



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-13

For the meeting of: April 20, 2010

Date: April 1, 2010

To: Board of Supervisors

From: *P* Thomas K. Mattson, Public Works Director

Subject: Ground Lease, No. L-0534, Eel River Conservation Camp and Establishment of Redway Transfer Facility Maintenance Trust Fund

RECOMMENDATION(S): That the Board of Supervisors:

1. Approves the attached Ground Lease with the State of California.
2. Authorizes the Chair to sign four originals of the Ground Lease.
3. Directs the Clerk of the Board to return all four executed Leases to the Public Works Department - Real Property Office for transmittal to State for signatures.
4. Direct the Auditor-Controller to establish trust fund 3691 Redway Transfer Facility Maintenance for the maintenance and repair of access road and bridge leading to the transfer station site as stipulated in the Ground Lease as well as the maintenance of the transfer station facilities by County during the term of the lease.

SOURCE OF FUNDING: General Fund – Solid Waste (1100438)

DISCUSSION:

Ground Lease

The Redway Transfer Facility has been operating from its current location since the 1970s. The transfer facility with its associated infrastructure is sited on property shared with the Eel River Conservation Camp

Prepared by Thomas K. Mattson

CAO Approval *Cheryl Dillman*

REVIEW: *mya*

Auditor *mya*

County Counsel *JS*

Personnel

Risk Manager

Other

TYPE OF ITEM:

- ☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *SMITH* Seconded by Supervisor *DUFFY*

Ayes *5*
Nays *0*
Abstain *0*
Absent *0*

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *5/4/10*

By: *Nancy L. Hampton*

Kathy Hayes, Clerk of the Board

and the California Department of Forestry and Fire Protection (Cal Fire). The parcel (Appraiser Parcel Number 222-161-002) is owned by the State of California and used by the County for the Redway Transfer Facility. The County has successfully negotiated the attached twenty-year lease in order to provide for long term solid waste collection and recycling in the Southern Humboldt Area. The lease will also allow for facility upgrades to be amortized over longer than normal terms. This will allow for lower rate increases for facility improvements than could occur with a shorter term lease.

Set-Up of Trust Fund

In lieu of rental payments to the State of California, the Ground Lease provides for the maintenance and repair of the road and bridge leading to the transfer station site by County, among other items. The County shall (a) maintain the road from terminus of the access road at County Road #6B105 to the leased premises, (b) pave the road surface once during the term of the lease with 0.15' overlay from the terminus of the road to the leased premises, and (c) provide bridge repair and maintenance not to exceed \$50,000 within any one year with Cal Fire agreeing to the same terms. In order for County to fulfill its repair and maintenance obligations over the twenty-year term of the Lease, staff is requesting to establish a Trust Fund for this purpose utilizing net revenues from the Solid Waste budget unit starting with FY 09/10.

The County is currently negotiating for a long-term lease with Eel River Disposal Company, Inc. for the operation of the Redway Transfer Facility. Eel River Disposal Company, Inc. has proposed to undertake site improvements and expansion of the facilities with costs amortized over a number of years through tip fee adjustments. Thereafter, County will continue to maintain the facilities to standards. Staff is requesting to also utilize the Trust Fund for this purpose.

The Ground Lease and request for establishment of a Trust Fund comes to the Board for approval.

FINANCIAL IMPACT: The Ground Lease requires County to pay a one-time fee of \$2,500 for the preparation of the lease documents and a one-time fee of \$5,000 for bridge maintenance repairs already completed by the State. Furthermore, it requires County pay for trash removal services provided by the current contractor, Eel River Disposal Company, Inc. The funds to cover these costs are included in FY 09/10 budget.

There will be a one-time road surface overlay estimated to cost \$80,000 with maintenance of the same road to County standards. Bridge repair and maintenance cost shall not exceed \$50,000 per project or aggregate total for projects within one year. There are currently no funds allocated for these costs in the current budget year. However, with the establishment of a Trust Fund, County will be able to set aside funds annually from solid waste net revenues to fulfill its obligations for the maintenance and repair of the road and bridge, as well as the facilities.

OTHER AGENCY INVOLVEMENT: California Department of Forestry and Fire Protection, Eel River Disposal Company, Inc.

ALTERNATIVES TO STAFF RECOMMENDATIONS: None recommended. The Ground Lease will provide for the execution of a long-term agreement with the current contractor Eel River Disposal Company, Inc. to ensure continuous operation of the Redway Transfer Station in the Southern Humboldt Area.

ATTACHMENTS: Ground Lease in quadruple.

Location of Leased Premises**EEL RIVER CONSERVATION CAMP**
Humboldt County**Agency:****Department of Forestry & Fire Protection****Real Property #467****GROUND LEASE****Lease No.: L-0534****LESSEE: COUNTY OF HUMBOLDT**

THIS LEASE, dated for reference purposes only, **March 8, 2010**, is made by and between the State of California, acting by and through the Director of the Department of General Services (DGS) with the consent of the Department of Forestry and Fire Protection (CAL FIRE), hereinafter collectively referred to as STATE, and the COUNTY OF HUMBOLDT, hereinafter referred to as LESSEE.

RECITALS

WHEREAS, the CAL FIRE has under its jurisdiction certain real property in the County of Humboldt, State of California, commonly referred to as the Eel River Conservation Camp, hereinafter referred to as the "Conservation Camp"; and

WHEREAS, pursuant to Government Code 11011.2, the Director of the Department of General Services, with the consent of the State agency concerned, may enter into a long-term lease which is to be determined by the Director of General Services, if the Director deems the letting to be in the best interest of the State; and

WHEREAS, jurisdiction for the Conservation Camp was transferred from the Department of Corrections to CAL FIRE; and

WHEREAS, the County of Humboldt has enjoyed continuous and uninterrupted occupation of a portion of the Conservation Camp since May of 1978 and LESSEE desires to lease that portion of the Conservation Camp grounds from STATE for use as a solid waste transfer station for public benefit; and

WHEREAS, it is in the best interests of the STATE that such a lease be consummated between STATE and LESSEE on the terms and conditions herein contained.

NOW THEREFORE, the parties agree to the provisions that follow and are incorporated herein as:

Section 1: Site Specific Provisions
Section 2: Ground Lease Specific Provisions
Section 3: Standard Provisions

SECTION 1 –SITE SPECIFIC PROVISIONS**WITNESSETH****PROPERTY
DESCRIPTION**

1. STATE does hereby lease to LESSEE and LESSEE does hereby hire from STATE an approximately 5.5 acre parcel of land hereinafter referred to as "Premises", located at the Eel River Conservation Camp, in the County of Humboldt, State of California, as shown on Exhibit "A", attached hereto and made a part of this Lease Agreement, along with non-exclusive right of ingress and egress from the terminus of the access road at Highway 101 to the above described leased area.

USE

2. The Premises shall be used during the term hereof solely and only for the purpose of operating a solid waste transfer station and for no other use whatsoever.

TERM

3. The term of this Lease shall be for twenty (20) years, commencing on April 1, 2010, and terminating on March 31, 2030, with such rights of termination as may be hereinafter expressly set forth.

IN-LIEU RENT

4. (a) In lieu of and equivalent to fair market rent, LESSEE shall:
- 1) Provide trash removal service for the Eel River Conservation Camp free of charge to STATE during the term of the lease.
 - 2) Maintain the road from the terminus of the access road at County Road #6B105 to the leased Premises for the term of the lease.
 - 3) Pave the road surface one time during the term of the lease with 0.15' overlay, from the terminus of the access road at County Road #6B105 to the leased Premises, paving by LESSEE to occur within two (2) years after written notification by CAL FIRE engineers of the need for paving, based on Caltrans standard specifications for the twenty four (24') foot wide road.
- (b) Should LESSEE terminate this lease prior to LESSEE's completion of paving the road from the terminus of the access road at County Road #6B105 to the Premises, LESSEE shall either owe STATE the cost of the road paving prorated for the period of time during which LESSEE occupied the Premises, or LESSEE may choose to pave the road within one (1) year of lease termination at LESSEE's expense with no compensation due and owing from STATE.
- (c) Should STATE terminate this lease prior to LESSEE's completion of paving the road from the terminus of the access road at County Road #6B105 to the Premises, then no rent will be due and owing to STATE from LESSEE.
- (d) Should STATE or LESSEE terminate this lease after LESSEE's completion of paving the road from the terminus of the access road at County Road #6B105 to the Premises, then no compensation will be due and owing to either STATE or LESSEE.
- (e) Should LESSEE cease to use the Premises as allowed and/or cease to provide trash removal and road maintenance service plus the one time paving of the access road as agreed in 4(b), then rent shall be adjusted by STATE and shall become due and payable from the date of change in use, at current fair market rent rates payable monthly in advance, as long as LESSEE continues the use of the Premises.

Rent Payments shall be made payable to:

Department of General Services
Accounts Receivables PAL (L-0534)
P. O. Box 989053
West Sacramento, CA 95798-9053

Rent shall be due and payable to STATE whether or not an actual invoice is sent by STATE or received by LESSEE.



SECTION 1 –SITE SPECIFIC PROVISIONS**BRIDGE REPAIR/
MAINTENANCE**

5. LESSEE shall provide bridge repair/maintenance as noted on the bi-annual bridge inspection reports provided by Department of Transportation (DOT), Department of Structures, Maintenance and Investigations. LESSEE shall have 60 days from receipt of the inspection report to review the report and respond to DOT and STATE in writing with approval or non-approval of the recommended maintenance or repair. Should LESSEE disagree with report recommendations, LESSEE shall be responsible for providing a DOT acceptable resolution within 180 days from receipt of inspection report.

Once a repair/maintenance strategy is agreed upon, the cost of the matching funds necessary for appropriation of Federal funding for repair/maintenance will be divided evenly between LESSEE and CAL FIRE. Said cost of LESSEE'S share for any one project, or aggregate total for projects within one year, shall not exceed Fifty Thousand and no/100 Dollars (\$50,000.00). All agreed upon maintenance or repairs shall be completed within two years of receipt of report unless critical to public safety.

LESSEE shall have authority to deal directly with DOT to develop plans for implementation of maintenance or repairs, subject to approval by CAL FIRE.

**ONE TIME BRIDGE
REPAIR FEE**

6. It is mutually agreed between the STATE and COUNTY that the STATE will secure all necessary permits and place jacks to secure the Eel River Bridge, Humboldt County. Said actual repairs shall be paid by the STATE and reimbursed as a one time payment by the COUNTY within thirty (30) days of receipt of an invoice from STATE reflecting the actual repair costs in an amount not to exceed:

FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS.

**ADMINISTRATIVE
FEES**

7. STATE acknowledges that LESSEE has paid the following one time fee associated with preparation of the lease documents, in the amount of Two Thousand Five Hundred (\$2,500) Dollars.

UTILITIES

8. LESSEE shall pay all water, electric, gas and other utility charges or any other charges payable in connection with LESSEE's use of Premises during the term of this Lease with the exception of water used from the State owned water system. No utilities including electricity or gas will be provided by STATE and STATE assumes no liability for the availability or non-availability of utilities.

**EARLY
TERMINATION**

9. The parties hereto agree that either party may terminate this Lease at any time during the term hereof by giving written notice to the other party, one hundred eighty (180) days prior to the date when such termination shall become effective. If LESSEE fails to complete its move out within the notice period and remains on the Premises, additional rent, if owing, shall be paid and prorated based on the actual number of days the LESSEE occupies the Premises following the effective date of termination.

**HOLDING OVER &
LEASE RENEWAL**

10. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease shall constitute a month to month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, that said holdover tenancy shall be subject, if applicable and at STATE's sole discretion, to a rent increase of five percent (5%) of the ending rent, payable monthly in advance.

STATE offers and LESSEE accepts no assurance that the Premises or any other comparable space or facilities at the site described herein will be made available to LESSEE beyond the term stated above or as said term is reduced as provided herein.

SECTION 1 –SITE SPECIFIC PROVISIONS**NOTICES**

11. (a) All notices or other communications required or permitted hereunder shall be in writing with Lease number **L-0534** prominently displayed, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.
- (b) All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (2) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

TO STATE: Department of General Services

Department of General Services
Real Estate Services Division
SOLD (L-0534)
P.O. Box 989052
West Sacramento, CA 95798-9052
(916) 375-4025 (phone)

Department of General Services
Real Estate Services Division
SOLD (L-0534)
707-3rd Street, MS 505
West Sacramento, CA 95605

TO CAL FIRE: California Department of Forestry and Fire Protection

(note: U.S. Postal Services will not deliver to CAL FIRE street address)

Technical Services Section
P.O. Box 944246
Sacramento, CA 94244-2460
(916) 324-1183 (phone)

Technical Services Section (L-0534)
1300 U Street
Sacramento, CA 95818

TO LESSEE: County of Humboldt

Department of Public Works
Public Works Director
1106 Second Street
Eureka CA 95501
(707) 268-2667

Notice of change of address or telephone number shall be given by written notice in the manner described in this Clause. LESSEE is obligated to notice all STATE offices listed above and the failure to provide notice to all STATE offices will be deemed to constitute a lack of notice.

**IMPROVEMENTS &
MODIFICATIONS**

12. LESSEE at its sole cost and expense may with written permission from State and subject to the "Fees Assessed Lessee For Changes" Section hereof, construct structures and improve or modify LESSEE's equipment consistent with LESSEE's permitted use of the Premises. STATE will not unreasonably withhold such approval. Such approval by STATE will not constitute approval of any equipment installed or to be installed by LESSEE, and will not relieve LESSEE of the obligation of complying with any and all terms and conditions of this Lease; LESSEE shall notify STATE thirty (30) days prior to the actual construction.

(a) Any improvements or modifications completed by LESSEE on the Premises shall be done in a lawful manner and in conformity with all applicable laws, including CEQA, ordinances, and regulations, and provided further that the Premises shall be kept free from any and all liens and charges on account of labor or materials used in or contributing to any work thereon. Prior to commencement of any improvements, changes or demolition, LESSEE shall provide documentation of the completed and approved CEQA process to STATE.



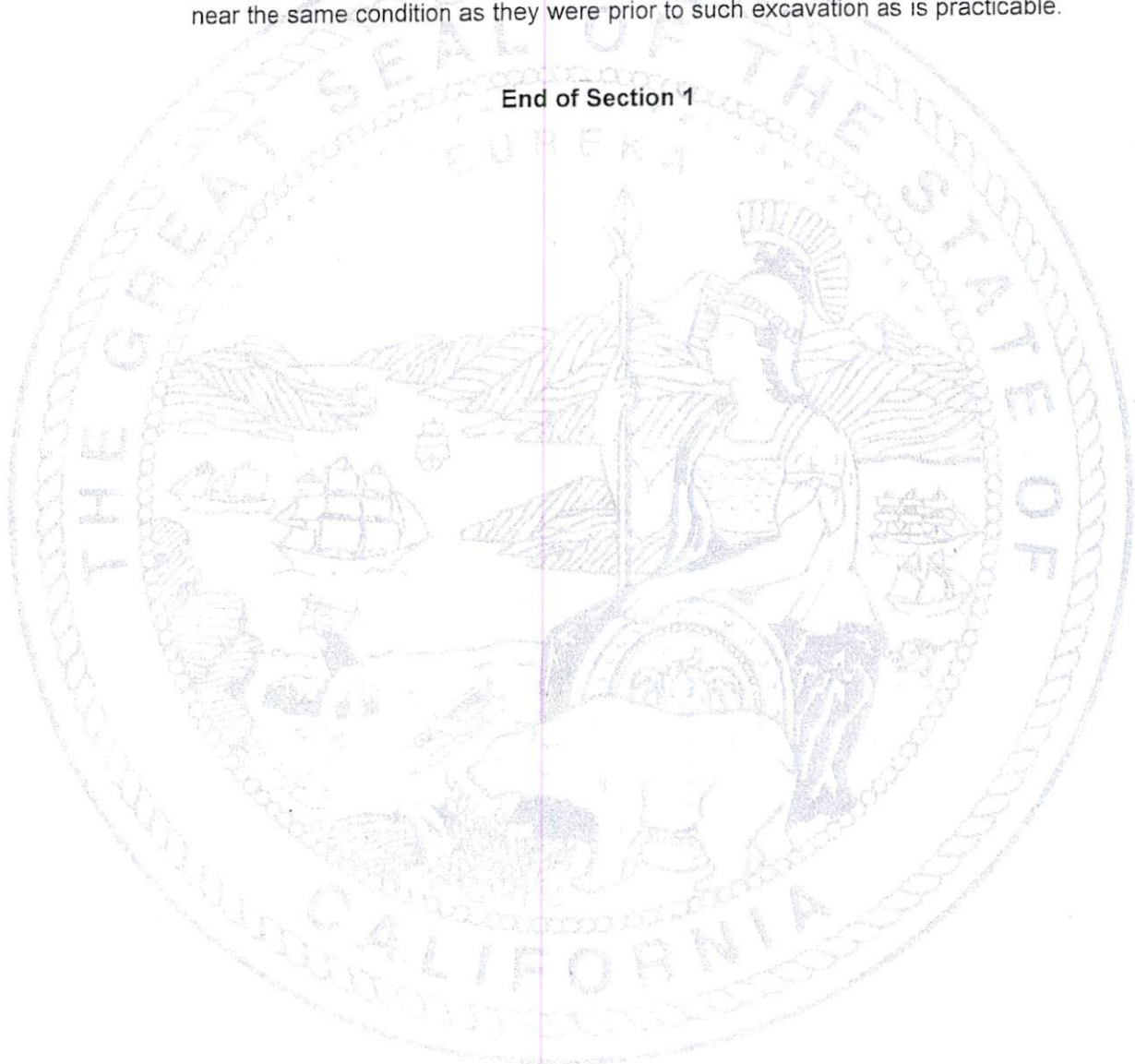
SECTION 1 –SITE SPECIFIC PROVISIONS

IMPROVEMENTS & MODIFICATIONS (CONT)

(b) LESSEE shall furnish, install and use in, upon, and under, and remove from the Premises such equipment and other property of whatsoever kind and nature as LESSEE deems necessary consistent with the purpose of this Lease as set forth in "Use" Section hereof.

(c) In making any excavation and/or installation of equipment on the Premises LESSEE shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation and/or construction, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as they were prior to such excavation as is practicable.

End of Section 1



SECTION 2 – GROUND LEASE SPECIFIC PROVISIONS

1. **ROAD ACCESS AND FEES.** STATE hereby makes no representation regarding ingress and egress rights via the access road that serves the Premises. LESSEE agrees to the following terms and conditions regarding the use of said access road:

(a) LESSEE shall exercise its right personally or through its authorized agents, employees, contractors, or servants whenever it is necessary.

(b) LESSEE shall use said road at its sole risk and avoid traveling upon it to the greatest practical extent at all times when weather conditions are such that excessive damage to the road surface may result from such use, and further, LESSEE shall, at its expense, promptly repair any road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.

(c) LESSEE agrees to pay, within 30 days of notice by STATE, its proportionate share of any road access fees that may be assessed upon STATE by any owners of the road.

2. **ACCESS TO PREMISES.** As the general public has access to the Premises for the purpose of trash disposal and related activities during normal business hours, LESSEE, its properly qualified and authorized agents, employees, contractors and servants, shall have the non-exclusive right of ingress to and egress from said Premises. If equipment of LESSEE is operated or maintained by anyone other than the regularly contracted operators, the admission of such persons to said site shall be permitted only upon the express consent of STATE having first been obtained.

3. **WORKMANSHIP STANDARDS.** The installation and maintenance of the equipment of LESSEE shall be performed in a neat and workmanlike manner and shall conform in all respects to the fire, safety and construction standards deemed applicable to such installation by STATE, and be satisfactory to STATE.

4. **DISPOSITION OF LESSEE'S IMPROVEMENTS.**

(a) During the term of this Lease, all equipment, and other personal property placed in, upon, or under the Premises by LESSEE shall remain the property of LESSEE and shall be removed by LESSEE, at its sole cost and expense within thirty (30) days after expiration or termination of LESSEE's tenancy.

(b) Should LESSEE fail to remove said equipment and personal property within sixty (60) days after expiration or termination of the Lease, STATE may do so at the risk of LESSEE. Upon written demand by STATE, LESSEE shall immediately pay all costs and expenses of the removal of LESSEE's personal property and equipment.

(c) LESSEE may, however, with written consent of STATE, abandon in place any and all of LESSEE's equipment and personal property, whereupon, as abandoned, title to said improvements will vest in STATE.

5. **LESSEE GUARANTEES.** LESSEE hereby guarantees any and all work or services performed by LESSEE or LESSEE's properly qualified or authorized agents, employees, contractors and servants, in order to accomplish the installation and/or maintenance of their equipment at STATE's facilities.

End of Section 2

SECTION 3 – STANDARD PROVISIONS

1. **PERMITS AND APPROVALS.** The parties agree that LESSEE's ability to use the Premises is dependent upon LESSEE obtaining all of the certificates, permits, licenses, and other approvals that may be required from any third party. STATE will cooperate with LESSEE at no expense to STATE, in LESSEE's effort to obtain such approvals in connection with said permits, licenses or other approvals.
2. **LEASE MODIFICATION FEES.** An administration review fee shall be assessed for any action originated by LESSEE requiring lease administration or staff review work by STATE, such as but not limited to, name changes, proposed new construction, assignments of Lease or changes in equipment which result in an amendment to, or assignment of this Lease. To initiate such services, LESSEE must submit a written request to DGS. The administration fee will be assessed at the prevailing rate in effect at the time the request is received. LESSEE will be required to remit the administration/review fee to the DGS address listed in the "Notices" Clause of this Lease. If the request is found to be complex and/or requires non-standard handling for administrative services, the transaction will be billed at the DGS current hourly rate for the actual additional hours required to complete the requested administrative/technical review services.
3. **DEFAULT.** LESSEE shall make all payments to STATE without deduction, default or delay. In the event of the failure of LESSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LESSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LESSEE of such default, this Lease may, at STATE's sole discretion, be terminated. In the event of termination of this Lease, it shall be lawful for STATE to reenter into and upon the Premises and every part thereof and to remove and store at LESSEE's expense all property there from and to repossess and occupy the Premises. In the event STATE terminates this Lease pursuant to this Clause, STATE shall not be required to pay LESSEE any sum or sums whatsoever.
4. **INTEREST ON PAST DUE OBLIGATIONS.** STATE may charge interest, for any amount due to STATE but not paid when due, at a rate equal to the annual maximum rate allowable by law from the due date. Payment of such interest together with the amount due shall excuse or cure any default by LESSEE under the "Default" Clause herein.
5. **COMPLIANCE WITH LAWS.** LESSEE shall at its sole cost and expense comply with all the statutes, laws, ordinances and regulations of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the Premises and use of the Premises as provided by this Lease.
6. **FAILURE TO PERFORM.** In the event of the failure, neglect, or refusal of LESSEE to do, or perform work, or any part thereof, or any act or thing in this Lease provided to be done and performed by LESSEE, STATE will, at its option, have the right to do and perform the same, and LESSEE hereby covenants and agrees to pay STATE the cost thereof on demand.
7. **ASSIGNMENT, SUBLETTING & CHANGE IN USE.** LESSEE shall not transfer or assign ("assign" shall include any transfer of any ownership interest in the Lease by LESSEE or by any partner, principal, or controlling stockholder, as the case may be, from the original LESSEE, its partner or principal) this Lease, and shall not sublet, license, permit or suffer any use of the Premises or any part thereof without first obtaining the written consent of STATE, which consent is at the sole discretion of STATE.
8. **RIGHTS RESERVED BY STATE.**
 - (a) STATE reserves the right to use the real property involved (not including real property installed, erected or constructed by LESSEE) in any manner, including but not limited to the right to construct, place, maintain, use, operate, repair, replace, alter and move pipelines, conduits, culverts, ducts, fences, poles, electrical energy, power and communication lines, roads, bridges, subways, sidewalks, to grant easements over, across, upon and under said real property, and the continuous right of ingress to and egress from any portion or portions of said real property in such manner as not to create any unreasonable interference with the exercise of the rights granted to LESSEE.
 - (b) Any grant herein contained is subject to all valid and existing contracts, leases, licenses, easements, encumbrances and claims of title which may affect said facility.
 - (c) No priority or other rights will attach to the use of any space in STATE's building or on said facility.
9. **PROHIBITED USES.** LESSEE shall not commit, suffer or permit any nuisance on the Premises or on STATE property or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the Premises for any illegal or immoral purposes. LESSEE agrees not to cut or remove any trees or brush thereon except as approved in writing in advance by STATE. LESSEE agrees that it shall at all times exercise due diligence in the protection of the Premises and STATE's property against damage or destruction by fire or other cause.
10. **FIRE AND CASUALTY DAMAGES.** STATE will not keep improvements which are constructed or installed by LESSEE under the provisions of this Lease insured against fire or casualty, and LESSEE shall make no claim of any nature against STATE by

SECTION 3 – STANDARD PROVISIONS

reason of any damage to the business or property of LESSEE in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or willful misconduct of agents or employees of STATE in the course of their employment.

11. **ACTS OF NATURE.** If any of LESSEE's improvements or equipment is destroyed by acts of nature, LESSEE may replace them with improvements or equipment of the same general type that meets or exceeds the technical specifications of the original equipment. LESSEE shall immediately notify STATE of such items and the date the replacement is completed.

12. **HAZARDOUS WASTE.** LESSEE agrees that it shall comply with all laws, federal, state, or local, existing during the term of this Lease pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

(a) LESSEE shall monitor overside drains and ensure that leachate or any contaminating liquid runoff resulting from spillage from any refuse transfer or containers is prevented from entering the roadway drainage system, contaminating the soil, ground water or the Eel River.

(b) In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LESSEE's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LESSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.

(c) Where the LESSEE is found to be in breach of this Clause due to the issuance of a government order directing the LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE or any person acting under LESSEE's direct control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

(d) In the event a government order is issued naming the LESSEE, or the LESSEE incurs any liability during or after the term of the Lease, in connection with contamination which pre-existed LESSEE's obligations and original occupancy under this Lease or which were not caused by the LESSEE, STATE will hold harmless, indemnify, and defend the LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts and expenses therefore.

13. **CONDITION OF PREMISES.**

(a) LESSEE is aware of the current condition of the Premises and accepts the Premises in "as is" condition. LESSEE accepts the Premises as being in good order, condition and repair from the first day of occupancy under the lease dated May 23, 1978, unless otherwise specified herein, and agrees that on the last day of the term, or sooner termination of this Lease, to surrender up to STATE the Premises, with any appurtenances or improvements therein, in the same condition as when received, reasonable use and wear thereof and damage by act of God, excepted.

(b) LESSEE shall not call on STATE to make any repairs or improvements on the Premises and LESSEE shall keep the same in good order and condition at its own expense.

14. **VACATING THE PREMISES.** LESSEE shall, on the last day of said term or sooner termination of this Lease, peaceably and quietly leave, surrender, and yield up to STATE, the Premises in good order, condition, and repair, reasonable use and wear thereof and damage by acts of nature, excepted. LESSEE shall remove any and all structures and equipment placed on the Premises and restore the ground around such excavation and/or construction, and shall replace the earth so removed by it and restore the surface of the ground, and any improvement thereon to as near the same condition as they were prior to LESSEE's occupation of the Premises, except that STATE may, at its discretion, waive this requirement.

15. **RECOVERY OF LEGAL FEES.** If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Lease to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by State and County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by State and County Counsel) on appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgement is rendered.

16. **TAXES AND ASSESSMENTS.** LESSEE agrees to pay all lawful taxes, assessments or charges that at any time may be levied upon any interest in this Lease. It is understood that this Lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.

SECTION 3 – STANDARD PROVISIONS**17. NON-DISCRIMINATION.**

(a) In the performance of this Lease, the LESSEE shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or use of family care leave. LESSEE shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

(b) Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(c) LESSEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Lease by reference and made a part thereof as if set forth in full. LESSEE shall give written notice of its obligations under this clause to any labor organizations with which they have collective bargaining or other agreement. Further, LESSEE shall post in conspicuous places available to employees and applicants for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment Practices Section. (Government Code, Section 12920-12994).

(d) Remedies for willful violations:

(1) STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(2) STATE will have the right to terminate this Lease and any loss or damage sustained by STATE by reason thereof will be borne and paid for by the LESSEE.

18. INSURANCE.

LESSEE shall furnish STATE a certificate of insurance with STATE's Lease Number (L-0534 indicated on the face of said certificate, issued to STATE with evidence of insurance as follows:

COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain general liability with limits of not less than \$1,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the LESSEE's limit of liability.

The policy must include State of California, Department of General Services, LESSEE, and their officers, agents, employees and servants as additional insureds, but only insofar as the operations under the Lease are concerned.

AUTOMOBILE LIABILITY

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State of California and Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned.

WORKERS' COMPENSATION

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California.

GENERAL REQUIREMENTS

LESSEE shall ensure that the following general requirements are met:

a. Insurance Companies must be acceptable to Department of General Services, Office of Risk and Insurance Management.

b. LESSEE shall provide STATE with a true copy of the policy in place providing coverage for General Liability, within thirty (30) days after each insurance policy renewal.

c. Coverage needs to be in-force for complete term of this Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE within thirty (30) days of the expiration date of the existing policy. This new insurance must still meet the terms of the original contract.

d. Insurance policies shall contain a provision that coverage will not be cancelled without thirty (30) days prior written notice to the STATE.

e. LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.

f. In the event LESSEE fails to keep in effect at all



SECTION 3 – STANDARD PROVISIONS

times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.

g. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.

h. If LESSEE is self-insured in whole or in part as to any of the above described types and levels of coverage, LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this Insurance clause pertaining to policies of insurance in regard to those types and levels of insurance.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

19. HOLD HARMLESS INDEMNIFICATION. This Lease is made upon the express condition that the State of California is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, holdover periods or any other occupancy of the Premises by LESSEE, except those arising out of the sole negligence of the state. LESSEE agrees to defend, indemnify, and save harmless the State of California from all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring.

20. LOSSES. STATE will not be responsible for losses or damage to personal property, equipment or materials of LESSEE and all losses shall be reported to STATE immediately upon discovery.

21. DEBT LIABILITY DISCLAIMER. The State, including but not limited to the State's General Fund or any special self insurance programs, is not liable for any debts, liabilities, settlements, liens or any other obligations of the LESSEE or its heirs, successors or assigns. The State and its agencies, departments and divisions will not be liable for and will be held harmless by LESSEE and for any claims or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LESSEE, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the LESSEE. The State has no obligation to defend or undertake the defense on behalf of the LESSEE or its heirs, successors or assigns. LESSEE shall defend the State of California and its agencies, departments and divisions from any claims, actions, lawsuits, administrative proceedings or damages associated

with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LESSEE, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of the LESSEE.

22. RELOCATION PAYMENTS.

(a) In the event that State terminates this Lease pursuant to its terms, Lessee acknowledges and agrees that it has no claim against the state for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq., or any regulations implementing or interpreting such sections. Lessee further agrees that it has no claim in either law or equity against the state for damages or other relief should the Lease be terminated, and waives any such claims it may have.

(b) In the event subleasing, under the terms of this Lease, is permitted, LESSEE shall incorporate this Clause into the sublease. Failure to do so may obligate LESSEE for damages and costs resulting from claims for relocation payments by sublessee.

23. SMOKING RESTRICTIONS. Smoking shall not be allowed inside any building, or within 20 feet of any entrance or operable window of any building.

24. RECORDING. LESSEE shall not record this Lease or a short form memorandum thereof. Any such recordation will, at the option of STATE, constitute a non-curable default by LESSEE hereunder.

25. CEQA. Any physical changes made to the improvements by Lessee or its agents shall comply with the California Environmental Quality Act (CEQA).

26. AMENDMENTS AND MODIFICATIONS. No amendment, modification, or supplement to this Lease shall be binding on either party unless it is in writing and signed by the party to be bound by the modification.

27. AUTHORITY TO CONTRACT.

(a) If Lessee is a public, private or non-profit corporation, each individual executing this Lease on behalf of said LESSEE shall provide evidence, which is acceptable to STATE, that he/she is duly authorized to execute and deliver this Lease on behalf of said LESSEE in accordance with a duly adopted resolution of the Board of Directors or in accordance with the Bylaws of said Board, and that this Lease is binding upon said Board of Directors in accordance with its terms.

(b) LESSEE shall, concurrently with the Execution of this Lease, deliver to STATE at the address for the Department of General Services shown in the "Notice" Clause of this Lease, either a copy of the board's bylaws or a certified copy of the resolution of the Board of Directors authorizing or ratifying the execution of this Lease.

SECTION 3 – STANDARD PROVISIONS

- (c) In addition prior to the execution of this Lease, LESSEE shall provide STATE with a copy of LESSEE's current bylaws and corporate filing status as filed with the California Secretary of State.
28. **PARTNERSHIP DISCLAIMER.** LESSEE its agents and employees shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained will be construed as constituting the parties herein as partners.
29. **BANKRUPTCY.** In no event shall this Lease or the leasehold estate become an asset of LESSEE in bankruptcy, receivership or other judicial proceedings. LESSEE shall be in default under this Lease and the provisions of the "Default" Clause hereof shall apply in the event of any of the following: (a) LESSEE becomes insolvent or makes an assignment for the benefit of creditors, (b) a petition in bankruptcy is filed by or against LESSEE, (c) a writ of execution is levied against this Lease or the leasehold estate, (d) LESSEE abandons or vacates or does not continuously occupy or safeguard the Premises.
30. **MUTUAL CONSENT.** Notwithstanding anything herein contained to the contrary, this Lease may be terminated and the provisions of the Lease may be altered, changed, or amended by mutual consent of the parties hereto in writing.
31. **FORCE MAJEURE.** If either LESSEE or STATE will be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this Clause shall excuse LESSEE from prompt payment of any rent, taxes, insurance or any other charge required of LESSEE, except as may be expressly provided in this Lease.
32. **WAIVER.** If STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE'S right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.
33. **ENTIRE AGREEMENT.** This Lease and its exhibits constitute the entire agreement between STATE and LESSEE. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding.
34. **CLAUSE HEADINGS.** All Clause headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
35. **SEVERABILITY.** If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.
36. **SUPERSEDURE.** This Lease supersedes and voids any prior license, lease or agreement between STATE and LESSEE identified in this Lease with regards to the Premises.
37. **BINDING.** The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.
38. **COUNTERPART.** This Lease may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.
39. **ESSENCE OF TIME.** Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

End of Section 3

There have been no representations by the STATE or understandings made between the STATE or LESSEE other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

STATE OF CALIFORNIADIRECTOR OF DEPARTMENT OF
GENERAL SERVICESBy: _____
TONY PSIHOPAIDAS, Manager
State Owned Leasing & Development

Date Executed: _____

LESSEE

COUNTY OF HUMBOLDT

By: _____
Name Cliff Clendenen, Chair
Title Humboldt County Board of SupervisorsDate Signed 5/4/10**CONSENT:**DEPARTMENT OF FORESTRY
AND FIRE PROTECTIONBy: _____
JEROLD L. PETERSON
Real Property Manager

Date Signed: _____

By: _____
Attest: Cliff Clendenen
Clerk of the BoardBy: _____
Risk ManagerBy: _____
Approved as to Form:
County Counsel**APPROVAL RECOMMENDED:**DEPARTMENT OF GENERAL SERVICES
State Owned Leasing and DevelopmentBy: _____
KIMBERLEY TSUMURA
Associate Real Estate Officer

EXHIBIT A
Eel River Humboldt County Transfer Station
Lease No.: L-0534

