

SUPERIOR COURT OF CALIFORNIA—COUNTY OF SAN DIEGO

Defendant: Mark Lee Collins Case No. M194182CE C.A. No. 597086 / ZN 1273

**CODE ENFORCEMENT CASE
TERMS AND CONDITIONS OF PROBATION**

If Defendant, MARK LEE COLLINS, pleads "Guilty" to Counts 1, 4, 5, and 6; the People will dismiss the balance of the complaint against Defendant MARK LEE COLLINS (D-177) and dismiss the case as to the co-defendant, EVERGREEN DISTRIBUTORS INCORPORATED (D-187) in its entirety. Defendant accepts all of the following terms and conditions of probation, in addition to all other terms and conditions ordered by the Court:

1. Imposition of sentence suspended for three (3) years;
2. *Harvey* waiver;
3. Violate no laws excluding minor traffic offenses.
4. **Fines:** \$4,000/ \$2,000 is stayed pending successful completion of all terms and conditions of probation.
5. **Restitution Fine:** \$550 per Penal Code section 1202.4(b).
6. **Probation Revocation Fee:** \$550 with \$550 stayed per Penal Code section 1202.44
7. **Investigative Costs: \$1,445.42. Within 30 calendar days from the date of sentencing,** Defendant shall pay the total investigative costs of One thousand-four hundred forty-five dollars and forty-two cents. Payment shall be made in the form of a certified check or money order payable to the "City of San Diego." The check shall be delivered to the City Attorney's Office, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: DCA Onu Omordia.
8. **Confinement:** 100 days of custody shall be imposed and stayed pending successful completion of probation.
9. **Illegal grading and Development: Immediately and no later than 5 calendar days from the date of sentencing,** Defendant shall cease from performing any activity constituting "Development" as defined by San Diego Municipal Code (SDMC) section 113.0103, and any earthen work or other conduct which disturbs the soil or native vegetation (e.g., clearing, digging, grubbing, embanking, drilling, assaying, grading, excavating, filling) at the PROPERTY or any other property within the City of San Diego until all necessary permits have first been obtained.
10. **Exterior Storage - Immediately and no later than 30 calendar days from the date of sentencing** remove all weeds, plant overgrowth, rodent harborage, trash, debris, junk, waste, accumulations and items stored in excess of incidental storage for the approved and permitted uses for 7150 Black Mountain Road aka 13650 Carmel Valley Road (APNs 306-010-16-00, 306-010-17-00, 306-010-18-00, 306-010-19-00, 306-010-22-00), the "PROPERTY."
11. **Sale of Goods: Within 30 calendar days from the date of sentencing,** Defendant and his corporation, Evergreen Distributors, Incorporated, its employees, agents, vendors and contractors shall cease selling all goods at the "PROPERTY," for which they do not have all necessary and required permits and variances to sell. Prohibited items include, but are not limited to: fountains, wind chimes, birdbaths, furniture, and food items (vending machines in employee break rooms are excluded). Defendant shall not allow or engage in the sale of these products until such time as proper permits, approvals, and licenses are obtained.
12. **Sale of Goods: Within 30 calendar days from issuance of approved Conditional Use Permit (CUP),** Defendant and his corporation, Evergreen Distributors, Incorporated, its employees, agents and contractors shall cease selling the following goods at the "PROPERTY" for which they do not have all necessary and required permits and variances to sell. Prohibited items include: pots, mulch, soils bagged and prepared off-site, rock, gravel and sand. Defendant shall not allow or engage in the sale of these products until such time as proper permits, approvals, and licenses are obtained.

13. **Green Material Composting Operation:** Defendant may continue to operate the existing Green Material Composting Operation (GMCO) in accordance with the Enforcement Agency (EA) Notification filed with the City of San Diego's Solid Waste Local Enforcement Agency (LEA) and the Settlement Agreement between Defendant and the LEA, dated February 6, 2004, so long as the GMCO is fully captured and included in the CUP application. Defendant may not relocate or expand production of the GMCO beyond its present capacity without the express written permission of DSD and LEA. Should Defendant fail to include the GMCO in the CUP submissions or in any way relocate or expand the production or capacity of the GMCO beyond the current 10,000 cubic yard limitation on feedstock and active compost without written permission from DSD and LEA, Defendant will be required to immediately and no later than two calendar days from the date of discovery completely cease the GMCO.
14. Under the direction of the City of San Diego's (City) Code Enforcement Division (CED) and the City's Development Services Department (DSD), regarding Assessor Parcel Nos. 306-010-16-00, 306-010-17-00, 306-010-18-00, 306-010-19-00, 306-010-22-00 aka 13650 Carmel Valley Road, the "PROPERTY" located in the City of San Diego, Defendant must:
- a. **Temporary Erosion Control Plan (TECP):** Within 30 calendar days from the date of sentencing, Defendant shall submit a TECP, prepared by a licensed professional engineer, to CED formerly known as the Neighborhood Code Compliance Division for approval. The TECP must include each of the following:
 - i. Address all areas of the PROPERTY containing any exposed or un-compacted dirt or fill material whatsoever, as well as any exposed embankments;
 - ii. Designate stabilization for the PROPERTY, controlling both erosion and runoff onto adjacent properties, as well as any erosion and/or sediment transport;
 - iii. Integration of an appropriate combination of erosion control measures, which may include, but are not limited to: hydro-seeding (native species only), silt fencing, fiber rolls, sandbags, and/or hay bales, the appropriateness of measures shall be determined by DSD;
 - iv. Use of Best Management Practices as determined by DSD. Defendant may submit to DSD a previously prepared BMP plan attached hereto as Exhibit 1. Defendant understands that DSD may require additional measures not in Exhibit 1.
 - v. Defendant shall submit any additional items or corrections to the TECP, as required by CED/DSD, **no later than 30 calendar days** from the date of any such request by CED/DSD. Defendant understands that multiple corrections or additions may be necessary depending on the content and quality of the original submission.
 - vi. Any additional items or corrections related to erosion control, which are necessary and required during the processing of discretionary permits.

PROPERTY USE ELECTION

15. **Property Use Election – Within 30 calendar days from the date of sentencing:** Defendant shall elect either OPTION 1, OPTION 2, or OPTION 3 below, and submit a completed application and set of plans to CED and DSD to pursue that Option, and take all required steps in order to have the application deemed complete by DSD.
- a. **OPTION 1 - Restore the PROPERTY to its last approved use and configuration.** The application for OPTION 1 must be submitted with scale drawings which address the change of occupancy of the altered structures, non-permitted construction, additions, grading and other modifications done to the PROPERTY.
 - i. **Option 1 – Restoration:** Defendant shall restore the PROPERTY to the naturally occurring and lawfully existing conditions which existed in 1998, as determined by CED based on reviews of topographical maps and aerial photos. Defendant agrees to submit all necessary and required documentation in order to address all illegal development and to restore all areas on the PROPERTY to their previous 1998 topography and conditions.
 - ii. **Option 1 – Revegetation:** Any revegetation plans and drawings shall include the following:

- (1) Landscape Irrigation Plan prepared in accordance with the SDMC Chapter 14, Article 2, Division 4, as part of the Land Development Code (LDC); and the LDC Landscape Standards (effective January 2000). All irrigation notes will be incorporated on this plan or on additional sheets as necessary.
- (2) Landscape Revegetation Planting Plan prepared in accordance with the LDC Chapter 14, Article 2, Division 4, the LDC Landscape Standards; and the General Outline For Revegetation/Restoration Plans of the City of San Diego's LDC Biology Guidelines (May 2001); and the applicable Environmentally Sensitive Lands Regulations under Chapter 14 Article 3, Division 1. All landscape and revegetation planting notes will be incorporated on this plan or on additional sheets as necessary.
- (3) Revegetation Maintenance and Monitoring Plan with detailed note sheets documenting all of the revegetation requirements described in the General Outline for Revegetation/Restoration Plans of the City of San Diego's LDC Biology Guidelines (May 2001).

OR

- b. **OPTION 2 - Develop the PROPERTY commercially as a nursery.** The plans for OPTION 2 must address the change of occupancy of the structures and the change of use from a residential use to a commercial use. This includes compliance with all current commercial development and construction regulations.

Discretionary Permits

- i. **Option 2 – Development:** Effective immediately and no later than 55 calendar days from the date the TECP is approved; Defendant shall submit applications and complete sets of plans to CED and DSD. Defendant shall tender complete submittals (this includes, but is not limited to all necessary drawings, photographs, reports, surveys, calculations, and fees). All applications must be prepared by a licensed Professional Engineer, for each of the following discretionary permits: a) **Conditional Use Permit**; and b) **Site Development Permit**.
- ii. **Option 2 – Corrections:** In the event CED and/or DSD request corrections to Defendant's plans for the Site Development Permit, Conditional Use Permit, and/or Grading Plan, then **within 30 calendar days** from the date of any such request, Defendant shall re-submit corrected plans to the requesting agency.

Ministerial Permits

- iii. **Option 2 – General Grading Permit – Within 75 calendar days** from the date the Site Development Permit and Conditional Use Permit is issued, Defendant shall submit a complete set of plans (including all drawings, photographs, reports, surveys, calculations, and fees) prepared by a licensed Professional Engineer to CED and DSD for the purpose of obtaining a ministerial general grading permit, which address previously unpermitted grading on the PROPERTY associated with the mulching, under road tunneling, and terracing of the PROPERTY, pursuant to the requirements of the approved Site Development Permit and Conditional Use Permit.
- iv. **Option 2 – Building Permits - Within the same 75 calendar day time frame set forth in paragraph 15(b)(iii)** of this plea agreement, Defendant agrees to apply for any ministerial construction permits required as part of the Conditional Use Permit.
- v. **Option 2 – Revegetation:** Any revegetation plans and drawings shall include the following:
 - (1) Landscape Irrigation Plan prepared in accordance with the SDMC Chapter 14, Article 2, Division 4, as part of the Land Development Code (LDC); and the LDC Landscape Standards (effective January 2000). All irrigation notes will be incorporated on this plan or on additional sheets as necessary.
 - (2) Landscape Revegetation Planting Plan prepared in accordance with the LDC Chapter 14, Article 2, Division 4, the LDC Landscape Standards; and the General Outline For

Revegetation/Restoration Plans of the City of San Diego's LDC Biology Guidelines (May 2001); and the applicable Environmentally Sensitive Lands Regulations under Chapter 14 Article 3, Division 1. All landscape and revegetation planting notes will be incorporated on this plan or on additional sheets as necessary.

- (3) Revegetation Maintenance and Monitoring Plan with detailed note sheets documenting all of the revegetation requirements described in the General Outline for Revegetation/Restoration Plans of the City of San Diego's LDC Biology Guidelines (May 2001).
- vi. In the event DSD requests corrections to any grading or construction ministerial permit application described above, Defendant shall resubmit the corrected plans and any other applicable documents **no later than 30 calendar days** from the date of any such request.
- vii. **Within 365 calendar days from the date DSD issues the necessary ministerial permits**, Defendant agrees to obtain all necessary inspections and final approvals from the City of San Diego for each of the issued permits.

OR

- c. **OPTION 3 - Place the PROPERTY for sale.** Defendant must show proof that he has entered into an agreement to sell the PROPERTY with a licensed real estate agent or real estate broker and made reasonable efforts to sell the PROPERTY. Reasonable efforts to sell the PROPERTY shall include but not be limited to the following: list the PROPERTY for sale on MLS; requested asking price shall not be more than two percent above comparable properties within 8 miles of the PROPERTY; defendant shall allow scheduled property viewings.

16. **Permits:** DSD will determine what permits are needed and required.

17. **Inspections.** Defendant agrees to allow inspectors from the City of San Diego access to all interior and exterior areas at all property owned by or through the Defendant in the City of San Diego to inspect and take photographs, for the purpose of monitoring Defendant's compliance with these terms and conditions of probation:

- a. Days & Time: Monday through Friday, 8AM - 5PM;
- b. Notice: 24 hour notice is required (notice to Defendant, Defendant's attorney, or Defendant's local representative is sufficient) Verbal notice is sufficient.

18. **Review Hearing.** Within 90 calendar days from the date of sentencing, Defendant must return to court to show proof of compliance with these terms and conditions of probation, and will report to court for further review dates as scheduled after that hearing.

By signing below, I acknowledge that I have read and understand these terms and conditions of Court ordered probation. Failure to obey these terms and conditions may result in the revocation of probation and imposition of further terms and conditions of probation, custody, or both.

Mark Collins Mark Collins
Print Name Defendant's Signature

Dated: 6/30/16

Counseled by:

Michael Lipman Michael Lipman
Print Name Signature (Private Counsel)

Dated: 6/30/16

Reviewed by:

Onu Omordia Onu Omordia
Print Name Signature (Deputy City Attorney)

Dated: 6/30/16

Evergreen Nursery Conservation Plan
13650 Carmel Valley Road
San Diego, CA 92130



Evergreen Nursery, 13650 Carmel Valley Road, San Diego, CA 92130

EXHIBIT 1

Planned Conservation Treatment

Nursery

This Resource Management System is a combination of conservation and management practices applies to land uses for the production of nursery products, recycling landscape materials, and other organic feed stocks. Objectives are to protect the resources base of soil, water, air plants and animals while providing for sustained, profitable recycling and production of crops.

Irrigation System, Trickle

A planned irrigation system with all necessary facilities will be installed and maintained to meet the water requirements of planned crops by applying water directly to plant root zone. Irrigation water will be applied to maintain soil moisture within the range for optimum plant growth and without excessive water loss, soil erosion, reduction in water quality or accumulation of salts. Installation will be according to approved plans and USDA Specification No. 441 for this practice.

Manual Irrigation Augmentation

The planned irrigation system may meet the water needs of many of the nursery crops. However, manual application of water by nursery personnel using hoses shall augment the planned irrigation system. The "hand watering" shall compensate for inconsistencies in the system and allow for adjustments to the watering program while maintaining optimum plant growth and without excessive water loss, soil erosion, reduction in water quality or accumulation of salts.

Irrigation Water Management

Irrigation water will be applied on a planned and efficient manner that considers the rate, amount, and timing of the irrigation water and crop growth needs. Irrigation water will be used effectively to manage and control soil moisture in the root zone to achieve the desired crop response. Soil erosion and loss of plant nutrients will be minimized, excessive water loss eliminated, accumulation of salts in the crop root zone minimized

and water quality protected. Performance will be according to USDA Specification No. 449 for this practice.

Nutrient Management

The amount, form, placement and timing of nitrogen and phosphorus will be scheduled for optimum forage or crop yields, minimize movement of nutrients to surface and groundwater, and maintain or improve chemical and biological condition of the soil. Performance will be according to USDA Specification No. 590 for this practice.

Runoff Containment System

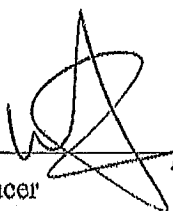
Though the irrigation management system substantially ensures no measurable offsite runoff of irrigation water, the site has an irrigation water retainment system. The retainment system is designed to capture any surplus irrigation and even most minor rainwater events. The system absolutely ensures no discharge of irrigation water from the site. The system utilizes two existing two stage basins located at the low points along the northerly perimeter of the property along with extensive gravel lined pervious drainways and surface berming to minimize and direct any potential irrigation runoff or siltation.

The gravel lined drainways and the berming shall be maintained in a manner ensuring any potential runoff is directed to the two runoff and silt containment basins. The containment ponds shall be seasonally maintained by mechanically removing any weeds or other vegetation from the first stage while maintaining grass and coarse gravel filtration in the final stage.. Any silt build-up in the basins shall be mechanically removed each summer or after any major rain event to ensure continued containment in anticipation of the following rainy season.

Pest Management

Agricultural pest infestations (including weeds, insect, and diseases) will be managed to reduce adverse effects on plant growth, crop production, and environmental resources. Use of target pesticides on cropland soils with a high risk for runoff or leaching will be minimized and suitable alternative including IPM explored. Performance will be according to USDA Specification No. 595 for this practice.

Evergreen Nursery, 13650 Carmel Valley Road, San Diego, CA 92130

 W. MY KATENS
Producer

UPDATED SAN 10th, 2010
Date

Appendix X.
Minimum BMPs for Industrial and Commercial Sites/Sources

Minimum Best Management Practices (BMPs) for Industrial and Commercial Sites/Sources

No.	BMP Title	Description and Examples	Justification for BMP
1	Provide secondary containment to catch spills if storing hazardous materials	Use one of a variety of methods (e.g., containers, curbs, vendor products) to provide secondary containment for areas storing hazardous materials in case of leaks or spills	Prevents pollutants from potentially entering the storm drain system by keeping them onsite
2	Use drip pans, etc. to collect leaks/spills	Repair vehicle leaks promptly. Use drip pans or other means (e.g. sealable containers) to capture spills or leaks of oil and other fluids from vehicles during maintenance; dispose of captured fluids per BMP #11 where applicable.	Prevents pollutants from potentially entering the storm drain system by keeping them onsite
3	Clean floor mats in locations that do not drain directly to storm drain system.	Wash kitchen floor mats and entry/exit door mats such that wash water is captured and directed to sanitary sewer system or wash mats with potable water or biodegradable detergent such that water drains to landscape areas without runoff to storm drain system.	Directs pollutants to sanitary system or landscape areas
4	Properly dispose of process or wash water	Collect wash water from processes such as pressure washing in permanent or temporary capture facilities and direct to landscape areas for infiltration or pump to sanitary sewer. (Coordinate with MWWDD and obtain industrial discharge permit if necessary.)	Directs pollutants to sanitary system and avoids non-storm water discharge
6	Immediately clean up spills with dry methods	Use absorbents, sweeping, and other dry cleanup methods to clean up spills and dispose of properly (depending on nature of spill) rather than washing spilled material into the storm drain system. Provide spill kits with dry cleanup materials in readily accessible locations. Train appropriate employees in spill response procedures.	Removes potential pollutants
6	Maintain a spill cleanup kit. Have necessary materials and equipment readily available	Use methods, equipment, and materials appropriate for the spill materials. For hazardous materials call Environmental Services Department. Assure that absorbents and dry cleanup materials are located in close proximity to locations where hazardous materials or potential storm water pollutants are stored or used, and instructions are clearly displayed	Removes potential pollutants
7	Wash vehicles and equipment in designated area and implement practices to prevent water from entering the storm drain.	Discharge to the storm drain system is prohibited. Prevent pollutants from potentially entering the storm drain system by containment, directing flow to landscaped areas, or vacuuming. Use a control nozzle or similar.	Prevents pollutants from potentially entering the storm drain system by keeping them onsite
8	Properly store and dispose of green waste	Do not dump or leave green matter from landscaping maintenance where it could enter the storm drain system. Take to green waste section of landfill or use appropriately on site.	Prevents pollutants from potentially entering the storm drain system
9	Keep animals out of creeks	Fence areas adjacent to channels to keep animals out of creeks and surrounding areas. Provide stock ponds or water tanks away from watercourses.	Prevents deposition of pollutants (nitrates, bacteria, etc.) in drainage way

X-1

Minimum Best Management Practices (BMPs) for Industrial and Commercial Sites/Sources

No.	BMP Title	Description and Examples	Justification for BMP
10	Prevent discharge of water from fire sprinkler system maintenance activities to the storm drain system, if feasible	<p><u>Fire sprinkler systems containing corrosion inhibitors, fire suppressants, or antifreeze:</u></p> <ul style="list-style-type: none"> • Prevent discharge to storm drain system • Collect and dispose of discharge to sanitary sewer system <p><u>Fire sprinkler systems without corrosion inhibitors, fire suppressants, or antifreeze:</u></p> <ul style="list-style-type: none"> • Discharge to the sanitary sewer system, if feasible. • If infeasible, conduct one or a combination of the following on days without a prediction for rain: <ul style="list-style-type: none"> - Direct flows to a paved area for evaporation/wet vacuuming and sweeping, and/or - Infiltrate flows in suitable landscape area without causing erosion or runoff. - For any portion of the flows that cannot be managed with the above methods, clean trash and debris from the flow path to the storm drain inlet and mechanically filter remaining flow with an appropriate filter fabric or other equivalent media prior to discharge to the storm drain system. <p><u>Main water lines into buildings (Potable water):</u> Discharge to the storm drain system, provided that the flow path to the storm drain inlet has been swept of debris, the water is dechlorinated, and the water has a pH between 6 and 9.</p>	Prevents or reduces pollutants from potentially entering the storm drain system by keeping them onsite
11	Properly store and dispose of hazardous materials	Store hazardous materials (paints, solvents, oils, pesticides) such that they will not come into contact with storm water if leaks or spills occur. Dispose of hazardous materials using authorized hazardous material collection services.	Prevents pollutants from potentially entering the storm drain system
12	When there is flexibility, schedule during dry weather any outdoor activities that could release pollutants	When there is flexibility, schedule outdoor activities such as vehicle washing and maintenance, handling of hazardous materials, mobile cleaning operations, etc. for non-rainy days. Or, move activities indoors.	Reduces potential for washing pollutants into storm drain system
13	Label containers and maintain up-to-date inventory to prevent mishandling of hazardous materials	Keep accurate inventory of potentially hazardous materials, especially those stored in outdoor areas. Clearly label containers with contents and any special handling instructions in accordance with current regulations.	Prevents pollutants from potentially entering the storm drain system

Minimum Best Management Practices (BMPs) for Industrial and Commercial Sites/Sources

No.	BMP Title	Description and Examples	Justification for BMP
14	Drain and properly dispose of fluids from Inoperable Vehicles	Drain oil, antifreeze, and other fluids from vehicle stored outside for storage or salvage. Dispose of waste per BMP #11 where applicable.	Prevents pollutants from potentially entering the storm drain system
15	Provide pollution prevention signage for storm drains, material storage, etc.	Provide concrete stamping or equivalent on all onsite drainage inlets and catch basins with prohibitive language (e.g., "No Dumping - Drains to Ocean"). Provide signage indicating nature of materials stored onsite, particularly hazardous materials, in accordance with current regulations.	Reduces potential for employees to inadvertently introduce pollutants into storm drain system
16	Properly manage pesticide/fertilizer use	Apply pesticides and fertilizers in strict accordance with manufacturer's guidance. Safely store chemicals in closed/covered areas. Dispose of waste products per BMP #11. When feasible, use integrated pest management principles (plant selection, biological controls, habitat manipulation) to reduce use of chemicals.	Reduces introduction of pollutants to areas that generate runoff
17	Protect landscaped areas from erosion by maintaining Vegetative cover	Plant and maintain healthy ground cover on exposed soils to reduce runoff and erosion of soils that may contain or transport pollutants	Reduces erosion and associated pollutants
18	Temporarily protect storm drains from non-storm water discharges while conducting activities have the potential to result in a discharge	Use temporary covers, sand bags, or other methods to prevent non-storm water from entering storm drain system.	Prevents non-storm water and contaminated storm water from entering storm drain system
19	Eliminate Irrigation runoff to the storm drain system	The goal of this BMP is to eliminate irrigation runoff to the storm drain system through proper landscape maintenance and watering practices, though it is recognized that some irrigation runoff may occur due to broken sprinklers, irrigation system failures, etc. Adopt proper watering and site design practices, properly maintain irrigation systems by abating runoff from broken sprinklers and other system components, control overspray, and abide by local watering restrictions.	Reduces potential for non-storm water to enter storm drain system
20	Regularly sweep parking areas	Sweep regularly as needed	Removes potential pollutants
21	Protect trash storage areas from contact with storm water	Trash areas should be either: (1) paved with an impervious surface, designed not to allow run-on from adjoining areas, and screened to prevent off-site transport of trash; (2) contain attached lids that exclude rain; and/or (3) covered to minimize direct precipitation. Locate trash areas downstream of drain inlets where applicable. Keep area free of trash.	Reduces contact of rain water with potential pollutants, and reduces runoff of potentially contaminated storm water

Minimum Best Management Practices (BMPs) for Industrial and Commercial Sites/Sources

No.	BMP Title	Description and Examples	Justification for BMP
22	Properly dispose of swimming pool, spa, fountain, and filter backwash water	Discharge swimming pool, spa, and fountain water only if the water is dechlorinated, has a pH in 7-8 range, is within ambient temperature, and has no algae or suspended solids. If any of the above standards are not met, dispose of swimming pool, spa, and fountain water either by (1) discharging water to the sanitary sewer system; and/or (2) draining water to landscaped areas. Dispose of filter backwash water only to a landscaped area or the sanitary sewer system.	Prevents contaminated discharge water from entering storm drain system
23	Clean up regularly with dry methods and non-hazardous cleaning products	Use absorbents, sweeping, and other dry cleanup methods to clean up spills rather than washing spilled material into the storm drain system. Dispose of spilled material properly (e.g., hazardous waste materials per BMP #11). Avoid use of cleaning products containing hazardous substances. Dispose of wash water to landscaped areas or sanitary sewer.	Removes potential pollutants
24	Clean trash disposal areas	Keep trash in dumpsters and other receptacles; prevent trash from blowing offsite; sweep trash storage areas frequently; check dumpsters for leaks; never place liquid waste in dumpsters; use dry cleanup methods in trash disposal areas.	Prevents contact of rain water with pollutants
25	Train appropriate employees on storm water pollution prevention	Provide initial training and annual refresher training for employees involved in activities that could result in spills or discharges to the storm drain system. Assure all employees are familiar with SWPPP if one exists for the site. Designate and train key employees in proper installation, operation, and maintenance of any onsite BMPs.	Reduces potential for employees to inadvertently introduce pollutants into storm drain system
26	Have written procedures for preventing and responding to spills	Facilities subject to regulations such as SPCC or Hazardous Materials Business Plan regulations already should have developed plans in accordance with guidance provided by State, City, and County emergency management departments. For businesses not subject to emergency response and contingency plans as described above, provide written procedures for preventing and responding to spills. Documents should be appropriate in scale to facility activities and potential discharges. Post procedures in appropriate areas and train appropriate employees in spill response procedures.	Removes potential pollutants

Minimum Best Management Practices (BMPs) for Industrial and Commercial Sites/Sources

No.	BMP Title	Description and Examples	Justification for BMP
27	Develop a written plan for identifying appropriate BMPs and describing proper implementation	Maintain a written plan that identifies all BMPs to be used and provides clear instruction on how to properly implement each BMP. For facilities subject to storm water permitting pursuant to State General Industrial Permit regulations, this requirement is met by the required Storm Water Pollution Prevention Plan. For businesses not subject to the State General Industrial Permit, this written plan need be appropriately scaled to the size of the facility and potential for discharges. Update these plans as site conditions or activities change.	Prepares plan to address site specific conditions and pollutant sources
28	Identify and eliminate illegal connections to storm drain	Assure all process water and drainage from loading areas, vehicle maintenance areas, and manufacturing areas is discharged to sanitary sewer system	Prevents pollutants from potentially entering the storm drain system

MINIMUM REQUIRED AMP8 FOR INDUSTRIAL/COMMERCIAL BUSINESSES

[illegible]

Notes: (1) Conjugates with ω axis values, in 101 (b) lines have not as common as ω axis conjugate pairs

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INVENTORY OF FACILITY ACTIVITIES AND SITE CONDITIONS

[] Eroded Soils (SSM B.2.2) Prior to the rainy season (Oct. 1 to Apr. 30), Dischargers must remove or contain any significant accumulation of eroded soils from slopes previously disturbed by clearing or grading, if those eroded soils could otherwise enter the Storm Water Conveyance System or Receiving Waters during the rainy season.

[] Pollution Prevention (SSM B.2.3) Dischargers employing ten or more persons on a full time basis shall implement those stormwater pollution prevention practices that are generally recognized in that Discharger's industry or business as being effective and economically advantageous.

[] Prevention of Illegal Discharges (SSM B.2.4) Illicit connections must be eliminated (even if the connection was established pursuant to a valid permit and was legal at the time it was connected), and illegal discharge practices eliminated.

[] Slopes (SSM B.2.5) Completed slopes that are more than five feet in height, more than 250 square feet in total areas, and steeper than 3:1 (run to rise) that have been disturbed at any time by clearing, grading, or landscaping, shall be protected for erosion prior to the first rainy season following completion of the slope, and continuously thereafter.

[] Storage of Materials and Wastes (SSM B.2.6) All materials and wastes with the potential to pollute urban runoff shall be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal.

[] Use of Materials (SSM B.2.6) All materials with the potential to pollute urban runoff (including but not limited to cleaning and maintenance products use outdoors, fertilizers, pesticides and herbicides, etc.) shall be used in accordance with label directions. No such materials may be disposed of or rinsed into Receiving Waters or the Stormwater Conveyance System.

Best Management Practice Requirements & General Requirements Sec. 67.807

Minimum Best Management Practices for All Dischargers (dfn. Dischargers-means any person or entity engaged in activities or operations or owning facilities, which will or may result in pollutants entering storm water, the Storm Water Conveyance System (SWCS), or Receiving Waters (RW); and the owners of real property on which such activities, operations or facilities are located; provided however, that a local government or public authority is not a discharger as to activities conducted in public rights of ways.)

All dischargers in the County Urban Area must install, implement and maintain at least the following minimum BMP:

- (1) Eroded soils. Prior to the rainy season, dischargers must remove or secure any significant accumulations of eroded soils from slopes previously disturbed by clearing or grading, if those eroded soils could otherwise enter the SWCS or RW during the rainy season. (dfn. Rainy Season-means, from Oct. 1 through Apr. 30.)
- (2) Pollution Prevention. Dischargers employing ten or more persons on a full-time basis shall implement those Stormwater Pollution Prevention Practices (SPPP) that are generally recognized in that Discharger's industry or business as being effective and economically advantageous.
- (3) Prevention of Illegal Discharges. Illicit connections must be eliminated (even if the connection was established pursuant to a valid permit and was legal at the time it was constructed), and illegal discharge practices eliminated.
- (4) Slopes. Completed slopes that are more than five feet in height, more than 250 sq. ft. in total area, and steeper than 3:1 (run to rise) that have been disturbed at any time by clearing, grading, or landscaping, shall be protected from erosion prior to the first rainy season following completion of the slope, and continuously thereafter. (Sec. 67.806 Discharges Exempted from Discharge Prohibitions. (c) Certain Agriculture Discharges. Non-stormwater agriculture dischargers that the SWRCB or RWQCB have explicitly determined to allow pursuant to a written waiver or formal policy, including any such discharges from commercial nurseries and greenhouses that are covered by such waivers or policies, are exempt from the discharge prohibitions established by this Ordinance, provided compliance with all relevant permit, waiver or policy conditions established by the SWRCB or RWQCB are maintained to the satisfaction of the SWRCB or RWQCB. These discharges are not otherwise exempt from this Ordinance. (d) Categorically Allowed Discharge Subject to 67.807. The following categories of non-stormwater discharges are exempt from discharge prohibitions established by this Ordinance, but Dischargers must install, implement and maintain the applicable BMP's set out in section 67.807 of this Ordinance, and any applicable BMP's specified in the Stormwater Standards Manual: >flows from riparian habitats and wetlands. >foundation drains. >irrigation water including recycled water used for irrigation. >landscape irrigation.)

- (5) Storage of Materials & Wastes. All materials and wastes with the potential to pollute urban runoff shall be stored in a manner that either prevents contact with rainfall and storm water, or contains contaminated runoff for treatment and disposal.
- (6) Use of Materials. All materials with the potential to pollute urban runoff (including but not limited to cleaning and maintenance products used outdoors, fertilizers, pesticides and herbicides, etc.) shall be used in accordance with label directions. No such product may be disposed of or rinsed into RW or the SWCS.

Inspection, Maintenance, Repair & Upgrading BMPs. BMPs at manned facilities must be inspected by the Discharger before and following predicted rain events. BMPs at unmanned facilities must be inspected by the Discharger at least once during the rainy season. These BMPs must be maintained so that they continue to function as designed. BMPs which fail must be repaired as soon as it is safe to do so. If the failure of a BMP indicates that the BMPs in use are inappropriate or inadequate to the circumstances, the BMPs must be modified or upgraded to prevent any failure in the same or similar circumstances.

SWPPP. Any Discharger required to submit and to obtain approval of a SWPPP shall install, implement and maintain the BMPs specified in the approved SWPPP.

Notification of Spills, Releases and Illegal Discharges. Spills, releases and illegal discharges of pollutants to RW or to the SWCS shall be reported by the Discharger as required by all applicable state and federal law. In addition, any such spills, releases & illegal discharges with the potential to endanger health, safety, or the environment shall be reported to the Director or Assist. Director, Department of Public Works within 24-hours after discovery of the spill, release or discharge. If safe to do so, necessary actions shall be taken to contain and minimize the spill, release or illegal discharge.

Sampling, Testing, Monitoring, and Reporting. Commercial, Industrial or Land Disturbance Activities (defn. Land Disturbance Activity (LDA)-means any activities that moves soils or substantially alters the pre-existing vegetated or man-made cover of land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil; placement of fill materials; paving, pavement removal, exterior construction; substantial removal of vegetation where soils are disturbed including but not limited to removal by clearing or grubbing; or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. LDA does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health & safety.) Dischargers shall perform the sampling, testing, monitoring & reporting required by this Ordinance. In addition, an Authorized Enforcement Official (AEO) or Authorized Enforcement Staff (AES) may order a Discharger to conduct testing or monitoring and to report the results to the County if (1) the AEO

determines that the testing or monitoring is needed to determine whether BMPs are effectively preventing or reducing pollution in the stormwater to the maximum extent practicable, or to determine whether the facility is a significant source of contaminants to RW; or (2) the AEO or AES determines that the testing or monitoring is needed to assess the impacts of an illegal discharge on health, safety or the environment; or (3) an Illegal Discharge has not been eliminated after written notice by an AEO or AES; or (4) repeated violations have been documented by written notices from AEO or AES; or (5) the RWQCB requires the County to provide any information related to the Discharger's activities,

Testing and Monitoring ordered pursuant to this subsection may include the following:

- Visual monitoring of dry weather flows, wet weather erosion, and/or BMPs.
- Visual monitoring of premises for spills or discharges.
- Laboratory analyses of stormwater or non-stormwater discharges for pollutants.
- Background or baseline monitoring or analysis.
- Monitoring of RW or sediments that may be affected by pollutant discharges (or by a group of dischargers including the discharger).

The AEO or AES may direct the manner in which the results of the required testing and monitoring are reported, and may determine when required sampling, testing or monitoring may be discontinued.

Mitigation. All Illegal Discharges must be mitigated within a reasonable period of time or compensate for all damages to the environment caused by the illegal discharge. The AEO or AES who issued notice to the Discharger that a discharger was illegal, or AES designated by that official, shall determine whether mitigation measures proposed or completed by the discharger meet this standard. The AEO or AES shall require the Discharger to submit a mitigation plan and schedule by a specified date prior to taking action, and to submit a summary of completed mitigation by a specified date.

Access for Inspections. All dischargers shall provide access to authorized enforcement staff, upon reasonable notice, for inspection of facilities and discharges subject to this ordinance.

Additional Minimum BMP Requirements for Commercial Activities & Facilities Sec. 67.809

- (a) Priorities and Requirements. Regulated Commercial Facilities are classified in this section as High Priority or All Other and additional requirements are imposed on those facilities by this section based on those classifications. All commercial Dischargers must install, implement and maintain at least the additional minimum BMPs, if any, specified in this section or in the County Stormwater Standards Manual for the priority classification and category of activity or facility owned or operated by that Discharger. All Regulated Commercial Facilities shall review

their facilities, activities, operations and procedures at least annually to detect and eliminate illicit connections and illegal discharges. Corrective training shall be provided as needed (and documented in training records) whenever an illegal disposal practice is discovered.

(b) High Priority Commercial Facilities Identified. As required by NODES Permit No. CAS 0108758, facilities in the County Urban Area having one or more of the following characteristics are High Priority Commercial Facilities:

(1) The facility is a Regulated Commercial Facilities primarily engaged in one of the following commercial activities:

Landscaping.

Nurseries & Greenhouses.

(2) The facility is a Regulated Commercial Facility that has outdoor Industrial Areas totaling two acres or more or an outdoor parking lot for 100 or more vehicles; and stormwater or runoff from the facility may adversely affect impaired waters (dfn. Impaired Water Body-means a water body that is listed by the SWRCB as impaired by a particular pollutant or pollutants, pursuant to section 303(d) of the Federal Clean Water Act.) or waters within an environmentally sensitive area.

(3) The facility is a Regulated Commercial Facility and has been notified in writing by an AEO or AES that it is a High Priority Commercial Facility. Such designations shall take effect 90 days after mailing or service of this notice. These designations shall be made where the facility discharges a pollutant load in storm water or runoff that causes or contributes to the violation of water quality standards.

(c) Additional Minimum BMP for All Regulated Commercial Facilities. All Regulated Commercial Facilities shall install, implement and maintain the BMPs specified in County Stormwater Standards Manual (Appendix A of this Ordinance) in the following areas:

- Employee Training.
- Stormwater pollution prevention plan.
- Storm drain tillage and signing.
- Annual review of facilities and activities.
- Pollution prevention.
- Materials and waste management.
- Vehicles and Equipment.
- Outdoor areas.

(d) Additional Minimum BMP for Specific Types of Regulated Commercial Facilities. Regulated Commercial Facilities, including but not limited to the type of facilities and activities listed below, shall install, implement and maintain the BMPs specified in the County Stormwater Standards Manual for each type of facility or activity.

- Vehicle & equipment repair & maintenance.
- Outdoor storage of vehicles & equipment.
- Retail & wholesale fueling.
- Vehicle body & repair & painting.
- Painting & coating.
- Parking lots & storage facilities.
- Cement mixing & cutting.
- Nurseries & greenhouses.
- Pool & fountain cleaning.
- Pest control.
- Landscaping.

Additional Minimum BMP Requirements for Agriculture Operations Sec. 67.811

- (a) Nursery and Greenhouse Operations. Pursuant to NPDES Permit No. CAS 0108758, nursery and greenhouse operations are classified as commercial operations for purposes of this Ordinance, and are subject to all requirements for Regulated Commercial Facilities set out in this Ordinance.
- (b) Agriculture Grading and Clearing. The BMP requirements imposed by section 67.817 of this ordinance for land disturbance activities apply to agriculture grading and clearing, whether or not a County-issued grading and clearing permit is required for that activity. Tilling or cultivating land exclusively for the purpose of growing plants or animals is not considered to be grading or clearing, provided all disturbed materials remain on the same site, the tilling or cultivating will not block or divert any natural drainage way, and the land to be tilled or cultivated has been in agriculture production for at least one (1) of the preceding five (5) years.
- (c) Land Development Associated with Agriculture Operations. The requirements imposed by section 67.818 of this Ordinance for land development activities apply to such activities when they are associated with agriculture operations.
- (d) Manure Management. (2) Areas used for storing or composting manure must be located, configured or managed to prevent runoff to RW or the SWCS.
- (e) Other Agriculture Operations. Other agriculture operations are subject to the discharge prohibitions and other requirements set out in sections 67.801 through 67.806 of this Ordinance. Agriculture operations located within or adjacent to (i.e., within 200ft. of), or which discharge directly to an impaired water body (Appendix C) or a coastal lagoon or a receiving water body within an ESA (Appendix D), are also subject to requirements set out in section 67.807.

County Stormwater Standards Manual Sec. 67.813

- (a) Manual a Part of this Ordinance. All BMPs installed, implemented or maintained

to meet the requirements of this ordinance must conform to the applicable specifications, if any, set out in this Manual.

- (b) Existing Facilities. The Stormwater Standard Manual sets out minimum BMPs & other objective specifications for specific types & categories of existing facilities and activities. Where minimum BMPs & objective specification are specified, they are mandatory. Where no minimum BMPs have been specified in the Stormwater Standards Manual for a type & category of facility or activity, only the requirements set out in this Ordinance are applicable.
- (e) Conflicting or More Detailed Requirements. In case of any conflict between any applicable minimum BMPs specified in sections 67.807 and 67.807.2 of this Ordinance, and any applicable requirement described in more detail for a particular type of facility or activity in the County Stormwater Standards Manual, the requirement in the Manual shall prevail.

Maintenance of BMPs Sec. 67.819

- (a) Existing Development. Residential, commercial, industrial, agricultural and municipal dischargers shall maintain the BMPs they rely upon to achieve and maintain compliance with this Ordinance.

**STORM WATER POLLUTION PREVENTION BMP REQUIREMENTS FOR
COMMERCIAL FACILITIES & ACTIVITIES**

Facility Information:

Facility Name Evergreen Nursery

Facility Address 13650 Carmel Valley Road San Diego CA 92130

Facility Owner Mark Collins

Contact Person Wally Kearns Phone No. 1-858-481-1434

Owner's Address 13650 Carmel Valley Road, San Diego, CA, 92130

Identify Responsible Personnel:

☐ Implementing and revising the BMPs Evergreen Nursery

☐ Inspecting facility Evergreen Nursery

☐ Regular inspections of BMPs Evergreen Nursery

☐ Training employees about BMPs affecting their jobs Evergreen Nursery

Notification Procedure:

☐ Notify Facility Manager Immediately

☐ County' Stormwater Hotline 1-888-846-0800

☐ Environmental Service Asbury Environmental Services 1-800-748-5744

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between EVERGREEN DISTRIBUTORS, INC. ("EVERGREEN"), and the CITY OF SAN DIEGO SOLID WASTE LOCAL ENFORCEMENT AGENCY ("LEA"), collectively referred to as the Parties, and is made in regards to the following facts:

Recitals

A. EVERGREEN operates a composting facility on Black Mountain Road in the City of San Diego under a Registration Permit issued by the LEA which allows it to maintain on site no more than 10,000 cubic yards of feedstock and active compost at any one time. The LEA regulates EVERGREEN'S composting facility for compliance with State Minimum Standards and its Registration Permit.

B. On or about August 28, 2003, the LEA issued Notice and Order To Cease And Desist And For Corrective Action No. 03-01 In the Matter of Evergreen Distributors, Inc. ("Notice and Order").

C. The Notice and Order was issued pursuant to Title 14 of the California Code of Regulations, Division 7, (14CCR) Chapter 5, Article 4, §18304 & 18304.1 and, California Public Resources Code (PRC), Division 30, Part 5, Chapter 1, Article 1, §45005 & 45011(a) (1).

D. The Notice and Order recited that the following conditions had been found to exist with regard to the composting facility operated by EVERGREEN: I. THE OPERATOR HAS MADE A SIGNIFICANT CHANGE IN THE OPERATION THAT IS NOT AUTHORIZED BY THE SOLID WASTE FACILITY PERMIT. Operating a composting facility in excess of its permitted capacity constitutes a significant change in operation that is not authorized by the permit. The Notice and Order to Cease and Desist and for Corrective Action No. 03-01 is attached and incorporated into this Settlement Agreement by this reference.

E. Pursuant to PRC §44307, EVERGREEN has the right to appeal this Notice and Order to the LEA Independent Hearing Panel. On September 12, EVERGREEN, through counsel, requested an appeal hearing from this enforcement action. EVERGREEN expressly denies that any volumetric violations cited by the LEA in its Notice and Order posed, or may have posed, any significant risk to the health and safety of the public or the environment. EVERGREEN also denies that it has not taken corrective action in response to previous notices from the LEA.

F. An appeal hearing was set for November 7, 2003 before the City of San Diego Solid Waste Local Enforcement Agency Independent Hearing Panel. Parties have agreed that this hearing shall be postponed until February 6, 2004, if necessary. Parties also agree that entering into this Settlement Agreement will negate the need for the above hearing.

G. A dispute having arisen between EVERGREEN, on the one hand, and LEA on the other hand, the parties desire to resolve their dispute in its totality, and settle all claims, without the further expenditure of time and expense on litigation and, for that reason, have entered into this Agreement.

H. The parties acknowledge and understand that this Settlement Agreement is a public document and that no confidentiality protections will be applicable to it.

In consideration of the promises and agreements of the parties specified herein, the parties agree as follows:

Terms

1. Incorporation By Reference

The recitals set forth above are hereby incorporated by reference.

2. Consideration

In consideration for the mutual promises contained in this Agreement, the parties shall do the following:

EVERGREEN:

(A) EVERGREEN hereby agrees to rescind its request for the appeal of the Notice and Order to the LEA Independent Hearing Panel, the California Integrated Waste Management Board ("CIWMB") and the Superior Court for the County of San Diego.

(B) EVERGREEN hereby admits that its Registration Permit, 37-AB-0005 only allows it to maintain 10,000 cubic yards of active compost and feedstock material at any one time on site at its Black Mountain Road composting facility. At various times in the past three years, the LEA has made findings indicating that EVERGREEN exceeded this volume level. Without admitting or denying these previous findings and violations issued by the LEA, EVERGREEN acknowledges and agrees that it must operate its facility within the volume limits imposed by its Registration Permit and will, in accordance with the Environmental Management Systems Plan described below, limit the amount of active feedstock and compost material at its Black Mountain Road composting facility to no more than 10,000 cubic yards as required by the Registration Permit.

(C) In order to assist EVERGREEN in complying with its permit requirements, EVERGREEN will retain a qualified professional environmental consultant with expertise in composting facilities to develop and assist it in the implementation of an Environmental Management Systems ("EMS") Plan for the facility within thirty (30) days from the Effective Date of this Agreement.

(D) This EMS Plan will contain the following five components: (1) Environmental Policies (goals); (2) Planning (methods and procedures); (3) Implementation (record-keeping, measurements, etc.); (4) Checking and Corrective Actions (continuous improvement and regulatory interaction) and (5) Management Review. The EMS Plan shall not be in effect until reviewed and approved in writing by the LEA.

(E) The EMS Plan will be provided to the LEA within ninety (90) days from the Effective Date of this Agreement and will be permanently retained on site at the Black Mountain Road composting facility as long as permitted composting operations continue. Example of specific areas that will be included in the EMS Plan shall be: (1) Diversion Strategies For Excess Materials; (2) Implementation Of a Meteorological Station On Site; (3) Communication Plan (which shall include a neighborhood relations component and 24 hour hotline); (4) Placement of Story Poles as determined by the LEA; and (5) Process Control Measures (e.g. volumes, pile dimensions, and other agreed upon measurements). Beginning one year from the date the parties execute this Settlement Agreement and continuing each year thereafter, EVERGREEN shall review the EMS Plan and submit a report to the LEA outlining any necessary updates to the Plan to assure that potential environmental impacts are minimized. The annual report shall be submitted to the LEA within thirty (30) days of the anniversary date of this Settlement Agreement.

(F) In order to limit future disputes concerning the volume and size of the compost pile on the facility: 1) EVERGREEN shall submit to the LEA an engineering drawing describing the topography of the ground underneath the pile. The LEA shall review the drawing submitted by EVERGREEN with its engineers; and 2) The LEA and EVERGREEN shall work together to create a mutually acceptable engineering drawing of that topography. That drawing shall be signed by the LEA and EVERGREEN. EVERGREEN and the LEA shall work together to determine a mutually acceptable process of measurement of the pile. The process shall be in writing and shall be signed by the LEA and EVERGREEN.

LEA:

(A) Upon the Effective Date of this Agreement, the LEA shall revoke and rescind its Notice and Order No. 03-01 issued to EVERGREEN.

(B) The LEA agrees that it shall not seek reimbursement for staff or engineering costs which have been, or may be, incurred in connection with, arising from, or in any way related to Notice and Order No. 03-01 or the administrative and regulatory actions cited therein.

(C) If EVERGREEN fails to comply with any term of this Agreement, the LEA may promptly pursue the imposition of civil penalties pursuant to Public Resources Code §45010 et. seq. in addition to any other remedies.

GENERAL:

(A) EVERGREEN and the LEA agree that the large coterminous pile of active compost on the site is active compost as defined in 14 CCR §17852(a)(1).

(B) EVERGREEN and the LEA agree that animal stable bedding is included in the definition of feedstock as defined in 14 CCR §17852(a)(19).

3. No Admission of Liability

The parties further agree, and do hereby stipulate, that by entering into this Agreement and by providing the considerations recited herein, no admission of liability is intended, or shall be so construed whatsoever, against either party to this Agreement. The parties further stipulate and agree that this Agreement is not intended to be construed, and shall not be construed, in such a way as to cause any prejudice to EVERGREEN's defense of any claim, including, but not limited to, those grounded in nuisance, alleged against EVERGREEN by any third party who is not a party to this Agreement. The parties shall agree that no term of this Agreement is intended to inure to the benefit to any third party.

4. Payment of Legal Fees and Costs

Each party hereto shall be responsible for the payment of its own legal fees and expenses, and all the sums which have been expended in conjunction with the matters referred to in this Agreement.

5. Representation of Comprehension of Agreement

When entering into this Agreement, the parties hereto represent that they have read the contents of this Agreement and that the terms of this Agreement are fully understood and voluntarily accepted by them. Each of the parties has had a sufficient opportunity to seek the advice of independent counsel of their own choosing. No party shall deny the validity of this Agreement on the grounds that they did not have advice of counsel.

6. Survival Of Provisions And No Merger

Any representation, warranty, covenant or agreement set forth in this Agreement of either party to this Agreement whether to be performed before or after the execution of this Agreement, shall expressly survive this Agreement and shall be binding on the party obligated thereby.

7. Successors in Interest

This Agreement shall be binding upon, and inure to the benefit of, assigns and successors of each party hereto.

8. Entire Document

This Agreement constitutes the entire written agreement of compromise and settlement between the parties, and there are no other agreements modifying its terms. Its terms can only be modified by a writing, signed by the parties, which expressly states that such modification is intended.

9. Governing Law

This Agreement is being executed and delivered, and it is intended to be performed, in the State of California. To the extent permitted by law, the execution, validity, construction, and performance of this Agreement shall be construed and enforced in accordance with the laws of the State of California. This Agreement shall be deemed made and entered into in San Diego County, California.

10. Interpretation of Agreement

This Agreement shall not be construed against any party on the basis that the party's attorney drafted it.

11. Further Documents

Each of the parties to this Agreement agrees to perform such further acts, and to execute and deliver any and all further documents, that may reasonably be necessary or desirable to effectuate the purpose of this Agreement.

12. Warranty of Capacity to Execute Agreement

Each party represents and warrants that it has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

13. Severability

Should any portion of this Agreement be found invalid for any reason whatsoever, this Agreement shall be read as if it did not contain that portion and the invalid portion shall be severable from the remainder.

14. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original. The counterparts shall constitute one and the same agreement.

15. Effectiveness

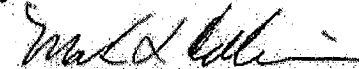
The Effective Date of this Agreement shall be the date last signed by either of the parties to this Agreement. This Agreement shall not be effective until the Agreement is signed by all parties to the Agreement.

16. No Third Party Beneficiaries

There are no third party beneficiaries of this Agreement.

Date: JAN 30, 2004

By:



Mark Collins, President
EVERGREEN DISTRIBUTORS, INC.

Date: FEB. 6, 2004

By:



Victoria L. Gallagher, Program Manager
CITY OF SAN DIEGO, SOLID WASTE
LOCAL ENFORCEMENT AGENCY

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, CITY ATTORNEY

By:



Elisa A. Cusato
Deputy City Attorney

1-20-2004

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