ITEM NO. 6

STAFF REPORT

CITY OF OCEANSIDE

DATE: October 3, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **APPROVAL OF A LEASE AGREEMENT WITH RANCHO DEL ORO LANDSCAPE AND MAINTENANCE INC.**

SYNOPSIS

Staff recommends that the City Council approve a five-year agricultural lease agreement, including one two-year renewal option, with Rancho Del Oro Landscape and Maintenance, Inc., for the purpose of low-intensity landscape growing on 5.28 acres of City property east of Rancho del Oro Drive between Mesa Drive and Ocean Ranch Boulevard and authorize the City Manager to execute the Lease Agreement.

BACKGROUND

The 5.28 acres are a remnant parcel remaining from the construction of Rancho del Oro Road ("Property'). The Property is surrounded by private property to the north, east and south and Rancho Del Oro Drive on the west. There is no access to sewer or electrical hook-ups on the Property and the Property is currently not suitable for development. Rancho Del Oro Landscape and Maintenance, Inc., ("RDO") previously had a five-year agreement for the purpose of low-intensity landscape growing, approved on March 16, 2005, with a two-year option that expired on March 31, 2012.

ANALYSIS

The proposed agreement is for a new five-year term, with one two-year option ("Agreement"). The Agreement contains a 120-day termination provision to ensure the Agreement does not interfere with the City's ability to develop or market the Property in the future. As a condition of the Agreement, RDO is required to provide the labor, equipment and materials necessary to maintain the Property in a clean and stable condition, including erosion and weed control. Additionally, RDO is required to maintain the erosion control measures for the north side of Oceanside Boulevard right-of-way between Rancho del Oro Drive to the east and El Camino Real to the west, prescribed in the Storm Water Pollution Prevention Plan for El Corazon.

FISCAL IMPACT

As consideration for the use of the Property, the City will be relieved of the costs associated with maintaining the Property, as well as the erosion control-measures required along the Oceanside Boulevard right-of-way between Rancho del Oro drive and El Camino Real. This will result in an approximate annual maintenance cost savings of $30,000.

INSURANCE REQUIREMENTS

RDO will be required to maintain the City's standard insurance requirement over the term of the Agreement.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a five-year agricultural lease agreement, including one two-year renewal option, with Rancho Del Oro Landscape and Maintenance, Inc., for the purpose of low-intensity landscape growing on 5.28 acres of City property east of Rancho del Oro Drive between Mesa Drive and Ocean Ranch Boulevard and authorize the City Manager to execute the Lease Agreement.

PREPARED BY:

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Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Doug Eddow, Real Property Manager

AGRICULTURAL LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC.

FOR THE LEASE OF CITY OWNED REAL PROPERTY

LOCATED ON THE

EAST SIDE OF RANCHO DEL ORO DRIVE BETWEEN MESA DRIVE AND OCEAN RANCH BOULEVARD

DATED

CITY OF OCEANSIDE
AGRICULTURAL LEASE AGREEMENT WITH
RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC.
FOR PROPERTY ON THE EAST SIDE OF RANCHO DEL ORO DRIVE BETWEEN
MESA DRIVE AND OCEAN RANCH BOULEVARD

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CITY OF OCEANSIDE
AGRICULTURAL LEASE AGREEMENT WITH
RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC.
FOR PROPERTY ON THE EAST SIDE OF RANCHO DEL ORO DRIVE BETWEEN MESA DRIVE AND OCEAN RANCH BOULEVARD

THIS LEASE AGREEMENT, herein after called "AGREEMENT", is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "CITY", and **RANCHO DEL ORO LANDSCAPE & MAINTENANCE INC**, hereinafter called "LESSEE".

A G R E E M E N T

NOW THEREFORE, the parties hereto mutually agree as follows:

SECTION 1: USES:

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY, in accordance with the terms of this Agreement, all of that certain real property situated in the City of Oceanside, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this Agreement. Said real property is hereinafter called the "PREMISES".

1.02 Uses. It is expressly agreed that the PREMISES is leased to LESSEE solely and exclusively for the purpose of **low intensity farming**, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the PREMISES for the above specified purposes and to diligently pursue said purposes throughout the term hereof. LESSEE shall not use the PREMISES in any manner that disturbs the quiet enjoyment of surrounding property owners' use of their property. In the event that LESSEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, the LESSEE shall be deemed in default under this Agreement.

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

1.04 **Quiet Possession.** LESSEE, paying the rent and performing the covenants and Agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the PREMISES. If CITY for any reason cannot deliver possession of the PREMISES to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of the CITY a proportionate reduction of the rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the PREMISES.

1.05 **Reservation of Rights.** CITY shall not unreasonably or substantially interfere with LESSEE'S use of the PREMISES while LESSEE is in possession of the PREMISES, however the CITY specifically retains the following rights:

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

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

c. **Right to Enter.** CITY has the right to enter the PREMISES for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

CITY will not reimburse LESSEE for damages, if any, to the permanent improvements, located on the leased PREMISES resulting from the CITY exercising the rights reserved in this Agreement. CITY will pay the costs of the maintenance and repair of all CITY installations made pursuant to these reserved rights. CITY's use of the PREMISES is paramount to that of the LESSEE's use.

SECTION 2: TERM

2.01 **Commencement.** The term of this Agreement shall be for a period of **five (5) years** commencing on **October 3, 2012** and terminating **October 2, 2017.**

If CITY for any reason cannot deliver possession of the PREMISES to LESSEE at the commencement of the term, or if during the term of this Agreement LESSEE is dispossessed for any reason whatsoever, CITY shall not be liable to LESSEE for any loss or damage resulting therefrom.

2.02 **Renewal Options.** The LESSEE shall have the option to extend the term of this Agreement for an additional **two (2) years** under the terms and conditions of this Agreement at the CITY's calculated fair market rental value, provided that the LESSEE is not in default of this Agreement. The LESSEE may request extensions of the term of this Agreement provided that the Supervising Property Agent receives written notice from the LESSEE no later than 90 days prior to the expiration of the term of this Agreement. Upon receipt of such request for extension, the CITY shall calculate the fair market rental value of the PREMISES, and transmit it to the LESSEE no later than 60 days prior to the expiration of the term of this Agreement.

2.03 **Termination Provisions.** CITY retains the right to terminate this agreement, with or without reason, by providing LESSEE 120 day's written notice. No other special termination options are available except those described elsewhere in this Lease.

2.04 **Holdover.** Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the PREMISES by LESSEE or by LESSEE's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement, including rental adjustments, shall continue in full force and effect. In addition to the adjusted rent, LESSEE shall, in the event of any holding over beyond ninety (90) days, pay an increase in rent equal to the product of: 1) the adjusted rent, and 2) five percent (5%) per year for each year of the term of Agreement counting from the original commencement date of the Agreement to the expiration or termination date of the Agreement.

2.05 Abandonment by LESSEE. Even if LESSEE breaches the Agreement and abandons the PREMISES, this Agreement shall continue in effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.06 Quitclaim of LESSEE'S Interest. On termination of this lease for any reason, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the PREMISES. LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. CITY may record such deed only on the expiration or earlier termination of this Agreement. If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting LESSEE's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Agreement and all LESSEE's rights to the PREMISES.

2.07 Surrender of PREMISES. At the expiration or earlier termination of this Agreement, LESSEE shall surrender the PREMISES to CITY free and clear of all liens and encumbrances, except those liens and encumbrances that existed on the date of the execution of this Agreement by CITY. The PREMISES, when surrendered by LESSEE, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Agreement, absent normal wear and tear.

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

SECTION 3: RENT

3.01 Rent. LESSEE agrees to provide the labor, equipment and materials necessary to maintain the PREMISES in a clean, useable condition for the term of this Agreement. LESSEE further agrees to maintain the erosion control measures for the northern side of Oceanside Boulevard right of way between Rancho del Oro Drive to the east and El Camino Real to the west prescribed in the Storm Water Pollution Prevention Plan for El Corazon De Oceanside. Additionally, LESSEE shall weed abate the City-owned property on Vista Way (APN: 165-493-47) twice annually. These services and activities are deemed a valuable consideration and shall constitute the

rent payments to be paid by LESSEE for its use of the PREMISES in accordance with the terms, covenants, conditions and provisions of this Agreement.

In the event that the PREMISES are not used in accordance with the terms, covenants, conditions and provisions of this Agreement, CITY shall have the right, upon written notice to LESSEE, to collect $600.00 per month as rent as well as any cost incurred under section 5.03.

SECTION 4: INSURANCE RISKS/SECURITY

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

4.02 Insurance.

a. LESSEE shall, throughout the duration of this Agreement maintain comprehensive general liability or commercial general liability insurance and property damage insurance covering all operations and activities of LESSEE, its agents and employees, performed in connection with this Agreement.

b. LESSEE shall maintain the following minimum limits:

General Liability	
Combined Single Limit Per Occurrence	$1,000,000
General Aggregate	$1,500,000

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

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

e. All insurance companies affording coverage shall provide thirty (30) day written notice to the City of Oceanside should the policy be canceled 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.

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

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

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

i. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. LESSEE shall pay said reimbursement and interest on the first (1st) day of the month following the notice of payment by CITY. Notwithstanding the preceding provisions of this Subsection, any failure or refusal by LESSEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. LESSEE represents and warrants that it has independently inspected the PREMISES and made all tests, investigations, and observations necessary to satisfy itself of the condition of the PREMISES. LESSEE acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. LESSEE further acknowledges that the PREMISES are in the condition called for by this Agreement and that LESSEE does not hold CITY responsible for any defects in the PREMISES.

5.02 Waste, Damage, or Destruction. LESSEE shall give notice to CITY of any fire or other damage that occurs on the PREMISES within ten (10) days of such fire or damage. LESSEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the PREMISES clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the PREMISES shall be damaged by any cause which puts the PREMISES into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the PREMISES to the condition which existed prior to said damage; or, at CITY'S option, and upon receipt of written demand thereof, LESSEE agrees to clear and remove from the PREMISES all debris resulting from said damage and rebuild the PREMISES in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. LESSEE shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the PREMISES.

5.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the PREMISES throughout the term of this Agreement. LESSEE will make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, upon written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said PREMISES in a decent, safe, healthy, and sanitary condition. LESSEE shall make payment no later than thirty (30) days after written notice from the City. Further, if at any time CITY determines that said PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written

notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

5.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the PREMISES, and LESSEE may not alter the PREMISES without prior written approval by the Supervising Property Agent. This provision shall not relieve LESSEE of any obligation under this Agreement to maintain the PREMISES in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.

5.05 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the leased PREMISES.

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

5.07 Encumbrance. LESSEE shall have no right, for any reason, to encumber the PREMISES, this lease, LESSEE's leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE.

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

LESSEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment

of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes.

5.09 **Signs.** LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the PREMISES, LESSEE shall remove the item at its expense within 24 hours of written notice thereof by CITY, or CITY may thereupon remove the item at LESSEE's cost.

5.10 **Ownership of Improvements and Personal Property.**

a. Any and all improvements, trade fixtures, structures, and installations or additions to the PREMISES now existing or constructed on the PREMISES by LESSEE shall at Agreement expiration or termination be deemed to be part of the PREMISES and shall become, at CITY's option, CITY's property, free of all liens and claims except as otherwise provided in this Agreement.

b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE in writing thirty (30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before Agreement expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

c. LESSEE owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Agreement. Any said items which LESSEE fails to remove will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.

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

e. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said PREMISES upon expiration or termination of this Agreement, then CITY shall have the first right to

acquire or purchase said personal property.

5.11 **Eminent Domain.** If all or parts of the PREMISES are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

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

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

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

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

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

e. **No Inverse Condemnation.** The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall

not impose any liability upon CITY for inverse condemnation so long as such rights do not unreasonably or substantially interfere with LESSEE'S operations.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this 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
300 North Coast Highway
Oceanside, CA 92054

To LESSEE:

Rancho Del Oro Landscape & Maintenance Inc.
4167 Avenida De La Plata, Suite 109
Oceanside, Ca 92056

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 working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 CITY Approval. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing LESSEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Supervising Property Agent.

6.03 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in LESSEE'S use of the PREMISES.

6.04 Equal Opportunity. LESSEE agrees to abide by CITY`s Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this Agreement. A copy of the program effective as of the date of this Agreement is on file with the CITY's City Clerk's Office.

6.05 Entire Agreement. This Agreement comprises the entire integrated understanding between CITY and LESSEE concerning the use and occupation of the PREMISES and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

6.06 Interpretation of the Agreement. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

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

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

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

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

6.08 Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or

right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the PREMISES is CITY-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the LESSEE's duties be delegated, without the express written consent of CITY. Any attempt to assign or delegate this Agreement without the express written consent of CITY shall be void and of no force or effect. Consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.10 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within Thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within Thirty (30) days of the notice, or, if more than Thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within Ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to LESSEE in the event that:

a. LESSEE has previously been notified by CITY of LESSEE's default under

this Agreement and LESSEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion; or

b. LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

c. LESSEE shall be adjudicated a bankruptcy; or

d. LESSEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the PREMISES.

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

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

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

SECTION 7: SPECIAL PROVISIONS - AGRICULTURAL

7.01 Agricultural Practice. All husbandry and agricultural practices shall be subject to CITY'S approval. Said practices shall include, but are not limited to, the

following requirements:

a. Installation of improvements and preparation of land shall conform to a time schedule acceptable to the City Manager. Provided, however, any obligation of LESSEE under this provision shall explicitly be subject to the provisions of Section 5.02, Waste, Damage or Destruction, hereof.

b. LESSEE shall prepare the land for planting in a manner consistent with good agricultural practice, taking maximum advantage of natural water sources. Such actions of LESSEE shall be performed in a manner satisfactory to the City Manager.

c. The approximate number, location and type (permanent and interplant) of plants to be planted by LESSEE shall be as designated in Section 1, Use of PREMISES.

d. Disagreements as to sound agricultural and/or husbandry practices shall be submitted to a mutually acceptable governmental agricultural authority located in the County of San Diego. CITY and LESSEE agree to accept the decisions of such authority as final. In the event that LESSEE fails to cure any unauthorized practice, then this lease shall be treated in accordance with Section 6.10, Defaults and Termination, hereof. All permanent plantings, as well as all other improvements to the property, shall become the property of CITY at the expiration or sooner termination of this lease agreement.

7.02 Water Rights. Water rights are hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.05, Reservation of Rights, hereof, CITY shall have the right throughout said term, to divert, impound, store, and transport by means of dams, reservoirs, or by pumping any or all water, both surface and underground, which flows over, under or across the PREMISES, together with the right to divert by percolating through any of said PREMISES. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the PREMISES all natural water necessary to carry out the purpose of this lease, but it is expressly agreed that said water shall be used only on the PREMISES. LESSEE agrees, that upon termination of this agreement, it will leave any wells developed or used on the PREMISES during the term of this lease in good order and condition and that the casing shall be left in place.

7.03 Noxious Weeds, Pests. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds and pests.

7.04 **Warranty.** CITY does not warrant that said PREMISES are suitable for the purposes for which they are leased as stated herein.

7.05 **Livestock.** Livestock shall not be allowed on the PREMISES.

7.06 **Deletion of Portion of the Leased PREMISES.** In the event LESSEE does not use any portion of the leased PREMISES for its highest and best permitted use, then CITY may, at CITY'S option, delete that portion of the PREMISES not used by LESSEE from Section 1.01, PREMISES, hereof. Provided, however, Section 3, RENT, hereof, shall be adjusted downward on an equitable basis.

7.07 **No Residential Uses.** LESSEE shall not permit any person to use the PREMISES for any residential purpose whatsoever, whether temporary or permanent, and LESSEE further agrees that no person shall remain on the PREMISES overnight, except for security personal.

REMAINDER OF PAGE BLANK

CITY OF OCEANSIDE
AGRICULTURAL LEASE AGREEMENT WITH
RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC.
FOR PROPERTY ON THE EAST SIDE OF RANCHO DEL ORO DRIVE BETWEEN
MESA DRIVE AND OCEAN RANCH BOULEVARD

SECTION 8: SIGNATURES

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

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

CITY
THE CITY OF OCEANSIDE

Date : _____

_____
City Manager

APPROVED AS TO FORM:

_____
City Attorney

LESSEE
Rancho Del Oro Landscape & Maintenance, Inc.
A California Corporation

Date 9/12/2012

By: _____
Uriel Espinoza
President
Chairman of the Board

Date 9·12·2012

By: _____
Richard Kirk
Secretary
Chief Financial Officer

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

CALIFORNIA ALL PURPOSE
Certificate of Acknowledgment

STATE OF CALIFORNIA
COUNTY OF San Diego

On September 12, 2012 before me, Janice K. Peck, Notary Public, personally appeared Uriel Espinoza & Richard Kirk

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Janice K Peck

ES11 JANICE K. PECK COMM. #1962862 Notary Public-California SAN DIEGO COUNTY My Comm. Exp. DEC 23, 2015 ES11

OPTIONAL INFORMATION

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document Agricultural Lease Agreement

Document Date _____ Number of Pages 26

Signer(s) Other Than Named Above City Manager & City Attorney