



# **CITY COUNCIL AGENDA REPORT**

---

MEETING DATE: JUNE 19, 2007

ITEM NUMBER:

**SUBJECT: RENEWAL OF ANNUAL CONTRACT FOR SHOPPING CART RETRIEVAL SERVICES**

**DATE: JUNE 6, 2007**

**FROM: DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: JAMES GOLFOS, CHIEF OF CODE ENFORCEMENT**

**FOR FURTHER INFORMATION CONTACT: JAMES GOLFOS (714) 754-4952**

---

## **RECOMMENDATION:**

Staff recommends City Council authorize the City Manager to execute a contract with Hernandez City Service, Inc.

## **BACKGROUND AND ANALYSIS:**

On June 17, 2003, City Council adopted Ordinance No. 03-6 and Resolution 03-42 declaring abandoned shopping carts a public nuisance. To effectively remove abandoned carts from public streets and private property, the City retained Hernandez City Service, Inc. for eight hours daily, seven days a week, at a monthly cost of \$4,000.

In subsequent years, after soliciting competitive bids, only one other bidder ever responded and was considerably more expensive. From what staff can determine, Hernandez City Service may be the only cart retrieval vendor serving Orange County cities. Since the current Hernandez contract will terminate on June 30, 2007, and since Hernandez provides excellent service, has never raised their fee including next year, staff is seeking Council's authorization to renew the contract.

## **FISCAL REVIEW:**

If this contract is approved effective July 1, 2007, sufficient funds can be appropriated in the Development Services Department's budget for fiscal year 2007-08.

## **LEGAL REVIEW:**

The subject contract is identical to prior year contracts and has been "approved as to form" by the City Attorney's Office.

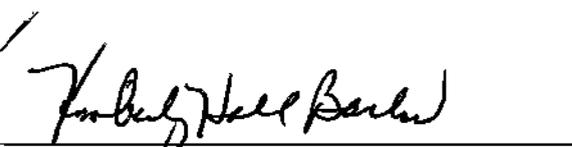
**CONCLUSION:**

Contracting for retrieval of abandoned carts is a cost effective means of removing them from public view. Our current program and contractor are very cost effective, and, have effectively eliminated a serious problem the City experienced years ago. While there will always be a few exceptions of missed carts, some obscured from view, or abandoned after regular patrol hours, the current program works very well and would be difficult to duplicate with City personnel.

  
\_\_\_\_\_  
JAMES GOLFOS  
Chief of Code Enforcement

  
\_\_\_\_\_  
DONALD D. LAMM, AICP  
Deputy City Mgr., Dev. Svs. Director

  
\_\_\_\_\_  
MARC R. PUCKETT  
Director of Finance

  
\_\_\_\_\_  
KIMBERLY HALL BARLOW  
City Attorney

DISTRIBUTION: City Manager  
Asst. City Manager  
City Attorney  
Public Services Director  
City Clerk (2)  
Staff (4)  
File (2)

ATTACHMENTS: 1 Contract for Professional Services Agreement

File Name: 061907HernandezRenewal	Date: 060707	Time: 9:00 a.m.
-----------------------------------	--------------	-----------------

**PROFESSIONAL SERVICES AGREEMENT  
FOR SHOPPING CART RETRIEVAL**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and HERNANDEZ CART SERVICE, INC., a California corporation (“Consultant”).

**WITNESSETH:**

- A. WHEREAS, City proposes to have Consultant perform shopping cart retrieval services as 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 Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference.

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 Four Thousand Dollars (\$4,000.00) per month in accordance with the fee schedule set forth in Exhibit "A." (the "Fee Schedule"). 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 scope of services 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. 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 July 1, 2007, and continue for a period of one (1) year, ending on June 30, 2008, unless previously terminated as provided herein. City shall have the sole option, upon at least ten (10) days prior written notice, to extend this Agreement on an annual basis for a maximum of two (2) additional years at the same rate of payment as set forth in paragraph 2.1, above.

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) If Consultant is or employs a licensed profession, 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:

Hernandez Cart Service, Inc.  
1808 Lincoln Boulevard  
Venice, CA 90291  
Tel: 310-452-9088  
Fax: 310-452-3925  
Attn: Enrique Hernandez

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: 714-754-4952  
Fax: 714-754-4856  
Attn: Jim Golfos

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.

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

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

HERNANDEZ CART SERVICE, INC.

*Eug Hernandez*  
Signature

Date: 5/15/07

President  
Name and Title

95-4305905  
Social Security or Taxpayer ID Number

APPROVED AS TO CONTENT:  
*[Signature]*  
Chief of Code Enforcement

Date: 4-24-07

APPROVED AS TO INSURANCE:

*[Signature]*  
Risk Management

Date: 5/8/07

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

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

HERNANDEZ CART SERVICE, INC.

*[Handwritten Signature]*  
Signature

Date: 5/15/07

President  
Name and Title

95-4305 905  
Social Security or Taxpayer ID Number

APPROVED AS TO CONTENT:

*[Handwritten Signature]*  
Chief of Code Enforcement

Date: 4-24-07

APPROVED AS TO INSURANCE:

*[Handwritten Signature]*  
Risk Management

Date: 5/8/07

APPROVED AS TO FORM:

*Embrey Hall Barlow*  
City Attorney

Date: *4/5/07*

APPROVED AS TO FORM:

Kimberly Kay Barlow  
City Attorney

Date: 4/5/07

**EXHIBIT A**  
**SCOPE OF SERVICES**  
and  
**FEE SCHEDULE**

## Hernandez City Services

A division of Hernandez Cart Service

For the past twenty-five years, Hernandez Cart Service, Inc. has been one of the most respected Shopping Cart Retrieval companies in Southern California. With humble beginnings as a one-man operation with a five-store route, it has also expanded to become one of the largest privately owned service companies in Southern California. Currently servicing approximately 300 supermarkets in both Orange County and Los Angeles, Hernandez Cart service has recently expanded to include specific City Service.

Hernandez City Services is currently under contract with the cities of Santa Ana, Garden Grove, and Anaheim for Cart retrieval. These unique daily and weekly services have been very successful in reducing the amount of stray carts throughout each city and promptly returning them to their respective stores or civic storage lots.

We would like to adapt a similar program with the City of Costa Mesa to include the following points.

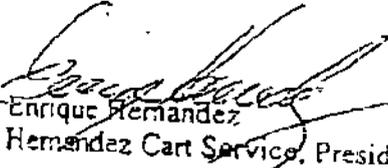
- A truck dedicated exclusively to cart retrieval and delivery within the city, daily.
- This daily route that would encompass at least 8 hours, seven days a week.
- A toll-free service number/stray cart hotline.
- Immediate dispatch for pick-up.
- Weekly log of all carts called in and delivered (see sample log next page).

Our monthly fixed rate for this program would be \$4,000.00 and inclusive of all services described above. This would average out to approximately \$133.00 per day.

We feel that this will ensure that the City of Costa Mesa will receive the proper time and care to best fit its demands. Of course, if at any time the program needs to be expanded upon, we would be glad to negotiate increased service.

Please feel free to call me with any additional questions or to set up a time when we can further discuss. I look forward to the opportunity to work together on this exciting new program.

Sincerely,

  
Enrique Hernandez  
Hernandez Cart Service, President

# Hernandez City Services

## Monthly Abandoned Cart Report



Date: \_\_\_\_\_ to \_\_\_\_\_

City: SANTA ANA

#	STORE NAME	#	STORE NAME	#	STORE NAME
	99C Only		Michaels		Toy Co.
	Albertsons (Luckys)		Northgate		Toys R Us
	Big Lots		Office Depot		Vons
	Big Saver		OSH		
	Comp USA		Party City		Junk/No Name
	Costco		Ralphs		
	Crawfords		Rioja		
	Family Market		Rite Aid		
	Food 4 Less		Ross		
	Home Depot		Sams (Tustin)		
	K.B.C.		Savon		
	Kids R Us		Smart & Final		
	Kmart (Costa Mesa)		SportsMart		
	La Mexicana		Staples		
	Main Ranch Market (Trader Joe's)		Stater Bros		
	Marshalls		Super A		
	May Ranch		Super Saver		
	<b>TOTAL</b>		<b>TOTAL</b>		<b>TOTAL</b>

Grand total collected

\* Collected & taken to yard

\* Collected/returned to stores

Thank you for letting us serve you!

**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**  
**CERTIFICATES OF INSURANCE**

FACSIMILE TRANSMITTAL SHEET

To:	97544856	From:	Triny Abreu
Fax Number:	97544856	Date:	03-May-07
Company:		Phone Number:	
Subject:	Hernandez	Pages:	5

Note:

Attached is the renewal certificate for our insured's business auto. Please let us know if you have any questions.

Thank you,

Triny Abreu

714 244 3127

22

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MMDD/YYYY) <b>4/27/2007</b>
PRODUCER (714)905-1923 FAX: (714)905-1910 <b>Hayward Tilton &amp; Rolapp Insurance Associates,</b> License #0614365 888 S. Disneyland Dr. STE 400 Anaheim CA 92802		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.
INSURED <b>Hernandez Cart Service, Inc.</b> 1808 Lincoln Blvd.  Venice CA 90291		
		INSURERS AFFORDING COVERAGE
		NAIC #
		INSURER A <b>Nautilus Insurance</b>
		INSURER B <b>Hartford Ins., The</b>
		INSURER C <b>Ace Property &amp; Casualty</b>
		INSURER D
		INSURER E

**COVERAGES**  
 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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MMDDYY)	POLICY EXPIRATION DATE (MMDDYY)	LIMITS
<b>A</b>	<b>GENERAL LIABILITY</b>	<b>RC642308</b>	<b>3/4/2007</b>	<b>3/4/2008</b>	EACH OCCURRENCE \$ <b>1,000,000</b>
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>50,000</b>
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ <b>1,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER				PERSONAL & ADV INJURY \$ <b>1,000,000</b>
<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ <b>1,000,000</b>
<b>B</b>	<b>AUTOMOBILE LIABILITY</b>	<b>72UENTQ5077</b>	<b>5/2/2007</b>	<b>5/2/2008</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b>
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input type="checkbox"/> HIRED AUTOS					
<input type="checkbox"/> NON-OWNED AUTOS					
<input checked="" type="checkbox"/> Collision DED:5000					
<input checked="" type="checkbox"/> Comp DED:5000					
<b>C</b>	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC AGG \$
					AUTO ONLY \$
<b>C</b>	<b>EXCESS/UMBRELLA LIABILITY</b>				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input type="checkbox"/> RETENTION \$				\$
<b>C</b>	<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b>	<b>C44701297</b>	<b>7/1/2006</b>	<b>7/1/2007</b>	WC STATUTORY LIMITS OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ <b>1,000,000</b>
					E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b>
					E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>OTHER</b>					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS  
 THIS IS FOR THE AUTO RENEWAL ONLY. PRIOR CERTS HAVE BEEN ISSUED ON OTHER LINES OF COVERAGE.

<b>CERTIFICATE HOLDER</b> (714) 754-4856  City of Costa Mesa Attn: Court Enforcement Dept. Attn: Jim Thyden 77 Fair Drive Costa Mesa, CA 92628-1200	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <b>30</b> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPROVE NO LIABILITY OR LOSS OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  AUTHORIZED REPRESENTATIVE Triny Abreu/MTA
--	--

23

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

24

### COMMENTS/REMARKS

\*10 DAY NOTICE OF CANCELLATION MAY BE GIVEN IN THE EVENT OF NON/PAYMENT OF PREMIUM.

25

### ADDITIONAL COVERAGES

Ref #	Description Adjst. to reconcile-exp mod. premium	Coverage Code AREM	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium
Ref #	Description	Coverage Code	Form No.	Edition Date	
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type	Premium

FACSIMILE TRANSMITTAL SHEET

To:	From:
97544991	Triny Abreu
Fax Number:	Date:
97544991	08-May-07
Company:	Phone Number:
Subject:	Pages:
Jim Thyden	3

Note:

Jim:

Attached the additional insured endorsement you requested.

Thank you,

Triny Abreu  
714 244 3127

Insured: Hernandez Cart Service  
Policy #: NC642308

**NAUTILUS INSURANCE COMPANY**

**LIABILITY ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - BLANKET**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS & CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART**

WHO IS AN INSURED (Section II) is amended to include as an insured, any person, organization, trustee, estate or governmental entity to whom or to which you are obligated by:

- 1. Virtue of a written contract; or
- 2. The issuance or existence of a permit;

to provide insurance such as is afforded by this policy, but only with respect to liability arising out of:

- 1. Your ongoing operations performed for that insured; or
- 2. Facilities used by you;

and then only for the limits of liability specified in such contract, but in no event for limits of liability in excess of the applicable limits of liability of this policy.

However, such person, organization, trustee, estate or governmental entity shall be an insured only with respect to occurrences taking place after such written contract has been executed or such permit has been issued.

All other terms and conditions of this policy remain unchanged