

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

116



FROM: Waste Management Department

SUBMITTAL DATE:
November 16, 2009

SUBJECT: New Master Lease with Coachella Landfill Compost Facility

RECOMMENDED MOTION: That the County Board of Supervisors:

Approve the attached Master Lease of County property at the Closed Coachella Landfill with Agri Service, Inc., for the continued operation of a compost and wood chip facility, and authorize the Chairman to execute the Lease on behalf of the Board.

BACKGROUND: The Coachella Landfill Compost Facility comprises 35+ acres south of the closed Coachella Sanitary Landfill in the County unincorporated area (east of the City of Indio and immediately west of the northern limits of the City of Coachella). The term of the lease that the County has with the operator, Agri Service, Inc., is due to end on December 21, 2009. The existing lease was executed by the Board ten years ago after Salado Creek Enterprises, LLC won a competitive bid process on December 2, 1999. A Mitigated Negative Declaration for Environmental Assessment (E.A.) No. 37800 was adopted the same day along with a Mitigation Monitoring Program for EA No. 37800. The County agreed to assign the lease to Agri Service, Inc., on September 24, 2002. (continued)

Hans W. Kernkamp, General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Alex Gann

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: NEAL K. KIPNIS DATE
Departmental Concurrence

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 10.2 (12/21/99); 12.2 (9/24/02); 12.3 (6/19/07) **District:** 4 **Agenda Number:**

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

12.1

F11: New Master Lease with Coachella Landfill Compost Facility

November 16, 2009

Page 2

The facility underwent repermitting that allowed the use of food waste as a feedstock material and the use of liquid grease-trap waste to supplement processed water usage. The Board approved the repermitting on June 11, 2007, when it also adopted a Mitigated Negative Declaration for EA No. 40808 and a Mitigation Monitoring Program for EA No. 40808.

The significant deal points have not changed from the original lease agreement and are outlined on Exhibit B of the lease agreement.

MASTER LEASE

LESSEE Name: Agri Service, Inc.

Riverside County, herein called COUNTY, leases to Agri Service, Inc. herein called LESSEE, the property described below upon the following terms and conditions set forth herein.

1. Description. The premises leased hereby consisting of approximately 35.27 acres located in an Unincorporated County area of Riverside County, California at the closed Coachella Landfill which is also a part of the Riverside County Recycling Market Development Zone, referred to herein as the "Premises", as more particularly described on Exhibit A (and drawn on Exhibit A-1) attached hereto and, by this reference made a part of this Lease.

2. Use.

(a) The Premises are leased hereby for the exclusive purpose of providing the financing, permitting, design, construction and operation of a compost and wood chip facility (The Facility). The facility to be constructed on the Premises is described on Exhibit B (and drawn on Exhibit B-1).

(b) LESSEE will operate the fee booth, provide and maintain a seventy foot electronically operated scale and set prices for all services. At no time shall a hauler from the unincorporated portion of the County be charged a higher rate than any like customer for comparable services.

(c) The Facility shall be open to the public for receipt of green and wood waste six (6) days per week. The Facility shall be staffed and open for public use at a minimum between the hours of 6:30 a.m. and 4:30 p.m. Monday through Friday and between the hours of 7:00 a.m. and 3:00 p.m. on Saturday. Station personnel may man the Facility as needed from 6:00 a.m. to 8:00 p.m. (estimated) for efficient station operations, it being stipulated that the site will typically not accept green and wood waste except during daylight hours.

(d) Green and Wood waste and other approved feedstocks (See Exhibit B) from sources within Riverside County and its Cities shall be given first priority to use this composting facility over other sources; so long as the green and wood waste and other approved feedstocks meet quality standards required for the site. Access to the use of this facility by Riverside County and its Cities shall be confirmed monthly by the applicant's submittal of the tonnage tracking information described in Section 2 (e).

(e) LESSEE shall operate a tonnage tracking system that will determine on a daily basis the amount and origin of generation for the green and wood waste delivered to the Facility. The tonnage tracking system shall be fully compatible with the COUNTY'S current system. LESSEE shall provide COUNTY with monthly reports broken down by origin of generation for the green and wood waste stream delivered to the Facility within fifteen (15) days of the end of the calendar month, and a year-end report that displays all data broken down by month along with a year total for the calendar year. The format of said reports shall be approved by the COUNTY.

(f) LESSEE agrees to provide COUNTY with the "overs" that result from its composting process and palm mulch which generally meet the specifications attached in Exhibit C,

free of charge for use as erosion control on the slopes of the closed Coachella Landfill if the use of such "overs" and palm mulch is approved by the appropriate regulating agencies and the County elects to use them. If approved, LESSEE'S provision of the "overs" and palm mulch shall include delivery to the top of the designated slopes. COUNTY shall place the "overs" and palm mulch on the slopes once it is delivered by LESSEE. If the COUNTY and LESSEE agree, LESSEE may spread the overs/palm mulch material on the slopes free of charge.

COUNTY and LESSEE agree to coordinate this activity with one another. If COUNTY does not have an outstanding request for "overs" with LESSEE, LESSEE is free to locate other uses for them.

(g) Hazardous Waste

(1) Loadcheck. The LESSEE shall transfer and legally dispose any hazardous waste received and generated at this site and identified through its load check program with no charge to COUNTY. The LESSEE is responsible for providing staff at the scale house and tipping floor for load checking, and shall be receptive to periodic unannounced site inspections by COUNTY personnel to confirm compliance.

(h) LESSEE shall include a penalty charge at the gate for delivery of uncovered loads, which charge shall equal the comparable charges at COUNTY landfills.

(i) LESSEE has installed a liner beneath the part of the site proposed for active compost activities where application of water on a frequent basis is required to promote the microbial action. Areas where storage of composted material that does not require the application of water, and access roadways where water is only applied for dust control, are not required to be lined. LESSEE shall submit any proposed liner and the site areas to be lined to COUNTY for its review and approval as part of the process described in section 7 below.

(j) LESSEE shall maintain and suppress dust on access roads and the site at levels which meets all regulatory requirements and which is compatible with the surrounding land uses.

(k) If during the term of this lease, LESSEE elects to bring utilities to the working windrow area of the site (See Exhibit A-I), LESSEE and COUNTY agree to cooperate with one another regarding this activity according to the provisions of this Master Lease.

(l) The LESSEE will be responsible for staffing the entire Facility, maintaining the spare parts inventory, supplying consumables, providing mobile operations equipment, attracting green and wood waste tonnage to the Facility, transferring residue, and providing all other accommodations. Furthermore, with the exception of COUNTY reviews for contract compliance, the LESSEE shall secure, pay for and maintain all certificates, permits, government fees, licenses, and Local Enforcement Agency charges and any other inspections necessary for the operation of the Facility. The LESSEE will be responsible for all costs associated with the operations including but not limited to accounting, purchasing, payroll, personnel, and material marketing functions and general and administrative overhead costs. In addition, the LESSEE will be responsible for all costs of electricity, water, and other utilities required for operations. The LESSEE will also pay for all taxes relating to the project.

(m) The applicable zoning, building and development regulations of any city, county, state or federal jurisdiction affecting the land shall be complied with. COUNTY hereby

warrants that the uses contemplated by this Master Lease are currently in compliance with all environmental clearance requirements, zoning and land use regulations applicable to the Site as of the commencement of the Master Lease.

3. Title.

(a) COUNTY shall deliver to LESSEE a Preliminary Title Report issued by Chicago Title Company (the "Title Company"). LESSEE's leasehold interest in the Land shall be insured once construction has begun on the Facility by a CLTA Policy of Leasehold Title insurance (the "Policy"). The Policy of title insurance provided for pursuant to this Section shall insure LESSEE's interest in the Land free and clear of all liens, encumbrances, restrictions, and rights of way of record; subject only to the following permitted conditions of title ("Permitted Title Exceptions"):

(1) The applicable zoning, building and development regulations of any city, county, state or federal jurisdiction affecting the land; and

(2) Exceptions to coverage: The printed exceptions and exclusions contained in the Policy and Preliminary Title Report 92035781 – K26 dated November 18, 1999.

(b) LESSEE shall have the option of purchasing an ALTA Extended coverage Policy of Leasehold Title Insurance. If LESSEE elects to purchase an ALTA Policy, LESSEE shall notify COUNTY of such fact within 5 days after the date hereof and shall cause a licensed surveyor or civil engineer to conduct a survey of the Land, to prepare from the survey a legal description satisfactory to the Title Company, and to prepare a plot plan showing the location of any streets, easement, and rights of way over or in favor of the Land, and shall then promptly obtain the initials of the parties on such survey within 30 days after receipt of the Preliminary Title Report. LESSEE shall use the survey for approving or disapproving the Preliminary Title Report and the Policy of title insurance; and

(c) The cost of LESSEE's Policy of title insurance equal to a CLTA Standard Coverage Policy shall be paid by COUNTY. The additional cost for the ALTA Extended Coverage Policy, and the cost of any survey ordered by LESSEE, if any, shall be paid by LESSEE.

4. Term.

The Term of this Lease shall commence on the date it is executed by the COUNTY'S Board of Supervisors ("the Commencement Date"), and shall end 10 years after the Commencement Date, unless sooner terminated as provided for herein or unless extended by mutual agreement of COUNTY and LESSEE.

5. Lease Payment.

(a) LESSEE shall pay the sum equal to 5% of the total gross tip fees for incoming feedstock material per month to COUNTY as payment for the leased premises for the use described in Section 2 hereof, payable, in arrears fifteen (15) days after the end of each calendar month, (the "Base Rental").

(b) COUNTY agrees to reimburse LESSEE semiannually (in December and

June), an amount equal to 40% of the total monthly payments described in section 5 (a) above to offset the actual initially constructed infrastructure costs (also known as Permanent Improvements) until one half of the total agreed upon costs are recovered by LESSEE. Infrastructure elements for which reimbursement may be claimed by LESSEE are shown on Exhibit E. Reimbursements shall be applied only to principal costs, and not to any financing costs therefore. LESSEE shall provide COUNTY with a monthly statement showing the basis of the monthly payment; records shall be kept which may be audited by COUNTY at any time. Once one half of the agreed upon initially constructed infrastructure costs are paid for, COUNTY shall retain the entire amount of all the monthly lease payments.

(c) All rent payable hereunder shall be paid without deduction or offset (other than described in section 5 (b) above) and in legal currency of the United States as at the time of payment shall be legal tender for the payment of private debts.

6. Taxes/Assessments.

(a) **Covenant to Pay Taxes.** LESSEE shall pay directly to the appropriate taxing authorities all taxes ("Taxes") levied or assessed upon or against the Premises during the Term and all property taxes levied on personal property located on the Premises. All taxes shall be paid at least 15 days prior to their due date. LESSEE shall furnish to COUNTY at least 10 days prior to the date when any Taxes would become delinquent receipts or other appropriate evidence establishing their payment, and before any fine, interest or penalty shall become due or be imposed by operation of law for their non-payment, and LESSEE shall promptly furnish to COUNTY satisfactory evidence establishing such payment. LESSEE may comply with this requirement by retaining a tax service to notify COUNTY whether the taxes have been paid.

(b) **Definition of Taxes.** The term "Taxes" shall include all real property taxes (including increases in real property taxes caused by reappraisals that are the result of changes in the ownership of COUNTY's interest), possessory interest taxes, personal property taxes, charges and assessments, (including street improvement liens) which are levied, assessed upon or imposed by any governmental authority or political subdivision thereof during any calendar year of the Term hereof with respect to the Premises and the Land and any improvements, fixtures, and equipment and all other property of LESSEE or COUNTY, real or personal, or used in connection with the operation of the Premises and any tax which shall be levied or assessed in addition to or in lieu of such real or personal property taxes, and any license fees, tax measured by or imposed upon rents, or other tax or charge upon COUNTY's leasing of the land or the receipt of rent hereunder. All assessments, taxes, fees, levies and charges imposed by governmental agencies for services such as fire protection, street, sidewalk and road maintenance, refuse removal and other public services generally provided without charge to owners or occupants prior to the adoption of Proposition 13 by the voters of the State of California in the June 1978 election, also shall be deemed included within the definition of "taxes" for the purposes of this Lease.

(c) Notwithstanding the foregoing, LESSEE shall not be required to pay any taxes for which it is otherwise exempt under the laws of the State of California, any Federal statute, or the United States Constitution.

7. Improvements.

(a) Proposed plans and specifications for all improvements, alterations or installation of fixtures by LESSEE shall first be submitted to COUNTY in writing in order to obtain its

written consent to proceed. Requests for approval will be granted or denied within ten (10) days, and will not be unreasonably denied or delayed. Any denial shall be in writing and shall be accompanied by detailed reasons for the denial.

(b) Once the plans and specifications are approved by COUNTY, LESSEE shall with reasonable diligence prosecute to completion all construction of the improvements. LESSEE shall have the responsibility for supplying all technical information and preparing all permits relevant to the project that are required by federal, state, and local regulatory agencies.

(c) All work shall be performed in a good and workmanlike manner, shall substantially comply with the plans and specifications submitted to COUNTY and shall comply with all applicable governmental permits, laws, ordinances and regulations. The parties acknowledge that it is common practice in the construction industry to make minor changes during the course of construction without substantially altering the plans and specifications previously approved by COUNTY; on completion of the work, LESSEE shall give COUNTY notice of all changes in plans and specifications made during the course of the work and shall, at the same time, supply COUNTY with "as built" drawings accurately reflecting all such changes.

(d) **Ownership of Improvements.** The improvements on the Premises shall be owned by LESSEE until the expiration or sooner termination of the Term. LESSEE shall not, however, remove any improvements from the Premises nor waste, destroy or modify any improvements on the Premises, except as permitted by this Lease or in the normal course of business for repair, modification for enhanced operation, or replacement as further provided in paragraph 7(a). The parties covenant and agree for themselves and all persons claiming under them that the improvements are real property. Upon expiration or sooner termination of the Term of this Lease, all permanent improvements on the Premises shown on Exhibit E, but exclusive of unattached furnishings, rolling stock and other detachable processing and handling equipment shall, with compensation to LESSEE amounting to payment of \$1.00 as permitted in this Lease, thereupon become COUNTY's property free and clear of all claims and encumbrances to or against them by LESSEE or any third person, and LESSEE shall defend and indemnify COUNTY against all liability and loss arising from any competing claims of ownership. COUNTY reserves the right to negotiate or seek proposals for the continued operation of the facility at that time.

Notwithstanding the foregoing language, in the event that this Lease is terminated prior to the natural expiration of its term as a result of a breach of the COUNTY, then in addition to any other damages which LESSEE may be entitled to receive from the COUNTY, COUNTY shall be obligated to purchase all fixed improvements on the Premises at a price equal to LESSEE's then unamortized book value of such improvements including, without limitation, unamortized financing costs or any bank costs incurred as a result of the early termination.

In the event that this Lease is terminated prior to the natural expiration of its term as a result of a material breach of the LESSEE, then in addition to any other damages which COUNTY may be entitled to receive from the LESSEE, LESSEE shall be obligated to pay in full the outstanding balance, if any, for all fixed improvements on the Premises, and the ownership of the improvements shall be immediately transferred to COUNTY per Section 7(e) herein.

(e) LESSEE, or its contract operator, shall provide a maintenance assurance, clean up/restoration bond (or other acceptable assurance approved by COUNTY'S counsel) in the amount of \$50,000 which sum shall be available to COUNTY to provide maintenance assurance, clean up or environmental remediation to the leased or adjoining parcels in the event LESSEE activities cause

environmental damage. This bond amount shall be maintained throughout the Lease Term and be adjusted every five years. The maximum increase allowable at any time of adjustment will be equal to the percent change in the Consumer Price Index (CPI). Said computation shall be equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, "(1982 - 84 = 100)", as published by the United States Department of Labor, Bureau of Labor Statistics. Said change shall be measured for the sixty (60) month period beginning when the Term starts and ending sixty (60) months later. The first increase may be effective on the first July 1 date after the sixty month period, based upon changes in the Consumer Price Index formula for the five year period.

8. Signs. LESSEE shall not erect, maintain or display any signs upon the leased premises without first obtaining the written approval of COUNTY, which approval shall not be unreasonably withheld. Signs shall comply with Riverside County Ordinance 348 and California State Solid Waste Permit requirements.

9. Custodial/Maintenance.

(a) Physical Condition of the Land. To the best of COUNTY's knowledge, without having made any independent investigation or study, the Premises on which compost activities are planned are not contaminated by any hazardous or toxic materials. Except as specifically otherwise set forth in Section 2 (m) hereof, COUNTY makes no covenants or warranties respecting the condition of the soil or subsoil or any other physical or environmental condition of the land. LESSEE has performed soils tests of the land and hereby approves the condition of the soils for the construction and use of the Facility on the Premises. COUNTY has heretofore recommended to LESSEE that prior to commencement of the Term that LESSEE conduct an environmental site assessment on the land, to determine the suitability of the Land for construction of the Project.

(1) At the beginning of the ninth year of the Term, if requested by COUNTY, LESSEE shall employ and pay for an independent consultant approved by COUNTY in writing, to conduct an environmental site assessment of the land to determine the condition of the land and the soils with respect to the presence of any hazardous or toxic materials introduced by the Facility or as a result of its operations. All findings and backup material for the environmental site assessment shall be provided to COUNTY for review by the end of the designated year of completion. COUNTY shall notify LESSEE of any cleanup and/or remediation action required to be taken as a result of the assessment findings within six (6) months of receipt of the independent site assessment report provided that LESSEE shall have no responsibility for any cleanup and/or remediation arising out of any condition of the Premises in existence as of the time of this Lease. For this purpose, the parties may rely on the soils tests and reports in existence prior to the execution of this Lease.

(b) LESSEE, at its expense shall provide for its own custodial/maintenance services in connection with the entire leased premises, including without limitation, keeping the building and the grounds in a neat and attractive condition including weed abatement and litter control.

(c) In addition to the requirements of Section 7(e), LESSEE shall promptly and diligently repair, paint, restore, and replace as required to maintain, or to remedy all damage to or destruction of all or any part of the improvements. The completed work of maintenance, compliance, repair, restoration, or replacement shall be equal in value, quality and use to the condition of the improvements before the event giving rise to the work, except as expressly provided to the contrary in this Lease. At the end of operations under the lease, LESSEE shall also clean up all green and wood waste and all compost/mulch in various stages of processing from the site, while leaving all permanent

improvements in place. COUNTY shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises. COUNTY's election to perform any obligation of LESSEE under this provision or LESSEE's failure or refusal to do so shall not constitute a waiver of any right or remedy for LESSEE's default, and LESSEE shall promptly reimburse, defend and indemnify COUNTY against all liability, loss, cost and expense arising from such election.

(d) In determining whether LESSEE has acted promptly as required under the foregoing section, one of the criteria to be considered is the availability of any applicable insurance proceeds.

(e) LESSEE waives the provisions of California Civil Code Sections 1941 and 1942 with respect to COUNTY's obligations for leasability of the Premises and LESSEE's right to make repairs and deduct the expenses of such repairs from Lease payments. LESSEE also waives the right to deduct the expenses from the required disposal fees due COUNTY.

10. Destruction.

(a) **Lease to govern LESSEE's Rights.** LESSEE waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to any destruction of the Premises, and agrees that LESSEE's rights in case of destruction shall be governed solely by the provisions of this Lease.

(b) **Restoration by LESSEE.** In addition to the requirements of Section 7 (e), LESSEE shall promptly and diligently repair, paint, restore and replace as required to maintain the Premises in first class condition and repair, or to remedy all damage to or destruction of all or any part of the improvements from any cause whatsoever required to be insured against pursuant to this Lease. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvements before the event giving rise to the work, except as expressly provided to the contrary in this Lease. COUNTY shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Premises. COUNTY's election to perform any obligation of LESSEE under this provision or LESSEE's failure or refusal to do so shall not constitute a waiver of any right or remedy for LESSEE's default, and LESSEE shall promptly reimburse, defend and indemnify COUNTY against all liability, loss, cost and expense arising from it. Any casualty or destruction shall not terminate this Lease. In reconstructing the improvements, LESSEE shall comply with (a) the Conditions of Major Construction set forth in Exhibit D and (b) the provisions of Section 7.

11. Utilities. LESSEE shall pay any applicable connection charges and pay for all utility services, including, but not limited to, telephone, electric, water, gas, and sewer services as may be required in the maintenance, operation and use of the leased premises.

12. Inspection of Premises. COUNTY, through its duly authorized agents, shall have, at any reasonable time, the right to enter the leased premises for the purpose of inspecting, monitoring and evaluating the obligations of LESSEE hereunder and for the purpose of doing any and all things which it is obligated and has a right to do under this Lease.

13. Quiet Enjoyment. LESSEE shall have, hold and quietly enjoy the use of the leased premises so long as it shall fully and faithfully perform the terms and conditions that it is required to do under this Lease.

14. Compliance with Government Regulations. LESSEE shall, at LESSEE's sole cost and expense, comply with the requirements of all local, state and federal statutes, regulations, rules, ordinances and orders now in force or which may be hereafter in force, pertaining to the leased premises. The final judgement, decree or order of any Court of competent jurisdiction, or the admission of LESSEE in any action or proceedings against LESSEE, whether LESSEE be a party thereto or not, that LESSEE has violated any such statutes, regulations, rules, or ordinances, or orders, in the use of the leased premises, shall be conclusive of that fact as between COUNTY and LESSEE.

15. Default.

(a) LESSEE's Default. The occurrence of any of the following shall constitute a default by LESSEE:

(1) Failure to construct a compost and wood chip facility on the Premises within the time frame as stated in Section 7(b) or not in compliance with the terms set forth in Section 7 hereof.

(2) Failure to pay rent, taxes as described above or any other payment required to be made by LESSEE hereunder as and when due.

(3) Failure to maintain the Premises as required by this Lease.

(4) Abandonment or surrender of the Premises or the leasehold estate by LESSEE.

(5) Failure to perform any other covenant or Provision of this Lease, if the failure to perform is not cured within 30 days after written notice. If the failure to perform cannot reasonably be cured within 30 days, LESSEE shall not be in default of this Lease if LESSEE commences to cure the failure to perform within the 30 day period and thereafter diligently and in good faith prosecutes the cure to completion, and such default is cured within a total of 90 days from the date of the notice.

(6) The subjection of any right or interest in and to the Premises to attachment, execution, or other levy, or to seizure under legal process, if not released within 45 days after notice from COUNTY to LESSEE.

(7) An assignment by LESSEE for the benefit of creditors or the filing of a voluntary or involuntary petition by or against LESSEE under any law for the purpose of adjudicating LESSEE a bankrupt, or for extending time for payment, adjustment, or satisfaction of LESSEE's liabilities hereunder, or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 45 days after the assignment, filing, or other initial event.

(8) The appointment of a receiver, unless such receivership is terminated within 45 days after the appointment of the receiver, to take possession of LESSEE's interest in the Premises or of LESSEE's interest in the leasehold estate or of LESSEE's operations on the Premises for any reason, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (a) pursuant to the first leasehold encumbrance, or (b) instituted by COUNTY, the event of default being not the appointment of a receiver at COUNTY's instance but the event justifying the receivership.

(b) Remedies.

(1) Cumulative Nature Of Remedies. If any default by LESSEE shall continue uncured, following written notice thereof to LESSEE from COUNTY as required by this Lease, for the period, if any, applicable to the default under the applicable provision of this Lease, COUNTY shall have the remedies described in this subsection (b) in addition to all other rights and remedies provided by law or equity, to which COUNTY may resort cumulatively or in the alternative.

(2) Termination. COUNTY may at COUNTY's election following determination of default terminate this Lease by giving LESSEE notice of termination. In the event COUNTY terminates this Lease, COUNTY may recover possession of the Premises (which LESSEE shall surrender and vacate upon demand) and remove all persons and unattached property therefrom, and COUNTY shall be entitled to recover any other additional remedies COUNTY may have at law or in equity and LESSEE shall promptly cooperate with COUNTY, performing any necessary administrative acts to transfer the California Integrated Waste Management Board (CIWMB) operating permit, and any other operations related permits, to COUNTY.

(3) Continuation of the Lease. Even though LESSEE has breached this Lease and abandoned the Premises, at COUNTY's option this Lease shall continue in effect for so long as COUNTY does not terminate LESSEE's right to possession, and COUNTY may enforce all of its rights and remedies hereunder, including the right to recover rent as it comes due under this Lease, and in such event COUNTY will permit LESSEE to sublet the Premises or to assign its interest in the Lease, or both, with the consent of COUNTY, which consent will not unreasonably be withheld provided the proposed assignee or subLESSEE is satisfactory to COUNTY as to credit and experience and ability to perform the obligations of LESSEE, and will occupy the Premises for the same purposes specified herein. For purposes of this subsection, the following shall not constitute a termination of LESSEE's right to possession: (i) acts of maintenance or preservation or efforts to relet the Premises; or (ii) the appointment of a receiver under the initiative of COUNTY to protect COUNTY's interest under this Lease.

(4) Use of LESSEE's Personal Property. COUNTY may for a period not more than one year at COUNTY's election use LESSEE's personal property located on, about or appurtenant to the Premises or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of LESSEE. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(5) Assignment of Subrents. LESSEE assigns to COUNTY all subrents and other sums falling due from sublessee, licensees, and concessionaires (herein called sublessee) during any period in which LESSEE is in default, and LESSEE shall not have any right to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same subrents and other sums to the lender under the first leasehold encumbrance. COUNTY may at COUNTY's election reenter the Premises with or without process of law, without terminating this Lease, and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. COUNTY shall receive and collect all subrents and proceeds from reletting, applying them: first, to the payment of reasonable expenses (including attorneys' fees or brokers' commissions or both) paid or incurred by or on behalf of COUNTY in recovering possession, placing the Premises in good condition, and preparing or altering the Premises for reletting; second, to the reasonable expense of securing new sublessee; third, to the fulfillment of LESSEE's covenants to the end of the

Term; and fourth, to COUNTY's uses and purposes. LESSEE shall nevertheless pay to COUNTY on the due dates specified in this Lease the equivalent of all sums required of LESSEE under this Lease, plus COUNTY's expenses, less the proceeds of the sums assigned and actually collected under this provision.

(c) Lender's Right to Cure Defaults.

(1) Notice of Default. Concurrently with giving notice of default to LESSEE under Section 15(b)(1), above, COUNTY shall deliver (in accordance with the provisions of Section 18) a copy of such notice of default to the lender under the first leasehold encumbrance at its address as furnished to COUNTY in accordance with Section 18.

(2) Lender's Right to Cure. During the continuance in effect of a first leasehold encumbrance, COUNTY will not terminate this Lease because of any default on the part of LESSEE provided that the lender, within ninety (90) days after COUNTY has sent a written notice pursuant to Section 15(b)(1):

(i) Cures such default, if such default can be cured by the payment of money, or, if the default is not so curable, commences or causes the trustee under the encumbrance to commence, and thereafter diligently pursue to completion proceedings to foreclose the encumbrance; and

(ii) Keeps and performs all of the covenants and conditions of this Lease requiring the payment or expenditure of money by LESSEE until such time as LESSEE's leasehold interest is sold upon foreclosure pursuant to the encumbrance, or transferred by an assignment in lieu of foreclosure.

(3) Transfer by Lender. Notwithstanding the provisions of Section 18(a) hereof restricting assignment of this Lease, this Lease may be assigned to the lender by judicial or non-judicial foreclosure or by assignment in lieu of foreclosure (without, however, releasing LESSEE from any of its obligations hereunder) without further consent of COUNTY or any assumption agreement by the lender, the liability of the lender being limited to the period of its possession or ownership of this Lease. No other or further assignment shall be made except in accordance with the provisions of Section 18(a) of this Lease.

(d) COUNTY's Default COUNTY shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within 60 days after written notice by LESSEE to COUNTY specifying wherein COUNTY has failed to perform such obligation; provided, however, that if the nature of COUNTY's obligation is such that more than 60 days are required for its performance, then COUNTY shall not be deemed to be in default if it shall commence such performance within such 60 day period and thereafter diligently and in good faith prosecute the cure to completion.

16. Professional Conduct

(a) In the event any official or employee for LESSEE or its successor-in-interest or any environmental or design professional hired by LESSEE or its successor-in-interest, is indicted by a grand jury, named as a defendant in a felony complaint filed in any court in the United States, or is otherwise alleged to have participated in any criminal activity directly or indirectly associated with the solid waste management and/or the green and wood waste processing business, activities or operations

of LESSEE or its successor-in-interest, LESSEE or its successor-in-interest shall provide notice thereof to the COUNTY within 7 days of such indictment, complaint or allegation. Such notice shall contain a description of the indictment, complaint or allegation, as well as a copy of such indictment or complaint or other matters of public record related thereto. In addition to the foregoing, LESSEE or its successor-in-interest shall provide the COUNTY with copies of any reports required to be prepared by LESSEE or its successor-in-interest pursuant to federal securities laws, including quarterly and annual reports.

(b) In the event any employee for LESSEE or official of the operations contractor or their successor-in-interests or any environment or design professional hired by LESSEE or the operations contractor or their successor-in-interests, who has direct responsibility for any phase of the development or operations at the compost and wood chip facility, including but not by way of limitation, any similar personnel for LESSEE or an operations contractor or their successor-in-interests having a responsibility for transferring or delivering green and/or wood waste to the facility or market, is convicted, indicted by a Grand Jury, or named as a defendant in a felony complaint filed in the Superior Court or a complaint filed in Federal Court associated with conduct of doing business for LESSEE or an operations contractor or their successor-in-interests, this person shall upon written request from the COUNTY be immediately removed from any assignment whatsoever, directly associated with the development or operation of the compost and wood chip facility during the pendency of trial and/or following conviction.

(c) In the event any employee of LESSEE or director or official of an operations contractor is ever convicted of a felony associated with the solid waste management and/or the green and wood waste processing business, said employee, director or official will be immediately terminated from such position.

17. Insurance and Indemnity.

(a) Insurance.

LESSEE shall obtain, and keep in force for the term of this Lease Agreement the following insurance policies which cover any acts or omissions of LESSEE, or its employees, contractors, and agents engaged in the provision of service specified in the Lease Agreement:

- (1) Worker's Compensation coverage in accordance with the statutory requirements of the State of California.
- (2) LESSEE shall obtain and maintain in full force and effect throughout the entire Term of this Lease Agreement a Broad Form Comprehensive General Liability (occurrence) Policy with a minimum limit of three million dollars (\$3,000,000.00) aggregate and two million dollars (\$2,000,000) per occurrence for bodily injury and property damage. Said insurance shall protect LESSEE, COUNTY, and the Riverside County Waste Resources Management District (District), and their elected or appointed officials, employees, and agents, from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operation of the Premises and vehicles while on the Premises or a COUNTY landfill site, whether such operations be by LESSEE itself, or by its agents and/or employees. Copies of the policies or

endorsements evidencing the above required insurance coverage shall be filed with the General Manager-Chief Engineer. All of the following endorsements are required to be made a part of the insurance policies required by this Section:

- (i) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the COUNTY may possess including self-insured retention the COUNTY may have, and any other insurance the COUNTY or District does possess shall be considered excess insurance and shall not contribute with it."
- (ii) "This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company."
- (iii) LESSEE shall cause its insurance carrier(s) to furnish COUNTY and District by direct mail with certificate(s) of insurance showing that such insurance is in full force and effect, and COUNTY and District are named as additional insureds with respect to this Lease Agreement and the obligations of LESSEE hereunder. Further, said certificate(s) shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to COUNTY and District prior to modification, cancellation or reduction in coverage of such insurance. In the event of any such modification, cancellation or reduction in coverage and on the effective date thereof, this Lease Agreement shall terminate forthwith, unless COUNTY and District receive prior to such effective date another certificate from an insurance carrier that the insurance required herein is in full force and effect.

The limits of such insurance coverage, and companies, shall be subject to review and approval by the Board of Supervisors every year and may be modified at that time at the Board of Supervisors' sole discretion and a demonstration of reasonable need. The COUNTY and District shall be named as additional insureds on all policies and endorsements. All policies and endorsements shall be endorsed to waive the insurer's rights of subrogation against COUNTY and District.

(b) Indemnity.

COUNTY agrees to defend, indemnify, and hold harmless, LESSEE and its officers, agents, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including, but not limited to, injury to COUNTY and District's officers, agents, or employees which arise from or are connected with or are caused or claimed to be caused by the sole acts or omissions of COUNTY, and its officers, agents, or employees, in performing required COUNTY duties on the Premises, and all costs and expenses of investigating and defending against same.

LESSEE agrees to defend, indemnify, and hold harmless, COUNTY and District and their officers, agents, and employees from and against any and all claims, demands, damages, liabilities, costs, or expenses for any damages or injuries to any person or property, including, but not limited to, injury to LESSEE's officers, agents, or employees which arise from or are connected with or are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of LESSEE, and its officers, agents, or employees, in operating the Premises, and all costs and expenses of investigating and defending against same.

18. Assignment, Subletting and Encumbering.

(a) Except as provided in Section 18 (b) (c) and (d) hereof to the contrary, LESSEE shall not voluntarily assign or encumber its interest in this Lease, in the Land, or in the Premises, or sublease substantially all or any part of the Land or the Premises, or allow any other person or entity (except LESSEE's authorized representatives) to occupy or use all or any part of the Premises. For the purposes hereof, an "encumbrance" shall mean mortgage, deed of trust, land sale contract, lease or other financing device. Assignment, subleasing or encumbering the Premises is absolutely prohibited. Any attempted assignment, encumbrance, or sublease shall be voidable and, at COUNTY's election, shall constitute a default hereunder. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this section.

(b) LESSEE shall have the right to sublet the Premises or any portion thereof, for occupancy leases with COUNTY's prior written consent, which consent shall not unreasonably be withheld.

(1) Each sublease shall contain a provision, satisfactory to COUNTY and to each lender having an interest at the time the sublease is executed, requiring the subLESSEE to attorn to COUNTY, or, in the event of any proceeding to foreclose any leasehold encumbrance, to the lender, or any person designated in a notice from such lender, if LESSEE defaults under this Lease and if the sublessee is notified by COUNTY or the lender of LESSEE's default and is instructed to make such sublessee's rental payments to COUNTY or the lender or designated person.

(2) LESSEE shall, promptly after execution of each sublease, notify COUNTY of the name and mailing address of the sublessee and shall, on demand, permit COUNTY to examine and copy the sublease.

(3) All subleases shall be "triple net" leases, with the rent payable thereunder to be net of all operating costs, maintenance, taxes, insurance, and utilities (unless LESSEE has received COUNTY's prior written consent to different terms).

(4) Notwithstanding any other provision contained in this Lease, COUNTY shall consent to a sublease between LESSEE and an operator selected by LESSEE to construct and operate the Facility required under this Lease. Such an operator can include any person, entity, or joint powers authority between two or more public entities.

(c) **Allowable Assignment.** Prior to completion of all improvements constituting the Project and after COUNTY's issuance of a Certificate of Completion therefor, LESSEE shall not assign this Lease to any person or entity without COUNTY's consent, which consent may be given or withheld in COUNTY's sole and absolute discretion.

(d) **Encumbrance or Assignment as Security.** Notwithstanding any other provision contained in this Lease, LESSEE shall have the right to encumber or assign its interest in this Lease by means of a leasehold encumbrance to any lender or COUNTY for the purpose of financing the construction of the improvements and for the purpose of providing a construction or take-out loan (in a principal amount not to exceed the actual total cost of constructing the improvements), subject to the following limitations:

(1) prior to execution of any such encumbrance (or any amendment, supplement or modification thereto) a true copy of such instrument(s) and the obligations secured thereby be delivered to COUNTY for COUNTY's review and approval, which shall not unreasonably be withheld, together with a written notice of the name and mailing address of the lender;

(2) the encumbrance documents shall provide that any proceeds from fire or extended coverage insurance shall be used for repair or rebuilding of the improvements and not to repay part of the outstanding obligation to the lender;

(3) the encumbrance shall contain provisions that all notices of default under the note and deed of trust must be sent to COUNTY and LESSEE and that COUNTY shall have the right to cure any default if LESSEE fails to do so. COUNTY shall have 30 days in which to cure any default after the time for LESSEE to cure it has expired. Neither COUNTY's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or deed of trust. If any default is non-curable, it shall not be grounds for foreclosure of the encumbrance if COUNTY, or LESSEE in possession of the Premises, promptly performs all other provisions of the note and deed of trust.

(4) upon the recordation of any instrument in connection therewith, LESSEE shall furnish to COUNTY the date and place of recording or filing of record thereof and the recorder's instrument number, book, and page reference or other recorder's index reference.

(5) during the existence of a leasehold encumbrance and following delivery thereof there shall be no cancellation, surrender, acceptance of surrender or modification of this Lease except by a written instrument executed by COUNTY, LESSEE and the lender.

(6) no encumbrance shall cover any interest in any real property other than LESSEE's leasehold interest in the Premises. No encumbrance shall cover more than one indebtedness.

(7) on termination of this Lease by COUNTY on LESSEE's default, or on the lender's acquisition of the leasehold by foreclosure, COUNTY shall enter into a new lease with the lender covering the Premises covered by the terminated or foreclosed lease if the lender (a) gives notice of request within 30 days after termination or foreclosure, (b) pays all costs resulting from default and termination, (c) remedies all defaults construed as though the Lease had not been terminated, and (d) receives approval from COUNTY for the new compost and wood chip facility operator in accordance with section 18(c) hereof. The new lease shall be for the remainder of the Term of the terminated or foreclosed lease, effective at the date of termination or foreclosure, at the rent and on the covenants agreements, conditions, provisions, restrictions, and limitations contained in the terminated or foreclosed lease.

(8) Except as expressly provided herein, nothing contained in the leasehold encumbrance shall be deemed or construed to relieve LESSEE from the full and faithful observance and performance of its covenants herein contained, or from any liability for the nonobservance or nonperformance thereof, or to constitute a waiver of any rights of COUNTY hereunder, or to require or provide for the subordination to the lien of the leasehold encumbrance of any estate, right, title or interest of COUNTY in or to the Land, the Premises, or this Lease.

(9) Subject to the foregoing, COUNTY shall cooperate in the efforts of LESSEE to obtain any such financing by the prompt execution of any and all documents and the prompt

granting of any and all approvals required in connection therewith.

(10) Without the consent of COUNTY, which consent shall not be unreasonably denied or delayed, LESSEE shall not enter into any such financing utilizing the leasehold estate as collateral: (i) which is of a priority lower than third priority, or (ii) in which the lender is not an institutional lender.

19. Toxic Materials. During the Term of this Lease and any extensions thereof, LESSEE shall not violate any federal, state or local law, or ordinance or regulation, relating to industrial hygiene or to the environmental condition on, under or about the leased premises including, but not limited to, soil and groundwater conditions. Further, LESSEE, its successors, assigns and sublessee, shall not use, generate, manufacture, produce, store or dispose of on, under or about the leased premises or transport to or from the leased premises any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances or related injurious materials, whether injurious by themselves or in combination with other materials (collectively, "hazardous materials"). For the purpose of this Lease, hazardous materials shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code; and in the regulations adopted in publications promulgated pursuant to said laws. Notwithstanding the foregoing, LESSEE shall not be responsible for any hazardous materials relating to or released as a result of the operations of the household hazardous waste facility if COUNTY is the operator of it.

20. Free from Liens. LESSEE shall pay, when due, all sums of money that may become due for any labor, services, material, supplies, or equipment, alleged to have been furnished or to be furnished to LESSEE, in, upon, or about the leased premises, and which may be secured by a mechanics', materialmen's or other lien against the leased premises or COUNTY's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by such lien matures or becomes due; provided, however, that if LESSEE desires to contest any such lien, it may do so, but notwithstanding any such contest, if such lien shall be reduced to final judgement, and such judgement or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed, and said stay thereafter expires, then and in such event, LESSEE shall forthwith pay and discharge said judgement.

21. Employees and Agents of LESSEE. It is understood and agreed that all persons hired or engaged by LESSEE shall be considered to be employees or agents of LESSEE and not of COUNTY.

22. Binding on Successors. LESSEE, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Lease, and all of the parties thereto shall be jointly and severally liable hereunder.

23. Severability. The invalidity of any provision in this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

24. Mediation. LESSEE and COUNTY agree to mediate any controversy or dispute between them involving the construction or the enforcement of any of the terms, provisions or

conditions of this Agreement before resorting to litigation. Mediation is a process by which the parties attempt to resolve a dispute or claim by submitting it to an impartial, mutual mediator, who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. The parties to such dispute shall agree upon a single person to mediate the resolution thereof, and the fees of such mediator, if any, shall be divided equally among the parties involved. Evidence of anything said, any admission made, and any documents prepared in the course of the mediation, shall not be admissible in evidence, or subject to discovery in any litigation proceeding, pursuant to California Evidence Code Section 1152.5. If any party commences a litigation proceeding based upon a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such litigation proceeding. The following matters are excluded from mediation hereunder:

- (a) Any matter which is within the jurisdiction of a probate or small claims court; or
- (b) Any tort action, including actions for bodily injury or wrongful death.

The mere filing of a court action to preserve the running of the statute of limitations, allow the recordation of a notice of pending action to perfect a mechanic's lien, or for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a violation of this section.

25. Venue. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

26. Attorney's Fees. In the event of any litigation between LESSEE and COUNTY to enforce any of the provisions of this Lease or any right of either party hereto, the unsuccessful party to such litigation agrees to pay to the successful party all costs and expenses, including reasonable attorney's fees, incurred therein by the successful party, all of which shall be included in and as a part of the judgement rendered in such litigation.

27. Notices. All notices, consents or other communications which are required or permitted by this Agreement to be served on or given to any party shall be in writing and shall be deemed served or given when personally delivered or, in lieu of personal delivery, on receipt, rejection or return undelivered, when deposited in the United States mail, first-class, certified or registered, postage prepaid, return receipt requested or overnight mail delivery service, addressed to the applicable party at the address which is provided in this paragraph. Unless notice of a different address has been given in accordance with this Section, all such notices shall be addressed as follows:

COUNTY:
Riverside County Waste
Management Department
14310 Frederick Street
Moreno Valley, CA 92553

LESSEE:
Agri Service, Inc.
380 South Melrose, Dr., Suite 203
Vista, CA 92081

or to such other addresses as from time to time shall be designated by the respective parties.

28. Estoppel Certificates.

(a) In the event of a proposed sale or refinancing of the Premises or any part thereof, at any time and from time to time, within twenty (20) days after notice of request by either party, the other party shall execute, acknowledge, and deliver to the requesting party, or to such other recipient as the notice shall direct, a statement certifying that this Lease is unmodified and in full force and effect; or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement and acknowledging that there are no uncured defaults or failures to perform any covenant or Provision of this Lease on the part of the requesting party or specifying any such defaults or failures which are claimed to exist. The statement shall also state the dates to which the Rent and any other charges have been paid in advance. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker of either party and by any prospective purchaser or the lender of the Premises or all or any part or parts of LESSEE's or COUNTY's interests under this Lease.

(b) Either party's failure to execute, acknowledge, and deliver, on request, the certified statement described above within the specified time shall constitute acknowledgment by such party to all persons entitled to rely on the statement that this Lease is unmodified and in full force and effect and that the rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults on the requesting party's part that may exist before the date of the notice.

29. Surrender of Premises. At the expiration or earlier termination of the Term, LESSEE shall surrender to COUNTY the possession of the Premises. Surrender or removal of improvements shall be as directed in the provisions of this Lease on ownership of improvements at expiration or termination. LESSEE shall leave the surrendered property and any other property in good and broom clean condition. All property that LESSEE is not required to surrender but that LESSEE does abandon shall, at COUNTY's election, become COUNTY's property at expiration or the sooner termination of this Lease.

30. No Discrimination.

LESSEE shall not discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this contract and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), and the Federal Civil Rights Act of 1964 (P.L. 88-352).

31. Miscellaneous.

(a) **Governing Law.** This Lease shall be construed and interpreted in accordance with the laws of the State of California.

(b) **Covenants and Conditions.** All provisions, whether covenants or conditions, on the part of LESSEE shall be deemed to be both covenants and conditions.

(c) **Transfer of COUNTY's Interest.** COUNTY shall not transfer its interest in the premises except upon the assumption by the transferee of all obligations and liabilities relating to

the Lease. In no event shall any transfer of COUNTY'S interest relieve COUNTY of any liability which either arose prior to the date of transfer or which is based on facts or circumstances in existence as of the date of the transfer.

(d) Waiver. The waiver by COUNTY or LESSEE of any breach or default by the other party of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach or default of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by the COUNTY shall not be deemed to be a waiver of any preceding breach or default by LESSEE of any term, covenant, or condition of this Lease, other than the failure to pay the particular rents so accepted, regardless of COUNTY's knowledge of such preceding breach or default at the time of acceptance of such rent.

(e) No Joint Venture. Nothing contained herein shall be construed to render the COUNTY in any way or for any purpose a partner, joint venturer, or associated in any relationship with LESSEE other than that of COUNTY and LESSEE, nor shall this Lease be construed to authorized to act as agent for the other.

(f) Exhibits. All exhibits to which reference is made in this Lease are hereby incorporated by reference. Any reference to "this Lease" includes matters incorporated by reference.

(g) Entire Agreement; Modification. This Lease contains the entire agreement between the Parties. No verbal agreement or implied covenant, representation, inducement or understanding of any kind or nature shall be held to vary the provisions hereof, any statements, law or custom to the contrary notwithstanding. No promise, representation, warranty, or covenant not included in this Lease has been or is relied on by either party. Each party has relied on its own inspection of the Premises and examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in this Lease itself. The failure or refusal of either party to inspect the Premises, to read this Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice. No provision of this Lease may be amended or varied except by an agreement in writing signed by the parties hereto and the lender under the first leasehold encumbrance or their respective successors.

(h) Consents to LESSEE. Neither COUNTY's execution of this Lease nor any consent or approval given by COUNTY hereunder in its capacity as COUNTY shall waiver, abridge, impair or otherwise affect COUNTY's powers and duties as a governmental body. Any requirements under this Lease that LESSEE obtain consents or approvals of COUNTY are in addition to and not in lieu of any requirements of law that LESSEE obtain approvals or permits. COUNTY hereby certifies, however, that as of the date hereof, there are no consents or approvals required to be given by COUNTY in connection with the execution and performance by LESSEE of the Master Lease in accordance with its terms and provisions which have not been granted by COUNTY.

(i) Records. COUNTY or any representative or designee thereof may examine the books and records of LESSEE, or any officer, employee, agent, contractor, affiliate, related person, assignee or franchise, as such books and records relate to, directly or indirectly, green and wood waste tonnage and the disposition of hazardous waste by LESSEE.

(j) Recordation of Memorandum of Lease. This Lease shall not be recorded. A memorandum of this Lease shall be recorded. The parties shall execute the memorandum in form and substance as required by a title insurance company insuring LESSEE's leasehold estate or the interest

of any leasehold or fee lender, and sufficient to give constructive notice of this Lease to subsequent purchasers and lenders.

(k) Execution in Counterparts. This Lease, or the memorandum of this Lease, or both, may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

32. Permits, Licenses and Taxes. LESSEE shall secure, at its expense, all necessary permits and licenses as it may be required to obtain, and LESSEE shall pay for all fees and taxes levied or required by any authorized public entity. LESSEE recognizes and understands that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of property taxes levied on such interest.

33. Paragraph Headings. The paragraph headings herein are for the convenience of the parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Lease.

34. COUNTY's Representative. COUNTY hereby appoints the General Manager-Chief Engineer of the COUNTY Waste Management Department as its authorized representative to administer this Lease.

35. COUNTY Periodic Access and Joint Use. It is expressly understood that COUNTY personnel and/or its contractors and agents will from time to time enter and cross the premises for purposes of access, construction and maintenance of the closed landfill and use of remaining COUNTY property. LESSEE agrees that it (and its authorized operator) will cooperate with all such agents, allowing ingress and egress, as needed to accommodate these activities, and allow short term equipment and material storage in the leased premises as may be mutually agreed upon which does not unreasonably interfere with LESSEE's activities. Routine periodic access for inspection and maintenance of the closed landfill, operation of the gas extraction system, and for air and ground water monitoring are anticipated without special coordination, providing however, during the compost and wood chip facility operating hours, COUNTY personnel will report in at the fee booth, to identify themselves and state their intended activity. Access for contracting agents doing construction activities for the COUNTY or lessees of some of the remaining COUNTY property will be granted following coordination meetings whereby specific uses and activities will be described and agreed to between the parties affected, prior to beginning. LESSEE shall not deny reasonably required access or short term joint uses.

LESSEE and COUNTY agree that nothing herein precludes COUNTY from entering into lease agreements with other vendors for COUNTY land that is outside the boundaries of the Premises. Except as provided for in the existing Master Lease with the Coachella/Indio Waste Transfer Authority, COUNTY shall not lease any portion or allow any other portion of the landfill property to be subleased to a green waste processing or composting operation. Green waste is defined in Title 14 of the Public Resources Code.

36. Entire Lease. This Lease is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous leases, agreements and understandings, oral or written, in connection therewith. This Lease may be changed or modified only upon the written consent of the parties hereto.

37. Illegal Dumping Prevention Services.

LESSEE shall have the continued responsibility to collect illegally dumped green waste material attributable to operation of the Facility along the Traveled Way on primary delivery routes to the Facility easterly of Highway 10 on Dillon Road and 44th Avenue/Landfill Road as shown on Exhibit A-II. Inspection and retrieval shall be completed not less often than twice weekly.

38. Compost Promotion Program.

LESSEE shall work with COUNTY solid waste personnel to promote recycling and compost end uses. Such work shall include, but not be limited to, providing material for events such as Earth Day, community gardens, school programs and dissemination of COUNTY or State produced recycling literature.

39. Lease Extension

At the end of the ninth year of the agreement, COUNTY and LESSEE agree to negotiate in good faith in regard to entering into another lease agreement at the end of the ten year term, providing however, nothing herein implies any commitment whatsoever on the part of the COUNTY to execute another lease.

40. Right of First Refusal.

In the event that COUNTY should elect to sell the Premises to a private purchaser, COUNTY shall first give notice to LESSEE of such intent, together with a true and complete copy of the proposed terms of sale, and shall give LESSEE the right to purchase the Premises upon the same terms of sale. LESSEE shall exercise its right to purchase the Premises, if at all, by delivering notice to COUNTY of its intent to purchase within forty-five (45) days following LESSEE'S receipt of COUNTY'S notice.

If COUNTY elects to sell the Premises, and is required to seek bids for such sale, LESSEE shall be deemed to have submitted a revocable bid in an amount which exceeds the highest bid actually received by One Dollar (\$1.00). LESSEE shall have the right to revoke such bid by delivering notice of revocation within fifteen (15) days following LESSEE'S receipt of notice from COUNTY of the deemed amount of LESSEE'S bid, in which event COUNTY may proceed, in the sole and exclusive exercise of its discretion, to sell the Premises to the highest other bidder, or to reject all bids and retain ownership of the Premises.

41. Cooperation with Transfer Station Lessee/Operator

LESSEE agrees to cooperate with the Transfer Station Lessee/Operator in regards to areas such as access road, water line, and other areas of mutual interest during the term of this Lease.

[The remainder of this page left blank]

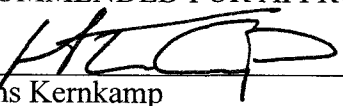
IN WITNESS WHEREOF, this Agreement has been executed and is effective on the date the Board of Directors takes action on it.

RIVERSIDE COUNTY WASTE
MANAGEMENT DEPARTMENT

AGRI SERVICE, INC

Dated: 11-16-09 Dated: November 17, 2009

RECOMMENDED FOR APPROVAL

By: 
Hans Kernkamp
General Manager-Chief Engineer
RIVERSIDE COUNTY WASTE
MANAGEMENT DEPARTMENT

By: 
Title: President

By: _____
Chairman, Board of Supervisors

ATTESTED:

By: _____

APPROVED:


By: 
Neal Kipnis, Deputy County Counsel

EXHIBIT A

LEGAL DESCRIPTION

**GREEN WASTE FACILITY AREA
WITHIN COUNTY OF RIVERSIDE PROPERTY**

That certain parcel of land situated in the unincorporated territory of the County of Riverside, State of California, being that portion of Section 22, Township 5 South, Range 8 East, San Bernardino Base and Meridian according to the official plat thereof described as follows:

BEGINNING at the Northwesterly corner of said section 22;

thence South 89-53-07 East 50.0001 feet,
thence South 00-02-49 East 73.3500 feet,
thence South 06-01-04 West 189.3434 feet,
thence South 45-54-35 East 88.1873 feet,
thence South 24-07-38 West 109.5502 feet,
thence South 00-52-52 East 110.5331 feet,
thence South 00-53-11 East 110.5432 feet,
thence South 30-02-33 West 43.2044 feet,
thence South 00-02-49 East 1468.5705 feet,
thence South 45-03-26 East 35.3624 feet,
thence North 89-57-15 East 349.1901 feet,
thence South 64-03-06 East 570.5926 feet,
thence South 35-43-01 East 166.0896 feet,
thence South 26-52-31 East 260.1032 feet,
thence South 23-16-53 East 200.8872 feet,
thence South 36-24-03 East 81.1047 feet,
thence South 61-40-47 East 238.9958 feet,

thence South 28-24-30 East 59.5057 feet,
thence South 00-00-00 East 103.0300 feet,
thence South 28-43-13 East 71.5869 feet,
thence North 78-50-06 East 46.4797 feet,
thence North 72-03-21 East 256.6441 feet,
thence North 82-56-20 East 164.6488 feet,
thence North 82-56-32 East 165.8668 feet,
thence North 83-04-20 East 247.6381 feet,
thence North 78-37-58 East 80.4175 feet,
thence North 01-50-40 West 249.7794 feet,
thence North 06-05-00 West 50.0116 feet,
thence North 58-45-30 East 158.4700 feet,
thence North 61-11-47 East 151.9271 feet,
thence North 61-55-31 East 149.0365 feet,
thence North 62-03-04 East 131.6668 feet,
thence North 19-35-15 East 150.3082 feet,
thence North 68-26-16 East 127.2340 feet,
thence North 54-43-41 East 121.5673 feet,
thence North 69-43-01 East 175.3320 feet,
thence South 07-35-04 East 117.5887 feet,
thence South 08-59-58 East 139.5579 feet,
thence South 10-53-23 East 133.1782 feet,
thence South 12-56-15 East 148.8691 feet,

thence South 15-36-11 East 104.3973 feet,
thence South 18-10-28 East 98.0411 feet,
thence South 11-11-17 East 47.0543 feet,
thence South 11-11-48 East 65.4558 feet,
thence South 18-04-06 West 556.3130 feet,
thence North 79-08-09 West 222.3554 feet,
thence North 76-33-34 West 196.9132 feet,
thence South 78-54-14 West 272.3209 feet,
thence North 78-09-24 West 242.5022 feet,
thence South 87-05-14 West 14.1683 feet,
thence South 87-03-31 West 243.4107 feet,
thence South 81-10-27 West 259.9884 feet,
thence South 81-10-29 West 77.1737 feet,
thence South 90-00-00 West 398.1300 feet,
thence North 00-00-00 East 239.0600 feet,
thence North 28-43-30 West 89.8241 feet,
thence North 00-00-00 East 103.1200 feet,
thence North 28-24-10 West 42.9501 feet,
thence North 61-40-53 West 236.7539 feet,
thence North 36-24-24 West 91.2870 feet,
thence North 23-16-40 West 203.3965 feet,
thence North 26-52-35 West 256.8430 feet,
thence North 35-42-47 West 156.2038 feet,
thence North 64-03-09 West 556.0977 feet,

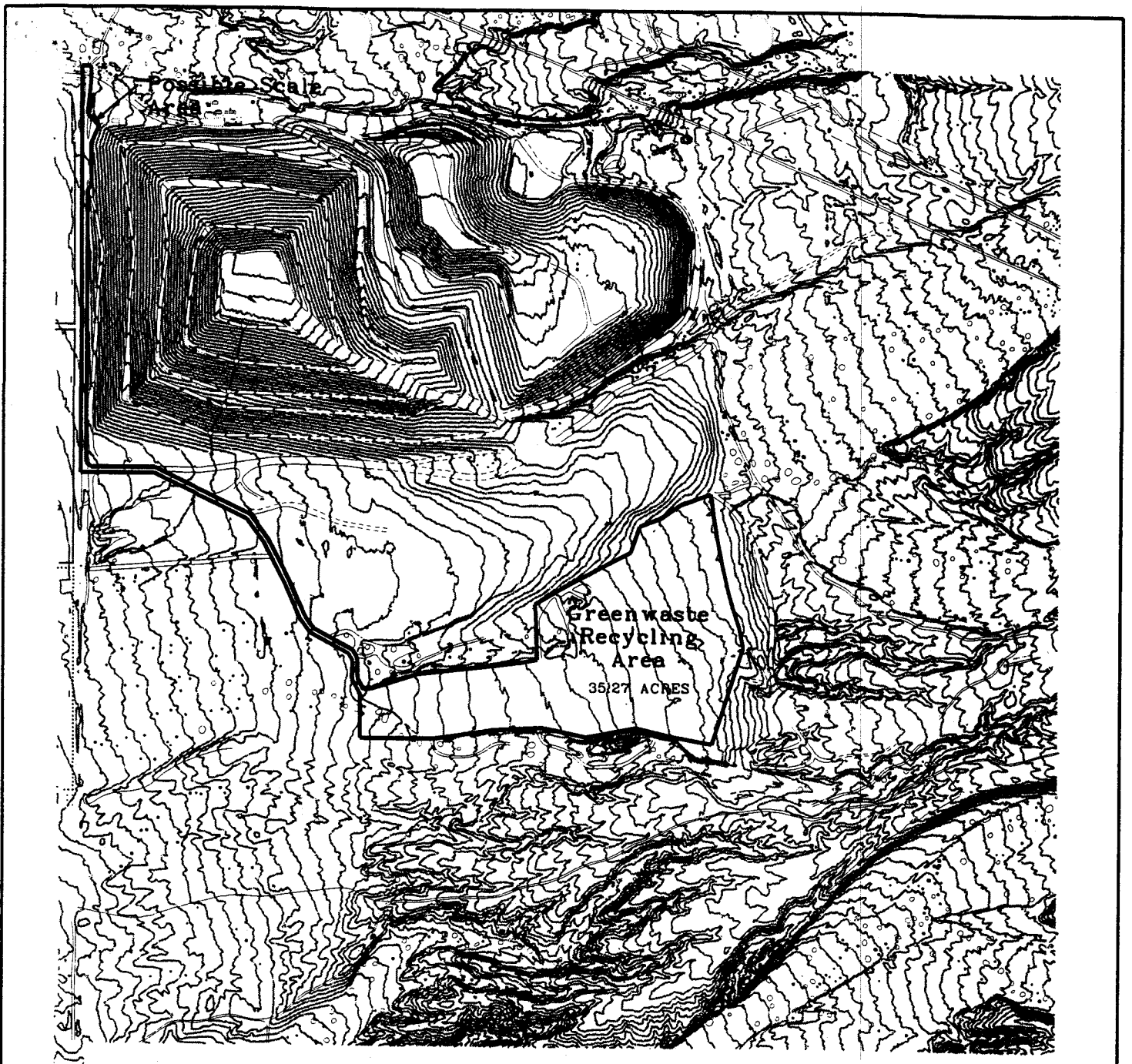
thence South 89-57-14 West 397.3201 feet,

thence North 00-02-43 West 2205.1407 feet to the POINT OF
BEGINNING.

CONTAINING 35.27 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record

Exhibit "A-1" attached and by this reference made a part hereof.



**Waste Management Department Land to be Leased to
Salado Creek Enterprises, LLC**

for Development of a Greenwaste Recycling Area



Land to be Leased to Salado Creek Enterprises, LLC

(35.27 ACRES)

The County (or its designated agent) reserves the right of access for ingress and egress at all times across the leased property for maintenance of its landfill and any other purpose it chooses for use of its remaining property.



Section 22 T.5S. R.8E. Exhibit A-1

Coachella Sanitary Landfill

Greenwaste Lease Area



**Riverside County
Waste Management Department**

sites/coach/99co/spec/greenwaste/co9911_greenwaste

Date: November 5, 1999

Scale: 1"=800'

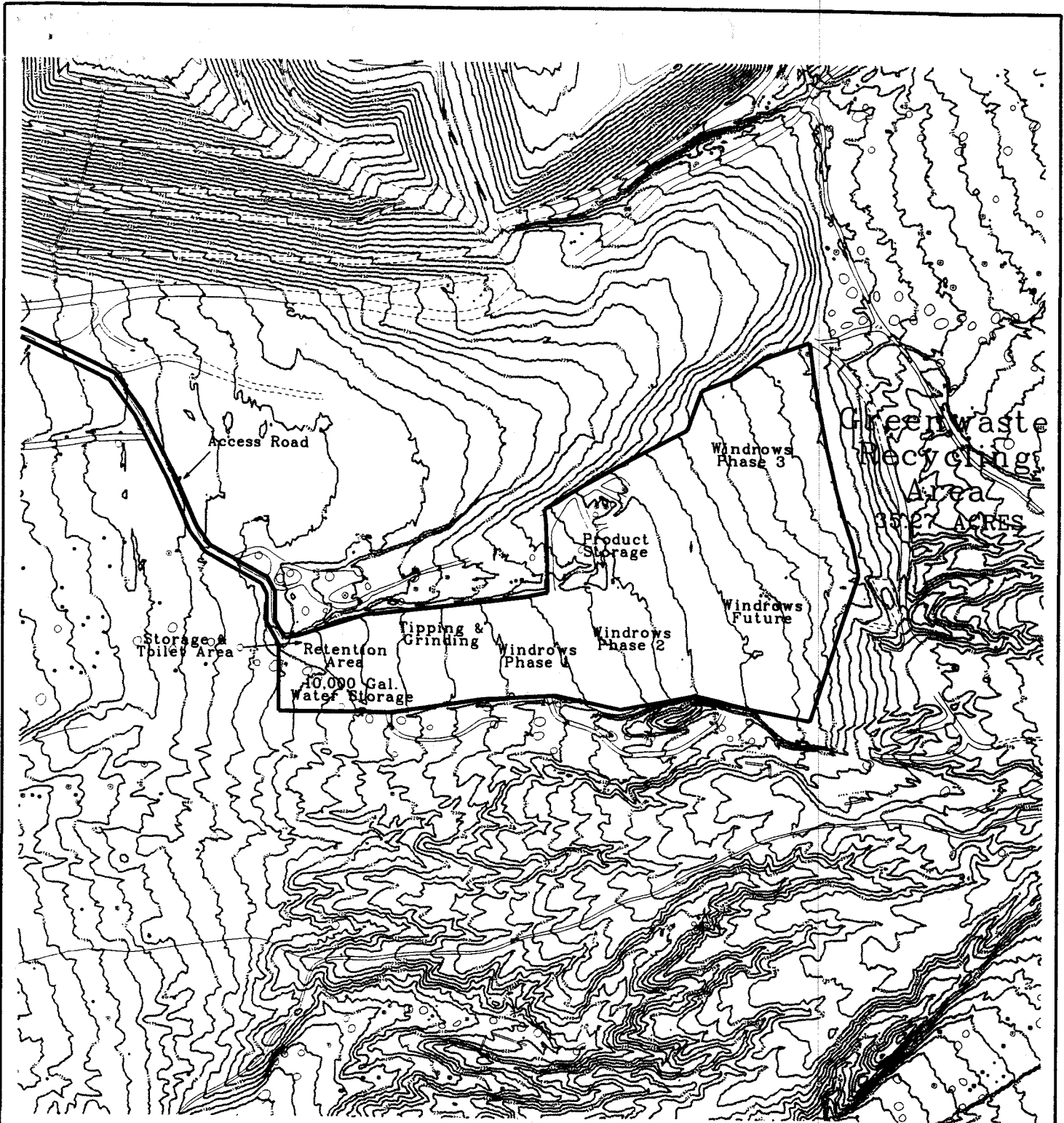


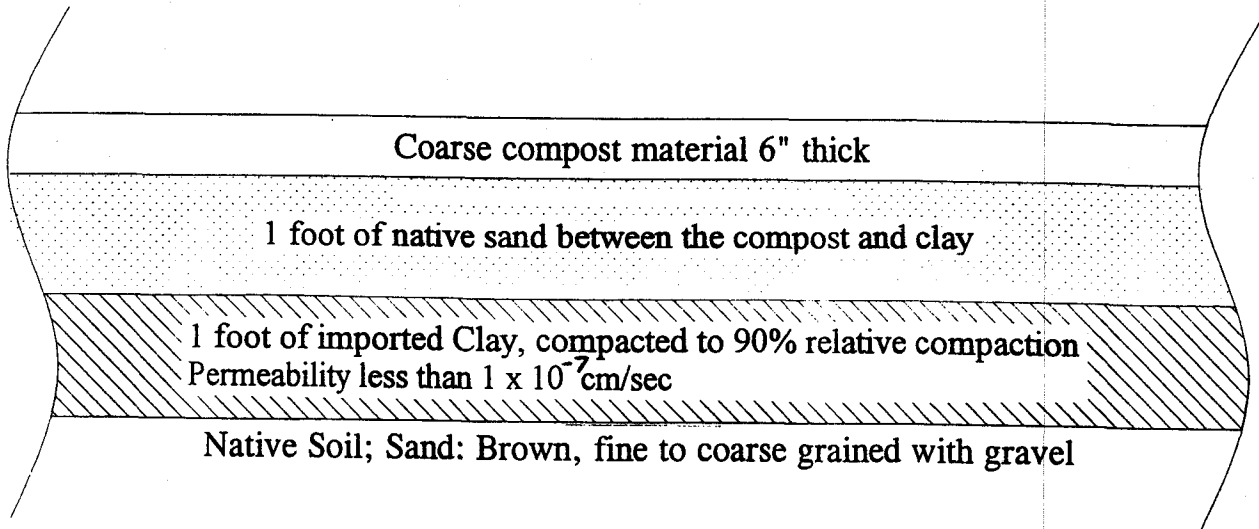
Exhibit B-1

Riverside County
Waste Management Department

Coachella Sanitary Landfill
Greenwaste Site Map

sites/coach/99co/spec/greenwaste/co9911_greenwaste_sm.dgn | Date: November 5, 1999

Photo Date : Sep. 1999 | Scale : 1"=500'



Brett L. Anderson

Exhibit B-II

Profile of Clay Liner	
County Greenwaste Site Dump Riverside County, California	
Sladden Engineering	
DATE: 12-6-99	JOB NO.: 544-9195

Exhibit C

Specification: Mulch for Erosion Control

Unless otherwise specified, mulch shall consist of at least 99.9 percent by weight of urban green waste material consisting of chipped, shredded, or ground woody landscape material, clean processed recycled wood products, tree bark, or any combination thereof. The mulch shall not contain more than two percent grass by weight.

The particle size of the mulch shall be between ½ and three inches in length and not less than ½ inch in width and 1/8 inch in thickness. At least 85 percent, by volume, of the mulch shall conform to the sizes specified. No particle shall exceed five inches in size, in any dimension.

The mulch shall be free of deleterious materials such as clods, coarse objects, and rocks. The moisture content of the mulch shall not be excessive as determined by the County.

The mulch shall not contain paint or petroleum products; or excessive or unhealthy levels of herbicides or fungicides, as determined by the County.

The County may perform or cause to be performed, random or selected testing for contaminants at the County's sole discretion, for protection of the health and safety of personnel or the environment.

A Certificate of Compliance for mulch shall be furnished to the County when requested. This certificate shall ensure conformance to the specification herein.

As an option to this specification, the County may elect to accept ground palm tree material at its discretion.

Exhibit B

Facility Description

1. The compost and wood chip facility will have a design capacity of 75,000 tons per year. Up to 10,000 tons per year of food waste may be used as a feedstock material, in addition to green and wood waste material, but together not to exceed a combined volume of 75,000 tons per year.

Liquid Grease-trap waste may supplement processed water usage, up to 12,500 gallons per day.
2. The facility will have a fee booth, office and a seventy foot electronically operated scale.
3. The facility shall have a hazardous waste load check program.
4. The facility shall have a tonnage tracking system that will determine on a daily basis the amount and origin of generation for the green and wood waste delivered to the Facility.
5. A liner with permeability resistance equal to or greater than the liner concept shown on Exhibit "B-11", shall be installed beneath any part of the site proposed for active compost activities where application of water on a frequent basis is required to promote the microbial action.
6. Features and uses to support the primary functions of the Facility as generally described in Section 2, including but not limited to fuel facilities, spare parts storage, office facilities and maintenance facilities and all incidental storage and support facilities are permitted under the Base Lease rate described in Section 5.

EXHIBIT D

CONDITIONS OF CONSTRUCTION

Before any work of construction, alteration or repair is commenced on the Land or the Premises, and before any building materials have been delivered to the Land or the Premises by LESSEE or under LESSEE's authority, LESSEE shall comply with all the following conditions or procure COUNTY's written waiver of the condition or conditions:

1. LESSEE shall prepare final working plans and specifications substantially conforming to preliminary plans previously reviewed by COUNTY, and shall submit them concurrently to COUNTY and to the appropriate governmental agencies for approval. Changes from the preliminary plans shall be considered to be within the scope of the preliminary plans (a) if they are not substantial or if they are made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval, and (b) if they do not depart substantially in size, utility, or value from the improvements described in the plans and specifications heretofore submitted by LESSEE to COUNTY.

The construction plans and specifications shall be prepared by an architect or engineer licensed to practice in California, including but not limited to preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, architecture and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates. All improvements shall be constructed within the exterior property lines of the Premises; provided that required work beyond the Premises on utilities, access, and conditional use requirements do not violate this Provision. With the plans, LESSEE shall deliver to COUNTY the certificate of the Person who prepared the plans and specifications certifying that LESSEE has fully paid for them or waiving payment and waiving any right to a Lien for preparing them and permitting COUNTY to use the plans without payment for purposes relevant to and consistent with this Lease.

COUNTY shall coordinate with the appropriate governmental agencies throughout the approval process, and shall supply any input deemed necessary by the COUNTY through such governmental agencies. LESSEE shall ensure that COUNTY receives concurrent copies of all correspondence, documents and drawings ("Papers") submitted by LESSEE to the various governmental agencies, and shall promptly deliver to COUNTY copies of all Papers received by LESSEE from such governmental agencies. COUNTY acknowledges that final approval of the plans and specifications by the appropriate governmental agencies shall constitute its approval, as well. LESSEE shall deliver to COUNTY one complete set of Plans and Specifications as approved by the governmental agencies.

2. Notify COUNTY of LESSEE's intention to commence a work of improvement at least twenty (20) days before commencement of any such work or delivery of any materials in connection therewith. The notice shall specify the approximate location and nature of the intended improvements. COUNTY shall have the right to post and maintain on the Premises any notices of nonresponsibility provided for under applicable law, and to inspect the Land and the Premises in relation to the construction at all reasonable times.

3. Furnish COUNTY with a true copy of LESSEE's contract with the general contractor and with evidence of the general contractor's financial condition for COUNTY's approval. The

contract shall give COUNTY the right but not the obligation to assume LESSEE's obligations and rights under that contract if LESSEE should default.

COUNTY may disapprove by notice given within 15 business days following delivery of the copy of the contract. The notice shall specify the grounds for disapproval. COUNTY shall not unreasonably disapprove. If LESSEE elects to act as general contractor, the reference above to contract and evidence shall be considered to apply to the subcontractor of each subcontract in excess of \$100,000.00.

4. Deliver to COUNTY true copies of all documents to evidence the commitment of financing for any new construction. "Financing" includes both the construction (or interim) financing and the take-out (also called permanent or long-term) loan. COUNTY may require by notice that no construction commence until the take-out financing is firmly committed but may disapprove the financing only if it violates an express provision of this Lease.

5. Within twenty (20) days of LESSEE's commencement of a work of improvement on the Premises and/or delivery of materials therewith, LESSEE shall file with COUNTY (i) a payment bond in the amount of 100% of COUNTY'S estimate of the construction cost and (ii) a performance bond in the amount of 100% of COUNTY'S estimate of the construction cost securing LESSEE's faithful performance in developing a compost and wood chip facility or newly constructed feature on the Premises in a bond form acceptable to COUNTY. These Bonds shall run concurrently for the period of construction. COUNTY shall release these bonds on the date that the facility is deemed functional on a continuous basis for the purposes of composting and chipping green/wood waste or meeting the intended use of the newly constructed feature as determined by the COUNTY's General Manager-Chief Engineer subject to LESSEE furnishing Performance Bonds, Insurance and Surety instruments required by this Lease. In the event that LESSEE's contractor supplies bonds which otherwise satisfy the foregoing requirements, LESSEE shall not be required to supply duplicative bonds.

6. Procure and deliver to COUNTY at LESSEE's expense evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to a grading permit, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction.

7. Deliver to COUNTY (1) certificates of insurance evidencing coverage for "builder's risk," (2) evidence of worker's compensation insurance covering all Persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against COUNTY or the Premises, and (3) evidence that LESSEE has paid or caused to be paid all premiums for the coverage described above in this paragraph and any increase in premiums on insurance provided for in the provision on insurance, sufficient to assure maintenance of all insurance above during the anticipated course of the work. LESSEE shall maintain, keep in force, and pay all premiums required to maintain and keep in force all insurance above at all times during which such work is in progress.

LESSEE represents and warrants that all of the improvements constructed by LESSEE shall be constructed in compliance with the current County and State of California standards and laws applicable to the construction of public improvements, and in compliance with all applicable law or regulation with respect to the payment of prevailing wages, to the extent applicable to LESSEE. The parties agree that one of the purposes of this Lease is for the construction of the improvements on the Premises, and is not, nor is it intended to be, a public works contract. In performing this Lease,

LESSEE is an independent contractor and not the agent of COUNTY. COUNTY shall not have any responsibility for payment to any contractor or supplier of LESSEE. Notwithstanding the foregoing, LESSEE understands that it may be subject to certain public contract requirements as provided by law, and to the extent that LESSEE is subject to such requirements, LESSEE shall comply with all such requirements.

Exhibit E
Infrastructure Elements

Permanent Improvements – Total Cost (As agreed upon during the first lease between County and Lessee)

<u>Leasehold Improvement</u>	<u>Cost</u>
Road	\$16,988.40
Liner Grading	\$92,828.82
Liner	\$136,719.78
Water Line (above tee)	\$127,015.14
Water Line (shared with Burrtec)	<u>\$118,004.50</u>
Total	\$491,556.64

Unattached furnishings, rolling stock and other detachable processing and handling equipment

- *Grinder
- *Scale
- *Office
- *Loader
- *Water Trucks
- *Fuel Tank