



DATE: November 18, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **GREEN WASTE DIVERSION SERVICE AGREEMENT AND PROPERTY LEASE AGREEMENT TO PROVIDE GREEN WASTE COMPOSTING RELATED SERVICES AT EL CORAZON, AND APPROVE A BUDGET APPROPRIATION TO FUND THE CITY'S PROPERTY DEVELOPMENT COST**

SYNOPSIS

Staff, the Integrated Waste Commission, and the El Corazon Oversight Committee recommend that the City Council approve a 15-year Green Waste Diversion Service Agreement and a 15-year Property Lease Agreement with AgriService, Inc., a California corporation to provide green waste composting-related services at El Corazon, with total revenue to the City in the approximate amount of \$2,400,000 plus indirect benefits valued at approximately \$2,550,000 over the term of the agreements, authorize the City Manager to execute the agreement; and approve a budget appropriation in the amount of \$150,000 from the Silica Reclamation fund account to the Silica Reclamation budget account to fund the City's property site development cost.

BACKGROUND

In March of 1995 the City entered into a service agreement with AgriService to build and operate a composting facility at El Corazon to process all of the City's curbside residential yard waste ("Green Waste") collected by the City's solid waste collection provider. The City's primary objective when entering into the original agreement was to use the products produced by composting the Green Waste to assist with erosion control and soil stabilization and for use as a soil amendment during the reclamation of the El Corazon site.

Another important benefit was the stabilization of the curbside collection cost to rate payers for the pickup of Green Waste by reducing the transportation and disposal costs by composting the Green Waste at El Corazon. Further, by not sending the Green Waste to a landfill facility, the City has the means to meet the State mandated AB 939 waste reduction goals imposed on municipalities within the State.

AgriService's operation of the Green Waste compost facility at El Corazon ("El Corazon Facility") has been an unqualified success in meeting the above described objectives. Over 120,000 cubic yards of usable composted material is produced annually at the El

Corazon Facility. Composted material has been used at El Corazon as an integral part of the reclamation and soil stabilization of the site. The curbside Green Waste collection rates have been minimally increased as part of the contract with the City's solid waste collection provider. The diverted residential yard waste delivered to the El Corazon Facility accounts for 60 percent of the State of California's mandated AB 939 waste reduction goals applicable to the City over the last 14 years.

Implementation of the recently approved El Corazon Specific Plan ("Specific Plan") will necessitate the closure of the El Corazon Facility at its current location. However, the Specific Plan designated a public use site at El Corazon which is intended as an interim site for the Green Waste composting facility. The planned development of El Corazon per the Specific Plan will require that the relocated green waste facility have an effective odor control system. In order to relocate and build a new facility with an effective odor control system, a longer term commitment was requested by AgriService in order to make the relocation economically feasible and to amortize the costs involved.

ANALYSIS

The term of the new Green Waste diversion service agreement and lease agreement with AgriService is fifteen years ("Agreement and Lease"). AgriService is responsible for constructing the new facility ("New Facility") with an enhanced odor control system without any City funding, (but subject to City oversight). The City will provide an approximate 15-acre finish-graded pad with utilities to the site. AgriService will pay the City ten percent of all Commercial Gross Revenue generated and received from the development, operation, management and maintenance of the New Facility plus five percent of all Product Gross Revenue in excess of \$100,000 annually from the sale of product generated at the New Facility using the incoming Green Waste material.

Additionally, the City will be allowed to deliver to the New Facility for processing, without payment of fees, up to two thousand tons of City-generated Green Waste per year. City will also receive up to \$125,000 per year-worth of the various compost products produced at the New Facility, which can be utilized for other City properties and projects. AgriService will also administer and provide all the various compost products for the City's compost give-away program, available to the residents of the City of Oceanside at no cost.

The City will recover and reclaim the approximate 15-acre pad in accordance with the State Mining and Geology Board-approved U. S. Silica (El Corazon) reclamation plan. The cost will be approximately \$150,000 and will be funded from the Silica Reclamation fund account.

By entering into the Agreement and Lease with AgriService the City will continue to be in a position to help stabilize the cost of the City's Green Waste curbside collection. Barring any unforeseen circumstances, it is anticipated that the rate charged to the City's green waste collection rate payers will not be increased other than by adjustments based on the yearly Consumer Price Index during the term of the

Agreement and Lease. The Green Waste operation will continue to aid the City in addressing the State-mandated AB 939 waste reduction goals by providing a mechanism to divert Green Waste that would otherwise be transported to landfill facilities.

In the event the City is in a position to develop the El Corazon property pursuant to the Specific Plan prior to the expiration of the fifteen-year term, the City has the right to an early termination of the Agreement and Lease. In order to exercise its early termination right, the City will be required to pay AgriService the cost of the agreed-upon improvements constructed by AgriService amortized over the remaining term of the Agreement and Lease.

The Green Waste Compost facility is one of two uses contemplated for the site in the El Corazon Specific Plan. The Specific Plan also contemplates a future Public Safety Center on the site. Should the City pursue a Public Safety Center, the Green Waste facility would have to be relocated to a permanent location or the El Corazon Specific Plan amended to allow both uses on the site.

FISCAL IMPACT

The consideration to be paid to the City for the Agreement and Lease is estimated to be approximately \$160,000 per year. Said estimated amount is based upon receiving ten percent of all Commercial Gross Revenue generated at the New Facility and five percent of all Product Gross Revenue (in excess of \$100,000) from the sale of product generated at the New Facility collected by AgriService. The initial estimated \$160,000 payment shall be used to repay the Silica Reclamation fund for the money used to complete the City's site preparation work. Thereafter payments will be deposited into the Silica Reclamation fund as revenue generated as a result of the site reclamation until the reclamation is complete, at which point the payments will be deposited into the General Fund. Over the fifteen-year term, the City could receive in excess of \$2,400,000.

The indirect consideration to the City, by delivering for processing without payment of fees, up to two thousand tons of City-generated Green Waste per year, together with receiving up to \$125,000 per year-worth of the various compost products produced at the New Facility is valued at over \$170,000 per year. Over the fifteen-year term, the City could receive additional benefits worth over \$2,550,000. Additionally, there is also the incalculable value of the free compost giveaway program provided by AgriService, which approximately 800 residents take advantage of each year.

The City site preparation work will require a budget appropriation in the amount of \$150,000 from the Silica Reclamation fund 501.3100.0001 to the 912880500501.5310 Silica Reclamation budget account. Currently the Silica Reclamation fund balance is approximately \$1,000,000.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Integrated Waste Commission and El Corazon Oversight Committee both endorse the relocation and continued operation of the green waste facility at El Corazon.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed and approved as to form.

RECOMMENDATION

Staff, the Integrated Waste Commission, and the El Corazon Oversight Committee recommend that the City Council approve a 15-year Green Waste Diversion Service Agreement and a 15-year Property Lease Agreement with AgriService, Inc., a California corporation to provide green waste composting-related services at El Corazon, with total revenue to the City in the approximate amount of \$2,400,000 plus indirect benefits valued at approximately \$2,550,000 over the term of the agreements, authorize the City Manager to execute the agreement; and approve a budget appropriation in the amount of \$150,000 from the Silica Reclamation fund account to the Silica Reclamation budget account to fund the City's property site development cost.

PREPARED BY:

SUBMITTED BY:



Gary P. Gurley
General Services Manager



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Donald L. Hadley, Deputy City Manager

Joseph Arranaga, Deputy Public Works Director

Douglas E. Eddow, Real Estate Manager

Teri Ferro, Financial Services Director



OPERATING AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

AGRISERVICE, INC.

FOR SERVICES TO BE PROVIDED

AT

EL CORAZON

DATED

NOVEMBER 18, 2009

**OPERATING AGREEMENT
FOR
GREEN WASTE FACILITY AT EL CORAZON
OCEANSIDE, CA**

THIS OPERATING AGREEMENT, herein after called "Operating Agreement", dated as of November 18, 2009 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and **AGRISERVICE, INC.**, a California corporation, hereinafter called "Operator". Notwithstanding the date set forth above, the effective date of this Agreement shall be the date the Oceanside City Council approves the Agreement ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the "Green Waste Facility Site at El Corazon" located in the City of Oceanside, County of San Diego, State of California ("Green Waste Facility");

WHEREAS, City is desirous of maintaining reasonable rates for the diversion of organic yard waste ("Green Waste") generated within the City of Oceanside and has promulgated a recycling ordinance with respect thereto;

WHEREAS, Operator is a duly authorized corporation in the State of California in the business of developing, operating, managing and maintaining Green Waste composting facilities qualified to accept, process and divert Green Waste;

WHEREAS, City and Operator are desirous of entering into an Operating Agreement to enable Operator to develop, operate, manage and maintain a Green Waste composting facility thereon together with related programs and activities;

WHEREAS, City and Lessee are mutually committed to act in good faith to see that a Green Waste composting facility is developed, operated, managed and maintained in accordance with the terms and conditions as set forth herein; and

WHEREAS, City and Operator are also desirous of entering into a separate property lease agreement in conjunction with the operation of the "Green Waste Facility Site at El Corazon" so that Operator can use a location within the City of Oceanside to provide the Green Waste related services to the City.

NOW THEREFORE, the parties, in consideration of the terms, conditions, covenants and provisions contained herein, do mutually agree as follows:

AGREEMENT

SECTION 1: SERVICES TO BE PROVIDED

1.01 Scope of Work. The services to be provided by Operator under this Operating Agreement at the Green Waste Facility shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of particular items of labor or equipment shall not relieve Operator of the duty to furnish all other necessary items. Operator shall accept, process and divert Green Waste generated within the City of Oceanside in accordance with the City's recycling ordinances with the goal of achieving reasonable rates to the ratepayers in the City of Oceanside for the diversion of Green Waste. The work to be done by Operator shall be accomplished in a thorough and professional manner so that the City is provided sanitary, reliable, and high-quality Green Waste diversion at all times.

1.02 Additional Services. Upon City's request, Operator agrees to assist City in identifying additional materials suitable for composting and to modify processing procedures, to increase the quality or recoverability of materials generated by customers. Operator also may submit unsolicited written proposals to City for any other services not granted by this Operating Agreement. Granting of any such services shall be contingent upon City approval and subject to the establishment of an appropriate rate for such new service.

1.03 Specific Green Waste Acceptance and Diversion Provisions.

a. City Green Waste Tonnage. During the term of the Operating Agreement Operator shall be prepared and capable of accepting all Green Waste generated within the City of Oceanside and collected by City's Solid Waste Contractor as part of the City's curbside collection of Green Waste (City Green Waste Tonnage).

b. Acceptance of Non-City Green Waste Tonnage. During the term of the Operating Agreement Operator shall be allowed to accept non-City Green Waste Tonnage (Green Waste tonnage that is either generated within the City of Oceanside that is delivered by anyone other than the City's Solid Waste Contractor and/or City of Oceanside personnel or Green Waste tonnage generated outside of the City of Oceanside) provided the follow conditions are met:

- i. Operator can accept and process all of the City Green Waste Tonnage.
- ii. Operator shall give priority to accepting Green Waste generated within the City of Oceanside.

1.04 Days and Hours of Operation. Operator shall accept deliveries on all days that City's Solid Waste Contractor conducts residential curbside Green Waste

collection. Operator may accept deliveries of Green Waste from 7:30 AM to 5:00 PM, Monday through Friday and from 8:00 AM to 4:00 PM on Saturday of each week. All times and drop-off days for operations and grinding are subject to approval by appropriate local, state and federal permitting regulatory agencies.

1.05 Operating Conditions.

a. **Noise.** All Green Waste collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and local noise level regulations. City may conduct random checks of noise emission levels to ensure such compliance. Operator will promptly resolve any complaints of noise to the satisfaction of City.

b. **Minimization of Spills.** Operator shall use due care to prevent Green Waste and related materials from being scattered during processing.

c. **Clean-Up.** Operator shall be responsible for cleaning any Green Waste spills at the El Corazon Site, which are caused by delivery of Green Waste or the removal of compost. Operator shall address instances of repeated spillage not caused by Operator, directly with the customer responsible and shall report such instances to City. City shall attempt to rectify such situations with the customer if Operator has previously attempted to do so without success. City may authorize Operator to charge an additional service fee for instances of repeated spillage.

d. **Contaminated Green Waste.** Operator shall refuse to accept Green Waste loads which are contaminated with municipal solid waste or contain any hazardous waste. In the event Operator inadvertently accepts contaminated loads, Operator may charge said customer a surcharge to pay for the disposal of the contaminants. The surcharge shall be subject to review and appeal by the City in its sole and absolute discretion.

e. **Fuel, Oil and Other Vehicle Fluid Spills.** Operator shall be responsible for immediately cleaning-up all fuel, oil or other vehicle fluid spills and must notify City, City Fire Department and appropriate county and state authorities immediately following each such spill. Costs incurred by City in responding to such spills as well as repair for damages caused by fuel, oil, or other vehicle fluid spills shall be at Operator's sole cost and expense.

1.06 Identification, Separation and Disposal of Unacceptable Waste.

a. **Unacceptable Waste.** If Operator determines that waste material delivered to the Green Waste Facility is municipal solid waste, hazardous waste, medical or infectious waste, or other waste ("Unacceptable Waste") presents a hazard to Operator or its employees, Operator shall have the right to refuse Unacceptable Waste.

b. Unacceptable Waste Identification. Operator is to file with City within one hundred eighty (180) days of the effective date of this Operating Agreement, a plan for identifying, separating, containing and if necessary disposing of such Unacceptable Waste delivered to the Green Waste Facility. The City, in its sole and absolute discretion, reserves the right to approve or disapprove of the Unacceptable Waste Identification Plan. Operator agrees to modify the plan as reasonably requested by City.

c. Unacceptable Waste Disposal Responsibility. If Unacceptable Waste is inadvertently accepted by Operator and the delivering party cannot be identified or fails to remove the Unacceptable Waste after being requested to do so, Operator shall arrange for its proper disposal at no cost or expense to City. Operator shall make a good faith effort to recover the cost of proper disposal for the delivering party, and the cost of such effort, as well as the cost of disposal shall be chargeable to the delivering party. If the delivering party cannot be identified or fails to pay such cost, Operator shall absorb the cost of the disposal. Operator shall report any such disposal cost to City in writing within forty-eight (48) hours of the date incurred.

1.07 Vehicles, Equipment and Personnel.

a. Vehicles and Equipment. Operator shall provide vehicles and equipment sufficient in number and capacity to efficiently perform the scope of work required by this Operating Agreement. Operator agrees to maintain each piece of equipment used in the performance of this Operating Agreement in good order and repair. Operator shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with the City of Oceanside's applicable zoning ordinances.

b. Personnel. Operator shall employ such qualified personnel as may be necessary to provide the services required by this Operating Agreement in a safe and efficient manner. Operator shall provide suitable operational and safety training for all of its employees who maintain, utilize, or operate vehicles and/or equipment.

1.08. Discretionary Review of Performance and Quality of Service. At City's sole discretion, with sixty (60) days written notice to Operator, City may conduct a public hearing at which Operator shall be present and shall participate, to review Operator's performance and quality of service and to provide for technological and regulatory changes. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Operating Agreement is found, City may direct Operator to correct the inadequacies in accordance with the terms of this Operating Agreement.

1.09 Green Waste Facility and Property Lease Agreement. The services to be provided under this Operating Agreement shall be at the Green Waste Facility and shall be in conjunction with the fulfillment of the Property Lease Agreement between the

City and Operator (“Lease Agreement”) so that Operator can provide Green Waste related services to the City. A copy of the Lease Agreement is attached as Exhibit “A” and is incorporated herein by this reference. As additional consideration for the use of the Green Waste Facility, Operator agrees to satisfy the terms and conditions of the Lease Agreement. Failure by Operator to perform pursuant to the terms and conditions of the Lease Agreement shall be deemed a default under this Operating Agreement.

1.10 Related Discretionary Actions. As a condition to this Agreement and prior to the commencement of the services as set forth in this Agreement, Operator shall be required to obtain a City business license, a conditional use permit and any other required discretionary and environmental permits in accordance with Section 6.13.

By entering into this Agreement with Operator, the City is not obligating itself as a regulatory body or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Green Waste Facility or as to the services to be performed under this Agreement. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Green Waste Facility.

1.11 Inspection by City. City shall have the right to observe and review Operator’s services and to enter the Green Waste Facility to inspect operations, without notice, during normal business hours.

1.12 City’s Right to Change Scope of Work. City may require changes in existing services or require new services and Operator shall comply, provided that if such changes result in increased costs to Operator, Operator shall be compensated for any such services for a fee to be agreed upon by City and Operator. City may also require a reduction or deletion in existing services provided by Operator.

a. Unamortized Cost Reimbursement. If a reduction or deletion in services that is required by the City renders Operator unable to pay for capital items initially acquired to perform the services required by this Operating Agreement, City shall pay to Operator, the unamortized portion of the cost of the capital items used by Operator in connection with performing or preparing to perform the reduced or deleted service that has been effected. The list of the initially acquired capital items and the schedule of values is set forth on Exhibit “B” attached hereto and incorporated herein by this reference. All amortization shall be done on a straight line depreciation basis in accordance with Generally Accepted Accounting Principles.

SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for a period of fifteen (15) years. The term shall commence upon the Commencement Date as set forth in the Lease Agreement. This Agreement shall expire at the end of the time period provided herein (“Agreement Expiration Date”) unless sooner terminated pursuant to the

terms of this Operating Agreement and/or Lease Agreement.

2.02 Agreement Transition Extension. If City elects not to renew this Operating Agreement at the end of the term, City may require Operator, by giving one hundred eighty (180) days written notice, to provide continued service under the terms of this Operating Agreement for up to one hundred eighty (180) days following the end of the term. The purpose of this extension provision is to ensure uninterrupted service to City in the event of a transition to a successor Operator or on-going new contract negotiations with present Operator which have not concluded by the end of the contract term.

2.03 Waiver of Renewal Statute. Public Resources Code Section 49520 states: "If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract."

Operator hereby knowingly and specifically waives any and all rights it may have as a result of Section 49520 or any subsequent statute granting the same or similar rights. Operator agrees that its rights to provide any of the services specified in this Operating Agreement shall be governed solely by the provisions of this Operating Agreement, and any of its rights to provide such services shall terminate upon termination of this Operating Agreement.

SECTION 3: CONSIDERATION AND SERVICE RATES

3.01 Operating Agreement Fee. For so long as the City and Operator maintain the Lease Agreement in full effect, the Operating Agreement fee payable to Operator pursuant to the work to be performed under this Operating Agreement shall be One and No/100 Dollars (\$1.00) per year.

3.02 Service Rates. Operator shall perform the responsibilities and duties described in this Operating Agreement at service rates ("Tip Fees") as hereinafter determined.

a. City Green Waste Tonnage. With respect to Tip Fees the intent of this Operating Agreement is to provide service at the lowest possible cost to the ratepayers of the City of Oceanside consistent with the terms and conditions of this Operating Agreement. The Tip Fees for City Green Waste Tonnage shall be as follows:

i. The initial Tip Fees charged by Operator for City Green Waste Tonnage shall be Twenty-Four and 64/100 Dollars (\$24.64) per ton;

ii. After the first full year of the term of the Operating Agreement, Operator may request an annual Tip Fees rate adjustment, which, if requested, shall become effective the following July 1 of each year of the term of the Operating Agreement. The annual Tip Fees rate adjustment shall be equal to One Hundred Percent (100%) of the annual percentage change in the San Diego All-Urban Consumers, Consumer Price Index for the last full calendar year prior to the annual anniversary of the Effective Date;

iii. Starting with the fifth (5th) anniversary of the Effective Date of the Operating Agreement and every five (5) years thereafter throughout the term of this Operating Agreement, the Tip Fees may be further adjusted to maintain the difference (as a percentage) between the initial Tip Fees and the initial average of similar tip fees of other comparable Green Waste facilities in the Southern California area.

For example: If the initial average tip fees in Southern California is \$30.00 per ton, and the initial tip fee in the City of Oceanside is \$24.00 per ton, the differential is \$6.00 per ton or 20% less. If the average tip fees in Southern California increases to \$35.00 per ton after five (5) years the tip fee in the City of Oceanside can be increased to \$28.00 per ton or 20% less.

b. **City Personnel Green Waste Tonnage.** With respect to Tip Fees for Green Waste Tonnage delivered by City personnel, the City shall be allowed to deliver to the Green Waste Facility for processing, without payment of Tip Fees, up to Two Thousand (2,000) tons of Green Waste per year. Thereafter, the City shall be required to pay the applicable City Green Waste Tonnage Tip Fees.

c. **Non-City Green Waste Tonnage.** The Operator, in its sole and absolute discretion, shall be permitted to establish the Tip Fees it will charge for Non-City Green Waste Tonnage.

3.03 Product Sales. The Operator, in its sole and absolute discretion, shall establish the wholesale and retail sales price of its various compost products that are produced from the Green Waste Tonnage that is accepted and processed at the Green Waste Facility.

a. **Product Sales Offset.** As consideration, notwithstanding anything herein to the contrary, Operator shall make available to the City One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) per year worth of the various compost products, provided said prices allocated to the various compost products picked up by the City are at a price equal to or less than the one hundred (100) yard bulk price for a particular product established by Operator as adjusted from time to time ("Established Price"). Thereafter, the City shall be charged a discounted rate of fifteen percent (15%) below the one hundred (100) yard bulk rate for said particular product.

i. After the first full year of the term of the Operating Agreement, Operator may request an annual rate adjustment of the One Hundred Twenty-Five Thousand and No/100 Dollar (\$125,000.00) amount, which shall become effective the following July 1 of each year of the term of the Operating Agreement. The annual adjustment shall be equal to one hundred percent (100%) of the annual percentage change in the San Diego All-Urban Consumers, Consumer Price Index for the last full calendar year prior to the annual anniversary of the Effective Date or by an amount equal to One Hundred Percent (100%) of the largest increase to any of the similar one hundred (100) yard bulk rates of other comparable Green Waste facilities in the Southern California area.

For example: If the "Forest Mulch" 100 yard bulk rate is \$30.00 per yard when the Operating Agreement started and it escalates to \$31.50 (i.e. a 5% increase) during the first year, the \$125,000.00 will escalate 5% at Operating Agreement Anniversary Date to \$131,250.00.

b. City of Oceanside Resident Compost Program. As further consideration, Operator shall administer and provide all the various compost products needed for the City's compost give-away program, available to the residents of the City of Oceanside.

3.04 Utilities. Operator agrees to order, obtain and pay for all utilities (e.g. electricity, water and sewer services), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.05 Delinquent Payments. If Operator fails to pay any amount when due, Operator will pay in addition to the unpaid amount, five percent (5%) of the delinquent payment. If said amount is still unpaid at the end of fifteen (15) days, Operator shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Operator default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Operating Agreement.

3.06 Operator Services Accounting. Operator shall be responsible for directly billing all its customers utilizing the services provided by Operator and for collecting all accounts associated with its customers. Operator shall also be responsible for collecting any related delinquent payments from its customers and shall bear all losses and expenses related to such collection.

SECTION 4: REPORTING

4.01 Monthly Reports and Statements. Operator shall keep monthly records of the total Green Waste Tonnage delivered to the Premises according to the following service categories and shall provide a copy of these reports to the City within fifteen (15) days after the end of each month during the term of the Operating Agreement:

- a. Green Waste Tonnage delivered by City's Solid Waste Contractor.
- b. Green Waste Tonnage delivered by private citizens residing in and businesses with their principal address in the City of Oceanside.
- c. Green Waste Tonnage delivered by other cities' contractor(s).
- d. Green Waste Tonnage delivered by private individuals and businesses from outside of the City of Oceanside.
- e. Product sales by category, amount sold and gross dollar amount.
- f. Compost giveaway participation by number of residents.

All reports required under this section shall contain statements which shall separate cost and revenues directly associated with each of the different service categories. Operator may, subject to approval by the City, provide Green Waste Tonnage generation estimates for those services which cannot be readily segregated from one another. Green Waste Tonnage generation estimates shall include a methodology acceptable to the City, which is used to assign Green Waste Tonnage and service levels to each category above.

4.02 Annual Financial Reports. Operator shall submit annual financial statements, including but not limited to, a current balance sheet, income and expense statement, billing statements, related consolidated statement of operations and other reports prescribed by the City. City's rights in this matter shall be limited to the Operating Agreement with the City and shall not extend to Operator's business unrelated to this Operating Agreement. All such statements and reports shall be for calendar year periods (i.e. January 1st through December 31st) or such partial year as applicable. Such statements and reports shall be due to City within sixty (60) days of the end of any calendar year during the term of the Operating Agreement. All reports and statements shall contain separate cost and revenues directly associated with City's Green Waste Tonnage from those associated with all Non-City Green Waste Tonnage.

4.03 Other Reports. Operator shall provide additional reports as may be reasonably requested by City in order to comply with all federal, state, regional and county solid waste, green waste and/or recyclable material reporting requirements. Further, Operator shall provide such additional reports as reasonably requested by City.

4.04 Inspection of Records. Operator shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Operator agrees to make any and all records and

accounts available to City for inspection at all reasonable times, so that City can determine Operator's compliance with this Operating Agreement. These records and accounts will be made available by Operator at the Premises or City's offices and will be complete and accurate showing all income and receipts from Operator's use of the Premises. Operator's failure to keep and maintain such records and make them available for inspection by City is a default of this Operating Agreement. These records include but are not limited to generally accepted business books, documents, and records. Operator shall maintain all such books, records and accounts for the term of this Operating Agreement. This provision shall survive the expiration or sooner termination of this Operating Agreement.

4.05 Auditing of Financial Information. All financial reports and statements provided by Operator may be audited and certified by an independent certified public accounting firm selected by City. City, in its sole discretion shall determine the scope of the audit. The cost of the audit shall be borne by the City unless the audit shows a discrepancy of ten percent (10%) or greater between the financial information provided by Operator and what is found by the audit. In such instance, Operator shall reimburse the City the total cost of the audit.

4.06 Confidentiality of Financial Information. Operator's financial reports and statements constitute highly confidential, proprietary information and assets of Operator and disclosure thereof to members of the public would result in unfair competitive disadvantages to Operator. City agrees to hold all such financial reports and statements provided by Operator as confidential unless required to be disclosed pursuant to statute or court order. City agrees to require any person or entity reviewing such financial reports and statements to agree, in writing, to the foregoing before having access to such information. If City is required to produce such information, City shall immediately notify Operator so that Operator shall have the opportunity to oppose such order. Operator agrees to pay for any and all expense incurred by City, including without limitation, attorney's fees of City or of the prevailing party, relating to a challenge of refusal to provide such information under this provision.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. Operator shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Operator or its employees, agents, or others in connection with its use and occupation of the Green Waste Facility under the Operating Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the City, its officers, agents, or employees. Operator's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Operator at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

5.02 Hazardous Substance Indemnification. Operator shall also indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising from or attributable to any spills or other events occurring during storage, and processing activities, and/or repair, clean-up of detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous, medical or infectious waste. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act. "CERCA", 42 U.S.C. Section 9607(e) and the California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify City from liability. This Section shall survive the termination or this Operating Agreement. Operator's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Operator at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

5.03 Insurance. Operator shall take out and maintain at all times during the term of this Operating Agreement, commencing the Effective Date of the Operating Agreement, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

All Risk

Insurance covering all of the Operator's improvements, trade fixtures, merchandise and personal property in the Green Waste Facility, alterations and additions made by Operator, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

- b. All insurance companies affording coverage to the Operator shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Operating Agreement.

- c. All insurance companies affording coverage to the Operator shall be

insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Operator shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Operating Agreement.

f. Operator shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Operator to provide such a substitution and extend the policy expiration date shall be considered a default by Operator may subject the Operator to a termination of this Operating Agreement.

g. Maintenance of insurance by the Operator as specified in this Operating Agreement shall in no way be interpreted as relieving the Operator of any responsibility whatsoever under the Operating Agreement, and Operator may carry, at its own expense, such additional insurance as it deems necessary.

h. If Operator fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Operator shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall be paid by Operator on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Operator to take out or maintain insurance as required in this Operating Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Operating Agreement.

i. **Modification.** City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Operating Agreement by giving Operator sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Green Waste Facility. Operator also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Operating Agreement.

5.05 Accident Reports. Operator shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Green Waste Facility. This report shall contain the names and

addresses of the parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Operating Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054

Attention: Real Estate Manager

To Operator:

Prior to Commencement Date

AgriService, Inc.
380 S. Melrose Drive, Suite 203
Vista, CA 92081

After the Commencement Date

At the Green Waste Facility

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Operating Agreement. The City Manager may delegate authority in connection with this Operating Agreement to the City Manager's designee(s).

6.03 Nondiscrimination. Operator agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Operator's use of the Green Waste Facility.

6.04 Equal Opportunity. Operator shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Operator shall certify in writing to City that Operator is in compliance and throughout the term of this Operating Agreement will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Operator of the equal employment opportunity and affirmative action program provision of this Operating Agreement is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Operating Agreement and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Operating Agreement together with the Lease Agreement contains the entire understanding between the City and Operator concerning the use and occupation of the Green Waste Facility and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Green Waste Facility, advice from its own attorneys, and the warranties, representations, and covenants of the Operating Agreement itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Operating Agreement shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Operating shall be in San Diego County, California. The Operating Agreement does not limit any other rights or remedies available to City.

Should any provision herein be found or deemed to be invalid, the Operating Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Operating Agreement are severable.

This Operating Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Operating Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the

parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Operating Agreement. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Operating Agreement is not a waiver of any default preceding the payment. City and Operator specifically agree that the property constituting the Green Waste Facility is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to any applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Operator to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Operating Agreement, and the use of the Green Waste Facility, provided City effects a recovery, Operator shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment. A major consideration for this Operating Agreement is the unique expertise of Operator in the operation and management of a green waste facility at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Operator shall not assign to, contract for and/or allow another individual or entity to operate and/or manage the green waste facility operation at the Green Waste Facility. Further, this Operating Agreement and any portion thereof shall not be assigned, transferred, or sold, nor shall any of the Operator's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Operating Agreement without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sale, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sale, or delegation.

6.11 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.12 Gender/Singular/Plural. The neuter gender includes the feminine and

masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

6.13 Compliance with Law. In providing the services required under this Operating Agreement, Operator shall at all times, at its sole cost, comply with all applicable laws, whether now in force or as they may be enacted during the term of this Operating Agreement, of the United States, the State of California, County of San Diego, the City of Oceanside, and any other regulatory and governmental agencies having jurisdiction over any of the services provided by Operator under this Operating Agreement.

6.14 Relationship of Parties. The parties to this Operating Agreement intend that Operator shall perform the services required therein as an independent contractor engaged by the City and not as an officer, employee, agent, partner or joint venturer with City. No employee, subcontractor or agent of Operator shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Operator shall have the exclusive control over the manner and means of accepting, processing and diverting Green Waste under this Operating Agreement, and shall be solely responsible for all persons performing such services.

SECTION 7: DEFAULTS AND REMEDIES

7.01 Defaults.

(a) Default in Performance. It is mutually understood and agreed that if any failure shall be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements herein, including any terms and conditions of the Lease Agreement referenced as part of the Operating Agreement (any covenant or agreement shall be construed and considered as a condition); or should Operator fail to fulfill in any manner the uses and purposes for which the Green Waste Facility is used as stated in this Operating Agreement, and such failure is not cured within five (5) days after written notice thereof if failure is in the submittal of amounts due as required in this Operating Agreement; or ten (10) days after written notice thereof if failure is in the performance of the provisions pursuant to Section 1.02 of this Operating Agreement; or thirty (30) days after written notice thereof if failure is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), any such failure shall be deemed a condition of default under this Operating Agreement.

(b) Other Defaults. Each of the following shall also be considered an event of default under this Operating Agreement:

(i) Any representation or disclosure made to City by Operator in

connection with or as an inducement to entering into this Operating Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made.

(ii) There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Operator, including without limitation, its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Operator's ability to perform under this Operating Agreement and which cannot be released, bonded or otherwise lifted within five (5) days, excluding weekends and holidays.

(iii) Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Operator for a part of Operator's operating assets or any substantial part of Operator's property, or shall make any general assignment for the benefit of Operator's creditors, or shall fail generally to pay Operator's debts as they become due or shall take any action in furtherance of the foregoing.

(iv) Any court having jurisdiction shall enter a decree or order for relief in respect of Operator, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Operator shall consent or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of Operator or for any part of Operator's operating equipment or assets, or order the winding up or liquidation of the affairs of Operator.

(v) Operator's failure to provide reasonable assurances of performance as required by this Operating Agreement.

7.02 Remedies.

(a) **Right to Terminate.** In the event of a default, City shall have the right to immediately terminate this Operating Agreement; and in the event of such termination, Operator shall have no further rights hereunder and Operator shall thereupon forthwith cease to use the Green Waste Facility and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Green Waste Facility.

(b) **Other Remedies.** City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Operator in the amount necessary to compensate City for all the detriment proximately caused by the Operator's failure to perform its obligations under the Operating Agreement or which in the ordinary course of things would be likely to result there from.

(c) **Possession of Property.** In the event of a termination for default by Operator, City shall have the right to take possession of and use any and all of Operator's leasehold, equipment and other property used in the acceptance and

processing of Green Waste. City shall have the right to retain the possession of an use such property until other suitable arrangements can be made for the diversion of Green Waste Tonnage generated in the City of Oceanside, which may include the award of an agreement to another entity. In the event the City utilizes Lessee's personal property (e.g., operating equipment) in order to continue to provide services to the public, City shall pay to Lessee the value of said personal property for the period said property is used by City, limited by any payment to Operator pursuant to the applicable provisions of the property lease agreement between City and Operator.

7.03 City's Right to Perform Services. In addition to any other legal or equitable remedies, in the event that Operator, for any reason whatsoever, fails, refuses or is unable to receive, process or dispose of Green Waste which is required by this Operating Agreement, for a period of five (5) working days, and if, as a result thereof, should unprocessed Green Waste accumulate at the Green Waste Facility, City may determine that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, without compensation to Operator upon twenty-four (24) hours prior notice to Operator, during the period of such emergency as determined by City to: (i) perform or caused to be performed, such services itself with its own personnel or third party contractor, without liability to Operator; and/or (ii) to take possession of any and all of Operator's equipment and other property used or useful in the acceptance, processing and diversion of Green Waste as use such to accept, process and divert Green Waste pursuant to this Operating Agreement.

(a) Notice. Notice of Operator's failure, refusal or neglect to perform its duties under this Operating Agreement may be given orally by telephone to Operator at its principal office and shall be effectively immediately. Written confirmation of such oral notification shall be sent to Operator within twenty-four (24) hours of the oral notification.

(b) Operator Cooperation. Operator further agrees that in such event:

(i) Operator will fully cooperate with City to effectuate the transfer of possession of its property to City for City's use.

(ii) Operator shall provide all necessary billing information related to the acceptance, process and diversion of Green Waste, to the City with respect to its operations at the Green Waste Facility so that the City can determine how to bill, in what amounts, and the distribution of amounts received.

(c) Disclaimer of City Action. The City's exercise of this right:

(i) Does not constitute a taking of private property for which compensation must be paid.

(ii) Will not create any contract, tort, or common count liability on the part of City to Operator.

(iii) Does not exempt Operator from the indemnity provisions of this Operating Agreement which are meant to extend to circumstances arising under

this Section, provided that Operator is not required to indemnify City against claims and damages arising from the sole negligence of City, its officers, employees, agents or volunteers under this Section.

7.04 Excuse for Performance. The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of "act of God" such as floods or earthquakes, by reason of war, civil insurrection, riots and other similar catastrophic events which are beyond the control of and not the fault of the party claiming such excuse from performance hereunder, provided service shall be resumed as soon as reasonably possible after such event. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by Operator's employees or directed at Operator's is not an excuse from performance hereunder.

The partial or complete interruption or discontinuance of Operator's services hereunder shall not be deemed a default of Operator under this Operating Agreement. Provided, however, the existence of any excuse from performance will not affect the City's rights under Section 8.01 below and if Operator is excused from performance for a period of sixty (60) days or more, other than as the results of third party labor disputes over which Operator has no control, City shall have the right in its sole discretion, to terminate this Operating Agreement by giving thirty (30) days written notice, in which case the provisions of Section 7.02 (c) above will apply.

7.05 Right to Demand Performance Assurance. If the City reasonably believes that Operator's performance under this Operating Agreement has thereby been placed in substantial jeopardy, City may, at its option and in addition to all other remedies it may have, demand from Operator reasonable assurances of timely and proper performance of this Operating Agreement, in such form and substance as City deems in good faith is reasonably necessary under the circumstances to evidence a continued ability to perform under this Operating Agreement. If Operator fails or refuses to provide satisfactory assurances of timely and proper performance in the form and date required by City, such failure or refusal shall be an event of default.

SECTION 8: SPECIAL PROVISIONS

8.01 Early Termination Provision. At any time during the term of this Operating Agreement, the City shall have the right to terminate this Operating Agreement and the Lease Agreement for any reason whatsoever by giving Operator at least one hundred eighty (180) days prior written notice. Except as set forth in the Lease Agreement between City and Operator, City shall not be obligated or liable, in any manner whatsoever to compensate Operator for such early termination.

8.02 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Green Waste Facility which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be

carried on therein or thereon, and nothing shall be done on said Green Waste Facility, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Green Waste Facility which will in any way injure the real property underlying the Green Waste Facility or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Operator from bringing, keeping or using on or about the Green Waste Facility, such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects. Provided, however, open flame burning, gasoline or other fuel storage at the Green Waste Facility, is expressly prohibited without the prior written consent of the City.

8.03 Memorandum of Lease and Operating Agreement. City and Operator agree the Operating Agreement shall not be recorded and that the parties shall execute a Memorandum of Lease and Operating Agreement to be recorded. The form of this Memorandum of Lease and Operating Agreement is shown on Exhibit "C" attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

SECTION 9: SIGNATURES

9.01 Signature Page. The individuals executing this Operating Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Operating Agreement on behalf of the respective legal entities of the Operator and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Operating Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: *Andrew Hamilton*, ASST.
City Attorney

OPERATOR

AGRISERVICE, INC.
a California corporation

Date 11-6-09

By: *Mary Malava*
Name: Mary Malava
Title: President

Date 11-6-09

By: *Pamela Jenkins*
Name: Pamela Jenkins
Title: Secretary

NOTARY ACKNOWLEDGMENTS OF OPERATOR'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 11/6/09 before me, Judy Thompson, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Mary Matava and Pamela Ruth Jenkins
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 Judy Thompson
Signature of Notary Public

Place Notary Seal Above

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: _____

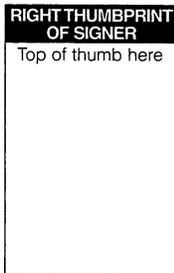
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

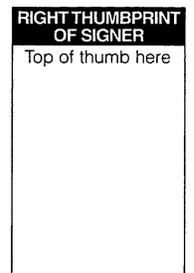
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

EXHIBIT "A"

PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

AGRISERVICE, INC.

FOR THE LEASE OF REAL PROPERTY

LOCATED AT

EL CORAZON

DATED

NOVEMBER 18, 2009

EXHIBIT "A"

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EXHIBIT "A"

**PROPERTY LEASE AGREEMENT
FOR
GREEN WASTE FACILITY AT EL CORAZON
OCEANSIDE, CA**

THIS PROPERTY LEASE AGREEMENT, herein after called "Lease", dated as of November 18, 2009 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and **AGRISERVICE, INC.**, a California corporation, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be the date the Oceanside City Council approves the Lease ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the "Green Waste Facility Site at El Corazon" located in the City of Oceanside, County of San Diego, State of California;

WHEREAS, Lessee is a duly authorized corporation in the State of California in the business of developing, operating, managing and maintaining green waste composting facilities;

WHEREAS, City and Lessee are desirous of leasing the "Green Waste Facility Site at El Corazon" to Lessee to enable Lessee to develop, operate, manage and maintain a green waste composting facility thereon together with related programs and activities;

WHEREAS, City and Lessee are mutually committed to act in good faith to see that the Green Waste Facility Site at El Corazon is developed, operated, managed and maintained in accordance with the terms and condition as set forth herein; and

WHEREAS, City and Lessee are also desirous of entering into a separate green waste facility operating agreement ("Operating Agreement") in conjunction with the leasing of the "Green Waste Facility Site at El Corazon" so that Lessee can provide green waste related services to the City.

EXHIBIT "A"

NOW THEREFORE, the parties in consideration of the terms, conditions, covenants and provisions contained herein do mutually agree as follows:

AGREEMENT

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the "Green Waste Facility Site at El Corazon" and more particularly described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part of this Lease. Said real property is hereinafter called the "Premises."

1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of operating a green waste composting facility together with related programs and activities open to the general public, and for such other related or incidental purposes as may be first approved in writing by the City Manager of the City of Oceanside and for no other purpose whatsoever.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Except as set forth above, Lessee shall not use the Premises in any manner which disrupts the quiet enjoyment of surrounding property owners' use of their property.

1.03 Operating Agreement Use. It is expressly agreed that the Premises is leased to Lessee in conjunction with the fulfillment of the Operating Agreement between City and Lessee so that Lessee can provide green waste related services to the City. A copy of the Operating Agreement is attached as Exhibit "C" and is incorporated herein by this reference. As additional consideration for the lease of the Premises, Lessee agrees to timely satisfy the terms and conditions of the Operating Agreement. Failure by Lessee to perform pursuant to the terms and conditions of the Operating Agreement shall be deemed a default under this Lease.

EXHIBIT "A"

1.04 Premises and Tenant Improvements.

a. City Improvement Obligations. City shall deliver the Premises to Lessee in an "as is, where is" condition without any representation or warranties as to the suitability of the Premises for Lessee's intended use. Said "as is, where is" condition shall include the improvements to be constructed on the Premises by City as set forth on Exhibit "D", attached hereto and incorporated herein by this reference ("City Improvements") as part of the condition in which the Premises is delivered to Lessee. Lessee hereby accepts the Premises in said "as is, where is" condition and shall construct improvements thereon which are necessary for Lessee to occupy the Premises for its intended use.

b. Lessee Improvement Obligations. Lessee shall perform all of the work required to be performed by Lessee pursuant to the scope of work and schedule more specifically set forth in Exhibit "E" ("Lessee Improvements") attached hereto and incorporated herein by this reference. Failure by Lessee to perform the work as described and/or as scheduled shall be deemed a default under this Lease.

1.05 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.06 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

1.07 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal

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resources and services. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of fifteen (15) years commencing on the earlier of the date Lessee substantially completes the Lessee Improvements to the Premises as set forth in Exhibit "D", as evidenced by a Notice of Completion or three (3) years from the Effective Date ("Commencement Date"). Upon determination of the Commencement Date, Lessee shall execute a Commencement Date Memorandum confirming the actual date the Lease commences and terminates. A copy of the Commencement Date Memorandum is shown in Exhibit "F" attached hereto and by this reference made a part of this Lease.

2.02 Feasibility Period. Beginning the Effective Date, Lessee shall conduct its feasibility analysis of the Premises and use thereof as follows:

a. Due Diligence. Lessee shall have up to ninety (90) days to conduct its due diligence of the Premises to determine the condition of the Premises for Lessee's intended use. Due diligence shall include, but not be limited to, geotechnical analysis, availability of utilities and ingress and egress to the Premises.

b. Entitlements. Lessee shall have up to thirty (30) months from the Effective Date to obtain the required regulatory entitlements ("Regulatory Entitlements") needed by Lessee to conduct Lessee's business at the Premises. Lessee agrees that it will use its best efforts and diligently pursue obtaining the required regulatory entitlements needed by Lessee.

c. Termination. In the event Lessee is not able to obtain the Regulatory Entitlements within said thirty (30) month period, either party shall have the right to terminate this Lease by giving the other party at least thirty (30) days written notice. It is expressly understood by Lessee that the City as landlord under this Lease and by entering into this Lease does not make any representations to Lessee that it has the authority to provide the regulatory discretionary approvals conferred upon the City of Oceanside as a regulatory agency.

2.03 Tenant Improvement Period. Prior to the actual Commencement Date of the Lease and upon obtaining the Regulatory Entitlements, Lessee shall be given the right to enter upon the Premises in order to complete the Lessee Improvements to the Premises as described in Exhibit "E" (or the portion thereof so as to allow occupancy of the Premises), as of the Effective Date, provided such right of entry is subject to and in compliance with the terms, conditions, covenants and provision of this Lease, including,

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but not limited to Section 4 herein. It is further agreed by the parties that Lessee shall have the opportunity to more particularly describe the Lessee Improvements, subject to approval by City, which approval shall not be unreasonably withheld, once Lessee has processed the Lessee Improvements for regulatory approval during the thirty (30) month period set forth in Section 2.02 above. If applicable, a revised description of the Lessee Improvements, entitled Exhibit "E-1" will be attached to the Agreement and replace the Exhibit "E" described herein.

2.04 Early Termination. City shall have the right to terminate this Lease for any reason whatsoever by giving Lessee at least one hundred and eighty (180) days prior written notice. Further, as a condition of City's early termination of this Lease, City shall be required to pay Lessee the unamortized portion of the cost of the Lessee Improvements incurred by Lessee as determined below provided Lessee is not in default of any of the terms and conditions of the Lease or the Operating Agreement.

a. Unamortized Cost Reimbursement. In the event of an early termination of the Lease by City, City shall pay to Lessee, the unamortized portion of the cost of the Lessee Improvements as determined by the schedule of values allocated to the Lessee Improvements as shown on Exhibit "G" attached hereto and incorporated herein by this reference. The amortization of the cost of the Lessee Improvements shall be on a straight line depreciation basis as determined by Generally Accepted Accounting Principles. Said payment of the unamortized cost of Lessee Improvements shall be based on the termination date of the Lease as set forth in the early termination notice as described above through the original expiration date of the Lease.

Further, in the event the City utilizes Lessee's personal property (e.g. operating equipment) in order to continue to provide services to the public, City shall also pay to Lessee the unamortized portion of the cost of Lessee's personal property used by City as set forth above. In the event Lessee revises the Lessee Improvements pursuant to Section 2.03 above, a revised description of the Lessee Improvements together with a revised schedule of values, entitled Exhibit "G-1" will be attached to the Agreement and replace the Exhibit "G" described herein.

After the Commencement Date of the Lease, in the event new and/or additional equipment is needed by Lessee and/or the Lessee Improvements shown on Exhibit "G" or Exhibit "G-1", as applicable, needs replacement, Lessee shall notify City in writing of its desire to amend Exhibit "G". Said notice shall include a description of the equipment, an explanation as to the need to add and/or replacement said equipment, and the value (including the useful life) of said equipment. City shall review Lessee's request to amend Exhibit "G" and should the City accept Lessee's changes to the Lessee Improvements, by informing Lessee in writing, the parties shall replace Exhibit "G" with a new exhibit entitled Exhibit "G-1" and so forth, without the need to formally

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amend the Lease. In the event the City does not agree to accept Lessee's changes to the Lessee Improvements, the parties agree to hire an impartial third party familiar with the practices in the industry to determine the need for said changes to the Lessee Improvements together with value associated therewith. The determination of said third party shall be binding, with the costs of said third party to be borne by the parties equally. Thereafter, Exhibit "G" will be changed accordingly as described above.

2.05 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall continue to, and pay monthly, the Rent as set forth in this Lease or the fair market value for similar operations in the Southern California area, whichever is higher during the holdover period.

2.06 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover any amounts owing under the Lease as said amount becomes due, plus damages.

2.07 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, at City's sole discretion, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand thereof. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Lease and all Lessee's rights to the Premises.

2.08 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

2.09 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

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SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. Percentage rent (as hereinafter defined) payments shall be due to City and payable by Lessee in arrears on or before the tenth (10th) day of the month following the month for which the percentage rent is calculated. In addition Lessee shall provide City with a percentage rent statement showing how the percentage rents were calculated. Also, Lessee shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide City with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this Lease.

Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

a. General. The total annual rent amount shall be equal to the Percentage Rent amount (as defined by Subsection 3.02b), without setoff or deductions.

b. Percentage Rent. The monthly Percentage Rent shall be the total applicable percentages of the gross revenue (as defined in Subsection 3.02c and 3.02d), for the month during which the monthly gross income was calculated. The applicable percentages are as follows:

(i) An amount equal to ten percent (10%) of all Commercial Gross Revenues (as hereinafter defined) generated and received from the development, operation, management and maintenance of the Premises by Tenant for each month of each Lease Year; and

(ii) An amount equal to five percent (5%) of all Product Gross Revenues (as hereinafter defined) from the sale of product generated at the Premises from the incoming feedstock material brought to the Premises (as hereinafter defined) for each month of each Lease Year in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00).

The monthly Percentage Rent shall be payable to City monthly in arrears not later than twenty (20) days following the end of each calendar month of the term of this

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Lease as required in Section 3.01 hereinabove.

c. Commercial Gross Revenues. Commercial Gross Revenues shall mean any and all revenue and income of any nature or other thing of value received for the disposal of green waste at the Premises or for any other services in connection with the collection thereof at the Premises or in connection with the use of Premises, including revenue and income typically referred to as "tip fees". Provided, however, "tip fees" collected as part of the City of Oceanside's Curbside Green Waste program shall not be considered Commercial Gross Revenues. Further, in no event shall any of the following be included in "Commercial Gross Revenues": (i) any sales taxes, excise taxes, gross receipt taxes or similar charges; (ii) proceeds from any refinancing; (iii) any federal, state or municipal taxes collected from Lessee's customers regardless of whether the amount thereof is stated to the customer as a separate charge and paid periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Commercial Gross Revenue.

d. Product Gross Revenues. Product Gross Revenues shall mean any and all revenue or income of any nature or other thing of value received by Lessee from the sale of goods or materials and the services related thereto on or from the Premises that are created and/or produced by Lessee from the green waste disposed of at the Premises or any such other similar revenue and income received by Lessee as a result of occupancy of the Premises. Product Gross Revenue shall include the amount of any manufacturer's or importer's excise tax included in the price of any goods or materials sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge, Provided, however, Product Gross Revenue shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Product Gross Revenue. Product Gross Revenue shall not include refunds for goods or materials returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Lessee.

(i) In addition, Product Gross Revenues shall not include goods or materials that are created and/or produced by Lessee from the green waste disposed of at the Premises that are removed from the Premises, which do not generate any revenue and income to the Lessee (i.e. other thing of value received). In the event a sublessee (subject to approval by City as set forth in Section 6.10) utilizes the Premises to sell a product that is created and/or produced from the green waste disposed of at the Premises, the definition of Product Gross Revenues shall only apply to the revenue and

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income that exceeds the green waste product or material purchased from Lessee provided Lessee has previously accounted for said green waste product or material purchased as Commercial Gross Revenues.

e. Gross Revenue Related Reports. The Commercial Gross Revenue and the Product Gross Revenue shall be calculated at the end of each month of the term of this Lease. The monthly Commercial Gross Revenue and Product Gross Revenue report ("Gross Revenue Reports") shall be delivered to the City monthly in arrears not later than twenty (20) days following the end of each calendar month of the Term of this Lease. In addition, during the Term of this Lease, Lessee shall also submit annually within sixty (60) days after the last day of each Lease Year, an annual statement of its Gross Revenue Reports for the just ended Lease Year.

3.03 Utilities. Lessee agrees to order, obtain and pay for all utilities (e.g. electricity, water and sewer services), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.04 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or City's offices and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City is a default of this Lease. These records include but are not limited to generally accepted business books, documents, and records. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

3.05 Delinquent Payments. If Lessee fails to pay any amount when due, Lessee will pay in addition to the unpaid amount, five percent (5%) of the delinquent rent. If said amount is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

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SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole negligence or sole willful conduct of the Lessee, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the Lessee, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the term of this Lease, commencing the Effective Date of the Lease, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

All Risk

Insurance covering all of the Lessee Improvements, trade fixtures, merchandise and personal property in the Premises, alterations and additions made by Lessee, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State

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Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall be paid by Lessee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Lease by giving Lessee sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the

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parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises, including but not limited to an environmental assessment and/or geotechnical analysis of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises which were not directly caused by City.

5.02 Waste, Damage, or Destruction. Lessee shall give written notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the Lease, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, including without limitation, the access road to the Premises, the City Improvements and the Lessee Improvements throughout the term of this Lease and without expense to City. Provided, however, Lessee's responsibility and cost of said access road to the Premises (provided said access road is used by others, including but not limited to, other third parties at El Corazon, the general public and the City) shall be limited to Lessee's prorata share thereof, as determined by City, in its reasonable discretion. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to

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provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefore. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. Except as set forth in Exhibit "D", no improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

5.06 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon

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by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.07 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

5.08 Signs. Except as set forth in Exhibit "D" Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

5.09 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises constructed on the Premises by Lessee, excepting such improvements and operating equipment placed on the Premises by Lessee which may

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be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing thirty (30) days prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property, except as described as Lessee Improvements shall be removed by Lessee by the date of the expiration or termination of this Lease. At City's election, any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

5.10 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. Total Taking. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. Partial Taking. In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. Award. All monies awarded in any such taking of the Premises shall

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belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in the installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. Repayment of Lessee Improvements. In the event of a total taking and the City is not awarded any monies by the condemning authority in connection therewith, the City shall not be responsible for any remaining unamortized portion cost of the Lessee Improvements as more specifically set forth in Exhibit "D" subject to Subsection 5.10c., above. In the event of a partial taking and the City is not awarded any monies by the condemning authority in connection therewith, the Lessee Improvements shall be allocated according to the remainder of the Premises and Lessee shall be responsible for the unamortized portion of the cost of the Lessee Improvements applicable to the portion of the Premises so taken.

e. Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this lease.

f. No Inverse Condemnation. The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

5.11 Damage or Destruction to Improvements.

a. City Reconstruction and Termination Right. If the City Improvements upon the Premises are damaged or destroyed by any risk against which City has insured, City (subject to being able to obtain all necessary permits and approvals) shall, within one hundred and twenty (120) days after such damage or destruction elect to terminate the Lease or repair and reconstruct the Premises to substantially the same condition as the Premises were originally delivered to Lessee. City shall not be liable for interruption to Lessee's operation or for damage to or for the repair or reconstruction of any items which Lessee is required to insure.

b. Lessee Reconstruction. If any item which Lessee is required to insure pursuant to the terms of this Lease is damaged or destroyed by fire or other risks to be so insured, Lessee (subject to being able to obtain all necessary permits and approvals) shall, within thirty (30) days after City has repaired or reconstructed the Premises that City is obligated to repair or reconstruct pursuant Subsection 5.11(a) above, Lessee shall commence to repair or reconstruct such items to substantially the same condition

EXHIBIT "A"

in which they were prior to such damage or destruction and prosecute the same diligently to completion.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054

Attention: Real Estate Manager

To Lessee:

Prior to Commencement Date

AgriService, Inc.
380 S. Melrose Drive, Suite 203
Vista, CA 92081

After the Commencement Date

At the Premises

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized

EXHIBIT "A"

representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, religion, sex or national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease together with the Operating Agreement contains the entire understanding between the City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall

EXHIBIT "A"

be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the Redevelopment Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Lease is not a waiver of any default preceding the amount payment. City and Lessee specifically agree that the property constituting the Premises is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Lessee to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment and Subletting - No Encumbrance. A major consideration for this Lease is the unique expertise of Lessee in the operation and management of a green waste facility at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Lessee shall not assign to, contract for and/or allow another individual or entity to operate and/or manage the green waste facility operation at the Premises. Further, this Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without

EXHIBIT "A"

the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements herein, including any terms and conditions of the Operating Agreement referenced as part of the Lease (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within five (5) days after written notice thereof if default is in the submittal of amounts due as required in this Lease; or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or thirty (30) days after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result there from.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with Section 5.06 of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within five (5) days, if the default is for the failure to submit rent as required, or within fifteen (15) days following the expiration of the period within which Lessee may cure such default, provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Sections 5.10 and 5.11 of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an

EXHIBIT "A"

assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 7: SPECIAL PROVISIONS

7.01 Relocation Provision. If during the initial term of this Lease, the City determines that there is a more desirable location in the City of Oceanside for a green waste facility, the City shall have the right to relocate Lessee to said location, provided, that said property is equal to or greater in square footage and that the City is willing to provide Lessee with improvements to said new space substantially similar to those that were constructed at the Premises including green waste capacity, provided said amount does not exceed amount of the Lessee Improvements as adjusted for inflation per the San Diego All-Urban Consumers, Consumer Price Index. City shall provide Lessee with at least one hundred eighty (180) days prior written notice of City's intention to relocate Lessee. City and Lessee shall amend this Lease to reflect said new property.

7.02 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

EXHIBIT "A"

7.03 Hours of Operation. The Lessee agrees that it shall conduct business on the Premises to conform to the published hours and days of operation as established, and in the best interest of the public, unless otherwise approved in writing by the City.

7.04 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.05 Merchandise and Equipment. City retains the right to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the City.

7.06 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterruptedly during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

7.07 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning; gasoline, or other fuel storage is expressly prohibited

EXHIBIT "A"

without prior written consent of the City.

7.08 Memorandum of Lease and Operating Agreement. City and Lessee agree the Lease shall not be recorded and that the parties shall execute a Memorandum of Lease and Operating Agreement to be recorded. The form of this Memorandum of Lease and Operating Agreement is as shown on Exhibit "H" attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease to Agreement be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

EXHIBIT "A"

APPROVED AS TO FORM:

By: _____
City Attorney

LESSEE

AGRISERVICE, INC.
a California corporation

Date _____

By: _____
Name: _____
Title: _____

Date _____

By: _____
Name: _____
Title: _____

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

Agri Service, Inc. and City of Oceanside Operating Agreement
EXHIBIT B
Schedule of Values for Equipment and Lessee Improvements

<u>ID #</u>	<u>Equipment Description</u>	<u>Value</u>	<u>Date Purchased</u>	<u>Estimated Useful Life</u>
101	Powerscreen	109,366.25	May-97	7
105	Screen 737	197,262.50	Sep-01	7
106	Scat	279,900.00	Nov-01	7
112	Verneer Grinder	476,226.75	Dec-08	5
208	CAT 966G Loader	280,185.00	Oct-02	7
209	CAT 962H Wheel Loader	267,471.00	Oct-06	5
210	CAT 950H Loader	233,710.00	Dec-06	5
301	Water Truck-NON OP	16,236.00	Mar-99	5
303	2001 Rolloff	23,005.00	Dec-00	5
305	2000 Service Truck	7,112.00	Mar-01	5
308	2003 Rolloff	25,194.00	Jan-03	5
309	2000 Water Truck-NON OP	42,023.00	Jul-04	5
311	2007 Silverado	51,055.60	Aug-06	5
313	2008 Service Truck	33,654.00	Oct-08	5
TBD	Cover Winder, \$50k-\$200k	200,000.00		
TBD	Universal Mixer, \$60k-150k	150,000.00		
Total Equipment Value		2,392,401.10		

<u>Leasehold Improvements</u>	<u>Estimated Cost **</u>
AC cover system, automated controls, aeration equipment, CompDog above-grade pipe-less aeration floor system	1,160,000.00
Construction Estimates Asphalt aeration floor, below-grade aeration plenum	1,000,000.00
Scale House/Office Building, Assume \$125/SQFT	187,500.00
Maintenance Shed/Storage	100,000.00
Landscaping	25,000.00
Fuel Tanks and Storage	2,500.00
New Scale/Software/Computer System	40,000.00
Miscellaneous desks, file cabinets, furniture	75,000.00
Contingency	259,000.00
Total Leasehold Improvements	2,849,000.00

Additional Cash Flow Required per Month

** NOTE: Lessee shall submit a final cost for the Leasehold Improvements all work is completed. Exhibit E will be modified when final costs are submitted by Agri Service, Inc.

Recording Requested by:
When Recorded Return to:

CITY CLERK, CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

(For Recorder's Use)

MEMORANDUM OF LEASE AND OPERATING AGREEMENT

THIS MEMORANDUM OF LEASE AND OPERATING AGREEMENT ("Memorandum") is made as of _____, 20__, by and between THE CITY OF OCEANSIDE, a municipal corporation ("CITY") and AGRISERVICE, INC., a California corporation ("AGRISERVICE").

CITY and AGRISERVICE have entered into that certain Property Lease Agreement ("Lease") and that certain Operating Agreement ("Operating Agreement") dated as of November 18, 2009, pursuant to which CITY has leased to AGRISERVICE, a portion of that certain property located at El Corazon in the City of Oceanside, County of San Diego, State of California and as more particularly described in Exhibit "A", which is attached and incorporated by this reference in order for AGRISERVICE to perform services set forth in the Operating Agreement, subject to the terms of the Lease and the Operating Agreement. The purpose of this Memorandum is to give notice of the existence of the Lease and Operating Agreement and the provisions thereof. To the extent that any provision of this Memorandum conflicts with any provision of the Lease and/or Operating Agreement, the Lease and/or Operating Agreement shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"CITY"

CITY OF OCEANSIDE,
a municipal corporation

By: _____
Name: _____
Title: _____

"AGRISERVICE"

AGRISERVICE, INC.,
a California corporation

By: _____
Name: _____
Title: _____

PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

AGRISERVICE, INC.

FOR THE LEASE OF REAL PROPERTY

LOCATED AT

EL CORAZON

DATED

NOVEMBER 18, 2009

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SECTION 8: SIGNATURES

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EXHIBITS

- "A" – Description of Premises
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- "C" – Operating Agreement
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- "E" – Lessee Improvements
- "F" – Commencement Date Memorandum
- "G" – Schedule of Values for Lessee Improvements
- "H" – Memorandum of Lease and Operating Agreement

**PROPERTY LEASE AGREEMENT
FOR
GREEN WASTE FACILITY AT EL CORAZON
OCEANSIDE, CA**

THIS PROPERTY LEASE AGREEMENT, herein after called "Lease", dated as of November 18, 2009 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and **AGRISERVICE, INC.**, a California corporation, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be the date the Oceanside City Council approves the Lease ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the "Green Waste Facility Site at El Corazon" located in the City of Oceanside, County of San Diego, State of California;

WHEREAS, Lessee is a duly authorized corporation in the State of California in the business of developing, operating, managing and maintaining green waste composting facilities;

WHEREAS, City and Lessee are desirous of leasing the "Green Waste Facility Site at El Corazon" to Lessee to enable Lessee to develop, operate, manage and maintain a green waste composting facility thereon together with related programs and activities;

WHEREAS, City and Lessee are mutually committed to act in good faith to see that the Green Waste Facility Site at El Corazon is developed, operated, managed and maintained in accordance with the terms and condition as set forth herein; and

WHEREAS, City and Lessee are also desirous of entering into a separate green waste facility operating agreement ("Operating Agreement") in conjunction with the leasing of the "Green Waste Facility Site at El Corazon" so that Lessee can provide green waste related services to the City.

NOW THEREFORE, the parties in consideration of the terms, conditions,

covenants and provisions contained herein do mutually agree as follows:

A G R E E M E N T

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the "Green Waste Facility Site at El Corazon" and more particularly described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part of this Lease. Said real property is hereinafter called the "Premises."

1.02 Uses. It is expressly agreed that the Premises is leased to Lessee solely and exclusively for the purpose of operating a green waste composting facility together with related programs and activities open to the general public, and for such other related or incidental purposes as may be first approved in writing by the City Manager of the City of Oceanside and for no other purpose whatsoever.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Except as set forth above, Lessee shall not use the Premises in any manner which disrupts the quiet enjoyment of surrounding property owners' use of their property.

1.03 Operating Agreement Use. It is expressly agreed that the Premises is leased to Lessee in conjunction with the fulfillment of the Operating Agreement between City and Lessee so that Lessee can provide green waste related services to the City. A copy of the Operating Agreement is attached as Exhibit "C" and is incorporated herein by this reference. As additional consideration for the lease of the Premises, Lessee agrees to timely satisfy the terms and conditions of the Operating Agreement. Failure by Lessee to perform pursuant to the terms and conditions of the Operating Agreement shall be deemed a default under this Lease.

1.04 Premises and Tenant Improvements.

a. City Improvement Obligations. City shall deliver the Premises to Lessee in an “as is, where is” condition without any representation or warranties as to the suitability of the Premises for Lessee’s intended use. Said “as is, where is” condition shall include the improvements to be constructed on the Premises by City as set forth on Exhibit “D”, attached hereto and incorporated herein by this reference (“City Improvements”) as part of the condition in which the Premises is delivered to Lessee. Lessee hereby accepts the Premises in said “as is, where is” condition and shall construct improvements thereon which are necessary for Lessee to occupy the Premises for its intended use.

b. Lessee Improvement Obligations. Lessee shall perform all of the work required to be performed by Lessee pursuant to the scope of work and schedule more specifically set forth in Exhibit “E” (“Lessee Improvements”) attached hereto and incorporated herein by this reference. Failure by Lessee to perform the work as described and/or as scheduled shall be deemed a default under this Lease.

1.05 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.06 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

1.07 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee’s use of the Premises while Lessee is in possession of the Premises; however the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of fifteen (15) years commencing on the earlier of the date Lessee substantially completes the Lessee Improvements to the Premises as set forth in Exhibit "D", as evidenced by a Notice of Completion or three (3) years from the Effective Date ("Commencement Date"). Upon determination of the Commencement Date, Lessee shall execute a Commencement Date Memorandum confirming the actual date the Lease commences and terminates. A copy of the Commencement Date Memorandum is shown in Exhibit "F" attached hereto and by this reference made a part of this Lease.

2.02 Feasibility Period. Beginning the Effective Date, Lessee shall conduct its feasibility analysis of the Premises and use thereof as follows:

a. **Due Diligence.** Lessee shall have up to ninety (90) days to conduct its due diligence of the Premises to determine the condition of the Premises for Lessee's intended use. Due diligence shall include, but not be limited to, geotechnical analysis, availability of utilities and ingress and egress to the Premises.

b. **Entitlements.** Lessee shall have up to thirty (30) months from the Effective Date to obtain the required regulatory entitlements ("Regulatory Entitlements") needed by Lessee to conduct Lessee's business at the Premises. Lessee agrees that it will use its best efforts and diligently pursue obtaining the required regulatory entitlements needed by Lessee.

c. **Termination.** In the event Lessee is not able to obtain the Regulatory Entitlements within said thirty (30) month period, either party shall have the right to terminate this Lease by giving the other party at least thirty (30) days written notice. It is expressly understood by Lessee that the City as landlord under this Lease and by entering into this Lease does not make any representations to Lessee that it has the authority to provide the regulatory discretionary approvals conferred upon the City of Oceanside as a regulatory agency.

2.03 Tenant Improvement Period. Prior to the actual Commencement Date of the Lease and upon obtaining the Regulatory Entitlements, Lessee shall be given the right to enter upon the Premises in order to complete the Lessee Improvements to the Premises as described in Exhibit "E" (or the portion thereof so as to allow occupancy of the Premises), as of the Effective Date, provided such right of entry is subject to and in compliance with the terms, conditions, covenants and provision of this Lease, including, but not limited to Section 4 herein. It is further agreed by the parties that Lessee shall have the opportunity to more particularly describe the Lessee Improvements, subject to approval by City, which approval shall not be unreasonably withheld, once Lessee has processed the Lessee Improvements for regulatory approval during the thirty (30) month

period set forth in Section 2.02 above. If applicable, a revised description of the Lessee Improvements, entitled Exhibit "E-1" will be attached to the Agreement and replace the Exhibit "E" described herein.

2.04 Early Termination. City shall have the right to terminate this Lease for any reason whatsoever by giving Lessee at least one hundred and eighty (180) days prior written notice. Further, as a condition of City's early termination of this Lease, City shall be required to pay Lessee the unamortized portion of the cost of the Lessee Improvements incurred by Lessee as determined below provided Lessee is not in default of any of the terms and conditions of the Lease or the Operating Agreement.

a. Unamortized Cost Reimbursement. In the event of an early termination of the Lease by City, City shall pay to Lessee, the unamortized portion of the cost of the Lessee Improvements as determined by the schedule of values allocated to the Lessee Improvements as shown on Exhibit "G" attached hereto and incorporated herein by this reference. The amortization of the cost of the Lessee Improvements shall be on a straight line depreciation basis as determined by Generally Accepted Accounting Principles. Said payment of the unamortized cost of Lessee Improvements shall be based on the termination date of the Lease as set forth in the early termination notice as described above through the original expiration date of the Lease.

Further, in the event the City utilizes Lessee's personal property (e.g. operating equipment) in order to continue to provide services to the public, City shall also pay to Lessee the unamortized portion of the cost of Lessee's personal property used by City as set forth above. In the event Lessee revises the Lessee Improvements pursuant to Section 2.03 above, a revised description of the Lessee Improvements together with a revised schedule of values, entitled Exhibit "G-1" will be attached to the Agreement and replace the Exhibit "G" described herein.

After the Commencement Date of the Lease, in the event new and/or additional equipment is needed by Lessee and/or the Lessee Improvements shown on Exhibit "G" or Exhibit "G-1", as applicable, needs replacement, Lessee shall notify City in writing of its desire to amend Exhibit "G". Said notice shall include a description of the equipment, an explanation as to the need to add and/or replacement said equipment, and the value (including the useful life) of said equipment. City shall review Lessee's request to amend Exhibit "G" and should the City accept Lessee's changes to the Lessee Improvements, by informing Lessee in writing, the parties shall replace Exhibit "G" with a new exhibit entitled Exhibit "G-1" and so forth, without the need to formally amend the Lease. In the event the City does not agree to accept Lessee's changes to the Lessee Improvements, the parties agree to hire an impartial third party familiar with the practices in the industry to determine the need for said changes to the Lessee Improvements together with value associated therewith. The determination of said third party shall be binding, with the costs of said third party to be borne by the parties

equally. Thereafter, Exhibit "G" will be changed accordingly as described above.

2.05 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall continue to, and pay monthly, the Rent as set forth in this Lease or the fair market value for similar operations in the Southern California area, whichever is higher during the holdover period.

2.06 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover any amounts owing under the Lease as said amount becomes due, plus damages.

2.07 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, at City's sole discretion, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand thereof. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Lease and all Lessee's rights to the Premises.

2.08 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

2.09 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. Percentage rent (as hereinafter defined) payments shall be due to City and payable by Lessee in arrears on or before the tenth (10th) day of the month following the month for which the percentage rent is calculated.

In addition Lessee shall provide City with a percentage rent statement showing how the percentage rents were calculated. Also, Lessee shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide City with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this Lease.

Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

a. General. The total annual rent amount shall be equal to the Percentage Rent amount (as defined by Subsection 3.02b), without setoff or deductions.

b. Percentage Rent. The monthly Percentage Rent shall be the total applicable percentages of the gross revenue (as defined in Subsection 3.02c and 3.02d), for the month during which the monthly gross income was calculated. The applicable percentages are as follows:

- (i) An amount equal to ten percent (10%) of all Commercial Gross Revenues (as hereinafter defined) generated and received from the development, operation, management and maintenance of the Premises by Tenant for each month of each Lease Year; and
- (ii) An amount equal to five percent (5%) of all Product Gross Revenues (as hereinafter defined) from the sale of product generated at the Premises from the incoming feedstock material brought to the Premises (as hereinafter defined) for each month of each Lease Year in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00).

The monthly Percentage Rent shall be payable to City monthly in arrears not later than twenty (20) days following the end of each calendar month of the term of this Lease as required in Section 3.01 hereinabove.

c. Commercial Gross Revenues. Commercial Gross Revenues shall mean any and all revenue and income of any nature or other thing of value received for the disposal of green waste at the Premises or for any other services in connection with the collection thereof at the Premises or in connection with the use of Premises, including revenue and income typically referred to as "tip fees". Provided, however, "tip fees"

collected as part of the City of Oceanside's Curbside Green Waste program shall not be considered Commercial Gross Revenues. Further, in no event shall any of the following be included in "Commercial Gross Revenues": (i) any sales taxes, excise taxes, gross receipt taxes or similar charges; (ii) proceeds from any refinancing; (iii) any federal, state or municipal taxes collected from Lessee's customers regardless of whether the amount thereof is stated to the customer as a separate charge and paid periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Commercial Gross Revenue.

d. Product Gross Revenues. Product Gross Revenues shall mean any and all revenue or income of any nature or other thing of value received by Lessee from the sale of goods or materials and the services related thereto on or from the Premises that are created and/or produced by Lessee from the green waste disposed of at the Premises or any such other similar revenue and income received by Lessee as a result of occupancy of the Premises. Product Gross Revenue shall include the amount of any manufacturer's or importer's excise tax included in the price of any goods or materials sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge, Provided, however, Product Gross Revenue shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Lessee in computing Product Gross Revenue. Product Gross Revenue shall not include refunds for goods or materials returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Lessee.

(i) In addition, Product Gross Revenues shall not include goods or materials that are created and/or produced by Lessee from the green waste disposed of at the Premises that are removed from the Premises, which do not generate any revenue and income to the Lessee (i.e. other thing of value received). In the event a sublessee (subject to approval by City as set forth in Section 6.10) utilizes the Premises to sell a product that is created and/or produced from the green waste disposed of at the Premises, the definition of Product Gross Revenues shall only apply to the revenue and income that exceeds the green waste product or material purchased from Lessee provided Lessee has previously accounted for said green waste product or material purchased as Commercial Gross Revenues.

e. Gross Revenue Related Reports. The Commercial Gross Revenue and the Product Gross Revenue shall be calculated at the end of each month of the term of this Lease. The monthly Commercial Gross Revenue and Product Gross Revenue report ("Gross Revenue Reports") shall be delivered to the City monthly in arrears not

later than twenty (20) days following the end of each calendar month of the Term of this Lease. In addition, during the Term of this Lease, Lessee shall also submit annually within sixty (60) days after the last day of each Lease Year, an annual statement of its Gross Revenue Reports for the just ended Lease Year.

3.03 Utilities. Lessee agrees to order, obtain and pay for all utilities (e.g. electricity, water and sewer services), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.04 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or City's offices and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. Lessee's failure to keep and maintain such records and make them available for inspection by City is a default of this Lease. These records include but are not limited to generally accepted business books, documents, and records. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

3.05 Delinquent Payments. If Lessee fails to pay any amount when due, Lessee will pay in addition to the unpaid amount, five percent (5%) of the delinquent rent. If said amount is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole negligence or sole willful conduct of the Lessee, its officers, agents, or employees. Lessee's indemnification shall include any and all

costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the Lessee, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the term of this Lease, commencing the Effective Date of the Lease, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

All Risk

Insurance covering all of the Lessee Improvements, trade fixtures, merchandise and personal property in the Premises, alterations and additions made by Lessee, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

- b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

- c. All insurance companies affording coverage to the Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

- d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

- e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall be paid by Lessee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Lease by giving Lessee sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises, including but not limited to an environmental assessment and/or geotechnical analysis of the Premises. Lessee acknowledges it is relying solely on such independent inspection,

tests, investigations, and observations in making this Lease. Lessee further acknowledges that Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises which were not directly caused by City.

5.02 Waste, Damage, or Destruction. Lessee shall give written notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the Lease, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, including without limitation, the access road to the Premises, the City Improvements and the Lessee Improvements throughout the term of this Lease and without expense to City. Provided, however, Lessee's responsibility and cost of said access road to the Premises (provided said access road is used by others, including but not limited to, other third parties at El Corazon, the general public and the City) shall be limited to Lessee's prorata share thereof, as determined by City, in its reasonable discretion. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary

maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefore. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. Except as set forth in Exhibit "D", no improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

5.06 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon shall also have prior approval in writing of City Manager. Such

subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.07 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

5.08 Signs. Except as set forth in Exhibit "D" Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

5.09 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises constructed on the Premises by Lessee, excepting such improvements and operating equipment placed on the Premises by Lessee which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, City shall so notify Lessee in writing thirty (30) days prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property, except as described as Lessee

Improvements shall be removed by Lessee by the date of the expiration or termination of this Lease. At City's election, any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

5.10 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. **Total Taking.** In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. **Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. **Award.** All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in the installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. **Repayment of Lessee Improvements.** In the event of a total taking and the City is not awarded any monies by the condemning authority in connection therewith, the City shall not be responsible for any remaining unamortized portion cost of the Lessee Improvements as more specifically set forth in Exhibit "D" subject to Subsection 5.10c., above. In the event of a partial taking and the City is not awarded any monies by the condemning authority in connection therewith, the Lessee Improvements shall be allocated according to the remainder of the Premises and Lessee shall be responsible for the unamortized portion of the cost of the Lessee Improvements applicable to the portion of the Premises so taken.

e. **Transfer.** City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this lease.

f. **No Inverse Condemnation.** The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

5.11 Damage or Destruction to Improvements.

a. **City Reconstruction and Termination Right.** If the City Improvements upon the Premises are damaged or destroyed by any risk against which City has insured, City (subject to being able to obtain all necessary permits and approvals) shall, within one hundred and twenty (120) days after such damage or destruction elect to terminate the Lease or repair and reconstruct the Premises to substantially the same condition as the Premises were originally delivered to Lessee. City shall not be liable for interruption to Lessee's operation or for damage to or for the repair or reconstruction of any items which Lessee is required to insure.

b. **Lessee Reconstruction.** If any item which Lessee is required to insure pursuant to the terms of this Lease is damaged or destroyed by fire or other risks to be so insured, Lessee (subject to being able to obtain all necessary permits and approvals) shall, within thirty (30) days after City has repaired or reconstructed the Premises that City is obligated to repair or reconstruct pursuant Subsection 5.11(a) above, Lessee shall commence to repair or reconstruct such items to substantially the same condition in which they were prior to such damage or destruction and prosecute the same diligently to completion.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway

Oceanside, CA 92054

Attention: Real Estate Manager

To Lessee:

Prior to Commencement Date

AgriService, Inc.
380 S. Melrose Drive, Suite 203
Vista, CA 92081

After the Commencement Date

At the Premises

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, religion, sex or national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without

limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease together with the Operating Agreement contains the entire understanding between the City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Lease is not a waiver of any default preceding the amount payment. City and Lessee specifically agree that the property constituting the Premises

constituting the Premises is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Lessee to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment and Subletting - No Encumbrance. A major consideration for this Lease is the unique expertise of Lessee in the operation and management of a green waste facility at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Lessee shall not assign to, contract for and/or allow another individual or entity to operate and/or manage the green waste facility operation at the Premises. Further, this Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements herein, including any terms and conditions of the Operating Agreement referenced as part of the Lease (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within five (5) days after written notice thereof if default is in the submittal of amounts due as required in this Lease; or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or thirty (30) days after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to

claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result there from.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with Section 5.06 of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within five (5) days, if the default is for the failure to submit rent as required, or within fifteen (15) days following the expiration of the period within which Lessee may cure such default, provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Sections 5.10 and 5.11 of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and

masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 7: SPECIAL PROVISIONS

7.01 Relocation Provision. If during the initial term of this Lease, the City determines that there is a more desirable location in the City of Oceanside for a green waste facility, the City shall have the right to relocate Lessee to said location, provided, that said property is equal to or greater in square footage and that the City is willing to provide Lessee with improvements to said new space substantially similar to those that were constructed at the Premises including green waste capacity, provided said amount does not exceed amount of the Lessee Improvements as adjusted for inflation per the San Diego All-Urban Consumers, Consumer Price Index. City shall provide Lessee with at least one hundred eighty (180) days prior written notice of City's intention to relocate Lessee. City and Lessee shall amend this Lease to reflect said new property.

7.02 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

7.03 Hours of Operation. The Lessee agrees that it shall conduct business on the Premises to conform to the published hours and days of operation as established, and in the best interest of the public, unless otherwise approved in writing by the City.

7.04 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.05 Merchandise and Equipment. City retains the right to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the City.

7.06 Continued Occupancy. Lessee covenants and agrees to, and it is the

intent of this Lease that the Lessee shall, continuously and uninterruptedly during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

7.07 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

7.08 Memorandum of Lease and Operating Agreement. City and Lessee agree the Lease shall not be recorded and that the parties shall execute a Memorandum of Lease and Operating Agreement to be recorded. The form of this Memorandum of Lease and Operating Agreement is as shown on Exhibit "H" attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease to Agreement be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: *Pamela Jenkins*, *ASST.*
City Attorney

LESSEE

AGRISERVICE, INC.
a California corporation

Date 11-06-09

By: *Mary Matava*
Name: Mary Matava
Title: President

Date 11-6-09

By: *Pamela Jenkins*
Name: Pamela Jenkins
Title: Secretary

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 11/6/09 before me, Judy Thompson, Notary Public
Date Here Insert Name and Title of the Officer

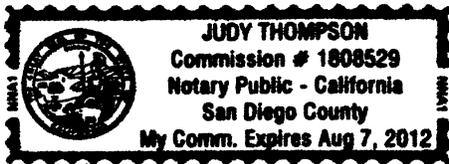
personally appeared Mary Matava and Pamela Ruth Jenkins
Name(s) of Signer(s)

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 Judy Thompson
Signature of Notary Public



Place Notary Seal Above

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: _____

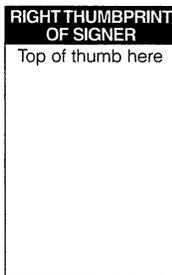
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

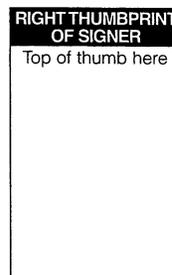
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

EXHIBIT "A"
PREMISES
LEGAL DESCRIPTION

THAT PORTION OF SECTION 20, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY TERMINUS OF THE SOUTH LINE OF LOT G OF RANCHO DEL ORO MASTER SUBDIVISION WEST AS SHOWN ON MAP 11410 RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DECEMBER 27, 1985;

THENCE ALONG SAID SOUTH LINE NORTH 88°37'32 WEST (NORTH 88°37'03" WEST PER SAID MAP 11410) 483.46 FEET TO THE SOUTHEAST CORNER OF SAID LOT G;

THENCE LEAVING SAID LOT G NORTH 18°33'01" EAST 190.02 FEET;

THENCE NORTH 87°05'16" EAST 177.72 FEET;

THENCE NORTH 75°49'42" EAST 163.21 FEET;

THENCE NORTH 88°41'16" EAST 107.39 FEET;

THENCE NORTH 77°49'11" EAST 83.69 FEET;

THENCE NORTH 55°57'02" EAST 128.15 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 71°10'30" EAST 86.03 FEET;

THENCE NORTH 28°33'23" EAST 74.28 FEET;

THENCE NORTH 00°46'00" EAST 468.44 FEET;

THENCE NORTH 05°10'53" EAST 199.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 80.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 80°26'28" AN ARC LENGTH OF 112.32 FEET;

THENCE NORTH 75°15'35" WEST 265.20 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 80.00 FEET;

THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 39°53'23" AN ARC LENGTH OF 55.70 FEET;

THENCE SOUTH 64°51'01" WEST 625.01 FEET;

THENCE SOUTH 25°08'59" EAST 63.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 94.25 FEET;

THENCE NORTH 64°51'01" EAST 126.05 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF
114°58'24" AN ARC LENGTH OF 120.40 FEET;

THENCE SOUTH 00°10'35" EAST 184.63 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00"
AN ARC LENGTH OF 94.25 FEET;

THENCE NORTH 89°49'25" EAST 100.00 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 15.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°42'24"
AN ARC LENGTH OF 23.49 FEET;

THENCE SOUTH 00°28'11" EAST 236.03 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°31'49"
AN ARC LENGTH OF 93.76 FEET;

THENCE SOUTH 90°00'00" EAST 250.41 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 11.69 ACRES MORE OR LESS.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY
DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

MICHAEL SCHLUMPBERGER, PLS 7790

DATE

EXHIBIT "A"
COMMON AREA
LEGAL DESCRIPTION

THAT PORTION OF SECTION 20, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY TERMINUS OF THE SOUTH LINE OF LOT G OF RANCHO DEL ORO MASTER SUBDIVISION WEST AS SHOWN ON MAP 11410 RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DECEMBER 27, 1985;

THENCE ALONG SAID SOUTH LINE NORTH 88°37'32 WEST (NORTH 88°37'03" WEST PER SAID MAP 11410) 483.46 FEET TO THE SOUTHEAST CORNER OF SAID LOT G;

THENCE LEAVING SAID LOT G NORTH 18°33'01" EAST 190.02 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 78°06'44" WEST 31.26 FEET;

THENCE NORTH 00°00'00" EAST 159.31 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 94.25 FEET;

THENCE SOUTH 90°00'00" EAST 74.98 FEET;

THENCE NORTH 00°10'35" WEST 469.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 20.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 114°58'24" AN ARC LENGTH OF 40.13 FEET;

THENCE SOUTH 64°51'01" WEST 126.05 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 100.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 157.08 FEET;

THENCE NORTH 25°08'59" WEST 63.84 FEET;

THENCE NORTH 64°51'01" EAST 40.00 FEET;

THENCE SOUTH 25°08'59" EAST 63.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 94.25 FEET;

THENCE NORTH 64°51'01" EAST 126.05 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 114°58'24" AN ARC LENGTH OF 120.40 FEET;

THENCE SOUTH 00°10'35" EAST 184.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00" AN ARC LENGTH OF 94.25 FEET;

THENCE NORTH 89°49'25" EAST 100.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 15.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°42'24" AN ARC LENGTH OF 23.49 FEET;

THENCE SOUTH 00°28'11" EAST 236.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89°31'49" AN ARC LENGTH OF 93.76 FEET;

THENCE SOUTH 90°00'00" EAST 250.41 FEET;

THENCE SOUTH 55°57'02" WEST 128.15 FEET;

THENCE SOUTH 77°49'11" WEST 83.69 FEET;

THENCE SOUTH 88°41'16" WEST 107.39 FEET;

THENCE SOUTH 75°49'42" WEST 163.21 FEET;

THENCE SOUTH 87°05'16" WEST 177.72 FEET TO THE **TRUE POINT OF BEGINNING.**

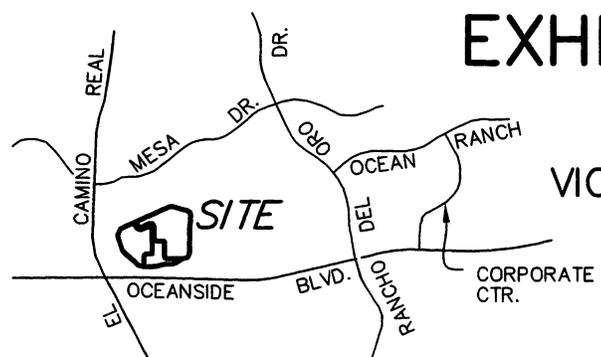
CONTAINING 3.92 ACRES MORE OR LESS.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

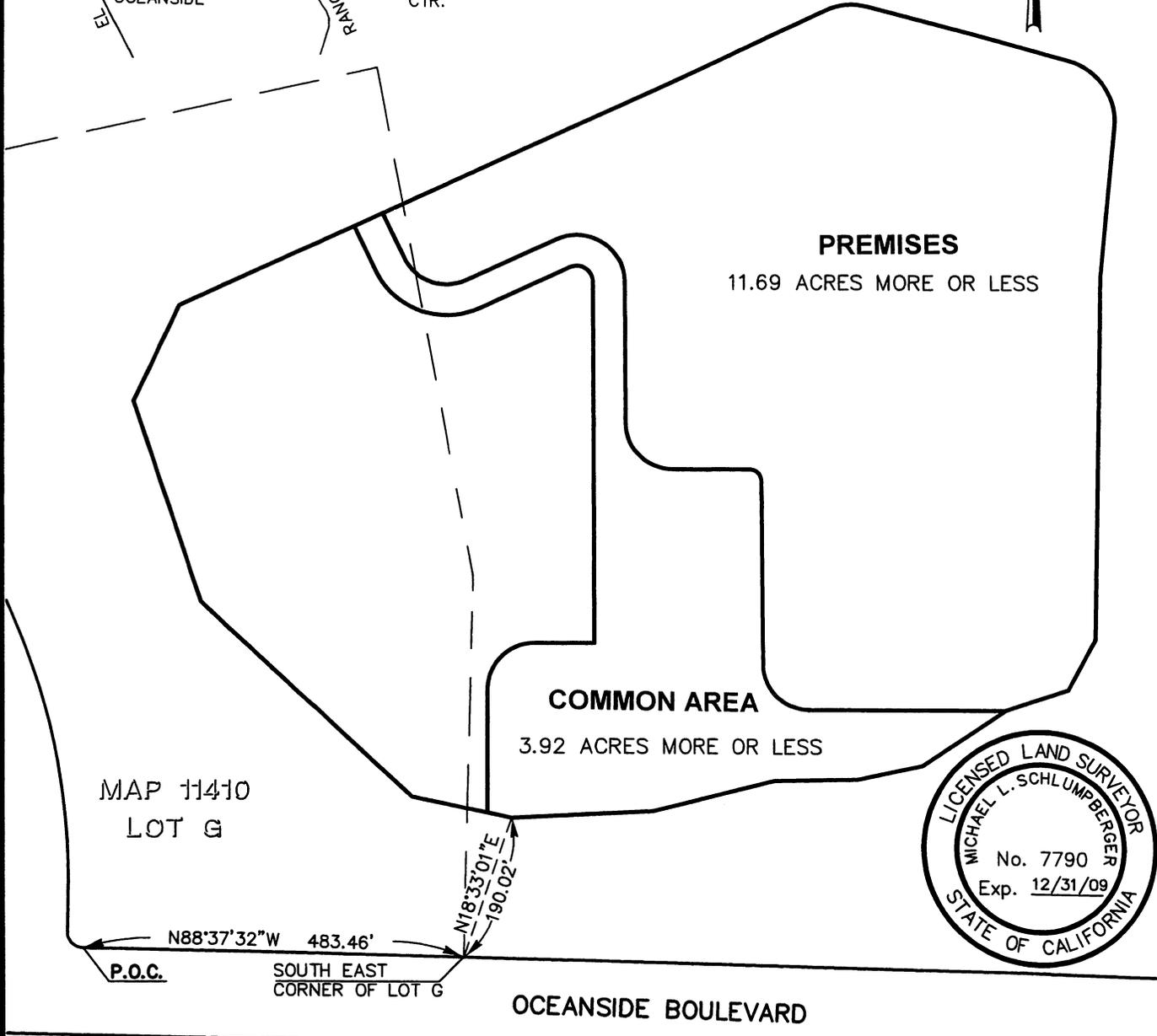
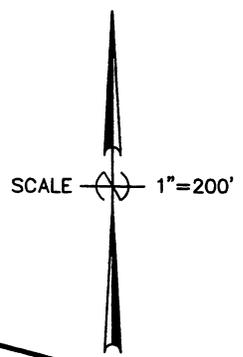
MICHAEL SCHLUMPBERGER, PLS 7790

DATE

EXHIBIT "B"



VICINITY MAP
NO SCALE



MAP 11410
LOT G

OCEANSIDE BOULEVARD

ASSESSORS' PARCEL NO.: 162-082-43

Right-Of-Way Engineering Services, Inc.
615 South Tremont Street · Oceanside, CA 92054
(760) 637-2700 FAX (760) 637-2701
Drawing file name: Lease Parcel Plat.dwg
Job No.: 0705-0046-01

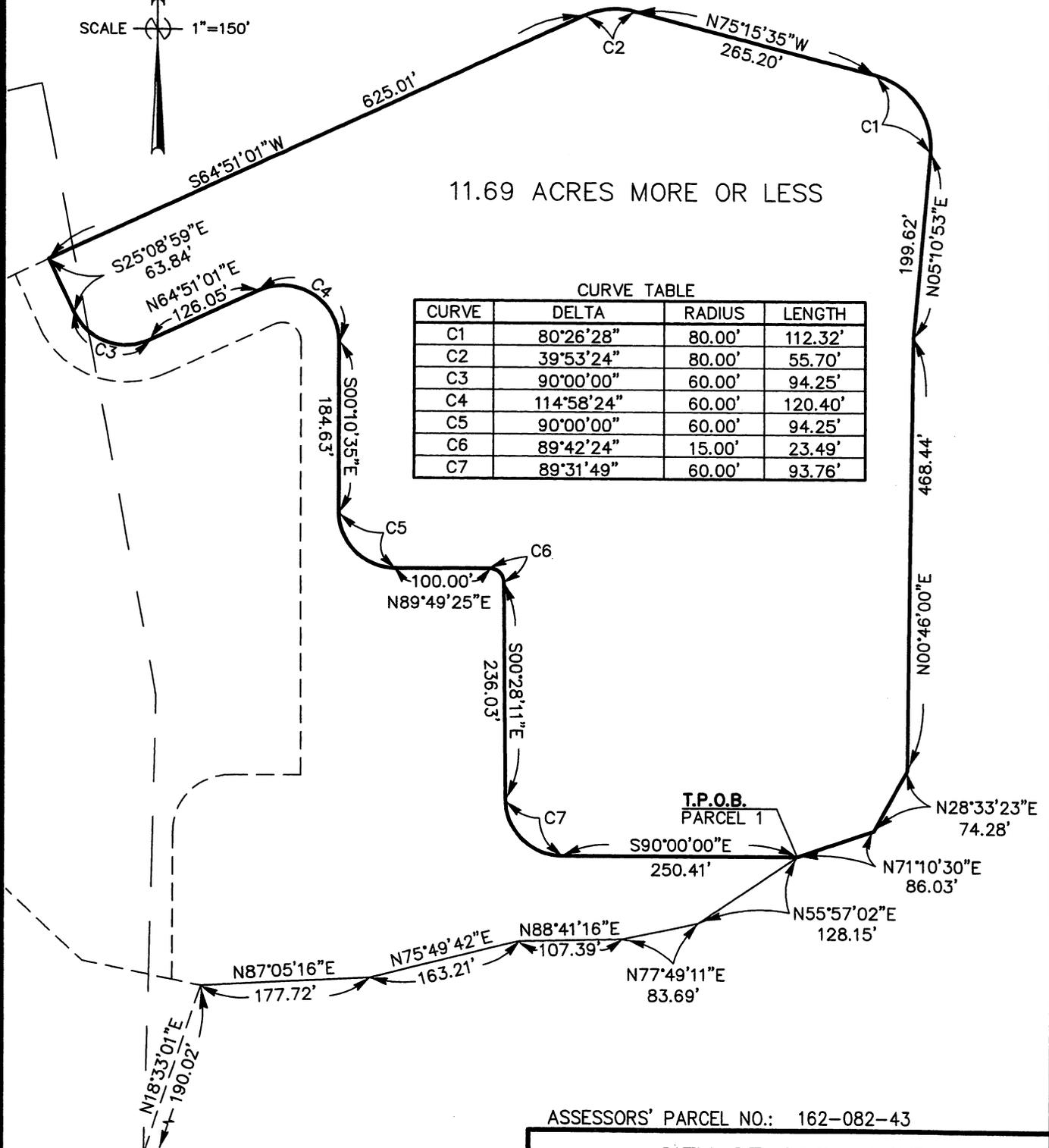
CITY OF OCEANSIDE	
PREMISES AND COMMON AREA	
NOVEMBER 3, 2009	

EXHIBIT "B"

SCALE 1"=150'

11.69 ACRES MORE OR LESS

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	80°26'28"	80.00'	112.32'
C2	39°53'24"	80.00'	55.70'
C3	90°00'00"	60.00'	94.25'
C4	114°58'24"	60.00'	120.40'
C5	90°00'00"	60.00'	94.25'
C6	89°42'24"	15.00'	23.49'
C7	89°31'49"	60.00'	93.76'



ASSESSORS' PARCEL NO.: 162-082-43

Right-Of-Way Engineering Services, Inc.

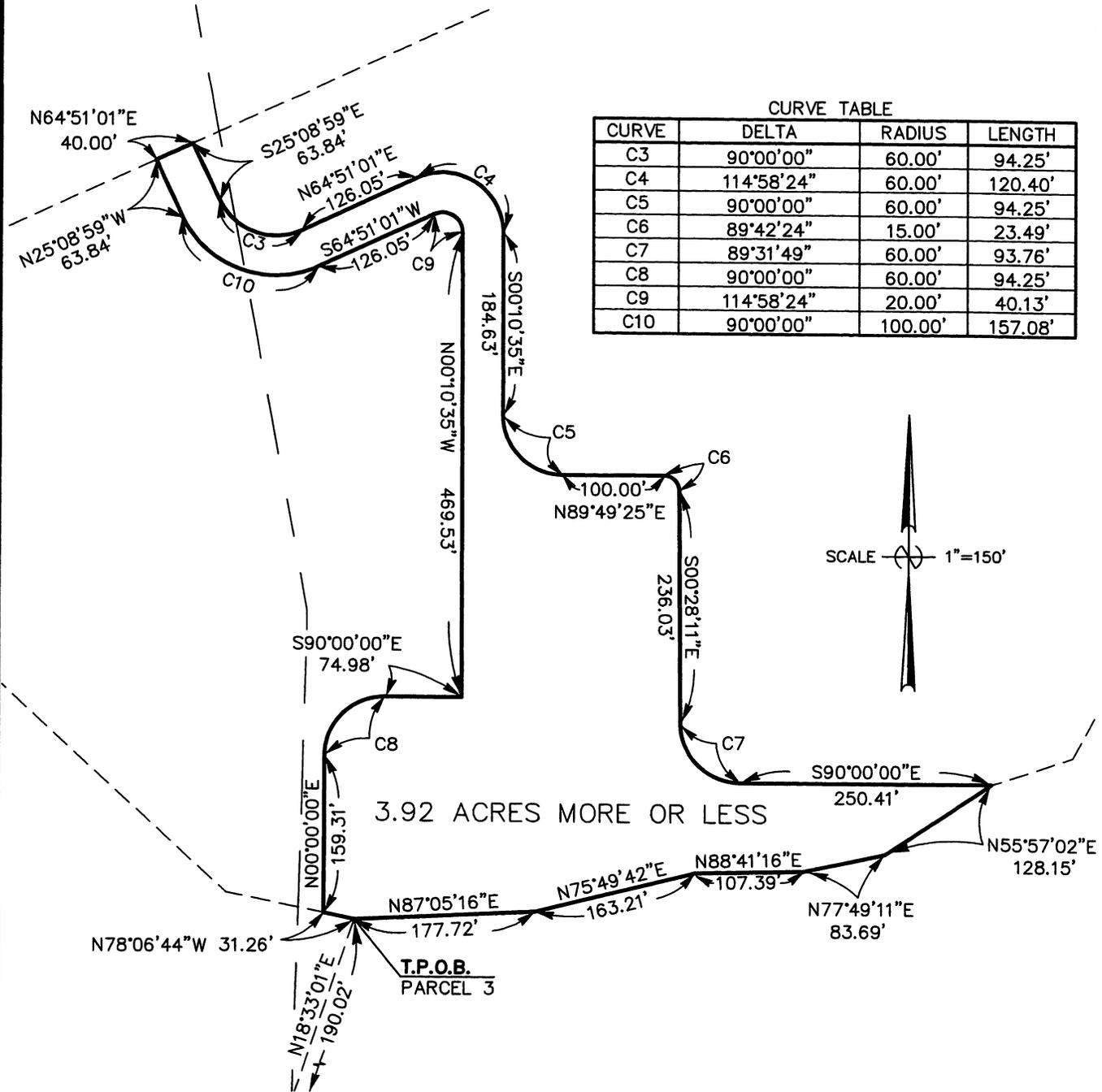
615 South Tremont Street · Oceanside, CA 92054
 (760) 637-2700 FAX (760) 637-2701
 Drawing file name: Lease Parcel Plat.dwg
 Job No.: 0705-0046-01

CITY OF OCEANSIDE

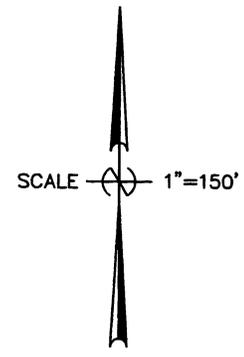
PREMISES

NOVEMBER 3, 2009

EXHIBIT "B"



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C3	90°00'00"	60.00'	94.25'
C4	114°58'24"	60.00'	120.40'
C5	90°00'00"	60.00'	94.25'
C6	89°42'24"	15.00'	23.49'
C7	89°31'49"	60.00'	93.76'
C8	90°00'00"	60.00'	94.25'
C9	114°58'24"	20.00'	40.13'
C10	90°00'00"	100.00'	157.08'



3.92 ACRES MORE OR LESS

T.P.O.B.
PARCEL 3

ASSESSORS' PARCEL NO.: 162-082-43

CITY OF OCEANSIDE	
COMMON AREA	
NOVEMBER 3, 2009	

Right-Of-Way Engineering Services, Inc.
 615 South Tremont Street · Oceanside, CA 92054
 (760) 637-2700 FAX (760) 637-2701
 Drawing file name: Lease Parcel Plat.dwg
 Job No.: 0705-0046-01

EXHIBIT "C"

OPERATING AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

AGRISERVICE, INC.

FOR SERVICES TO BE PROVIDED

AT

EL CORAZON

DATED

NOVEMBER 18, 2009

EXHIBIT "C"
OPERATING AGREEMENT
FOR
GREEN WASTE FACILITY AT EL CORAZON
OCEANSIDE, CA

THIS OPERATING AGREEMENT, herein after called "Operating Agreement", dated as of November 18, 2009 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and **AGRISERVICE, INC.**, a California corporation, hereinafter called "Operator". Notwithstanding the date set forth above, the effective date of this Agreement shall be the date the Oceanside City Council approves the Agreement ("Effective Date").

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the "Green Waste Facility Site at El Corazon" located in the City of Oceanside, County of San Diego, State of California ("Green Waste Facility");

WHEREAS, City is desirous of maintaining reasonable rates for the diversion of organic yard waste ("Green Waste") generated within the City of Oceanside and has promulgated a recycling ordinance with respect thereto;

WHEREAS, Operator is a duly authorized corporation in the State of California in the business of developing, operating, managing and maintaining Green Waste composting facilities qualified to accept, process and divert Green Waste;

WHEREAS, City and Operator are desirous of entering into an Operating Agreement to enable Operator to develop, operate, manage and maintain a Green Waste composting facility thereon together with related programs and activities;

WHEREAS, City and Lessee are mutually committed to act in good faith to see that a Green Waste composting facility is developed, operated, managed and maintained in accordance with the terms and conditions as set forth herein; and

WHEREAS, City and Operator are also desirous of entering into a separate property lease agreement in conjunction with the operation of the "Green Waste Facility Site at El Corazon" so that Operator can use a location within the City of Oceanside to provide the Green Waste related services to the City.

NOW THEREFORE, the parties, in consideration of the terms, conditions, covenants and provisions contained herein, do mutually agree as follows:

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AGREEMENT

SECTION 1: SERVICES TO BE PROVIDED

1.01 Scope of Work. The services to be provided by Operator under this Operating Agreement at the Green Waste Facility shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of particular items of labor or equipment shall not relieve Operator of the duty to furnish all other necessary items. Operator shall accept, process and divert Green Waste generated within the City of Oceanside in accordance with the City's recycling ordinances with the goal of achieving reasonable rates to the ratepayers in the City of Oceanside for the diversion of Green Waste. The work to be done by Operator shall be accomplished in a thorough and professional manner so that the City is provided sanitary, reliable, and high-quality Green Waste diversion at all times.

1.02 Additional Services. Upon City's request, Operator agrees to assist City in identifying additional materials suitable for composting and to modify processing procedures, to increase the quality or recoverability of materials generated by customers. Operator also may submit unsolicited written proposals to City for any other services not granted by this Operating Agreement. Granting of any such services shall be contingent upon City approval and subject to the establishment of an appropriate rate for such new service.

1.03 Specific Green Waste Acceptance and Diversion Provisions.

a. City Green Waste Tonnage. During the term of the Operating Agreement Operator shall be prepared and capable of accepting all Green Waste generated within the City of Oceanside and collected by City's Solid Waste Contractor as part of the City's curbside collection of Green Waste (City Green Waste Tonnage).

b. Acceptance of Non-City Green Waste Tonnage. During the term of the Operating Agreement Operator shall be allowed to accept non-City Green Waste Tonnage (Green Waste tonnage that is either generated within the City of Oceanside that is delivered by anyone other than the City's Solid Waste Contractor and/or City of Oceanside personnel or Green Waste tonnage generated outside of the City of Oceanside) provided the follow conditions are met:

- i. Operator can accept and process all of the City Green Waste Tonnage.
- ii. Operator shall give priority to accepting Green Waste generated within the City of Oceanside.

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1.04 Days and Hours of Operation. Operator shall accept deliveries on all days that City’s Solid Waste Contractor conducts residential curbside Green Waste collection. Operator may accept deliveries of Green Waste from 7:30 AM to 5:00 PM, Monday through Friday and from 8:00 AM to 4:00 PM on Saturday of each week. All times and drop-off days for operations and grinding are subject to approval by appropriate local, state and federal permitting regulatory agencies.

1.05 Operating Conditions.

a. Noise. All Green Waste collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and local noise level regulations. City may conduct random checks of noise emission levels to ensure such compliance. Operator will promptly resolve any complaints of noise to the satisfaction of City.

b. Minimization of Spills. Operator shall use due care to prevent Green Waste and related materials from being scattered during processing.

c. Clean-Up. Operator shall be responsible for cleaning any Green Waste spills at the El Corazon Site, which are caused by delivery of Green Waste or the removal of compost. Operator shall address instances of repeated spillage not caused by Operator, directly with the customer responsible and shall report such instances to City. City shall attempt to rectify such situations with the customer if Operator has previously attempted to do so without success. City may authorize Operator to charge an additional service fee for instances of repeated spillage.

d. Contaminated Green Waste. Operator shall refuse to accept Green Waste loads which are contaminated with municipal solid waste or contain any hazardous waste. In the event Operator inadvertently accepts contaminated loads, Operator may charge said customer a surcharge to pay for the disposal of the contaminants. The surcharge shall be subject to review and appeal by the City in its sole and absolute discretion.

e. Fuel, Oil and Other Vehicle Fluid Spills. Operator shall be responsible for immediately cleaning-up all fuel, oil or other vehicle fluid spills and must notify City, City Fire Department and appropriate county and state authorities immediately following each such spill. Costs incurred by City in responding to such spills as well as repair for damages caused by fuel, oil, or other vehicle fluid spills shall be at Operator’s sole cost and expense.

1.06 Identification, Separation and Disposal of Unacceptable Waste.

a. Unacceptable Waste. If Operator determines that waste material

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delivered to the Green Waste Facility is municipal solid waste, hazardous waste, medical or infectious waste, or other waste ("Unacceptable Waste") presents a hazard to Operator or its employees, Operator shall have the right to refuse Unacceptable Waste.

b. Unacceptable Waste Identification. Operator is to file with City within one hundred eighty (180) days of the effective date of this Operating Agreement, a plan for identifying, separating, containing and if necessary disposing of such Unacceptable Waste delivered to the Green Waste Facility. The City, in its sole and absolute discretion, reserves the right to approve or disapprove of the Unacceptable Waste Identification Plan. Operator agrees to modify the plan as reasonably requested by City.

c. Unacceptable Waste Disposal Responsibility. If Unacceptable Waste is inadvertently accepted by Operator and the delivering party cannot be identified or fails to remove the Unacceptable Waste after being requested to do so, Operator shall arrange for its proper disposal at no cost or expense to City. Operator shall make a good faith effort to recover the cost of proper disposal for the delivering party, and the cost of such effort, as well as the cost of disposal shall be chargeable to the delivering party. If the delivering party cannot be identified or fails to pay such cost, Operator shall absorb the cost of the disposal. Operator shall report any such disposal cost to City in writing within forty-eight (48) hours of the date incurred.

1.07 Vehicles, Equipment and Personnel.

a. Vehicles and Equipment. Operator shall provide vehicles and equipment sufficient in number and capacity to efficiently perform the scope of work required by this Operating Agreement. Operator agrees to maintain each piece of equipment used in the performance of this Operating Agreement in good order and repair. Operator shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with the City of Oceanside's applicable zoning ordinances.

b. Personnel. Operator shall employ such qualified personnel as may be necessary to provide the services required by this Operating Agreement in a safe and efficient manner. Operator shall provide suitable operational and safety training for all of its employees who maintain, utilize, or operate vehicles and/or equipment.

1.08. Discretionary Review of Performance and Quality of Service. At City's sole discretion, with sixty (60) days written notice to Operator, City may conduct a public hearing at which Operator shall be present and shall participate, to review Operator's performance and quality of service and to provide for technological and regulatory changes. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Operating Agreement is found, City may direct

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Operator to correct the inadequacies in accordance with the terms of this Operating Agreement.

1.09 Green Waste Facility and Property Lease Agreement. The services to be provided under this Operating Agreement shall be at the Green Waste Facility and shall be in conjunction with the fulfillment of the Property Lease Agreement between the City and Operator ("Lease Agreement") so that Operator can provide Green Waste related services to the City. A copy of the Lease Agreement is attached as Exhibit "A" and is incorporated herein by this reference. As additional consideration for the use of the Green Waste Facility, Operator agrees to satisfy the terms and conditions of the Lease Agreement. Failure by Operator to perform pursuant to the terms and conditions of the Lease Agreement shall be deemed a default under this Operating Agreement.

1.10 Related Discretionary Actions. As a condition to this Agreement and prior to the commencement of the services as set forth in this Agreement, Operator shall be required to obtain a City business license, a conditional use permit and any other required discretionary and environmental permits in accordance with Section 6.13. By entering into this Agreement with Operator, the City is not obligating itself as a regulatory body or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Green Waste Facility or as to the services to be performed under this Agreement. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Green Waste Facility.

1.11 Inspection by City. City shall have the right to observe and review Operator's services and to enter the Green Waste Facility to inspect operations, without notice, during normal business hours.

1.12 City's Right to Change Scope of Work. City may require changes in existing services or require new services and Operator shall comply, provided that if such changes result in increased costs to Operator, Operator shall be compensated for any such services for a fee to be agreed upon by City and Operator. City may also require a reduction or deletion in existing services provided by Operator.

a. Unamortized Cost Reimbursement. If a reduction or deletion in services that is required by the City renders Operator unable to pay for capital items initially acquired to perform the services required by this Operating Agreement, City shall pay to Operator, the unamortized portion of the cost of the capital items used by Operator in connection with performing or preparing to perform the reduced or deleted service that has been effected. The list of the initially acquired capital items and the schedule of values is set forth on Exhibit "B" attached hereto and incorporated herein by this reference. All amortization shall be done on a straight line depreciation basis in accordance with Generally Accepted Accounting Principles.

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SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for a period of fifteen (15) years. The term shall commence upon the Commencement Date as set forth in the Lease Agreement. This Agreement shall expire at the end of the time period provided herein ("Agreement Expiration Date") unless sooner terminated pursuant to the terms of this Operating Agreement and/or Lease Agreement.

2.02 Agreement Transition Extension. If City elects not to renew this Operating Agreement at the end of the term, City may require Operator, by giving one hundred eighty (180) days written notice, to provide continued service under the terms of this Operating Agreement for up to one hundred eighty (180) days following the end of the term. The purpose of this extension provision is to ensure uninterrupted service to City in the event of a transition to a successor Operator or on-going new contract negotiations with present Operator which have not concluded by the end of the contract term.

2.03 Waiver of Renewal Statute. Public Resources Code Section 49520 states: "If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract."

Operator hereby knowingly and specifically waives any and all rights it may have as a result of Section 49520 or any subsequent statute granting the same or similar rights. Operator agrees that its rights to provide any of the services specified in this Operating Agreement shall be governed solely by the provisions of this Operating Agreement, and any of its rights to provide such services shall terminate upon termination of this Operating Agreement.

SECTION 3: CONSIDERATION AND SERVICE RATES

3.01 Operating Agreement Fee. For so long as the City and Operator maintain the Lease Agreement in full effect, the Operating Agreement fee payable to Operator pursuant to the work to be performed under this Operating Agreement shall be One and No/100 Dollars (\$1.00) per year.

3.02 Service Rates. Operator shall perform the responsibilities and duties described in this Operating Agreement at service rates ("Tip Fees") as hereinafter

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determined.

a. City Green Waste Tonnage. With respect to Tip Fees the intent of this Operating Agreement is to provide service at the lowest possible cost to the ratepayers of the City of Oceanside consistent with the terms and conditions of this Operating Agreement. The Tip Fees for City Green Waste Tonnage shall be as follows:

i. The initial Tip Fees charged by Operator for City Green Waste Tonnage shall be Twenty-Four and 64/100 Dollars (\$24.64) per ton;

ii. After the first full year of the term of the Operating Agreement, Operator may request an annual Tip Fees rate adjustment, which, if requested, shall become effective the following July 1 of each year of the term of the Operating Agreement. The annual Tip Fees rate adjustment shall be equal to One Hundred Percent (100%) of the annual percentage change in the San Diego All-Urban Consumers, Consumer Price Index for the last full calendar year prior to the annual anniversary of the Effective Date;

iii. Starting with the fifth (5th) anniversary of the Effective Date of the Operating Agreement and every five (5) years thereafter throughout the term of this Operating Agreement, the Tip Fees may be further adjusted to maintain the difference (as a percentage) between the initial Tip Fees and the initial average of similar tip fees of other comparable Green Waste facilities in the Southern California area.

For example: If the initial average tip fees in Southern California is \$30.00 per ton, and the initial tip fee in the City of Oceanside is \$24.00 per ton, the differential is \$6.00 per ton or 20% less. If the average tip fees in Southern California increases to \$35.00 per ton after five (5) years the tip fee in the City of Oceanside can be increased to \$28.00 per ton or 20% less.

b. City Personnel Green Waste Tonnage. With respect to Tip Fees for Green Waste Tonnage delivered by City personnel, the City shall be allowed to deliver to the Green Waste Facility for processing, without payment of Tip Fees, up to Two Thousand (2,000) tons of Green Waste per year. Thereafter, the City shall be required to pay the applicable City Green Waste Tonnage Tip Fees.

c. Non-City Green Waste Tonnage. The Operator, in its sole and absolute discretion, shall be permitted to establish the Tip Fees it will charge for Non-City Green Waste Tonnage.

3.03 Product Sales. The Operator, in its sole and absolute discretion, shall establish the wholesale and retail sales price of its various compost products that are produced from the Green Waste Tonnage that is accepted and processed at the Green

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Waste Facility.

a. Product Sales Offset. As consideration, notwithstanding anything herein to the contrary, Operator shall make available to the City One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) per year worth of the various compost products, provided said prices allocated to the various compost products picked up by the City are at a price equal to or less than the one hundred (100) yard bulk price for a particular product established by Operator as adjusted from time to time ("Established Price"). Thereafter, the City shall be charged a discounted rate of fifteen percent (15%) below the one hundred (100) yard bulk rate for said particular product.

i. After the first full year of the term of the Operating Agreement, Operator may request an annual rate adjustment of the One Hundred Twenty-Five Thousand and No/100 Dollar (\$125,000.00) amount, which shall become effective the following July 1 of each year of the term of the Operating Agreement. The annual adjustment shall be equal to one hundred percent (100%) of the annual percentage change in the San Diego All-Urban Consumers, Consumer Price Index for the last full calendar year prior to the annual anniversary of the Effective Date or by an amount equal to One Hundred Percent (100%) of the largest increase to any of the similar one hundred (100) yard bulk rates of other comparable Green Waste facilities in the Southern California area.

For example: If the "Forest Mulch" 100 yard bulk rate is \$30.00 per yard when the Operating Agreement started and it escalates to \$31.50 (i.e. a 5% increase) during the first year, the \$125,000.00 will escalate 5% at Operating Agreement Anniversary Date to \$131,250.00.

b. City of Oceanside Resident Compost Program. As further consideration, Operator shall administer and provide all the various compost products needed for the City's compost give-away program, available to the residents of the City of Oceanside.

3.04 Utilities. Operator agrees to order, obtain and pay for all utilities (e.g. electricity, water and sewer services), telephone and refuse collection to and for the Premises in connection with the development, occupation, operation, management and maintenance of the Premises.

3.05 Delinquent Payments. If Operator fails to pay any amount when due, Operator will pay in addition to the unpaid amount, five percent (5%) of the delinquent payment. If said amount is still unpaid at the end of fifteen (15) days, Operator shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of

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servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Operator default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Operating Agreement.

3.06 Operator Services Accounting. Operator shall be responsible for directly billing all its customers utilizing the services provided by Operator and for collecting all accounts associated with its customers. Operator shall also be responsible for collecting any related delinquent payments from its customers and shall bear all losses and expenses related to such collection.

SECTION 4: REPORTING

4.01 Monthly Reports and Statements. Operator shall keep monthly records of the total Green Waste Tonnage delivered to the Premises according to the following service categories and shall provide a copy of these reports to the City within fifteen (15) days after the end of each month during the term of the Operating Agreement:

- a. Green Waste Tonnage delivered by City's Solid Waste Contractor.
- b. Green Waste Tonnage delivered by private citizens residing in and businesses with their principal address in the City of Oceanside.
- c. Green Waste Tonnage delivered by other cities' contractor(s).
- d. Green Waste Tonnage delivered by private individuals and businesses from outside of the City of Oceanside.
- e. Product sales by category, amount sold and gross dollar amount.
- f. Compost giveaway participation by number of residents.

All reports required under this section shall contain statements which shall separate cost and revenues directly associated with each of the different service categories. Operator may, subject to approval by the City, provide Green Waste Tonnage generation estimates for those services which cannot be readily segregated from one another. Green Waste Tonnage generation estimates shall include a methodology acceptable to the City, which is used to assign Green Waste Tonnage and service levels to each category above.

4.02 Annual Financial Reports. Operator shall submit annual financial statements, including but not limited to, a current balance sheet, income and expense statement, billing statements, related consolidated statement of operations and other reports prescribed by the City. City's rights in this matter shall be limited to the Operating Agreement with the City and shall not extend to Operator's business unrelated to this Operating Agreement. All such statements and reports shall be for calendar year periods (i.e. January 1st through December 31st) or such partial year as

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applicable. Such statements and reports shall be due to City within sixty (60) days of the end of any calendar year during the term of the Operating Agreement. All reports and statements shall contain separate cost and revenues directly associated with City's Green Waste Tonnage from those associated with all Non-City Green Waste Tonnage.

4.03 Other Reports. Operator shall provide additional reports as may be reasonably requested by City in order to comply with all federal, state, regional and county solid waste, green waste and/or recyclable material reporting requirements. Further, Operator shall provide such additional reports as reasonably requested by City.

4.04 Inspection of Records. Operator shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained in accordance with normal business standards and good accounting practice. Operator agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Operator's compliance with this Operating Agreement. These records and accounts will be made available by Operator at the Premises or City's offices and will be complete and accurate showing all income and receipts from Operator's use of the Premises. Operator's failure to keep and maintain such records and make them available for inspection by City is a default of this Operating Agreement. These records include but are not limited to generally accepted business books, documents, and records. Operator shall maintain all such books, records and accounts for the term of this Operating Agreement. This provision shall survive the expiration or sooner termination of this Operating Agreement.

4.05 Auditing of Financial Information. All financial reports and statements provided by Operator may be audited and certified by an independent certified public accounting firm selected by City. City, in its sole discretion shall determine the scope of the audit. The cost of the audit shall be borne by the City unless the audit shows a discrepancy of ten percent (10%) or greater between the financial information provided by Operator and what is found by the audit. In such instance, Operator shall reimburse the City the total cost of the audit.

4.06 Confidentiality of Financial Information. Operator's financial reports and statements constitute highly confidential, proprietary information and assets of Operator and disclosure thereof to members of the public would result in unfair competitive disadvantages to Operator. City agrees to hold all such financial reports and statements provided by Operator as confidential unless required to be disclosed pursuant to statute or court order. City agrees to require any person or entity reviewing such financial reports and statements to agree, in writing, to the foregoing before having access to such information. If City is required to produce such information, City shall immediately notify Operator so that Operator shall have the opportunity to oppose such order. Operator agrees to pay for any and all expense incurred by City, including without limitation, attorney's fees of City or of the prevailing party, relating to a challenge of refusal to provide such information under this provision.

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SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. Operator shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Operator or its employees, agents, or others in connection with its use and occupation of the Green Waste Facility under the Operating Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the City, its officers, agents, or employees. Operator's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Operator at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

5.02 Hazardous Substance Indemnification. Operator shall also indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising from or attributable to any spills or other events occurring during storage, and processing activities, and/or repair, clean-up of detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous, medical or infectious waste. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act. "CERCA", 42 U.S.C. Section 9607(e) and the California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify City from liability. This Section shall survive the termination or this Operating Agreement. Operator's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Operator at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

5.03 Insurance. Operator shall take out and maintain at all times during the term of this Operating Agreement, commencing the Effective Date of the Operating Agreement, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per
Occurrence

\$2,000,000

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General Aggregate

\$4,000,000

All Risk

Insurance covering all of the Operator's improvements, trade fixtures, merchandise and personal property in the Green Waste Facility, alterations and additions made by Operator, in an amount not less than 100% of their full replacement, providing protection against perils included in the standard state form of all-risk insurance policy, plus insurance against vandalism and malicious mischief.

b. All insurance companies affording coverage to the Operator shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Operating Agreement.

c. All insurance companies affording coverage to the Operator shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Operator shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Operating Agreement.

f. Operator shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Operator to provide such a substitution and extend the policy expiration date shall be considered a default by Operator may subject the Operator to a termination of this Operating Agreement.

g. Maintenance of insurance by the Operator as specified in this Operating Agreement shall in no way be interpreted as relieving the Operator of any responsibility whatsoever under the Operating Agreement, and Operator may carry, at its own expense, such additional insurance as it deems necessary.

h. If Operator fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Operator shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall

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be paid by Operator on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Operator to take out or maintain insurance as required in this Operating Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Operating Agreement.

i. **Modification.** City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Operating Agreement by giving Operator sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Green Waste Facility. Operator also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Operating Agreement.

5.05 Accident Reports. Operator shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Green Waste Facility. This report shall contain the names and addresses of the parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Operating Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054

Attention: Real Estate Manager

To Operator:

Prior to Commencement Date

AgriService, Inc.
380 S. Melrose Drive, Suite 203

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Vista, CA 92081

After the Commencement Date

At the Green Waste Facility

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Operating Agreement. The City Manager may delegate authority in connection with this Operating Agreement to the City Manager's designee(s).

6.03 Nondiscrimination. Operator agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Operator's use of the Green Waste Facility.

6.04 Equal Opportunity. Operator shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Operator shall certify in writing to City that Operator is in compliance and throughout the term of this Operating Agreement will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Operator of the equal employment opportunity and affirmative action program provision of this Operating Agreement is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Operating Agreement and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Operating Agreement together with the Lease

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Agreement contains the entire understanding between the City and Operator concerning the use and occupation of the Green Waste Facility and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Green Waste Facility, advice from its own attorneys, and the warranties, representations, and covenants of the Operating Agreement itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Operating Agreement shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Operating shall be in San Diego County, California. The Operating Agreement does not limit any other rights or remedies available to City.

Should any provision herein be found or deemed to be invalid, the Operating Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Operating Agreement are severable.

This Operating Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Operating Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Operating Agreement. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Operating Agreement is not a waiver of any default preceding the payment. City and Operator specifically agree that the property constituting the Green Waste Facility is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to any applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Operator to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of

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the State of California relating to the unlawful detention of property, for forfeit of this Operating Agreement, and the use of the Green Waste Facility, provided City effects a recovery, Operator shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment. A major consideration for this Operating Agreement is the unique expertise of Operator in the operation and management of a green waste facility at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Operator shall not assign to, contract for and/or allow another individual or entity to operate and/or manage the green waste facility operation at the Green Waste Facility. Further, this Operating Agreement and any portion thereof shall not be assigned, transferred, or sold, nor shall any of the Operator's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Operating Agreement without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sale, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sale, or delegation.

6.11 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.12 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

6.13 Compliance with Law. In providing the services required under this Operating Agreement, Operator shall at all times, at its sole cost, comply with all applicable laws, whether now in force or as they may be enacted during the term of this Operating Agreement, of the United States, the State of California, County of San Diego, the City of Oceanside, and any other regulatory and governmental agencies having jurisdiction over any of the services provided by Operator under this Operating Agreement.

6.14 Relationship of Parties. The parties to this Operating Agreement intend that Operator shall perform the services required therein as an independent contractor engaged by the City and not as an officer, employee, agent, partner or joint venturer with City. No employee, subcontractor or agent of Operator shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Operator shall have the exclusive control over the manner and means of accepting, processing and diverting Green Waste under this Operating Agreement, and shall be solely responsible for all persons performing such services.

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SECTION 7: DEFAULTS AND REMEDIES

7.01 Defaults.

(a) **Default in Performance.** It is mutually understood and agreed that if any failure shall be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements herein, including any terms and conditions of the Lease Agreement referenced as part of the Operating Agreement (any covenant or agreement shall be construed and considered as a condition); or should Operator fail to fulfill in any manner the uses and purposes for which the Green Waste Facility is used as stated in this Operating Agreement, and such failure is not cured within five (5) days after written notice thereof if failure is in the submittal of amounts due as required in this Operating Agreement; or ten (10) days after written notice thereof if failure is in the performance of the provisions pursuant to Section 1.02 of this Operating Agreement; or thirty (30) days after written notice thereof if failure is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), any such failure shall be deemed a condition of default under this Operating Agreement.

(b) **Other Defaults.** Each of the following shall also be considered an event of default under this Operating Agreement:

(i) Any representation or disclosure made to City by Operator in connection with or as an inducement to entering into this Operating Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made.

(ii) There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Operator, including without limitation, its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Operator's ability to perform under this Operating Agreement and which cannot be released, bonded or otherwise lifted within five (5) days, excluding weekends and holidays.

(iii) Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Operator for a part of Operator's operating assets or any substantial part of Operator's property, or shall make any general assignment for the benefit of Operator's creditors, or shall fail generally to pay Operator's debts as they become due or shall take any action in furtherance of the foregoing.

(iv) Any court having jurisdiction shall enter a decree or order for relief in respect of Operator, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Operator

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shall consent or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of Operator or for any part of Operator’s operating equipment or assets, or order the winding up or liquidation of the affairs of Operator.

(v) Operator’s failure to provide reasonable assurances of performance as required by this Operating Agreement.

7.02 Remedies.

(a) **Right to Terminate.** In the event of a default, City shall have the right to immediately terminate this Operating Agreement; and in the event of such termination, Operator shall have no further rights hereunder and Operator shall thereupon forthwith cease to use the Green Waste Facility and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Green Waste Facility.

(b) **Other Remedies.** City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Operator in the amount necessary to compensate City for all the detriment proximately caused by the Operator’s failure to perform its obligations under the Operating Agreement or which in the ordinary course of things would be likely to result there from.

(c) **Possession of Property.** In the event of a termination for default by Operator, City shall have the right to take possession of and use any and all of Operator’s leasehold, equipment and other property used in the acceptance and processing of Green Waste. City shall have the right to retain the possession of an use such property until other suitable arrangements can be made for the diversion of Green Waste Tonnage generated in the City of Oceanside, which may include the award of an agreement to another entity. In the event the City utilizes Lessee’s personal property (e.g., operating equipment) in order to continue to provide services to the public, City shall pay to Lessee the value of said personal property for the period said property is used by City, limited by any payment to Operator pursuant to the applicable provisions of the property lease agreement between City and Operator.

7.03 City’s Right to Perform Services. In addition to any other legal or equitable remedies, in the event that Operator, for any reason whatsoever, fails, refuses or is unable to receive, process or dispose of Green Waste which is required by this Operating Agreement, for a period of five (5) working days, and if, as a result thereof, should unprocessed Green Waste accumulate at the Green Waste Facility, City may determine that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, without compensation to Operator upon twenty-four (24) hours prior notice to Operator, during the period of such emergency as determined by City to: (i) perform or caused to be performed, such services itself with its own personnel or third party contractor, without

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liability to Operator; and/or (ii) to take possession of any and all of Operator's equipment and other property used or useful in the acceptance, processing and diversion of Green Waste as use such to accept, process and divert Green Waste pursuant to this Operating Agreement.

(a) Notice. Notice of Operator's failure, refusal or neglect to perform its duties under this Operating Agreement may be given orally by telephone to Operator at its principal office and shall be effectively immediately. Written confirmation of such oral notification shall be sent to Operator within twenty-four (24) hours of the oral notification.

(b) Operator Cooperation. Operator further agrees that in such event:

(i) Operator will fully cooperate with City to effectuate the transfer of possession of its property to City for City's use.

(ii) Operator shall provide all necessary billing information related to the acceptance, process and diversion of Green Waste, to the City with respect to its operations at the Green Waste Facility so that the City can determine how to bill, in what amounts, and the distribution of amounts received.

(c) Disclaimer of City Action. The City's exercise of this right:

(i) Does not constitute a taking of private property for which compensation must be paid.

(ii) Will not create any contract, tort, or common count liability on the part of City to Operator.

(iii) Does not exempt Operator from the indemnity provisions of this Operating Agreement which are meant to extend to circumstances arising under this Section, provided that Operator is not required to indemnify City against claims and damages arising from the sole negligence of City, its officers, employees, agents or volunteers under this Section.

7.04 Excuse for Performance. The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of "act of God" such as floods or earthquakes, by reason of war, civil insurrection, riots and other similar catastrophic events which are beyond the control of and not the fault of the party claiming such excuse from performance hereunder, provided service shall be resumed as soon as reasonably possible after such event. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by Operator's employees or directed at Operator's is not an excuse from performance hereunder.

The partial or complete interruption or discontinuance of Operator's services hereunder shall not be deemed a default of Operator under this Operating Agreement.

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Provided, however, the existence of any excuse from performance will not affect the City's rights under Section 8.01 below and if Operator is excused from performance for a period of sixty (60) days or more, other than as the results of third party labor disputes over which Operator has no control, City shall have the right in its sole discretion, to terminate this Operating Agreement by giving thirty (30) days written notice, in which case the provisions of Section 7.02 (c) above will apply.

7.05 Right to Demand Performance Assurance. If the City reasonably believes that Operator's performance under this Operating Agreement has thereby been placed in substantial jeopardy, City may, at its option and in addition to all other remedies it may have, demand from Operator reasonable assurances of timely and proper performance of this Operating Agreement, in such form and substance as City deems in good faith is reasonably necessary under the circumstances to evidence a continued ability to perform under this Operating Agreement. If Operator fails or refuses to provide satisfactory assurances of timely and proper performance in the form and date required by City, such failure or refusal shall be an event of default.

SECTION 8: SPECIAL PROVISIONS

8.01 Early Termination Provision. At any time during the term of this Operating Agreement, the City shall have the right to terminate this Operating Agreement and the Lease Agreement for any reason whatsoever by giving Operator at least one hundred eighty (180) days prior written notice. Except as set forth in the Lease Agreement between City and Operator, City shall not be obligated or liable, in any manner whatsoever to compensate Operator for such early termination.

8.02 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Green Waste Facility which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Green Waste Facility, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Green Waste Facility which will in any way injure the real property underlying the Green Waste Facility or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Operator from bringing, keeping or using on or about the Green Waste Facility, such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects. Provided, however, open flame burning, gasoline or other fuel storage at the Green Waste Facility, is expressly prohibited without the prior written consent of the City.

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8.03 Memorandum of Lease and Operating Agreement. City and Operator agree the Operating Agreement shall not be recorded and that the parties shall execute a Memorandum of Lease and Operating Agreement to be recorded. The form of this Memorandum of Lease and Operating Agreement is shown on Exhibit "C" attached hereto and incorporated herein by this reference, and shall be recorded in the Official Records of the County of San Diego.

SECTION 9: SIGNATURES

9.01 Signature Page. The individuals executing this Operating Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Operating Agreement on behalf of the respective legal entities of the Operator and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Operating Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

OPERATOR

AGRISERVICE, INC.
a California corporation

Date _____

By: _____
Name: _____
Title: _____

EXHIBIT "C"

Date _____

By: _____

Name: _____

Title: _____

NOTARY ACKNOWLEDGMENTS OF OPERATOR'S SIGNATURE(S) MUST BE ATTACHED

Agri Service, Inc. and City of Oceanside Lease Agreement
EXHIBIT E
Schedule of Lessee Improvements

<u>Leasehold Improvements</u>	<u>Estimated Cost **</u>
AC cover system, automated controls, aeration equipment, CompDog above-grade pipe-less aeration floor system	1,160,000.00
Construction Estimates Asphalt aeration floor, below-grade aeration plenum	1,000,000.00
Scale House/Office Building, Assume \$125/SQFT	187,500.00
Maintenance Shed/Storage	100,000.00
Landscaping	25,000.00
Fuel Tanks and Storage	2,500.00
New Scale/Software/Computer System	40,000.00
Miscellaneous desks, file cabinets, furniture	75,000.00
Contingency	259,000.00
Total Leasehold Improvements	2,849,000.00

** NOTE: Lessee shall submit a final cost for the Leasehold Improvements all work is completed. Exhibit E will be modified when final costs are submitted by Agri Service, Inc.

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____, 20__ is executed between the CITY OF OCEANSIDE, a municipal corporation ("CITY") and AGRISERVICE, INC., a California non-profit corporation ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE have entered into that certain Property Lease Agreement ("Lease") dated November 18, 2009 for the lease of real property located at El Corazon, in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Lease, the parties are to execute a memorandum to confirm the commencement date of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

1. The CITY and LESSEE agree that the commencement date of the Lease is _____, ____ and the termination date is _____, ____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"

City of Oceanside
a municipal corporation

By: _____

Title: Real Estate Manager

"LESSEE"

Agriservice, Inc.
a California corporation

By: _____

Name: _____

Title: _____

Agri Service, Inc. and City of Oceanside Lease Agreement
EXHIBIT G
Schedule of Values for Equipment and Lessee Improvements

<u>ID #</u>	<u>Equipment Description</u>	<u>Value</u>	<u>Date Purchased</u>	<u>Estimated Useful Life</u>
101	Powerscreen	109,366.25	May-97	7
105	Screen 737	197,262.50	Sep-01	7
106	Scat	279,900.00	Nov-01	7
112	Verneer Grinder	476,226.75	Dec-08	5
208	CAT 966G Loader	280,185.00	Oct-02	7
209	CAT 962H Wheel Loader	267,471.00	Oct-06	5
210	CAT 950H Loader	233,710.00	Dec-06	5
301	Water Truck-NON OP	16,236.00	Mar-99	5
303	2001 Rolloff	23,005.00	Dec-00	5
305	2000 Service Truck	7,112.00	Mar-01	5
308	2003 Rolloff	25,194.00	Jan-03	5
309	2000 Water Truck-NON OP	42,023.00	Jul-04	5
311	2007 Silverado	51,055.60	Aug-06	5
313	2008 Service Truck	33,654.00	Oct-08	5
TBD	Cover Winder, \$50k-\$200k	200,000.00		
TBD	Universal Mixer, \$60k-150k	150,000.00		
Total Equipment Value		2,392,401.10		

Estimated Cost **

Leasehold Improvements

AC cover system, automated controls, aeration equipment, CompDog above-grade pipe-less aeration floor system	1,160,000.00
Construction Estimates Asphalt aeration floor, below-grade aeration plenum	1,000,000.00
Scale House/Office Building, Assume \$125/SQFT	187,500.00
Maintenance Shed/Storage	100,000.00
Landscaping	25,000.00
Fuel Tanks and Storage	2,500.00
New Scale/Software/Computer System	40,000.00
Miscellaneous desks, file cabinets, furniture	75,000.00
Contingency	259,000.00
Total Leasehold Improvements	2,849,000.00

** NOTE: Lessee shall submit a final cost for the Leasehold Improvements all work is completed. Exhibit E will be modified when final costs are submitted by Agri Service, Inc.

Recording Requested by:
When Recorded Return to:

CITY CLERK, CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

_____(For Recorder's Use)

MEMORANDUM OF LEASE AND OPERATING AGREEMENT

THIS MEMORANDUM OF LEASE AND OPERATING AGREEMENT ("Memorandum") is made as of _____, 20__, by and between THE CITY OF OCEANSIDE, a municipal corporation ("CITY") and AGRISERVICE, INC., a California corporation ("AGRISERVICE").

CITY and AGRISERVICE have entered into that certain Property Lease Agreement ("Lease") and that certain Operating Agreement ("Operating Agreement") dated as of November 18, 2009, pursuant to which CITY has leased to AGRISERVICE, a portion of that certain property located at El Corazon in the City of Oceanside, County of San Diego, State of California and as more particularly described in Exhibit "A", which is attached and incorporated by this reference in order for AGRISERVICE to perform services set forth in the Operating Agreement, subject to the terms of the Lease and the Operating Agreement. The purpose of this Memorandum is to give notice of the existence of the Lease and Operating Agreement and the provisions thereof. To the extent that any provision of this Memorandum conflicts with any provision of the Lease and/or Operating Agreement, the Lease and/or Operating Agreement shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"CITY"

CITY OF OCEANSIDE,
a municipal corporation

By: _____
Name: _____
Title: _____

"AGRISERVICE"

AGRISERVICE, INC.,
a California corporation

By: _____
Name: _____
Title: _____