Hardwoods, Inc. for Greenwaste Drop-off and Processing Services effective July 13, 2017.

2. Termination of Prior Agreement

That certain Prior Agreement between HWMA and the City of Arcata for “Greenwaste Drop-Off Service” dated December 19, 2007 is hereby replaced by this Agreement and said Prior Agreement shall be deemed terminated upon the Effective Date. Notwithstanding the above, the Parties intend for a smooth transition between the Prior Agreement and this Agreement, and the Authority shall cause Contractor to receive and process Greenwaste from City Customers

pursuant to the Prior Agreement until the Commencement Date of this Agreement. The Authority shall make payment for all services rendered by Contractor under the Prior Agreement. Additionally, the provisions of Prior Agreement Section 14, "Indemnification," shall survive termination of the Prior Agreement.

3. Commencement Date

This Agreement shall commence on a date mutually agreed to in writing by the parties ("Commencement Date"). The Authority shall provide written notice of the Commencement Date to its Contractor.

4. Scope of Services

- A. Facility Operation. Beginning on the Commencement Date, the Authority shall cause Contractor to accept at the Facility and process Greenwaste materials delivered by City Customers in accordance with the terms of this Agreement. Greenwaste shall be accepted from the following categories (collectively referred to as "City Customers"):
- City residents and businesses who receive solid waste collection services in the City of Arcata through an active account with the City's solid waste franchise hauler and who self-haul Greenwaste generated at the solid waste collection account location to the Facility. Such franchise hauler account holders may designate up to two individuals per account to deliver Greenwaste generated at the solid waste account holder's City of Arcata collection location to the Facility, to be credited to the solid waste collection account. Deliveries made under this category are referred to as "Arcata Contract Registered Self-Haul Deliveries."
 - City's solid waste franchise hauler ("Arcata Franchise Deliveries"); and
 - City of Arcata municipal deliveries ("Arcata Municipal Deliveries").
- B. Registration with Facility. City residents and businesses who desire to drop off Greenwaste at the Facility for no charge as an Arcata Contract Registered Self-Haul Delivery must be registered with the Contractor. In addition, individuals designated by a solid waste franchise hauler customer to drop-off Greenwaste at the Facility on behalf of the solid waste collection account holder must also register with the Contractor. Once registered with the Contractor, City solid waste franchise hauler customers and their designated individuals will be allowed to drop off up to 24 cubic yards per calendar year per solid waste franchise account at no charge to the City Customer. Once a registered City Customer has delivered 24 cubic yards during a calendar year, any additional yardage delivered for that account will be charged by Contractor at the time of Greenwaste drop-off the Contractor's standard fee per cubic yard.
- C. Drop-off. All persons registered to drop-off Greenwaste at the Facility for no charge as an Arcata Contract Registered Self-Haul Delivery must present identification at the Facility when dropping off Greenwaste.

The Authority shall cause Contractor to provide an accessible area at the Facility for Arcata Contract Self-Haul Deliveries to drop-off Acceptable Materials during regular business hours.

The Authority shall cause the Contractor to provide staff at the Facility to conduct load checks and to record delivery type and quantity of Acceptable Material from City residents and businesses. Delivery volume shall be estimated in cubic yards by the Contractor. In accordance with the MRH Greenwaste Agreement, cubic yards will be converted to tons at a rate of ten (10) cubic yards/ton.

- D. Processing. The Authority shall cause Contractor to process all Acceptable Materials through such methods including but not limited to composting, vermi-composting, and grinding for chips and for combustion. Processing may not include landfill disposal.
- E. Permits. The Authority shall ensure that the Contractor is responsible for obtaining all necessary state and local permits required to provide or conduct Greenwaste drop-off and processing services at the Facility.
- F. Processed Materials. Consistent with the MRH Greenwaste Agreement, the Contractor will make available processed materials free of charge for the City's operations. Contractor may charge the City a loading service fee to transfer material into City owned vehicles, and City staff will transport processed materials for City's use. The City may separately arrange with Contractor for Contractor deliveries and payment of a delivery charge to Contractor.

5. Fees

Greenwaste fees shall be set by the Integrated Waste Management Fee resolution of the Authority. Initially greenwaste fees shall be \$59/ton plus 5% as set by the 2020/2021 Resolution. The cost of service associated with Arcata Franchise Collectors, Self-Haul Customers and City Municipal Deliveries will be established in Section 10, Drop-off and Processing Fee, Payment, of this Agreement. During the term of the Agreement, if fees are raised greater than 5% in any given year the City can terminate the Agreement with 90 days notice.

6. Acceptable Materials

The Authority's Contractor shall accept and process the following materials ("Acceptable Materials) at the Facility provided that Authority's permits allow the composting or other appropriate processing of such items at the Facility:

- Greenwaste,
- Unpainted wood, lumber, wooden shingles and wooden pallets,
- Cardboard that is otherwise not recyclable,

Any other compostable material by mutual agreement of the Authority, the City and the Contractor.

7. Rejection of Loads

- A. Contaminated Materials. The Authority's Contractor will reject all Contaminated Materials prior to accepting such Materials for weighing. In the case of City Municipal

Deliveries, any rejected loads shall be either loaded back onto the delivery vehicle with staff and equipment provided by Contractor, or shall be sufficiently cleaned by City with staff provided by City so as to make the load acceptable for processing. The transportation and disposal costs of any material from a City Customer that is rejected by Contractor and transported to HWMA's Hawthorne Street transfer station for disposal, will be passed onto the City.

- B. Other Rejection. If the Authority's Contractor cannot accept materials for any other reason, the Authority will cause the Contractor to immediately notify the Authority and the City, including the reason for such rejection.

8. Term

The initial term of this Agreement shall commence on December 1, 2019 and shall expire on December 31, 2021. This Agreement may be extended by mutual agreement of the parties for an additional two-year term.

9. Termination

If any material term or condition of the Agreement is violated, either party may give to the breaching party, a Notice to remedy such violations(s) within a fourteen (14) day period; and if such violation(s) is substantial and is not remedied within said period of time, the other party, at its discretion, may terminate the Agreement; except that, if the breach is such that public health, welfare, or safety is endangered, termination of Agreement by Authority may be immediate upon Notice. Either party may terminate without cause upon giving the non-terminating party and Mad River Hardwoods a minimum of 90 day's written notice. If the contract is terminated, the City remains responsible for unpaid invoices and future invoices for self-haul materials to the Mad River Hardwoods site at the Member Agency rate.

10. Drop-off and Processing Fee, Payment

- A. Drop-off and Processing Fee. Beginning on the Commencement Date, the City shall pay Authority compensation for actual tonnage of Acceptable Materials received and processed at the Facility ("Drop-off and Processing Fee") pursuant to Section 4, Scope of Services, for the following classifications of deliveries, delivered to the Facility at no charge to the customer:

Arcata Contract Registered Self-Haul Deliveries;
Arcata Municipal Deliveries
Arcata Franchise Deliveries

- B. Administrative Fee. HWMA shall charge the City of Arcata an administration fee of five percent (5%) of the approved Greenwaste fee for contract administration.
- C. Method of Payment. HWMA will pay Contractor for actual tonnage of Acceptable materials invoiced for City Customers, and HWMA will invoice the City monthly for said actual tonnage received plus the Administrative fee. Payment is due upon City's receipt of invoice and shall be paid within 20 days of due date, unless invoice is disputed.

11. Recordkeeping and Reporting

Authority shall provide monthly reports to the City containing information including, but not limited to: the number of daily customers, volume, and/or weight of all Materials received pursuant to this Agreement. As part of the invoice for services, Authority shall provide the estimated weight of Acceptable Material that is subject to this Agreement by delivery category. The Authority will also provide copies of the daily sign-in list.

Authority shall maintain at its office full and complete accounting books and records, or copies thereof, prepared in accordance with generally accepted accounting principles, reflecting its revenues and expenses relating to fulfilling its performance obligations under this Agreement. Such records shall include operational, accounting, statistical, and other records related to its performance under this Agreement. The City may audit such books and records at the City's own expense upon three working days' notice.

12. Independent Contractor Status

It is expressly agreed and understood the Authority is providing contract services under this Agreement as an independent contractor for City, and Authority's employees and Contractors are neither employees nor agents of the City. At no time shall Authority's employees or Contractors represent themselves as employees of the City. Authority shall have sole control over the manner and method of performance of the services. City's only interest shall be in the results of such services.

13. Authority Covenants

Authority and its agents, employees, Contractor and subcontractors shall perform the services required under this Agreement in compliance with the following:

- A. All applicable federal, state, and local laws, statutes, ordinances, orders, regulations and similar requirements of applicable governmental entities, including but not limited to, all Equal Employment Opportunity and anti-discrimination laws;
- B. Recognized business practices and standards of performance in the industry.

14. Notice to Representatives

All notices required or permitted hereunder shall be in writing and shall be deemed to have been properly given and delivered when delivered personally (including by commercial messenger or courier or by facsimile transmission) or five (5) business days after deposit in the U.S. mail with all postage or charges fully prepaid and addressed to the address of the appropriate party as identified above, or as later changed in writing. Notices to the Authority shall be addressed to the Executive Director, and to the City in care of the Director of Environmental Services, at the addresses first above written.

15. Indemnification

Authority agrees, to the extent permitted by law, that it shall protect, indemnify, and hold harmless the City and its respective officers, employees and agents, and consultants (the "City Indemnified Parties"), from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees and shall

defend the City Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or for loss or damage to property arising out of the acts or omissions of the Authority in the performance (or nonperformance) of the Authority's obligations under this Agreement, including but not limited to any impacts of the operation to the Authority Facility. The Authority is not, however, required to protect, indemnify or hold harmless any City Indemnified Party for loss or claim resulting from performance (or nonperformance) of the City's obligations under this Agreement or the negligence or willful misconduct of any City Indemnified Party. The Authority's aforesaid indemnity is for the exclusive benefit of the City Indemnified Parties and in no event shall such indemnity inure to the benefit of any third Person.

City agrees, to the extent permitted by law, that it shall protect, indemnify, and hold harmless the Authority, subcontractors, affiliates (including subsidiaries), and their respective officers, members, employees and agents (the "Authority Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the Authority Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or for loss or damage to property arising out of the acts or omissions of the City including its officers, employees and agents in the performance (or nonperformance) of the City's obligations under this Agreement. The City is not, however, required to protect, indemnify or hold harmless any Authority Indemnified Party for loss or claim resulting from performance (or nonperformance) of the Authority's obligations under this Agreement or the negligence or willful misconduct of any Authority Indemnified Party, including but not limited to any impacts of the operation to the Authority Facility. The City's aforesaid indemnity is for the exclusive benefit of the Authority Indemnified Parties, and in no event shall such indemnity inure to the benefit of any third Person.

The provisions of this section shall survive termination of this Agreement.

16. Insurance Requirements.

- A. The Authority represents that it maintains general liability insurance in the amount of \$5,000,000 per claim or in the aggregate. Evidence of coverage shall be provided to the City upon request.
- B. Insurance coverage for the Contractors will contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days prior written notice, by registered mail or other receipted delivery, has been given to the Authority. All such insurance shall remain in effect throughout the term of this Agreement.
- C. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Authority's responsibility for payment of damages resulting from services under this Agreement.
- D. Workers' Compensation Insurance, Employers' Liability. Authority shall require its Contractors to purchase and maintain such Workers' Compensation as prescribed by law and Employer's Liability Insurance for bodily injury by accident and disease in the amount of \$2,000,000.

- E. General Liability. Authority shall require its Contractors to purchase and maintain such General Liability Insurance for the services being performed and furnished for the Authority as will provide protection from claims which may arise out of or result from Contractors' performance. Minimum limits of liability shall be \$3,000,000 per occurrence and in the amount of \$4,000,000 per aggregate.

The Authority's shall require its Contractors to ensure that insurance policies are always primary with respect to performance under their Agreements with the Authority.

17. 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.

18. Rights and Powers

Each party hereto warrants and represents to the other party that such party has the full right and power to enter into this Agreement and has obtained all necessary consents and approvals to consummate the transaction contemplated hereby.

19. Entire Agreement

This Agreement constitutes the entire agreement between the Authority and City as to the subject matter hereof. It supersedes all prior communications, representations, or agreements oral or written, with respect to the subject matter hereof. Any modification of this Agreement must be in writing and signed by both parties.

20. Amendments

This Agreement may only be amended by a written agreement duly executed by HWMA and the City of Arcata.

21. Assignment

Neither party may assign its rights or delegate or otherwise transfer or assign its obligations under this Agreement without the prior consent of the other party, which may be granted in its sole discretion. Any assignment made without the consent of the other party will be void.

22. Survival of Certain Conditions

Conditions of this Agreement that survive the termination of the Agreement include indemnification provisions and the responsibility for any payment related to this Agreement that is due at termination.

In witness whereof, the parties have executed this agreement effective on the date set forth above.

**HUMBOLDT WASTE
MANAGEMENT AUTHORITY:**



Jill K Duffy, Executive Director



Date

CITY OF ARCATA:



Karen Diemer, City Manager

11.18.2020

Date