

**PROFESSIONAL SERVICES AGREEMENT FOR WASTE HAULERS  
FRANCHISE FEE AUDIT AND MONITORING SERVICES**

THIS AGREEMENT is made and entered into this 19th day of April, 2005 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and MICHAEL BALLIET CONSULTING, a sole proprietor (“Consultant”).

**W I T N E S S E T H :**

- A. WHEREAS, City proposes to have Consultant perform the services described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the Consultant’s Proposal attached hereto as Exhibit “A” and incorporated herein by reference (“Proposal”).

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers’ compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys’ fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant’s performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5 Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.6. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the Proposal, attached hereto and made a part of this Agreement (the "Proposal"). Consultant's compensation shall in no case exceed Forty Eight Thousand Dollars (\$48,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the specified Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in accordance with the work schedule as established by the City as outlined in "Exhibit A". The Work Schedule may be amended by mutual agreement of the

parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, ending on May 15, 2006 with two (2) one (1) year renewal options, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4 Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

#### **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.4. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Michael Balliet Consulting  
26351 Tarrasa Lane  
Mission Viejo, CA 92691

Attn: Michael Balliet

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Fax: (714) 754-5040

Attn: Marc Puckett

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9 Indemnification and Hold Harmless: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11 Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.12 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.13. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.14. Prohibited Employment: Consultant will not employ any regular employee of City while this Agreement is in effect.

6.15. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the Proposal, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both.

6.16. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.17. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.18. Headings: Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.19. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.20. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.21. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.22. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.23. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.24. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,  
A municipal corporation

MICHAEL BALLIET CONSULTING

\_\_\_\_\_  
Mayor of the City of Costa Mesa

\_\_\_\_\_

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Social Security or Taxpayer ID Number

ATTEST:

\_\_\_\_\_  
Deputy City Clerk and ex-officio Clerk  
of the City of Costa Mesa

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Project Manager

**EXHIBIT A**  
**PROPOSAL**



## Michael Balliet Consulting

December 17, 2004

Donna Theriault  
Management Analyst  
City of Costa Mesa  
77 Fair Drive  
P.O. Box 1200  
Costa Mesa, CA 92628-1200

Donna:

This letter proposal submits a pro-active approach to the franchise hauler audit process that will secure accurate submission of franchise fees from the commencement of the non-exclusive franchise, ensure timely and accurate payments on an ongoing basis, and maintain a desired spirit of partnership between the City and its franchised haulers.

I have helped municipalities deal with waste hauler and franchise compliance issues since 1992. In addition, I have assisted City staff with oversight responsibilities for the waste haulers participating in your non-exclusive franchise, since 1993. I also have experience in performing financial audits of these same haulers, which resulted in municipal fee recovery of over \$100,000.

Financial audits for franchised haulers are typically done once every three years, and in jurisdictions with a large number of firms (i.e. Newport Beach), they only target a portion of the firms (primarily to save time and money). As a frame of reference, The City of Newport Beach used the firm of Hilton, Farnkopf & Hobson to perform their most recent franchise fee audit. A total of 5 firms were audited. The project budget was \$60,000, but actual charges exceeded \$90,000. In addition, the audit process was extended well over the prescribed time-frame, leaving the City frustrated by the experience. As a result, Newport Beach's Finance Department has decided to hire me to perform the approach I am proposing herein.

The periodic financial audit approach invariably fosters a contentious relationship with the haulers and, in actual practice, only recovers a portion of the fees due (audits typically look at one year only, then apply the findings over the entire audit period). Given the increase in jurisdictional audits of haulers in recent years, the industry is becoming increasingly savvy in their accounting methods. Allowing haulers one to three years to reconcile their books, in anticipation of City audits, allows ample time to "creatively" account for under-payments and/or to re-categorize difficult to track revenues (e.g. cash or credit card sales on temporary bins). The only way to ensue that those monies are properly being remitted to the City is through constant monitoring. Therefore, I am proposing to provide ongoing monitoring and fee recovery services, at an annual cost that is far less than what you pay for a traditional audit of all

Michael Balliet Consulting  
(949)837-3618 (Phone/Fax)

26351 Tarrasa Lane  
mballiet@cox.net

Mission Viejo, CA 92691

franchised haulers. In addition, since the process I propose will gather most of the information needed for a traditional audit, I am also providing you with a lower cost option for this service as well.

The proposed program coordinates the haulers current quarterly tonnage reporting practices with franchise fee remittances, to create a system that allows the City to address and recoup funds due in the short term. The reality of the waste hauling business is that every commodity collected is accounted for by a third party. Landfills, material recovery facilities and waste-to-energy facilities all receive and compile reports on tonnage received from waste haulers. By State mandate, these reports are broken down by jurisdiction. These facility reports thus provide an excellent tool for revenue to service level comparisons, which are vital to the franchise fee review process. Similar material tracking reports are available from most recyclers. The recycling facilities that do not provide these reports, still issue tonnage slips to their hauler customers. On a monthly or quarterly basis it is relatively easy to compile needed information from these slips.

It is important to understand that while trash haulers charge by volume, their costs are primarily tied to weight. By comparing tonnage and gross receipt information, on a quarterly basis, to disposal and recycling facility reports for accuracy, we incorporate a "reality-check" into the revenue oversight process. Under-reported revenue, based upon discrepancies between hauler and facility operator tonnage records, can be resolved in the short-term. In addition, per-ton revenues below an established standard will be immediately recognizable and resolved quickly. In Costa Mesa's AB 939 fee program, over 90% of these errors have resulted in additional fee payments to the City.

The pro-active approach I propose starts with obtaining background information from the haulers to establish a revenue basis for each area of that hauler's Costa Mesa operations. If a hauler knows that we have a firm handle on their revenue generation, by business activity and tonnage hauled, then they are much less likely to try and withhold revenues due. More importantly, by working with the haulers on an ongoing basis, we can fix problems under a "technical assistance" approach. We help them to comply, rather than trying to catch them in non-compliance. I believe this approach nets more revenue and fosters better municipal/hauler relations.

Under the proposed program the City still retains its financial audit rights. If a hauler fails to comply with technical assistance requests or withholds requested route or financial data, the City will receive written notification from the Consultant. The hauler will then be noticed by the City and given a final opportunity to comply with the request. If the hauler does not rectify the situation, the City can then invoke a full financial audit and have ample grounds to charge the hauler for the cost of this service. In addition, the work I propose to perform throughout the year will make the promised financial audits of all franchise holders, not only possible, but a simple and straightforward process. What would likely be a \$100,000 cost to the City (based upon the Newport Beach example), could be performed (in conjunction with the proposed program) for less than a third of that amount.

Initial project activities involve a coordination of activities between the Finance and Public Services Departments. Many data gathering tools that would be helpful to the Finance Department are already incorporated into the Public Services quarterly AB 939 tonnage and fee reporting program. I propose to review current Public Services Department data collection activities, concerning franchised waste haulers, with Finance Department staff, to identify what additional information is needed to facilitate the new franchise fee monitoring and collection program. The consultant will work with both departments to either incorporate needed information into current forms and procedures, or delineate additional items that need to be obtained through separate forms. While all of the needed information could be incorporated

into a franchise fee payment form, it may be advisable to maintain distinct data collection areas for each Department. The City will have final approval on the data collection method to be used.

To successfully implement the program, the key is establishing open lines of communication with the franchised haulers. Having worked with all the potential franchise holders, those lines of communication are already open. I propose a round-table meeting to inform the haulers of the selected data gathering methods, discuss the data needed and submit new forms for review, and finally to solicit their input on the process. While this may create some debate, I believe it is a needed part of the process that will lead the haulers to "buy-in" to the program and foster their cooperation.

The consultant will next schedule and meet with all haulers individually, and on an ongoing basis, to assist them in gathering and reporting information in the format required by the City. To establish a revenue basis for each firm, the consultant will compare route sheets to corresponding billings and truck weight tickets. Haulers will be allowed to select a representative portion of their business, so they feel a fair basis is established. Questions and concerns of the haulers will be addressed during this data gathering process, with the goal being to establish fair revenue expectations for the City and payment parameters for the haulers.

Once all program parameters are established, haulers will submit required information on a monthly or quarterly basis (at the City's option). On a quarterly basis, hauler submissions will be compared to reports from area landfills, material recovery facilities, recycling centers, waste-to-energy facilities, and any other locations accepting waste originating from Costa Mesa. Both hauler-submitted reports and revenue basis projections will be utilized in this process. Any discrepancies or questions will be immediately addressed with the haulers and resolution of the issue will be presented to the Finance Department before final action is taken. Once data is finalized and all issues resolved, a more detailed report, summarizing quarterly franchise fee payments, will be prepared for the Finance Department.

The proposed cost to establish the franchise fee reporting system, develop revenue basis figures for each franchised hauler, perform ongoing hauler franchise fee payment monitoring activities, respond to a reasonable level of under-reporting errors (projected at 3 to 5 per quarter), and to assist City staff with program administration is \$24,000. If the City desires a full financial audit of all franchised haulers at the conclusion of the first year of the franchise, the cost for this service would be an additional \$24,000. Since the proposed program is basically an ongoing audit/monitoring program, the City will likely not need full financial audits in the future.

Thanks for the opportunity to present this proposal.

Sincerely,

Mike Balliet  
MBC

**EXHIBIT B**  
**CITY COUNCIL POLICY 100-5**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa’s commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

**POLICY**

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor’s and/or sub-grantee’s workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
  - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
  - 1. Abide by the terms of the statement; and
  - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
  - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
  - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
    - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
    - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
    - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

**EXHIBIT C**  
**CERTIFICATE OF INSURANCE**

**ACORD**™

DATE (MM/DD/YY)  
03/29/05

PRODUCER

Carolyn Galbraith Insurance  
2750 Bellflower Blvd. #118  
Long Beach, CA 90815  
562-627-1727 / 562-627-0727

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

- COMPANY  
A MARKEL AMERICAN INSURANCE CO.
- COMPANY  
B
- COMPANY  
C
- COMPANY  
D

INSURED

MIKE BALLIET WASTE MANAGEMENT  
26351 TARRASA LANE  
MISSION VIEJO, CA. 92691

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				GENERAL AGGREGATE \$ PRODUCTS - COM/PROP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				WC STATUTORY LIMITS OTH-ER EL EACH ACCIDENT \$ EL DISEASE - POLICY LIMIT \$ EL DISEASE - EA EMPLOYEE \$
A	<b>OTHER</b> <b>PROFESSIONAL LIABILITY</b>	MG 820865	7/18/04	7/18/05	\$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CITY OF COAST MESA  
77 FAIR DRIVE  
COSTA MESA, CA. 92626

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Carolyn Galbraith*