

STAFF REPORT*CITY OF OCEANSIDE*

DATE: November 3, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF THE AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT RENEWAL FOR THE RECLAMATION OF A PORTION OF EL CORAZON**

SYNOPSIS

Staff recommends that the City Council approve the amended and restated Professional Service Agreement with JMM Diversified, Inc. dba Moody's Excavating of Bonsall, California, to continue to operate a clean-fill material processing site at El Corazon for a fifteen-year term in support of the El Corazon reclamation plan and authorization for the City Manager to execute the agreement.

BACKGROUND

The City is responsible for the implementation of the State-required reclamation plan to restore the El Corazon site to a safe and stable condition. One of the specific tasks of the reclamation plan is the elimination of the approximately 51-acre mine tailings pond area in the northeast area of the El Corazon site by filling it with environmentally safe material.

In November 1997 the Council approved an agreement with Moody's to furnish all labor, equipment, materials, tools, services and special skills required to implement that portion of the reclamation plan concerning the 51-acre mine tailings pond. Moody's operation of the clean-fill facility at El Corazon ("El Corazon Facility") has been an unqualified success. Approximately half of the required 1,500,000 cubic yards of material necessary to achieve the plan's goal of filling and capping the impoundment area has been placed in the pond area. This diverted material delivered to the El Corazon Facility accounts for over 40 percent of the State of California's mandated AB 939 waste reduction goals applicable to the City over the last 12 years. Additionally, each year the City dumps about 100,000 cubic yards of acceptable material at the site and uses about 50,000 cubic yards of products produced from the diverted material for various projects throughout the City.

Implementation of the El Corazon Specific Plan ("Specific Plan") will necessitate the closure of the El Corazon Facility at some point. In its current condition, the tailings pond is not suitable for any recreational or building uses. At the current rate of fill the pond will be filled and capped in 12-15 years.

ANALYSIS

The term of the amended and restated Professional Service Agreement with Moody's is fifteen years ("Professional Services Agreement"). Moody's will continue to allow the public to dispose of environmentally acceptable fill material for a disposal fee and will perform extensive earth-moving operations in the area surrounding the pond to achieve the plan's goal of filling and capping the pond. Acceptable material is defined as concrete with rebar cut flush, asphalt, rock, clean fill dirt and other environmentally acceptable material. Unacceptable material is any hazardous waste, metal, exposed rebar, organic material and municipal solid waste. Moody's will place small-sized material directly into the fill area; larger material is crushed into alternate products such as Class II or miscellaneous base as defined in the *Standard Specifications for Public Works Construction* (Greenbook.) and may be sold or placed as fill material. Moody's is responsible for all cost associated with the operation of the El Corazon Facility and the cost to recover the site in accordance with the State Mining and Geology Board-approved U. S. Silica (El Corazon) reclamation plan.

Moody's will pay the City fifteen percent of all Disposal Fee Revenue generated and received from the development, operation, management and maintenance of the El Corazon Facility plus five percent of all Product Gross Revenue in excess of \$125,000 annually from the sale of product generated at the El Corazon Facility using the incoming diverted material. The City will also be allowed to deliver to the El Corazon Facility for processing, without payment of fees, up to two thousand cubic yards of City-generated acceptable material per year. City will also receive up to \$125,000 per year-worth of the various products produced at the El Corazon Facility, which can be utilized for other City properties and projects.

Additionally, Moody's will provide up to \$150,000 per year of earthwork in lieu of rental payments or direct charge, at the City's direction, aboard the portions of El Corazon owned and controlled by the City. The cost of the earthwork is set at 95¢ per cubic yard for unclassified excavation; \$1.10 per cubic yard for overexcavation and recompaction; 50¢ per cubic yard for material loading; and 10¢ per square foot clearing and grubbing.

Moody's is the single largest contributor to the City's waste diversion rate currently accounting for 40 percent of the total. In the event the El Corazon property is developed pursuant to the Specific Plan prior to the expiration of the fifteen-year term, the City has the right to relocate the clean-fill material processing site or exercise an early termination clause in the Professional Services Agreement. In order to exercise its early termination right, the City will be required to pay Moody's the depreciated value of the agreed-upon site improvements and heavy equipment over the remaining term of the Professional Services Agreement. The initial value of the improvements and heavy equipment is approximately \$1,500,000.

FISCAL IMPACT

The rent to be paid to the City during the first year of the Professional Services Agreement is estimated to be approximately \$260,000 and will be deposited to the El Corazon Reclamation account 912880500501.4351.0012. Said estimated amount is based upon receiving fifteen percent of all Disposal Fee Revenue plus five percent of all Product Gross Revenue in excess of \$125,000 from the sale of product generated at the El Corazon Facility. The indirect consideration to the City is the free dumping of up to two thousand cubic yards of City-generated acceptable material per year, receiving up to \$125,000 per year-worth of the various products produced at the El Corazon Facility, and the earthwork cost savings. The total indirect consideration is valued at over \$200,000 per year.

Over the fifteen-year term, the City could receive in excess of \$3,900,000 in rent payments and additional benefits worth over \$3,000,000 for a total compensation of over \$6,900,000.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Although the El Corazon Oversight Committee has not specifically reviewed this document they have consistently endorsed the continued operation of the clean-fill material processing site at El Corazon.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

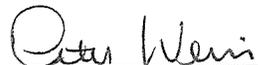
Staff recommends that the City Council approve the amended and restated Professional Service Agreement with JMM Diversified, Inc. dba Moody's Excavating of Bonsall, California, to continue to operate a clean-fill material processing site at El Corazon for a fifteen-year term in support of the El Corazon reclamation plan and authorization for the City Manager to execute the agreement.

PREPARED BY:



Gary P. Gurley
General Services Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

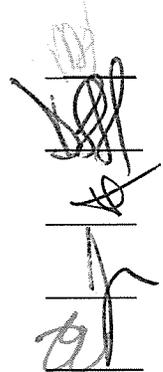
Michelle Skaggs Lawrence, Deputy City Manager

Donald L. Hadley, Deputy City Manager

Teri Ferro, Financial Services Director

Joseph Arranaga, Deputy Public Works Director

Douglas E. Eddow, Real Estate Manager



**AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF OCEANSIDE
AND
JMM DIVERSIFIED, INC.
DBA MOODY'S EXCAVATING
FOR SERVICES TO BE PROVIDED
AT
EL CORAZON
DATED
NOVEMBER 3, 2010**

**AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT
FOR
ASPHALT AND CONCRETE RECYCLING AND DISPOSAL SITE
AT EL CORAZON
OCEANSIDE, CA**

This AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT, herein after called "Service Agreement", dated as of November 3, 2010 for identification purposes is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "City", and JMM Diversified, Inc. dba Moody's Excavating, 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 which is a former silica sand mine commonly known as "El Corazon" located in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, City as owner of "El Corazon" is responsible for implementing the State of California Department of Conservation, Mine Reclamation Plan for "El Corazon"; and

WHEREAS, Operator is a duly authorized corporation in the State of California in the business of developing, operating, managing and maintaining asphalt and concrete recycling and disposal sites and is qualified to accept, process and divert asphalt and concrete as necessary to support the City's reclamation plan; and

WHEREAS, City is desirous of maintaining an asphalt and concrete recycling and disposal site within the City of Oceanside; and

WHEREAS, City and Operator entered into a Professional Services Agreement on June 15, 2005 to enable Operator to develop, operate, manage and maintain an asphalt and concrete recycling and disposal site thereon together with related programs and activities; and

WHEREAS, City and Operator are agreeable to numerous amendments to the approved Professional Services Agreement which are easier to understand and administer through an amended and restated Professional Services Agreement; and

WHEREAS, City and Operator are mutually committed to act in good faith to see that an asphalt and concrete recycling and disposal site is developed, operated, managed and maintained in accordance with the terms and conditions as set forth herein.

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FOR
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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: SERVICES TO BE PROVIDED

1.01 Recycling and Disposal Site. The primary intent of this Service Agreement is to cause the implementation of the City of Oceanside's El Corazon reclamation plan for the 51.11 acre impoundment area site at El Corazon that constitutes the Recycling and Disposal Site; which is more particularly described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part of this Service Agreement. Said real property is hereinafter called the "Recycling and Disposal Site."

1.02 Use of Site and Scope of Work. The Operator shall allow the public to dispose of acceptable environmentally suitable fill material at the Recycling and Disposal Site for a disposal fee. Operator shall process on site any and all materials Operator accepts into usable alternate products as defined by the latest edition of *Standard Specifications for Public Works Construction*, including all supplements, as written and promulgated by the Joint Cooperative Committee of the Southern California Chapter of the American Public Works Association and the Southern California District of the Associated General Contractors of California (Greenbook). Operator shall furnish all labor, equipment, materials, tools, services and special skills required to perform the scope of work.

1.03 Acceptable Material. Fill material accepted at the Recycling and Disposal Site includes concrete with rebar cut flush, asphalt, rock, clean fill dirt and other environmentally acceptable material suitable for processing into alternate products as defined in the Greenbook.

1.04 Unacceptable Material. Hazardous waste, metal, exposed rebar, organic material, municipal solid waste, and any other material not suitable for processing into untreated base material as defined in the Greenbook shall not be accepted at the Recycling and Disposal Site.

1.05 Additional Services. Upon City's request, Operator agrees to assist City in identifying additional materials suitable for processing or 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 Service 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.

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1.06 Operating Conditions.

a. Noise. All operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and local noise level regulations. Various departments within the County of San Diego and the State of California may conduct random checks of noise emission levels to ensure such compliance. Operator will promptly resolve any complaints of noise to the satisfaction of the monitoring agency.

b. Clean-Up. Operator shall be responsible for cleaning any material spills at the El Corazon Site that are caused by delivery of materials or the removal of products. 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.

c. 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 all 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 Operator's sole responsibility.

1.07 Identification and Disposal of Unacceptable Material.

a. Unacceptable Material. If Operator determines that material delivered to the site is Unacceptable Material as defined in §1.04 above or contains medical or infectious waste, or other undefined material that may present a hazard to Operator or its employees, Operator shall have the right to refuse such loads.

b. Unacceptable Material Disposal Responsibility. If Unacceptable Material is inadvertently accepted by Operator and the delivering party cannot be identified or fails to remove the Unacceptable Material 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 from 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.

1.08 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

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required by this Service Agreement. Operator agrees to maintain each piece of equipment used in the performance of this Service 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 Service 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.

1.09 Related Discretionary Actions. The development and operation of the Recycling and Disposal Site is to support the California Department of Conservation, Mine Reclamation Plan for "El Corazon". As of the date of this Service Agreement the City has completed all the discretionary actions necessary to operate the Recycling and Disposal Site as part of the El Corazon Reclamation Plan. However, as a condition to this Service Agreement and prior to the commencement of the services as set forth in this Service Agreement, Operator shall be required to obtain a City business license and shall possess all other licenses and permits required for the performance of the work required by this Service Agreement.

By entering into this Service 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 Recycling and Disposal Site or as to the services to be performed under this Service Agreement. Discretionary action includes, but is not limited to County Health permit, clean air ordinances, equipment emission and operating or any other governmental agency approvals which may be required for the operation of the Recycling and Disposal Site.

1.10 Inspection by City. City shall have the right to observe and review Operator's services and to enter the Recycling and Disposal Site to inspect operations, without notice, during normal business hours.

1.11 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 Service 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

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has been affected. The list of the initially acquired capital items and the schedule of values is set forth on Exhibit "C" 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: RECYCLING AND DISPOSAL SITE OPERATIONS

2.01 City Improvement Obligations. City shall deliver the Recycling and Disposal Site to Operator in an "as is, where is" condition without any representation or warranties as to the suitability of the Recycling and Disposal Site for Operator's intended use. Operator hereby accepts the Recycling and Disposal Site in said "as is, where is" condition and shall make any and all repairs to the Recycling and Disposal Site and construct improvements thereto necessary for Operator to occupy the Recycling and Disposal Site for its intended use.

2.02 Operator Recycling and Disposal Site Improvement Obligations. By agreeing to this Service Agreement Operator declares its understanding of the work associated with the City of Oceanside's El Corazon reclamation plan for the 51.11-acre impoundment area which requires the placement of fill material, base type material, earthen fill from the area surrounding the impoundment area and extensive earth sculpting to achieve the plan's goal of filling and capping the impoundment area to create a safe and stable area more particularly described and depicted in Exhibit "D" attached hereto and by this reference made a part of this Service Agreement.

Due to the nature of the Operator Recycling and Disposal Site Improvement Obligations, Service Agreement anticipates Operator shall perform all of the work required to be performed by Operator pursuant to this section (with the exception of placement of fill material and base type material, which shall be ongoing during the term of this Service Agreement) during the fifteenth year of the Service Agreement. Should City exercise any early termination provisions found elsewhere in this Service Agreement, Operator shall be afforded one year from written notification to perform Operator Recycling and Disposal Site Improvement Obligations. Failure by City to afford Operator one-year to perform all of the work required to be performed by Operator pursuant to this section shall relieve Operator of completing Operator Recycling and Disposal Site Improvement Obligations. Failure by Operator to perform the work as described and/or as scheduled shall be deemed a default under this Service Agreement.

2.03 Reservation of Rights. City shall not unreasonably or substantially interfere with Operator's use of the Recycling and Disposal Site while Operator is in possession of the Recycling and Disposal Site; however, the City specifically retains the following rights:

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a. Property Rights. City hereby reserves all rights, title and interest in and to the Recycling and Disposal Site, including any and all subsurface natural gas, oil, minerals and water on or within the Recycling and Disposal Site.

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 Recycling and Disposal Site for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Recycling and Disposal Site at any time or for any reason, including for the purpose of performing maintenance, inspections, repairs or improvements, developing municipal resources and services.

SECTION 3: TERM

3.01 Commencement. The term of this Service Agreement shall be for a period of approximately fifteen (15) years. The term shall commence upon the date Council approves the Service Agreement. This Service Agreement shall expire at the end of the time period provided herein (“Service Agreement Expiration Date”) unless sooner terminated pursuant to the terms of the Operating Agreement and/or Service Agreement.

3.02 Service Agreement Expiration Date. This Service Agreement shall expire at the end of the last calendar day of the 180th anniversary month of Council approval of the Service Agreement.

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

a. Unamortized Cost Reimbursement. In the event of an early termination of the Service Agreement by City, City shall pay to Operator, the unamortized portion of the cost of the Operator Improvements as determined by the schedule of values allocated to the Operator Improvements as shown on Exhibit “C”. The amortization of the cost of the Operator Improvements and heavy equipment shall be on a straight line depreciation basis as determined by Generally Accepted Accounting Principles. Said payment of the unamortized cost of Operator Improvements shall be based on the termination date of the Service Agreement as set forth in the early termination notice as described above through the original expiration date of the Service Agreement.

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3.04 Holdover. Any use or occupancy of the Recycling and Disposal Site by Operator after expiration or termination shall not be considered as a renewal or extension of this Service Agreement. All other terms and conditions of this Service Agreement shall continue in full force and effect in the event of any holding over by Operator.

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

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

3.07 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Service Agreement.

SECTION 4: CONSIDERATION AND SERVICE RATES

4.01 Service Agreement Fees. Service Agreement fees payable to City pursuant to the work to be performed under this Service Agreement shall be defined as follows:

4.02 Fees.

a. Percentage Fee Payment. The monthly Percentage Fee Payment shall be the total applicable percentages of the gross revenue (as defined in Subsection 4.02b and 4.02c), for each month of the Service Agreement year. The applicable percentages are as follows:

(i) An amount equal to Fifteen percent (15%) of all Disposal Fee Revenues (as hereinafter defined); and

(ii) An amount equal to five percent (5%) of all Product Gross Revenues (as hereinafter defined) in excess of One Hundred Twenty-five Thousand and No/100 Dollars (\$125,000.00) annually.

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The monthly Percentage Fee Payment 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 Service Agreement as required in Section 4.03.

b. Disposal Fee Revenues. The Operator, in its sole and absolute discretion, shall be permitted to establish the disposal fee to all persons dumping material at the site. Disposal fee schedules shall be based on type of delivery vehicle, i.e. 5 ton dump, end dump, standard pick-up etc.

(i) Disposal Fee Revenues shall mean any and all revenue and income of any nature or other thing of value received for the disposal of acceptable material at the Recycling and Disposal Site or for any other services in connection with the collection thereof at the Recycling and Disposal Site or in connection with the use of Recycling and Disposal Site, including revenue and income typically referred to as "disposal fees". In no event shall any of the following be included in "Disposal Fee Revenues": (1) any sales taxes, excise taxes, gross receipt taxes or similar charges; (2) proceeds from any refinancing; (3) any federal, state or municipal taxes collected from Operator's customers regardless of whether the amount thereof is stated to the customer as a separate charge and paid periodically by Operator to a governmental agency accompanied by a tax return or statement as required by law.

c. Product Gross Revenues. The Operator, in its sole and absolute discretion, shall establish the wholesale and retail sales price of its various products that are produced from the acceptable material that is accepted and processed at the site. The principal address on all product sales for tax purposes must be in the City of Oceanside.

(i) Product Gross Revenues shall mean any and all revenue or income of any nature or other thing of value received by Operator from the sale of goods or materials and the services related thereto on or from the Recycling and Disposal Site that are created and/or produced by Operator from the material disposed of at the Recycling and Disposal Site or any such other similar revenue and income received by Operator as a result of use and occupancy of the Recycling and Disposal Site. 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 Operator 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 Operator in computing Product Gross Revenue. Product Gross Revenue shall not include refunds for goods or materials returned for

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resale on the Recycling and Disposal Site or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Operator.

(ii) In addition, Product Gross Revenues shall not include goods or materials that are created and/or produced by Operator from the material disposed of at the Recycling and Disposal Site that are removed from the Recycling and Disposal Site, which do not generate any revenue, income, or anything of value to the Operator. In the event a sub-lessee (subject to approval by City as set forth in Section 8.10) utilizes the Recycling and Disposal Site to sell a product that is created and/or produced from the acceptable material disposed of at the Recycling and Disposal Site, the definition of Product Gross Revenues shall apply only to the revenue and income that exceeds the material product or material purchased from Operator, provided that Operator has previously accounted for said material product or material purchased as commercial gross revenues.

d. **City Tonnage.** With respect to Disposal Fees for tonnage delivered by City personnel, the City shall be allowed to deliver to the Recycling and Disposal Site for processing, without payment of Disposal Fees, up to Two Thousand (2,000) tons of acceptable material as defined in §1.03 per year. Thereafter, the City shall be charged a discounted rate of fifteen percent (15%) below the otherwise applicable disposal fees.

e. **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 products, provided said prices allocated to the various products picked up by the City are at a price equal to or less than the one hundred (100) cubic yard price for that 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 Established Price for said particular product.

(i) After the first full year of the term of the Service Agreement, Operator/City 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 Service 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) cubic yard rates of other comparable asphalt and concrete recycling facilities in the Southern California area. For example: If "Class II aggregate" 100 cubic yard rate is \$10.00 per cubic yard when the Service Agreement starts and it escalates to \$10.50 (i.e. a 5% increase) during the first year, the \$125,000.00 will escalate 5% at Service Agreement Anniversary Date to \$131,250.00.

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f. **Earthwork in lieu of Fees.** The City, in its sole and absolute discretion, may require Operator to provide earthwork aboard the portions of El Corazon owned and controlled by the City during the term of this Service Agreement as more particularly described in Earthwork Specifications, attached as Exhibit "E" and incorporated herein by this reference.

(i) Operator may be required to provide up to \$150,000 of earthwork per year for the first three (3) years of the Service Agreement and adjusted thereafter per §4.02g. Operator in its sole and absolute discretion shall determine if Operator or Operator subcontractor actually does the work. The City, in its sole and absolute discretion shall determine if payment shall be in the form of a credit against fees or shall be paid by City to Operator as the work is completed. Yearly dollar amounts expire on the Service Agreement anniversary date each year; there is no dollar amount carry over.

(ii) Operator shall provide earthwork for the following quantity prices for the first three (3) years of the Service Agreement and adjusted thereafter per §4.02g.

- | | |
|--|-------------------------------|
| 1. Unclassified Excavation: | 95¢ per cubic yard. |
| 2. Overexcavation and Recompaction: | \$1.10 per cubic yard. |
| 3. Loading: | 50¢ per cubic yard. |
| 3. Clearing & Grubbing: | 10¢ per square foot. |

(iii) After the third full year of the term of the Service Agreement and every three (3) years thereafter, Operator/City may request a rate adjustment of the total dollar amount of services and quantity prices (rate adjustments herein referred to as quantity prices) which shall become effective the following July 1 of the adjustment year. 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.

Adjustment Index. The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by City and Operator mutual agreement. If the parties cannot agree within **60 days** after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Service Agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection.

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Regardless of the index publication dates, the quantity prices adjustment dates shall be on the dates defined by Subsection 4.02f(iii) above. Until the quantity prices adjustment can be actually calculated in accordance with this Service Agreement, Operator shall continue to receive credits for work done at the existing quantity prices. When the adjustment is calculated, the balance of work done due at the adjusted rate, from the quantity prices adjustment date through the date of calculation, will be credited to Operator within **30 days** of written notice by the City. In no event shall the adjusted quantity prices as established by the CPI be less than the quantity prices in existence immediately prior to the adjustment date.

g. Minimum Quantity Prices Adjustment Computation. The annual minimum quantity prices adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

Initial Quantity Prices: The minimum quantity prices at the commencement of this Service Agreement as listed in Subsection 4.02.f above.

Existing Quantity Prices: The existing quantity prices shall be the quantity prices in effect on the date preceding the quantity prices adjustment date.

Percent change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12 month** period covered by the most recent publication of the Index.

Quantity Prices Adjustment Formulas:

First Adjustment: Initial quantity price + (Initial quantity price x the percent change in the CPI) = New quantity price.

For example: $90¢ + (90¢ \times 4\%) = 93.6¢$ which rounds to $94¢$ quantity price.
 $\$150,000 + (\$150,000 \times 4\%) = \$156,000$

Subsequent Adjustments: Existing quantity price + (Initial quantity price x the percent change in the CPI) = New quantity price.

For example: $93.6¢ + (90¢ \times 6\%) = 99¢$
 $\$156,000 + (\$150,000 \times 6\%) = \$165,000$

4.03 Time and Place of Payment. Percentage fees (as hereinafter defined) payments shall be due to City and payable by Operator in arrears on or before the tenth (10th) day of the month following the month for which the percentage fees is calculated. In addition Operator shall provide City with a percentage fees statement showing how

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the percentage fees were calculated. Also, Operator 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 Service Agreement.

Checks should be made payable to the City of Oceanside and delivered to the City at the address set forth in Section 8 of this Service Agreement. The place and time of payment may be changed at any time by City upon thirty (30) days written notice to Operator. Operator assumes all risk of loss and responsibility for late payment charges. Operator agrees to pay City an additional Twenty-Five and No/100 Dollars (\$25.00) for any returned check that is not honored by the financial institution from which the check is drawn.

4.04 Material Accounting. Material entering the site shall be accounted for by type of material and type of delivery vehicle, i.e. asphalt rubble 5 ton dump, concrete pieces end dump, rock standard pick-up etc. As material is processed, it shall be accounted for by the appropriate unit of measure for the type of material (i.e. ton, cubic yards, etc.)

4.05 Material Ownership. As a means to off-set the cost of processing all acceptable material, one half of all material processed, as determined by the appropriate unit of measure for the type of material (i.e. ton, cubic yards, etc.) shall belong to the Operator. The remaining one half of all material processed, all "overs" and any other acceptable material accepted but not processed shall belong to the City. Yearly, in writing, City, in its sole and absolute discretion, shall establish the percentage of City owned material Operator may include in product sales. Operator shall place all remaining City material in the fill area.

4.06 Product Production. The Operator shall process on site any and all materials received into usable alternate products as defined by the Greenbook. The type and amount of each usable alternate product produced is at the sole and absolute discretion of Operator.

4.07 Utilities. CONTRACTOR agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the site.

4.08 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

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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 Service Agreement.

4.09 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. All billing for services and product sales principal address for tax purposes must be in the City of Oceanside. 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 5: REPORTING

5.01 Monthly Operating Reports and Statements. Operator shall keep monthly operating records of the total tonnage delivered to the Recycling and Disposal Site, processed and awaiting process. A monthly operating report detailing the amount of material accepted, by vehicle type and the amount of material processed by the appropriate unit of measure and the amount of material waiting processing by the appropriate unit of measure shall be provided.

Additionally Operator shall keep monthly records of the total tonnage delivered to the Recycling and Disposal Site, according to the following service categories:

- a. Tonnage delivered by private citizens residing in and businesses with their principal address in the City of Oceanside.
- b. Tonnage delivered by other cities' contractor(s).
- c. Tonnage delivered by private individuals and businesses from outside of the City of Oceanside.

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 tonnage generation estimates for those services which cannot be readily segregated from one another. Tonnage generation estimates shall include a methodology acceptable to the City, which is used to assign tonnage and service levels to each category above.

A cumulative yearly total shall be included in each report by reporting category. Reports shall be provided to the City within fifteen (15) days after the end of each month during the term of the Service Agreement.

5.02 Gross Revenue Related Reports. The Disposal Fee Revenue and the Product Gross Revenue shall be calculated at the end of each month of the term of this Service Agreement. The monthly Disposal Fee Revenue and Product Gross Revenue report ("Gross Revenue Reports") shall be delivered to the City monthly in arrears not

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

5.03 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 Service Agreement with the City and shall not extend to Operator's business unrelated to this Service 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 Service Agreement.

5.04 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, construction debris and/or recyclable material reporting requirements. Further, Operator shall provide such additional reports as reasonably requested by City.

5.05 Inspection of Records. Operator shall maintain accurate financial books and records for the operation of its business provided at, or from, the Recycling and Disposal Site. 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 Service Agreement. These records and accounts will be made available by Operator at the Recycling and Disposal Site or City's offices and will be complete and accurate showing all income and receipts from Operator's use of the Recycling and Disposal Site. Operator's failure to keep and maintain such records and make them available for inspection by City is a default of this Service 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 Service Agreement. This provision shall survive the expiration or sooner termination of this Service Agreement.

5.06 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.

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5.07 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 6: INSURANCE RISKS/SECURITY

6.01 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 Recycling and Disposal Site under the Service Agreement, except only for those claims arising from the sole negligence or sole willful misconduct 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.

6.02 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. "CERCLA", 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 of this Service 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,

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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.

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

- a. Operator 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 at the Recycling and Disposal Site, 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 Service 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 Service 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

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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 Service Agreement.

g. Maintenance of insurance by the Operator as specified in this Service Agreement shall in no way be interpreted as relieving the Operator of any responsibility whatsoever under the Service 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 Service Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Service Agreement.

i. Modification. City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Service 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 Recycling and Disposal Site. Operator also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Service Agreement.

6.04 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 Recycling and Disposal Site. 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 7: IMPROVEMENTS/ALTERATIONS/REPAIRS

7.01 Acceptance of Recycling and Disposal Site. Operator represents and warrants that it has independently inspected the Recycling and Disposal Site and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Recycling and Disposal Site, including but not limited to an environmental assessment and/or geotechnical analysis of the Recycling and Disposal Site. Operator acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Service Agreement. Operator further acknowledges

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that Recycling and Disposal Site are in the condition called for by this Service Agreement and that Operator does not hold City responsible for any defects in the Recycling and Disposal Site.

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

7.03 Maintenance. As part of the consideration for the Service Agreement, Operator agrees to assume full responsibility and cost for the operation, maintenance and repair of the Recycling and Disposal Site, including without limitation, the access road to the Recycling and Disposal Site, the City Improvements and the Operator Improvements throughout the term of this Service Agreement and without expense to City. Provided, however, Operator's responsibility and cost of said access road to the Recycling and Disposal Site (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 Operator's prorata share thereof, as determined by City, in its reasonable discretion. Operator will perform all maintenance, repairs and replacements necessary to maintain and preserve the Recycling and Disposal Site in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Operator further agrees to provide approved containers for trash and garbage and to keep the Recycling and Disposal Site free and clear of rubbish and litter, or any other fire hazards. Operator 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 Recycling and Disposal Site 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 Recycling and Disposal Site. In the event that City finds that the Recycling and

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Disposal Site are not in a decent, safe, healthy, and sanitary condition, Operator must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from City. In the event Operator fails to perform such work, City shall have the right, upon written notice to Operator, to have any necessary maintenance work done at the expense of Operator, and Operator shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Recycling and Disposal Site in a decent, safe, healthy, and sanitary condition. Operator shall make payment no later than ten (10) days after City's written demand therefor. 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 Recycling and Disposal Site. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Service Agreement.

7.04 Improvements/Alterations. No permanent improvements, structures, or installations shall be constructed on the Recycling and Disposal Site, and the Recycling and Disposal Site may not be altered by Operator without prior written approval by the City Manager. Further, Operator agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Recycling and Disposal Site without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Operator of any obligation under this Service Agreement to maintain the Recycling and Disposal Site 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 Service Agreement to make or assume any expense for any improvements or alterations.

7.05 Liens. Operator 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 Recycling and Disposal Site.

7.06 Signs. Operator 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 Recycling and Disposal Site, Operator 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 Operator's cost.

7.07 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Recycling and Disposal Site constructed on the Recycling and Disposal Site by Operator, excepting such fixtures which may be removed without causing damage to the Recycling and Disposal Site, shall at Service Agreement expiration or

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termination be deemed to be part of the Recycling and Disposal Site and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Service Agreement.

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

c. Operator owned machines, appliances, equipment (other than trade fixtures), and other items of personal property, except as described as Operator Improvements shall be removed by Operator by the date of the expiration or termination of this Service Agreement. At City's election, any said items which Operator 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 Operator's expense.

d. If any removal of such personal property by Operator results in damage to the remaining improvements on the Recycling and Disposal Site, Operator shall repair all such damage.

7.08 Eminent Domain. If all or part of the Recycling and Disposal Site 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 Operator (or beneficiary or mortgagee) will be as follows:

a. Total Taking. In the event the entire Recycling and Disposal Site are taken, this Service Agreement 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 Operator, the remaining part of the Recycling and Disposal Site is unsuitable for the Service Agreement operation, this Service Agreement 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 Operator, the remainder of the Recycling and Disposal Site is suitable for continued Service Agreement operation, this Service Agreement 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 Recycling and Disposal Site taken.

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

d. Repayment of Operator Improvements. In the event of a total taking and the City is not awarded any monies by the condemning authority in connection therewith, Operator shall be responsible for the unamortized portion cost of the Operator Improvements 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 Operator Improvements shall be allocated according to the remainder of the Recycling and Disposal Site and Operator shall be responsible for the unamortized portion of the cost of the Operator Improvements applicable to the portion of the Recycling and Disposal Site so taken.

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

f. No Inverse Condemnation. The exercise of any City right under this Service Agreement 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 Operator's operations.

7.09 Damage or Destruction to Improvements.

a. City Reconstruction and Termination Right. If the City Improvements upon the Recycling and Disposal Site 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 Service Agreement or repair and reconstruct the Recycling and Disposal Site to substantially the same condition as the Recycling and Disposal Site were originally delivered to Operator. City shall not be liable for interruption to Operator's operation or for damage to or for the repair or reconstruction of any items which Operator is required to insure.

b. Operator Reconstruction. If any item which Operator is required to insure pursuant to the terms of this Service Agreement is damaged or destroyed by fire or other risks to be so insured, Operator (subject to being able to obtain all necessary permits and approvals) shall, within thirty (30) days after City has repaired or

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reconstructed the Recycling and Disposal Site that City is obligated to repair or reconstruct pursuant Subsection 5.11(a) above, Operator 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 8: GENERAL PROVISIONS

8.01 Notices. All notices, demands, requests, consents or other communications which this Service 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:

Moody's
PO Box 969
Bonsall, CA 92003

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.

8.02 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 Service Agreement. The City Manager may delegate authority in connection with this Service Agreement to the City Manager's designee(s).

8.03 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 Recycling and Disposal Site.

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8.04 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 Service 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 Service Agreement is an express condition hereof and any failure by Operator to so comply and perform shall be a default of this Service Agreement and City may exercise any right as provided herein and as otherwise provided by law.

8.05 Entire Agreement. This Service Agreement together with the Service Agreement contains the entire understanding between the City and Operator concerning the use and occupation of the Recycling and Disposal Site and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Recycling and Disposal Site, advice from its own attorneys, and the warranties, representations, and covenants of the Service Agreement itself.

8.06 Interpretation. The interpretation, validity and enforcement of the Service 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 Service Agreement does not limit any other rights or remedies available to City.

Should any provision herein be found or deemed to be invalid, the Service 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 Service Agreement are severable.

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

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

8.08 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

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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 Service 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 Service Agreement is not a waiver of any default preceding the payment. City and Operator specifically agree that the property constituting the Recycling and Disposal Site 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.

8.09 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 Service Agreement, and the use of the Recycling and Disposal Site, 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.

8.10 Assignment. A major consideration for this Service Agreement is the unique expertise of the current Operator management group in the operation and management of a asphalt and concrete recycling and disposal site at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Operator shall continue any current management agreements and not assign to, contract for and/or allow another individual or entity to operate and/or manage the asphalt and concrete recycling and disposal site operation at the Recycling and Disposal Site. Further, this Service 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 Service 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.

8.11 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.

8.12 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes

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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.

8.13 Compliance with Law. In providing the services required under this Service 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 Service 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 Service Agreement.

8.14 Relationship of Parties. The parties to this Service 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 venture 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 and processing asphalt and concrete under this Service Agreement, and shall be solely responsible for all persons performing such services.

SECTION 9: DEFAULTS AND REMEDIES

9.01 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 Service Agreement referenced as part of the Service 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 Recycling and Disposal Site is used as stated in this Service 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 Service 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 Service 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 Service Agreement.

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

(i) Any representation or disclosure made to City by Operator in connection with or as an inducement to entering into this Service Agreement,

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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 Service 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 Service Agreement.

9.02 Remedies.

a. Right to Terminate. In the event of a default, City shall have the right to immediately terminate this Service Agreement; and in the event of such termination, Operator shall have no further rights hereunder and Operator shall thereupon forthwith cease to use the Recycling and Disposal Site 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 Recycling and Disposal Site.

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 Service 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

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Operator's Service Agreement equipment and other property used in the acceptance and processing of asphalt and concrete. City shall have the right to retain the possession of and use such property until other suitable arrangements can be made, which may include the award of an agreement to another entity. In the event the City utilizes Operator's personal property (e.g., operating equipment) in order to continue to provide services to the public, City shall pay to Operator 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 Service Agreement between City and Operator.

9.03 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 asphalt and concrete as required by this Service Agreement, for a period of five (5) working days, and if, as a result thereof, unprocessed asphalt and concrete accumulate at the Recycling and Disposal Site, and City determines 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, to: (i) perform or caused to be performed, such services 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 and processing of asphalt and concrete pursuant to this Service Agreement.

a. Notice. Notice of Operator's failure, refusal or neglect to perform its duties under this Service 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 and processing of asphalt and concrete to the City with respect to its operations at the Recycling and Disposal Site 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 the rights described in this subsection 9.03:

(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.

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

9.04 Excuse from 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 Service Agreement. Provided, however, the existence of any excuse from performance will not affect the City's rights under Section 10.01 below, and if Operator is excused from performance for a period of sixty (60) days or more, other than as a result of third party labor disputes over which Operator has no control, City shall have the right in its sole discretion, to terminate this Service Agreement by giving thirty (30) days written notice, in which case the provisions of Section 9.02 (c) above will apply.

9.05 Right to Demand Performance Assurance. If the City reasonably believes that Operator's performance under this Service 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 Service 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 Service 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.

9.06 Bankruptcy. In the event Operator 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 Operator's interest under this Service Agreement, City shall have the right to declare this Service Agreement in default.

The conditions of this section shall not be applicable or binding on Operator or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Recycling and Disposal Site which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in

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interest consented to by resolution of the City Council, as long as there remains monies to be paid by Operator 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 Service Agreement and the Recycling and Disposal Site are continuously and actively used in accordance with Section 1.02 of this Service Agreement.

SECTION 10: SPECIAL PROVISIONS

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

10.02 Relocation. If during the initial term of this Service Agreement, the City determines that there is a more desirable location in the City of Oceanside for an asphalt and concrete recycling and disposal site, the City shall have the right to relocate Operator to said location, provided that said property is equal to or greater in square footage and that the City is willing to provide Operator with improvements to said new space substantially similar to those that were constructed at the Recycling and Disposal Site including as to capacity, provided said amount does not exceed amount of the Operator Improvements. City shall provide Operator with at least ninety (90) days prior written notice of City's intention to relocate Operator. City and Operator shall amend this Service Agreement to reflect said new property.

10.03 Standards of Operation. Operator agrees that it shall operate and manage the services and facilities offered upon or from the Recycling and Disposal Site in a first class manner.

10.04 Hours of Operation. The Operator agrees that it shall conduct business on the Recycling and Disposal Site 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.

10.05 Manner of Providing Service. Operator shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Operator on the Recycling and Disposal Site. Said supervisor shall be empowered with authority to act on behalf of Operator in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Recycling and Disposal Site to insure the public's health, safety, and welfare. Operator 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

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regulations as hereafter may be promulgated, or put into operation by the City. Operator 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 Recycling and Disposal Site.

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

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

10.08 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Recycling and Disposal Site 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 Recycling and Disposal Site, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other Recycling and Disposal Site and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Recycling and Disposal Site which will in any way injure the real property underlying the Recycling and Disposal Site or improvements thereon, or adjacent or other Recycling and Disposal Site, 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 Recycling and Disposal Site, 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 Recycling and Disposal Site, is expressly prohibited without the prior written consent of the City.

10.09 Local Office. Operator shall maintain a local office at the Recycling and Disposal Site with a competent company representative who can oversee the operation and be reached during normal working hours who is authorized to discuss matters pertaining to this Agreement. The local office must have a telephone the City can call without a toll charge. If the local office is not the billing address for all billing for services and product sales then the principal address for all billing for services and product sales for tax purposes must be in the City of Oceanside.

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10.10 Controlled Prices. Operator shall at all times maintain and clearly post a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the site whether the same are supplied by Operator or by Operator's sub-lessee(s), assignee(s), concessionaire(s), permittee(s) or licensee(s).

SECTION 11: SIGNATURES

11.01 Signature Page. The individuals executing this Service Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Service 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 Service 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: *Robert D. Hamilton, ASST.*
City Attorney

OPERATOR

JMM Diversified, Inc.
A California corporation
dba Moody's Excavating

Date _____

By: *Janice M. Moody*
Name: *Janice M. Moody*
Title: *Pres.*

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

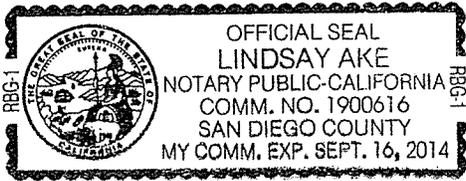
State of California

County of SAN DIEGO

On 10-13-10 before me, LINDSAY AKE, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared JANICE M. MOODY
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.

Place Notary Seal Above

Signature: [Handwritten Signature]
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

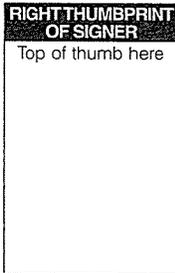
Title or Type of Document: Amended + Restated Professional Services Agreement for asphalt + concrete recycling + disposal site at El Coronado
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

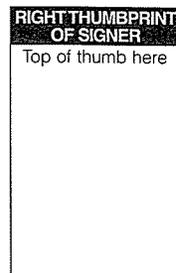
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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"
LEGAL DESCRIPTION

THAT PORTION OF SECTION 20, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, AS SHOWN ON RANCHO DEL ORO – MASTER SUBDIVISION MAP WEST, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11410, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON DECEMBER 27, 1985, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/16 CORNER OF SECTIONS 20 AND 21, BEING A POINT ON THE EASTERLY BOUNDARY OF LOT 7 OF SAID MAP NO. 11410;

THENCE ALONG SAID EASTERLY BOUNDARY SOUTH 00°46'05" WEST (NORTH 00°46'34" EAST RECORD PER MAP 11410) 810.00 FEET TO AN ANGLE POINT IN SAID EASTERLY BOUNDARY OF LOT 7;

THENCE LEAVING SAID EASTERLY BOUNDARY SOUTH 62°53'44" WEST 248.58 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 80°31'56" WEST 439.00 FEET;

THENCE NORTH 71°42'46" WEST 595.00 FEET;

THENCE SOUTH 89°07'50" WEST 611.00 FEET;

THENCE SOUTH 52°47'25" WEST 152.00 FEET;

THENCE NORTH 46°14'00" WEST 60.00 FEET;

THENCE NORTH 15°54'36" EAST 114.00 FEET;

THENCE NORTH 16°40'40" WEST 244.00 FEET;

THENCE NORTH 17°37'02" EAST 644.00 FEET;

THENCE NORTH 32°04'37" EAST 327.00 FEET

THENCE NORTH 87°39'43" EAST 697.00 FEET;

THENCE NORTH 73°33'20" EAST 500.00 FEET TO A POINT ON A NON-TANGENT 1925.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 55°33'07" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 49°57'06" A DISTANCE OF 1678.26 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 51.11 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT "B".

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

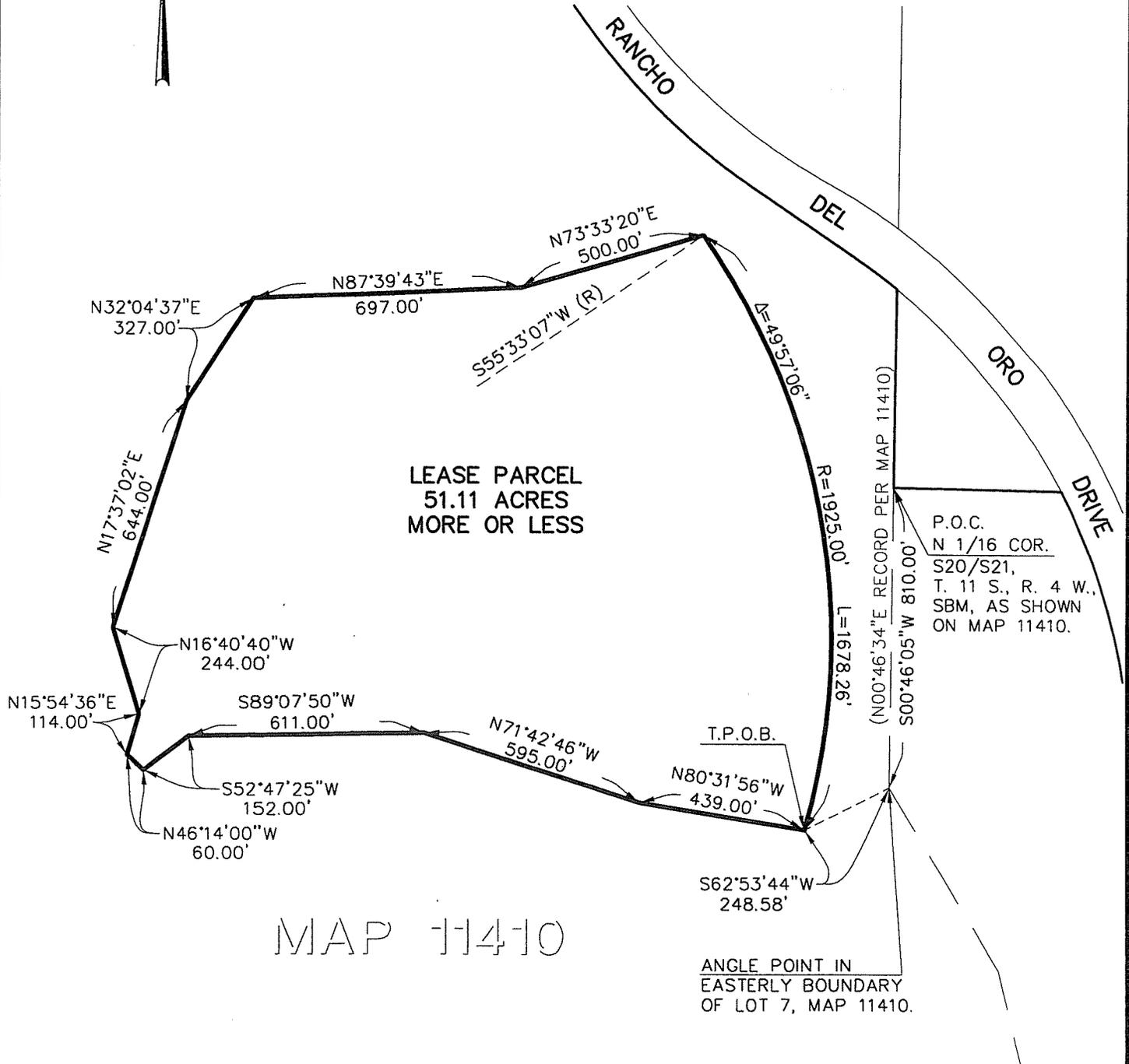

MICHAEL SCHLUMPBERGER, PLS 7790

August 5, 2010
DATE



EXHIBIT "B"

SCALE 1"=400'



MAP 11410

ASSESSOR'S PARCEL NO.: 162-082-43

CITY OF OCEANSIDE

LEASE PARCEL

JANUARY 19, 2010

SHEET 2 OF 2

Right-Of-Way Engineering Services, Inc.

615 South Tremont Street · Oceanside, CA 92054
(760) 637-2700 FAX (760) 637-2701

Drawing file name: Exhibit B - Moody Premises.dwg
Job No.: 0306-0057-01

EXHIBIT C

Schedule Of Values

The following machinery or apparatus are used or operated on or about the Recycling and Disposal Site to meet the requirements of this Service Agreement:

2010 VOLVO L150 LOADER	\$265,000.00
2010 McCLOSKEY R155 SEPARATOR	\$220,000.00
2009 McCLOSKEY S190 SCREEN	\$200,000.00
2008 EXTEC CRUSHER	\$350,000.00
2009 JD EXCAVATOR	\$150,000.00
2001 VOLVO L150D LOADER	\$95,000.00
2000 CAT 226	\$15,000.00
1998 VOLVO L150C LOADER	\$75,000.00
1996 VOLVO L120B LOADER	\$30,000.00
1999 KOLBERG 271 SCREEN	\$50,000.00
1988 INTERNATIONAL WATER TRUCK	\$10,000.00
1988 MITSUBISHI EXCAVATOR	\$20,000.00
1985 VALEW WATER TOWER	\$10,000.00
1988 CAT D8K DOZER	\$50,000.00
TOTAL VALUE OF EQUIPMENT AT SITE	\$1,540,000.00

Exhibit E

Earthwork Specifications

Standard Specifications. All references to Standard Specifications shall refer to the most recent edition of the Standard Specifications for Public Works Construction, including all supplements, as written and promulgated by the Joint Cooperative Committee of the Southern California Chapter of the American Public Works Association and the Southern California District of the Associated General Contractors of California. Copies of the Standard Specifications are available from the Publisher, Buildings News, Incorporated; 3055 Overland Avenue; Los Angeles, CA 90034; Telephone (213) 202-7775.

Survey Service. City shall perform and be responsible for the accuracy of surveying adequate for construction. Operator shall preserve and shall not disturb construction survey stakes and marks unless otherwise authorized in writing by City. Operator shall bear the expense of replacing any such markers that are disturbed without authorization. Replacement shall be done by City.

Operator shall notify City in writing at least two (2) working days before survey services will be required in connection with the laying out of any portion of the work. Operator shall dig all holes necessary for line and grade stakes.

Stakes will be set and stationed by City for clearing and curbing areas, unclassified excavation, overexcavation and recompaction, and rough grade and a corresponding cut or fill to finished grade (or flowline) indicated on a grade sheet.

Stormwater Control – Best Management Practices: Work shall conform to all stormwater control best management practices (BMP's) in accordance with the recommendations and specifications set forth in the El Corazon Stormwater Pollution Prevention Plan (SWPPP). City is responsible for the installation and cost of BMP maintenance. Operator shall notify the City in writing at least five (5) working days before BMP installation is required. Operator shall preserve and shall not disturb BMP's unless otherwise authorized in writing by City. Operator shall bear the expense of replacing any such BMP's that are disturbed without authorization.

Clearing & Grubbing: This work shall conform to Section 300-1 of the Standard Specifications and to these Special Provisions.

All materials removed shall be disposed of on-site. Green waste shall be delivered to the Green Waste Disposal facility aboard El Corazon. All other material shall be disposed of by Operator through the Asphalt and Concrete Recycling and Disposal Site. Burning shall not be permitted under any circumstances. No accumulation of flammable material shall remain on or adjacent to the work site. The work site and adjacent areas shall be left with a neat and finished appearance.

In addition to the work outlined in Section 300-1 of the Standard Specifications, work for this item include, but are not limited to:

Exhibit E

Earthwork Specifications

1. Maintain dust control at all times by watering; including developing a water supply and furnishing and placing all water required for work done, including water used for extra work.
2. Cleaning and flushing existing storm drain system.
3. Maintenance of project appearance.
4. Control of water and dewatering of construction.
5. Cleanup of project area upon completion of work.
6. Minor grading for swales and drainage control.

Unless otherwise specified, compensation for clearing and grubbing shall be accounted for at the square foot price and no additional compensation will be allowed. Payment shall include full compensation for furnishing all labor, materials, tools, equipment and doing all work involved in clearing and grubbing as specified in these Specifications and Special Provisions, as directed by the Engineer, including the removal and disposal of all resulting materials.

Unclassified Excavation: Unclassified excavation shall conform to Section 300-2, "Unclassified Excavation", of the Standard Specifications. Unclassified excavation may include excavation of roadway prisms, wall prisms, sheet grading, temporary sediment basins, and earthen berms, brow ditches and terrace ditches.

Overexcavation and Recompaction: Work required to remove and recompact certain areas on the El Corazon site that have not been previously overexcavated shall be done under the observation of a qualified geotechnical engineer provided by City.

Fill: Fill material shall be placed in horizontal layers of depths compatible to the material being placed and the type of equipment being used. Each layer shall be evenly spread and moistened or aerated, as necessary. Unless otherwise approved by the Engineer, each layer spread for compaction shall have a loose thickness of not more than eight (8) inches.

No rock or similar irreducible material with a maximum dimension greater than eight (8) inches shall be buried or placed in any fill. All fills shall be compacted to a minimum of ninety percent (90%) of maximum density as determined in the laboratory of ASTM Test Method D1557-91, also known as the Proctor test.

Rough Finish: Grading operations shall result in a final configuration of the embankments, sheet-graded areas, slopes and berms which is within an allowable tolerance of plus or minus two-tenths (0.20) of a foot horizontally or vertically, and for ditches within an allowable tolerance of plus or minus one-tenth (0.10). Cut and fill

Exhibit E

Earthwork Specifications

slopes shall be trimmed to the finish grade to produce a smooth and uniform surface of cross section. The slopes of excavation or embankments shall be shaped and trimmed as directed by City. Finish slopes shall be left in a neat and orderly condition. All stones, roots, or other waste material shall be properly disposed of.

Removal and Disposal: All work shall include the removal and disposal on-site of any excess material.

Loading: Placing stockpiled material into trucks. Work shall consist of providing a front-end loader or similar equipment and operator to load material stockpiled by others into trucks provided by others.

Payment:

The quantities for the unclassified excavation, overexcavation and recompaction, and any other general earth moving operations shall be measured in surveyed cubic yards. The City will provide the initial survey, as built survey and calculate cubic yards. Overexcavation and recompaction surveys will include bottom surveys. Payment shall include full compensation for furnishing all labor, materials, tools, equipment and doing all work involved in said work, including the removal and disposal of any excess materials.

The quantities for clearing and curbing operations shall be measured in surveyed square feet. The City will provide the initial survey, as built survey and calculate square feet. Payment shall include full compensation for furnishing all labor, materials, tools, equipment and doing all work involved in said work, including the removal and disposal of any excess materials.