

HUMBOLDT WASTE MANAGEMENT AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT

TABLE OF CONTENTS:

<u>SECTION 1. DEFINITIONS</u>	1
<u>SECTION 2. FORMATION, MEMBERSHIP</u>	
2.1 HUMBOLDT WASTE MANAGEMENT AUTHORITY	3
2.1 Humboldt Waste Management Authority	4
2.2 Member Additions	34
2.3 AUTHORITY Authority Qualifications	35
<u>SECTION 3. PURPOSE</u>	
3.1 General	45
3.2 TRANSFER FACILITY	4 Transfer
Facility	5
3.3 Landfill Closure and Maintenance	46
3.4 Common and Additional Powers	56
<u>SECTION 4. ORGANIZATION</u>	
4.1 Composition	56
4.2 Principal Office	56
4.3 BOARD	
5 Board	6
4.4 DIRECTORS	
5 Directors	6
4.5 EXECUTIVE ADVISORY COMMITTEE	6
4.5 Executive Advisory Committee	7
4.6 Technical and Advisory Committees	7
<u>SECTION 5. PERSONNEL AND ADMINISTRATION</u>	
5.1 Employees	78
5.2 EXECUTIVE DIRECTOR	7 Executive
Director	8
<u>SECTION 6. POWERS</u>	
6.1 FACILITIES Facilities	8
6.2 Approved Powers	8
6.3 Limitations	10
6.4 Noncompetition	10
6.5 Possible Future Responsibilities and Duties	10
6.6 Individual MEMBER Member Services	11 10
6.7 Local Governing Body	11 10

<u>SECTION 7. FINANCE</u>	
7.1 Assets, Rights, Debts, Liabilities and Obligations.....	14 10
7.2 Budget.....	12 11
7.3 Rates.....	12
7.4 Financial Audit.....	13 12
7.5 Indemnity	13 12
7.6 Insurance	13 12
<u>SECTION 8. RULES OF CONDUCTBY-LAWS, OFFICERS AND VOTING</u>	
8.1 Bylaws.....	15 13
8.2 Officers and Committees	15 13
8.3 Voting	15 13
8.4 Quorum.	16 14
8.5 Disclosure of Closed Session Information	16 14
<u>SECTION 9. TERM</u>	17 14
<u>SECTION 10. WITHDRAWAL</u>	17 15
<u>SECTION 11. DISSOLUTION</u>	
11.1 Assets.	17 15
11.2 REVENUE BONDS	18 Revenue
Bonds	15
11.3 Effective.....	19 16
<u>SECTION 12. AMENDMENTS</u>	19 16
<u>SECTION 13. FILING WITH THE SECRETARY OF STATE</u>	19 16
<u>SECTION 14. NOTICES</u>	19 17
<u>SECTION 15. SUCCESSORS AND ASSIGNS</u>	20 17
<u>SECTION 16. SEVERABILITY</u>	21 17
<u>SECTION 17. SECTION HEADINGS</u>	21 17
<u>SECTION 18. ARBITRATION</u>	21 17
<u>SECTION 19. LAW TO GOVERN</u>	21 18
<u>SECTION 20. ENTIRETY</u>	21 18
<u>SECTION 21. WAIVER</u>	18

	<u>SECTION 22. EFFECTIVE DATE</u>	<u>18</u>
--	--	------------------

AMENDED AND RESTATED
HUMBOLDT WASTE MANAGEMENT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT
(Adopted November 17, 1999
Amended April 8, 2002
Amended June 14, 2002
Amended November 10, 2016)

SECTION 1. DEFINITIONS

~~The terms defined in this Section that are capitalized in this AGREEMENT have the following meanings:~~

Amended and Restated [date] 2023

This Amended and Restated Joint Powers Agreement of the Humboldt Waste Management Authority is made and entered into pursuant to the provisions of California Government Code Section 6500 et seq., and supersedes the original Joint Powers Agreement first adopted on November 17, 1999, and amended on April 8, 2002, July 12, 2012, and November 10, 2016. This Amended and Restated Joint Powers Agreement ("Agreement") is effective as of _____, 2023.

RECITALS

WHEREAS, the Cities of Arcata, Blue Lake, Eureka, Ferndale, and Rio Dell, and the County of Humboldt in 1999, entered into a Joint Powers Agreement to form the Humboldt Waste Management Authority for purposes of providing coordinated solid waste management services for the member agencies and their communities; and

WHEREAS, the Authority seeks to amend the Joint Powers Agreement to incorporate powers required to implement new state mandated waste diversion and material management requirements;

WHEREAS, the Authority believes it would be desirable and convenient to restate the Joint Powers Agreement in its entirety, including previous amendments, and amend said Joint Powers Agreement as recited herein.

NOW, THEREFORE, based on the mutual covenants, conditions and terms recited herein, which are made a material part of this Agreement, the undersigned public agencies, collectively referred to herein as the "Members," enter into this Amended and Restated Joint Powers Agreement and agree as follows:

AGREEMENT

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms have the respective definitions as set forth

below:

"ACT" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

"AGREEMENT" means this joint exercise of powers agreement, ~~as it may be amended~~first adopted on November 17, 1999, and amended on April 8, 2002, July 12, 2012, November 10, 2016, and on the effective date stated above, and as it may be amended in the future from time to time.

"AUTHORITY" means the ~~HUMBOLDT WASTE MANAGEMENT AUTHORITY~~Humboldt Waste Management Authority a joint exercise of powers authority created by the ~~MEMBERS~~Members pursuant to this ~~AGREEMENT~~Agreement.

"BOARD" means the ~~BOARD~~Board of ~~DIRECTORS~~Directors of the ~~AUTHORITY~~The Authority.

~~"BONDS" shall have the meaning ascribed to such term in the INDENTURE.~~

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (Public Law No. 96-510, 94 Stat.2767), ~~as amended; 42 U.S.C. § 9601 et seq.~~

"DESIGNATED SOURCE SEPARATED MATERIAL(S)" means Source Separated Material(s) over which a Member has obtained Flow Control and directs its franchised or contracted collection hauler to deliver to a facility that is owned by, operated by, or under the contractual obligation of the Authority for purposes of processing, recovering, transferring, transforming, energy production, or disposal, as required by the Authority Directors.

"DIRECTOR" means the representative appointee of a ~~MEMBER~~Member to the ~~BOARD~~Board.

"EXECUTIVE ADVISORY COMMITTEE" means the committee which shall consist of the participating Agency City and County Managers, or their appointees or designees.

"EXECUTIVE DIRECTOR" means the person appointed by the ~~BOARD~~Board as the ~~AUTHORITY'S~~Authority's administrative officer to manage the affairs of the ~~AUTHORITY~~Authority and to implement the policies of the ~~BOARD~~Board.

~~"FINANCIAL ASSURANCES" means financial assurances by a MEMBER or MEMBERS with respect to FINANCIAL OBLIGATIONS of the AUTHORITY which is acceptable to the other MEMBERS, the AUTHORITY, any REVENUE BOND trustee(s), and any insurer or guarantor of such FINANCIAL OBLIGATIONS and their respective counsel that will assure continued payment of the MEMBERS' share of the outstanding~~

~~indebtedness. Approval of such financial assurances by an independent financial consultant selected by the BOARD shall be required.~~

~~“FINANCIAL OBLIGATIONS” means INDENTURE OBLIGATIONS, REVENUE BONDS” means Indenture Obligations, Revenue Bonds and any other financial obligations or liabilities incurred by the AUTHORITY~~Authority.

"FISCAL YEAR" means the period commencing on each July 1 and ending on the following June 30.

“FLOW CONTROL” means a system by which a Member, through ordinance, regulation or other official directive, compels its franchised or contracted collection hauler(s) to transport municipal solid waste, recyclables, or other Source Separated Material(s) from the place material is generated to a facility that is owned by, operated by, or under the contractual obligation of the Authority for purposes of processing, recovering, transferring, transforming, energy production or disposal.

“INDENTURE” means ~~the Indenture of Trust dated as of April 1, 2002 between the AUTHORITY and BNY Western Trust Company, as such Indenture may be amended and supplemented from time to time (the “Indenture”) and any other similar indentures securing indenture that secures a financial obligations~~obligation of the AUTHORITYAuthority with revenues of the AUTHORITYAuthority.

“INDENTURE OBLIGATIONS” means ~~BONDS and PARITY OBLIGATIONS~~bonds, parity obligations and similar instruments, including any Revenue Bonds, which shall constitute REVENUE BONDS under the terms of this AGREEMENTevidence obligations of the Authority arising under and in respect of any Indenture.

"GOVERNMENT CODE" means Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (California Government Code Sections 6500 et seq.) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

“HOUSEHOLD HAZARDOUS WASTE” means those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, physical, chemical or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed or otherwise managed, as defined in the California Public Resources Code § 40141.

“LANDFILL” means the Cummings Road ~~Sanitary~~Landfill located at 5755 Cummings Road, Eureka, CA 95501.

“MEMBER” or “MEMBERS” means the City of Arcata, the City of Blue Lake, the City of Eureka, the City of Ferndale, the City of Rio Dell, the County of Humboldt, or any city located wholly or partly within Humboldt County which has joined the ~~AUTHORITY~~Authority pursuant to Section 2.2~~and has not subsequently withdrawn.~~

~~"MEMBERS" means the governing bodies of such entities collectively.~~

"OUTSTANDING" as of any particular date means (a) with respect to ~~INDENTURE OBLIGATIONS~~Indenture Obligations, the term shall have the meaning ascribed to it in the ~~INDENTURE~~Indenture, (b) with respect to ~~REVENUE BONDS~~Revenue Bonds, means ~~REVENUE BONDS~~Revenue Bonds issued but not yet defeased or redeemed, and (c) with respect to other financial obligations and liabilities of the ~~AUTHORITY~~Authority, means those other financial obligations and liabilities which have been incurred but not yet paid in accordance with their terms.

~~"PARITY OBLIGATIONS" shall have the meaning ascribed to such term in the INDENTURE."~~

"PLEDGE OF REVENUES" means a financial assurance mechanism as defined in 27 California Code of Regulations section 22200(jj) by which the ~~AUTHORITY~~Authority promises to make specified, identified future revenues of facilities under its ratemaking control available to pay future postclosure maintenance costs of a solid waste facility.

"REVENUE BONDS" means revenue bonds, notes, certificates of participation or any other instruments or evidences of indebtedness issued, executed, or delivered by the ~~AUTHORITY~~Authority from time to time pursuant to the ~~GOVERNMENT CODE~~Government Code or any other applicable law in order to finance any facility, plant, site, existing or planned, owned, leased, and constructed, maintained, and/or operated by the AUTHORITYAuthority, and/or any financial aspects of closed ~~LANDFILL~~Landfill maintenance.

"SERVICE AREA" means those areas under the jurisdiction of ~~MEMBERS~~Members from which the ~~AUTHORITY~~Authority receives ~~SOLID WASTE~~Solid Waste for processing, transportation, and disposal. If and when any additional cities join the ~~AUTHORITY~~Authority pursuant to Section 2.2., the ~~SERVICE AREA~~Service Area shall also include all areas within the joining City or Cities.

"SOLID WASTE" means the type of wastes commonly collected by ~~MEMBERS~~Members franchised ~~SOLID WASTE~~Solid Waste collectors including putrescible and nonputrescible solid, semisolid and liquid wastes including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition, and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewater, treated or chemically fixed sewage sludge which is not hazardous wastes, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. ~~SOLID WASTE~~Solid Waste does not include source-separated 1) hazardous wastes as defined in California Public Resources Code § 40141 or by federal law or regulation, 2) radioactive waste as defined and regulated, or 3) medical waste as defined and regulated, or 4) those Source Separated recyclable or compostable materials intended for collection as part of a ~~MEMBER's~~Member's collection and/or recycling, reuse, reprocessing

franchise. ~~SOLID WASTE does not include any wastes defined as "hazardous wastes" under federal or state laws or regulations.~~

"SOURCE SEPARATED MATERIAL(S)" means materials collected by a Member's franchised or contracted collection hauler that is separated, placed into a container by the generator and specifically intended for separate collection (e.g., curbside collected recyclables, and compostable materials).

"TRANSFER FACILITY" means a ~~SOLID WASTE~~any facility, including ~~any plant, site, existing or planned, owned, leased, and constructed, maintained, operated, or used for purposes of performing under this Agreement and includes any future Transfer Facility~~ accessory facilities related thereto, meeting the requirements of a "transfer or processing station" under Section 40200 of the California Public Resources Code, ~~and~~ for the receiving, processing, disposal, recycling and transportation of ~~SOLID WASTE~~Solid Waste and the recovery of materials from ~~such SOLID WASTES, which facility Solid Waste and Designated Source Separated Material(s), that~~ is owned by the ~~AUTHORITY~~Authority, by a ~~MEMBER~~Member, or by a private entity, but in all events is available for use by the ~~AUTHORITY~~Authority or its ~~MEMBERS~~Members, such that the ~~waste~~material is handled by the ~~AUTHORITY'S~~Authority's transport, processing and disposal system.

~~Those approved facilities are set forth on Exhibit A attached hereto.~~

SECTION 2. FORMATION, MEMBERSHIP

2.1 ~~HUMBOLDT WASTE MANAGEMENT AUTHORITY.~~Humboldt Waste Management Authority. Pursuant to the ~~GOVERNMENT CODE~~Government Code, the ~~MEMBERS~~Members do hereby create, form and establish the ~~AUTHORITY~~Authority, a public entity to be known as the "HUMBOLDT WASTE MANAGEMENT AUTHORITYHumboldt Waste Management Authority", it being understood that the ~~BOARD~~Board shall be entitled to change the ~~AUTHORITY'S~~Authority's name from time to time if it so chooses. The ~~AUTHORITY~~Authority shall be a public entity separate and distinct from each of the ~~MEMBERS~~Members.

2.2 **Member Additions.** Any city or county in Humboldt County may apply to join the ~~AUTHORITY~~Authority as a Member. The prospective Member's application must be received by the Authority no later than January 1 for potential membership beginning with the following Authority Fiscal Year. Membership will be granted only upon the approval of at least 70% of the then-existing MEMBERS. ~~Directors.~~ Such approval shall not be granted unless and until the jurisdiction shall have: (1) covenanted to direct all ~~SOLID WASTE~~Solid Waste and Designated Source Separated Material(s) collected by the jurisdiction (if such jurisdiction provides collection services directly to its constituents) to ~~the TRANSFER FACILITY~~a Transfer Facility for processing, transportation, and disposal; (2) successfully entered into one or more agreements, satisfactory to the

~~AUTHORITY~~Authority, which direct its franchised ~~or contracted collection~~ hauler(s) to deliver all ~~SOLID WASTE~~Solid Waste and Designated Source Separated Material(s) collected under such franchise(s) ~~or contract(s) to the TRANSFER FACILITY~~a Transfer Facility for processing, transportation and disposal; or (3) made such other arrangement or covenant acceptable to the ~~AUTHORITY for the delivery of SOLID WASTE to the TRANSFER FACILITY~~Authority for the delivery of Solid Waste to the Transfer Facility. Additionally, new Members will be assessed a prorated share of assets and liabilities held by the Authority such as the undesignated reserve fund and any existing Indenture Obligations.

- 2.3 ~~AUTHORITY~~Qualifications.**Flow Control.** It is hereby understood that the intent of the ~~AUTHORITY~~Authority is to require all present and future ~~MEMBERS~~Members to covenant to take all actions possible to direct ~~SOLID WASTE~~Solid Waste and Designated Source Separated Material(s) to ~~the TRANSFER FACILITY~~a Transfer Facility and to amend or revise any franchise collection agreements at the earliest possible date (which date may be the next renewal date for such franchise collection agreement) to provide the ~~MEMBER~~Member with the right to direct all ~~SOLID WASTE~~Solid Waste and Designated Source Separated Material(s) collected under any franchise collection agreement to ~~the TRANSFER FACILITY~~a Transfer Facility as specified by the Authority Directors.

SECTION 3. PURPOSE

- 3.1 **General.** The ~~AUTHORITY~~Authority is formed to provide ~~economical~~the economic coordination of ~~SOLID WASTE~~Solid Waste and Designated Source Separated Material(s) management services and to efficiently and fairly assure against potential adverse effects of past ~~SOLID WASTE~~Solid Waste management services within the ~~SERVICE AREA~~Service Area. This Agreement is entered into by the ~~MEMBERS~~Members in order: 1) that they shall jointly request proposals and contract for ~~SOLID WASTE~~Solid Waste and Designated Source Separated Material(s) processing and disposal services; and 2) that they may jointly develop and fund programs to provide for the: A) siting, permitting, developing, constructing, maintaining, operating or contracting for the construction and/or operation of disposal sites, ~~transfer facilities~~Transfer Facilities and equipment, materials recovery facilities, waste to energy facilities, and/or ~~solid waste~~Solid Waste landfills; B) preparing ~~and implementing an Integrated Waste Management Plan and other of~~ planning documents which meet the requirements of the ~~ACT~~Act and other state law and regulation; C) ~~disposal of waste, transfer, or processing of materials~~ generated in the incorporated and unincorporated area of the County; ~~and the granting of franchises for waste hauling, as may be agreed to in writing and signed by any or all MEMBERS;~~ D) planning, implementing and supervising programs which serve all or most jurisdictions, including facilities (household hazardous waste, centralized composting and disposal), special wastes (tires, appliances, and construction/demolition wastes) and recycling market development.
- 3.2 ~~TRANSFER FACILITY~~**Transfer Facility.** The general purpose ~~may~~ include, but is not limited to, the purpose of providing ~~economical~~the economic coordination of ~~SOLID~~

~~WASTE~~ processing, transfer and disposal services ~~of SOLID WASTE~~ for Solid Waste and Designated Source Separated Material(s) generated within the ~~SERVICE AREA~~ Service Area, including but not limited to the acquisition, construction, financing, refinancing, maintaining, operating, rate setting, rate collection, and regulation of a ~~TRANSFER FACILITY~~ Transfer Facilities.

- 3.3 **Landfill Closure and Maintenance.** The general purpose also includes, but is not limited to, establishment of pooled insurance and other financial or other mechanisms to provide, for the safe closure and long term postclosure maintenance of the closed ~~LANDFILL~~ Landfill serving part or all of the ~~SERVICE AREA~~ Service Area for the general purpose of protecting the health and safety of the public within the ~~SERVICE AREA~~ Service Area and the specific purpose of protecting the general funds of the ~~MEMBERS~~ Members against any possible "generator" liability under state or federal laws and regulations which might arise if such landfills are not properly closed and maintained. The purposes of the ~~AUTHORITY~~ Authority may include ownership and/or management of the ~~LANDFILL~~ Landfill during the final stages of the ~~LANDFILL's~~ Landfill's active life, during closure, and thereafter if such is deemed essential, in the discretion of the ~~BOARD OF DIRECTORS~~ Board of Directors, for successful accomplishment of the primary purpose of safe closure and postclosure maintenance. This Section excludes all landfills closed prior to July 1, 1996.

- 3.4 **Common and Additional Powers.** The ~~AUTHORITY's~~ Authority's purpose also includes the establishment of the ~~AUTHORITY~~ Authority as an independent joint powers entity to enable the ~~MEMBERS~~ Members to jointly exercise the common powers of the ~~MEMBERS~~ Members set forth in Section 3.1 and for the exercise of such additional powers as are conferred under Section 6 or conferred by the ~~GOVERNMENT CODE~~ Government Code upon all joint powers authorities.

SECTION 4. ORGANIZATION

- 4.1 **Composition.** The ~~AUTHORITY~~ Authority shall be composed of the City of Arcata, the City of Blue Lake, the City of Eureka, the City of Ferndale, the City of Rio Dell, any city within the ~~SERVICE AREA~~ Service Area which has joined pursuant to Section 2.2 ~~and not subsequently withdrawn~~, and the County of Humboldt.
- 4.2 **Principal Office.** The principal office of the AUTHORITY shall be established by the ~~BOARD~~ Board. The ~~BOARD~~ Board may change that principal office upon giving at least 15 days written notice to each ~~MEMBER~~ Member.
- 4.3 **BOARD** Board The ~~AUTHORITY~~ Authority shall be governed by the ~~BOARD OF DIRECTORS~~ Board of Directors, which shall exercise or oversee the exercise of all powers and authority on behalf of the ~~AUTHORITY~~ Authority. The ~~AUTHORITY BOARD~~ Authority Board of ~~DIRECTORS~~ Directors shall appoint at its first meeting a chairperson and a vice chairperson. Thereafter at its first meeting in each succeeding fiscal

year, the ~~BOARD~~Board shall appoint new officers. The appointment of the chairperson shall rotate among the ~~MEMBERS~~Members of the ~~AUTHORITY~~Authority.

4.4 ~~DIRECTORS~~Directors.

- (a) The ~~BOARD~~Board shall consist of the same number of ~~DIRECTORS~~Directors as the number of ~~MEMBERS~~Members. Each ~~MEMBER~~Member shall appoint one ~~DIRECTOR~~Director. Upon execution of this ~~AGREEMENT~~Agreement by a ~~MEMBER~~Member, the ~~MEMBER~~Member shall appoint its representative to the ~~BOARD~~Board and at least one person as an alternate to serve in the case of absence or conflict on the part of the appointed ~~DIRECTOR~~Director. Thereafter, vacancies shall be filled by the appointing ~~MEMBER~~Member within thirty (30) days of the occurrence thereof. Each ~~DIRECTOR~~Director and alternate shall be an elected official of the governing body of the ~~MEMBER~~Member that he or she represents. If a ~~DIRECTOR~~Director or alternate ceases holding any such elected position, he or she shall then cease to serve as a ~~DIRECTOR~~Director or alternate. The ~~AUTHORITY~~Authority and the ~~BOARD~~Board shall be entitled to rely on a written notice from the City Clerk (in the case of city ~~MEMBERS~~Members) and the Clerk of the Board of Supervisors (in the case of county ~~MEMBERS~~Members) as conclusive evidence of the appointment and removal of the ~~DIRECTORS~~Directors and/or alternates representing that ~~MEMBER~~Member.
- (b) Each ~~DIRECTOR~~Director and alternate shall hold office from the first meeting of the ~~BOARD~~Board after appointment by the ~~MEMBER~~Member, until his or her successor is selected by the ~~MEMBER~~Member that appointed that ~~DIRECTOR~~Director. Each ~~DIRECTOR~~Director and alternate shall serve at the pleasure of the ~~MEMBER~~Member that he or she represents and may be removed at any time, without cause, at the sole discretion of that ~~MEMBER~~Member.
- (c) No compensation shall be received by any ~~DIRECTOR~~Director or alternate unless expressly provided by resolution of the ~~BOARD~~Board.

4.5 ~~EXECUTIVE ADVISORY COMMITTEE~~Executive Advisory Committee. There is hereby created an ~~EXECUTIVE ADVISORY COMMITTEE~~Executive Advisory Committee which shall consist of the ~~MEMBER~~Member City and County Managers, or their appointees or designees, to advise the ~~EXECUTIVE DIRECTOR~~Executive Director as specified below:

- a) Review and recommend an operating and capital budget, and review and comment on ~~AUTHORITY~~Authority goals and objectives.
- b) Provide assistance to the ~~BOARD~~Board as requested in the recruitment and selection for the ~~AUTHORITY'S EXECUTIVE DIRECTOR~~Authority's Executive Director.