

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ADOPTING A SOLID WASTE HAULING FRANCHISE FEE AND RELATED COMPUTATION AND COLLECTION PROCEDURES

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, the City Council of the City of Costa Mesa adopted Ordinance No. 04-12 on November 15, 2004, that requires solid waste enterprises operating within the City to obtain a City franchise and pay a franchise fee; and

WHEREAS, Ordinance No. 04-12 also provides in Municipal Code section 8-87(c) that the amount of the franchise fee will be set by City Council resolution and the City Council hereby desires to set said fee amount and adopt related procedural provisions for the fee's computation and collection.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COSTA MESA AS FOLLOWS:

SECTION 1. FRANCHISE FEE.

- a. There is hereby enacted a franchise fee in the amount of 12% of the annual gross receipts of a franchisee from its business conducted in the City of Costa Mesa. For the purpose of this resolution, gross receipts means and includes all monies, fees, charges, consideration, and revenue received by, or imputed to the franchisee and any affiliates, parent companies, subsidiaries and/or subcontractors of the franchisee, in connection with, arising from, or in any way attributable to the services

carried out by or on behalf of the franchisee pursuant to a franchise granted under section 8-87.

- b. This fee shall be paid quarterly by each franchisee to the City Finance Department (“Department”). Each payment shall be due within 30 days of the end of each calendar quarter, i.e. payments for the four quarters shall be due on April 30, July 30, October 30, and January 30 of each calendar year. Franchisees shall include with each payment the financial data requested by the Department for verifying that the amount of the fees paid complies with this resolution.
- c. The franchisee shall pay a penalty for any late payment of a franchise fee in the amount of 5% of the delinquent franchise fee owed, plus an additional 1 1/2 % of the fee for each month, or any portion of a month, that the payment is late.
- d. To prevent the franchise fee from being applied to more than the actual gross receipts of a franchisee, no franchisee shall itemize the amount of the franchise fee as a separate amount or line-item in its bills to customers.

SECTION 2. FINANCIAL AUDITS OF FRANCHISEES.

- a. The Department may order a financial audit of any franchisee pursuant to Costa Mesa Municipal Code (“CMMC”) section 8-87(f). The City Audit shall include a review of the franchisee's cash receipts records, solid waste tonnage collection, diversion, and other related records, as well as those of each of its parent, subsidiary and/or affiliate companies, as appropriate, to determine the franchisee's gross receipts, the accuracy of franchise fees

paid, and such other information as shall be deemed appropriate by the City Finance Director to evaluate the franchisee's compliance with section 8-87. In connection with a City Audit, franchisees shall make available for review at their business offices detailed account records, such as the names and addresses of customers.

- b. If a City Audit determines a franchisee has not paid its full franchise fee, the City shall invoice the franchisee for the amount of the net deficiency plus a penalty fee equal to twenty percent (20%) of the net deficiency.
- c. A franchisee shall reimburse the City for the cost of a City Audit if the audit determines that the franchise fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee. Such reimbursement shall be paid by the franchisee within thirty (30) days of the date the City notifies the franchisee in writing of the amount of the City's cost of the audit.

SECTION 3. REPEAL OF PRIOR RESOLUTION. City Council resolution No. 00-72 setting a fee for City's costs for the preparation, adoption and implementation of its source reduction and recycling element and household hazardous waste element is hereby repealed. The costs for these city services will now be paid for from the solid waste hauling franchise fee revenue.

SECTION 4. EFFECTIVE DATE OF FRANCHISE FEE. This franchise fee shall commence on January 1, 2005, and the first quarter fees shall be due to the City on April 30, 2005. Failure to pay any franchise fees or penalties assessed to a franchisee shall constitute grounds for revocation of the franchise pursuant to CMMC section 8-79.

PASSED AND ADOPTED this ____ day of _____, 2004.

ATTEST:

Deputy City Clerk of the City of Costa Mesa

Mayor of the City of Costa Mesa

APPROVED AS TO FORM

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Resolution No. _____ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the ____ day of _____, 2004, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Costa Mesa this ____ day of _____, 2004.

Deputy City Clerk and ex-officio Clerk of
the City Council of the City of Costa Mesa