

**REAL PROPERTY LEASE AGREEMENT
BY AND BETWEEN WEBER COUNTY AND
DIAMOND TREE EXPERTS**

This lease agreement is entered into between WEBER COUNTY (“County”), a political subdivision of the State of Utah, located at 2380 Washington Blvd., Ogden, Utah, 84401, and DIAMOND TREE EXPERTS (“Lessee”), a Utah corporation, located at 3645 S. 500 W., Salt Lake City, Utah, 84115. This agreement, and the lease term, shall take effect as soon as both parties have signed it.

RECITALS

1. The County has space (the “Leased Space”) at the Weber County Transfer Station, 867 West Wilson Lane, Ogden, Utah, 84401, that it has used for green waste disposal and processing.
2. Lessee has submitted a proposal under which Lessee would assume responsibility for green waste disposal and processing at the Transfer Station by leasing the Leased Space.
3. The County finds that leasing the Leased Space to Lessee for the management and operation of green waste disposal and processing will streamline the handling of green waste, improve public access to finished mulch products, and generate revenue for the County. It will also reduce the County’s operational burden at the Transfer Station.
4. The Leased Space is more fully described in Exhibit A, which is hereby incorporated into this agreement.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**SECTION ONE
LEASED PREMISES**

The County, for and in consideration of the lease payment described below and Lessee’s agreement to provide its services to the public and to governmental entities, does lease to Lessee, and Lessee hereby leases from the County, the Leased Space, as described in Exhibit A.

Lessee and its employees, contractors, customers, agents, and invitees shall have the right to the non-exclusive use, in common with other users, of all common areas and areas open to the public on the Transfer Station property. Lessee shall actively remind its employees, contractors, customers, agents, and invitees not to enter or park in restricted areas. Lessee shall be responsible for providing its own restroom facilities.

SECTION TWO TERM

The initial lease term shall be approximately three years, commencing as soon as this lease has been signed by both parties, and ending at the end of the day on April 30, 2029, unless terminated earlier as provided in this lease. The parties may renew this lease up to three times for two-year extensions, but only if they mutually agree to each extension and all of the terms and conditions of the extension.

SECTION THREE LEASE PAYMENT

- A. Payment Amount. Lessee's payments to the County will come in two forms:
- a. Lessee will pay to the County 50% of the green waste disposal fees collected by Lessee at the Transfer Station. Lessee will base the green waste fee on the size of the transport vehicle bringing green waste for disposal. Lessee will collect the entire fee and will keep 50% of the collected fees and remit the other 50% to the County. As an exception, the County will not receive any portion of any fee for loads brought in by Lessee's own crews.
 - b. Lessee will pay to the County \$1.00 per cubic yard for all mulch products and other finished products that leave the Transfer Station, whether as a result of sale to third parties or as a result of Lessee or its agents, contractors, or employees moving them to another location.
- B. Operating Expenses. Lessee shall be required to provide and pay for its own costs for internet service and all other operating expenses, except that the County will pay for electrical power in the existing compost shed on the Leased Space at the level of service existing at the time the lease begins.
- C. Payment Due Date. Each party shall make the required payments to the other party on or before the 20th day of the month after the month in which the fees were collected or the products were sold, unless the parties agree on another payment deadline.
- D. Payments. Lessee shall pay all lease payments due hereunder to the Weber County Community Development Department, 2380 Washington Blvd, Ste. 250, Ogden, UT 84401, unless and until the County designates, in writing, a different address or a different payment method.
- E. Late Payments. If Lessee fails to pay the lease payment when due, then Lessee shall pay interest on such past due amount at the rate of twelve percent (12%) per annum from the date that the payment was due and payable until it is paid.

**SECTION FOUR
LESSEE'S USE OF THE LEASED SPACE**

- A. Lessee's Operations and Services. Lessee shall assume operation and responsibility for green waste processing and finished product sales on the Leased Space, carrying out those duties independently as part of its own business operation and not as a contractor hired by the County. Lessee shall be completely responsible for managing and performing all of the day-to-day operations of its business, including setting its own pricing for its products and services, except that Lessee shall use the County's services for weighing incoming green waste loads and collecting fees for those loads.
- B. Continuous Operations. Lessee's agreement to run its business operation on the Leased Space, providing green waste disposal and also mulch and related products to both the general public and governmental entities in the Weber County area, is part of the consideration for this lease. Therefore, Lessee agrees to operate its business continuously throughout the term of this lease, providing those products and services to the general public and to governmental entities. Lessee shall only be open to the public on days when the Transfer Station is open to the public, and its business hours shall be the same as the hours that the Transfer Station is open to the public, unless the County and Lessee agree otherwise in writing.
- C. Other Provisions Regarding the Leased Space. Lessee shall use and occupy the Leased Space in a lawful, careful, and proper manner. For example, Lessee shall install, label, and maintain designated mulch bins on the Leased Space containing all mulch products offered by Lessee, ensuring organized storage and safe public access. Lessee shall not create or permit any nuisance or disturbance nor commit any waste. Lessee shall comply with all present and future laws, ordinances, rules, regulations, requirements, and orders of governmental authority respecting the use and occupancy of the Leased Space.

Lessee shall keep the Leased Space free of non-working equipment, junk, and excessive amounts of unprocessed green waste. Lessee shall also maintain the asphalt areas of the Leased Space in good condition, at Lessee's expense.

Lessee and its agents, contractors, employees, and invitees may park vehicles and equipment in the Leased Space, subject to the other provisions of this agreement.

The County will provide a water source sufficient for Lessee's business operations. Lessee will pay the cost of the water it uses, at the same rate paid by the County at the Transfer Station, with usage determined by a meter that the County will install.

**SECTION FIVE
ADDITIONAL LEASE PROVISIONS**

- A. The County's Right of Entry. The County shall have the right to enter upon the Leased Space at reasonable hours to inspect the same, provided that the County shall not thereby unreasonably interfere with Lessee's business.
- B. Alterations to the Leased Space. Lessee shall not make or cause to be made any alterations to the Leased Space or any part thereof without the prior written consent of the County. This includes providing additional electrical power or other utilities. If the County approves alterations, Lessee shall be responsible for making, and paying the full cost of, such alterations, unless otherwise agreed by the County.
- C. Signs. All signage must be approved in writing by the County and must comply with all applicable local ordinances. The County shall provide space for signage on the Transfer Station property in locations agreeable to both parties. Lessee may also provide signage on the Leased Space. Lessee shall maintain any approved signage in good condition. The County may remove any signage or other items placed or maintained in violation of this paragraph.
- D. Locks and Keys. The County shall provide to Lessee all necessary keys or other means of access to the Leased Space. Upon termination of this lease, Lessee shall deliver to the County all keys or other means of access that were issued to it. The County shall have the right to make any changes it deems necessary to Lessee's locks and keys, as long as Lessee continues to have full access to the Leased Space for itself and for its customers at all times when it is in good standing under this lease. Lessee shall have access to the Leased Space 24 hours per day, seven days per week.
- E. Assignment and Subletting. Lessee shall not have any right, power, or authority to assign or sublet the Leased Space.
- F. Insurance and Indemnification. Lessee agrees to maintain sufficient personal injury and property damage liability insurance to adequately protect the County from liability for personal injuries or property damage occurring on or about the Transfer Station property, including the Leased Space, to the extent caused by the negligence or wrongful acts of Lessee, its agents, contractors, employees, or invitees. Lessee's insurance must provide no less than \$2,000,000 combined single limit coverage of bodily injury, property damage, or combination thereof.

Lessee shall also secure and maintain during the term of this lease (and for four years after the termination of this lease if written on a claims made basis) Pollution Liability or Environmental Liability insurance in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate.

Lessee shall be responsible for its own personal property losses occurring on the Leased Space and shall provide insurance for the same, if desired.

Lessee shall indemnify and hold the County harmless from and against any and all claims resulting from Lessee's use of or activity on the Transfer Station property, including the Leased Space, regardless of whether or not Lessee's insurance covers such claims. Lessee shall not be obligated to indemnify or hold the County harmless from claims to the extent that they are caused by the negligent acts or omissions of the County.

- G. Termination and Surrender. This lease, and the tenancy hereby created, shall terminate at the end of the lease term, or any extension or renewal thereof, without the necessity of any notice from either the County or Lessee to terminate the same. Lessee hereby waives notice to vacate the Leased Space and agrees that the County shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of the Leased Space from Lessee holding over to the same extent as if statutory notice had been given.

Lessee may terminate this lease for any reason by providing written notice to the County at least 60 days in advance. The County's right to terminate is limited to the following situations: if Lessee defaults, as described in this lease agreement; if required by law; or if, due to circumstances unforeseen at the beginning of this lease and beyond the County's control, the board of county commissioners determines that it is necessary to terminate the lease for financial reasons.

Upon termination of this lease, Lessee agrees to remove all of its property and restore the Leased Space to substantially the condition it was in on the date first occupied by Lessee, unless otherwise agreed in writing by the County. If the Leased Space is not restored to the required condition, Lessee shall pay the costs incurred by the County in restoring the Leased Space to the required condition.

- H. County's Rights Related to Construction and Sale. The County reserves the right to make changes to the Transfer Station and associated facilities. If the County engages in construction or other activities that materially and adversely affect Lessee's lease rights under this agreement, the parties shall engage in good faith efforts to find a mutually agreeable resolution. However, the parties agree that temporary or permanent changes to the Transfer Station property shall not entitle Lessee to any compensation, reduction in lease payments, or any other remedy, as long as Lessee's ability to exercise its rights under this lease are materially preserved. The County also reserves the right to sell or otherwise transfer its ownership rights to the Transfer Station and to assign to the new owner its rights and responsibilities under this lease agreement.
- I. Damage Preventing Use. If the Leased Space is rendered unfit for use by Lessee for purposes of this lease for more than one month, due to damage to all or any portion of the Transfer Station caused by fire, earthquake, or any other event outside the control of the parties, then either party may immediately terminate this lease with no obligation to the

other party. If the parties choose to allow the lease to continue, then Lessee's payment obligations shall be suspended for as long as the Leased Space is unavailable for use.

- J. Audit Authority. Each party shall have the right to audit the other party's books and records to the extent necessary to verify compliance with the payment provisions and other terms of this lease.

SECTION SIX MISCELLANEOUS

- A. Applicable Law. This lease shall be interpreted in accordance with Utah Law.
- B. Default. If Lessee defaults on its payment obligations, or in the performance of any other provision of this agreement, and fails to remedy the default or commence work on a remedy (and continue to pursue it diligently thereafter) within ten days after written notice thereof from the County, then the County may, at its option, terminate the lease and re-enter upon the Leased Space and repossess it. If this occurs, then the County retains the right to recover from Lessee all payments due up to the time of such re-entry. Each party retains all other rights, remedies, and benefits allowed by law in the case of default by the other party.
- C. Dispute Resolution. The parties may agree on any dispute resolution method, or either party may pursue its claims in court. In any dispute resolution proceeding, each party shall be responsible for its own costs, including attorneys' fees.
- D. Entire Agreement. This lease agreement shall constitute the entire agreement between the parties and shall supersede all oral understandings and agreements. Alterations or amendments to this agreement must be in writing, executed by both the County and Lessee.
- E. Headings and Paragraph Numbers. Headings and paragraph numbers are for convenience only, and are not to be considered limitations or modifications of provisions set forth in the body of this lease.
- F. Holding Over. Any holding over after the expiration of the original term of this agreement or any extension thereof without the written permission of the County shall be construed as a tenancy from month-to-month, and in such case all provisions of this lease, other than those relating to its term, shall be considered in full force and effect, except that the County shall be entitled to keep 75% of the green waste load fees and shall receive \$1.50 per cubic yard for all mulch products that Lessee sells.
- G. Recording. Neither party shall record this lease. However, upon the request of either party, the parties shall prepare, execute, and record a memorandum of lease to provide notice of the lease to third parties.

H. Notices.

- a. Any notice required or desired to be given pursuant to this agreement shall be in writing and shall be either (1) delivered personally to the party's primary contact; (2) delivered electronically, with confirmed receipt, to the party's primary contact; or (3) mailed to the party's primary contact. The following contact information shall be used, unless a party notifies the other party of a change in representative or contact information:

Sean Wilkinson
Community Development Director
2380 Washington Blvd., Ste. 250
Ogden, UT 84401
swilkinson@webercountyutah.gov

Trent Van Dam
President
Diamond Tree Experts, Inc.
3645 South 500 West
Salt Lake City, UT 84115
Trent@diamondtreeexperts.com
801-856-8350

- b. Notice shall be effective upon delivery, if receipt is confirmed. If notice is properly mailed and receipt is not confirmed, notice shall be effective three business days after the date of mailing.
- I. Severability. The invalidity of any provision of this agreement will not and shall not be deemed to affect the validity of any other provisions, and the remainder of the agreement will remain in full force and effect, unless the invalidation of the term materially alters this agreement. If the invalidation of the term materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties.
- J. Time of Essence. Time is of the essence in the performance of all provisions in this lease for which time is a factor.
- K. Waiver. No waiver of, or failure to enforce, any right granted by this agreement shall be deemed a waiver of such right upon any subsequent breach of any provision of the agreement.

IN WITNESS WHEREOF, the parties have executed this agreement below.

(Signatures on next page)

DIAMOND TREE EXPERTS

Signature _____

Date _____

Printed Name _____

Title _____

STATE OF _____)

)ss.

COUNTY OF _____)

On this _____ day of _____, in the year _____, before me,
(notary name) _____, a notary public, personally appeared
(signer name) _____, proved on the basis of satisfactory
evidence to be the person whose name is subscribed to this instrument, and acknowledged that he
or she executed the same.

Notary Public

Notary seal:

WEBER COUNTY

Chair, Board of County Commissioners

Date: _____

ATTEST:

Weber County Clerk/Auditor

Date: _____

Exhibit A

The Leased Space consists of the following property:

Part of the western approximately 500 feet of the Weber County Transfer Station property limited to the area lying within the existing berm barrier. Said part being located in the west half of Section 30, Township 6 North, Range 1 West, Salt Lake Base & Meridian. Excluding therefrom any portion of the berm barrier, detention basins to the south, the access along the northern boundary line and the county structure and facilities along the northern boundary. Said part being further described as follows:

Beginning at a point on the inside edge of the berm barrier being N 89°38'48" E 1128.96 feet along the monumented quarter section line between the West and East quarter corner monuments of said Section 30, and South 124.91 feet from the Weber County monument dated 2005 for the West quarter corner of said Section 30, said point being S 42°11'23" E 35.31 feet from the northwest corner of said Transfer Station property boundary as defined by survey no. 5145 on file in the Weber County Surveyor's Office; and running thence along the inside edge of said berm the following five (5) courses: 1) N 56°27'36" E 37.17 feet, 2) N 70°56'20" E 46.22 feet, 3) N 53°40'41" E 72.66 feet, 4) N 66°48'53" E 188.56 feet, and 5) N 25°53'42" E 19.77 feet to the northerly edge of a concrete wall; thence N 63°49'22" E 49.61 feet along the northerly edge of said wall to a point approximately 21 feet from a chain link fence; thence S 25°13'02" E 71.31 feet running parallel to said fence to a point approximately 7 feet beyond the corner of said fence; thence N 65°17'12" E 56.36 feet parallel to said fence; thence S 21°52'06" E 13.18 feet; thence N 86°18'40" E 31.60 feet; thence S 12°25'25" E 243.96 feet; thence S 46°38'05" W 138.34 feet to a point on the inside edge of the berm barrier; thence along the inside edge of said berm barrier the following seven (7) courses: 1) S 81°33'12" W 134.50 feet, 2) N 87°54'07" W 81.40 feet, 3) N 68°44'35" W 136.80 feet, 4) N 16°11'10" E 34.97 feet, 5) N 77°24'05" W 104.33 feet, 6) N 3°13'21" W 48.12 feet, and 7) N 7°20'19" E 55.06 feet to the point of beginning.

Contains 3.33 acres more or less.

The image on the next page shows a general depiction of the Leased Space.

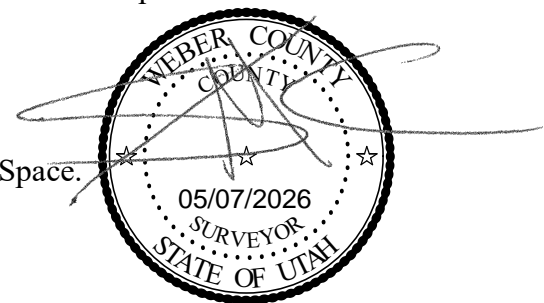


Exhibit A (continued)

General depiction of Leased Space (outlined in blue):

