

NSWMA

National Solid Wastes Management Association 1730 Rhode Island Ave., N.W., Suite 1000 Washington, DC 20036 – 202/659-4613

Technical Bulletin #85-7

Release Date: November 1, 1985

NSWMA Model Municipal Contract

Model Contract Documents for Residential Solid Waste Collection and Disposal

Questions:

For further information, contact Dr. Charles A. Johnson or C.L. Pettit at 202-659-4613

– for NSWMA Members Only –

NOTE:

This model contract is not intended as a substitute for advice from competent legal counsel. Most municipal collection contracts reflect a give-and-take negotiation process in which legal counsel may be advisable.

**NSWMA MODEL MUNICIPAL CONTRACT
OUTLINE OF CONTRACT DOCUMENTS FOR
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL**

REQUESTS FOR BIDS

INSTRUCTION TO BIDDERS

Receipt and Opening of Proposals
Scope of Work
Term of Contract
Preparation and Submission of Proposal
Contractor to Make Examinations
Bid Bond
Performance Bond/Letter of Credit
Qualifications and Competency of Proponents
Basis of the Proposal
Addenda and Explanation

CONTRACTOR'S PROPOSAL

CONTRACT SPECIFICATIONS

I. Definitions

Bags
Bid Bond
Bulky Waste
Bundle
City
Construction Debris
Containers
Contract Documents
Contractor
Disposal Site
Garbage
Hazardous Waste
Letter of Credit
Performance Bond
Refuse
Residential Unit
Rubbish

II. Scope of Contract

Effective Date
Term
Exclusive Right
Compliance with Applicable Laws
Bankruptcy
Breach of Contract
Force Majeure
Arbitration and Award
Assignment of Contract
Change of Ownership
Waivers
Illegal and Invalid Provisions
Joint and Several Liability
Binding Effect
Amendment of the Contract
Merger Clause: Previous Agreements Superseded

III. Service, Operations and Performance

Service Provided

Area to be Served
Hours of Collection
Routes and Schedule of Collection
Missed Collections
Holidays
Complaints
Collection Equipment
Personnel
Disposal Site
Introduction of Recycling Programs
Title to Solid Waste
Notification of Residents
Office
Notice

IV. Nondiscrimination

V. Indemnity

VI. Insurance

VII. Performance Bond/Letter of Credit

VIII. Permits, Licenses and Taxes

IX. Basis and Method of Payment

Rates
Adjustments in Total Compensation for New or Discontinued Service
Escalation Clause
Fuel Cost Adjustment
Petition for Unusual or Unanticipated Costs: Adjustments to Rates
Billing and Payment

CONTRACT

PERFORMANCE BOND

REQUEST FOR BIDS

For Residential Solid Waste Collection and Disposal

Sealed proposals (i.e., "bids") will be received by the City of,
at the office of(the "Department") located
.....until.....(a.m.) (p.m.) on....., the
.....day of, 19..... . All bids will then be publicly opened and read
aloud.

Bids must be made on the Proposal Forms and in accordance with the Instructions to Bidders. The Contract Documents, of which the Proposal Form is a part, are published by and available through the Department. No more than () copies will be furnished to any one person.

Envelopes containing the bids must be sealed and must clearly show the name and address of the bidder, the date and time of bid opening, and the statement "Proposal for Residential Solid Waste Collection and Disposal". Bids may be withdrawn up to 24 hours prior to bid opening.

A Bid Bond or certified check must accompany the bid in accordance with the Instructions to Bidders. Said bond will be held as a guarantee that in the event the bid is accepted and a Contract awarded to the bidder, the Contract will be duly executed, and its performance properly secured by the required performance bond or letter of credit. The successful bidder will be required to execute the Contract within () days after award of the Contract to him. In case the bidder neglects to so execute the Contract, the bond accompanying the bid shall be forfeited to the City, not as a penalty, but as liquidated damages.

The City reserves the right to reject any or all bids, to waive irregularities and/or informalities in any bid, and to make an award in any manner, consistent with law, deemed in the best interest of the City.

City of

By:

Date

INSTRUCTIONS TO BIDDERS

RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL

Department

City

1. Receipt and Opening of Proposals

The City of invites and will receive Proposals (i.e., "bids") on the forms attached hereto at the office of untila.m./p.m. on19..... . Bids will be publicly opened and read aloud immediately following said time on said date. Bids must be sealed and addressed to and plainly marked "Proposal for Residential Solid Waste Collection and Disposal."

2. Scope of Work

The work to be performed under this Contract shall consist of all items contained in the Proposal including the provision of all labor, equipment, materials, tools, insurance; supervision, and all other items necessary to provide the service as set forth in the specifications attached hereto.

3. Term of Contract

The term of this Contract will be for a (.....) year period beginning upon, 19....-and ending19..... . The parties agree that by their mutual consent, each expressed in writing and received at least (.....) days before the termination of the current term ending on , 19..... , that this Contract may be extended for an additional period of (.....) year(s) upon the same terms and conditions as set forth in this Contract.

Comment:

The duration of a municipal contract ordinarily is governed by state statutes or charter provisions. The length of a residential collection contract is usually stated in the Instructions to Bidders and is generally not negotiable. The Contractor should be sure that the period is long enough to permit him to depreciate adequately the equipment to be used or any other capital expenditures that are anticipated to be incurred in carrying out the contract. A five year period is common for residential collection contracts since it complements the average five-year straight-line basis of depreciation for collection vehicles. Whether the City can agree to an extension of the Contract depends on both the powers granted it in the state's municipal code and any restrictions it may place upon itself. Some states and/or cities may want to require a new solicitation for bids whenever the term of a contract expires. Where the City either declines or does not have the authority to extend the Contract, the sentence describing the extension would be struck from both this section and that for Term of Contract in the Contract Specifications.

4. Preparation and Submission of Proposal

All proposals (i.e., "bids") must be prepared and signed by the bidders on the form attached hereto and without removal from this bound pamphlet. If submitted by a corporation, the bid must be signed by an officer of the corporation, or by other persons authorized by a resolution of the Board of Directors. Bids which are not signed by individuals or corporations making them shall have attached hereto a power of attorney evidencing authority to sign the bid in the name of the person for whom it is signed.

All bids must be legibly written in ink or typewritten. Proposed rate schedules and quantities must be written in both words and figures. In the event of a discrepancy or error, the unit prices and quantities as written out in words shall govern.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and plainly marked "Proposal for Residential Solid Waste Collection and Disposal." If forwarding by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid. The City reserves the right to reject any bid not prepared and submitted in accordance with the provisions hereof; to waive any irregularities, and to reject any and all bids. Conditional bids will not be accepted.

5. Contractor to Make Examinations

Bidders shall inform themselves of all conditions under which the work is to be performed and all other relevant matters that may affect both the quantity of work and the quantity of labor, equipment and material needed thereon. The bidder shall make his own determinations as to conditions and shall assume all risk and responsibility and shall complete the work in and under conditions he may encounter or create, without extra cost to the City. The bidder agrees that if he should execute the Contract he shall make no claim against the City because of estimates or statements made by any officer or agent of the City which may prove to be in any respect erroneous. The failure or omission of any bidder to receive or examine any form, instrument, addendum or other document shall in no way relieve him of any obligations with respect to his bid or to the Contract. The shall make all such documents available to the bidders.

6. Bid Bond

Each bid must be accompanied by a certified check, cashier's check, or Bid Bond in the amount of (), payable to as guarantee that if the bid is accepted, the bidder will execute the Contract within(.....) days of its award. The failure or refusal of the successful bidder to enter into the Contract within said time frame will result in the forfeiture of the Bid Bond (or check) to the City as liquidated damages. Forfeiture of the security shall be the sole remedy of the City. Award of the Contract may then be made to the next best qualified bidder or the work readvertised for proposals as the City may elect.

Comment:

Where bids are so1icited on the basis of a total contract price rather than a monthly rate per household, the amount of the bid bond will be expressed as some percentage of the total (frequently 5, 10, or 15%).

The Bid Bond of the lowest three bidders will be held until the Contract is executed. If no bid has been selected within 60 days of the opening of bids, securities will be returned upon demand of any bidder at any time thereafter, provided that he has not been notified of the acceptance of his bid.

Each bid must also be accompanied by a certificate of insurance evidencing the coverages set forth in the Contract Specifications. In lieu of the certificate, the bidder may submit evidence satisfactory to the City that, in the event that award of the Contract is made to him, the required coverages would be in place before execution of the Contract.

7. Performance Bond/Letter of Credit

The selected bidder shall have 14 days after notification of acceptance of the bid to deliver to the City a Performance Bond or letter of credit in the amount of (see Section VII of Contract Specifications). Said bond or letter of credit is to be executed by a surety or banking institution satisfactory to the City, guaranteeing both the faithful performance of the Contract and the due payment of all lawful claims for all labor, material and equipment used in the work. A letter of intent written by the surety stating that said bond will be delivered before work can commence shall be submitted with the bid. The form of the bond is appended hereto.

Comment;

Surety companies generally will not write a performance bond before a contract is awarded except in the rarest of circumstances such as that for a very large client.

8. Qualifications and Competency of Bidders

Each bidder is required to submit with the bid certified supporting data regarding his qualifications and suitability for the work to be performed including the following information, sworn to under oath by him:

- a. An itemized list of the bidder's equipment for use on the Contract (which may include equipment that the bidder intends to purchase from the City or from suppliers)
- b. A copy of the latest available financial statement prepared by an outside certified accounting firm for the bidder (or its parent corporation).
- c. Where the bidder is a corporation, evidence that the bidder is in good standing under the laws of the State of In the case of corporations organized under the laws of any other state, evidence that the bidder is licensed (or is capable of being licensed) to do business and is in good standing under the laws of the State of , or a sworn statement that it will take all necessary action to become so licensed if its bid is accepted.

- d. Evidence, in form and substance satisfactory to the City, that the bidder (or its affiliated companies) has been in existence as a going concern for in excess of (.....) year(s) and/or possesses not less than (.....) year(s) actual operating experience in Refuse collection and disposal.

9. Basis of the Proposal

Proposals with respect to refuse collection and disposal are solicited on the basis of monthly rates per Residential Unit. The total number of Residential Units and, so, the total compensation due the Contractor may change as provided in the Contract Specifications. An additional rate for the collection of a Bulky Waste item must be proposed. This rate will be assessed as payment due the Contractor for each collection in the billing period. The City will collect charges from all Residential Units receiving service and faithfully render compensation due the contractor for *all* services in the manner prescribed in the Contract Specifications.

Comment:

The collection of bulky waste items is frequently included as a standard obligation of the Contractor for which a separate rate might preferably be bid. These collections generally require special schedules or trips. Whether these collections are part of standard service and whether they are made at a special rate of compensation will depend largely on how the City defines the work for which it solicits bids. The Contractor may be asked or may be required as part of the bid to offer a purchase price for equipment owned by the City. Since offered prices may vary depending upon the needs of each Contractor, the offer should not be a criterion in evaluating bids. What amounts to a subjective bid on used equipment would only tend to cloud the issue of lowest cost service. The lowest bidder might lose the bid because he could not use the equipment and was unwilling to swallow its cost. Where the City wants to sell its equipment, it should do so on the market rather than force it upon the successful bidder.

10. Addenda and Explanation

Explanations desired by a prospective bidder shall be requested of the City in writing, and if explanations are necessary, a reply shall be made in the form of an addendum, a copy of which will be forwarded to each bidder. Every request for such explanation and any other information regarding the Contract shall be addressed in writing to Any verbal statements regarding same by any person, previous to the award, shall be unauthoritative and not binding.

CONTRACTOR'S PROPOSAL
FOR RESIDENTIAL SOLID WASTE COLLECTION
AND DISPOSAL

To: The of the City of.....
Proposal of.....(AN INDIVIDUAL), (A PARTNERSHIP), (A
CORPORATION) duly organized under the laws of the State of

The undersigned having carefully read and considered the terms and conditions of the Contract Documents for Residential Solid Waste Collection and Disposal for the City of, and being familiar with local conditions affecting the cost of work, does hereby offer to furnish, at the rates hereinafter set forth, all labor, equipment, materials, tools, insurance, supervision, and all other items necessary to provide the service as specified.

Rate per Residential Unit Per Month:
Rate per Collection of Bulky Waste Item:

By:

Address
.....

Telephone Number

CONTRACT SPECIFICATIONS

I. DEFINITION

Bags – Plastic sacks designed for refuse with sufficient wall strength to maintain physical integrity when lifted by top; securely tied at the top for collection, with a capacity not to exceed 30 gallons and a loaded weight not to exceed 35 lbs.

Bid Bond – The corporate surety bond or a certified check drawn on a national bank, in the amount specified in the Instruction to Bidders, submitted with the bid as a guarantee that the bidder will, if called upon to do so, accept and enter in the Contract.

Bulky Waste – A large appliance, piece of furniture or waste material from a residential source other than Construction Debris or Hazardous Waste, with a weight or volume greater than that allowed for Containers.

Bundle – Yard and garden trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding 3 feet in length or 35 lbs. in weight.

Comment

30 US gallons is approximately 114 litres

35 lbs. is approximately 15.9 kg

3 feet is approximately 0.91 meters

City – Refers to the applicable municipal authority (e.g., city, town, village, county, etc.) empowered under state law to solicit and award contracts for the collection of residential Refuse. Will also refer to the appropriate employee or office of the municipality authorized to act as its agent in handling the pertinent matter of this Contract.

Construction Debris – Waste building materials resulting from construction, remodeling, repair or demolition operations.

Containers – (a.) Reusable Containers – A receptacle made of plastic, metal, or fiberglass with a capacity not to exceed 30 gallons, a loaded weight of no more than 35 lbs., a tight-fitting lid, and handles of adequate strength for lifting. (b.) *Non-reusable Containers* – See definition of Bags.

Contract Documents – The Request for Bids, Instructions to Bidders, Contractor's Proposal, Contract Specifications, the Contract, Performance Bond or Letter of Credit and any addenda or changes to the foregoing documents agreed to by the City and the Contractor.

Contractor – The individual, firm, partnership, joint venture, corporation, or association performing refuse collection and disposal under Contract with the City.

Disposal Site – A refuse depository for the processing or final disposal of Refuse including but not limited to sanitary landfills, transfer stations, incinerators, and waste processing separation centers, licensed, permitted or approved by all governmental bodies and agencies having jurisdiction.

Garbage – Putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, serving or consumption of food and including food containers.

Hazardous Waste – Waste designated as hazardous by the United States Environmental Protection Agency or appropriate state agency.

Letter of Credit – A written undertaking by a financial institution on behalf of the applicant (the Contractor) to pay the beneficiary (the City) for non-performance in amounts and under conditions as may be specified in the agreement.

Performance Bond – A corporate surety bond that guarantees compensation to the City in the event that it must assume the obligations and/or duties of the Contractor in order to continue the service as defined by the Contract's Specifications.

Refuse – Discarded waste materials in a solid or semi-liquid state, consisting of garbage, rubbish or a combination thereof.

Residential Unit – A group of rooms located within a building and forming a single inhabitable unit with facilities which are used or are intended to be used for living, sleeping, cooking and eating. Also to include buildings containing four or less separate or contiguous single-family dwelling units with each unit to be treated separately for purposes of billing.

Rubbish – Non-putrescible solid wastes consisting of combustible and non-combustible materials including yard and garden wastes.

II. SCOPE OF CONTRACT

Effective Date – This Contract shall become effective on the day of execution. Contractor shall begin the service of residential solid waste collection and disposal as set out by this agreement on theday after the effective date.

Term – The term of this Contract shall be for a year period beginning , 19..... and terminating , 19..... . The parties agree that by their mutual consent, each expressed in writing and received at least days before the termination of the current term ending on , 19.... , that this Contract may be extended for an additional period of year(s) upon the same terms and conditions as set forth in this Contract.

Exclusive Right – The City, as grantor, grants the Contractor, as grantee, the exclusive right during the term of this Contract to collect and dispose of residential solid waste located within the area as defined in **Service, Operations and Performance, Section III**. The City warrants that it has the authority to grant such an exclusive right as described in this Contract and as delegated to it by (state municipal code and/or city statute).

The City covenants that during the term of this Contract it will not engage other individuals or itself become involved in the activity of collecting and disposing of residential solid waste or any other similar activity that would impair the exclusive right of the Contractor.

Comment:

Most state municipal codes grant cities the authority to contract for collection service and, in many cases (e.g., cities of a certain size), to pass an ordinance that makes such service the exclusive arrangement. Unless expressly stated otherwise, the code's provision, in effect, allows a city to require its citizens through a local ordinance to subscribe to its service arrangement. The provision, however, may be silent or at best ambiguous as to whether or not the City is itself required to exercise its authority and prevent its citizens from opting out of its service arrangement.

An exclusive right provision written into the Contract, however, guarantees the Contractor that no individual or firm will interfere and/or compete with the Contractor in the performance of his duties. This contract provision would force upon the City an obligation to require its citizens to use the services of the Contractor and to render payment unto the City as the City will allow. Residents could not negotiate for service themselves though they could assume the responsibility of disposal for themselves (i.e., they could take their own wastes to a disposal site).

It is very important that the exclusive right granted in the Contract does not exceed the authority of the municipality to grant such a right. The general rule is that one who makes a contract with a municipal corporation is bound to take notice of limitations on its power to contract and also of the power of the particular officer or agency to make the contract. The contractor must assume the risk if the municipal corporation acts beyond the scope of its powers since such a contract will not bind the municipal corporation.

A warranty made by the municipal corporation assures the contractor of the existence of a statute, state law, charter, etc., giving the municipality the proper authority to exercise the power of granting an exclusive right. Since a contractor is imputed with knowledge of the municipal corporation's limited powers and that of its agents, it is doubtful that a successful suit could be maintained for breach of this promise. However, there is a possibility of holding a municipal corporation liable for a tort, if the tort is committed by an agent of the municipality within the scope of his duties. An example of such a tort would be fraud or deceit used by an agent of the municipal corporation to induce the Contractor to make the Contract.

A provision explicitly stating what the municipal corporation can or cannot do after granting an

exclusive right should be included in the contract provisions. Such a provision should help avoid a misunderstanding of the City's obligation not to impair the exclusive right of the Contractor.

Compliance with Applicable Laws – The parties to this Contract agree that the laws of the State of..... shall govern the validity, construction, interpretation, and effect of this Contract. The Contractor shall conduct the service of residential solid waste collection as provided for by this Contract in compliance with all applicable federal and state regulations and laws. This Contract and the work to be done as described herein is also subject to the provisions of all pertinent municipal ordinances which are hereby made a part hereof with the same force and effect as if specifically set out herein.

Comment:

When a contract is made, it incorporates all the relevant laws then existing in the municipality. Therefore, a change in law subsequent to the formation of a contract may be an impairment of that contract. As a general rule, a municipality may not pass any law, ordinance or city charter that impairs a contractual obligation between it and another party. The major exception to this rule is that in the exercise of its police power for the protection and welfare of the public, the municipality may pass an ordinance or law that impairs or even renders void a contract. The police power must be exercised in a reasonable manner to be valid.

Bankruptcy – "Insolvent" for the purposes of this clause shall mean a party's inability to pay its debts as they mature.

A party's insolvency, or voluntary or involuntary bankruptcy, shall not constitute prospective unwillingness and/or inability to perform nor a repudiation of this agreement unless the party fails to give a timely and adequate assurance of its ability to perform. Until such assurances are received, the demanding party may suspend, if commercially reasonable, any performance due upon its part unless already paid for. If a party is unable to give adequate assurance, the other party may terminate the Contract with (....) days written notice. Assumption of this Contract by a bankrupt debtor's trustee shall initially give rise only to a reasonable sense of insecurity and shall not operate as an automatic repudiation, prospective unwillingness to perform, or a breach of the Contract where the Contractor is in the process of voluntary or involuntary bankruptcy.

The City (*shall*)(*shall not*) be bound to the Contract by an insolvent Contractor's trustee or receiver.

In the event of the Contractor's bankruptcy, the City will have the same remedies as provided for Breach of Contract.

Comment:

Whether a proceeding in bankruptcy, either voluntary or involuntary, which results in an adjudication of bankruptcy is sufficient to consider a breach of a contract is a matter of local law. A contract provision for bankruptcy should be drafted so that each party has a right to be informed of the other party's difficulties with respect to insolvency. This would help to lessen the uncertainty that may be caused by local laws' different treatment of bankruptcy or insolvency as a breach of contract.

An important fact to consider is whether a party is to be bound to the contract by an insolvent party's trustee or receiver electing to continue the contract. The contractor or city may wish to deal only with each other personally without the need to have a trustee or receiver substitute for one party or the other.

Breach of Contract – If the Contractor fails to perform, or to perform in a satisfactory manner, or to perform in accordance with applicable ordinances, the City shall have the right to demand in writing adequate assurance from the Contractor that steps have been or are being taken to rectify the situation. The Contractor must within (.....) day(s) of receipt of such demand return to..... a written statement that explains reasons for non-performance or delayed, partial or substandard performance during that period and any continuation thereof. The Contractor also has available to him the option to appear with an explanation before the City Council (or other appropriate governing body, e.g., Board of Aldermen, etc.). Upon receipt of the Contractor's statement or the failure of the Contractor to submit one, the City may, except under conditions of Force Majeure, terminate this Contract with a 2/3 vote of the Council and, as its sole remedy, make demands under the terms of the Performance Bond or the Letter of Credit.

Comment:

Since a breach of contract may occur in many ways, the parties should have a clear understanding of all their rights and obligations before entering into the contract. It is more than likely that a failure of the Contractor to collect residential waste will give by agreement of the parties certain rights that strongly favor the City to protect the health and welfare of the public. Due to the public interest involved in this type of contract, the Contractor would most likely find it difficult to negotiate provisions for failure to perform that would be especially favorable to him. Perhaps the most favorable terms attainable will be those that specify the sole remedy of the City as to make demands under the terms of the performance bond.

Various remedies can be specified in the Contract as available to the City in case of default by the Contractor. Some contracts will allow the City to assume the use of the Contractor's equipment to see that service is continued. Usually a fair market rental or lease is specified as payable to the defaulting Contractor. In most cases, however, the award of monies under the terms of the performance bond should serve sufficiently the interests of the City. Generally, the refuse hauling business has low barriers to entry and is very competitive. Where there are competitors that could execute a new contract with the City, the Contractor should consider carefully whether or not he wants to execute a contract that commits his equipment to the City. Such a committal could make the financing of said equipment more difficult.

Force Majeure – Neither the Contractor nor the City shall be liable for the failure to perform their duties nor for any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war, governmental order or regulation, strike, fine, accident, act of God or other similar or different contingency beyond the reasonable control of the Contractor or City.

If such circumstances persist for more than (.....) days or if after their cessation the Contractor is unable to render full or substantial performance for a period of (.....) days, he may terminate this Contract upon written notice given in..... (.....) days advance to the City.

Comment:

This is a typical force majeure clause. The provision gives the contractor the right to end the contract after so many days have passed and the unusual circumstances have continued to exist. This right may be desirable since the circumstances may be such that they will remain so long that the contractor is better off without the contract. This right would also give the contractor the leverage to renegotiate a contract with the city at terms that would be more favorable to him in light of the new circumstances surrounding the parties.

Arbitration and Award – Any controversy or claim arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

Comment:

Settling controversies by courtroom litigation is an expensive procedure. Arbitration is a non-judicial method of resolving differences which is usually faster and less expensive than going to court. In arbitration, the entire problem is submitted to a private person(s) for settlement. An award is made by the arbitrator(s) which becomes a binding decision of the matter in controversy. This provision is an agreement by the parties to submit all future controversies to arbitration. The arbitration of any and all disputes is a condition precedent to any action on the contract such as a suit for breach of contract and damages. In most jurisdictions with modern arbitration statutes such a conclusive arbitration provision is valid and enforceable. Generally, a municipal corporation may be bound by an agreement to arbitrate future disputes. However, the ability of a municipality to bind itself to arbitration in a contract of this type should be examined.

Assignment of Contract – No assignment of this Contract or any right accruing under this Contract shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be unreasonably withheld. The delegation of any Contract duties will require the written consent of the Surety as such a delegation will not relieve the Contractor or his Surety of any liability and/or obligation to perform. In the event of any delegation of a duty, the delegate shall assume full responsibility and liability for

performance of that duty without affecting the Contractor's liability.

Comment:

A provision for assignment of the contract, subletting, subcontracting, etc., is a typical provision contained in most contracts for collection of residential solid waste. Many contracts contain a provision that restricts the ability of a party to assign his rights or delegate his duties under the contract.

The assignment of a contract involves two distinct activities: the assignment of rights and the delegation of duties, though both activities are usually contemplated when a person speaks of "assignment of the contract". The distinction is important because each activity has its own set of consequences. Generally, rights can be freely assigned and contract provisions that attempt to restrict them are strictly construed by a court. Delegation of duties is permissible but is subject to more restrictions than assignment of rights. Delegation of a duty does not relieve the delegator of his liability to perform the delegated duty.

Change of Ownership – In the event that the Contractor's business assets are sold, the City maintains the right to hold the original owner solely liable. If, however, the City determines that the new ownership can adequately and faithfully render the services called for in this Contract for the remaining term of the Contract, then the City may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Contract and releasing the previous ownership of all obligation and liability. The new ownership would then be solely liable for any work and/or claims attendant to this agreement.

Comment:

A novation clause is not typical in a residential solid waste collection contract. However, since the sale of a business is not an unusual occurrence, it may be advantageous to provide a provision that lets the contractor out of the contract upon selling his business as a going concern to another entity.

A novation is not an assignment of rights or a delegation of duties. The effect of a novation is that one of the original parties is discharged from the contract with the newcomer taking his place. A novation, as a discharge, relieves the removed party of future liability to perform a duty.

Waivers – A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of a Contract modification as provided for elsewhere in this section.

Illegal and Invalid Provisions – Should any term, provision or other part of this Contract be declared illegal it shall be excised and modified to conform to the appropriate laws or regulations. Should any term, provision or other part of this Contract be held to be inoperative, invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with applicable laws or regulations. In both cases of illegal and invalid provisions, the remainder of the Contract shall not be affected but shall remain in full force and effect.

Comment:

A provision calling for the severance or excise of an illegal provision(s) in a contract manifests the parties' intent to remain bound to the enforceable part of the agreement and to have the illegal portion of the agreement disregarded. However, if the illegal provision is central to the parties' agreement and/or involves serious moral culpability, the contract as a whole may be declared by a court illegal and non-enforceable.

There are many ways for a contract to be declared illegal and void; it is sufficient to state for the purpose of this guideline that the parties should protect their interests by including a clause that would remove any illegal provision so as to preserve the rest of their agreement.

Caution *An illegal provision is a provision that is illegal at the contract's formation and renders the contract void if it is not severable from the other contract provisions. When there is a legal agreement and then a supervening prohibition or prevention by law occurs, there is a valid excuse for non-performance. The major difference between a contract where a provision cannot be*

performed due to impossibility of performance (caused by supervening prohibition) and an illegal provision is that the courts will not aid the parties in the performance or enforcement of a contract which contains a non-severable illegal clause.

Joint and Several Liability – If the contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the contractor shall be jointly and severally liable.

Binding Effect – The provisions, covenants, and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

Amendment of the Contract – No modification or amendment of the terms hereof shall be effective unless written and signed by the authorized representatives of all parties entitled to receive a right or obligated to perform a duty under this Contract. A signed original is to be fastened to the original Contract with signed copies retained by all the parties.

The written modification is not to become effective for a period of (.....) business days during which time either party may revoke the writing upon delivery to the other party of written notice to that effect, dated and signed by a notary.

Comment:

Unless otherwise specified, written agreements may be modified by subsequent oral or written agreements. If modification is agreed on by both parties, it is best to have it in writing to avoid future disputes. The law does not usually require an agreement modifying a contract to be in writing. By requiring written modification, the parties add certainty and protection to the terms of their contract. The written modification requirement would render void any oral agreement not reduced to writing and signed by the parties.

Merger Clause: Previous Agreements Superseded – This agreement constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are to be without effect in the construction of any provision or term of this Contract if they alter, vary or contradict this agreement.

Comment:

A merger clause is important because it will usually be considered as conclusive evidence of the parties' intention to make in writing the final and complete expression of their agreement. Where a contract has been reduced to writing, the Parol Evidence Rule comes into effect. In general, this rule states that oral or written agreements made at the same time or prior to the execution of the final written agreement are not admissible for the purpose of varying or contradicting that written agreement. If the parties decide to use a merger clause, they should make sure that all agreements are expressed in the final writing. Where it is desired that certain prior agreements survive the final written agreement, they should be expressly stated as doing so.

III. SERVICE, OPERATIONS AND PERFORMANCE

Service Provided – The Contractor shall provide curbside collection service for the collection of Refuse from Residential Units (.....) time(s) per week. It is the resident's responsibility to see that Containers, Bags and Bundles are placed curbside or as close as practicable to collection vehicle routes by a.m. on the designated collection day. Curbside refers to that portion of the right-of-way adjacent to paved or traveled roadways (including alleys).

Contractor may decline to collect any Container, Bag or Bundle not so placed; any Container not defined in the Definitions; any Containers that contain sharp objects or liquids; or any residential Refuse not properly contained. Where the Contractor has reason to leave solid waste uncollected at a residence, he or his agents shall inform the resident within (.....) days by written notice, mailing, or telephone as to why the solid waste was not collected, i.e., non-residential solid waste, Hazardous Waste, unapproved Containers or Bundles, improper placement, etc.

Collection of Bulky Wastes will be made upon request of the City and/or a resident of the service area. A verifiable record of Bulky Waste collections shall be kept by the Contractor.

Area to be Served – The area to receive the service of residential Refuse collection is indicated in the map appended hereto and/or by the following description of its boundaries:

Hours of Collection – Normal hours of collection are to be from a.m. to p.m. Monday through Friday and a.m. to p.m. on Saturday. Exceptions may be made only when the Contractor has reasonably determined that an exception is necessary to complete collection of an existing route due to unusual circumstances or upon the mutual agreement of the City and the Contractor.

Routes and Schedule of Collections – The Contractor shall provide the City with maps and schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, the City shall so notify each resident affected in a manner and time as it chooses.

Not less than (.....) days prior to commencing service, the Contractor agrees to furnish for the City's approval the initial schedules and maps of all routes to be used in serving the area as specified in this Contract. Any changes in routes and/or schedules will also be subject to the City's approval which will not be unreasonably withheld.

Missed Collections – In the event that a regularly scheduled collection is missed and a complaint received by either the City or the Contractor, and where no fault can be found on the generator's part, a special collection of the refuse will be required of the Contractor within (.....) hours. The City shall notify the Contractor of any complaints it receives within (.....) hours.

Holidays – The following holidays will be observed as non-collection days by the Contractor:

The following holidays, if any, are optional as to whether or not the Contractor chooses to observe them as non- collection days:

The suspension of collection service on any holiday in no way relieves the Contractor of his obligation to provide collection service at least once per week. Extending the hours of service to meet this obligation is subject to the City's approval.

Complaints – The Contractor shall receive and respond to all complaints regarding services provided under this Contract. Any complaints received by the City will be directed to the Contractor's office. Should a complaint go unresolved for longer than (.....) days, the City will have the right to demand an explanation or resolution to its satisfaction.

Collection Equipment – An adequate number of vehicles shall be provided by the Contractor to collect Refuse in accordance with the terms of this Contract. The vehicles shall be licensed in the State of and shall operate in compliance with all applicable state, federal and municipal regulations. All vehicles shall be manufactured and maintained to conform with the American National Standards Institute's (ANSI) standard Z245.1.

All vehicles and other equipment shall be kept in proper repair and sanitary condition. Each vehicle shall bear, as a minimum, the name and phone number of the Contractor plainly visible on both cab doors. Each vehicle shall be uniquely numbered in lettering at least (.....) inches high. Each truck shall have at least one broom and shovel to clean up solid waste that may be spilled or otherwise scattered during the

process of collection. All vehicles shall be sufficiently secure so as to prevent any littering of solid waste and/or leakage of fluid. No vehicles shall be willfully overloaded.

The Contractor may make private collections with the same vehicles used for Contract collections provided that such use in no way impairs the delivery of service required under this Contract.

Comment:

Some contracts will specify that any transfer, sale or lease of equipment be subject to the City's approval or be considered a possible breach of contract. However, the service provider should be very careful before agreeing to such terms as it could provide the City with unwarranted leverage over the Contractor.

Personnel – The Contractor shall require his employees to be courteous at all times, to work quietly and not to use loud or profane language. Each employee shall wear a company uniform clearly labeled with the name of company and employee. Clothing will be as neat and clean as circumstances permit. Shirts will be required at all times.

The Contractor's employees shall follow the regular walks for pedestrians while on private property, shall not trespass or loiter on private property, shall not cross property to adjoining property, and shall not meddle or tamper with property which does not or should not concern them.

Each employee assigned to drive a vehicle shall, at all times, carry a valid driver's license for the type of vehicle he is driving.

The City shall have the right to make a complaint regarding any employee of the Contractor who violates any provision hereof or who is wanton, negligent, or discourteous in the performance of his duties.

The City may suggest action to be taken in its complaint but it shall not be binding on the Contractor.

Disposal Site – The Contractor shall be totally responsible for all equipment owned while operated on any disposal site.

The location of the disposal site to be used under the terms of this Contract is shown on the map appended hereto and/or described as follows:

The choice of this site was made by (choose one):

(1) the City, which directly assumes all fees and increases in fees and/or provides the Contractor with the use of this or another site free of charge. The City will compensate the Contractor for all unanticipated costs attendant to a change in the disposal site. Use of the site for commercial and/or industrial accounts is subject to *(the City's)(site operator's)* approval.

(2) the City, which, given satisfactory documentation, will reimburse the Contractor with each billing period on a one-to-one basis for all disposal fees and increases in fees. The City will compensate the Contractor for all unanticipated costs attendant to a change in the disposal site. Use of the site for commercial and/or industrial accounts is subject to the site operator's approval.

(3) the Contractor, who will assume all fees. Compensation for fee increases and unanticipated costs will be subject to this Contract's provision for petitioning for unanticipated costs. The Contractor may at any time be asked to provide evidence that the disposal site upon which his rates are based is the site actually used and that the said site is a legally permitted facility.

Comment:

This provision restricts the City to designating sites that it is prepared to provide at its expense. Many Contractors will not favor a provision that allows the City to insist on a site while expecting the Contractor to assume all attendant fees. Such an arrangement might be viewed as allowing the City too much discretion over what tipping fees the Contractor would face.

Introduction of Recycling Programs – In the event that, within the duration of this Contract, a new local ordinance or state law requires the separate collection of recyclable materials from residential units, the Contractor shall maintain the right to decline participation. Where the Contractor chooses to participate, he

will, be entitled to an adjustment of the Contract payments to reflect any additional costs of the program. To secure greater compensation, the Contractor must be able to demonstrate that the added costs are direct operating costs solely assignable to the recycling program. Depreciation of only that equipment specifically bought and exclusively used to meet the needs of the recycling program will be allowed. Increased costs must be capable of verification by an independent auditor.

Title to Solid Waste – Title to refuse shall pass to the Contractor when placed in the Contractor's collection vehicle, removed by the Contractor from a container, or removed by the Contractor from the customer's premises.

Comment:

The Contractor may favor a provision that specifies the City as holding title to the waste materials. Such a provision might help to protect the Contractor from liability that could arise when hazardous or contaminated wastes are unknowingly delivered to the disposal site. However, this seems more of a major concern in commercial and industrial collection. Leaving title to the City could be of greater concern to the Contractor insofar as it might be used by the City as the basis for instigating or exercising "flow control" authority in conjunction with a resource recovery project.

Notification of Residents – The City shall inform all residents as to complaint procedures, rates, regulations and day(s) for scheduled refuse collection.

Office – The Contractor shall establish and maintain a local office or other facility, not necessarily within city limits, through which he can be contacted, where service may be applied for, and complaints can be made; Such office or facility shall be equipped with adequate telephone communications, shall have at least one responsible person in charge and present during collection hours, and shall be open during all collection hours.

Notice – A letter properly addressed and sent by mail, certified mail, or registered mail to any party at the addresses provided below shall constitute sufficient notice whenever written notice is required for any purpose of this agreement. Notice will be considered sent either when received at the appropriate address or deposited in the United States mail.

Address for notices to City:

Address for notices to Contractor:

Address for notices to Surety:

IV. NONDISCRIMINATION

Neither the Contractor nor any sub-contractor nor any person(s) acting on his behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin.

V. INDEMNITY

The Contractor will indemnify and save harmless the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from a willful or negligent act or omission of the Contractor, its officers, agents, servants and employees in the performance of this Contract; provided, however, that the Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys'

fees arising out of the award of this Contract or a willful or negligent act or omission of the City, its officers, agents, servants and employees.

VI. INSURANCE

The Contractor shall maintain in full force and effect throughout the term of this Contract and throughout any extension or renewal thereof the following types of insurance in at least the limits specified below:

<i>Coverages</i>	<i>Minimum Limits of Liability</i>
Workmen's Compensation	Statutory
Employer's Liability
General Liability:	
Bodily Injury each occurrence
 aggregate
Property Damage each occurrence
 aggregate
Automobile Liability:	
Bodily Injury each person
 each occurrence
Property Damage each occurrence
Excess Umbrella Coverage each occurrence

Employer's Liability Coverage will be required of the Contractor and any sub-contractor where any class of employee engaged in work under this Contract is not protected under the Workmen's Compensation Statute.

All insurance will be by insurers acceptable to the City and authorized to do business in the State of Prior to the commencement of work the Contractor shall furnish the City with certificates of insurance or other satisfactory evidence that such insurance has been produced and is in force. Said policies shall not thereafter be cancelled, permitted to expire, or be changed without thirty (30) days advance written notice to the City.

To the extent permitted by law, all or any part of required insurance coverage(s) may be provided under a plan of self-insurance.

Comment:

Due to the public nature of the Contractor's work, the City will want to require its Contractor to be adequately insured. The City must recognize that the requirements for insurance will directly affect the Contractor's cost of providing this service. In addition, the City should be certain that it does not set an unrealistic level of insurance coverage that would be unduly expensive or burdensome for a Contractor to acquire. If the level is set too high, a competent contractor may be prevented from submitting an accurate bid due to an inability to acquire coverage and/or to pay the higher premiums that a high level of coverage would entail.

Actual levels of coverage are not recommended here due to the volatile nature of the market for insurance and the difficulty in defining appropriate levels that could apply to all Contractors in all cases.

It is suggested that before setting levels for various insurance coverage and bonds the City examine the market to ascertain the availability of such coverage and their costs. The City should keep in mind that there are many contractors that could more than adequately perform this contract but who are unable to acquire the required coverage due to circumstances beyond their control.

Some contracts will require that the contractor's policies name the City and its agents as "additionally insured". The Contractor, however, should not have to assume the cost of the City's coverage nor pay for its losses. In any event, the municipality is responsible for its own negligence under the indemnification clause.

VII. PERFORMANCE BOND

Before this Contract can be executed, the Contractor shall furnish a corporate surety bond or a letter of credit written by an acceptable bank as security for the performance of the Contract. Said bond or letter of credit must be in the amount of (.....).

The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Attorneys-in-fact who sign Performance Bonds must file with each bond an effectively dated copy of their power of attorney, bearing the seal of the company, evidencing such agent's authority to execute the bond. In case of extension or renewal of this Contract, the Contractor shall furnish a Performance Bond or Letter of Credit in the same amount and under the same terms as for the initial Bond or Letter of Credit. The original Surety, however, is in no way obligated to extend or renew the bond.

This Contract shall be subject to termination by the City at any time if said bond shall be cancelled or the surety thereon relieved from liability for any reason. Notice of cancellation of the bond must be served upon the City (.....) days prior to the effective date of said cancellation. The Contract will not be terminated if within (.....) days of such notice the Contractor files with the City a similar bond to be effective for the balance of the Contract period.

Comment:

A performance bond guarantees the faithful performance of the contractor's duties and obligations as provided for by the terms of the contract. The bond is used to cover costs incurred by the City should the Contractor fail to render service, forcing the City to deliver service itself or to contract with another hauler for the same service. A letter of credit guarantees the faithful performance of the Contractor's duties in a similar manner. Whether and to what extent the Contractor, in applying for a letter of credit, must dedicate funds or physical assets as collateral will depend on the requirements of the issuing financial institution.

The amount of money that a performance bond is to be issued for is very important. The larger the amount the greater the cost to the Contractor and ultimately the city and public. The larger the amount the greater the possibility of limiting the bidding to only large solid waste collection companies at the expense of smaller but otherwise competent firms.

The amount of the bond should reflect a realistic estimate of any additional costs for supplying service if the Contractor should default. Competition for such residential solid waste collection contracts and the ability of competitors to step in and provide the same level of service should be considered when determining the amount of the bond.

Frequently the required amount of the bond is expressed as the approximate amount of revenue that the Contractor would realize for services provided under the Contract over a specified period of time. Six months' or a year's worth of revenue should provide the City with adequate protection. If the City should insist that the required amount of the bond be 100% of the Contractor's revenue (i.e., over its full term), the Contract should provide for an annual prorated reduction in the bond amount over the term of the Contract. Alternatively, the amount may be reduced or the bond requirement altogether waived after a specified number of years.

Payment bonds are a frequent requirement of any Contractor who is to provide a public service such as the collection of residential waste. The purpose of such bonds is to afford a measure of protection to the materialmen and laborers who deal with the contractor in performing his duties under this contract. These bonds are usually executed separately by a surety though their provisions for guaranteeing payment can be written in as terms of the performance bond.

The typical argument for requiring payment bonds is that laborers and materialmen should not suffer any loss or injustice due to an irresponsible contractor's failure to pay for labor and material used in providing a public service. This argument is even more compelling when viewed from the fact that laborers and materialmen ordinarily do not have a right to put a mechanic's lien upon public property in order to satisfy their claim. If written separately, the amount of the Payment Bond should equal 6 months' or a year's typical wage and contract payments. Like a performance bond, the required amount should be reduced or altogether waived after a specified number of years.

Bonding rates (i.e., premiums) faced by Contractors can be fairly consistent from year to year and from one locale to another. The Surety Association of America (SAA) provides to over 590 member surety companies a rate manual indicating recommended rates according to contract (business) categories. The rates are based on an actuarial record of premiums, claims and losses. They are usually filed with and approved by a state's Board of Insurance or other aptly named agency. Though the SAA's rates are merely recommended rates, they generally prevail throughout the country. In some states, they may be the only rates allowed.

It is not necessary for a statute to exist that gives express authority to the City to require bonds of a Contractor for public work. In general, if a municipal corporation or other public authority has the power to let contracts, it also has the power to require Contractors to furnish bonds.

VIII. PERMITS, LICENSES AND TAXES

The Contractor shall obtain and assume the cost of all licenses and permits (other than the license and permit granted by the Contract) and promptly pay all taxes required by the City.

IX. BASIS AND METHOD OF PAYMENT

Rates – For all collection and disposal services required under this Contract, the charges to residents will equal the rate(s) as set forth in the Contractor’s proposal, plus a reasonable surcharge that reflects the City’s cost of its billing and payment procedures.

At its option the Contractor may attempt to market to Residential Units special Bags or Containers, but in no way shall any Residential Unit be required to use such Bags or Containers.

Comment:

A contract with the City, as opposed to a franchise, contemplates that the City, not the Contractor, will collect the charges from the public or render compensation out of general tax revenues. Where compensation is paid out of general revenues, the Contract should specifically state as much. The Contract should then also state the terms under which collections will be made in the event that commercial establishments and/or residential buildings of more than an agreed number of units are determined or are specified as deserving service. Many apartment houses and commercial establishments will object to a residential collection contract that excludes them from service, yet is paid for out of a general tax fund provided by all.

Where the City collects a direct service charge from each resident receiving service, the contract might specify whether a variable fee will be assessed according to the amount of material placed. A variable fee may also be employed where some part(s) of a service area desire(s) more or less frequent collection than is generally provided. Cities will normally use a flat fee, however, and expect the Contractor to be flexible in making collections. The volumes of materials generated by residential units should be fairly consistent and predictable.

Total Compensation and Adjustments for New or Discontinued Service – Before commencement of work under this Contract, it shall be the City’s responsibility to provide the Contractor with an accurate address list of dwelling units to receive service. Thereafter and for the duration of the Contract, the City shall promptly inform the Contractor of any new or discontinued service.

The Contractor shall bill the City within (.....) days of the end of each calendar month for an amount calculated as:

(Number of Units Receiving Service) X (Monthly Rate for Residential Collection)

plus

(Number of Bulky Waste Items Collected) X (Rate for Collection of Bulky Waste Items)

The City shall remit payment within (.....) days following the end of each month. If any dispute arises, the undisputed amount shall be paid.

Where a unit received new service or discontinued service on a day other than the month’s first scheduled collection day, its charge will be prorated according to the percentage of that month’s collections performed.

The Contractor will provide service to any territory annexed by the City within the duration of this Contract including any extension thereof. The aforementioned formula for compensation, together with the provision for petitioning for unanticipated costs, will provide the greater compensation due the Contractor for servicing annexed territory.

Comment:

As the billing agent, the City will want to maintain an accurate record of all units receiving service. Moreover, the City will want to notify the Contractor of new or discontinued service so that it is not billed for service not needed and so that it does not bill for service not received. The Contractor will want to refer to the City all residents’ questions about beginning or ending service.

Escalation Clause – An annual adjustment of rates will be made to reflect the general increase in the cost of operations.

Adjustments will be made annually following execution of this Contract. The unit rates for collection and disposal will be increased by the same percent increase (if any) as accrued for the previous 12 months in the all-items Consumer Price Index for the *(Northeast)(North Central) (Southern)(Western)* states and according to the appropriate category for municipal population. Price Indices are published by the U.S. Department of Labor, Bureau of Labor Statistics. Where the effective date of the Contract was other than the first of a month, the percentage increase in the price index for that month will be prorated accordingly.

The Contractor may, if it chooses, request that adjustments in the rates be based on a component CPI or some combination thereof. Use of any index or indices other than the All-Items CPI will be subject to the approval of the City. All records, accountant reports and work- sheets used in the calculation of rate changes based there-on may be required for inspection, if the City should so choose, upon (.....) days written notice.

Fuel Cost Adjustment – Annual compensation shall be made to the Contractor to cover fuel cost increases beyond the control of the Contractor which exceed the CPI automatic annual cost escalation. At the end of each year the year's weighted average fuel price will be calculated as the year's total expense for fuel divided by the total number of gallons. If the weighted average fuel price for the second and each succeeding year of this contract exceeds the product of that for the previous year and the current (most recent) CPI, the difference will be the Fuel Adjustment Factor. This Fuel Adjustment Factor multiplied by the total number of gallons purchased in the latest year will equal the additional compensation due the Contractor. If the weighted average fuel price for the most recent year does not exceed the product of that for the previous year and the most recent annual CPI, no adjustments will be made in compensation due the Contractor.

All interpretations of the fuel cost adjustment calculation method shall be made by the City. Documentation to the satisfaction of the City must be provided before any fuel cost compensation will be made.

Petition for Unusual or Unanticipated Costs – The Contractor may petition the City at any time for additional rate adjustments on the basis of unusual changes in the cost of operations, such as new or revised laws, ordinances or regulations; changes in the location of disposal sites or changes in disposal fees; and for other reasons. The City shall have the right, as a condition for its approval, to demand inspections by itself or by an independent auditor of pertinent records that demonstrate the need for an adjustment to the rates.

Comment:

This clause is designed to be flexible with room for negotiation. The need for an adjustment to the rates refers to those unanticipated costs beyond the Contractor's control.

Billing and Payment – The City shall submit statements and collect charges from all Residential Units for services provided by the Contractor under the terms of this Contract.

Billing and payment shall be based on the price rates and schedules set forth in the Contract Documents. The Contractor shall be entitled to payment for services rendered irrespective of whether or not the City collects from customers for such service.

CONTRACT

THIS CONTRACT, Made and entered into this day of..... 19...., by and between the City of (hereinafter called the "City"), and- (hereinafter called the "Contractor").

WITNESSETH, That the Contractor and the City for the consideration stated herein agree as follows:

- I. *Term.* This contract shall take effect on 19...., and remain in full force and effect for (.....) years to, 19...... The initial term of this contract may be extended for an additional (.....) year period, under the same terms and conditions as this, the initial contract, provided each party has received from the other a written expression of consent no less than (.....) days prior to the expiration of the initial term.
- II. *Scope of Work.* The Contractor is granted the sole and exclusive right within the geographic area as described in the Contract Specifications and shall furnish all personnel, labor, equipment, trucks and all other items necessary to provide Refuse collection, removal and disposal services as specified and to perform all of the work called for and described in the Contract Documents.
- III. *Component Parts of the Contract Documents.* The Contract Documents shall include the following documents, all of which are as fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached.
 - (1) The Request for Bids
 - (2) The Instructions to Bidders
 - (3) The Contractor's Proposal
 - (4) The Contract Specifications
 - (5) The Performance Bond or Letter of Credit
 - (6) This Instrument
 - (7) Any addenda or changes to the foregoing documents agreed to by the parties hereto.

All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this contract shall be made except upon the written consent of the parties, which consents shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.

This Contract is intended to conform in all respects to applicable statutes of the State of, and if any part or provision of this Contract conflicts therewith, the said statute shall govern.

IN WITNESS WHEREOF, We, the contracting parties, by our duly authorized agents, hereto affix our signatures and seals at....., as of this day of, 19....

SEAL

City of,

By:
Mayor

and
City Clerk

.....
Contractor

SEAL

By:

ATTEST:

(Sealed, Witnessed, and/or notarized as required by the laws of applicable State)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we,
.....
(hereinafter called "Principal"), as Principal, and, a
corporation organized and existing under the laws of the State of and
authorized to transact business in the State of(hereinafter called
"Surety"), as Surety, are held firmly bound unto(hereinafter
called "Obligee"), as Obligee, in the penal sum of DOLLARS (\$) for the payment of
which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and
assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has entered into a certain written contract with the
Obligee, dated theday of, 19.... , for Residential Solid
Waste Collection and Disposal, which Contract is hereby referred to and made a
part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if
the Principal shall faithfully perform the Contract on his part, free and clear of all
liens arising out of claims for labor and materials entering into the performance of
the contract and indemnify and save harmless the Obligee from all loss, cost, or
damage that he may suffer by reason of the failure so to do, then this obligation shall
be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, That no suit, action or proceeding shall be had or
maintained against Surety on this bond unless the same be brought or instituted
within one (1) year after the date of completion or default by Principal. Written
notice to Principal and Surety must be given within thirty (30) days after the
occurrence of an alleged default or failure to perform.

Signed and sealed this-day of, 19.....

(SEAL)

.....
PRINCIPAL

By:

(SEAL)

.....
SURETY

By:

**ABOUT THE NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION**

NSWMA is the trade association of the waste service industry. It represents 2,500 private waste service and street sweeping companies in the U.S., Canada, and a growing number of other nations. NSWMA members are responsible professionals who collect, process, and dispose of solid and liquid, hazardous and non-hazardous residential, commercial and industrial waste. The association also represents manufacturers and distributors of waste handling equipment, companies that operate facilities recovering materials and energy from waste, and professional firms that provide business and technical services to waste managers.

To receive more information about membership in NSWMA and its institutes, contact NSWMA Member Services at 1730 Rhode Island Ave., N.W., Suite 1000, Washington, D.C. 20036, or call 202/659 4613.

**National Solid Wastes Management Association
1730 Rhode Island Ave., N.W., Suite 1000
Washington, D.C. 20036
202/659-4613**