



## ***Staff Report***

**DATE:** November 13, 2014 For Board Meeting: November 13, 2014

**FROM:** Jill K. Duffy, Executive Director

**SUBJECT:** Item 6)  
Receive and Consider Agreement with Eel River Resource Recovery, Inc. to Provide Municipal Solid Waste Loading Services at the Eel River Disposal and Resource Recovery's Fortuna Transfer Station.

**RECOMMENDED ACTION:** Voice vote.  
Consider Approval of a 90-Day Agreement with Eel River Resource and Recovery, Inc. ending February 17, 2015; and 2) Authorize the Chair to sign Agreement.

### **DISCUSSION:**

HWMA has contracted with Eel River Resource Recovery, Inc. (ERRR) to provide loading and transportation services for member agency solid waste directly from Eel River's Fortuna Transfer Station to Anderson Landfill since 2002. With the Anderson disposal agreement terminating June 1, the Authority has been in conversations with representatives of ERRR, Rio Dell, Ferndale and County representatives to discuss necessary transitional planning for loading services for the transportation and disposal of solid waste using the Authority's designated transportation contractor.

In June of 2014, HWMA and ERRR entered into an interim agreement to enable the loading of member agency solid waste originating from the Fortuna Transfer Station using Bettendorf trailers for transportation and disposal of material at Dry Creek Landfill on an interim basis ending October 31, 2014. This arrangement enabled parties time to develop an loading agreement and dispatch protocol. Due to the Board meeting being on November 13<sup>th</sup>, staff is also recommending in Consent Calendar 3c a two-week extension in order for ERRR to continue loading and short hauling Bettendorf trailers, ending November 16, to provide time to finalize the proposed loading agreement.

At the September 11, 2014 meeting, the HWMA Board of Directors approved a letter to the member agencies, requesting that, in accordance with their franchise agreements, they exercise flow control and provide notification to their respective franchise haulers that solid waste be directed to the Authority's designated transportation provider.

HWMA staff negotiated with ERRR and SWOW representatives to arrange for the dispatch and live loading of trailers, and terms and conditions necessary to develop an facility such an

arrangement. Affected member agency representatives have received regular briefings, and provided assistance which resulted in the agreement before you.

The agreement with ERRR, as proposed, will enable 'live loading' of member agency material at the Fortuna facility, into the Authority's designated trailers. This solution differs from the original intent to have the Authority's transportation contractor to place trailers on-site and available for loading. The Authority's transportation contractor, Solid Wastes of Willits, has agreed to 'live loading' of trailers. Live Loading means the completion of loading Permitted Waste into an individual Trailer to the allowable weight capacity while the Trailer's truck driver stands-by. Costs associated with loading trailers is already embedded in the franchise rates paid by curbside customers.

The draft agreement and exhibit was submitted to ERRR for final review on Thursday, October 30, and an agreement was reached Thursday, November 13<sup>th</sup>. Staff presents the material terms of a 90-day interim agreement to the Board for your consideration to provide for the live loading of member agencies (Rio Dell, Ferndale and the southern portion of the unincorporated County) solid waste at the Fortuna Satellite Facility into the SWOW trailers. . Several issues were identified through this process that both parties would like time to evaluate during the 90-day period. Consequently staff is recommending the approval of this 90-day agreement.

**FISCAL IMPACT:**

These proposed agreement will have no adverse impact on Member Agency disposal rates.

**ALTERNATIVES:**

Board discretion

**ATTACHMENT**

Material Terms of Agreements With Eel River Resource And Recovery, Inc. (ERRR) and Solid Wastes of Willits for Loading of Municipal Solid Waste at the Eel River Transfer Facility

**AGREEMENT BETWEEN  
HUMBOLDT WASTE MANAGEMENT AUTHORITY  
AND  
EEL RIVER RESOURCE RECOVERY, INC.  
TO PROVIDE MSW LOADING SERVICES**

This Agreement is effective this 17th day of November, 2014, by and between the Humboldt Waste Management Authority, a joint powers authority (herein “HWMA” and the “Authority”) Eel River Resource Recovery, Inc., a California corporation with principal offices in Fortuna, California (herein “ERRR”).

**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**, HWMA has entered into a Transportation and Disposal Agreement with Solid Wastes of Willits (“Transportation Contractor”) to transport and dispose of municipal solid waste at Potrero Hills Landfill located in Solano County, CA (“Transportation and Disposal Agreement”); and

**WHEREAS**, ERRR holds franchise agreements to collect curbside municipal solid waste from the HWMA member agencies consisting of the Cities of Rio Dell, and Ferndale, and the County of Humboldt and haul such solid waste to its satellite transfer station located at 965 River Walk Drive, Fortuna, CA (“Eel River Transfer Station”); and

**WHEREAS**, under the terms of the HWMA Joint Powers Agreement, the municipal solid waste collected by ERRR pursuant to said franchise agreements is subject to HWMA’s flow control and disposal in accordance with the Transportation and Disposal Agreement; and

**WHEREAS**, ERRR collects monthly payments from its customers under said franchise agreements, which payments include a fee established by ordinance of the HWMA to fund HWMA programs including the transportation and disposal of solid waste; and

**WHEREAS**, HWMA desires to contract with ERRR to load said member agency municipal solid waste collected by ERRR at the Eel River Transfer Station into the Transportation Contractor’s trailers for transportation and disposal by the Transportation Contractor pursuant to the Transportation and Disposal Agreement, and ERRR desires to provide such services; and

**WHEREAS**, pursuant to the Transportation and Disposal Agreement, this Agreement with ERRR to load member agency solid waste at its satellite transfer facility is subject to approval by Transportation Contractor.

**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:

**“Designated Disposal Facility”** means the landfill disposal facility or facilities with which the Authority has entered into agreement for solid waste disposal. As of the Effective Date of this agreement, Disposal Facility shall mean Potrero Hills Landfill, or such other landfill disposal facility as the Authority may designate.

**“Dispatch Protocol”** means the notification procedure agreed upon by HWMA, ERRR and the Transportation Contractor for the coordination and delivery of Trailers by the Transportation Contractor to the Eel River Transfer Station for loading of Permitted Waste, attached hereto as Exhibit “A” and incorporated herein. The Dispatch Protocol may be revised from time to time in writing and with the approval of ERRR, HWMA and the Transportation Contractor, which approval shall not be unreasonably withheld.

**“Eel River Transfer Station”** means the transfer facility owned and operated by Eel River Disposal and Resource Recovery, Inc. and located at 965 Riverwalk Drive, Fortuna, CA.

**“Hazardous Waste”** means materials as defined by Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or re-codification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Permitted Solid Waste Disposal Act Amendments of 1980), and related federal, state and local laws and regulations; materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and materials regulated under any future additional or substitute federal, state or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste. If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or Disposal, the broader, less restrictive definition shall be employed for purposes of this Agreement.

**“Live Loading”** means the completion of loading Permitted Waste into an individual Trailer to the allowable weight capacity while the Trailer’s truck driver stands-by.

**“Permitted Waste”** means Solid Waste excluding without limitation, Hazardous Waste, Household Hazardous Waste, other unacceptable waste, recyclable materials, or material used as alternative daily cover (ADC).

**“Satellite Facility Fees”** means those fees established by the Authority that are charged to operators of Satellite Transfer Stations for handling Authority member solid waste.

**“Solid Waste”** means putrescible and non-putrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, street sweepings and catch basin residue, construction and demolition waste not classified as discarded materials, bulky goods not classified as recycled materials, discarded brown goods not classified as recycled materials, dewatered, treated or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semi -Solid Wastes, residues from recycling, composting and similar processes, and other

discarded wastes and any other materials defined in Section 40191 of the California Public Resources Code, as may be amended from time to time, which is generated within the Authority.

**“Solid Wastes of Willits” or “SWOW”** means Solid Wastes of Willits, Inc. a California corporation having a business address located at P.O. Box 1425, 351 Franklin Ave, Willits, CA 95490.

**“Stand-by Charge”** means the fee based on the Stand-by Rate charged to and paid by ERRR for delays in completing the Live Load of any Trailer in excess of 58 minutes.

**“Stand-by Rate”** means the rate for determining the Stand-by Charge and represents the costs incurred by the Transportation Contractor for standing time during Trailer loading in excess of 58 minutes, calculated as \$29.62 for every fifteen (15) minute increment, or portion thereof, after 58 minutes.

**“Trailer” or “Trailers”** means the transport-ready “possum belly” trailers supplied by the Authority or Transportation Contractor for transport of Permitted Waste from the Eel River Transfer Station for disposal at the Designated Disposal Facility.

**“Transportation Contractor”** means the trucking entity or entities with which the Authority has entered into contracts to transport solid wastes to the Disposal Facilities. As of the Effective Date of this contract, Transportation Contractor shall mean Solid Wastes of Willits.

**“Transportation and Disposal Agreement”** means that certain Agreement entered into between the Authority and SWOW for the Transportation and Disposal of Permitted Solid Wastes, dated June 1, 2014.

**“Unpermitted Waste”** means wastes that the Designated Disposal Facility may not receive under its permits, including but not limited to:

- (a) **agricultural wastes** comprised of animal manures;
- (b) **asbestos**, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos other than non-friable materials containing asbestos which are triple bagged, boxed and taped;
- (c) **ash** residue from the incineration of solid wastes, including municipal waste, infectious waste described in item (7) below, sludge, and agricultural wastes described in item (1) above;
- (d) **auto shredder** "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances which remains after the shredding of automobiles;
- (e) **Hazardous Wastes**, explosives, ordnance, highly flammable substances and noxious materials;
- (f) **Infectious Wastes** which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and

carcasses used for medical purposes or with known infectious diseases other than patient care items that have been disinfected;

- (g) **Liquid Wastes** which are not spadeable, usually containing less than fifty percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes;
- (h) **Radioactive Wastes** under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation.

2. **TERM OF AGREEMENT.** The effective date of this Agreement shall be November 17, 2014 and this Agreement shall terminate on February 17, 2015.

3. **TRAILER LOADING SERVICES AND WEIGHING REQUIREMENTS**

**3.1 Trailer supply and delivery.** The Authority will cause the Transportation Contractor to deliver empty Trailers the Eel River Transfer Station, backed into the loading bays and ready for loading with tops open, tarps rolled up and all other container openings closed to prevent leakage or spills. ERRR shall coordinate with the Authority to receive sufficient empty transport-ready Trailers to ensure that the transport of HWMA Permitted Waste occurs with the regularity and frequency necessary to comply with applicable law, including time and volume limitations on the storage of solid waste. Such coordination and delivery of Trailers shall be in accordance with the Dispatch Protocol.

**3.2 Permitted Waste loading.**

- (a) **Proper loading.** ERRR shall Live Load Trailers with all Permitted Solid Waste collected from HWMA member agencies in accordance with all applicable laws and permit requirements and the provisions of this Agreement. Loading shall occur with the regularity and frequency necessary to comply with applicable law, including time or volume limitations on the storage of Permitted Waste at the Eel River Transfer Station. ERRR shall pay all fines or penalties for overloaded or improperly loaded Trailers. During loading, ERRR shall provide reasonable accommodations including restroom facilities for the Transportation Contractor's driver.
- (b) **Weight capacity and restrictions.** Each Trailer shall be Live Loaded on a pit scale to an allowable weight capacity as determined by the California Department of Transportation axle weight limitations for transport vehicles, no less than 20.5 tons Permitted Waste per Trailer and no more than 23 tons Permitted Waste per Trailer, depending on the transport vehicle.
- (c) **Screening and removal of Unpermitted Waste.** ERRR shall screen waste to prevent loading of Unpermitted Waste, and will not Load Unpermitted Waste. ERRR shall pay the total cost of Unpermitted Waste handling and disposal as well as all fees, charges and other amounts billed by the Designated Disposal Facility for ERRR's delivery of Unpermitted Waste to the Designated Disposal Facility without reimbursement by or offset from the Authority.

- (d) **Load timing.** Once delivered, Trailers shall have loading priority over other operations at the Eel River Transfer Facility. Live Loading shall be completed for each Trailer within fifty (50) minutes after the Trailer is situated at the Eel River Transfer Station loading bay and is ready for loading. ERRR shall pay a Stand-by Rate equal to \$29.62 for each 15 minute interval, or fraction thereof, in excess of fifty eight (58) minutes during which loading is completed.
- (e) **Trailer inspection.** After loading, ERRR will inspect each Trailer and clean loose debris from the Trailer to allow the Transportation Contractor to secure the Trailer for transport.
- (f) **Commingling of Authority's waste with other waste.** ERRR may not load Trailers with Permitted Waste commingled with Permitted Waste from non-member agency jurisdictions unless it has verified the actual tonnage attributable to the HWMA member agency jurisdictions. Any methodology used by ERRR to estimate tonnage attributable to HWMA member agencies and to non-member agencies shall be approved in advance in writing by the Authority and is subject to periodic verification or audit by the Authority.
- (g) **Complying with rules of Designated Disposal Facility.** ERRR shall load Trailers in compliance with all applicable rules, regulations, protocols, instructions and directions of the Designated Disposal Facility, including but not limited to rules with respect to load checking and removal of materials that cannot be accepted by the Designated Disposal Facility. The Authority shall provide ERRR with a copy of such applicable rules.
- (h) **Right to inspect loading operations.** The Authority may, upon 24 hours advance notice, but is not obligated, to observe and inspect loading operations at the Eel River Transfer Station.

**3.3 Title to waste.** HWMA will not assume title to any materials delivered to the Eel River Transfer Station or loaded by ERRR. Pursuant to the Transportation Agreement, title to Permitted Waste shall transfer to the Transportation Contractor upon loading into the Trailer.

**3.4 Plugged loads.** ERRR shall be solely responsible for all additional costs associated with tipping plugged loads. HWMA shall invoice ERRR for all costs HWMA is charged by the Designated Disposal Facility that are associated with tipping plugged loads.

**3.5 Scales, weight records, reporting.** ERRR shall install, repair, maintain and operate at the Eel River Transfer Station appropriate 1) entry scales and 2) pit scales.

- (a) **Entry weights.** ERRR shall weigh all incoming Solid Waste originating from Authority members, and provide such weights to HWMA upon request to allow HWMA and its member agencies to accurately track the amount of Solid Waste generated in each member's jurisdiction and amounts diverted from landfill disposal.
- (b) **Trailer departure weights.** ERRR shall weigh each loaded Trailer and transport vehicle prior to its departure from the Eel River Transfer Station, and record and report such weights to HWMA in a format sufficient to allow HWMA to accurately track the Permitted Waste transported from the Eel River Transfer Station to the Designated Disposal Facility.

#### **4. FEES AND PAYMENT.**

**4.1 Satellite Facility Fee.** ERRR shall pay to HWMA a Satellite Facility Fee on all Solid Waste collected by ERRR from HWMA member agencies equal to then current rate as adopted by the Authority. The Satellite Facility Fee as of the Effective date of this Agreement is as follows:

<b>SATELLITE FACILITIES</b>	<b>PER TON</b>
Operation, Transport, Disposal	71.55
Countywide Programs	26.14
<b>Total Satellite Facilities Rate</b>	<b>97.69</b>

The Satellite Facility Fee is subject to amendment by the Authority, in which case the Authority Executive Director, or her designee, shall notify ERRR of the changed rate.

**4.2 Stand-by and other additional fees and charges.** ERRR shall pay to HWMA Stand-by Charges and any additional third party fees, fines or penalties otherwise charged to HWMA arising from its performance under his Agreement, including but not limited to, charges for plugged loads, overloaded containers and Unpermitted Waste handling and disposal plus 10% for administrative handling plus HWMA.

**4.3 Payment.** ERRR shall remit the Satellite Facility Fee by the 10th day of each month for Permitted Waste delivered to the Eel River Transfer Station during the previous month. Records of entry weight information indicating the Authority jurisdiction from which the Permitted Waste derived shall be provided quarterly. All additional fees and charges that are payable by ERRR in accordance with this Agreement will be invoiced by the Authority to ERRR and shall be due and payable within 30 days of receipt thereof.

**5. RECORDS AND REPORTING, AUDITING**

**5.1 Reporting.** ERRR shall provide HWMA with records as follows: 1) quarterly, entry weight information indicating the jurisdiction of origin for the Permitted Waste received by the Eel River Transfer Station and 2) monthly, the loaded Trailer weight tickets ready for transport to the Designated Disposal Facility. HWMA shall provide ERRR with the weight tickets and disposal ticket numbers from the Designated Disposal Facility that are used to calculate the monthly Satellite Facility Fee.

**5.2 Record keeping.** ERRR 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 ERRR’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. Records shall be maintained for a minimum of three years after termination of this Agreement.

**5.3 Tonnage audit.** Upon three (3) days’ advance notice to ERRR, HWMA may verify entry and/or loaded Trailer weight records through on-site inspections, sampling and auditing methods.

**6. PERFORMANCE STANDARDS**

ERRR will perform all its obligations under this Agreement in accordance with accepted practices for comparable facilities, applicable law and the provisions of this Agreement. ERRR is solely liable for all fines and penalties that may be imposed on ERRR to the extent that those fines and penalties are the result of ERRR’s violations of applicable law. ERRR retains responsibility for all injuries, accidents and other mishaps associated with its performance under this Agreement, including personal injury and damage to any real or personal property.



ERRR will promptly report any such events to the Authority orally, followed by written notice within three working days, including details of any witness statements. ERRR will institute an emergency operations plan and provide a copy to the Authority upon the Authority's request. 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.

## **7. INSURANCE AND INDEMNITY.**

**7.1 Insurance.** ERRR will secure and maintain in full force and effect:

- (a) **General Liability:** General liability limits with minimum limits of liability per occurrence of Three Million Dollars (\$3,000,000); and per aggregate of Four Million Dollars (\$4,000,000);
- (b) **Workers' Compensation insurance as required by state law;**
- (c) **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.
- (d) **General Provisions.** ERRR will ensure that insurance policies are always primary with respect to performance under this Agreement. ERRR will include the Authority and its employees, officials, members, officers, agents, contractors, assigns and volunteers by endorsement or otherwise as additional insured under all policies except with respect to general liability and employer's liability insurance.
- (e) ERRR will file with the Authority evidence of coverage in force, including endorsements, together with a Certificate of Insurance on an authority-approved form.

## **7.2 Indemnification.**

- (a) **General indemnity.** ERRR will 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 ERRR performed or occurring under or in connection with the Agreement, whether or not those liabilities are litigated, settled or reduced to judgment and whether or not those liabilities are caused in part by any wrongful or negligent act, error or omission by any party indemnified under this Agreement.
- (b) **Hazardous waste.** Without limiting ERRR's indemnification stated above, and upon the HWMA's request, ERRR will indemnify, hold harmless, protect and defend with legal counsel acceptable to the Authority or co-counsel selected by the Authority at ERRR's sole cost, the Authority from and against all liabilities paid, incurred or suffered by or asserted against the Authority in a judicial, administrative or regulatory form or otherwise, arising or resulting in whole or in part from any repair, cleanup or detoxification, or preparation and implementation or any removal, remedial response, closure or other plan concerning any Unpermitted Waste at the Eel River Transfer ultimately the release of any Unpermitted Waste from ERRR's transportation vehicles or containers.

The indemnities described in this subsection are intended to operate as an agreement pursuant to 42 USC § 9607(e) and California Health & Safety Code § 25364, to insure, protect, hold harmless and indemnify the Authority from liabilities in accordance with this section. The Authority does not hereby waive or surrender any other indemnity or remedy available to it, and ERRR is strictly liable to the Authority for hazardous materials conditions arising under this Agreement, including any repair, cleanup or detoxification thereof or preparation and implementation of any removal, remedial, response, closure or other plan.

**8. EVENTS OF DEFAULT.**

**8.1 Default.** Each of the following constitutes an event of default (“Default”):

- (a) Breach of Agreement. ERRR’s failure to perform any of its obligations under this Agreement and fails to cure that breach within fifteen (15) days of receiving notice from the HWMA specifying the breach.
- (b) Attachment of any equipment owned by ERRR that is necessary for its ability to provide loading services if said equipment is seized, attached, or levied upon and not placed back into service within two business days.
- (c) Failure to load into Trailers the exact tonnage equivalent of all Permitted Waste actually collected.
- (d) Bankruptcy, insolvency, liquidation. ERRR’s filing of 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 ERRR for any part of ERRR’s operating assets or property.

**8.2 Remedies upon default.** Upon occurrence of a Default, the Authority has the following rights:

- (a) To terminate the Agreement;
- (b) To suspend the Agreement;
- (c) 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.

**8.3 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. LIQUIDATED DAMAGES.** The parties acknowledge that timely, consistent and efficient operations are of utmost importance to the Authority; failure to allow the Transportation Contractor into the staging area and failure to conduct timely Live Loading operations in accordance with this Agreement increases costs to the Authority. The Authority has considered and relied on the ERRR’s representations as to its quality of service commitment in entering into this Agreement. The parties further recognize that

quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties recognize that if the Contractor fails in its obligations, the Authority, its member agencies and franchise customers may suffer damages that will be impractical and difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the Stand-by Charges represents a reasonable estimate and remedy to such damages.

Payment of Stand-By Charges in no way limits the Authority's ability to seek other damages for other causes; and does not excuse ERRR from conducting appropriate cure of default as provided in Section 8.

**10. 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.

**11. INDEPENDENT CONTRACTOR STATUS.** The parties intend that ERRR 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 ERRR will be deemed to be an employee or agent of the Authority. ERRR will have exclusive control over the manner and means of performing its obligations under this Agreement. ERRR officers, employees or agents will not obtain any rights to retirement benefits, workers compensation or any other benefits that accrue to Authority employees.

**12. PARTY'S REPRESENTATIONS.** ERRR represents and warrants that it has full legal right, power and authority to execute, deliver, and perform its obligation under this Agreement.

**13. ASSIGNMENTS.** This Agreement may not be assigned in whole or in part without the Authority's approval which shall not be unreasonably withheld.

**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:

To ERRR: c/o Harry Hardin, President  
Eel River Disposal  
P.O. Box 266  
Fortuna, CA 95540

HWMA: c/o Jill K. Duffy, Executive Director  
Humboldt Waste Management Authority  
1059 West Hawthorne Street  
Eureka, CA 955

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement effective on the date first above stated.

**HUMBOLDT WASTE MANAGEMENT  
AUTHORITY**

By \_\_\_\_\_  
Jack Thompson, Chairman

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Nancy Diamond, General Counsel, HWMA

Dated: \_\_\_\_\_

**EEL RIVER DISPOSAL, INC.**

By \_\_\_\_\_ Dated: \_\_\_\_\_  
Harry Hardin, President

**READ AND APPROVED BY  
TRANSPORTATION CONTRACTOR, SOLID WASTES OF WILLITS**

\_\_\_\_\_  
By: Gerald W. Ward, President

Dated: \_\_\_\_\_

Exhibit A: HWMA, ERRR and SWOW Dispatch Loading, and Transportation Protocol  
(dated Nov. 15, 2014)



## *Staff Report*

**DATE:** November 7, 2014 For Board Meeting: November 13, 2014

**FROM:** Jill K. Duffy, Executive Director

**SUBJECT:** Item 7)  
Consider Amendment to Agreement with Solid Wastes of Willits to provide compensation for Live Loading at the Eel River Transfer Station.

**RECOMMENDED ACTION:** Voice vote.

- 1) Consider and approve terms of Amendment No. 1 to Transportation and Disposal Agreement with Solid Wastes of Willits; and
- 2) authorize the Executive Director and Legal Counsel to draft and execute the agreement.

*This item is dependent upon consideration and approval of the preceding agenda item, "Agreement with ERRR to Provide Municipal Solid Waste Loading Services". HWMA staff recommends the Board receive an update this item, consider a term sheet that will be presented at the November 13 Board meeting, and provide direction to staff and legal counsel for the development of Amendment Number 1 to the Solid Wastes of Willits Agreement.*

### **DISCUSSION:**

At the May 8, 2014 meeting, the Board authorized execution of an agreement for transportation and disposal services of the Authority's municipal solid wastes with Solid Wastes of Willits. As presented through the Request for Proposal (RFP) process and accepted practices, SWOW developed a proposal that SWOW trucks would pick up SWOW trailers filled with Authority solid waste from the Hawthorne Street Transfer Station, Humboldt Sanitation and Eel River Resource and Recovery, Inc. (ERRR) facilities. A full trailer would be removed, and replaced by an empty trailer. The time necessary to unload an empty trailer, and hitch the full trailer was estimated to take approximately ten (10) minutes. ERRR requested that the Authority and SWOW consider 'Live Loading' of member agency material instead of dropping off and picking up trailers due to limited space at the Fortuna Transfer Station and trailer loading weight restrictions. ERD has agreed to have material on the floor ready for immediate loading upon arrival of the SWOW truck and trailer. The time to load the trailer is approximately 50 minutes or less.

Following discussions with SWOW and development of dispatch protocol, staff is recommending the Board consider an amendment to the transportation and disposal agreement with SWOW to compensate for the driver's time for waiting while SWOW trailers are loaded by ERRR for a flat rate of \$29.62/load.

**Background**

For the past five-months, SWOW and Bettendorf Trucking have provided empty trailers and picking up full trailers from the Hawthorne Street facility for transportation to Potrero Hill Landfill and Dry Creek Landfill, respectively. Authority solid waste originating from the Humboldt Sanitation facility is currently hauled under existing agreements by Bettendorf Trucking to Dry Creek Landfill. The Authority entered into an interim agreement with ERD for the loading and transportation of Bettendorf Trailers for delivery to Bettendorf's Arcata Yard so that a loading agreement could be developed between the Authority and ERD.

Through the loading agreement negotiation process, ERD approached Authority staff with the request that the Authority's transportation hauler 'live load' instead of leaving a trailer on-site for loading. This would require SWOW to transport a trailer to the facility, wait while ERD live loads SWOW's trailer with member agency franchise waste and upon completion of loading have the truck and trailer transport and dispose of the waste at the Potrero Hills Landfill. ERD cited challenges associated with facility space constraints relating to parking an empty trailer and possible irregularities between their 'yard dog' and SWOW's truck which could affect loading the trailers to allowable weight limitations.

SWOW is willing to provide 'live loading' services, but recognizes there will be an actual cost associated with this option. At the proposed flat rate of \$29.62/load, this option is considerably less than ERD picking up and hauling loaded trailers to Bettendorf facility (\$250/load), and significantly less than ERD packer trucks hauling franchise materials directly to the Hawthorne Street Facility.

**FISCAL IMPACT:**

Compensation for this service is based on a flat rate of \$29.62 per load originating from the Eel River Transfer Station. Based on an average of 3.5 loads per week for 12 weeks, the fiscal impact associated with this recommendation for a 90-day period is approximately \$1,245.

Unbudgeted overruns will most likely be recovered from backhaul credits realized from both the SWOW and Bettendorf transportation of loads to Potrero Hills and Dry Creek Landfill. The cost is not significant enough to consider other methods of cost recovery.

**ALTERNATIVES:**

Board discretion

**ATTACHMENT:**

Material Terms of Amendment No. 1 with between HWMA and Solid Wastes of Willits for solid wastes transportation and disposal services.

**MATERIAL TERMS OF  
AMENDMENT NUMBER 1 TO AGREEMENT BETWEEN HWMA AND SOLID WASTES OF  
WILLITS (SWOW) FOR  
TRANSPORTATION AND DISPOSAL SERVICES**

**Amendment No. 1 to Agreement between HWMA and Solid Wastes of Willits for solid waste transportation and disposal services:**

1. SWOW services: Deliver trailers to Eel River Transfer Station for live loading.
2. Dispatch Protocol: Deliver trailers to Eel River Transfer Station for loading pursuant to agreed upon dispatch protocol (attached).
3. Transport trailer to Potrero Hills Landfill for disposal.
4. Length of Agreement: Begin November 17, 2014, terminate February 17, 2015 (90 days).
5. Payment:
  - a. HWMA to pay flat rate of \$29.62 per trailer for 50 minutes loading.
  - b. HWMA to pay "Stand-by Rate" of \$29.62 for each 15-minute increment loading after 58 minutes.

Attachment: Dispatch Protocol

## **Solid Waste Transportation Dispatch Protocol Eel River Disposal's Transfer Station (ERD-TF)**

*Version  
November 1, 2014*

### **I. Purpose**

To provide coordination of adequate trailer availability for the timely removal of Authority designated solid waste from the ERD-TF tip floor. Trailers may be loaded Tuesday through Friday (i.e., no weekend loading), from 8 am to 4 pm. An average of one (1) trailer each day four days a week is expected to accommodate adequate removal of member agency franchise solid waste.

### **II. Responsible Positions**

#### **A. HWMA:**

1. Solid Waste Operations Supervisor - leads implementation of this protocol
2. Lead Operator - responsible when Solid Waste Ops Supervisor is not on duty
3. Operations Manager - backup for positions above when both are not on duty

#### **B. Eel River Disposal Transfer Station:**

4. Operations Supervisor Manager
5. Assistant Manager
6. General Manager – backup for positions above in the event of absence.

### **III. Protocol**

Effective November 15, 2014, an average of 4 trailers per week are expected to be delivered by HWMA's Transportation Contractor to haul HWMA's member agency solid waste material. These trailers will have loading priority at the time of their arrival at ERD's Transfer Station to enable live loading.

#### **A. Dispatch Coordination Activities:**

1. ERD Operations Manager will notify HWMA's Operation Supervisor **24 hours** in advance of trailer request. Requests must be received prior to 10:30 in the morning Monday-Thursday for following day trailer delivery. HWMA Operations Supervisor will coordinate with the Authority's Transportation Contractor of total trailer delivery for all facilities.
2. ERD Operations Manager will ensure that sufficient material is available for loading at the expected time of arrival (no less than 20.5 tons and no more than 23.0 tons/trailer).
3. Authority's Transportation Contractor will notify ERD's Operations Manager approximately 30-45 minutes prior to arrival at ERD's Transfer Station. ERD's Operation Manager will ensure that the loading bay is available and empty at the time of container delivery, and solid waste material available for immediate loading.
4. The Authority's Transportation Contractor will arrive with trailer prepared to be loaded, with tarps opened.
5. ERD will provide spotters and assistance as necessary to enable the safe backing of trailers and trucks into the loading bay.



6. The Transportation Contractor's driver will conduct a visual inspection of the truck/trailer *prior to loading* to document any pre-existing conditions or damage, and condition of cross bars and top rails. Deficiencies will be reviewed and noted by ERD's Operation's Manager, or designee.
7. Transportation Contractor's driver may have access to restroom facilities and other appropriate waiting areas as designated by ERD during the loading process.
8. Live Loading activities are expected to take no more than 50 minutes. Loading will take place on the 'pit scales' to ensure loading and compliance with axel weight restrictions. ERD will clear any debris or material from the trailer from the top rails and make sure nothing is poking up higher than the top of the trailer side that could prevent proper tarping.
9. Trailers will be loaded with Permitted Solid Wastes and meet loading and weight criteria contained within Loading Agreement.
10. Following loading, the Transportation Contractor's driver will conduct a visual inspection of the truck/trailer to document any damage incurred as a result of loading activities. Noted damage will be reviewed and noted by ERD's Operation's Manager, or designee. Damage will be reported the HWMA Operations Supervisor in a timely manner.
11. Transportation Contractor driver\*\* will close and secure the tarp, and depart from the facility using the northern gate.

#### **B. Weekends and Holidays:**

Unless prior arrangements have been made, empty trailers are not delivered by Transportation Contractor on weekends or holidays. In the event of holiday or higher volume of MSW disposed, contact HWMA's Operation Supervisor to verify and coordinate trailer availability for weekends and holidays loading on a case-by-case basis.

#### **IV. Contact Information:**

##### **A. HWMA staff**

##### **1. Helder Morais, Operations Supervisor:**

Cell: (707) 599-4113  
 Office: (707) 268-8680, ext. 225  
 Email: [hmorais@hwma.net](mailto:hmorais@hwma.net)

##### **2. Aaron Manson, Lead Operator (Alternate):**

Cell: (707) 499-0504  
 Email: [amanson@hwma.net](mailto:amanson@hwma.net)

##### **3. Patrick Owen, Operations Manager:**

Cell: (707) 499-4407  
 Office: (707) 268-0356  
 Email: [powen@hwma.net](mailto:powen@hwma.net)

*\*\*Detail to be confirmed with SWOW*

**B. Eel River Disposal Staff:**

1. Kris Mobley, Operations Manager  
Cell: (707) 496-3546  
Phone: (707) 725-5156  
Email: [erkism@sbcglobal.net](mailto:erkism@sbcglobal.net)
  
2. Chuck Schager, Assistant Manager  
Cell: (707) 498-4466  
Phone: (707) 725-5156  
Email: [erchuck@sbcglobal.net](mailto:erchuck@sbcglobal.net)
  
3. Rick Powell, General Manager  
Cell: (707) 296-3144  
Office: (707) 725-5156  
Email: [errickp@sbcglobal.net](mailto:errickp@sbcglobal.net)



### ***Staff Report***

**DATE:** November 7, 2014 For Meeting of: November 13, 2014

**FROM:** Jill Duffy, Executive Director

**SUBJECT:** Item 11)  
Executive Director Report

**RECOMMENDED ACTION:** Informational Only

Activities during the month of October focused on several key areas including, finalization of the Burn Ash Site construction activities, the annual audit, finalization of the Tip Floor Repair project, preparation of the recycling processing proposal and negotiations with Eel River Resource and Recovery for the Authority's designated transporter to place a trailer at the Fortuna Transfer Station for loading of member agency material.

#### **Burn Ash Site**

The Clean Up & Abatement Order directed corrective action activities to be complete by September 30, 2014 unless a request to extend was received. Due to the September 23<sup>rd</sup> 2.68" rainfall event, construction activities were suspended until equipment was able to resume activities. A request was approved by the NCRWQCB, extending the project by 15 days to October 15, 2014.

Construction activities concluded October 10<sup>th</sup>, and complete site erosion control placement was in place by October 15<sup>th</sup>. An estimated 83,000 cubic yards of material was excavated and placed into the Cummings Road Landfill; this volume will be confirmed through engineering surveys. Steelhead Constructors demobilized from the site, and the required Final Report is being prepared for submittal to the NCRWQCB by December 15<sup>th</sup>. Additional reports required by permitting agencies are also in preparation; these include a fisheries report to NOAA and a cultural report to the State Historic Preservation Office. Staff is currently reviewing Steelhead invoice number 4 which covers the period of September through mid-October. Invoice number 5 will be the final.

A mixture of redwood, sitka spruce and red alders were planted during the week of November 3<sup>rd</sup>, in accordance with the restoration plan required by the CDFW permits.

In conjunction with the Corrective Action Plan, field and soil samples were regularly obtained to ensure the remediation goals for the clean up objectives were met. Remediation goals were established for lead, copper, cadmium and zinc in remaining soil and sediment to

ensure future protection of human health and the environment. Soil sample results collected on the final day of construction activities indicated one sample exceeded the lead remediation goal of 78 mg/kg. On November 6<sup>th</sup>, Jesse Solario returned to the site on the western side of the Delta to take additional soil samples.

Based on the results of those samples, an additional 170 cubic yards of material was removed with the landfill's excavator and removed from the Delta area on November 6<sup>th</sup> using manual labor. This material was hauled out of the Delta and placed into the landfill area with Authority staff assistance. Soil samples collected from the Delta wall show all lead levels below the remediation goal.

On Wednesday, November 12<sup>th</sup>, the CalRecycle representative Bob Healy visited the Burn Ash Site, along with the County LEA Craig Greenlee. The morning and early afternoon was spent evaluating the site, walking the trails and streams, erosion control measures, and other site conditions. They also went to the disposal area for visual verification. Mr. Healy was both complementary and appreciative of all the work that has been completed with this project given the site complexities, 18-month compliance time-frame, and the parties ability to work with each other.

**Landfill:**

The landfill activities the month of October:

1. Assist Steel Head Construction crew finish up burn dump project.
2. Rebuild Landfill Gas and Leachate systems in burn dump construction areas.
3. Install Well heads and pumps into extended well casings.
4. Complete Erosion control, Seeding and mulching in construction areas.
5. Rebuild and reinstall three leachate pumps and three transfer pumps.
6. Clean up after construction activities.
7. Gas system adjustment.
8. Storm water Surface water sampling.
9. Replace drive line and drive belt on polarsis

**Operations:**

By the last week of October, HWMA met its obligation to deliver a minimum of 25,000 tons of member agency solid waste to the Dry Creek Landfill, for the contract year ending October 31, 2014. As of November 1, 2014, there are two years remaining on the agreement between Dry Creek and HWMA.

Interviews were recently held for a Utility Worker position on our tip floor, to fill the vacancy created when Kevin Thuresson left HWMA this August to return to school full-time. Kevin worked for 8 years for HWMA, and 6 years for Waste Solutions Group before that. We want to thank him for all his years of hard work, and wish him the best of luck in his future endeavors.

Our staff at the Eureka Recycling Center (ERC) at Hawthorne Street is in the process of upgrading our refrigerant (e.g. Freon®) recovery certification (per EPA Section 608 of the Clean Air Act), which will allow us to begin decommissioning larger, high-pressure commercial appliances. This will potentially save ERC upwards of several thousand dollars per year, by not having to pay to send these used appliances out of county for salvaging.

**Household Hazardous Waste:**

The mobile HHW event held in the community of Bridgeville on October 11<sup>th</sup> saw *eight* residents use this opportunity to dispose of wastes at the Bridgeville School. The event mobilization costs were covered under a standing HHW grant with a work plan approved by CalRecycle in 2013. Outreach through community electronic bulletin boards, newsletters, and flyers reached 620 homes in the area. The reason for the low attendance is not clear.

The November Red Shed held November 1st saw 125 attendees disposing household hazardous wastes.

The most recent hazardous waste shipment by Clean Harbors totaled in excess of 40,000 pounds. The fourth shipment of PaintCare products, a total of 23 boxes is ready to ship as well. The PaintCare collection program continues to gain momentum here at HWMA.

HWMA has notified carpet retailers and installers that the Carpet Program has been successful and we are expanding. HWMA is now able to accept carpet pad, just the same as carpet. The disposal rate remains at the reduced rate of \$90/ton.

**Programs Staff:**

The Programs staff welcomes James Pickering as our new analyst. James will be charged with tracking and reporting AB-939 diversion and working in concert with those member agencies that have standing AB-939 contracts in place with HWMA. James is energetic and athletic and welcomes the opportunities inherent in the north coast lifestyle.

**Used Oil Grant Programs:**

The next cycle for used oil payments OPP Cycle 5 has been approved. This grant covers the period from July, 2014 until June, 2016 and will total about \$48,000 in available grant funding. Like the predecessor grant programs, funds are used for used oil recycling education and outreach.