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DATE: September 24, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **AMENDMENT 1 TO THE PROPERTY LEASE AGREEMENT AND THE OPERATING AGREEMENT WITH AGRI SERVICE RECYCLING, INC., FOR THE OPERATION OF A COMPOST FACILITY AT EL CORAZON**

### **SYNOPSIS**

Staff recommends that the City Council approve Amendment 1 to the Property Lease Agreement and the Operating Agreement with Agri Service, Recycling, Inc., a California corporation, for the operation of a compost facility at El Corazon, to provide for the reimbursement of an amount up to \$180,000 per year to Agri Service to address the removal of green waste contaminants, revise the legal description of the property, and address other minor changes to the agreements; and authorization for the City Manager to execute the amendments.

### **BACKGROUND**

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

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

Due to the unqualified success of the Agri Service operation, in 2009 the City entered into a new property lease agreement and a new operating agreement (collectively

“Agreements”) for 15 years with Agri Service, to build and operate a new compost facility (“Facility”) at El Corazon with an enhanced odor control system. Under the Agreements, Agri Service pays the City a percentage rent of the commercial revenue and product sales generated from the Facility. Additionally, the City is allowed to deliver City-generated Green Waste and also receive some of the compost product that is produced at the Facility.

Despite the successful operation of the Facility, some items need to be addressed. As a condition of the Agreements, the City was required to deliver a graded pad (“Site”). Due to geotechnical and environmental issues that were encountered during the grading of the Site the original configuration of the Site changed. Once the Facility became fully operational, Agri Service incurred additional costs associated with the increase in contaminated Green Waste (i.e., other solid waste in the green waste residential containers) delivered to the Facility by the City’s solid waste collection provider.

## **ANALYSIS**

Staff is recommending amending the Agreements to change the legal description and to address the additional cost associated with the increase in contaminated Green Waste. As a result of needing to amend the Agreements for the above, staff would also like to clarify and “clean up” certain terminology and update certain information in the Agreements.

The unanticipated increase in contaminated Green Waste that is being delivered to the Facility is causing Agri Service to incur additional costs to separate the other solid waste (e.g., plastic, rubbish) from the Green Waste prior to processing. The additional cost was not part of the Agreements between Agri Service and the City. In order to offset the cost without increasing the direct cost to the ratepayers of Oceanside in the collection of Green Waste, up to \$180,000 per year will be paid to Agri Service. The amount shall be prorated monthly based on the tonnage of Green Waste delivered to the Site and the amount of contaminants removed.

Another change contemplated by the amendment to the Agreements is to revise the legal description of the Site. During the grading of the Site, the configuration of the Site needed to be changed. This change was a result of encountering unforeseen geotechnical conditions and to avoid an environmentally sensitive area of El Corazon. However, the change in the legal description of the Site does not change the area designated as Civic Services in the Specific Plan nor did it decrease the adjacent area designated as Habitat.

Additionally, the amendment to the Agreements will address other “housekeeping” items. These items include a change in the name and address of the lessee to “Agri Service Recycling, Inc.”, a change in the definition of “Green Waste” to more accurately describe what is to be delivered to and accepted at the Site, and to modify the list of the improvements made to the Site and equipment purchased by Agri Service (based on actuals versus estimates) for the purpose of determining the buy-out amount should the City exercise its early termination of the Agreements.

### **FISCAL IMPACT**

The amendment to the Agreements requires the City to reimburse up to \$180,000 per year, subject to annual increases in the Consumer Price Index. Said amount is to offset the cost incurred by Agri Service to remove contaminants from the Green Waste delivered to the Site by the City’s solid waste collection provider. The \$180,000 was approved as part of the Water Utilities Department FY 2014-15 Budget and will be paid from the Solid Waste Fund, account number 700010731.5355.

### **INSURANCE REQUIREMENTS**

The City’s standard insurance requirements will be met.

### **COMMISSION OR COMMITTEE REPORT**

Does not apply.

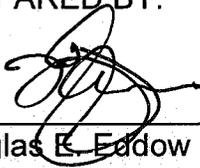
### **CITY ATTORNEY’S ANALYSIS**

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

**RECOMMENDATION**

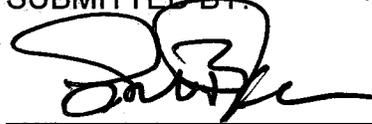
Staff recommends that the City Council approve Amendment 1 to the Property Lease Agreement and the Operating Agreement with Agri Service, Recycling, Inc., a California corporation, for the operation of a compost facility at El Corazon, to provide for the reimbursement of an amount up to \$180,000 per year to Agri Service to address the removal of green waste contaminants, revise the legal description of the property, and address other minor changes to the agreements; and authorization for the City Manager to execute the amendments.

PREPARED BY:



\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:



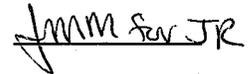
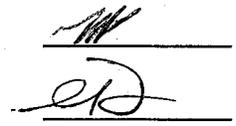
\_\_\_\_\_  
Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

James Riley, Financial Services Director



Attachments:

- 1) Amendment 1 to Property Lease Agreement
- 2) Amendment 1 to Operating Agreement

**AMENDMENT NO. 1  
TO  
PROPERTY LEASE AGREEMENT**

THIS AMENDMENT NO. 1 TO PROPERTY LEASE AGREEMENT (“Amendment”) is entered into this 6<sup>th</sup> day of August 2014, by and between the City of Oceanside, a public body, corporate and politic (“City”), and AGRI SERVICE RECYCLING, INC., a California corporation, successor in interest to AGRISERVICE, INC., (“Lessee”).

**RECITALS**

WHEREAS, on November 18, 2009, the City and Lessee’s predecessor in interest Agriservice, Inc., entered into a Property Lease Agreement (“Lease”) for the lease of a portion of the El Corazon property (“Premises”) for the purpose of developing, operating, managing and maintaining a green waste composting facility thereon;

WHEREAS, also on November 18, 2009, the City and Lessee’s predecessor in interest Agriservice, Inc., also entered into an Operating Agreement for the purpose of enabling Lessee to provides services in conjunction with the operation, management and maintenance of a green waste composting facility on the Premises together with related programs and activities;

WHEREAS, as a result of a change to the configuration of the Premises during the grading thereof as part of the City’s Improvement Obligations, the parties are desirous of amending the Lease to revise the legal description of the Premises; and

WHEREAS, the parties are also desirous of making additional changes to the Lease in order to clarify and make minor modifications to other provisions of the Lease.

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

**AGREEMENT**

1. SECTION 1: USES – 1.01 Premises. shall be amended by deleting Exhibits “A” and “B” and replacing them with Exhibits “A-1” and “B-1”, attached hereto and by this reference made a part of the Lease. Said revised property description is hereinafter called the “Premises”.

2. SECTION 1: USES shall be amended to add the following:

1.08 Definition of “Green Waste”. “Green Waste” shall be defined as any plant material that is separated at the point of generation, contains no greater than one percent (1.0%) of physical contaminants by weight and meets the requirements of California Title 14, Section 17868.5. “Green Waste” includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and construction and demolition wood waste. “Green Waste” does not include food material, biosolids, mixed solid waste,

material processed from commingled waste collection, wood containing lead-based paint or wood preservative, mixed construction or mixed demolition debris.

3. SECTION 2: TERM – 2.04 Early Termination. a. Unamortized Cost Reimbursements. shall be amended by deleting Exhibit “G” and replacing it with Exhibit “G-1”, attached hereto and by this reference made a part of the Lease.

4. SECTION 6: GENERAL PROVISIONS – 6.01 Notices. shall be amended by setting forth Lessee’s Notices address as follows:

Agri Service Recycling, Inc.  
3720 Oceanic Way, Suite 204  
Oceanside, CA 92056

5. Any reference to the term “Green Waste Facility Site at El Corazon” in the Lease shall be changed to “El Corazon Compost Facility” and any reference to the term “Green Waste Facility” in the Lease shall be changed to “Compost Facility”.

6. Except as set forth in this Amendment all other terms and conditions of the Lease shall remain in full force and effect. Should there be a conflict between this Amendment and the Lease the terms of this Amendment shall prevail.

“City”

CITY OF OCEANSIDE  
a public body, corporate and politic

BY: \_\_\_\_\_  
City Manager

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

BY: *Christine Hamilton*, ASST.  
City Attorney

“Lessee”

AGRI SERVICE RECYCLING, INC.  
a California corporation

BY: *Mary Matava*

NAME: Mary Matava

TITLE: President

Dated: 9/3/2014

**NOTARY ACKNOWLEDGEMENT OF LESSEE’S SIGNATURE MUST BE ATTACHED**

**EXHIBIT "A-1"**  
**PARCEL 1**  
**LEASE PARCEL**  
**LEGAL DESCRIPTION**

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

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

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

THENCE LEAVING SAID LOT G NORTH 54°48'13" EAST 331.09 FEET;

THENCE NORTH 87°05'16" EAST 57.85 FEET;

THENCE NORTH 77°49'11" EAST 262.93 FEET;

THENCE NORTH 57°45'04" EAST 144.96 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 71°10'30" EAST 68.68 FEET;

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

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

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

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

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

THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 39°53'24" AN ARC LENGTH OF 55.70 FEET;

THENCE SOUTH 64°51'01" WEST 995.07 FEET TO THE BEGINNING OF A 240.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°50'02" A DISTANCE OF 49.57 FEET;

THENCE NON-TANGENT TO SAID CURVE SOUTH 49°37'11" EAST 197.65 FEET;

THENCE NORTH 64°51'01" EAST 479.43 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 60.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 115°54'59" AN ARC LENGTH OF 121.39 FEET;

THENCE SOUTH 00°46'00" WEST 421.95 FEET;

THENCE NORTH 89°14'00" WEST 30.00 FEET;

THENCE SOUTH 00°46'00" WEST 81.55 FEET;

THENCE SOUTH 88°36'56" EAST 235.01 FEET;

THENCE NORTH 00°46'00" EAST 39.13 FEET;

THENCE SOUTH 89°14'00" EAST 319.72 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 15.33 ACRES MORE OR LESS.

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

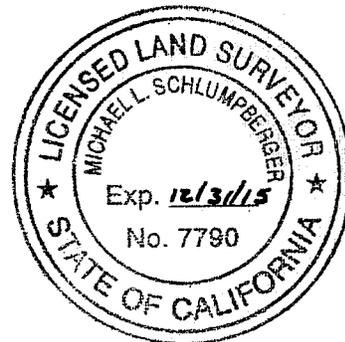
THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.



MICHAEL SCHLUMPBERGER, PLS 7790

September 2, 2014

DATE



**EXHIBIT "A-1"**  
**PARCEL 2**  
**COMMON AREA**  
**LEGAL DESCRIPTION**

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

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

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

THENCE LEAVING SAID LOT G NORTH 54°48'13" EAST 331.09 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 87°05'16" EAST 57.85 FEET;

THENCE NORTH 77°49'11" EAST 262.93 FEET;

THENCE NORTH 57°45'04" EAST 144.96 FEET

THENCE NORTH 89°14'00" WEST 319.72 FEET;

THENCE SOUTH 00°46'00" WEST 39.13 FEET;

THENCE NORTH 88°36'56" WEST 235.01 FEET;

THENCE NORTH 00°46'00" EAST 81.55 FEET

THENCE SOUTH 89°14'00" EAST 30.00 FEET;

THENCE NORTH 00°46'00" EAST 421.95 FEET TO THE BEGINNING OF A 60.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 115°54'59" A DISTANCE OF 121.39 FEET;

THENCE SOUTH 64°51'01" WEST 479.43 FEET;

THENCE NORTH 49°37'11" WEST 197.65 FEET TO A POINT ON A NON-TANGENT 240.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 36°59'01" EAST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°27'47" A DISTANCE OF 68.96 FEET;

THENCE NON-TANGENT TO SAID CURVE SOUTH 49°37'11" EAST 247.03 FEET;

THENCE NORTH 64°51'01" EAST 426.99 FEET TO THE BEGINNING OF A 30.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 115°54'59" A DISTANCE OF 60.69 FEET;

THENCE SOUTH 00°46'00" WEST 359.33 FEET TO THE BEGINNING OF A 30.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 118°46'19" A DISTANCE OF 62.19 FEET;

THENCE NORTH 60°27'41" WEST 192.02 FEET TO THE BEGINNING OF A 60.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 112°19'12" A DISTANCE OF 117.62 FEET TO THE BEGINNING OF A COMPOUND 195.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 67°44'41" A DISTANCE OF 230.56 FEET;

THENCE SOUTH 60°31'34" EAST 95.03 FEET TO THE BEGINNING OF A 200.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°05'06" A DISTANCE OF 178.32 FEET;

THENCE NORTH 68°23'20" EAST 145.75 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 5.25 ACRES MORE OR LESS.

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

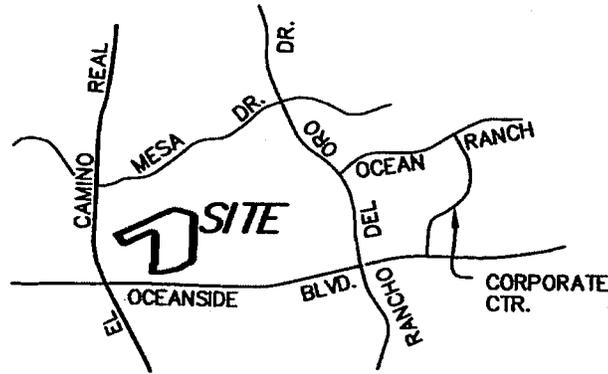
THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

  
MICHAEL SCHLUMPBERGER, PLS 7790

September 2, 2014  
DATE



# EXHIBIT "B-1"



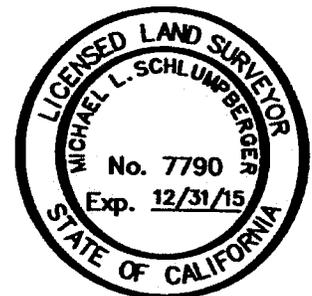
VICINITY MAP  
NO SCALE

### LINE DATA

- L1 N87°05'16"E 57.85'
- L2 N89°14'00"W 30.00'
- L3 S00°46'00"W 81.55'
- L4 S60°31'34"E 95.03'
- L5 N68°23'20"E 145.75'

### CURVE DATA

- C1 Δ=16°27'47" R=240.00' L=68.96'
- C2 Δ=115°54'59" R=30.00' L=60.69'
- C3 Δ=118°46'19" R=30.00' L=62.19'
- C4 Δ=112°19'12" R=60.00' L=117.62'
- C5 Δ=67°44'41" R=195.00' L=230.56'
- C6 Δ=51°05'06" R=200.00' L=178.32'
- C7 Δ=11°50'02" R=240.00' L=49.57'



THIS PLAT WAS PREPARED BY ME OR  
UNDER MY DIRECTION IN CONFORMANCE WITH  
THE PROFESSIONAL LAND SURVEYOR'S ACT.

ASSESSORS' PARCEL NO.: 162-082-43

MICHAEL L. SCHLUMBERGER, PLS 7790

### Right-Of-Way Engineering Services, Inc.

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

CITY OF OCEANSIDE

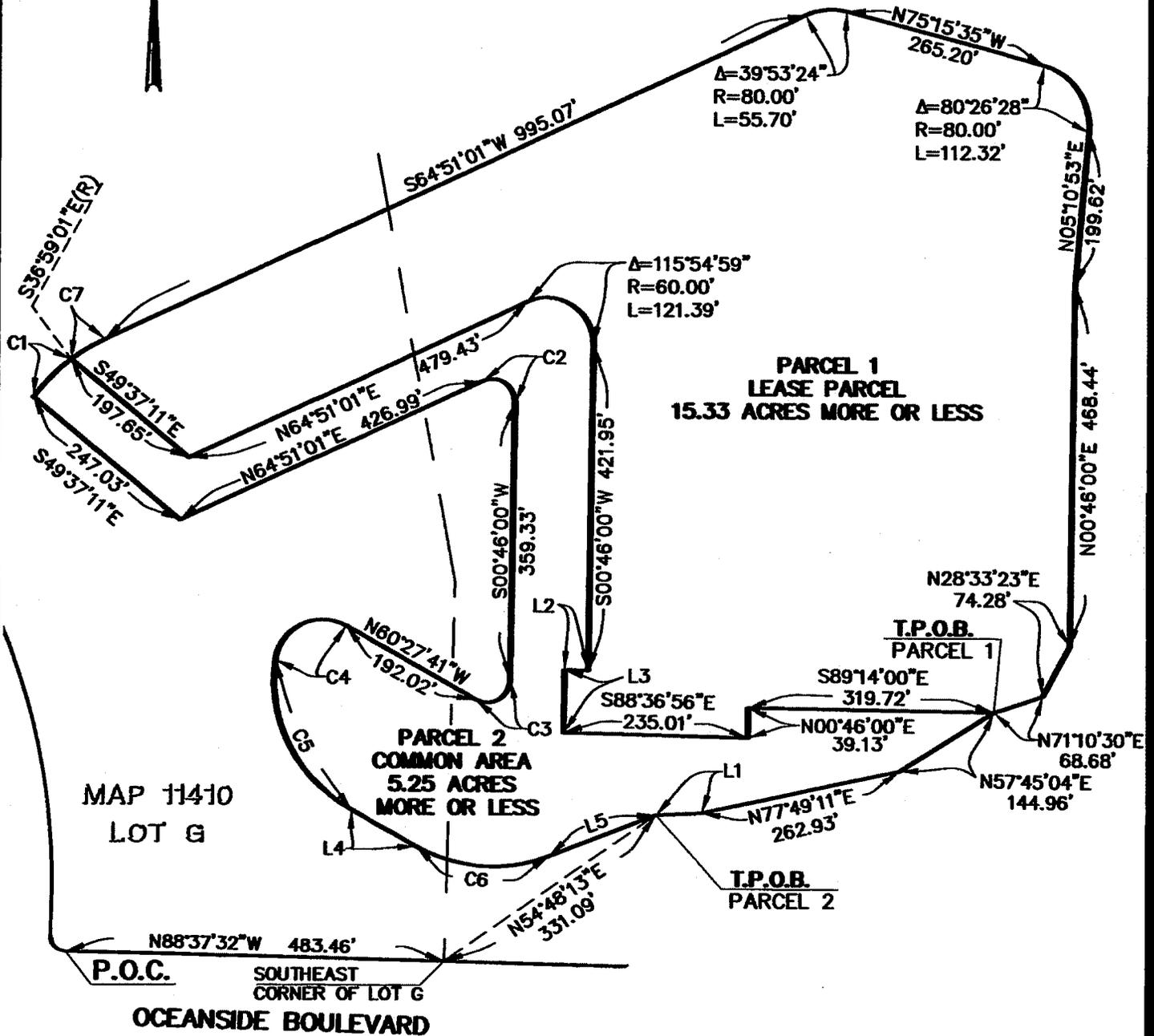
LEASE PARCEL

DATE: JULY 29, 2014

SHEET 1 OF 2

# EXHIBIT "B-1"

SCALE  $1" = 200'$



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

<b>CITY OF OCEANSIDE</b>	
<b>LEASE PARCEL</b>	
DATE: JULY 29, 2014	SHEET 2 OF 2

**Agri Service, Inc. and City of Oceanside Lease Agreement**  
**EXHIBIT "G-1"**  
**Schedule of Values for Equipment and Lessee Improvements**

<u>ID #</u>	<u>Equipment Description</u>	<u>Contract</u>		<u>Date Purchased</u>	<u>Estimated Useful Life</u>
		<u>Contract Version Nov 2009</u>	<u>Version April 2013</u>		
101	Powerscreen	109,366.25		May-97	7
102	Morbark Grinder-1200, SN 565-459		283,142.00	Jun-98	7
105	Morbark 737 Screen, SN 603-4008	197,262.50	197,262.50	Oct-01	7
106	Scat	279,900.00		Nov-01	7
111	Doppstadt Screen, SN W096212772D07197		314,813.21	Jul-08	5
112	Vermeer TG7000 Grinder (1VRY4536761000116)	476,226.75	476,226.75	Dec-08	5
113	Donkey Forklift(M13-4K3WD)		20,116.75	Sep-10	5
114	Rotochopper Go Bagger 250-HP		67,015.62	May-11	5
115	Scarab Windrow Turner		488,584.45	Dec-12	5
116	Doppstadt Picking Station		168,761.43	Mar-03	
201	Loader-950(43J00450)		28,145.00	Aug-95	5
203	Tractor-JohnDeere(E520399)		25,860.00	Mar-97	7
206	Loader-966F(3XJ00799)		98,288.79	Jul-00	7
207	Loader-966G(3SW1062)		279,285.00	Mar-01	7
208	Loader-966G(3SW1549)	280,185.00	280,184.50	Nov-02	7
209	Loader-962H (K6K00180)	267,471.00	267,471.36	Sep-06	5
210	Loader-950H(MIG00341)	233,710.00	233,709.75	Dec-06	5
301	Water Truck-NON OP	16,236.00		Mar-99	5
302	Rolloff -2000		16,800.00	Nov-10	5
303	Rolloff - 2001	23,005.00	23,005.27	Jan-06	5
305	2000 Service Truck	7,112.00		Mar-01	5
308	2003 Rolloff	25,194.00		Jan-03	5
309	2000 Water Truck-NON OP	42,023.00		Jul-04	5
311	2007 Silverado	51,055.60	40,859.09	Aug-06	5
313	Service Truck,Chevy Silverado	33,654.00	33,653.78	Jul-08	5
317	Water/Pumper Truck - 2012 Ford		75,438.29	Dec-12	5
TBD	Electric Grinder				
TBD	Cover Winder, \$50k-\$200k	200,000.00			
TBD	Universal Mixer, \$60k-150k	150,000.00			
<b>Total Equipment Value</b>		<b>2,392,401.10</b>	<b>3,418,623.54</b>		

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

<u>Leasehold Improvements</u>	<u>Contract Version Nov 2009</u>	<u>Contract Version April 2013</u>
	<u>Estimated Cost **</u>	<u>Actual Cost</u>
Aeration Equipment, controls and in-floor system	1,160,000.00	716,823.00
Onsite construction, grading, and concrete aeration floor	1,000,000.00	1,423,536.12
Scale House/Office Building/Restrooms/Maintenance Shed and Storage	187,500.00	141,389.82
Landscaping	25,000.00	15,000.00
Fuel Tanks and Storage	2,500.00	2,500.00
New Scale/Software/Computer System	40,000.00	53,263.32
Water Tanks		5,000.00
Miscellaneous desks, file cabinets, furniture	75,000.00	0.00
Contingency	259,000.00	0.00
<b>Total Leasehold Improvements</b>	<b>2,749,000.00</b>	<b>2,357,512.26</b>

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

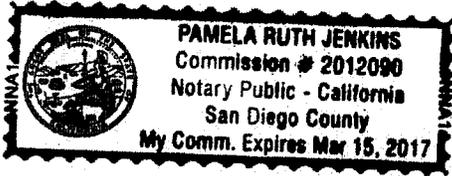
County of San Diego

On 9/3/14  
Date

before me, Pamela Ruth Jenkins, notary public  
Here Insert Name and Title of the Officer

personally appeared Mary Mataua  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: Pamela Ruth Jenkins  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

Attorney in Fact  Attorney in Fact

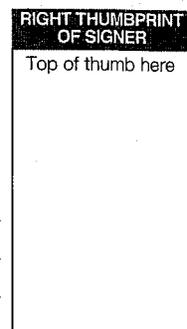
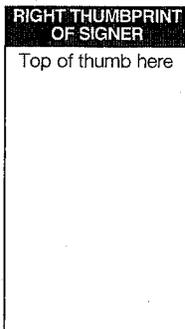
Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**AMENDMENT NO. 1  
TO  
OPERATING AGREEMENT**

THIS AMENDMENT NO. 1 TO OPERATING AGREEMENT ("Amendment") is entered into this 6<sup>th</sup> day of August 2014, by and between the City of Oceanside, a public body, corporate and politic ("City"), and AGRI SERVICE RECYCLING, INC., a California corporation, successor in interest to AGRISERVICE, INC., a California corporation ("Operator").

**RECITALS**

WHEREAS, on November 18, 2009, the City and Lessee's predecessor in interest Agriservice, Inc., entered into an Operating Agreement ("Agreement") for the purpose of enabling Lessee to provides services in conjunction with the operation, management and maintenance of a green waste composting facility on a portion of the El Corazon property together with related programs and activities;

WHEREAS, also on November 18, 2009, the City and Lessee's predecessor in interest Agriservice, Inc., also entered into a Property Lease Agreement for the lease of said portion of the El Corazon property for the purpose of developing, operating, managing and maintaining a green waste composting facility;

WHEREAS, as a result of an increase in the contaminants in the green waste delivered to the facility by the City's solid waste collection provider the parties are desirous of amending the Agreement to address the additional costs incurred by the Operator; and

WHEREAS, the parties are also desirous of making additional changes to the Agreement in order to clarify and make minor modifications to other provisions of the Agreement.

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

**AGREEMENT**

1. SECTION 1: SERVICES TO BE PROVIDED – 1.05 Operating Conditions. shall be amended by adding subsection 1.05 (f). Definition of "Green Waste". to read as follows:

"1.05 (f). Definition of "Green Waste". "Green Waste" shall be defined as any plant material that is separated at the point of generation, contains no greater than one percent (1.0%) of physical contaminants by weight and meets the requirements of California Title 14, Section 17868.5. "Green Waste" includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and construction and demolition wood waste. "Green Waste" does not include food material, biosolids, mixed

solid waste, material processed from commingled waste collection, wood containing lead-based paint or wood preservative, mixed construction or mixed demolition debris.”

2. SECTION 1: SERVICES TO BE PROVIDED – 1.05 (d). Contaminated Green Waste, shall be amended by deleting the second sentence and replacing it with the following sentence:

“In the event Operator inadvertently accepts contaminated loads, Operator may charge said customer a surcharge to pay for the disposal and clean-up of the contaminants.”

3. SECTION 1: SERVICES TO BE PROVIDED – 1.06 (a). Unacceptable Waste. shall be deleted in its entirety and replaced with the following:

“1.06 (a). Unacceptable Waste. If Operator determines that waste material delivered to the Compost Facility is municipal solid waste, hazardous waste, medical or infectious waste, palm fronds, cactus, yucca or other similar waste (“Unacceptable Waste”) presents a hazard to Operator or its employees or is unacceptable for processing, Operator shall have the right to refuse said Unacceptable Waste.”

4. SECTION 1: SERVICES TO BE PROVIDED – 1.06 Operating Conditions. shall be amended by adding subsection 1.06 (d). Contaminated Green Waste Surcharge. to read as follows:

“1.06 (d). Contaminated Green Waste Surcharge. Notwithstanding anything to the contrary in this Section above, Operator may charge the City a Contaminated Green Waste surcharge fee of up to Fifteen Thousand and No/100 Dollars (\$15,000.00) per month for the cost incurred by Operator in removing contaminants from the Green Waste delivered to the facility by the City’s solid waste collection provider. Operator shall request said surcharge fee monthly in arrears and shall provide documentation showing the tonnage provided by the City’s solid waste collection based on Eleven and 57/100 Dollars (\$11.57) per ton cleaning fee. Said surcharge fee shall be adjusted annually by the Consumer Price Index (as set forth in subsection 3.03 (a)(i) below) but shall in no event exceed a total of Two Hundred Thousand and No/100 (\$200,000.00) per year.”

5. SECTION 3: CONSIDERATION AND SERVICE RATES – 3.03 Products Sales. (a). Product Sales Offset. shall be amended by adding the following language to the end of the subsection:

“The amount attributable to City Tip Fees shall also be included in determining the Product Sales offset amount.”

6. SECTION 6: GENERAL PROVISIONS – 6.01 Notices. shall be amended by setting forth Operator’s Notices address as follows:

Agri Service Recycling, Inc.  
3720 Oceanic Way, Suite 204  
Oceanside, CA 92056

7. Any reference to the term "Green Waste Facility Site at El Corazon" in the Agreement shall be changed to "El Corazon Compost Facility" and any reference to the term "Green Waste Facility" in the Agreement shall be changed to "Compost Facility".

8. Except as set forth in this Amendment all other terms and conditions of the Agreement shall remain in full force and effect. Should there be a conflict between this Amendment and the Agreement the terms of this Amendment shall prevail.

"City"

CITY OF OCEANSIDE  
a public body, corporate and politic

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Manager

BY: *Robert Hamilton, A.B.S.T.*  
City Attorney

Dated: \_\_\_\_\_

"Operator"

AGRI SERVICE RECYCLING, INC.  
a California corporation

BY: *Mary Matava*

NAME: *Mary Matava*

TITLE: *President*

Dated: *9/3/2014*

**NOTARY ACKNOWLEDGEMENT OF OPERATOR'S SIGNATURE MUST BE ATTACHED**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

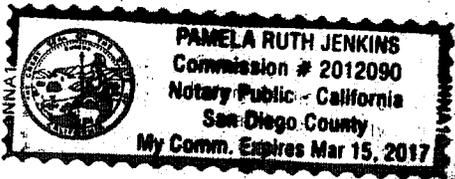
County of San Diego

On 9/3/14  
Date

before me, Pamela Ruth Jenkins notary public  
Here Insert Name and Title of the Officer

personally appeared Mary Matawa  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Pamela Ruth Jenkins  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

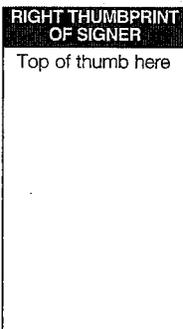
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

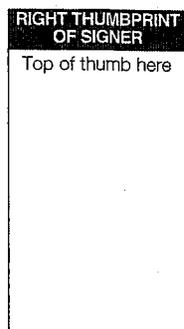
- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_