AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND INTEGRATED WASTE MANAGEMENT CONSULTING

This AGREEMENT is entered into by and between the City of San Diego, a municipal corporation, herein called "CITY," and Integrated Waste Management Consulting, herein called "CONSULTANT."

RECITALS

A. WHEREAS, the CITY is required by California state law to reduce the amount of solid waste disposed in landfills by 50% and to make a good faith effort to implement programs as described in CITY's Source Reduction and Recycling Element;

B WHEREAS, the CITY's Environmental Services Department (ESD) requires professional consultant services for obtaining a new permit for the CITY'S composting facility at the Miramar Landfill in an expedited time frame [PROJECT];

C. WHEREAS, the CONSULTANT is qualified, willing, and able to provide the services necessary within the time frames desired by the CITY;

NOW, THEREFORE, the CITY and the CONSULTANT, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, do hereby agree as follows:

SCOPE OF WORK

CONSULTANT shall provide the following Professional Services in connection with this Project:

1. Prepare a comprehensive composting program and facilities description to be used in the permit renewal process [PROGRAM DESCRIPTION]. The PROGRAM DESCRIPTION will serve as the basis for subsequent permitting documents as needed.

2. Revise the composting facility Site Plan as needed. The Site Plan will be used for various associated permits such as the Amended Use Permit.

3. Conduct composting facility site specific studies as needed for the permitting process.

4. Prepare a mitigated Negative Declaration for the CITY composting facility and advise the CITY about possible mitigation measure needed in the CEQA and NEPA process.

5. Ensure that the CITY composting facility is identified correctly in the Countywide Integrated Waste Management Plan and/or Non-Disposal Facility Element [NDFE].

6. Revise existing Report of Composting Site Information to include an Odor Impact Minimization Plan and other necessary documents.

7. Develop a compete description of the composting process to add to the existing Report of Waste Discharge.

8. Modify existing Air Quality Management District [AQMD] Air Quality permits as needed.

9. Design of all deliverables in collaboration with staff of ESD's Environmental Programs Division. All documents prepared by CONSULTANT will be subject to approval by the Environmental Programs Division Deputy Director.

ARTICLE I: <u>CONSULTANT'S RESPONSIBILITIES</u>

A. Under the general supervision of the Department Director or the Director's designated representatives, CONSULTANT shall provide CITY with the Professional Services and planning/preparation required for the Project as described in the Scope of Work above.

B. CONSULTANT shall consult with the Department Director's representatives to ascertain the Project's requirements and provide CITY with written recommendations for the Project.

ARTICLE II: <u>CITY'S RESPONSIBILITIES</u>

A. CITY shall provide CONSULTANT with the requirements of the Project including budget limitations and scheduling.

B. CITY shall notify CONSULTANT of any administrative procedures required and the name of representatives authorized to act in its behalf.

ARTICLE III: <u>CONSULTANT'S COMPENSATION</u>

The CITY shall pay the CONSULTANT for CONSULTANT'S services, as set forth in Article I, a total fee not to exceed twenty four thousand five hundred dollars ($24,500) per fiscal year based on services provided at an hourly rate of $95.00. All expenses must be pre-approved by CITY and provided at cost.

ARTICLE IV: PAYMENT TO CONSULTANT

A. Invoices for services shall be sent to the assigned Project Manager. Payments to CONSULTANT for basic services shall be made upon completion of agreed upon milestones and will not exceed the total of $24,500 per fiscal year. Invoices must include an itemized listing of expenses.

B. CONSULTANT's compensation defined in Article III is the maximum compensation payable under the terms of this AGREEMENT per fiscal year. CONSULTANT shall not provide services beyond the scope of this AGREEMENT unless those services, and compensation for those services, have been defined in an approved amendment in writing signed by both parties to this AGREEMENT. No CITY employee can bind CITY with regard to any payment for services that exceed the amount payable under the terms of this AGREEMENT.

C. If, at any state of the work, the PROJECT is abandoned or delayed indefinitely, CITY may elect to terminate this AGREEMENT. In the event CITY elects to terminate, CITY shall pay CONSULTANT the reasonable value of the work performed up to the effective date of termination but not to exceed the amounts as scheduled in Article IV, Section A.

D. If unusual delays occur in complying with PROJECT schedules, CITY may suspend performance of further services by CONSULTANT for a reasonable period of time, after which CITY may require compliance by CONSULTANT with all terms and conditions of this AGREEMENT. In the event of such suspension, CITY shall pay CONSULTANT the reasonable value of the work performed up to the date of the suspension, but not to exceed the amounts as scheduled in Article IV, Section A.

E. The CITY's exercise of its options provided herein shall be evidenced by written notice given to CONSULTANT. Acceptance of payment by CONSULTANT shall discharge all of CITY's obligations and liability for such payment under this AGREEMENT except in the event that the CITY under Article IV, Section D, rescinds the suspension and requests continued compliance by CONSULTANT with the terms and conditions of this AGREEMENT.

ARTICLE V: GENERAL CONDITIONS

A. EFFECTIVE DATE/TERM

This AGREEMENT shall be effective as of the date executed by the last party to sign the AGREEMENT [EFFECTIVE DATE]. The term of the AGREEMENT [TERM] shall be from the EFFECTIVE DATE until the SCOPE OF WORK has been completed or the AGREEMENT has been terminated as provided hereunder, but in no event shall the TERM of this AGREEMENT be greater than five (5) years from its EFFECTIVE DATE.

B. INTELLECTUAL PROPERTY

The City shall own all rights, title, and interests in and to the documents, programs, handouts, fliers, press releases, videos, audios, images, jingles, music, signs, mottos, stamps, animation, graphics symbols, logos, and other creative works (collectively ACreative Works@) created by Consultant pursuant to this Agreement including, but not limited to, all copyrights, all rights to reproduce and/or distribute such Creative Works, all rights to trademark all or any portion of such Creative Works, and all rights to use any of the content and/or audio thereof, in whole or in part, for broadcast or publication in any media including, but not limited to television, radio, newspaper, magazine, internet, flyers, brochures, posters, and billboards. To the extent that ownership of such Creative Works or other rights does not automatically vest in City by virtue of this Agreement, Consultant agrees to assign and transfer to City all rights, title and interests in and to such Creative Works and protectable elements or derivative works thereof. Said rights, title, and interests shall be royalty free, worldwide, perpetual, and unlimited.

C. WASTE REDUCTION

CITY has a commitment to reduce environmentally harmful waste. CONSULTANT shall conduct work accordingly. For example, to the extent practicable, photocopies shall be duplexed and resources conserved.

D. SUBCONSULTANTS

Other consultants employed by CONSULTANT for the Project shall be subject to prior approval by the Department Director.

E. STANDARD OF CARE

CONSULTANT shall provide the Professional Services according to the prevailing standard of practice normally exercised by experienced, reputable, and competent professionals, and using the degree of care and skill exercised by such professionals, in the performance of professional services of a similar nature in San Diego County.

F. INDEPENDENT CONTRACTOR

CONSULTANT and any subconsultants employed by CONSULTANT shall be independent contractors and not agents of the CITY hereunder. Any provisions in this AGREEMENT that may appear to give CITY the right to direct CONSULTANT or subconsultants as to details of doing work or to exercise a measure of control over the work mean that CONSULTANT or consultants shall follow the direction of CITY as to the end results of the work only.

G. PROHIBITION AGAINST TRANSFER

CONSULTANT shall not assign, hypothecate, or transfer this AGREEMENT, nor any interest therein, without the prior written consent of CITY. Any attempt to assign, hypothecate, or transfer such this AGREEMENT or any interest therein shall constitute a default and is grounds for immediate termination of this AGREEMENT, at the sole discretion of CITY. Any assignee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

H. INSURANCE

CONSULTANT must obtain, and maintain in full force and effect during the life of this AGREEMENT, insurance coverage including, at a minimum, Commercial General Liability, Automobile Liability, and Worker's Compensation. Insurance policy limits shall be no less than the following:

1. Commercial General Liability: $500,000 combined single limit per occurrence for bodily injury, personal injury, and property damage;
2. Automobile Liability: $500,000 combined single limit per accident for bodily injury and property damage;
3. Worker's Compensation and a minimum of $1,000,000 of Employer's Liability coverage.

All insurance coverage required herein shall be issued by an insurance company or companies authorized/licensed to do business in the State of California and having an insurance rating in the most recent edition of the A.M. Best Key Rating Guide of "A" or better.

The City of San Diego, its elected officials, officers, employees, agents and representatives shall be named as additional insuredS on each policy required herein. Each such insurance policy shall provide that it shall remain in full force and effect throughout the life of this AGREEMENT and shall not be canceled, terminated or allowed to expire without thirty (30) days prior written notice to CITY from the insurance company.

The Worker's Compensation Policy required herein shall contain a waiver of subrogation of rights against CITY, its elected officials, officers, employees, agents, representatives, and volunteers.

All deductibles under the insurance policies required herein shall be the responsibility of CONSULTANT.

The insurance coverage required herein shall be primary insurance as respects the CITY, its elected officials, officers, employees, agents, or volunteers. Any insurance or self-insurance maintained by CITY shall be excess of the successful CONSULTANT's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to CITY, its elected officials, officers, employees, agents, representatives, and volunteers.

Each insurance policy shall contain appropriate endorsements as specified by CITY.

Simultaneously with the execution of this AGREEMENT by CONSULTANT, CONSULTANT shall furnish CITY with certificates of each insurance policy required herein. Renewal certificates will be furnished periodically to CITY to demonstrate maintenance of the required insurance coverages throughout the life of the contract.

At the end of each AGREEMENT year, and at the end of each year thereafter, the CITY reserves the right to review insurance coverage requirements and to require more or less insurance depending upon assessment of the risk of exposure, CONSULTANT's past claims experience, and the availability and affordability of increased insurance coverage.

I. REMEDIES OF CITY

In the event (a) that CONSULTANT shall default in the performance or fulfillment of any covenant or condition herein contained on its part to be performed or fulfilled and shall fail to cure such default within ten (10) calendar days following the service on it of a written notice from CITY

specifying the default or defaults complained of and the date by which CONSULTANT'S rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, or (b) that CONSULTANT shall file a voluntary petition in bankruptcy, or (c) that CONSULTANT shall be adjudicated a bankruptcy, or (d) that CONSULTANT shall make a general assignment for the benefit of creditors, then, and in either or any of said events, CITY may at its option without further notice or demand upon CONSULTANT, immediately cancel and terminate this AGREEMENT and terminate each, every and all of the rights of CONSULTANT and of any and all persons claiming by or through CONSULTANT under this AGREEMENT.

CITY may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this AGREEMENT by giving written notice of such termination to CONSULTANT. Such notice shall be delivered by certified mail with return receipt for delivery to CITY. The termination of the Professional Services shall be effective upon receipt of the notice by CONSULTANT. After termination of this AGREEMENT, CONSULTANT shall complete any and all additional Scope of Work necessary for the orderly filing of documents and closing of the CONSULTANT's Professional Services under this AGREEMENT. For services rendered in completing the work, CONSULTANT shall be entitled to fair and reasonable compensation for the Professional Services performed by CONSULTANT before the effective date of termination. After filing of documents and completion of performance, CONSULTANT shall deliver to CITY all drawings, plans, calculations, specifications and other documents or records related to both the PROJECT and to the CONSULTANT's Professional Services on the PROJECT. By accepting payment for completion, filing, and delivering documents as called for in this paragraph, the CONSULTANT discharges CITY of all of CITY's payment obligations and liabilities under this AGREEMENT.

The rights and remedies of CITY as set forth above are cumulative and shall not limit, waive or deny any of CITY's rights under any of the other provisions of this AGREEMENT or otherwise deny to CITY any right or remedy at law or in equity which CITY may have or assert against CONSULTANT under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of CITY, as set forth above, shall supplement or be in addition to or in aid of the other provisions of this AGREEMENT and of any right or remedy at law or in equity which CITY may have against said CONSULTANT.

J. CONTROL AND ADMINISTRATION OF AGREEMENT; NOTICES

Control and administration of this AGREEMENT is under the jurisdiction of the Department Director as to CITY's interest herein and any communication as to the terms or conditions or any changes thereto or any notice or notices provided for by this AGREEMENT or by any law to be given or served upon CITY may be given or served by letter deposited in the United States mail, postage prepaid, and addressed to the Environmental Services Director, 9601 Ridgehaven Ct., San Diego, California 92123-1636.

Any notice or notices provided for by this AGREEMENT or by law to be given or served upon CONSULTANT may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to said CONSULTANT at its principal place of business or any other addresses which may hereafter be agreed upon by CONSULTANT and CITY, or may be personally served upon CONSULTANT or any person hereafter authorized by CONSULTANT to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

K. PRODUCT ENDORSEMENT

CONSULTANT acknowledges and agrees to comply with Council Policy Number 000-41, effective February 1, 2000, regarding product endorsement, which prohibits implied and/or direct endorsements of commercial products or services by the CITY, its employees, and agencies or organizations funded either in whole or in part by the City when such endorsement will be used for advertising purposes except as approved by the City Council and in accordance with a signed agreement between the CITY and a provider of products or services.

L. EMPLOYEE CONDUCT

This AGREEMENT may be unilaterally and immediately terminated by CITY if the CONSULTANT employs an individual who within the twelve (12) months immediately preceding such employment did, in the individual's capacity as a CITY officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the CONSULTANT.

M. INDEMNIFICATION

1. Indemnification and Hold Harmless Agreement: With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the CONSULTANT, or the CONSULTANT'S employees, agents, officers or volunteers, arising out of any services performed involving the PROJECT, except liability for the Professional Services covered under Subsection 2 below, the CONSULTANT agrees to defend, indemnify, protect, and hold harmless the CITY, its elected officials, agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the CITY, its elected officials, agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the CONSULTANT, its employees, agents, officers or volunteers, or any third party. The CONSULTANT'S duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the CITY, its agents, officers or employees. This Section in no way alters, affects or modifies the CONSULTANT'S obligations and duties under Section H above.

2. Indemnification for Professional Services: As to the CONSULTANT'S professional obligations, work or services involving this PROJECT, the CONSULTANT agrees to indemnify and hold harmless the CITY, its elected officials, agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the CONSULTANT or the CONSULTANT'S employees, agents, officers or volunteers.

3. Enforcement Costs: The CONSULTANT agrees to pay any and all costs the CITY incurs enforcing the indemnity and defense provisions set forth in Subsection 1 above and the indemnity provision in Subsection 2 above.

N. <u>EQUAL EMPLOYMENT OPPORTUNITY</u>

The CONSULTANT acknowledges and agrees that it is aware of, and will comply with the City's Council Ordinance No. 18173, San Diego Municipal Code Section 22.2701-22.2707, EQUAL OPPORTUNITY OUTREACH PROGRAM, which is attached hereto and incorporated herein as Exhibit A. The CONSULTANT and all its subcontractors are individually responsible to abide by its contents.

CONSULTANT agrees to be bound by and comply with the City's *Nondiscrimination in Contracting Ordinance,* San Diego Municipal Code Sections 22.3501- 22.3517.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, age or physical handicap. CONSULTANT shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age or physical handicap.

CONSULTANT shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. CONSULTANT shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. CONSULTANT understands and agrees that violation of this clause shall be considered a material breach of this AGREEMENT and may result in termination, debarment, or other sanctions.

CONSULTANT agrees that compliance with the foregoing provisions is to be inserted in all subcontracts for any work covered by this AGREEMENT so that such provisions will be binding upon each consultant. CONSULTANT agrees that compliance with regards to EEO provisions flowing from the authority of both parties will be implemented, monitored and reviewed by the City's EOCP staff.

O. <u>CONFLICT OF INTEREST</u>

CONSULTANT is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

If, in performing the Professional Services set forth in this AGREEMENT, CONSULTANT makes, or participates in, a "governmental decision" as described in title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the CITY that would otherwise be performed by a CITY employee holding a position specified in the department's conflict of interest code, CONSULTANT shall be subject to a conflict of interest code requiring the

completion of one or more statements of economic interests disclosing the CONSULTANT'S relevant financial interests.

Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. CONSULTANT shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the CITY's determination that CONSULTANT is subject to a conflict of interest code. CONSULTANT shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which CONSULTANT was subject to a conflict of interest code.

If the CITY requires CONSULTANT to file a statement of economic interests as a result of the Professional Services performed, CONSULTANT shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the CITY for one year following the termination of this AGREEMENT.

CONSULTANT shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

If CONSULTANT violates any conflict of interest law or any of the provisions in this section, the violation shall be grounds for immediate termination of this AGREEMENT. Further, the violation subjects CONSULTANT to liability to the CITY for attorneys fees and all damages sustained as a result of the violation.

P. ERRORS OR OMISSIONS

CONSULTANT will not be compensated for Professional Services incidental to changes required by CONSULTANT's negligent acts or omissions in the performance of work or services contemplated by this AGREEMENT.

Q. AMERICANS WITH DISABILITIES ACT

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and shall comply with Council Policy 100-04, adopted by Resolution No. 282153, relating to the Federally-mandated Americans with Disabilities Act (ADA).

CONSULTANT and subconsultants shall be individually responsible for their own ADA program.

R. DRUG-FREE WORKPLACE

CONSULTANT agrees to comply with the City's Drug Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. CONSULTANT shall certify to CITY that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form, Exhibit B.

S. COMPLIANCE WITH THE LAW

CONSULTANT shall comply with all Federal, State, and Local laws and ordinances applicable to, and in the performance of, the services under this AGREEMENT.

T. WAIVER OF BREACH

No failure of either CITY or CONSULTANT to insist upon the strict performance by the other of any covenant, agreement, term or condition of this AGREEMENT, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this AGREEMENT, but each and every covenant, condition, agreement and term of this AGREEMENT shall continue in full force and effect without respect to any other then existing or subsequent breach.

U. INTEGRATION

This AGREEMENT represents the entire understanding of City and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may not be modified or altered except in writing signed by both parties.

V. SEVERABILITY

The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision of this AGREEMENT unenforceable, invalid or illegal.

IN WITNESS WHEREOF, this AGREEMENT is executed by THE CITY OF SAN DIEGO, acting through its City Manager, pursuant to Section 22.3223 of the San Diego Municipal Code authorizing such execution and by Integrated Waste Management Consulting.

THE CITY OF SAN DIEGO
A Municipal Corporation,

By_____

Elmer L. Heap, Jr., Director
Environmental Services Department

Date: _____

Consultant,

By_____

Matthew Cotton
Integrated Waste Management Consulting

Date: _____

I HEREBY APPROVE the form and legality of the foregoing AGREEMENT, this day of _____, 2003.

CASEY GWINN, CITY ATTORNEY

By_____
Grace C. Lowenberg,
Deputy City Attorney