

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



**ITEM: 12.2**  
(ID # 21704)

**MEETING DATE:**  
Tuesday, May 09, 2023


**FROM :** DEPARTMENT OF WASTE RESOURCES:

**SUBJECT:** DEPARTMENT OF WASTE RESOURCES: Approve the Maintenance, Restoration and Remediation Agreement (Agreement) between the County of Riverside and Southern California Mulch, Inc., as required under Conditions of Approval for Conditional Use Permit (CUP) No. 200009, District 3. [\$0 Total Cost - Department of Waste Resources Enterprise Funds] (CEQA – Nothing Further Required)

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Agreement between the County of Riverside (County) and Southern California Mulch, Inc.;
2. Authorize the Chairman of the Board to sign the Agreement; and
3. Authorize the Department of Waste Resources (Department) General Manager-Chief Engineer to enter into Amendments for the duration of the Agreement and to execute future Agreements for similar projects requiring Maintenance, Restoration and Remediation Agreements, subject to approval as to form by County Counsel.

**ACTION:Policy**

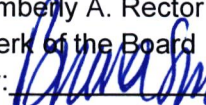
  
Hans Keinkamp, General Manager - Chief Engineer 4/27/2023

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Gutierrez, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez  
Nays: None  
Absent: None  
Date: May 9, 2023  
xc: Waste

Kimberly A. Rector  
Clerk of the Board  
By:   
Deputy

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| <b>FINANCIAL DATA</b>                                    | <b>Current Fiscal Year:</b> | <b>Next Fiscal Year:</b> | <b>Total Cost:</b>        | <b>Ongoing Cost</b> |
|--|-----------------------------|--------------------------|---------------------------|---------------------|
| <b>COST</b>  | \$ 0                        | \$ 0                     | \$ 0                      | \$ 0                |
| <b>NET COUNTY COST</b>                                   | \$ 0                        | \$ 0                     | \$ 0                      | \$ 0                |
| <b>SOURCE OF FUNDS:</b> Waste Resources Enterprise Funds |                             |                          | <b>Budget Adjustment:</b> | No                  |
|  |                             |                          | <b>For Fiscal Year:</b>   | 22/23               |

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

On November 2, 2022 (Item 4.1), the Planning Commission approved CUP No. 200009 allowing the continued operation of an existing bulk landscape supply facility. As part of the Conditions of Approval for the CUP, the Department conditioned the Project to provide a financial assurance mechanism (bond or other acceptable assurance), thereby providing funding for site restoration, clean-up and environmental remediation in the event that the facility causes environmental damage, and required that the applicant enter into an Agreement with the County to address this subject.

Southern California Mulch, Inc. has provided financial assurance in the amount of \$59,000, and has accepted 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. In addition, the Agreement provides for Consumer Price Index (CPI) adjustments to the financial assurance mechanism.

**CEQA Findings**

On November 2, 2022, the Riverside County Planning Commission approved CUP No. 200009 and found that the Project was exempt from CEQA. As such, a Notice of Exemption (NOE) was prepared identifying that CUP No. 200009 was categorically exempt from CEQA pursuant to the State CEQA Guidelines Section 15301 (Existing Facilities). The statute of limitations for review and comment has expired, with no comments or challenges to the NOE received.

The Project contemplated in this Form 11 involves the approval of an Agreement between the County and Southern California Mulch, Inc., as part of the Conditions of Approval for CUP No. 200009. The conditions contemplated in this Agreement are in response to the continued operation of an existing bulk landscape supply facility. The Agreement does not require any specific construction or land disturbance activities and is not tied to any specific remediation project, nor will it have a direct, indirect, or cumulatively significant impact on the environment. Approval of the Agreement will not alter the prior analysis made in the NOE. Therefore, no further action is required for the purposes of CEQA.

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**Impact on Residents and Businesses**

As there are no state requirements that bulk landscape supply facilities provide financial assurance for their operations, the applicant's adherence to the Department's conditions of approval ensure that the County is fiscally protected in the event that remediation action is required.

**ATTACHMENTS**

**ATTACHMENT A.** Maintenance, Restoration and Remediation Agreement



Jason Farin, Principal Management Analyst 5/3/2023



Maintenance, Restoration and Remediation Agreement

This Maintenance, Restoration and Remediation Agreement (“Agreement”) is made and entered into on May 9, 2023 (“Effective Date”) by and between the County of Riverside, a political subdivision of the State of California (“County”) and Southern California Mulch Incorporated, a California Corporation (“Permittee”). County and Permittee are, at times, hereinafter referred to individually as “party” or collectively as “parties.”

WITNESSETH

**WHEREAS**, the County recognizes that the State of California requires diversion of waste from landfills, green waste processing and mulch/composting outlets to meet the escalating diversion and recycling goals; and,

**WHEREAS**, the Permittee operates a mulch, soil, and aggregate storage facility on APN 461-140-050, located at 30075 Grand Ave, Winchester, County of Riverside (“Property”), under Conditional Use Permit No. 200009 (“CUP”) approved on (November 2, 2022), for which Conditions of Approval have been adopted; and,

**WHEREAS**, Condition of Approval 015.WASTE.01 requires that Permittee provide and maintain in force during the life of the CUP a maintenance assurance, clean up and restoration bond, or other acceptable assurance, in the amount of \$59,000 U.S. Dollars, as approved by the County; and,

**WHEREAS**, Condition of Approval 015.WASTE.02 requires that the Permittee enter into this Maintenance, Restoration and Remediation Agreement with the Riverside County Department of Waste Resources (“Department”); and,

**WHEREAS**, the County enters into this Agreement on behalf of the Department.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein the County and Permittee mutually agree as follows:

1. Permittee shall forward to the Department any inspections by regulatory agencies, including but not limited to, the Local Enforcement Agency, California Department of Resources, Recycling, and Recovery, South Coast Air Quality Management District, and the State Regional Water Quality Control Board, for which the Property received an Area of Concern (“AOC”) or a Notice of Violation (“NOV”) for any issue.

2. In the event Permittee receives two consecutive NOV’s or AOC’s from the same regulatory agency related to the same or similar issue or receives three or more NOV’s or AOC’s from the same regulatory agency within a rolling 12-month period for the same or similar issue, the County may request the Permittee to submit a Remediation Work Plan to the County. Such request from the County shall be made in writing to the Permittee.

3. Permittee shall submit the Remediation/Restoration Work Plan (“Plan”) to the County for review and approval by the Department within thirty (30) calendar days of receiving the County’s written request. The Plan shall include the actions Permittee will take to remedy the

issues cited in the NOV or AOC, a description of the necessary restoration improvements or remediation, and a time period to complete the improvements or remediation.

4. Permittee shall furnish all labor, equipment, and materials necessary to perform and complete in a good and workmanlike manner, within the time period specified in the Remediation/Restoration Work Plan, all restoration improvements and remediation in accordance with the approved Plan. Such improvements and remediation shall also be completed within the time period specified in the Plan. Work completed under the Plan shall not be deemed complete until approved in writing by the Department's General Manager-Chief Engineer.

5. Permittee shall conduct all restoration improvements and remediation work ("Work") required by the Plan in accordance with all applicable federal, state and local laws, regulations and ordinances. In particular, without limitation, Permittee shall comply with Ordinance No. 348 and Ordinance No. 457.

6. Permittee shall at all times, up to the completion and approval of the Work by the Department, give good and adequate warning to the traveling public such as, but not limited to, signage and traffic control measures for each and every dangerous condition caused by the Work, and to protect the traveling public from such defective or dangerous conditions.

7. The Permittee, or its agents and employees, shall give written notice to the Department at least 48 hours before beginning any of the Work and provide weekly updates to the Department on the progress and manner of the Work.

8. The Permittee hereby grants to the County, and to any agent or employee of the County, the irrevocable permission to enter upon the Property for the purpose of inspecting the Work or determining compliance with this Agreement. The County shall give reasonable inspection notice in writing to the Permittee, of no less than 48 hours, unless there are immediate health and safety concerns, in which case no notice shall be required.

9. Permittee shall pay to the County the total cost for inspections of the Permittee's Work required by the Plan. Payment by the Permittee to the County shall be submitted within thirty (30) calendar days of receiving the County's written invoice for costs.

10. In the event the Work to the Property or adjoining parcels necessitates the County's assistance such as, but not limited to, inspections or construction assistance, the Permittee shall fully reimburse the County for all costs associated with said assistance. Payment by the Permittee to the County shall be submitted within thirty (30) calendar days of receiving the County's written invoice for costs. In the event that Permittee fails to reimburse the County within said thirty (30) calendar days, Permittee agrees that County shall be entitled to reimbursement from the clean-up/restoration bond, or other financial assurance surety, as required under the CUP's Condition of Approval 015.WASTE.01.

11. Upon execution of this Agreement by Permittee, Permittee shall provide to County the duly executed maintenance assurance, clean up and restoration security as required by the CUP's Condition of Approval 015. WASTE.01. Permittee agrees that if the security is a bond and if the sureties on the faithful performance bond in the opinion of the Department's General Manager-Chief Engineer become insufficient, Permittee agrees to renew each and every bond or bonds with good and sufficient sureties within ten (10) calendar days after being notified in writing by the Department 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, Permittee shall be in default of this Agreement unless the Work is completed within ninety (90) calendar days of the date on which the Department notifies the Permittee of the insufficiency of the sureties. In the event of a default, County retains all rights to seek any and all remedies available at law or in equity.

12. The aforesaid bond or bonds or the issuance of any instruments or letters of credit shall be adjusted every five (5) years ("Term"). 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 shall be equal to the change in the Consumer Price Index for all Urban Consumers for the Riverside-San Bernardino-Ontario (December 2017=100), as published by the U.S. 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 Term shall begin on the Effective Date and shall end sixty (60) months later. The first increase shall be effective on the first July 1 date after the end of the first Term, based upon changes in the CPI formula for the Term's five-year period. Each subsequent Term shall begin the day after the end of the previous Term, and each subsequent increase shall be effective on the first July 1st following the end of the previous Term.

13. In the event it is deemed necessary to extend the time of completion of the Work, extensions of time may be granted in writing from time to time by the Department and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on said bonds. Permittee 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.

14. In the event any claims or legal challenges are brought against the County regarding this Agreement or any security guaranteeing the completion of the Plan's Work, Permittee shall pay all costs and reasonable expenses and fees, including without limitation reasonable attorney's fees, incurred by the County related to such claims or legal challenges. Upon entry of decision or judgment, such costs, expenses, and fees shall be deemed recoverable by the County.

15. Permittee and its agents and employees shall act at all times in an independent capacity during the term of this Agreement, and shall not act as, shall not be, nor shall they in any manner be construed to be agents, officers or employees of the County.

16. County shall not, nor shall any officer or employee of the County, be liable or responsible for any accident, loss or damage happening, occurring or associated with the Work specified in this Agreement, 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, its agents or employees in the performance of the Work, and all of said liabilities are assumed by Permittee. Permittee assumes any and all risk of loss, damage or injury of any kind to any person, to the Property or any other property of, or under the control or custody of, the Permittee. Permittee's assumption of risk shall include, without limitation, loss, damage or injury caused in operating the waste processing facility on the Property or in performance of the Work specified in this Agreement.

17. Permittee agrees to assume liability for and shall indemnify and hold harmless the County, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and



representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any acts, omissions, work or services of Permittee, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, 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 Permittee, its officers, employees, subcontractors, agents or representatives from this Agreement. The Permittee shall defend, at its sole expense, all costs and fees including, but not limited to, attorney's fees, costs of investigation, defense and settlements or awards, the Indemnitees may incur in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Permittee, Permittee shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Permittee's indemnification to Indemnitees as set forth herein.

Permittee's obligation hereunder shall be satisfied when Permittee has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

In the event there is conflict between this clause and California Civil Code section 2782, this clause shall be interpreted to comply with Civil Code section 2782. Such interpretation shall not relieve the Permittee from indemnifying the Indemnitees to the fullest extent allowed by law.

18. If the Permittee, or its agents or employees, neglects, refuses, or fails to perform the Work with such diligence as to ensure its completion within the Plan's specified time, or within such extensions of time as have been granted by the Department in writing, or if the Permittee violates, neglects, refuses, or fails to perform satisfactorily any of the provisions in this Agreement, Permittee shall be in default of this Agreement. Upon the County's determination that Permittee is in default of the Agreement, the County shall issue a written notice of default identifying the default and specify actions the County 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 County 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 County within a reasonable time, the County may begin revocation procedures for the CUP in accordance with Riverside County Land Use Ordinance No. 348. Additionally, in the event of a default, the County retains all rights to seek any and all remedies available at law or in equity.

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

20. It is expressly agreed that this Agreement embodies the entire agreement of the parties in relation to the subject matter hereof, and that no other agreement or understanding, verbal or otherwise, relative to this subject matter, exists between the parties at the time of execution.

21. Each paragraph and provision of this Agreement is severable from each other provision, and if any provision or part thereof is declared invalid, the remaining provisions shall remain in full force and effect.

22. The Permittee shall not make any assignment, conveyance or transfer in any other form with respect to this Agreement without prior written approval of the County.

23. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

24. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

25. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the superior court of California, County of Riverside, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

26. The persons executing this Agreement or exhibits attached hereto on behalf of the parties to this Agreement hereby warrant and represent that they have the authority to execute this Agreement and warrant and represent that they have the authority to bind the respective parties to this Agreement to the performance of its obligations hereunder.

27. This Agreement shall not be amended unless such changes are mutually agreed upon by the County and the Permittee and shall be incorporated in written executed amendments to this Agreement.

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

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

PERMITTEE:  
SOUTHERN CALIFORNIA MULCH, INC.  
30075 Grand Ave.  
Winchester, CA 92276

29. The term of this Agreement ("Agreement Term") shall commence on the Effective Date and remain in effect for the life of the CUP.

30. The Department and its General Manager-Chief Engineer or designee are designated as the administrator for overseeing compliance and performance of this Agreement by Permittee.



**IN WITNESS WHEREOF**, this Agreement is hereby mutually approved and executed by County and Permittee on the date first above written.

**RECOMMENDED FOR APPROVAL**

By: [Signature]  
Name: Hans Kernkamp  
Title: General Manager-Chief Engineer

**COUNTY**  
County of Riverside

By: [Signature]  
Kevin Jeffries  
Chair, Board of Supervisors

ATTEST:  
By: [Signature]  
Kimberly Rector  
Clerk of the Board

APPROVED AS TO FORM:  
Minh. C Tran  
County Counsel

By: [Signature]  
Aaron C. Gettis  
Supervising Deputy County Counsel

**PERMITTEE**  
Southern California Mulch, a California Corporation

By: [Signature]      [Signature]  
Title: President      Secretary

SEE NOTARY  
ATTACHED

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

# Maintenance Restoration and Remediation Agreement

## ACKNOWLEDGMENT

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 SAN BERNARDINO )

On 3/14/2023 before me, AHMAD ABDULBAKY, NOTARY PUBLIC  
(insert name and title of the officer)

personally appeared Elisabeth Brownton and Lauralee Brownton,  
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

Ahmad Abdulbaky

(Seal)

