

CONTRACT FOR TEMPORARY HEAVY EQUIPMENT RENTAL BETWEEN THE
COUNTY OF LAKE AND ELMS EQUIPMENT RENTAL, INC.

This CONTRACT is made and entered into this _____ day of _____, 2019, by and between the COUNTY OF LAKE, hereinafter referred to as "COUNTY" and ELMS EQUIPMENT RENTAL, INC., hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, it is the desire of COUNTY to continue to excavate at the Eastlake Sanitary Landfill for a future landfill expansion phase; and

WHEREAS, the expansion area has been excavated to a depth that the prevalent material is now rock; and

WHEREAS, the temporary use of a portable tracked rock crusher is deemed to be the most effective and efficient means of preparing the material for beneficial reuse as landfill cover; and

WHEREAS, CONTRACTOR has represented to COUNTY that it has the necessary equipment to complete the tasks required for this effort.

NOW, THEREFORE, based on the foregoing recitals, the parties hereto agree as follows:

I.

CONTRACTOR SERVICES AND RESPONSIBILITIES

CONTRACTOR shall perform all requested and necessary duties in connection with providing temporary landfill heavy equipment. Delivery will be at the County Eastlake Landfill at 16015 Davis Avenue, Clearlake, California. CONTRACTOR shall perform only those services as requested by County Public Services Director or his designated representative. Services shall be performed pursuant to the following terms and conditions:

CONTRACTOR will deliver equipment, as requested, to the Eastlake landfill located at 16015 Davis Avenue, Clearlake, California 95422 as per CONTRACTOR'S Quotation attached hereto as Exhibit "A".

II.

COUNTY'S RESPONSIBILITIES

For services performed, as described above, COUNTY shall pay CONTRACTOR within 30 days from receipt of invoice and satisfactory completion of work as determined by County Public Services Director or his designated representative.

Unpaid balances over 30 days will be assessed a 1.5% per month (18% per annum) late charge. In the event the COUNTY disputes any portion of an invoice, COUNTY shall pay the undisputed portion within the applicable payment period.

COUNTY shall provide CONTRACTOR with advance notification of equipment hours for those which are approaching a standard maintenance (lube) service interval to allow for convenient local scheduling of such service.

III.
COMPENSATION

The total amount of compensation to be paid under this CONTRACT shall not exceed one hundred and fifty thousand dollars (\$150,000.00) per fiscal year.

The total rate to be charged under this CONTRACT shall not exceed the unit pricing as indicated in Exhibit "A".

IV.
TERM

This CONTRACT shall commence on the date hereinabove entered into and shall terminate on December 31, 2021, unless earlier terminated as hereinafter provided.

V.
TERMINATION

This CONTRACT may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By County Public Services Director upon 10 days written notice thereof to CONTRACTOR.
- C. By CONTRACTOR upon 10 days written notice there to County Public Services Director.

Upon termination prior to the full and satisfactory completion of Contractor's performance under this Agreement, COUNTY shall not be liable to pay CONTRACTOR the total compensation set forth in provision II of this Agreement, but CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the CONTRACTOR covered by this Agreement.

VI.
CONTRACTOR'S INSURANCE

CONTRACTOR shall not commence work under this Agreement until he has obtained all the insurance required herein, Certificates of Insurance have been submitted to the COUNTY and said insurance has been approved by the COUNTY. The Certificates of Insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least twenty (20) days prior written notice has been given to COUNTY.

CONTRACTOR shall not allow any subcontractor to commence work on a subcontract until the insurance required of the subcontractor has been obtained.

Any failure of CONTRACTOR to maintain the insurance required by this provision or to comply with any of the requirements of this provision shall constitute a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance shall be filed with the COUNTY within 10 (10) days after the date of execution of this Agreement by CONTRACTOR and prior to commencement of work hereunder.

- A. **Compensation Insurance.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Worker's Compensation Insurance and Employer's Liability Insurance as required by the State of California for all employees to be engaged in work. In case of any such work sublet, CONTRACTOR shall require subcontractor similarly to provide Employer's Liability Insurance and Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by

CONTRACTOR's Workers' Compensation Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

- B. **Commercial General Liability.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001, or equivalent) for bodily injury, personal injury, and broad form property damage, in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-Operations, Products and completed operations, Blanket contractual, and Independent contractor's liability.
- C. **Automobile Liability Insurance.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONTRACTOR's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.
- D. **Subcontractors.** CONTRACTOR shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the COUNTY for each subcontractor which shall be subject to review and approval by COUNTY. All insurance coverages for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONTRACTOR described with particularity herein below.
- E. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:
"The COUNTY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to CONTRACTOR's insurance on Form CG 20 10 11 85 or equivalent. CONTRACTOR shall not commence work under this Agreement until he has had delivered to the COUNTY the Additional Insured Endorsements required herein."

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

- F. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as to the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, agents or volunteers shall be in excess of the CONTRACTOR's officials, employees, agents or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either CONTRACTOR shall reduce or eliminate such deductibles or self-insurance retentions or CONTRACTOR shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONTRACTOR under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of COUNTY to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "Occurrence" form, CONTRACTOR agrees to maintain required coverage for a period of three (3) years after the expiration of this Agreement (Hereinafter, "Post Agreement Coverage") and any extensions thereof. CONTRACTOR may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

CONTRACTOR agrees to waive all rights of subrogation against COUNTY, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONTRACTOR under this Agreement.

VII. **CONTRACTOR WARRANTIES**

CONTRACTOR hereby makes the following representations and warranties:

Standard of Care. CONTRACTOR represents it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by CONTRACTOR or designated subcontractors, in a timely manner according to generally accepted equipment repair and services practices.

Non-Discrimination in Employment In the performance of the work authorized under this Agreement, CONTRACTOR shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

Adherence to Applicable Disability Law. CONTRACTOR shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.), California Government Code Sections 12920 et seq., and all related state and local laws.

HIPPA Compliance. CONTRACTOR will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

Safety Responsibilities. CONTRACTOR will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. CONTRACTOR agrees that in the performance of work under this Agreement, CONTRACTOR will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

Interest of Contractor. CONTRACTOR hereby covenants that he has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this work, no person having such interest shall be employed.

VIII.
INDEMNIFICATION – HOLD HARMLESS

CONTRACTOR shall indemnify and defend COUNTY and its officers, employees and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by COUNTY, whether for damage to or loss of property, or injury to or death of person, including properties of COUNTY and injury to or death of COUNTY officials, employees or agents, to the extent caused by CONTRACTOR hereunder or the performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of COUNTY.

CONTRACTOR's obligations under this Section shall survive the termination of the Agreement.

IX.
ASSIGNMENT

The CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the COUNTY, except that claims for money due or to become due the CONTRACTOR from the COUNTY may be assigned to a bank, trust company or other financial institution without such approval.

Written notice of any such transfer shall be furnished promptly to the COUNTY. Any attempt at assignment of rights under the Agreement except those specifically provided herein shall be void.

X.
INDEPENDENT CONTRACTOR

It is specifically understood and agreed that in the making and performance of this Agreement, CONTRACTOR is an independent contractor and is not an employee, agent or servant of the COUNTY. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted herein.

CONTRACTOR is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONTRACTOR and CONTRACTOR's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

XI.
MODIFICATION

This Agreement may only be modified by a written amendment thereto, executed by both parties.

XII.
ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to any other relief to which such party may be entitled.

XIII.
RECORDS - AUDIT

CONTRACTOR shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids (if applicable), all income, and expenditures. These documents and records shall be retained by CONTRACTOR for at least five (5)

years from the completion of this Agreement. CONTRACTOR shall permit COUNTY to audit all books, accounts, and/or records relating to this Agreement and/or all accounts or records of any business entities controlled by CONTRACTOR who participated in this Agreement. An audit may be conducted on CONTRACTOR's premises, or at COUNTY's option, CONTRACTOR shall provide all books and records within a maximum of fifteen (15) days of CONTRACTOR's receipt of written notice to do so from the COUNTY. CONTRACTOR shall refund any moneys erroneously charged.

XIV.
JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. CONTRACTOR waives any right of removal it might have under California Code of Civil Procedure Section 394.

XV.
RESIDENCY

All independent contractors providing services to COUNTY for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

XVI.
NO THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

XVII.
SEVERABILITY

If any provision of this Contract is held to be unenforceable, the remainder of this Agreement shall be severable and not affected hereby.

XVIII.
NOTICES

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

COUNTY OF LAKE
Lars Ewing
Public Services Director
333 2nd Street
Lakeport, CA 95453

ELMS EQUIPMENT RENTAL, INC.
PO Box 371
245 North Eighth Street
Brawley, CA 92227

ADDITIONAL PROVISIONS

This Agreement will be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This CONTRACT supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

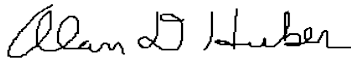
COUNTY and CONTRACTOR have executed this Agreement on the day and year first written above.

Executed at Lakeport, California, on the day and year first written above.

COUNTY OF LAKE:

ELMS EQUIPMENT RENTAL, INC.

Chair, Board of Supervisors



Contractor President

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board
of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____

By:  _____

ADDITIONAL TERMS AND CONDITIONS TO
ELMS EQUIPMENT RENTAL, INC.
CONTRACT NUMBER

1. **DAILY REPORTS:** Lessee shall be required to complete a daily operations report as provided by Lessor. Additionally Lessee agrees to keep copies of said report on the job site where said equipment is operating at all times and provide copies of same to Lessor on a weekly basis.
2. **MACHINE FAULTS:** The cost of any field service calls attributed to operator error, not related to mechanical machine failure caused by normal wear and tear, shall be solely borne by Lessee.
3. **MAINTENANCE:** Lessee is responsible for all daily maintenance, lubrication, filters, fuel, and labor associated with the daily operation of all equipment listed on the contract above. In addition, Lessee agrees to bore all cost related to the replacement of any parts or products related to said daily maintenance including, but not limited to, filters, lubricants and fuel.
4. **LAWS AND REGULATIONS:** Lessee shall at all times comply with all applicable laws, ordinances, statutes, rules and regulations of the Federal Government, State, County, Municipalities or their Agencies of Government and particularly those regulations relating to air pollution and dust control. Responsibility, both legally and financially, for any and all violations of any laws, ordinances, statutes, rules and regulations of the Federal Government, State, County, Municipalities or their Agencies of Government relating to the operation of said equipment, while in the custody and control of the Lessee, shall be borne solely by the Lessee. **WARNING-THE OPERATION OF THIS EQUIPMENT IS HIGHLY REGULATED.**
5. **LICENCES/PERMITS:** Lessee shall obtain, and solely bore all cost to obtain, any and all licenses/permits that may be required of the Federal Government, State, County, Municipalities or their Agencies of Government relating to the operation of any or all of the equipment listed on the contract above. Lessee further agrees to solely bore all cost associated with the compliance to said licenses/permits. Copies of all licenses/permits shall be provided, on request of Lessor, by Lessee.
6. **TRAINING:** A minimum of Eight (8) hours of operator training is required to operate said equipment safely and efficiently. Lessee agrees to provide a qualified person for said training. Any and all cost for said Lessee's trainee shall be borne solely by Lessee. This includes, but is not limited to, all transportation, lodging, meals, wages, equipment, tools, overhead and profit.
7. **DOCUMENTATION:** Lessee hereby acknowledges receipt of the following: Hand Over and Startup certificate, operators manual, remote control manual, trouble shooting diagrams and tool box listing for all machine(s) listed on the contract above. Lessee further acknowledges receipt of an electronic version (CD) of all machine manuals as provided by the Manufacturer.
8. **WEAR CHARGE:** An hourly wear charge listed in the contract above will be charged based on the hour meter of the machine(s) rounded to the nearest tenth of an hour. This wear charge covers normal wear only. Any high wear or breakage will be charged out as determined by Lessor. Any wear charge monies collected will be used to offset the cost of any wear parts purchased by Lessee for the machine(s) laid forth in the contract above, during the rental term. ***All new and used wear parts must be returned to Lessor within ten (10) days of rental return of machine(s) for full credit. Any new or used parts not returned within ten (10) days of rental return will not be credited toward wear charge.***
9. **WEAR PARTS:** Lessee agrees to inspect the equipment listed on the contract above, twice a day, for wear. Should the replacement of any wear parts, including but not limited to belts, hammers, screens, screen fingers and wear plates, become necessary Lessee further agrees to obtain said wear parts from the Lessor or a factory authorized dealer for the equipment listed on the contract above. Any and all cost to acquire and replace said wear parts shall be borne solely by the Lessee. Based on past machine performance, but without Lessor warranty, Lessee could expect normal wear cost to be approximately Thirty-eight Cents (\$0.38) per ton. However, the cost per ton shown is only an estimate. Lessee's actual wear cost may vary. Lessor shall not be responsible should Lessee's cost exceed this number.



ELMS EQUIPMENT RENTAL, INC.

245 N. 8th Street 580 Dealwood 81-531 Industrial
 Brawley, CA 92227 El Centro, CA 92243 Indio, CA 92201
 (760) 344-3780 (760) 353-4400 (760) 342-7930
 CA STATE CONTRACTORS LICENSE NO. A602025

DATE 4/18/19

1086148

QUOTE

ERALANH

Please Remit To:

Post Office Box 371
 Brawley, CA 92227



DATE OUT 5/13/19 TIME OUT 7:00 AM

YARD TICKET NO.

4305
 LESSEE COUNTY OF LAKE PUBLIC SERVICES
 333 SECOND STREET
 LAKEPORT, CA 95453

DATE IN TIME IN

YARD TICKET NO.

PHONE # 707-262-1618

FAX # 707-262-0973

JOB # EASTLAKE LANDFILL

JOB ADDRESS 16015 DAVIS AVE

ORDERED BY KRIS BYRD

P.O. NUMBER NONE

Qty	Equipment #		Rental Rates				ITEM AMOUNT
			Min	Day	Week	4 Week	
1	0182110	CC: 018-2110 RM100GO! TRACK MOUNTED IMPACT CRUSHER Unit above is rented with the unit below and both must be returned together to end rental.	3800.00	3800.00	10500.00	27520.00	27520.00
1	0182210	CC: 018-2210 MS105GO! SCREENBOX W/RFB7550GO! REFEEDER Unit delivered with 25 X 25 mm screens.	500.00	500.00	1500.00	4480.00	4480.00
Qty	SALES ITEMS: Item number		Unit	Price	Disc %	Disc \$	
1	*WEAR CHARGE WEAR CHARGE Wear charge will be charged out for each hour added to the machine hour meter during the rental period.		HR	50.000			50.00

CONTINUED...

ELMS EQUIPMENT RENTAL will not extend credit to anyone past the 10th of the month without a signed credit arrangement from your bank. (Late payment penalty of 1 1/2 % permonth on all past due accounts)

DAMAGE WAIVER: By his initials hereon or by separate written confirmation, lessee agrees to pay additional daily rental as set forth below or, if not set forth then as posted in the lessor's office; and, in return thereof, lessor agrees to waive certain claims for damage to rental item(s), as specified on the back of this contract.

DAMAGE WAIVER IS 14 % OF RENTAL TOTAL

Initials Accepts _____

An ENVIRONMENTAL FEE of 2.5% will be charged on RENTAL TOTAL

Initials Rejects _____

RENTALS ARE CASH IN ADVANCE

CONDITIONS UNDER WHICH TOOLS AND OTHER EQUIPMENT ARE RENTED ARE LISTED ON REVERSE SIDE

I AGREE THAT ALL CHARGES FOR RENTAL, DAMAGE, CLEANING, OR MATERIAL WILL BE PAID, AND THAT ALL COLLECTION FEES, ACTUAL ATTORNEY FEES, COURT COSTS, OR ANY EXPENSE INVOLVED IN THE COLLECTION OF THESE CHARGES WILL BE BORNE BY ME IN THE COURT OF IMPERIAL COUNTY CALIFORNIA. THERE ARE NO WARRANTIES OR MERCHANTABILITY OR FITNESS EITHER EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF

NO ONE HAS MADE ANY ORAL, OR OTHER WRITTEN REPRESENTATIONS OR PROMISES NOT INCLUDED IN THIS CONTRACT. I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT. THE EQUIPMENT IS IN GOOD WORKING ORDER AND I AM FULLY FAMILIAR WITH ITS OPERATION AND USE. I ALSO AGREE TO ONLY PERMIT PROPERLY TRAINED PERSONNEL TO OPERATE THE EQUIPMENT.

LESSEE: _____

LESSOR: _____

DELIVERED BY: _____ DATE _____ TIME _____

DAMAGE WAIVER

FUEL

PLEASE PAY THIS AMOUNT

7:00 A.M. - 5:00 P.M. CONSTITUTES A DAY'S RENTAL

TIME IS MONEY - RETURN PROMPTLY!

24 Hour Emergency Service * If You Have Trouble, Phone Us

HOURS - 7:00 A.M. - 5:00 P.M. Mon through Sat

Closed Sundays and Holidays



ELMS EQUIPMENT RENTAL, INC.

245 N. 8th Street 580 Dealwood 81-531 Industrial
 Brawley, CA 92227 El Centro, CA 92243 Indio, CA 92201
 (760) 344-3780 (760) 353-4400 (760) 342-7930
 CA STATE CONTRACTORS LICENSE NO. A602025

DATE 4/18/19

1086148

QUOTE

ERLANH

Please Remit To:

Post Office Box 371
 Brawley, CA 92227



DATE OUT 5/13/19 TIME OUT 7:00 AM

YARD TICKET NO.

4305
 LESSEE COUNTY OF LAKE PUBLIC SERVICE
 333 SECOND STREET
 LAKEPORT, CA 95453

DATE IN TIME IN

YARD TICKET NO.

PHONE # 707-262-1618
 FAX # 707-262-0973
 JOB # EASTLAKE LANDFILL

JOB ADDRESS 16015 DAVIS AVE
 ORDERED BY KRIS BYRD
 P.O. NUMBER NONE

SALES ITEMS:						ITEM AMOUNT
Qty	Item number	Unit	Price	Disc %	Disc \$	
1	MOBILIZATION IN MOBILIZATION IN Mob includes in and out.	HR	9000.000			9000.00
1	ENVIRONMENTAL FEE ENVIRONMENTAL FEE	EA	500.000			500.00
SUBTOTAL						41550.00

ELMS EQUIPMENT RENTAL will not extend credit to anyone past the 10th of the month without a signed credit arrangement from your bank. (Late payment penalty of 1 1/2 % permonth on all past due accounts)

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NO ONE HAS MADE ANY ORAL, OR OTHER WRITTEN REPRESENTATIONS OR PROMISES NOT INCLUDED IN THIS CONTRACT. I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT. THE EQUIPMENT IS IN GOOD WORKING ORDER AND I AM FULLY FAMILIAR WITH ITS OPERATION AND USE. I ALSO AGREE TO ONLY PERMIT PROPERLY TRAINED PERSONNEL TO OPERATE THE EQUIPMENT.

LESSEE: _____

LESSOR: _____

DELIVERED BY: _____ DATE _____ TIME _____

DAMAGE WAIVER	4480.00
FUEL	
DEL/PU	
7.250	2323.63
PLEASE PAY THIS AMOUNT	48353.63

7:00 A.M. - 5:00 P.M. CONSTITUTES A DAY'S RENTAL
TIME IS MONEY - RETURN PROMPTLY!
 24 Hour Emergency Service * If You Have Trouble, Phone Us
 HOURS - 7:00 A.M. - 5:00 P.M. Mon through Sat
 Closed Sundays and Holidays

TERMS AND CONDITIONS

1. Rental. Elms Equipment Rental, Inc. (Dealer) rents the equipment for the period commencing with the delivery of said equipment to Customer and terminating upon DEALER'S ACKNOWLEDGEMENT OF RECEIPT OF THE RETURN OF SAID EQUIPMENT.

2. RENTAL CHARGES: The Customer agrees to pay Dealer all rental, mileage and other charges and costs as set forth in this agreement, or is not set forth herein at the rates, schedules and charges on file with Dealer. Except for truck and trailer rentals all equipment utilized by Customer: for DOUBLE-SHIFT USE (16 hours per day) will be charged 1 1/2 times the normal rate; and for TRIPLE SHIFT USE (24 hours per day) will be charged twice the normal rate.

3. INSPECTION. Customer acknowledges that he/she has had an opportunity to personally inspect the equipment, and finds it suitable for his/her needs and in good condition, and that he/she understands its proper use. Customer further acknowledges his/her duty to inspect the equipment prior to use and notify Dealer of any defects.

4. REPLACEMENT OF MALFUNCTIONING EQUIPMENT. If the equipment becomes unsafe or in disrepair as a result of normal use, Customer agrees to discontinue use and notify Dealer who will replace the equipment with similar equipment in good working order, if available. Dealer is not responsible for any incidental or consequential damage caused by delays or otherwise.

5. WARRANTIES. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS, EITHER EXPRESS OR IMPLIED, SALES OR RENTAL. All sales are final and sold on a "AS IS" basis. There is no warranty that the equipment is suited for Customers intended use, or that it is free from defects. Customer's sole remedy for any failure of or defect in the equipment shall be the termination of the rental charges at the time of failure, provided the equipment is returned within twenty four hours after such failure. Dealer shall not be responsible for any loss, damage, or injury to customer or customer's property, including incidental, special or consequential damages, in any way connected with the operation, use, defect in or failure of the equipment.

6. HOLD HARMLESS AGREEMENT. Customer agrees to assume the risks of, and hold Dealer and its employees harmless for, property damage and/or personal injury, caused by the equipment and/or arising out of Dealer's negligence.

7. PROHIBITED USES AND CUSTOMER'S LIABILITY FOR MISUSE OF EQUIPMENT. Use of the equipment in the following circumstances is prohibited, and constitutes a breach of this contract:

- Use for illegal purpose or in illegal manner.
- Use when the equipment is in bad repair or is unsafe.
- Improper, unintended use or misuse.
- Use by anyone other than Customer or his/her employees, without Dealer's written permission.
- Use at any location other than the address furnished Dealer without Dealer's written permission. (Does not apply to mobile equipment.)

Customer shall not abuse, harm or misuse the equipment. Customer shall not permit any repairs to be made or left to be placed upon the equipment without Dealer's written consent.

In the event of any accident or casualty resulting in bodily injury or property damage arising out of customer's use and hiring of said equipment, customer agrees to accept all responsibility therefore and shall hold Dealer harmless from any claim or action arising therefrom. Customer shall furnish Dealer with a complete report of any accident involving said equipment, including names and addresses of all persons involved and all witnesses.

Unless otherwise specified herein, in case of the loss or destruction of any part of the equipment, or of loss of possession thereof, or inability to return the same to Dealer, on the expiration and due date, for any reason whatsoever customer shall pay Dealer the actual replacement cost thereof, and in addition thereof, Dealer's loss of use of said equipment.

8. ASSIGNMENTS, SUBLEASES AND LOANS OF EQUIPMENT. Dealer may assign his rights under this contract without Customer's consent, but will remain bound by all obligations herein. Customer may not sublease or loan the equipment without Dealer's written permission. Any purported assignment by Customer is void.

9. TIME OF RETURN. Customer's right to possession of the equipment terminates on the expiration of the rental period and retention of possession after this time constitutes a material breach of this contract. Time is of the essence of this contract. Any extension must be mutually agreed upon in writing.

10. LATE RETURN. Customer agrees to return the rented equipment during Dealer's regular store hours, upon termination of the rental period. If not timely returned, Customer shall pay an additional charge of 1/6 of the daily rate for each hour the equipment is retained beyond the expiration of the rental period.

11. DIRTY, DAMAGED OR LOST PROPERTY. Except as set forth below in paragraph 12, Customer agrees to pay for any damage to or loss of the equipment, as an insurer, regardless of cause, except reasonable wear and tear, but including acts of God, while the equipment is out of the possession of the Dealer. Customer also agrees to pay a reasonable cleaning charge for equipment returned dirty. Accrued rental charges cannot be applied against the purchase or cost of repair of damaged or lost equipment. Equipment damaged beyond repair will be paid for at its Fair Market Value when rented with the actual replacement cost. The costs of repairs will be borne by Customer, whether performed by Dealer, or at Dealer's option, by others.

12. THIRD PARTY LIABILITY PROTECTION: Anyone authorized by this Agreement to drive Vehicle is covered by an automobile insurance policy AGAINST LIABILITY TO THIRD PARTIES ONLY (NOT INCLUDING, TO EXTENT PERMITTED BY LAW, ANY OF SUCH DRIVER AND FAMILY MEMBERS RELATED BY BLOOD, MARRIAGE OR ADOPTION RESIDING IN THEIR HOUSEHOLD) for bodily injury, death or property damage caused by or arising from the use or operation of vehicle as permitted by this agreement. The amount of coverage provided under the agreement is equal to the minimum financial responsibility limit established by the Financial Responsibility Law or other applicable statute ("Statutory Limits") of the state or other jurisdiction in which vehicle was rented. Protection hereunder shall automatically conform to basic requirements of any mandatory "NO FAULT" law which may be applicable, BUT DOES NOT INCLUDE "UNINSURED MOTORIST", "UNDERINSURED MOTORIST", OR SUPPLEMENTARY "NO FAULT" OR OTHER OPTIONAL PROTECTION; AND DEALER AND RENTER HEREBY REJECT TO EXTENT PERMITTED BY LAW, INCLUSION OF ANY SUCH PROTECTION, in the event that coverage is imposed, by operation of law for benefit of any person other than Renter, than limits of such coverage shall be Statutory Limits of state or other jurisdiction in which accident occurred, Dealer warrants that to the extent permitted by law liability protection described in this paragraph 12 is secondary with respect to any insurance available to renter. Renter and additional renter(s) hereby indemnify and hold Dealer, its agents and employees harmless from and against all loss, liability and expense whatsoever, as a result of bodily injury, death or property damage caused by, or arising from the use or operation of vehicle. PROTECTION IS VOID IN MEXICO. Renter must obtain Dealer written authorization and purchase liability and property damage insurance before entering Mexico. IF RENTER DOES NOT REPORT ACCIDENT TO DEALER WITHIN 24 HOURS OF OCCURRENCE LIABILITY INSURANCE COVERAGE DESCRIBED IN THIS PARAGRAPH IS VOID AND DEALER PROVIDES NO LIABILITY INSURANCE TO RENTER UNDER THIS AGREEMENT.

13. DAMAGE AND LOSS PROVISION

- Customer assumes the entire risk of loss with respect to the equipment from damage, theft or mysterious disappearance, whether or not due to fault of Customer and shall pay the Dealer for said loss immediately upon receipt of invoice. However, if said equipment is used for its specified purpose and not misused in any fashion and if Customer is in compliance with the damage and loss waiver on the face of this rental agreement, then Dealer agrees to waive, per the terms and conditions as set forth below in subparagraphs (1) and (2) and all of paragraphs b and c, claims for damage, vandalism or malicious mischief, except:

- As a deductible, the first \$1000 or 20% of replacement costs, whichever is higher for each item of equipment claimed for loss or damage; provided, however, if said item of equipment has a replacement cost of less than \$1000, then said deductible shall be 20% of said replacement cost.

(2) Dealer's waiver shall not apply, and Customer remains solely responsible for the loss to any and all accessories, such as, but not limited to, air hoses, tool steel, electric cords, blades, welding cable, liquid fuel tanks and other similar items or accessories.

b. There shall be no waiver of a claim for loss or damage.

(1) resulting from theft:

(2) to equipment as a result of overloading or exceeding the rated capacity of said equipment;

(3) to motors, generators, drills or other electrical appliances or devices caused by portable electric current, whether or not said portable electrical current is supplied by Dealer;

(4) to tires and lubes caused by blowout, bruises, cuts, road hazards or other causes of normal wear and tear inherent in the use of the equipment;

(5) to forklifts, masts, mast carriages or crane drag line or derrick booms caused by collision, upset, overturn or any improper application or use;

(6) resulting from a lack of, or negligent lubrication or other proper servicing of equipment;

(7) due to mysterious disappearance or shortage disclosed on inventory.

Customer agrees to immediately and timely inform Dealer of all losses or damage, and provide Dealer the name of Customer's insurance company, name and address of Customer's insurance agent, a copy of the police report, and complete information concerning insurance coverage for said loss or damage. Providing Customer has applicable insurance coverage for said loss or damage, Customer shall exercise all rights available to Customer under insurance coverage, and Customer further agrees to assign said claim and any and all proceeds from insurance coverage to Dealer.

14. TIME OF PAYMENT. Accounts are due and payable at the termination of the rental period. A carrying charge of 1 1/2% per month (ANNUAL RATE OF 18%) will be charged on all overdue accounts.

15. COLLECTION COSTS. Customer agrees to pay all actual collection, attorney's and court fees and other expenses involved in the collection of the charges of enforcement of Dealer's right under this contract whether or not suit is commenced.

16. REPOSSESSION. Upon a failure to pay rent or other breach of this contract, Dealer may terminate this contract and take possession of and remove the equipment from wherever they are, without prejudice to any other remedies or claims which Dealer might otherwise possess by law or pursuant to this rental equipment, for rental charges payable, damage or loss charges, and collection charges including court costs and attorney's fee, and Dealer and his agents shall not be liable for any claims for damage or trespass arising out of the removal of the equipment.

17. INSPECTION OF TRAILER HITCH. Customer agrees to inspect the trailer coupling mechanism and safety chain before leaving Dealer's premises. Customer also agrees to inspect the equipment periodically (every 250 miles) and to maintain the coupling and chain in a safe and secure condition.

18. UNAUTHORIZED USE. Use by anyone other than the following is prohibited: Customer, his employer or employees, or persons residing permanently in Customer's household. No person under 21 years of age may operate the vehicle or trailer and any operator must possess a valid driver's license. Customer further agrees not to use the rented trailer with any vehicle other than the one specified in this contract.

19. WAIVER OF CLAIMS. Customer waives all claims for personal injuries, property or equipment damage to the transported goods, loss of time or inconvenience arising out of the use of the rented vehicle or trailer, or any accident or breakdown.

20. DAMAGE TO PROPERTY TRANSPORTED. Customer waives all claims for loss or damage to property transported in the rental vehicle or trailer.

21. DAMAGE TO BUMPERS. Dealer is not liable for damage to Customer's bumper or automobile done by detachable hitches or mirrors.

22. ACCIDENT NOTIFICATION. Customer will immediately notify Dealer in the event of any accident.

23. DAMAGE TO VEHICLE. Customer is responsible for all overhead damage, tire repairs, moving, parking and overload violations, traffic tolls, permits and gasoline.

24. SECURITY INTEREST. For the purpose of satisfying Customer's obligations under this contract, Customer grants Dealer a security interest in all goods placed in the vehicle and/or trailer.

25. DUTY CARE OF VEHICLE OR EQUIPMENT. Customer agrees not to operate the vehicle or equipment in a careless or negligent manner, or to operate the vehicle at excessive speed, while intoxicated, or under the influence of any drugs.

26. DISCLAIMER OF AGENCY. Customer acknowledges that he is not the agent of Dealer for any purpose.

27. TIRE REPAIR OR REPLACEMENT. Customer acknowledges that repair and replacement of tires are not included in the rental rate and agrees to pay for the repair or replacement (with like tires) of any tires returned to the dealer in a damaged condition, regardless of the cause of the damage, reasonable wear and tear excepted.

28. FAILURE TO RETURN EQUIPMENT DURING BUSINESS HOURS. In the event the equipment is not returned during Dealer's regular business hours, Customer agrees to pay for any damage to or loss of the equipment occurring between the time of return and the commencement of Dealer's next business day.

29. DISCLAIMER OF MANUFACTURE. Customer agrees that Dealer is neither the manufacturer of the equipment nor the agent of the manufacturer.

30. Customer agrees that all rented equipment shall be used and operated only by persons competent in its operation and further agrees to operate and maintain the equipment in accordance with instructions provided by Manufacturers. Customer further agrees not to operate the equipment in a careless or negligent manner.

31. SEVERABILITY. The provisions of this agreement shall be severable so that the invalidity, unenforceability or waiver of any of the provisions shall not affect the remaining provisions.

32. INDEMNITY. Customer agrees to indemnify and reimburse Dealer for all liabilities to Customer, his agents or third parties, arising out of the use of the equipment or a breach of this contract by Customer.

33. "Every Person who shall take the personal property, which value exceeds \$200.00, of another, or who shall fraudulently appropriate property which has been entrusted to him is guilty of grand theft. Intent to commit theft by fraud is presumed if one who has rented the personal property of another pursuant to a written contract fails to return the personal property to its owner after demand following the expiration of the rental agreement." FELONY California Penal Code Sections 484, 487.

34. CALIFORNIA AIR RESOURCES DISCLOSURE: When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. CA Air Resources Board Regulation 2449(d)(3). As of June 15th, 2008 idling equipment must be limited to 5 minutes.

10. WEAR PARTS CHARGE EG: A couple of wear parts scenarios are as follows;

Normal Wear		HighWear or with Breakage	
All New and Used Parts Returned		All New and Used Parts Returned	
Purchased Parts	5,000.00	Purchased Parts	9,000.00
New Parts Returned	(2,000.00)	New Parts Returned	(2,000.00)
Parts Balance (Paid)	3,000.00	Parts Balance (Paid)	7,000.00
Wear Charges	6,400.00	Wear Charges	6,400.00
Parts Balance (Paid)	(3,000.00)	Parts Balance (Paid)	(7,000.00)
Wear Charge Balance	3,400.00	High Wear/Breakage Charge	4,000.00
		Wear Charge Balance	3,400.00
Normal Wear		HighWear or with Breakage	
No New or Used Parts Returned		No New and Used Parts Returned	
Purchased Parts	5,000.00	Purchased Parts	9,000.00
New Parts Returned	-	New Parts Returned	-
Parts Balance (Paid)	5,000.00	Parts Balance (Paid)	9,000.00
Wear Charge Balance	6,400.00	Wear Charge Balance	6,400.00

LESSEE SIGNATURE: _____

DATE: ___ / ___ / 2019 Print: _____

LESSOR SIGNATURE: _____

DATE: ___ / ___ / 2018 Print: _____



ELMS EQUIPMENT RENTAL, INCORPORATED

MAILING ADDRESS: P.O. BOX 371, BRAWLEY, CALIFORNIA 92227
CORPORATE OFFICE: 245 NORTH 8TH STREET, BRAWLEY, CA. 92227
PHONE: 760-344-3780 FAX: 760-344-0371
CA LIC 602025

DATE:

TO:

RE: INSURANCE REQUIREMENTS

A certificate of liability insurance is required for all commercial customers renting equipment from **Elms Equipment Rental, Inc.** Please provide a certificate based on the requirements below.

Rental Business Policy must include coverage for conversion bodily injury, property damage or personal and advertising injury arising directly or indirectly out of leased, rented or sold equipment, or your product that at any time was leased, rented or sold equipment, and also have a damage waiver provision.

General Liability Coverage for bodily injury and property damage should be written with minimum limits of:

\$1,000,000 Each Occurance
\$2,000,000 General Aggregate

Truck Rental certificate must show automobile liability and hired auto physical damage limit.

***Elms Equipment Rental, Inc to be named as Additional Insured and Loss Payee for all equipment rented.**

*** Your inland marine coverage must be adequate to cover the value of equipment that is being rented and cover conversion.**

Certificate must show single item limit.

Certificate Holder and Additional Insured/Loss Payee should be listed as:

Elms Equipment Rental, Inc.
P.O. Box 371
Brawley, CA 92227

Please fax a copy of the certificate to 760-344-0371 or email: AP-AR@elmsrental.com