

CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and AM-SOD INC, a California corporation ("PERMITTEE"), to be effective May 15, 2013 ("Effective Date") after the Permit has been signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY is the owner of certain real property ("City Property") known as APN 241-100-31 located in the City of San Diego, San Pasqual Valley, consisting of an area of approximately 8.8 acres, to be referred to herein as the "Permit Area", and an additional twenty (20) acres to be referred to herein as the "Weed Control Area", as shown in EXHIBIT A attached hereto.
- B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of storage of water for irrigation purposes on the PERMITTEE'S adjacent leasehold and for no other purpose whatsoever.
- C. Nothing in this Permit implies an intention by CITY to enter into a long-term agreement to continue the Permit Use after the Term of this Permit expires.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Right to Enter: Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, their employees, agents, and contractors to enter upon the City Property solely for the Permit Use and for no other purpose whatsoever.
- 2. Permit Use: PERMITTEE may use the following areas for the following uses (individually and collectively, "Permit Use"): use of the water storage reservoir on the Permit Area for the sole purpose of impounding water and installing and maintaining pipes and equipment for irrigation on PERMITTEE'S adjacent leasehold area, on a non-exclusive use basis, along with ingress and egress to the reservoir; and access and entry to and over the Weed Control Area for control of weeds and invasive plant material. Control of weeds and invasive plant material shall be provided solely by means of discing or tilling of land on the subject area, and PERMITTEE shall not use any herbicide or chemical means in any manner on the City Property. Use of the City Property is solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.

3. Permit Fee. The Permit Fee will be a onetime \$727.00 payment to CITY, due upon execution of this Permit. As additional consideration to CITY, PERMITTEE shall also control weeds and invasive plant material in the Weed Control Area. PERMITTEE shall disc the Weed Control Area at least twice during the Term, once on June 1, 2013 and once on March 1, 2014.
4. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall terminate on March 1, 2014. Notwithstanding the foregoing, PERMITTEE shall only be allowed to use the Permit Area as described herein from the Effective Date until and through October 31, 2013.
5. Permit Termination. Upon termination of this Permit, PERMITTEE shall remove from the City Property all personal property including all pumps, water conveyance piping, and related equipment. PERMITTEE shall leave the City Property in a natural condition satisfactory to the CITY and consistent with its condition on the Effective Date.
6. Revocable Permit. This Permit is not a lease. It is a license to use certain CITY property, and may be revoked with a 30 days written notice by CITY, in its sole discretion. CITY shall not be obligated for any loss or burden, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit.
7. CITY'S Consent, Discretion. Whenever required under this Permit or otherwise by law, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided.
8. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to PERMITTEE or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the City Property or PERMITTEE'S use of the City Property. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the City Property.
9. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the City Property. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the City Property without CITY'S prior written consent. 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 substances. "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 of California's list of hazardous substances.

- a. Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the City Property (individually and collectively, "PERMITTEE's Operations") results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- b. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- c. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the City Property.
- d. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S Operations resulted in any hazardous substance being released on or beneath the City Property, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal

recommended in the environmental assessment such that compliance with all environmental laws is achieved, and PERMITTEE shall pay all costs and expenses therefore.

10. Noninterference. PERMITTEE's use of the City Property shall not materially interfere with CITY'S use, operations, and activities on the City Property. If necessary, PERMITTEE shall use such routes and follow such procedures on, over or through the City Property to access the Permit Area and Weed Control Area as shall result in the least damage and inconvenience to CITY and other users of the City Property.
11. Property Damage. PERMITTEE shall pay for all damage to the City Property, CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit, including without limitation soil erosion, subsidence, or damage resulting thereby. PERMITTEE shall promptly repair and restore to its original condition all such property.
12. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the City Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any established liability arising from the established sole gross negligence or sole willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
13. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the City Property. A possessory interest subject to property taxation may be created by virtue of this Permit. In the event that a possessory interest is created, PERMITTEE agrees to pay all such possessory interest taxes and CITY shall not be liable for the payment of such taxes. PERMITTEE further agrees that the payment of any such taxes shall not reduce any consideration paid or due to CITY pursuant to this Permit.

14. Encumbrances. PERMITTEE shall keep the City Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the City Property. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the City Property, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the City Property pursuant to the California Civil Code.
15. No Discrimination. PERMITTEE shall not 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 disability in PERMITTEE'S use of the City Property, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
16. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the City Property and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
17. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:
- a. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - b. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - c. Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- 1.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials,

officers, employees, representatives, and agents” shall be named as additional insureds in all policies.

- 1.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 1.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 1.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 1.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 1.6 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the City Property, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to the Permit Use or the City Property.
- 1.7 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the City Property. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the

date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

1.8 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE'S insurable property related to the Permit Use or the City Property in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

18. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the City Property and PERMITTEE'S Operations on the City Property.
19. Competent Management. For the Term of this Permit, PERMITTEE shall provide competent management of the City Property to the satisfaction of the CITY. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of the water storage pond and best management practices whenever possible, and related activities in a fiscally responsible manner.
20. Water Rights. CITY reserves all of its right, title and interest in and to the water and all wells on the City Property. There is hereby reserved to CITY, and PERMITTEE herein expressly agrees that CITY shall have the right throughout the Permit Term, the right to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the City Property, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the City Property. Nothing in this Permit shall result in the transfer of the CITY'S rights, title or interest in the water on the City Property to any other person or entity.
21. PERMITTEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. PERMITTEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park trail system, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the City Property. PERMITTEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible and, if required by CITY, would include Permit Area boundary fencing. However, if additional measures for protecting the site are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park trail system.

22. Signs. No signs other than customary notice signs are allowed unless pre-approved in writing by the CITY.
23. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition. PERMITTEE is responsible for excluding unauthorized and unwanted activities from the Permit Area, including but not limited to off-highway vehicles, trespass, encroachment, and trash dumping. In addition to the Permit Use, the PERMITTEE shall monitor the Permit Area for protection from unauthorized access and unwanted activity, and shall diligently report all unauthorized access or unwanted activity to CITY.
24. Inspection. CITY may, at any and all times, enter and inspect the City Property.
25. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the City Property is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
26. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
27. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by all parties.
28. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY:

The City of San Diego
Real Estate Assets Department
Attention: Department Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

PERMITTEE:

Am-Sod, Inc.
P.O. Box 300638
Escondido, California 92030-0638

- 37 Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 7/23/13

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Date: 6-27-13

AM-SOD, INC, a California corporation

BY: [Signature]
Name: [Signature]
Title: V.P.

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to CEQA Section 15301.

Date: June 28, 2013

BY: [Signature]
Name: NICOLE A. MEGINWIS
Title: SENIOR PLANNER

Approved as to form and legality this
24 day of July, 2013.

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Jeremy M. Fonseca, Deputy City Attorney

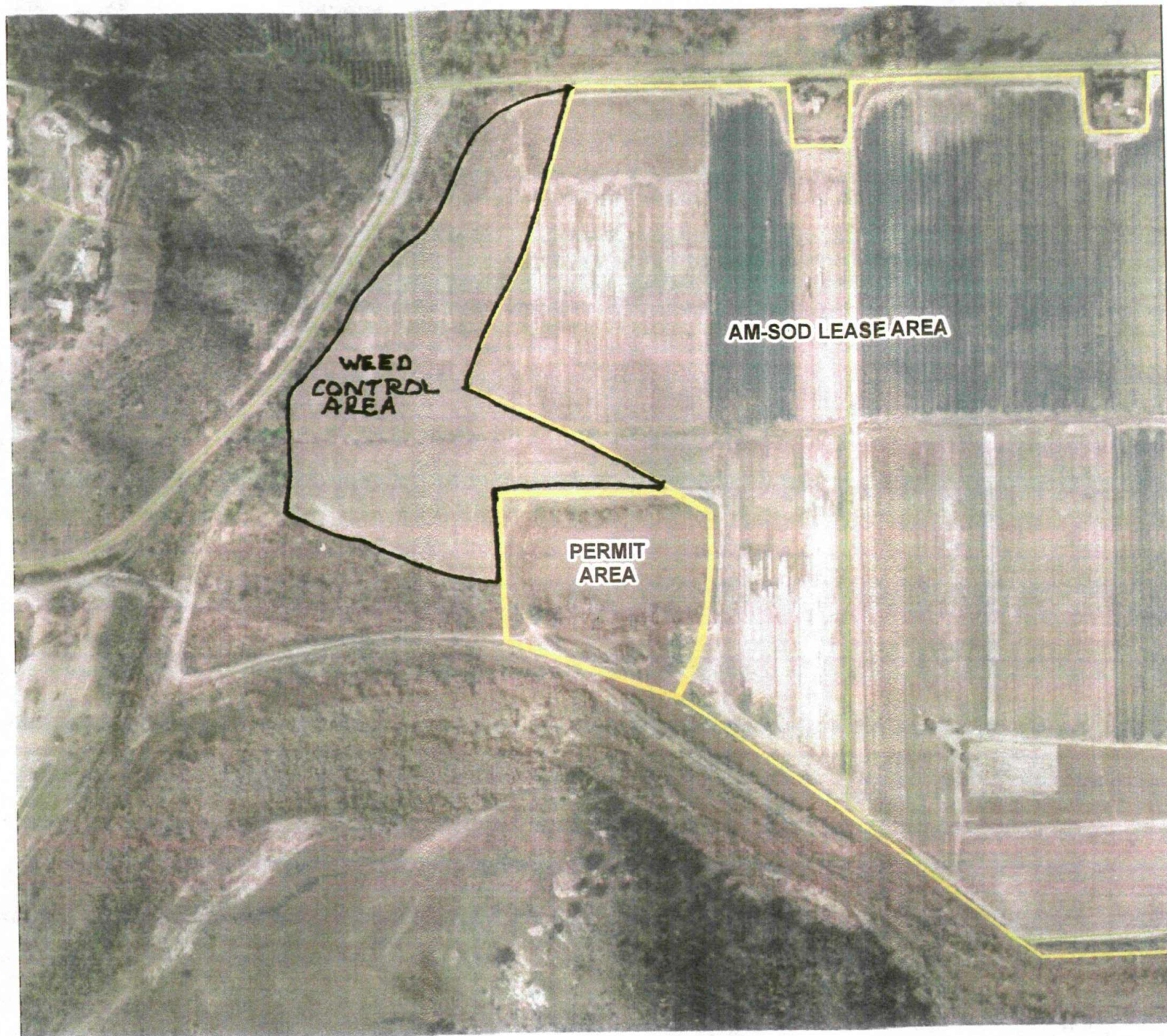
Exhibit “A”



EXHIBIT A

AM-SOD

8.8 acres
(approximate)



SanGIS

Map Date: 05/21/13
Aerial Image Date: 201
RFAD/car