

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

693



FROM: Economic Development Agency

SUBMITTAL DATE:
August 28, 2013

SUBJECT: Settlement and Release Agreement Between the County of Riverside and Priority Pallet, Inc.

RECOMMENDED MOTION: That the Board of Supervisors approve the Settlement and Release Agreement between the County of Riverside and Priority Pallet, Inc.

BACKGROUND: On June 24, 2004, the Economic Development Agency (EDA) was awarded a \$1.8 million Economic Development Assistance grant from the State and Private Forestry branch of the U.S. Forest Service (USFS). The purpose of the grant was to support private enterprises to process drought-caused Bark Beetle infested logs being removed from the local mountains and to develop the infrastructure for similar contingencies in the future.

(Continued)

Lisa Brandl for

Robert Field
Assistant County Executive Officer/EDA
By: Lisa Brandl, Managing Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/14

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: U.S. Forest Service SPEA Grant	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Jennifer L. Sargent*
Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Lisa Brandl* 8/27/13
DATE
Departmental Concurrence
ANNIE T. SAHAR

- Dep't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3.19 of 6/15/04; 3.8 of 8/15/06; 3.14 of 1/6/09; 3.26 of 7/26/11

District: All

Agenda Number: 3-25

BACKGROUND: (Continued)

After a second Request for Proposal in August 2005, in December, 2006, Priority Pallet, Inc. (PPI) was awarded a \$1.3 million loan, as approved by the County of Riverside Board of Supervisors, to purchase milling equipment to process the Bark Beetle infested logs, resulting in the diversion of these logs from the local waste stream and the creation of jobs (the Project). As part of the terms of performance for the loan, PPI was to create 20 jobs by the end of the first year of operation and retain those 20 jobs three years later. If these metrics were achieved, the loan would be converted into a grant. PPI was required to make a series of infrastructure improvements at their Beaumont facility in order to obtain a conditional use permit, which delayed the commencement of the Project. Subsequently, a second loan agreement was entered into with PPI in March 2009, with the period of performance for the Project ending in November of 2012.

PPI performed the majority of the benchmarks pursuant to the terms of the loan agreements by creating 20 jobs within the first year of operation and timely payment of interest payments on the loan for the duration of the Project, but due to the recent economic recession and the lack of USFS funding for logging, there was a resulting slowdown in the logging industry during the time of performance of the Project; thus, PPI was unable to retain the 20 jobs through November 2012. Towards the end of 2012, the USFS awarded an Idllywild logging company a fuel reduction contract for the San Bernardino National Forest as part of the Federal Saddle Stewardship Program. PPI bid for the felled project logs and restarted operations in January 2013, and has now created more than 20 new jobs, utilizing the same infrastructure and sawmill equipment purchased pursuant to the original loan agreement. The USFS, in a February 4, 2013 letter to EDA, has stated its support of PPI's continued use of the infrastructure and sawmill equipment, noting that the equipment is being used consistent with the terms of the Project for which it was acquired, that PPI is an important part of the region's wood products utilization infrastructure and that PPI is the first stationary sawmill in Southern California in over 40 years.

After negotiations in good faith, and in recognition of PPI's performance of its obligations under the loan agreements, it is the desire of the County and PPI to resolve the minor outstanding terms of the loan agreements through settlement rather than through litigation. Under the terms of the Settlement and Release Agreement, PPI will pay the County \$3,250.00 and the County will convert the loan into a grant as contemplated by the original loan agreements. The infrastructure and sawmill equipment will remain in place at the PPI Beaumont facility and EDA will inventory and monitor the equipment to assure its proper use.

County Counsel has reviewed the Settlement and Release Agreement and approved it as to form.

Attachment: Settlement and Release Agreement

EXHIBIT A

Project Equipment Description

The log and lumber milling and processing equipment were added to the existing infrastructure at the Priority Pallet, Beaumont, California location. The equipment ensures that any future forest emergencies, such as beetle infestation, will be addressed through adequate regional infrastructure. The equipment also ensures that the infrastructure is in place for ongoing fuel reduction activities in the regional forests. The equipment purchased was approved by the United States Forest Service.

1. Ellington Industrial Supply, Inc.-Baker complete Sawmill System, including saw blades.
2. Marco Sheet Metal-Saw Dust Collection System
3. Elite Heavy Equipment
Cat 966C with logging forks
4. Rory Electric Inc.-Electrical System Upgrades
5. West Salem Machinery Co.-WSM Scrap Wood and Fiber Grinder
6. Hawthorne Lift Systems-2 new forklifts and 1 used forklift
7. Tranzon-Dust Collection System
8. Haynes Fire Systems-Fire Sprinkler System
9. Beaumont Cherry Valley Water District – 2 PFS 8x4x1 Fire Service Compound Meters
10. Miscellaneous (permits, concrete slabs for equipment, equipment and electrical installation, exhaust lines, sales tax)

EXHIBIT B



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

Regional Office, R5
1323 Club Drive
Vallejo, CA 94592
(707) 562-8737 Voice
(707) 562-9240 Text (TDD)

File Code: 1580

Date: February 4, 2013

Ms. Annie Sahha
Deputy County Counsel
Economic Development Agency, County of Riverside
1151 Spruce St.
Riverside, CA 92507

Dear Annie,

This letter responds to your email dated January 28, 2013 where you asked several questions about equipment purchased under Grant No. 04-DG-11052021-041. This grant was issued to Riverside County on June 24, 2004 and expired September 30, 2009. Total federal funds awarded were \$1,878,818.

Question 1: Can Priority Pallets, who received \$1.3 million of grant funds through a County loan agreement, continue to use the equipment purchased with these funds after the loan agreement expires?

Answer 1: Yes. *7 CFR 3016.32 (c) Use. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds.*

The Forest Service accepted and incorporated into the grant award the County's original application for grant funds. County objectives in the original application included: 1) Fostering the "...development of utilization opportunities, slow the flow into the solid waste stream and reduce impacts caused by burning slash."; and 2) "...establish an entrepreneurial assistance program to foster establishment of a local sawmill, pallet mill or other utilization facility...". Additionally, the Forest Service accepted and incorporated into the original grant the County's modification request letter (Forest Service response to County dated June 16, 2006) which acknowledged that future log volumes would be less than expected, and reaffirmed intent to retain processing infrastructure and trained personnel to assist in future wood removal because of drought, beetle infestations or fires (paraphrased section from Robin Zimpfer's letter, Assistant County Executive Officer/ Economic Development Agency (EDA), to Forest Service, May 25, 2006).

Priority Pallets is the first new stationary sawmill in Southern California in over 40 years and an important part of the region's wood products utilization infrastructure. Priority Pallets has also taken advantage of every opportunity to acquire logs when they become available from the San Bernardino National Forest and other locations, and uses portions of the sawmill to



process lumber when logs are unavailable. It is our interpretation the equipment is being used for the "...program or project for which it was acquired...".

Question 2: What are the County's obligations for future management and monitoring of equipment purchased with federal grant funds administered by the County?

Answer 2: The County is responsible for compliance with 7 CFR 3016.32 and other requirements as long as the equipment purchased with federal grant funds, in whole or in part, has fair market value over \$5,000, or until such time when it is no longer needed for "...program or project for which it was acquired...".

The County has done an excellent job providing the Forest Service records and documenting compliance with grant-funded equipment management requirements as set forth in 7 CFR 2016.32 (d). The Forest Service does not offer specific advice about how to comply with these requirements, but it is assumed EDA professional staff will continue to find ways to meet stated county objectives, involving not only the mutually shared goals referenced above, but also job retention and creation.

One last item which needs to be mentioned is that the requirements discussed above apply to all equipment acquired using federal grant funds from this award, including the components of an "integrated trucking system" purchased by the Riverside County Fire Department (see Riverside County EDA "Final Report" sent to the Forest Service, dated October 23, 2010).

Please do not hesitate to contact Larry Swan, Program Manager, if you have any questions (707) 562-8917, lswan01@fs.fed.us).

Sincerely,

/s/ Susan Skalski
SUSAN SKALSKI
Acting Director, State and Private Forestry

cc: Pascual Guardado
pguardado
Greg Bratcher
gregg.bratcher

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into between the COUNTY OF RIVERSIDE, a political subdivision of the State of California (hereinafter “County”) and PRIORITY PALLET, INC., a California corporation (hereinafter “Priority”). The County and Priority are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

1. INTRODUCTION

Pursuant to grant funds received by the County from the United States Department of Agriculture (USDA) Forest Service, one of the purposes of which was to establish a revolving loan fund for the development of projects for the timely movement of material out of the forest areas of the mountainous areas in and surrounding Riverside County for reuse in value added projects, including, but not limited to, sawmills, co-generation plants, sorting yards, equipment and other wood reuse processing operations, the Parties entered into a loan agreement (“First Loan Agreement” or “Loan”) on December 1, 2006, wherein County agreed to lend Priority, and Priority agreed to borrow from County, the total sum of One Million Three Hundred thousand Dollars (\$1,300,000).

Pursuant to the terms of the First Loan Agreement, Priority agreed, among other things, to: 1) pay interest on so much of the Loan as remained unpaid at the rate of three percent (3%) per annum, fully due and payable three (3) years from the date of December 1, 2006, with monthly payments of not less than three thousand two hundred and fifty (\$3,250) dollars; and 2) utilize the funds from the Loan to add log and lumber milling and processing equipment (“Equipment”) to the previously-existing infrastructure at Priority’s Beaumont, California, location, for the purpose of processing lumber from the beetle infested and healthy forest activities into pallets for commercial consumption (the “Project”); and, 3) hire a minimum of ten (10) persons to provide direct or supportive services to the Project within sixty (60) days of commencing operation, and hire an additional ten (10) persons to provide direct or supportive services to the Project after execution of the Loan documents and within twelve (12) months of commencing operations.

The USDA Forest Service grant period for the funding provided to County expired on September 30, 2009. Additionally, the period of performance under the First Loan Agreement ended on or about December, 2009.

Thereafter, on March 2, 2009, the parties entered into a second loan agreement (“Second Loan Agreement”) to continue the obligations of the parties under the First Loan Agreement, as well as to describe new obligations. Under the terms of the Second Loan Agreement, if Priority met the benchmarks outlined in the First and Second Loan Agreements to the satisfaction of the County, County would forgive any and all required Loan payments under said Loan and convert the balance to a grant to Priority for purposes of continuing the Project. Under the terms of the Second Loan Agreement, the period of performance ended on November 15, 2012. The Loan was fully due and payable three (3) years from December 15, 2009.

Due to, among other things, the recent economic recession and a slowdown in the logging industry during the time of performance of the Project, Priority has notified the County that, during the period of performance under the First and Second Loan Agreements, while Priority

was able to add the milling and processing Equipment, listed in Exhibit "A", attached hereto, to support the Project, and was further able to pay the monthly interest payments to County and hire a certain amount of persons to provide direct or supportive services to the Project, Priority was unable to completely fulfill some of the remaining terms of the First and Second Loan Agreements during the time of performance of the Project, and that Priority is unable to repay the principal amount due on the Loan.

Priority maintains possession of the Equipment listed in Exhibit "A". Priority continues to utilize the Equipment in furtherance of a new federal program, the SBNF Saddle Stewardship Fuel Reduction Program ("Program"), instituted on or about January, 2013.

County has sought disposition instructions for the Equipment from the United States Department of Agriculture (USDA) Forest Service pursuant to its obligations under the grant agreement with the USDA Forest Service. Pursuant to a February 4, 2013, written opinion of the United States Department of Agriculture (USDA) Forest Service, a copy of which is attached hereto as Exhibit "B", the USDA Forest Service determined that Priority's continued use of the Equipment for the Program is consistent with 7 CFR 3016.329(c), as the Equipment is being used consistently with the terms of the Project for which it was acquired.

After negotiations in good faith, it is the desire of the Parties to resolve the obligations due under the terms of the First and Second Loan Agreements through settlement rather than through litigation, including any allegations or claims and liabilities raised in connection with the First and Second Loan Agreements which could have been raised in a legal action, or which could arise from or relate to a legal action and to avoid incurring costs and expenses arising out of any legal action. In addition, except as to the obligations created by this Agreement, it is the desire of the Parties to settle any and all claims, disputes and/or liabilities which the Parties have or may have against each other which relate to, or in any way could be connected with, the obligations due under or in any way are connected to the terms of the First and Second Loan Agreements. The Parties enter into this Agreement to fully settle and discharge all disputed civil claims arising out of the First and Second Loan Agreements upon the terms and conditions set forth herein.

2. NO ADMISSION OF LIABILITY

It is expressly understood, acknowledged and agreed by the Parties, that by reason of entering into this Agreement, the Parties do not admit, expressly or implicitly, any fact or liability of any type or nature, whether or not referred to herein, or the sufficiency of any claims, allegations, assertions, or positions taken or made, or those that could have been raised by any Party with respect to the First and Second Loan Agreements. Further, the Parties have not made any such admissions and this Agreement is entered into solely by way of compromise and settlement.

3. SETTLEMENT TERMS AND CONDITIONS

A. *Terms.*

County herein agrees to forgive any and all required payments under the First and Second Loan Agreements and shall convert such balance of One Million Three Hundred Thousand Dollars (\$1,300,000) to a grant to Priority for purposes of continuing the efforts of the Project under the auspices of the Program.

In exchange, and in order to alleviate County's costs to process this Agreement, Priority agrees to pay the County Three Thousand Two Hundred and fifty dollars (\$3,250.00).

Further, pursuant to the February 4, 2013, written determination by the United States Department of Agriculture (USDA) Forest Service that Priority's continued, present use of the Equipment is allowable in that it is consistent with 7 CFR 3016.329(c), Priority shall continue to maintain temporary possession of the Equipment until otherwise instructed by the USDA Forest Service or County. Further, Priority shall, for the duration of the possession of the Equipment:

- 1) maintain the Equipment in good, working condition; Priority shall not sell or otherwise dispose of such Equipment unless and until instructed by County or the USDA Forest Service; and,
- 2) allow County to enter the premises where the Equipment is located one time within each and every two (2) year period, for the purpose of inventory and inspection of such Equipment, for so long as Priority continues to possess such Equipment; and
- 3) retain all records pertaining to the Equipment for a period of two (2) years after the termination of the Program or after any other state or federal programs in effect, or after Priority relinquishes such Equipment pursuant to instructions by the USDA Forest Service or County. If, at the end of the two years, there is ongoing litigation or an audit involving those records, Priority shall retain the records until the resolution of such litigation or audit; and,
- 4) at its own cost and expense, procure, maintain and provide County with proof of, insurance in the amounts and types of coverage and provisions satisfactory to County. This requirement of insurance shall be independent of Priority's obligation to indemnify, defend and hold the County harmless, as stated herein, and shall not limit or diminish such obligation.

B. Conditions.

Priority herein understands and agrees that Priority shall indemnify and hold harmless the County of Riverside, its Agencies, Boards, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed official, employees, agents and representatives(individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any use of the Equipment by Priority, its officers, employees, subcontractors, agents of representatives arising out of or in any relating to Priority's use of the equipment, including but not limited to property damage, bodily injury or death or any other element of any kind or nature whatsoever arising from the performance of Priority, its officers, employees, subcontractors, agents or representatives from the use of the Equipment. Priority shall defend, at is sole expense, all costs and fees, including but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

Priority herein further understands and agrees that County, in making this Agreement, is relying solely on the written determination of the USDA Forest Service, as set forth in Exhibit "B" that Priority can continue to possess and use the Equipment and that County makes no determination

of its own as to Priority's permission to possess and use the Equipment. Further, County makes no determination as to the current or future legal title to the Equipment.

Priority herein further understands and agrees that County makes no warranty as to the ultimate disposition requirements for the Equipment once the Program has expired or is otherwise terminated, or in the event that the USDA Forest Service determines that Priority's use of the Equipment is no longer allowable.

The Parties agree to work together reasonably and in good faith to execute any further documents necessary to implement this Agreement and or any future agreements regarding the final disposition of the Equipment.

4. RELEASE

In consideration of the settlement terms referred to herein, each Party does hereby fully and forever completely release, acquit and discharge the other Party, together with the other Party's past and present employees, agents (whether ostensible or actual), officers, directors, shareholders, successors, assigns, departments, and representatives (collectively "Releasees") from any and all claims, demands, actions, liabilities, damages, wages, costs, attorneys' fees, rights or causes of action, whether known or unknown, present or future, which either Party may have against the other or that may arise in the future from, or are directly or indirectly related to, or are connected in any way with the First and Second Loan Agreements, except that County shall not waive any claims for indemnification, contribution or apportionment of claims or liability brought against the County by any third party resulting from Priority's possession and use of the Equipment and/or damages resulting from any latent or hidden defect or hazardous materials contamination caused by Priority or resulting from Priority's possession and use of the Equipment.

5. NO PRIOR ASSIGNMENT OR TRANSFER

Each Party represents and warrants that there has been no assignment or other transfer of any claims or causes of action which it is releasing pursuant to the terms of this Agreement.

6. INDEMNIFICATION

The Parties and its attorneys hereby agree to release any and all claims and demands, rights and causes of action of any kind that may now have arisen or hereafter may arise as a result of the above-referenced First and Second Loan Agreements, and further agree to hold the other Party harmless, and to indemnify it for and against any claim, lien or debt which has or may arise from the incident described herein. Further, Priority agrees to indemnify County as more fully set forth in Section 3(B) above.

7. MISCELLANEOUS PROVISIONS

A. *Entire Agreement:*

This Agreement constitutes the full and entire agreement of the claims between the Parties hereto and such Parties acknowledge that there is no other claim or agreement, oral and/or written, between the Parties hereto.

B. *Authority to Enter Agreement:*

This Agreement is the result of arms-length negotiations. Each Party to this Agreement represents and warrants to the other that the persons executing this Agreement on behalf of such Party are duly and fully authorized to do so, and that each such Party is acting pursuant to the power and authority granted by their respective principals, and that no further approvals are required to be obtained from any persons or entities. Priority further represents and warrants that there are no outstanding liens or obligations against the Equipment and that Priority will defend, indemnify and hold harmless the County against any claims by any third party against the County for any outstanding liens or obligations, should they exist.

C. *Final Agreement:*

The Parties to this Agreement, and each of them, acknowledge that this Agreement and its reduction to final form is the result of extensive good faith negotiations between the Parties.

D. *Binding Agreement:*

This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, affiliates, subsidiaries, successors, assigns, parties, agents, officers, employees, shareholders, associates, legal representatives, heirs, executives and/or administrators of each of the Parties hereto.

E. *Interpretative Law:*

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable for whatever reason, the remaining provisions not so declared shall nonetheless continue in full force and effect without being impaired in any manner whatsoever.

F. *Paragraph Headings:*

Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.

G. *No Inducement:*

Each of the Parties to this Agreement acknowledges for itself that it has read this Agreement and fully understands its contents and consequences, and has voluntarily executed it. Each of the Parties also warrants that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, concerning the nature and extent of the injuries, damages or legal liabilities thereof.

H. *Counterparts*

This Agreement may be executed in counter-parts with the same effect as if all original signatures were placed on one document and all of which together shall be one and the same Agreement.

I. *Additional Documents:*

All Parties agree to cooperate fully to take any and all steps, perform any acts, and execute any documents consistent with the terms and conditions of this Agreement, which may be needed or required to effectuate the terms, intent, conditions, covenants, and provisions hereof.

J. *Venue:*

Venue for enforcement of this Agreement shall be in the Superior Court of the State of California, County of Riverside, Riverside Branch.

K. *Facsimile Signatures:*

Signatures delivered by facsimile shall be as binding as originals upon the Parties so signing and delivering.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Piverside } ss.
On August 23, 2013 before me, Kathleen Ann Dietrich
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Raymond Gutierrez
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal
Kathleen Ann Dietrich
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Release Agreement

Document Date: August 23, 2013 Number of Pages: 7

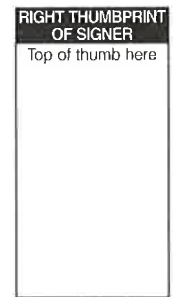
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: Raymond Gutierrez

- Individual
- Corporate Officer — Title(s): President
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: Priority Pallet, Inc.

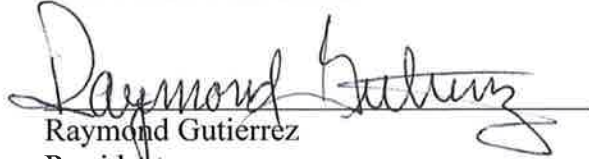


WE HEREBY CERTIFY THAT WE HAVE READ THIS SETTLEMENT AGREEMENT AND FULLY UNDERSTAND THE SAME, AND IN WITNESS WHEREOF WE HAVE EXECUTED AND DELIVERED THIS AGREEMENT.

COUNTY OF RIVERSIDE
a political subdivision of the
State of California

PRIORITY PALLET, INC.
a California corporation

John J. Benoit, Chairman
Board of Supervisors


Raymond Gutierrez
President

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

FORM APPROVED:

PAMELA J. WALLS
County Counsel


By: Annie Sahhar, Deputy