

FORM APPROVED COUNTY COUNSEL
BY: 9/24/15
DATE: 9/24/15
GREGORY P. PRIAMOS

Departmental Concurrence

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



FROM: Department of Waste Resources

SUBMITTAL DATE:
July 30, 2015

SUBJECT: Approve the Maintenance, Restoration and Remediation Agreement (Agreement) between the County and SA Recycling LLC., as required under Conditions of Approval for Conditional Use Permit (CUP) 3252R4, District 4 [\$0 – Department of Waste Resources Enterprise Funds], Nothing Further Required under CEQA.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement with SA Recycling, LLC.; and,
2. Authorize the Chairman of the Board to sign the Agreement; and,
3. Authorize the Department of Waste Resources General Manager-Chief Engineer to enter into Amendments for the duration of the Agreement; and,
4. Find that nothing further is required pursuant to the California Environmental Quality Act (CEQA) as all potentially significant effects of the Project has been adequately analyzed in Environmental Assessment/Mitigated Negative Declaration (EA/MND) No. 42522 (SCH No. 2013101095).

BACKGROUND:

Summary

In 2014, SA Recycling, an existing greenwaste and metals processing/recycling facility located in Thousand Palms, processed a revision to their CUP allowing for greenwaste composting and other operational/administrative changes.(continued)


Hans Kernkamp
General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

SOURCE OF FUNDS:

Budget Adjustment: No
For Fiscal Year: 15/16

C.E.O. RECOMMENDATION:

APPROVE

BY:


Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

☐ A-30
☐ 4/5 Vote
☐ Positions Added
☐ Change Order

Prev. Agn. Ref.: 1.2 of 7/1/14

District: 4

Agenda Number:

12-1

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approve the Maintenance, Restoration and Remediation Agreement (Agreement) between the County and SA Recycling LLC., as required under Conditions of Approval for Conditional Use Permit (CUP) 3252R4, District 4/4 [\$0 – Department of Waste Resources Enterprise Funds], Nothing Further Required under CEQA.

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PAGE: 2 of 2

BACKGROUND:

Summary (continued)

The Planning Commission approved the revised CUP on February 26, 2014, as well as adopted a IS/MND for the project. As part of the Conditions of Approval for the CUP revision, the Department of Waste Resources conditioned the project to increase the financial assurance mechanism (Bond), thereby providing funding for site restoration, clean-up and environmental remediation in the event composting causes environmental damage, and required that the applicant comply with the County-approved Best Management Practices (BMP's), and enter into a Maintenance, Restoration, and Remediation Agreement with the County.

SA Recycling LLC., has provided the required financial assurance (\$1,000,000 USD Bond), and agreed to comply with the County's BMP's for organic processing facilities. SA Recycling LLC., has also accepted the terms of the Agreement, which in part includes the notification/reporting of violations, as well as submittal of a Remediation Work Plan (if required), to the Department of Waste Resources. In addition, the Agreement provides for CPI adjustments to the financial assurance mechanism.

CEQA Findings

The Project will not result in any new significant environmental effects, substantially increase the severity of the prior environmental effects, alter or include additional mitigation measures, or result in any other changes that may impact the prior significance determinations identified in the previously certified EA/MND No. 42522 (SCH No. 2013101095). The Agreement does not require any specific construction or land disturbance activities, is not tied to any specific remediation project, and does not commit the County to any specific remediation or restoration activities. Approval of the Agreement does not alter the prior analysis or impact determinations from the previously certified EA/MND and does not require an addendum to the prior IS/MND.

A Notice of Determination (NOD) to this effect will be filed with the County Clerk upon Project approval.

Impact on Residents and Businesses

As there are no State requirements that organics waste processing/composting facilities provide financial assurances for their operations, the applicant's adherence to the Department of Waste Resources Conditions of Approval ensures that the County is fiscally protected in the event remediation/mitigation is required.

Contract History and Price Reasonableness

The Conditions of Approval requiring financial assurances as well as execution of a Maintenance, Restoration and Remediation Agreement, are reasonable and necessary to ensure adequate cleanup/remediation, if required at the facility.

Maintenance, Restoration and Remediation Agreement

This Maintenance, Restoration and Remediation Agreement ("Agreement") is made and entered into on _____ ("Effective Date") by and between the County of Riverside, a political subdivision of the State of California ("County") and SA Recycling LLC, ("Permittee").

WITNESSETH

WHEREAS, the County recognizes that the State of California ("State") is phasing out organic waste from landfills, and more organic waste processing facilities will be needed to meet escalating diversion and recycling goals; and,

WHEREAS, the County has developed Best Management Practices, standards, and conditions of approval to address future organic waste processing/composting facilities in order to ensure compatibility of such facilities with surrounding uses and avoid negatively impacting the residents of Riverside County; and,

WHEREAS, the facility identified in this Agreement operates under Conditional Use Permit ("CUP") No. 3252R4 , for which Conditions of Approval have been adopted; and,

WHEREAS, Condition of Approval 20.PLANNING 002 requires that Permittee provide and maintain in force during the life of the CUP a maintenance assurance, clean up/restoration bond, or other acceptable assurance, in the amount of one million U.S Dollars (\$1,000,000 USD), as approved by the County; and,

WHEREAS, Condition of Approval 20.PLANNING 005 requires that the Permittee enter into a 'Maintenance, Restoration and Remediation Agreement' with the Riverside County Department of Waste Resources, on behalf of the County.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Permittee, for and in consideration of the approval and issuance of the land use permit CUP 3252R4 on that certain property known as SA Recycling ("Property"), agrees as follows:

- a. Permittee shall forward any inspections by regulatory agencies, including but not limited to, the Local Enforcement Agency (LEA), California Department of Resources, Recycling, and Recovery (CalRecycle), South Coast Air Quality Management District (AQMD), and the State Regional Water Quality Control Board (RWQCB), for which the Property received an Area of Concern (AOC) relating to odors, or a Notice of Violation (NOV) for any issue, to the Riverside County Department of Waste Resources.
- b. If requested by the Riverside County Planning or Waste Resources Departments, Permittee shall submit a Remediation Work Plan for review and approval within 30 days of receiving the request. Such request shall only be made when two consecutive NOV's or AOC's (relating to odors only) are received at the Property (issued by the same regulatory agency) relating to the same/similar issue or if three or more NOV's/AOC's (relating to odors only) are issued within a rolling 12 month period for the same/similar issue.

- c. Permittee shall furnish all labor, equipment, and material necessary to perform and complete in a good and workmanlike manner, within the time period specified in the Remediation Work Plan, all those restoration improvements and remediation in accordance with the Remediation Work Plan, and to do all work incidental thereto in accordance with the requirements set forth in Riverside County Ordinance No. 348 and Ordinance No. 457, and Compost Best Management Practices attached hereto as Exhibit "A," and as may be amended, which are expressly made a part of this Agreement. Work completed under the Remediation Work Plan shall not be deemed complete until approval of the restoration and remediation is granted by the General Manager-Chief Engineer of the Department of Waste Resources.
- d. Permittee agrees that in the event restoration, clean-up or environmental remediation to the Property or adjoining parcels is required which necessitates County's assistance, County shall be fully reimbursed for all costs associated with said clean-up or remediation. Payment to the County shall be submitted within 30 days of receiving an invoice.
- e. In the event that Permittee fails to reimburse the County within time allotted under Section 1(d), Permittee agrees that County shall be entitled to reimbursement from the clean-up/restoration bond, or other financial assurance surety, as required under Condition of Approval 20.PLANNING 002.

2. Permittee agrees to pay to the County the actual cost of re-inspections of the work as may be required by the Department of Waste Resources. Permittee further agrees that if suit is brought upon this Agreement or any security guaranteeing the completion of the work, all costs and reasonable expenses and fees incurred by the County in successfully enforcing such obligations shall be paid by Permittee, including reasonable attorney's fees, and that upon entry of judgment, such costs, expenses, and fees shall be taxed as costs and included in any judgment rendered.

3. County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this Agreement prior to the completion and approval hereof, nor shall County or any officer or employee thereof be liable for any persons or property injured by reason of the acts or omissions of Permittee, his agents or employees in the performance of the work, and all of said liabilities are assumed by Permittee. Permittee agrees to protect, defend and indemnify County and the officers and employees thereof from all loss, liability or claim including attorney fees because of, or arising out of the acts or omissions of Permittee, his agents and employees, in the performance of this Agreement, or arising out of the use of any patent or patented article in the performance of this Agreement.

4. The Permittee hereby grants to the County, and to any agent or employee of the County, the irrevocable permission to enter upon the lands of the above-referenced land division for the purpose of inspecting improvements or determining compliance with this Agreement. The Department of Waste Resources shall give reasonable inspection notice, of no less than 48 hours, unless there are immediate health and safety concerns, in which case no notice shall be required. This permission shall terminate in the event that Permittee has completed the work within the time specified or any extension thereof granted by the Department of Waste Resources.

5. Permittee agrees at all times, up to the completion and approval of the work by the Department of Waste Resources, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the restoration/remediation project, and to protect the traveling public from such defective or dangerous conditions.

6. The Permittee, or his agents and employees shall give notice to the Department of Waste Resources at least 48 hours before beginning any work, as identified in the Remediation Work Plan prepared pursuant to Section 1b of this Agreement, and shall furnish said Director all reasonable facilities for obtaining full information respecting the progress and manner of said work.

7. If the Permittee, or his agents or employees, neglects, refuses, or fails to perform the work, as identified in the Remediation Work Plan prepared pursuant to Section 1b of this Agreement, with such diligence as to insure its completion within the specified time, or within such extensions of time as have been granted by the Department of Waste Resources, or if the Permittee violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, he shall be in default of this Agreement. Upon the Department of Waste Resources' determination that Permittee is in default of the Agreement, it shall issue a written notice of default identifying the default and specify actions the Department of Waste Resources believes will remedy the default. Within 15 business days of the date of the notice of default or the time otherwise specified in the notice of default, the Department of Waste Resources and Permittee shall meet and confer to discuss the default, how the default can be remedied, and the time period for the cure. Permittee agrees to conduct all commercially reasonable efforts to resolve the matter. To the extent the matter is not resolved to the satisfaction of the Department of Waste Resources within a reasonable time, the Department of Waste Resources shall report the default to the Director of the Building and Safety Department for determination that the conditions for revocation of Permittee's use permit exist pursuant to Section 18.31 of Ordinance No. 348, and the rights, duties, and procedures of that section shall apply.

8. The Permittee agrees to file with County prior to the date this Agreement is executed a good and sufficient security as required in the conditions to Permittee's development in the amount of one million U.S Dollars (\$1,000,000 USD). Permittee further agrees that if the security is a bond and if the sureties on the faithful performance bond in the opinion of the General Manager-Chief Engineer become insufficient, Permittee agrees to renew each and every bond or bonds with good and sufficient sureties within ten days after being notified by the Department of Waste Resources that the sureties are insufficient. Notwithstanding any other provision herein, if Permittee fails to take such action as is necessary to comply with said notice, he shall be in default of this Agreement unless all required work is completed within 90 days of the date on which the Department of Waste Resources notifies the Permittee of the insufficiency of the sureties.

9. The aforesaid bond or bonds or the issuance of any instruments or letters of credit shall be adjusted every five years. The maximum increase allowable at any time of adjustment will be equal to the percent change in the Consumer Price Index ("CPI"). Computation of the change in the CPI will be made according to the following methodology:

- (1) Said computation shall be equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, "(1982- 84 = 100)", as published by the United States Department of Labor, Bureau of Labor Statistics. Said change shall be measured for the sixty (60) month period beginning when the Term starts and ending sixty (60) months later. The first increase may be effective on the first July 1 date after the sixty-month period, based upon changes in the Consumer Price Index formula for the five-year period.

10. It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or the issuers of any instruments or letters or credit securing this Agreement that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this Agreement, extensions of time may be granted from time to time by the Department of Waste Resources or upon request of the Permittee, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on said bonds. Permittee further agrees to maintain the aforesaid bond or bonds or the issuance of any instruments or letters of credit in full force and effect during the terms of this Agreement, including any extensions of time as may be granted thereon.

11. This Agreement shall be binding upon the Permittee and his heirs, executors, administrators, successors or assigns, all and each both jointly and severally.

12. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

[Signatures on following page]

13. Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

RIVERSIDE COUNTY
DEPARTMENT OF WASTE RESOURCES
14310 Frederick Street
Moreno Valley, CA 92553

Permittee

Date: _____

Date: 8/26/15

By: _____

Name: George Adams

Title: President/CEO

RECOMMENDED FOR APPROVAL

By: _____

Name: Hans Kernkamp

Title: General Manager-Chief Engineer

RIVERSIDE COUNTY

By: _____

Chairman, Board of Supervisors

ATTEST:

By: _____

Clerk of the Board

IN WITNESS WHEREOF PERMITTEE HAS AFFIXED HIS NAME, ADDRESS AND SEAL.

Dated: _____

By: _____

By: _____

Approved as to Form:

By: _____

Deputy County Counsel

(SIGNATURES OF PERMITTEE(S) MUST BE ACKNOWLEDGED BY A NOTARY AND EXECUTED IN DUPLICATE, WITH THE NOTARY ACKNOWLEDGMENT ATTACHED HERETO.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

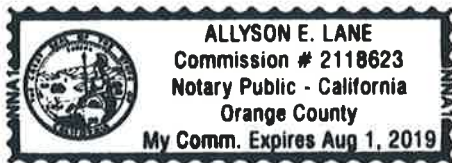
State of California)

County of Orange)On 8/26/15 before me, Allyson E. Lane, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared George Adams
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Allyson E. Lane
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____