

COPY

COPY

THE CITY OF SAN DIEGO



Am-Sod, Inc.

Flat Rate Lease

DOCUMENT NO. 00-18319
FILED JUN 24 1996
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

AM-SOD LEASE AGREEMENT

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
SECTION 2: TERM	3
2.1 <u>Commencement</u>	3
2.2 <u>Holdover</u>	3
2.3 <u>Quitclaim and Surrender of LESSEE'S Interest</u>	3
SECTION 3: RENT	4
3.1 <u>Time and Place of Payment</u>	4
3.2 <u>Rent</u>	4
3.3 <u>Delinquent Rent</u>	7
SECTION 4: ASSIGNMENT	8
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	8
4.2 <u>Assignment and Subletting</u>	8
4.3 <u>Encumbrance</u>	9
4.4 <u>Defaults and Remedies</u>	9
4.5 <u>Eminent Domain</u>	11
4.6 <u>Control by Specified Individuals or Entities</u>	12
4.7 <u>MBE/WBE Assignment</u>	13
SECTION 5: INSURANCE RISKS/SECURITY	13
5.1 <u>Indemnity</u>	13
5.2 <u>Insurance</u>	14
5.3 <u>Waste, Damage, or Destruction</u>	15
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	16
6.1 <u>Acceptance of Premises</u>	16
6.2 <u>Entry and Inspection</u>	16
6.3 <u>Maintenance</u>	17
6.4 <u>Improvements/Alterations</u>	17
6.5 <u>Utilities</u>	17
6.6 <u>Liens</u>	17
6.7 <u>Taxes</u>	18
6.8 <u>Signs</u>	18
6.9 <u>Ownership of Improvements and Personal Property</u>	18

6.10	<u>Unavoidable Delay</u>	19
SECTION 7: GENERAL PROVISIONS		
7.1	<u>Notices</u>	20
7.2	<u>Compliance with Law</u>	20
7.3	<u>CITY Approval</u>	20
7.4	<u>Nondiscrimination</u>	20
7.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	21
7.6	<u>Partial Invalidity</u>	22
7.7	<u>Legal Fees</u>	22
7.8	<u>Number and Gender</u>	22
7.9	<u>Captions</u>	22
7.10	<u>Entire Understanding</u>	22
7.11	<u>CITY Employee Participation Policy</u>	22
7.12	<u>Drug-free Workplace</u>	23
7.13	<u>Disabled Access Compliance</u>	23
7.14	<u>Corporate Authority</u>	24
7.15	<u>CITY Option to Purchase</u>	24
7.16	<u>Supersedure</u>	25
SECTION 8: AGRICULTURAL PROVISIONS		
8.1	<u>Agricultural Practice</u>	25
8.2	<u>Best Management Practices</u>	26
8.3	<u>Reporting Requirements for Agricultural Practices</u>	26
8.4	<u>Noxious Weeds, Pests, and Erosion</u>	26
8.5	<u>No Warranty</u>	26
8.6	<u>Cutting of Trees</u>	26
8.7	<u>Hold Harmless, Flood Damage and Other Acts of God</u>	27
8.8	<u>Water Rights</u>	27
SECTION 9: SPECIAL PROVISIONS		
9.1	<u>Potential Construction of Public Hiking, Biking and Riding Trails</u>	30
9.2	<u>LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites</u>	31
9.3	<u>Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites</u>	31
9.4	<u>Boundary Adjustments</u>	32
9.5	<u>Housing of Permanent Employees</u>	32
9.6	<u>Hazardous/Toxic Waste</u>	32
9.7	<u>City's Right to Buy Back Leasehold Interest</u>	33
SECTION 10: SIGNATURES		
10.1	<u>Signature Page</u>	36
SECTION 11: EXHIBITS		
		37

11.1	<u>Exhibit A - Maps</u>	37
11.2	<u>Exhibit B - Corporate Name</u>	38

**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and AM-SOD, INC., hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as approximately 250 acres of improved property and further described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." Both LESSEE and LESSOR acknowledge that the leasehold has not been surveyed. However, both LESSEE and LESSOR agree that the entire leasehold is approximately 250 acres of farm land.

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of growing sod and/or general field crops, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

If LESSEE requests a change of use or an additional use not approved in the original document, CITY may require additional environmental studies to determine if any proposed change in use is compatible with current or proposed environmental documents regarding the San Pasqual Valley.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary

action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

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

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of

this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a turf/sod growing farm and the growing of general field crops, and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be 30 years commencing on the first day of April 1996. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. LESSEE will be permitted to harvest and market any remaining crops after the expiration or termination of this agreement. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent is due quarterly in advance. All quarterly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar quarter. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. The initial rent is \$87,500 (\$350 per acre per year) per annum payable quarterly commencing April 1, 1996. At the beginning of the sixth year (April 1, 2001), the rent shall be adjusted to \$105,000 per annum payable quarterly.

The rent is subject to adjustments based on increases in the Consumer Price Index (CPI), and if any, in the fair market value of the leased premises as hereinafter provided. However, in no event shall the CPI adjustment be less than two percent (2%) per annum or exceed five percent (5%) per annum.

- b. (1) CPI Index Adjustments. At the end of the fifteenth (15th) year following the effective date of the lease, i.e., March 31, 2011 and at the end of the twenty fifth year (25th), i.e., March 31, 2021 of the lease term, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the

base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The base figure shall be the three months average of index figures published by said CPI for the months of October, November and December for the calendar year ending six years prior to the particular adjustment year in which the adjustment occurs.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index	<u>121</u>
Base Figure	110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- c. Market Value Adjustments. In addition to said CPI adjustments, at the end of the tenth year, i.e., March 31, 2006, and twentieth year (20th), i.e., March 31, 2016 following the effective date of this agreement i.e., (April 1, 1996), the rent for the ensuing five years, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of eight percent (8%) by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed

third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value, of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant (without tenant improvements) and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established i.e., March 31, 2016. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- 3.3 Delinquent Rent: If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional 10 percent (10%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 Defaults and Remedies.

- a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if

curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

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

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

- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
 - d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, such as remaining value of the leasehold interest, good will, business loss, moving costs, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
 - f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.6 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and controlled by Floyd R. Wirthlin, at least to the extent of fifty-one percent (51%) of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the premises. Provided, however, in the event that any of the above-named persons shall become incapacitated, then the other(s) shall continue in such active administration and supervision. In the event all parties are incapacitated, then the stockholders shall select an experienced manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer of stock or divestment of any interest in said corporation

by the above-named persons in excess of five percent (5%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment and Subletting, hereof; provided, however, that the stock of any stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease as an assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.7 MBE/WBE Assignment. LESSEE acknowledges that it is CITY policy to encourage Minority Business Enterprise/Women Business Enterprise (MBE/WBE) involvement in CITY contracts and leases and that a public purpose is served thereby. If LESSEE proposes to assign this lease to a non-MBE/WBE buyer, LESSEE agrees to first use due diligence in finding a qualified MBE/WBE assignee. LESSEE shall fulfill this requirement to use due diligence by doing all of the following:

- a. LESSEE, at its expense, shall advertise the proposed sale of the leasehold in at least one issue each of three different minority/women-focus publications of general circulation. The publications shall be approved by the City Manager, and City Manager shall provide a list of such publications to LESSEE upon request. The ads may be either display or classified and shall state that LESSEE desires to locate a qualified MBE/WBE buyer. The ads shall also request respondents to register their interest with a designated employee of CITY. Affidavits of publication shall be furnished to the City Manager.
- b. LESSEE shall allow no fewer than 20 calendar days from the date of publication for interested parties to respond. Any offers from prospective MBE/WBE buyers shall be presented in writing to CITY for review, together with LESSEE'S reason(s) for accepting or rejecting the proposal.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected

with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

(1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

(2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

(1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the

premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within

ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any

necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.3 Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state, and federal agencies shall be observed in all maintenance, repairs, and replacements on the premises.
- 6.4 Improvements/Alterations. ~~No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager.~~ Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the

premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY. In the case of any sale, transfer, exchange or other disposition of the land by CITY during the term of this lease, LESSEE shall not be responsible for the payment of an increase in fees, taxes or assessments due to such sale, transfer, exchange or other disposition.

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

6.9 Ownership of Improvements and Personal Property.

- a. During the term of the lease, LESSEE, shall be the owner of any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S

option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.

- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party

claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

Office of the City Manager
Attention: Real Estate Assets Manager
City Administration Building
202 "C" Street, M.S. 9-B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.
- 7.2 **Compliance with Law.** LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3 **CITY Approval.** The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council. The City Manager is executing this lease effective April 1, 1996. In the event that City Council does not approve this lease by ordinance prior to December 31, 1996, this lease shall terminate March 31, 1999.
- 7.4 **Nondiscrimination.** LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender,

sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at

the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.14 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

7.15 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures, and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its

interest at a lower price without first reoffering to CITY the right to purchase at such lower price.

- 7.16 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 16th day of June 1993, with the office of the City Clerk of the City of San Diego, Document C-04799, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8: AGRICULTURAL PROVISIONS

- 8.1 Agricultural Practice. All husbandry and agricultural practices shall be subject to CITY'S approval. Said practices shall include, but are not limited to, the following requirements:
- a. Installation of improvements and preparation of land shall conform to a time schedule acceptable to the City Manager. Provided, however, any obligation of LESSEE under this provision shall explicitly be subject to the provisions of Section 5.3, Waste, Damage or Destruction, hereof.
 - b. LESSEE shall prepare the land for planting in a manner consistent with good agricultural practice, taking maximum advantage of natural water sources. Such actions of LESSEE shall be performed in a manner satisfactory to the City Manager.
 - c. LESSEE shall install a drag hose, rainbird-type sprinkler head or approved type of irrigation system of sufficient size to irrigate the acreage devoted to crop production. The main lines shall consist of either agricultural grade transite or City-approved plastic. The hoses and sprinklers shall be adequately sized so as to properly distribute the water over the usable acreage in the required time.
 - d. Disagreements as to sound agricultural and/or husbandry practices shall be submitted to a mutually acceptable governmental agricultural authority located in the County of San Diego. CITY and LESSEE agree to accept the decisions of such authority as final. In the event that LESSEE fails to cure any unauthorized practice, then this lease shall be treated in accordance with Section 4.4, Defaults and Remedies, hereof. All permanent plantings, as well as all other improvements to the property, shall become the property of CITY at the expiration or sooner termination of this lease agreement.

- 8.2 Best Management Practices. LESSEE agrees to develop a Resource Management Plan for the purpose of maintaining the premises in a condition for sustainable agricultural production. A Resource Management Plan is a combination of best management practices that are determined by CITY and LESSEE to be applicable to the leased premises for cropland. It is further defined as a combination of conservation and management practices applied to land used for the production of row crops, orchards, vineyards and field crops alone or in association with other crops. Objectives are to protect the resource base while providing for the sustained, profitable production of agricultural crops. Adoption of a Resource Management System is the most effective and practical means to prevent or reduce the generation of pollutants to a level compatible with water quality goals. The Resource Management Plan shall be reviewed and approved by City Manager.

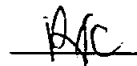
LESSEE agrees to provide CITY a draft of Resource Management Plan within six (6) months of the effective date of the lease and a final program within twelve (12) months. LESSEE agrees to use all available resources, including Federal, State, County and City in LESSEE'S Resource Management Plan. The LESSEE agrees to update the Resource Management Plan every five years. These updates shall be reviewed and approved by the City Manager.

- 8.3 Reporting Requirements for Agricultural Practices. LESSEE agrees to provide to the Water Utilities Department regular reports about the agricultural activities conducted on the leased property. These reports will detail the usage of water, pesticides, herbicides, fertilizers, and soil amendments; as well as the crops grown. The required reports are specified in Resource Management Plan.
- 8.4 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.
- 8.5 No Warranty. CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.
- 8.6 Cutting of Trees. No growing or mature trees are to be destroyed or removed without prior written consent of the City Manager; trees growing along roadways may be trimmed back as required by the LESSEE. Trees growing in manmade ditches may be removed by LESSEE. Trees growing in natural drainage channels may not be removed without written consent of the City Manager.

- 8.7 Hold Harmless, Flood Damage and Other Acts of God. LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY, and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes. LESSEE is authorized to minimize potential flood damage through improved drainage and other flood control improvements as agreed upon with CITY.


LESSEE'S

Initials


LESSOR'S
Initials

Were it not for LESSEE'S agreement to assume all risk regarding flooding and LESSEE'S further agreement that CITY has absolutely no obligation with regard to controlling or mitigating or reducing flood damages or potential flood damages, CITY would not enter into this lease.

- 8.8 Water Rights. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.5, Easements and Reservations, hereof, CITY shall have the right throughout said term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flows over, under or across the leased premises, together with the right to divert by percolating through any of the leased premises.

- a. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the leased premises all natural water necessary to carry out the purpose of this lease, but it is expressly agreed that said water shall be used only on the leased premises. LESSEE shall install, at LESSEE'S sole cost, a metering device on all well(s) (including open wells) satisfactory to and approved by the Water Utilities Department to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering device(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.

LESSEE agrees to compensate CITY for the use of all underground water necessary to carry out the purpose of this lease effective

immediately upon the City Manager's determination that the underground basin has been developed and is operating as an emergency and seasonal storage reservoir for the City of San Diego water system (is injecting and extracting substantial water which is being sold for municipal and industrial uses). The charge to LESSEE shall be based on the amount then being charged by the San Diego County Water Authority (CWA) for untreated water less pumping and facilities costs and credit for irrigation water returned to the underground basin. The formula for computing the amount due CITY for water pumped from the well(s) is as follows:

(1) CWA Rate for Untreated Water *minus* (2) Pumping Costs *minus* (3) Facility Costs *minus* (4) Credit for Returned Water = cost per acre foot to LESSEE.

(1) CWA Rate for Untreated Water - Adjusted annually on July 1 (currently \$494 per acre foot).

(2) Pumping Costs - Energy costs associated with the extraction of water from a 300-foot well adjusted annually in accordance with the Consumer Price Index (currently estimated to be \$90 per acre foot).

(3) Facilities Costs - Actual costs incurred by the City the previous year for the annual operations and maintenance of the injection and extraction facilities for the underground basin.

(4) Credit for Returned Water - A 33 percent cost credit for irrigation water which percolates back into the groundwater basin (currently \$163 per acre foot).

EXAMPLE 1

Assumption:

If the charge was effective currently (1996), the rate for untreated water would be \$494 per acre foot.

Applying the Formula:

Water rate = \$494 - \$90 (pumping costs) - \$0 (presently there are no injection/extraction facilities) - \$163 (credit for water returned to the basin) = \$241 per acre foot, which would be the cost of water for the year beginning July 1,

1996. However, no water charge would be assessed since the injection/extraction facilities have not been developed.

EXAMPLE 2

Assumption:

- ° Five years later - 2001
- ° Water rate = \$600
- ° Annual facilities costs - \$100 per acre foot
- ° Average CPI = 5%

Applying the Formula:

Water rate = \$600 - \$114.86 - \$100 - \$200 = \$185 per acre foot, which would be the cost of water for the year beginning July 1, 2001.

CITY shall bill LESSEE at the beginning of each new quarter for all water used during the previous quarter. Payment for said water shall be due CITY on or before the last day of the month beginning each new quarter.

At the beginning of each successive lease year of the term of this agreement, the charge for water pumped from the groundwater basin, including open wells, shall be reviewed to determine if the amount charged by CWA for untreated water has changed. In this event, the charge for water shall be adjusted in accordance with the above formula and the cost per acre foot for the ensuing year determined accordingly. Provided, however, CITY and LESSEE agree that except for the initial year any increase in the charge for water shall not exceed 15 percent over the previous year.

Following the City Manager's determination that "effective immediately" the City is to be compensated for all water pumped from the groundwater basin, LESSEE shall have the right to cancel this agreement upon 30-day written notice to CITY. Said written notice from LESSEE must be received by CITY within 30 days following LESSEE'S receipt of the City Manager's notification that the charge for water is to be imposed. In the event LESSEE elects to cancel this agreement, no compensation for permanent improvements of any kind installed or existing on the premises shall be due LESSEE by CITY. Any and all permanent improvements existing, installed or constructed on the premises shall be deemed to

be part of the premises and shall become, at CITY'S option, CITY'S property.

- b. LESSEE agrees that upon termination of this agreement, it will leave any wells developed or used on the leased premises during the term of this lease in good order and condition and that the casing shall be left in place.
- c. CITY shall have the right to reasonable access for monitoring the level and quality of surface water and groundwater over and under the leased premises.
- d. Should the monitoring indicate water quality degradation, of either surface water or groundwater, the CITY shall have the right to require alteration or cessation of any agricultural, irrigation, or other practice by the LESSEE which may cause such water quality degradation.

Water quality degradation is herein defined as either: 1) degradation of the water such that it is in violation of any applicable regulatory standard for potable water, or; 2) degradation that, as determined by the City Manager, makes the water unsuitable as a source for potable, irrigation or recreation uses, or other beneficial uses, or; 3) a quantifiable trend, as determined by the City Manager, that would lead to the condition(s) stated in (1) or (2).

- e. CITY shall have the right to construct over and under the leased premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the leased premises. CITY shall further have the right to require LESSEE to connect, or to reconnect, to such CITY-constructed water facilities; provided, however, CITY shall furnish water to LESSEE subject to rules and regulations, including payment of customary charges and water rates, applicable to all other water customers receiving similar class and/or quality service from the City of San Diego.

SECTION 9: SPECIAL PROVISIONS

- 9.1 Potential Construction of Public Hiking, Biking and Riding Trails. LESSEE has been advised and acknowledges that the leased premises are within the focused planning area of the proposed San Dieguito River Valley Park. LESSEE has further been advised and acknowledges that a system of public hiking, biking and riding trails has been proposed for inclusion through the San Dieguito River Valley Park. LESSEE agrees that, in the

event such trails are to be constructed through the leased premises that the property needed for such trails may be deleted from the leasehold area subject to 90 days prior written notice from the CITY. The notice of intent to delete the trail area shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any fruit trees, crops or leasehold improvements growing in the area taken for trails be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and City Manager. CITY further agrees that, in the event a portion of the leasehold is taken for such trails as described above, the trails shall be fenced as necessary for the reasonable security and/or protection of the remainder of the leased premises. All costs related to the construction and maintenance of trails and security fencing installed on the leasehold including the provision that insurance coverage is obtained and in effect, prior to the release of property use for trail shall be the sole responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

- 9.2. LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. LESSEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the leased premises. LESSEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible. Provided, however, if additional measures for protecting the site such as fencing are required, the installation and maintenance costs involved shall be the sole responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park. LESSEE agrees that in protecting such sites, while performing those approved uses (Section 1.2), LESSEE will not cause the soil to be disturbed more than forty-eight (48) inches below the surface of the ground.
- 9.3 Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites. LESSEE has been advised and acknowledges that public access may be required through the leased premises to access hiking, biking, and riding trails constructed on the property. Also, such public access may be necessary for viewing environmental, historical, and/or cultural resources sites located on the leasehold. In this event the property needed for public access may be deleted from the leasehold area upon 90-day prior written notice from the CITY. Said notice of

intent to delete the public access area shall include a plat clearly designating the property to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any fruit trees, crops or leasehold improvements in the area taken for public access be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and City Manager. CITY further agrees that, in the event a portion of the leasehold is taken for such public access as described above, said public access shall be fenced as necessary for the reasonable security and/or protection of the remainder of the leased premises. All costs related to the construction and maintenance of the security fencing including the provision that insurance coverage is obtained and in effect prior to the release of any property for use under this provision shall be the responsibility of the City or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park. LESSEE acknowledges that the San Pasqual Valley Plan calls for a Cultural resource survey. Because the leasehold will contain growing crops, LESSEE and CITY will cooperate in completing this survey.

- 9.4 Boundary Adjustments. LESSEE has been advised and acknowledge that the boundaries of the leased premises are subject to adjustments related to the Multiple Species conservation Program. LESSEE agrees that, in the event such boundary adjustments are made, the property needed for the Multiple Species Conservation Program may be deleted from the leasehold area, subject to 180 days prior written notice from CITY. The notice of intent to delete said property shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the rent shall be reduced accordingly.
- 9.5 Housing of Permanent Employees. To the extent legally feasible, LESSEE shall provide adequate housing for permanent employees, i.e., those who work on the premises on a daily basis for a minimum of eleven (11) months during the calendar year. Housing provided by LESSEE shall be installed and maintained on the premises in accordance with applicable City of San Diego Building Department and Zoning requirements.
- 9.6 Hazardous/Toxic Waste. Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides, and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation or release of hazardous substances in, on, under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or

otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704-1.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including, but not limited to, costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental action or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the premises prior to the effective date of this lease agreement.

- 9.7 City's Right to Buy Back Leasehold Interest. LESSEE agrees that CITY may, at its option, purchase LESSEE'S leasehold interest at any time following the first ten (10) years of the term of this lease agreement. The CITY'S option shall be exercised by giving LESSEE at least six (6) months prior written notice of intent to purchase the leasehold.

Upon LESSEE'S receipt of such notice, LESSEE agrees to cooperate with CITY in designating an appraiser satisfactory to both CITY and LESSEE to conduct an appraisal of LESSEE'S remaining leasehold interest. The appraiser's determination of the leasehold value shall be binding on the CITY and LESSEE. If no concurrence upon an individual appraiser is reached within 15 days following LESSEE'S receipt of notice of CITY'S intent to repurchase, CITY and LESSEE agree that each shall immediately appoint and pay for the services of an individual appraiser both of whom shall be charged with determining the fair market value of the LESSEE'S remaining leasehold interest. If the appraisals are within 20 percent of one another (the larger appraiser being not more than 20 percent higher than the lower appraisal), the fair market value shall be the average of the two appraisal amounts.

If the two appraisals differ by more than 20 percent and the City Manager and LESSEE cannot agree to a fair market value and an impasse is thus reached, then the two appraisers shall be asked to mutually agree upon a third independent appraiser. If the two appraisers do not mutually agree upon a third appraiser within a reasonable time after such request, the CITY and LESSEE agree that the Presiding Judge of the Superior Court in San Diego shall be requested to appoint the third appraiser. If the Presiding Judge for any reason declines to make such appointment, the parties agree that such appointment shall be made expeditiously and in accordance with the standard rules of the American Arbitration Association.

The third appraiser shall review the results of the two appraisals and render an opinion as to the fair market value. The third appraiser's determination shall be binding on the CITY and LESSEE. The CITY and LESSEE shall equally bear the cost of the third appraiser.

Upon a determination of the leasehold value, CITY shall have ninety (90) days in which to determine whether or not to allocate funds and authorize the expenditure of such funds for the acquisition of the leasehold. In the event CITY determines not to acquire the leasehold, CITY agrees to reimburse LESSEE for its actual costs for the appraisal and shall have no further obligations to LESSEE for any costs or damages incurred by LESSEE as a result of such determination not to proceed with acquisition.

In determining the fair market value of LESSEE'S leasehold interest, CITY and LESSEE agree that the appraiser or appraisers will be directed to establish the leasehold value based upon all the terms and conditions of the lease. LESSEE specifically agrees, however, that no "bonus" value shall be paid for LESSEE'S leasehold interest. The appraiser or appraisers

shall be directed to assume that the lease requires the payment of full fair market rent on the leasehold property at all times during the remaining lease term. LESSEE further specifically agrees that any permanent capital improvements constructed by LESSEE on the leased premises shall be appraised by taking the initial construction cost of such improvements and depreciating such improvements on a straight-line basis over a twenty-five year (25) year period from the date of installation of such improvements, or over the remaining lease term, whichever time period is the lesser.

In the event there are City-approved loans or encumbrances against LESSEE'S leasehold interest, CITY agrees that the buy-out price shall in no event be less than the then remaining balance of any such loans or encumbrances.

Should the CITY determine to repurchase, LESSEE shall have up to one year in which to vacate the premises. During any such continued use by LESSEE, LESSEE shall continue to pay to CITY the rents provided for in the lease. The buy-out price shall be paid within 10 days after LESSEE vacates the premises.

SECTION 10: SIGNATURES

10.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 6/27/96

By Robert J. Collins

LESSEE: AM-SOD, INC.

Date 6-20-96

By Floyd R. Wirthlin
Floyd R. Wirthlin

APPROVED as to form and legality this 9 day of July, 1996.

JOHN W. WITT, City Attorney

By W. Witt
Chief Deputy City Attorney

DEVELOPMENT AND ENVIRONMENTAL PLANNING
ENVIRONMENT CLEARANCE

Chris [Signature] 7/2/96
Name/Date

CVS:dcj(\\WPO\1996\ESTEY\AM-SOD.LS)
4-19-96

SECTION 11: EXHIBITS

11.1 Exhibit A - Maps.

45 141-37-107

$$\begin{array}{r} \cancel{241} - \cancel{10} \\ 760 - 170 \end{array}$$

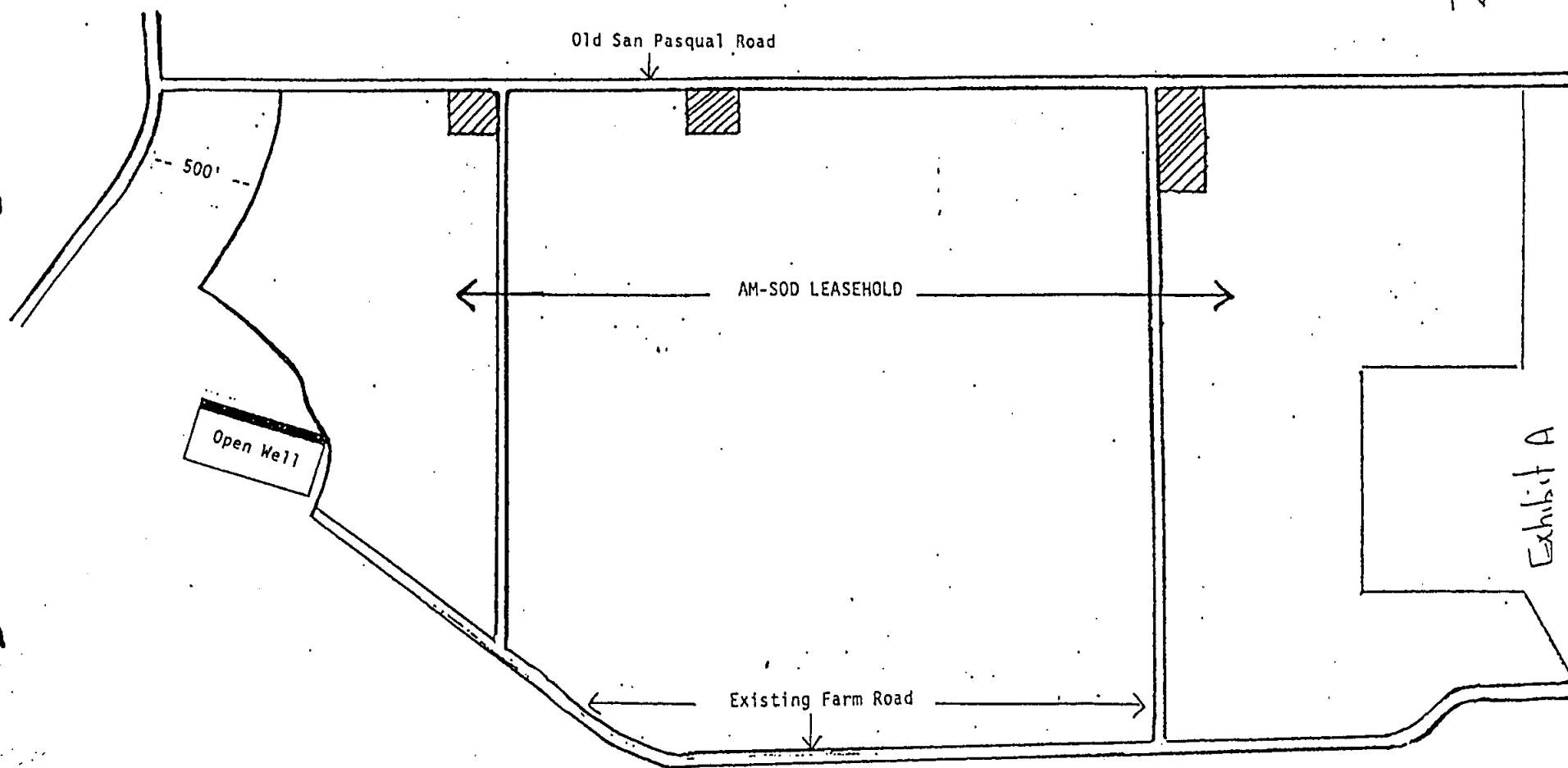
9-23-93
MAS

12-13-78 MA

CHANGES

This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon.

MAP 1676-RHO RINCON DEL DIABLO RESUB
BLKS 225 & 226 & 227 & 228

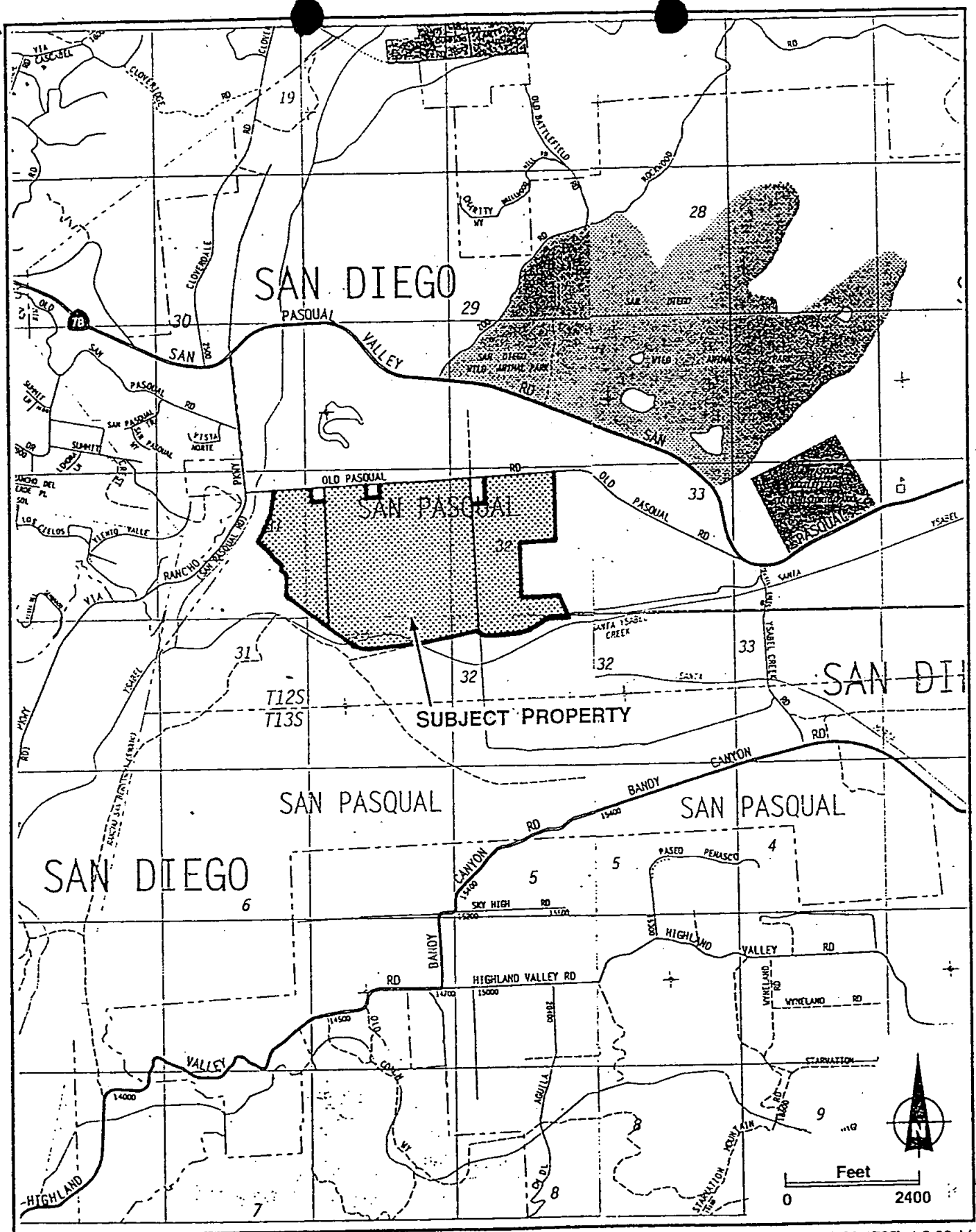


 Excluded from
Am-Sod Leasehold

MSCP

Not to Scale

Exhibit A



(336-1765) 4-3-96 bl.



LOCATION MAP AM-SOD Leasehold Environmental Analysis Section

CITY OF SAN DIEGO • DEVELOPMENT SERVICES DEPARTMENT

Figure

1

Am-Sod

Estey
Real Estate
57-A

(O-96-163)
(Corrected 05/23/96)

ORDINANCE NUMBER O- 18319 (NEW SERIES)

ADOPTED ON JUN 24 1996

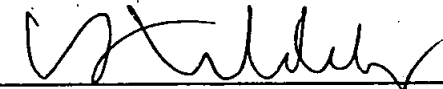
AN ORDINANCE AUTHORIZING A 30-YEAR LEASE
AGREEMENT WITH AM-SOD, INC. FOR APPROXIMATELY
250 ACRES IN THE SAN PASQUAL VALLEY

BE IT ORDAINED, by the Council of The City of San Diego,
that the City Manager is authorized and empowered to execute, for
and on behalf of the City, a thirty-year agreement with Am-Sod,
Inc., for the lease, for growing sod and general field crops, of
approximately 250 acres in the San Pasqual Valley, with an initial
rent of \$87,500 per year, under the terms and conditions set forth
in the Flat Rate Lease Agreement on file in the office of the City
Clerk as Document No. OO- 18319.

BE IT FURTHER ORDAINED, that this ordinance shall take effect
and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Chief Deputy City Attorney

HOV:mb:ps
05/22/96
05/23/96 COR.COPY
Or.Dept:REA
O-96-163
Form=o+t

Passed and adopted by the Council of The City of San Diego on _____ by the following vote:

YEAS: Mathis, Wear, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas, and
Mayor Golding

NAYS: None

NOT PRESENT: None

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: *Myrna Skelley*, Deputy
Myrna Skelley

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18319 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on June 3, 1996 and on June 24, 1996.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: *Myrna Skelley*, Deputy
Myrna Skelley

(O-96-163)
(Corrected 05/23/96)

ORDINANCE NUMBER O- 18319 (NEW SERIES)

ADOPTED ON JUN 24 1996

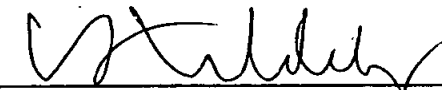
AN ORDINANCE AUTHORIZING A 30-YEAR LEASE
AGREEMENT WITH AM-SOD, INC. FOR APPROXIMATELY
250 ACRES IN THE SAN PASQUAL VALLEY

BE IT ORDAINED, by the Council of The City of San Diego,
that the City Manager is authorized and empowered to execute, for
and on behalf of the City, a thirty-year agreement with Am-Sod,
Inc., for the lease, for growing sod and general field crops, of
approximately 250 acres in the San Pasqual Valley, with an initial
rent of \$87,500 per year, under the terms and conditions set forth
in the Flat Rate Lease Agreement on file in the office of the City
Clerk as Document No. OO- 18319.

BE IT FURTHER ORDAINED, that this ordinance shall take effect
and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Chief Deputy City Attorney

HOV:mb:ps
05/22/96
05/23/96 COR.COPY
Or.Dept:REA
O-96-163
Form=o+t