



AGENDA ITEM NO.  
**C-14**

# COUNTY OF HUMBOLDT

For the meeting of: May 9, 2017

Date: May 4, 2017

To: Board of Supervisors

From: Thomas K. Mattson, Public Works Director *TS For TM*

Subject: Construction Waste and Clean Debris Placement Agreement with Humboldt Redwood Company, LLC.

### RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve, and authorize the Chair of the Board to execute in duplicate, the attached construction waste and clean debris placement agreement with Humboldt Redwood Company, LLC.
2. Direct the Clerk of the Board to return one (1) executed original of the attached construction waste and clean debris placement agreement to the Department of Public Works – Road Division for transmittal to Humboldt Redwood Company, LLC.

### SOURCE OF FUNDING:

Road Fund - 1200325

### DISCUSSION:

After the January 2017 storm event, areas within Dyerville Loop Road, County Road Number 6D100, became unstable and had several slides occur continuously. The volume of material from these slides is very time consuming and difficult for county crews to haul outside of the area. The Department of Public Works is requesting that the Board approve the attached agreement with Humboldt Redwood Company to use their property in the Dyerville Loop Road area for depositing up to thirty-five thousand (35,000) cubic

Prepared by Art Reeve *[Signature]* CAO Approval *[Signature]*

REVIEW: Auditor \_\_\_\_\_ County Counsel Sm Personnel \_\_\_\_\_ Risk Manager \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT  
 Upon motion of Supervisor Fennell  
 Seconded by Supervisor Wilson  
 And unanimously carried by those members present,  
 The Board hereby adopts the recommended action  
 contained in this report.

### PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_  
 Meeting of: \_\_\_\_\_

Dated: May 9, 2017  
 Kathy Hayes, Clerk of the Board  
 By: *[Signature]*

yards of slide debris. Humboldt Redwood Company is not asking for payment, and this arrangement will reduce the amount of time involved with providing a clear roadway for the public.

FINANCIAL IMPACT:

The recommended action will not impact the Humboldt County General Fund since there are no financial terms in the attached agreement.

This action supports the Board's Strategic Framework by providing for and maintaining infrastructure.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the attached construction waste and clean debris placement agreement with Humboldt Redwood Company. Staff does not recommend this alternative since doing so will increase the difficulties county road crews are experiencing in keeping Dyerville Loop Road open for residents to access their homes and properties.

ATTACHMENTS:

1. Construction Waste and Clean Debris Placement Agreement with Humboldt Redwood Company, LLC

**CONSTRUCTION WASTE AND CLEAN DEBRIS PLACEMENT AGREEMENT  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
HUMBOLDT REDWOOD COMPANY, LLC.**

This Construction Waste and Clean Debris Placement Agreement ("Agreement"), entered into this 12th day of April, 2017, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Humboldt Redwood Company, LLC., a Delaware limited liability company, hereinafter referred to as "OWNER," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Public Works – Roads Division, has caused, or will cause, the removal of various waste and other clean debris related products ("Construction Debris") from one of its public works right of way projects, known more specifically as the Dyerville Loop Road Slide Removal Project ("Project"); and

WHEREAS, COUNTY has represented to OWNER that the placement of "acceptable Construction Debris," as set forth more fully below, on OWNER's real property that is adjacent to the Project site ("Property") will not violate or contravene any applicable local, state or federal laws or regulations; and

WHEREAS, COUNTY has requested OWNER's permission to place up to thirty-five thousand (35,000) cubic yards of Construction Debris from the Project site on the Property; and

WHEREAS, subject to the terms and conditions of this Agreement, OWNER has agreed to permit COUNTY and its agents and approved contractors and/or subcontractors to place or otherwise deposit Construction Debris onto the Property; and

WHEREAS, the parties desire to enter into an agreement which sets forth each party's rights and responsibilities regarding the temporary use of the Property.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto mutually agree as follows:

**1. RIGHTS AND RESPONSIBILITIES OF THE PARTIES:**

- A. **Permission to Enter OWNER's Property.** Subject to the terms and conditions of this Agreement, OWNER hereby permits COUNTY and its agents and approved contractors and/or subcontractors to access the Property for the sole purpose of placing or otherwise depositing up to thirty-five thousand (35,000) cubic yards of acceptable Construction Debris thereon until completion of the Project.
- B. **Placement of Construction Debris on OWNER's Property.** COUNTY hereby agrees that all Construction Debris placed on the Property pursuant to the terms and conditions of this Agreement shall be ordinary uncontaminated construction waste obtained only from the Project site. Such Construction Debris shall not contain any special waste that requires environmental permits or imposes any restrictions, notification requirements or other obligations on OWNER. COUNTY further agrees that all Construction Debris placed on the Property shall, for liability purposes, be deemed to be "owned" by COUNTY at all times.
- C. **Refusal of Unacceptable Waste.** OWNER hereby reserves the right to refuse acceptance of any Construction Debris which OWNER, in its sole discretion, deems to be "Unacceptable

Waste." For purposes of this Agreement, Unacceptable Waste includes, but is not limited to, items that would be characterized as special waste in the landfill industry, hazardous wastes, reactive wastes, ignitable or explosive wastes, highly acidic or alkaline wastes, infectious or medical wastes, waste from oil, gas or mining operations, agricultural wastes, landscape wastes or any other waste which by its general nature, or by applicable law or governmental regulation, must be handled and disposed of in any manner other than what is approved by this Agreement. If at any time COUNTY becomes aware of the placement of any such Unacceptable Waste on the Property, COUNTY shall immediately notify OWNER of such placement, and COUNTY shall, at its own cost and expense, immediately take steps to sequester and remove the Unacceptable Waste from the other acceptable Construction Debris for proper permanent disposal elsewhere.

- D. **Right of Inspection.** OWNER shall have the right to inspect, and test samples taken from, any Construction Debris that COUNTY intends to place on the Property pursuant to the terms and conditions of this Agreement in order to determine whether such Construction Debris contains Unacceptable Waste. Failure by OWNER to conduct any such inspections and/or tests shall not relieve COUNTY of its obligations under this Agreement. If Construction Debris is found to contain Unacceptable Waste, OWNER will reject the delivery of such Construction Debris.

2. **TERM:**

This Agreement shall begin on April 12, 2017 and shall remain in full force and effect until completion of the Project, unless sooner terminated as provided herein.

3. **TERMINATION:**

- A. **Breach of Contract.** Either party may immediately terminate this Agreement in the event that the other party materially defaults in performing any obligation set forth herein, or violates any ordinance, regulation or other law applicable to its performance hereunder.
- B. **Without Cause.** Either party may terminate this Agreement without cause, at any time, upon seven (7) days advance written notice. Such notice shall include the effective date of the termination.

4. **NOTICE:**

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be deemed effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Department of Public Works  
Attention: Thomas K. Mattson, Public Works Director  
1106 Second Street  
Eureka, California 95501

OWNER: Humboldt Redwood Company, LLC.  
Attention: Ryan Rice, Construction Manager  
P. O. Box 712  
Scotia, California 95565

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5. **RECORD RETENTION:**

Each party hereby agrees to timely prepare accurate and complete records relating to the performance of its duties and obligations hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

6. **CONFIDENTIAL INFORMATION:**

In the performance of this Agreement, each party may receive information that is confidential under local, state or federal law. Each party hereby agrees to protect all confidential information received hereunder in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.

7. **NON-DISCRIMINATION COMPLIANCE:**

In connection with the execution of this Agreement, neither party shall unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

8. **NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:**

By executing this Agreement, OWNER certifies that it is not a Nuclear Weapons Contractor, in that OWNER is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. OWNER agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if OWNER subsequently becomes a Nuclear Weapons Contractor.

9. **INDEMNIFICATION:**

- A. **Mutual Indemnity.** Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials employees and volunteers, from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, reasonable attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. **Comparative Liability.** Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.

- C. **Effect of Insurance.** Acceptance of the insurances required by this Agreement shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to the performance of the duties and obligations set forth herein regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification to be provided by either party.

10. **INSURANCE REQUIREMENTS:**

- A. **General Insurance Requirements.** Without limiting either party's indemnification obligations provided for herein, each party shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the term of this Agreement, at its own expense, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise in connection with, the activities of the parties and their agents, officers, directors, employees, agents or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against the other party and its agents, officers, officials, employees and volunteers.

- B. **Special Insurance Requirements.** Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policies obtained by each party shall not contain any special limitations on the scope of protection afforded to the other party. Said policies shall also contain a provision stating that such coverage:
  - a. Includes contractual liability.
  - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
  - c. Is the primary insurance with regard to the other party.
  - d. Does not contain a pro-rata, excess only and/or escape clause.
  - e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage by either party without thirty (30) days prior written notice being provided to the other party in accordance with the notice provisions set forth herein. It is further understood that neither party shall terminate such coverage until the other party receives adequate proof that equal or better insurance has been secured.
3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
4. Any failure to comply with the provisions of this Agreement by either party shall not affect coverage provided to the other party.

C. **Insurance Notices.** Any and all insurance notices required to be given pursuant to the terms and conditions of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

Humboldt County Department of Public Works  
Attention: Thomas K. Mattson, Public Works Director  
1106 Second Street  
Eureka, California 95501

OWNER: Humboldt Redwood Company, LLC.  
Attention: Ryan Rice, Construction Manager  
P. O. Box 712  
Scotia, California 95565

#### 11. **RELATIONSHIP OF PARTIES:**

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant employee, partnership, joint venture or any other similar association. Both parties agree that neither party shall be entitled to any benefits to which the other party's employees are entitled, including, without limitation, overtime, retirement benefits, leave benefits or workers' compensation. Each party shall be solely responsible for the acts or omissions of its agents, officers, employees and volunteers.

#### 12. **COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:**

Each party agrees to comply with any and all local, state and federal laws, regulations and standards, applicable to the placement of Construction Debris on the Property. Each party further agrees to comply with all applicable local, state and federal licensure and certification requirements.

#### 13. **PROVISIONS REQUIRED BY LAW:**

This Agreement is subject to any additional local, state and/or federal restrictions, limitations or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall

be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

**14. REFERENCE TO LAWS AND RULES:**

In the event any law, regulation or contract referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective date thereof.

**15. SEVERABILITY:**

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**16. ASSIGNMENT:**

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by either party in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

**17. AGREEMENT SHALL BIND SUCCESSORS:**

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

**18. RIGHTS AND REMEDIES:**

The parties' rights and remedies hereunder are cumulative and shall be in addition to, not in lieu of, those which the parties have at law or in equity. The waiver by either party of any breach or violation of any provision of this Agreement shall not constitute a waiver of any such breach in the future, or of the breach of any other provision of this Agreement.

**19. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:**

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

**20. AMENDMENT:**

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

**21. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.



**22. ADVERTISING AND MEDIA RELEASE:**

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. CONTRACTOR shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews.

**23. ATTORNEYS' FEES:**

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other for the alleged failure of the other to perform or keep any provision of this Agreement to be performed, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include costs and fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action 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 judgment is rendered.

**24. SURVIVAL:**

The duties and obligations of the parties set forth in Section 5 – Record Retention, Section 6 – Confidential Information and Section 9 – Indemnification shall survive the expiration or termination of this Agreement.

**25. CONFLICTING TERMS OR CONDITIONS:**

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

**26. INTERPRETATION:**

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

**27. INDEPENDENT CONSTRUCTION:**

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

**28. FORCE MAJEURE:**

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

**29. ENTIRE AGREEMENT:**

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all previous agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

**30. AUTHORITY TO EXECUTE:**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the first date written above.

**HUMBOLDT REDWOOD COMPANY, LLC.:**

By: Chuck Jeffries

Date: 4/25/2017

Name: Chuck Jeffries

Title: Agent

**COUNTY OF HUMBOLDT:**

By: Virginia Bass  
Virginia Bass  
Chair, Humboldt County Board of Supervisors

Date: 5/9/17

**INSURANCE AND INDEMNIFICATION REQUIREMENTS REVIEWED AND APPROVED:**

By: Kaylen  
Risk Management

Date: 5/2/17