

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

413



FROM: Waste Management Department

SUBMITTAL DATE:
April 24, 2013

SUBJECT: Sole Source Purchase of Habitat Restoration Credit for Badlands Soil Stockpile Project

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the Sole Source Purchase of \$59,949 for the Funding Agreement between the County of Riverside and the Riverside-Corona Resource Conservation District; and
- 2) Authorize the General Manager-Chief Engineer of the Waste Management Department to execute the Funding Agreement; and
- 3) Authorize the Purchasing Agent to issue a Purchase Order for the cost as noted.

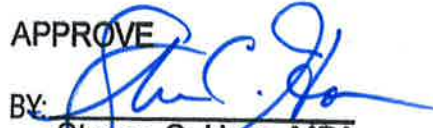
BACKGROUND: In order to mitigate impacts to jurisdictional waters as a result of the Badlands Soil Stockpile Project (Project), the California Department of Fish & Wildlife (CDFW) requires, per CDFW Streambed Alteration Agreement (SAA) No. 1600-2011-0150-R6, that the Waste Management Department execute a Funding Agreement with the Riverside-Corona Resource Conservation District for the purchase of Habitat Restoration Credit. (continued)


Hans W. Kernkamp, General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 59,949.00	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	No
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	12/13

SOURCE OF FUNDS: Waste Management Annual Approved Budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: Steven C. Horn, MPA

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
 BY:  DATE: 4/24/13
 NEAL R. KIPNIS
 Purchasing Agent
 Departmental Concurrence

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

The Project provides permanent accommodation for surplus soil generated from the Canyon 4 Phase 3 (C4P3) liner expansion project, as well as accommodation of the soil currently stored in the borrow area in Canyon 6. Approval of the Sole Source Purchase and authorization to execute the Funding Agreement are necessary to meet the mitigation and regulatory requirements for the Project.

PRICE REASONABLENESS: Establishing a Funding Agreement with the Riverside-Corona Resource Conservation District is a regulatory requirement as mitigation for impacts resulting from the C4P3 Project. The price is reasonable when compared to the cost of delaying the landfill expansion project which is estimated to be a \$7,000,000.00 cost in its entirety. Delays may cause additional expenses to be incurred by contractors waiting to complete the work in the area requiring the conservation assessment. Furthermore, the Riverside-Corona Resource Conservation District is a local vendor within Riverside County and the rate charged in the Funding Agreement is the same rate charged to other comparable government agencies.

California Environmental Quality Act (CEQA)

The Funding Agreement has been reviewed and determined to be categorically exempt from CEQA under CEQA Guidelines Section 15301, Class 1 – Existing Facilities. The Funding Agreement involves mitigation for an existing public facility with little or no expansion of approved uses. Furthermore, the Project was considered under Environmental Assessment "Badlands 2010-01," for which a Mitigated Negative Declaration (MND) was approved by the Riverside County Board of Supervisors on January 25, 2011.



Riverside County
Waste Management Department

Hans W. Kernkamp, General Manager-Chief Engineer

Date: April 24, 2013
From: Hans W. Kernkamp, Chief Engineer-General Manager **Dept.** Waste Management
To: Board of Supervisors
Via: Ryan Ross, Principal Planner
Subject: **Sole Source Procurement; Request for Authorization of Funding Agreement**

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

- 1. Supply/Service being requested:** Provide funding as identified in Funding Agreement (see attached), as mitigation for the Badlands Stockpile Project, as required by California Department of Fish & Wildlife (CDFW).
- 2. Supplier being requested:** Riverside-Corona Resource Conservation District, vendor code #2227.
- 3. Alternative suppliers that can or might be able to provide supply/service:** None. Area for the conservation services is located in the Riverside-Corona Resource Conservation jurisdictional district.
- 4. Extent of market search conducted:** None. Department is required to establish a Conservation Services Agreement with the Riverside-Corona Resource Conservation District as mitigation for the Badlands Stockpile Project, as required by CDFW.
- 5. Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Required as mitigation for a Department project, per CDFW Streambed Alteration Agreement (SAA) No. 1600-2011-0150-R6. This is a regulatory requirement to establish a Funding Agreement with the Riverside-Corona Resource Conservation District.
- 6. Reasons why my department requires these unique features and what benefit will accrue to the county:** Required as mitigation for a Department project, per CDFW SAA No. 1600-2011-0150-R6. This is a regulatory requirement to establish a Funding Agreement with the Riverside-Corona Resource Conservation District.
- 7. Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** Price is reasonable when compared to the cost of delaying the landfill expansion project which is estimated to be a \$7,000,000.00 cost in its entirety. Delays may cause additional expenses to be incurred by contractors waiting to complete the work in the area requiring the conservation assessment.
- 8. Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** No.

FUNDING AGREEMENT

This Funding Agreement (“Agreement”) is entered into by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, acting through the RIVERSIDE COUNTY WASTE MANAGEMENT DEPARTMENT, having offices at 14310 Frederick Street, Moreno Valley, California 92553 (“Waste Management”), and the RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT, a governmental special district having offices at 4500 Glenwood Drive, Riverside, California 92501 (“RCRCD”) (together, the “Parties”). Waste Management and RCRCD are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. WHEREAS, Waste Management proposes work within five unnamed drainages, tributary to San Jacinto River, located within the northwestern end of the 1,168-acre Badlands Landfill property, just west of the terminus of Ironwood Avenue, north of Highway 60, and east of Theodore Street, east of the City of Moreno Valley, in unincorporated Riverside County, which will consist of the construction of two permanent soil stockpiling areas to accommodate a total of 1.75 million cubic yards of clean soil and two sedimentation basins to collect and treat runoff from the soil stockpiling areas. Surface runoff within the soil stockpiling areas will be collected through a series of improved drainage structures (i.e. metal flumes, corrugated metal pipes, riprap channels, etc.) that flow into the two sedimentation basins. The water will be discharged into the remaining portions of the onsite channels via a riprap energy dissipater (“Project”); and

B. WHEREAS, Project construction is scheduled to be completed by September 19, 2016; and

C. WHEREAS, the Project will permanently impact no more than 0.54 acres of ephemeral streambed; and

D. WHEREAS, an Operation of Law letter dated August 29, 2011 (“OpLaw Letter”) for the Project has been received from the California Department of Fish and Wildlife (the “Department”) in response to the Notification of Lake or Streambed Alteration No. 1600-2011-0150-R6 (“Notification”); and

E. WHEREAS, the OpLaw Letter originally allowed Waste Management to mitigate Project impacts by planting 0.81 acres of native wetland/riparian plant species within appropriate jurisdictional areas of the Pedley Landfill site which would have been monitored and maintained for a minimum of three years, with a minimum of 70% native cover and 100% survival of planted species; and

F. WHEREAS, the Department later authorized, pursuant to an e-mail attached as Exhibit “A,” the purchase from RCRCD of 0.81 acre of habitat restoration to be

implemented on RCRCO-controlled land along with three years of maintenance and monitoring in lieu of the original mitigation ("Habitat Restoration Credit"). The Habitat Restoration Credit does not include avoidance and minimization measures described in the OpLaw Letter including, but not limited to, work avoidance during the bird nesting season of March 15 to September 15, conducting preconstruction surveys for nesting birds, including burrowing owl, if Project activities and/or vegetation removal occurs during the nesting bird season, and implementation of standard construction best management practices identified in the Hydrology Assessment Report dated July 2010. The OpLaw Letter, the Notification, and the email in Exhibit "A" are collectively referred to herein as the "Permit;" and

G. WHEREAS, RCRCO is a Resource Conservation District formed for the control of runoff, the prevention or control of soil erosion, the development and distribution of water, and the improvement of land capabilities pursuant to Public Resources Code section 9151 et seq.; and

H. WHEREAS, RCRCO may accept grants of money and conservation easements to carry out its purposes, and may establish and charge fees for services provided upon request pursuant to Public Resources Code sections 9401 et seq.; and

I. WHEREAS, the Parties wish to enter into this Agreement to document the purchase by Waste Management of 0.81 acres of Habitat Restoration Credit from the RCRCO.

NOW, THEREFORE, Waste Management and RCRCO do hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein and made an operative part of this Agreement.
2. Payment. Waste Management shall pay FIFTY NINE THOUSAND NINE HUNDRED FORTY NINE AND NO/100'S DOLLARS (\$59,949.00) to RCRCO at the time of execution of this Agreement ("Payment").
3. Habitat Restoration Credit: In consideration of the Payment, RCRCO agrees to provide the Habitat Restoration Credit to Waste Management in fulfillment of the Permit, as described above.
4. Mitigation and/or Conservation Responsibility: The Parties explicitly agree that any mitigation for activities of Waste Management not covered by this Agreement, including but not limited to any mitigation set forth in the Permit not specifically agreed to be conducted by RCRCO under this Agreement, or any other regulatory permit issued to Waste Management or other changes in mitigation related to the Project, remains solely and entirely the responsibility of Waste Management. Waste Management agrees that RCRCO shall not be responsible to conduct any habitat restoration or other services except for those outlined in Section 3 above, even if the Department and/or any other regulatory agency later modify their respective mitigation requirements.

5. Term. This Agreement is considered to be fulfilled and completed upon RCRC D's receipt of the Payment.

6. Notices. As used in this Agreement, notice includes but is not limited to the communications of any notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. All notices must be in writing. All such notices from one party to another may be delivered in person, sent via reputable overnight courier, or served by first-class mail, certified or registered, postage prepaid, to each and all of the addresses set forth below.

To RCRC D at:

Riverside-Corona Resource
Conservation District (RCRC D)
4500 Glenwood Drive, Building A
Riverside, CA 92501
Attn: District Manager
Phone: (951) 683-7691

To Waste Management at:

Riverside County Waste Management
Department (Waste Management)
14310 Frederick Street
Moreno Valley, CA 92553
Attn: General Manager-Chief Engineer
Phone: (951) 486-3200

Any party may change the address to which such notices or other communications may be sent by giving the other Parties written notice of such change.

7. Authority to Enter Agreement. Each Party to this Agreement warrants to the other that it is duly organized and existing and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents and bind the parties thereto.

8. Entire Agreement. This Agreement is the result of negotiations between the Parties. This Agreement is intended by the Parties as a full and final expression of their understanding with respect to the matters contained in this Agreement and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

9. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

10. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

11. Attorneys' Fees. The Parties shall bear their own attorney's fees and costs.

12. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Waste Management without the prior written consent of the RCRC D.

13. No Waiver. Failure of the RCRC D to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term,

covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

14. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15. Severability. It is intended that each paragraph of this Agreement shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date as indicated beside each Party's signature.

Date

Hans Kernkamp, General Manager-Chief Engineer
Riverside County Waste Management Department

Date

Alfred "Bud" Bonnett
President of the Board of Directors
Riverside-Corona Resource Conservation District

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis DATE 9/12/13

EXHIBIT A

From: Kim Freeburn [mailto:Kim.Freeburn@wildlife.ca.gov]

Sent: **Wednesday, March 06, 2013 3:20 PM**

To: Shelli Lamb

Subject: RE: FW: 1600-2011-0150-R6

I am approving RCWM's purchase of 0.81 acre of habitat restoration and three years maintenance and monitoring from the RCRCDD in lieu of the original mitigation proposed within the Streambed Alteration Notification number 1600-2011-0150-R6.

Kimberly Freeburn-Marquez
Environmental Scientist
Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
(909) 945-3484 (voice)
kim.freeburn@wildlife.ca.gov

From: Kim Freeburn [mailto:KFreeburn@dfg.ca.gov]

Sent: **Tuesday, December 11, 2012 9:30 AM**

To: Ross, Ryan

Cc: lamb@rcrcd.com

Subject: 1600-2011-0150-R6

Ryan,

Since site conditions and status of the proposed mitigation area have changed, I approve the transfer of mitigation funding to the Riverside Corona Resource Conservation District. The mitigation proposed by the County consisted of site preparation, planting, and three years of maintenance and monitoring of 0.81 acre of riparian habitat at the Pedley Landfill site. Please contact Shelli Lamb (cc'd) at RCRCDD. She will provide you the funding requirements to fulfill the mitigation obligations mentioned above. Once funding has been provided to the RCRCDD, your mitigation obligations will have been met.

Thanks, Kim

Kimberly Freeburn-Marquez
Environmental Scientist
Department of Fish and Game
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
(909) 945-3484 (voice)
kfreeburn@dfg.ca.gov