

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: David Kahn, City Attorney via City Manager

SUBJECT: Memorandum of Agreement Between City of Brisbane and Sunquest Properties, Inc. for Continued Operations Under Use Permit UP-8-03

DATE: May 5, 2014

### **City Council Goals:**

To preserve and enhance livability and diversity of neighborhoods. (#14)  
To preserve the unique character of Brisbane. (#16)  
To promote economic development that stabilizes and diversifies the tax base. (#4)

### **Purpose:**

To consider and approve a Memorandum of Agreement (“MOA”) for continued soil processing operations by Sunquest Properties Inc. at the Baylands site as a “bridge” between the former Use Permit UP-8-03 and review and action by the Planning Commission on the pending application for a new Use Permit for the soil processing site. The MOA will establish maximum height limits and incorporate air and dust management plans, and enforcement procedures, for the soil processing site.

### **Recommendation:**

Approve the attached Memorandum of Agreement between City of Brisbane and Sunquest Properties, Inc, for Continued Operations Under Interim Use Permit UP-8-03 and authorize City Manager to sign Memorandum of Agreement.

### **Background:**

The MOA was on the April 21, 2014, agenda for consideration and approval. The April 21, 2014, agenda report is attached. The Council requested several revisions and additions to the MOA, and the matter was continued to the May 5, 2014 Council meeting to allow City staff to revise the MOA pursuant to the Council’s direction. The revised MOA is before the Council for consideration and approval.

**Discussion:**

Changes to the MOA since the April 21, 2014 meeting are:

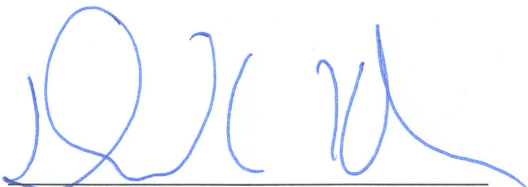
- Revision of the Exhibit A map to designate all dirt piles on the site, both those that will be active and those that will be dormant, and to add current heights, maximum permitted heights, and approximate cubic yards of additional dirt for piles where the height will increase.
- Incorporation of the Soil Management and Quality Assurance Plan as an Exhibit to the MOA.
- Requirement for particulate monitors on site.
- Requirement to retain hydroseeding on Pile E.

**Fiscal Impact:**

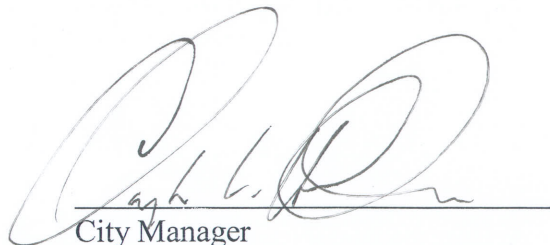
The annual truck haul fees from the Baylands soil processing business were \$202,049 in 2011; \$299,272 in 2012; and \$379,599 in 2013. If operations are not allowed to proceed, or the heights permitted do not allow for continued operations until the Planning Commission review of the interim use permit application, there will be a corresponding loss of all or part of this revenue to the City.

**Measure of Success**

Resident concerns related to dust emissions and monitoring and regulation of soils heights are addressed by the Memorandum of Agreement and the City continues to receive the substantial revenues from the Baylands soil processing operation.



City Attorney



City Manager

A copy of supporting materials provided to the City Manager and Council Persons in connection with this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Department of Public Works, Brisbane, CA, 94005, Telephone: (415) 508-2130.

**Attachments:**

- (Revised) Memorandum of Agreement Between City of Brisbane and Sunquest Properties, Inc. for Continued Operations Under UP-8-03 with Exhibits A,B and C
- April 21, 2014 Agenda Report on Memorandum of Agreement



**MEMORANDUM OF AGREEMENT BETWEEN CITY OF  
BRISBANE AND SUNQUEST PROPERTIES, INC. FOR  
CONTINUED OPERATIONS UNDER USE PERMIT UP-8-03**

This Memorandum of Agreement ("MOA") for Continued Operations Under Use Permit UP-8-03, dated April \_\_\_, 2014 for reference purposes only, is entered into by the City of Brisbane ("CITY") and Sunquest Properties, Inc. ("PROPERTY OWNER"), with reference to the following facts:

- A. The CITY approved Use Permit UP-8-03 ("PERMIT") in January, 2004. The PERMIT allowed the PROPERTY OWNER to receive, screen, stockpile and sell inert materials, including clean sand, topsoil, clay and loam, on the portion of the Baylands landfill located between Beatty Avenue, Tunnel Avenue, Lagoon Way and the Bayshore Freeway shown on Exhibit A ("SOIL PROCESSING SITE").
- B. The initial term of the PERMIT was three years. Prior to expiration of the PERMIT, the PROPERTY OWNER made timely application to CITY to extend the PERMIT to allow continuing operations.
- C. Upon receiving the PROPERTY OWNER'S application to extend the PERMIT, the CITY identified multiple issues regarding which it required information prior to making a determination on the PROPERTY OWNER'S application. The CITY asserts that the PROPERTY OWNER'S site operator in 2007 did not timely provide the information requested by the CITY. In 2009, the PROPERTY OWNER terminated the existing operator, Ryan Engineering, Inc., and retained a new operator, Proven Management, Inc., now Baylands Soil Processing, LLC ("BSP").
- D. In November 2009, the PROPERTY OWNER submitted a further application to the CITY to extend the PERMIT. In March 2010, BSP submitted a draft site operations plan to the CITY. The PROPERTY OWNER and BSP have either complied or are in the process of complying with all CITY requests for additional information.
- E. Based on the PROPERTY OWNER'S timely requests for extension of the PERMIT, during the continuing review by the CITY of the application, the CITY has permitted continuing operation of the SOIL PROCESSING SITE under the PERMIT. As a condition of continued operation, the PROPERTY OWNER agreed to a Compliance Audit that was not required by the PERMIT. The Compliance Audit, performed by a contractor to the CITY at the PROPERTY OWNER'S expense, evaluated the SOIL PROCESSING SITE intake and soils testing procedures to insure that all materials transported to the SOIL PROCESSING SITE are free from contamination.
- F. As a result of continuing operations at the SOIL PROCESSING SITE beyond the initial term of the PERMIT, the stockpile heights and total material at the SOIL



PROCESSING SITE may exceed or be inconsistent with the limits identified in the PERMIT. The CITY will be reviewing the PROPERTY OWNER'S request for extension of the PERMIT in 2014 and, if a formal extension is approved, the CITY will establish the appropriate conditions of approval for the continued use.

- G. A number of Brisbane citizens have stated that the continuing operations at the SOIL PROCESSING SITE have resulted in multiple violations of the dust control requirements, and that the massing and height of the dirt stockpiles have resulted in visual blight in the CITY. The PERMIT provides that it is subject to revocation pursuant to the Brisbane Municipal Code if the SOIL PROCESSING SITE results in a nuisance, or is injurious or detrimental to property in the neighborhood, or injurious to the general welfare of the CITY. The CITY acknowledges the economic and other community benefits of continued operations at the SOIL PROCESSING SITE, has reviewed the ongoing operations at the SOIL PROCESSING SITE and is willing to permit continued operations at the SOIL PROCESSING SITE until such time as the CITY formally acts on the PROPERTY OWNER'S application for extension of the PERMIT. However, such continued operations are contingent on the PROPERTY OWNER'S agreement to certain terms and conditions of continued operations that address the CITY'S operational, health and public welfare concerns at the SOIL PROCESSING SITE.

THEREFORE, THE PROPERTY OWNER AGREES TO THE FOLLOWING TERMS AND CONDITIONS AS A PREREQUISITE TO CONTINUED OPERATIONS OF THE SOIL PROCESSING SITE PRIOR TO FORMAL ACTION BY THE CITY ON THE PROPERTY OWNER'S APPLICATION:

1. The October 14, 2013, Air and Dust Management Plan ("ADMP"), Brisbane Baylands, Brisbane, California, prepared and adopted pursuant to CITY Ordinances and Bay Area Air Quality Management District regulations is attached to this MOA as Exhibit B and incorporated into this MOA by reference. The PROPERTY OWNER agrees that it will implement and comply with all of the Best Management Practices for air and dust control in the ADMP, including listed management and mitigation measures in the event that visible dust from soil disturbance activities is observed.
2. The PROPERTY OWNER acknowledges and agrees that pursuant to Section 3.8 of the ADMP, in the event that visible dust from soil disturbance activities is observed crossing the SOIL PROCESSING SITE boundary, the specific source of dust emissions will be immediately shut down, and a more aggressive application of the BMP Best Management Practices in the ADMP will be implemented.
3. PROPERTY OWNER acknowledges and agrees that pursuant to Section 3.9 of the ADMP, in the event that visible dust from soil disturbance activities is observed within the SOIL PROCESSING SITE boundary, a more aggressive



application of the Best Management Practices in the ADMP will be implemented. If visible dust emissions continue after application of the Best Management Practices, the specific source of the dust emissions will be shut down until the implemented dust control mitigation is effective or, due to changed conditions, is no longer necessary.

4. PROPERTY OWNER acknowledges and agrees that pursuant to Section 3.10 of the ADMP, if windblown visible dust plumes originate from the site during weekends, holidays, or other times when there are no active soil-disturbing operations at the SOIL PROCESSING SITE, Best Management Practices to mitigate the visible dust will be implemented as soon as feasible, which determination is subject to review by the Public Works Director, and maintained until the visible dust plumes originating from the SOIL PROCESSING SITE are minimized or eliminated.
5. The PROPERTY OWNER acknowledges and agrees that no operations are permitted at the SOIL PROCESSING SITE after 10:00 p.m.
6. The CITY and the PROPERTY OWNER agree that the environmental health and safety of the SOIL PROCESSING SITE is important for the health and safety of both employees at the SOIL PROCESSING SITE, Brisbane residents, and surrounding communities. The PROPERTY OWNER agrees that as a condition of the CITY permitting continued operations at the SOIL PROCESSING SITE under the PERMIT, the PROPERTY OWNER will comply with the Soil Management and Quality Assurance Plan dated September 2013 on file with the City of Brisbane Community Development Department, attached as Exhibit C and incorporated by reference, to insure that the SOIL PROCESSING SITE does not accept or process contaminated material. Additionally the CITY retains the right to perform an audit of site operations to ensure compliance with the above-referenced Soil Management and Quality Assurance Plan at the PROPERTY OWNER'S reasonable expense. The PROPERTY OWNER shall be responsible to correct operational deficiencies or otherwise work with the CITY to promptly address any recommendations identified by the audit.
7. Within 60 days of the date of execution of the MOA, applicant shall submit for the City Engineer's review and approval an updated ADMP plan that includes regular monitoring for airborne particulate matter, and that ties corrective actions to specified increased levels of airborne particulate, in addition to the current ADMP requirement to take action when fugitive dust is observed crossing the property boundaries. This update to the ADMP shall be prepared by an Industrial Hygienist or functionally equivalent professional, and shall include specifications for monitoring of wind speed, wind direction, location/spacing/frequency and technical requirements for the monitoring equipment. This update to the ADMP is generally expected to require the placement of no less than four (4) particulate monitors (i.e., DataRAM 4 or Aereocet 531S) on the eastern boundary of the property, at less one monitor on the western boundary to account for non-project

contributions to airborne particulates, as well as the aforementioned action levels and specific actions for specified increases in concentration of PM 10 airborne matter.

8. Finding 2 of the PERMIT provides that the interim use on the SOIL PROCESSING SITE will not be detrimental to the public health, safety or welfare of the CITY. Condition of Approval C provides that materials should be stockpiled no higher than 25 feet above the surrounding grade. Due to the length of time between the initial end date of PERMIT and the current date of April 21, 2014, and the increase in demand for the SOIL PROCESSING SITE based on major construction and excavation projects in the City of San Francisco and other cities, the overall height of the stockpiles and adjacent grades has increased as shown on Exhibit A.

On the other hand, The CITY acknowledges the economic value of operations at the SOIL PROCESSING SITE to the CITY, and desires to allow continued operations pending completion of the CITY's review of the PROPERTY OWNER'S application for extension of the PERMIT, subject to the PROPERTY OWNER agreeing to set reasonable maximum elevations for the SOIL PROCESSING SITE that are acceptable to the CITY and that will not be exceeded pending the review of the PROPERTY OWNER'S application. The PROPERTY OWNER provided the CITY with a current topographical map of the SOIL PROCESSING SITE on February 21, 2014. Maximum elevations of the dirt stockpiles and processing sites prior to the issuance of an Interim use Permit will be established by reference to the elevations above Mean Sea Level on the topographical map submitted on February 21, 2014. Maximum elevations shall not exceed those shown on Exhibit A, hereby incorporated by reference into the Agreement, except by a mutually agreed Amendment in writing and approved by the City Council.

The maximum elevation heights above Mean Sea Level ("MSL") are:

Pile A	58 feet
Pile B	50 feet
Pile C	75 feet
Pile D	75 feet
Pile E	75 feet <sup>1</sup>
Pile F	65 feet
Pile G	73 feet

---

<sup>1</sup> Additionally, the current hydro-seeding on Pile E will be maintained for as long as this M OA is in effect.



9. To allow the CITY to monitor compliance with this condition, PROPERTY OWNER shall provide an engineer's report every two (2) months, commencing on the effective date of this Agreement, verifying that the maximum elevations on site do not exceed the maximum allowed. PROPERTY OWNER shall submit updated topographical surveys for the SOIL PROCESSING SITE commencing twelve (12) months from the Agreement effective date, and continuing every twelve (12) months until an Interim Use Permit is issued that incorporates a grading plan.

All other Findings and Conditions of Approval of the PERMIT remain in effect, including Condition of Approval BB providing for revocation of the PERMIT pursuant to Brisbane Municipal Code Chapter 17.48 if the continued use does not comply with the conditions of approval, or is a nuisance, injurious or detrimental to property or improvements in the neighborhood or the general welfare of the CITY, or for any reason that the City Council deems in its sole discretion to make continuation of the use not satisfactory to the CITY. The City may also, at its sole discretion, enforce any violation of the Agreement pursuant to Brisbane Municipal Code Chapter 17.58, Enforcement and Penalties.

Date \_\_\_\_\_

\_\_\_\_\_  
City of Brisbane

Date \_\_\_\_\_

\_\_\_\_\_  
Sunquest Properties, Inc.

BRISBANE BAYLANDS  
 BRISBANE, CALIFORNIA

INTERIM GRADING PLAN  
 EXHIBIT A  
 SHEET 1 OF 1

BASIS OF SURVEY  
 FIELD SURVEY PERFORMED ON FEBRUARY 11, 2014, BY PROFESSIONAL LAND  
 DEVELOPMENT SPECIALISTS, INC. (PLS), AND  
 CONSTRUCTION MAPS DESIGNED BY SD-0021

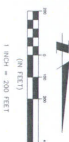




EXHIBIT A TO:

MEMORANDUM OF AGREEMENT BETWEEN CITY OF BRISBANE AND SUNQUEST  
PROPERTIES INC. FOR CONTINUED OPERATIONS UNDER USE PERMIT UP-8-03

The existing and maximum elevation heights above Mean Sea Level("MSL"), and approximate number of cubic yards that will be permitted for each pile where there is a height increase, are:

Pile Designation	Existing Height	Maximum Height	Cubic Yards Added
Pile A	51 feet	58 feet	200,000
Pile B	50	50 feet	0
Pile C	59	75 feet	325,600
Pile D	72	75 feet	82,250
Pile E	75	75 feet	0
Pile F	65	65 feet	0
Pile G	73	73 feet	0

DIRT PILE ACTIVITIES:

Piles A,C,D - Import: Materials meeting BSP's screening and acceptance criteria that is hauled in by the Generator and/or its representative to be screened and mixed to create various types of recycled materials for resale and export. Import Materials include topsoil, non-compactable fill, compactable rock, and engineered fill.



## Exhibit A

### Page 2 of Dirt Pile Height Information

Pile E- Dormant: The area of the site designated as dormant will no longer accept Import materials. This dormant area is also not currently scheduled as a source for recycled export material in the short term. However, in the event that the operator is awarded a large export contract, the area may be used to create recycled export materials.

Piles B,F- Staging: A specific geographic area that is used as part of the primary operations for near-term stockpiling, testing, screening, mixing and final processing of materials to be exported in the near future.

Pile G- Top Soil Processing: A specific geographic area that is used for Top Soil Processing including recycling operations for near-term stockpiling, testing, screening, mixing and final processing of materials to be sold as topsoil.