

# Annex N

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## *Contract Administration*

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## **N Contract Administration**

### **N.1 Regulatory Base**

The effectiveness in the administration of SWM services in AMSS, will depend on the compliance with current norms and the new regulatory and institutional framework proposed in the “Proposal of Law” (see Annex-O).

As a result of this new regulation, the responsibilities of the organizations that should take part in and the conditions for the participation by private sector are outlined, by means of appropriate and transparent procedures that ensure competition and attainment of economic prices.

The quality norms that should be observed and the incentives and sanctions to which the Contractor will be subject to according to its performance are proposed. Also, the information that the Contractor should submit and its submission period is also pointed out, with the purpose of maintaining a true symmetry in the information and avoiding information lag.

On these bases and competition rules previously established in the bid basis contained in the Contract, the required organization can be structured in order to follow up and control all the terms and scope of the subscribed contract.

The contract administration unit should constantly and orderly manage the information that being produced, not only to control the Contractor’s performance, but also to analyze the data obtained and be able to gain experience in productivity and costs and negotiate better conditions in the future.

### **N.2 Contracts, Effective Regulation and Role by the Organizations**

The regulation economy suggests that specific details of each market (or regulation of the distinctive private markets) should be realized by means of the contract specifications.

Hence, with the purpose of improving efficiency and effectiveness in the service provision through the contract with a private sector, it is necessary to establish and adopt certain basic approaches:

- Well-defined performance measures
- obligatory sanctions for non-performance
- permanent monitoring
- costs control

Experience has demonstrated that PPS is successful only if the above basic conditions are complied with and the performance is compared with the productivity of a model company.

The following table shows some recommendations that can be very valuable to solve problems that arise during the execution of PPS contracts.

Table N-1: Recommendation for the Execution of the PPS Contracts

- Carry out a pre-qualification process to exclude the companies with no resources or experience
- Increase the responsibility of districts and/or civil society organization in the supervision of contracts
- Improve the quality of the contract documents, especially in the service quality norms, penalty clauses (fines) and amounts of SW handled
- Establish the contract duration for 5-7 years for collection, and use new vehicles during that period.
- Expand the contracts including all the SWM services (collection, manual and mechanical sweeping and ditch and gutter cleaning), in order to prevent any overlapping and potential responsibility conflicts with parallel municipal services being carried out.
- Stress the fact that the Contractor maintains a good image and presence (e.g., obligatory use of uniforms, well-painted and clean vehicles)
- Obligate the Contractor to have an office in the Service Area, so that the contact among the municipality, the service provider and the public improves.

The municipality must be able to efficiently design, negotiate and verify the contracts without having to impose unnecessary fines to the contractors, but generate confidence upon the private sector and attract the best companies.

The municipality should remind that PPS does not exempt them from having technical assistance for training and strengthening of its organization, but supporting them. Likewise, the municipality should develop coordination mechanisms with other actors that participate in the regulation of the service.

The function of the actors of this public service is properly defined in the Proposal of Law of **“Regulatory and Institutional Framework for Solid Waste Management”** that this Study recommends for the authorities’ consideration.

This Proposal of Law establishes an effective regulation with the separation of functions among the Ministry of Public Health and Social Assistance (MSPAS), the Regulator (entity that is recommended to be created or render its regulation functions to SIGET) and the Service Provider, in this case the Municipality.

MSPAS will be in charge of the formulation and coordination of the sector policies and long-term planning; dictate the technical norms and regulations related to the provision of the service, protection of public health and environmental preservation.

The Regulator will have the functions of regulation, control, supervision and inspection of the services provided; to dictate the regulations to formulate efficient investment programs for maintenance, rehabilitation and expansion of the services. The regulator will also: intervene as a superior administrative body when clients complain about the services rendered or due to a lack of attention to such claims; oversee that competition is promoted in awarding contracts; revise and approve the tariff studies.

The Service Provider, in this case the municipality, has the obligation to provide the services under conditions that ensure their quality, continuity, regularity and equality so that their efficient provision is guaranteed. In order to comply with this responsibility, the municipality can modify its organizational structure (the Study proposes the creation of a Municipal Public Company of Urban Cleansing in the Municipality of San Salvador) and achieve participation by private sector through competitive bids.

## **N.3 Quality Norms and Contract-out Process**

### **N.3.1 Quality Norms and Procedures for PPS**

The quality norms and the procedures for PPP have been established for the rendering of the following services:

- Sweeping (manual)
- Sweeping (mechanical)
- Primary and secondary collection
- Transfer
- Final disposal through a national regulation project
- Forms of PPS
- Fixation of costs and competitive prices
- Participation by customers
- Control procedures
- Delivery of information

### **N.3.2 Pre-qualification**

Pre-qualification has an objective of selecting the most competent and experienced companies, according to financial and technical requirements of the service to be contracted.

The objective of pre-qualification competition is informed through a public invitation to tender. The date, hour and place for submitting the document should also be remarked.

Detail of the services to be contracted, contract-out modality, duration of the contract, regulation norms and quality of the requested services, required guarantees and insurance, form of payment should also be established.

It is established which will be the **juridical** information (articles of incorporation, capital, partners, shareholders, legal mandatory, other certifications that prove the juridical capacity of the company to contract); **economic and financial** data (balances sheet, profit and loss statements, assets, three bank and three commercial certifications); **operative** information (list of the equipment and machinery required for the service being under tender, with certificates of property or purchase or rent

agreements); **technical experience** (certification by clients of similar works; the professionals' résumé assigned to the contract) **and the form of evaluating and qualifying the participants.**

An evaluation and qualification commission formed specifically for that purpose will give its judgement on a date established in advance, and the list of the participants that were pre-qualified will be published and communicated.

### **N.3.3 Bid**

**The Instructions to the Bidders** will be sent to the pre-qualified participants, which will include the required and enough information for the preparation of their technical and economic offer.

The technical and regulation norms that rule the contract should be clearly established, since the best understanding between the Municipality and the Contractor during contract validity period will depend on the specificity of such norms. The norms will facilitate follow-up and control of the service quality and the information submission.

**The Contract Specifications** should be delivered, which consist of: definitions; scope of the contract; service, operations and performance; compensations; insurance; guarantees; permissions, licenses and taxes; bases and methods of payment.

Chapter **N.5: Model of Contract Document** for the Solid Wastes Collection is attached herewith.

## **N.4 Monitoring and Administration of Contracts**

The performance review by the monitoring is a key element in the process of providing services of a good quality and at economical prices.

It is the process by which the service efficiency is monitored and compared with the parameters of quality agreed on in the Contract.

Data gathered should be processed in order to transform it into useful information. It should be reminded that the information itself is valuable only when if it is managed and used for a specific purpose.

### **N.4.1 Strengthening the Monitoring Performance**

The analysis of the service status should be carried out along with the data obtained in a formal way and in accordance with a certain procedure. The following can lead to lamentable errors: data obtained by visual observations, comments by workers and/or customer claims; when considered exclusively to raise an opinion about the service status and quality.

The service monitoring performance has numerous goals, such as the following:

Table N-2: Monitoring Performance

- Closely observe the quality of the services provided in order to maintain or improve the service quality
- Encourage efficient use of available resources
- Relate the expenditures with revenues and eventually costs
- First of all, improve the service quality and its relative costs
- Encourage the responsibility of the service providers
- Cut the service provision costs
- Compare and evaluate the services provided against the goals stated in the Contract
- Provide information with which the administration can work out policies and make decisions about the service.
- Compare the services provided for two or more municipalities.
- Compare the service received in a municipality month by month.
- Monitor the services provided by the Contractor in general

The monitoring performance does not necessarily bind to the municipality. It can be applied in any area and in any moment. The important thing is to maintain a benchmark when the performance evaluation is pursued in intervals of time.

The two central questions of monitoring on the service performance are:

- How effective is the SWM service that is being provided?  
which means: in what degree are the necessities of SWM services being satisfied through the current system and what are the requirements for their improvement,
- How efficient is the SWM service that is being provided?  
which means: are the available resources being utilized in the best way and how can such use be further improved?

The effectiveness and efficiency are closely linked; in most scenarios the increase in efficiency results in an increase of effectiveness, provided that the resources do not decrease simultaneously.

How to use the funds, the personnel and the equipment in the best possible way should be acknowledged in order to serve most of the clients and with the best quality possible. We need to know which are the weak points and the restrictive points in the system that prevent us from advancing in the improvement of the services.

## **N.4.2 Definitions of the Performance Indicators**

In order to determine the performance of SWM services in general, as well as individual components of the services in particular, data and information so called “performance indicators” and “performance measures” are used.

The “performance indicators” are quantitative data related with the services, such as:

- Number of served ICIs
- Kilometers of streets swept
- Number of employees in the collection

The “performance measures” are the result of processing the indicators while relating them to time or cost, and they represent the main tools for evaluating the performance of the system being analyzed. These are:

- Cost per collected ton
- Time of collection per ton
- Sweeping performance per day

In order to obtain real performance measures, it is necessary to comply with the following rules:

- The data collection should be precise, reliable and regular
- The cost accounting processes should be precise and reliable
- Solid wastes must be weighed
- Details of the services operations should be available
- Units in which the performance indicators should be indicated (cost per 1000 persons served; time per ton collected, etc)

## **N.4.3 Performance indicators**

Details of performance indicators that are recommended to be utilized for evaluating the service are shown herewith in the Annex-Q.



## N.5 Model Contract Document

### MODEL CONTRACT DOCUMENT FOR THE COLLECTION OF SOLID WASTES

#### INSTRUCTIONS TO BIDDERS

##### 1. Receipt and Opening of Proposals

The municipality invites and receives proposals on the forms attached hereto at the office of "Unidad de Adquisición y Contratación Institucional" (UACI) until a.m./ p.m. on \_\_\_\_\_, 2000

Bids will be publicity open and read aloud immediately following said time on said date. Bids must be sealed and addressed to:

Unidad de Adquisición y Contratación Institucional  
Municipality of \_\_\_\_\_  
Public tender N° \_\_\_\_\_  
"Proposal for the Collection of Solid Wastes"  
Building of the Municipal Town hall

##### 2. Scope of Work

The work to be performed under this contract shall consist of the rendering of the solid waste collection service. It includes all the items contained in this proposal including the provision of all labor, equipment, materials, tools, insurance, supervision and all other items necessary to provide the service. The contract modality will be "lump sum".

##### 3. Term of Contract

The term of this contract will be for \_\_\_\_\_ years beginning upon \_\_\_\_\_, 2000 and ending \_\_\_\_\_, 2007. 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 \_\_\_\_\_, 2007, that this contract may be extended for an additional period of \_\_\_\_\_ ( ) years, upon the same terms and conditions as set forth in this contract.

##### *Comment*

*The duration of a solid waste collection service contract ordinarily is governed by 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 this type of service since it compliments the average five-year straight-line basis of depreciation for collection vehicles.*

*The experience in San Salvador shows that a straight-line basis of depreciation of 7 years with enough maintenance to new vehicles can be considered, as long as this saving shows a lower cost of tariffs or the "lump sum" proposal.*

*Whereas an extension of the contract can be established on a mutual agreement basis, the municipality will have the chance of having an appropriate contract price, as long as it is satisfied with the service provided and that the regulations in force so allow it.*

#### **4. Preparation and Submission of Proposal**

All proposals must be prepared and signed by the bidders on the form attached hereto and without removal from the formularies attached the instructions for the bidders of the contract and technical basis hereto.

If submitted by a corporation, the bid must be signed by an officer of it or by other person legally authorized to do so on behalf of the corporation.

If bids are signed by another individual or corporation shall have attached hereto a power of attorney evidencing authority of the individual/corporation to sign the bid.

All bids must be legibly written. Proposed 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 Solid Waste Collection".

If forwarding by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid.

The municipality reserves the right to reject any bid not prepared and submitted in accordance with the provisions hereof.

Conditional bids will not be accepted.

#### **5. Examinations on Area being Served**

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 labor, equipment and material needed thereon.

The bidder shall make its own determinations as to conditions and shall assume all risks and responsibility and shall complete the work and under conditions he may encounter or create, without extra cost to the municipality.

The bidder agrees that if he should execute the contract he shall make no claim against the municipality because of estimates or statements made by any officer or agent of the municipality 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 UACI shall make all such documents available to the bidders.

The bidders shall submit the Examination and Acknowledgement of Area Statement that is shown in Annex

## 6. Guarantees

Guarantees may consist of bonds or bank guarantees issued by insurance companies or banking institutions, duly authorized by the Superintendence of the financial system in El Salvador and accepted by the municipality.

Foreign financial companies will issue bonds as long as they made it through any of the institutions of the financial Salvadoran system, which will perform as the confirming entity of such issuance.

### *Comment*

*The guarantees being deposited in trust will be in accordance to what is set forth in the Law of Contracting and Acquisition of Public Administration, articles 31, 32, 33, 35 and 38.*

### 6.1 Bid Bond

Each bid must be accompanied by its corresponding guarantee to maintain the bid in the amount of ¢ xxxxxxxx (xxxxxx colones), payable to the municipality of \_\_\_\_\_, as a guarantee to maintain the conditions and bid prices as from the day of the bid opening until one hundred and twenty days (120) after such opening act.

### *Comment*

*The contracting modality will be "lump sum", therefore a guarantee that accounts for a percentage from the total amount (frequently from 5 to 10%) should exist.*

The bidder who was awarded the bid must expand the validity of the guarantee to maintain bid up to ninety (90) days after the bidder is informed of the awarding of the contract to him.

The bid bond will become effective in the following cases:

- a) If the bidder does not formalize the contract within the fifteen (15) days after being informed of the awarding.
- b) If the bid bond is not presented at the moment of entering the respective contract.
- c) If the bidder withdraws its bid without any justifiable reason.

The amount set forth in the bid bond will be the sole remedy of the municipality as liquidated damages.

The failure to enter the contract will allow the municipality to award the contract to the next best qualified bidder or the work is re-advertised for proposals as the municipality may elect.

## 6.2 Performance Bond

At the moment of entering the respective contract, the awarded bidder will deliver the performance bond in the amount of (10%) from the total value contracted for the *seven years* of the service, for the municipality of \_\_\_\_\_ and with a duration of *seven years* plus 90 days as from the day the contract was signed.

This bond is granted to ensure that the contractor will duly comply with all the clauses of the contract and that the contracted service will be received with total satisfaction and in accordance with the reestablished quality of service; otherwise, if no justifiable reason is exposed, the performance bond will become effective.

**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.

### *Comment*

*The performance bond ensures the municipality about 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 municipality should the contractor fail to render the service, forcing the municipality to deliver the service by itself or to contract another collector.*

*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 municipality and the 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 ones.*

*The amount of the bond should reflect a realistic estimate of any additional costs for supplying the 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 revenues should provide the municipality with adequate protection.*

*If the municipality insists that the required amount of the bond 100% of the contract's revenue, the contract should provide for an annual prorated reduction in the bond amount over the term of the contract.*

## 6.3 Satisfaction Bond

At the moment of signing the respective contract, the awarded bidder will deliver a satisfaction bond in an amount equal to six month's operation billing and payment in favor of the municipality of \_\_\_\_\_ and with a duration of *seven years* plus 180 days as from the day the contract was signed.

This bond is granted with the purpose that the workers and suppliers suffer no damage or injustice, due to a lack of payment by the contractor, for the materials and labor used to provide a public service, as well as a cautious measure for the municipality's interest against a suit for ancillary liability.

## 6.4 Liability Insurance

The contractor shall maintain in full force and effect throughout the term of this contract and throughout any extension or renewal thereof a liability insurance in at least the limits specified below:

Coverage	Minimum limits of liability
Workmen's Compensation Employer's liability	According to labor laws
General liability:	
Bodily injury	Each occurrence
Property damage	Each occurrence
Automobile liability:	
Bodily injury	Each person and occurrence
Property damage	Each occurrence

### *Comment*

*Due to the public nature of the contractor's work, the municipality will want to require its contractor to be adequately insured. The municipality must recognize that the requirements for insurance will directly affect the contractor's cost of providing this service. In addition, the municipality 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.*

*It is suggested that before setting levels for various insurance coverage and bonds the municipality examine the market to ascertain the availability of such coverage and their costs. The municipality 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.*

*Policies should be issued by insurance companies accepted by the municipality and delivered prior to commencement of any contract work, by confirming through certificate that it is in force; policies shall not be cancelled or allowed to mature. Any change of the conditions of the policies shall be communicated in writing to the municipality within thirty (30) in advance before becoming effective.*

*The coverage to ensure the contractor's liability towards the workers is requested whenever labor laws do not cover benefits for the workers in these type of contracts.*

## 7. Qualifications and Competency of Bidders

Each bidder is required to submit with the bid certified supporting data regarding its 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 bidders' equipment for use on the contract (which may include equipment that the bidders intends to purchase from the municipality or from suppliers);
- b) A copy of the latest financial statements prepared by an outside certified accounting firm for the bidder (or its parent corporation);
- c) Certificate from UACI that the bidder is not excluded to enter a contract with the municipality.

### *Comment*

*See article 14 of the Law of Acquisitions and Contracts of Public Administration.*

- d) Evidence in form of certificates from its customers that the bidder has an experience of \_\_\_\_\_ ( ) years to \_\_\_\_\_ ( ) years of rendering the collection and sweeping services.

#### **8. Basis of the Proposal**

The requested proposals will be based on “lump sum”.

#### **9. Addenda and Explanation**

The municipality shall make addenda or amendments to the bid bases in writing. All the parties concerned that have withdrawn the bid basis will be informed of so.

The interested parties that have withdrawn the bid basis will ask in writing to UACI until ten (10) calendar days prior to the bid date.

The municipality shall modify the date foreseen for the bid, provided that such addenda, amendment or consultation require of a prudent time so that the interested parties can follow any new condition.

***Comment***

*See articles 50 and 51 of op.cit. law*

## CONTRACT SPECIFICATIONS

### I. Definition

They are as follows for the contract herein:

**Activity or functional categories of solid waste management:** Solid waste management consists of the following activities or functional categories: collection, sweeping, recycling, transfer, treatment and final disposal of wastes;

**Accumulation of wastes:** wastes amassed on public roads, especially bulky ones, and due to their weight and volume they cannot be manually collected;

**Physical agent:** Different forms of energy to which workers can be exposed to; such as noise, vibrations, abnormal pressure and extreme temperatures.

**Chemical agent:** Substances, compounds or products that can penetrate into the body through the respiratory system as dust, smoke, fogs or vapors, according to the nature of the activity people are exposed to, these can be absorbed by the body through skin or ingested.

**Dead animals:** any animal found dead, which has to be taken to the final disposal site;

**Competent authority:** the Ministry of Health, the body that regulates public services or the municipality according to each case;

**Manual sweeping and cleansing of public roads:** sweeping and cleansing operation that encompasses pedestrian footpaths, curbsides, division stripes, parking lots and public parks performed exclusively with manual tools and/or with human force;

**Mechanical sweeping:** sweeping and cleaning of streets or sidewalks by using machinery and equipment;

**Bags:** plastic sacks designed to contain wastes, with sufficient strength to keep its physical integrity when lifted, firmly tied up at the top and not exceeding a capacity of (100) liters and a weight of (15) kilos;

**Bundle:** garden waste, newspapers or magazines firmly tied up and forming an easy and manageable package, such shall not exceed a length of (90) centimeters or (15) kilos in weight;

**Paved streets:** streets with a concrete layer, bituminous or asphalt mixtures, paving stone, flagstones or any other type of material that resists vehicle traffic;

**Back load truck:** solid waste collection vehicle loaded at the back;

**Side load truck:** solid waste collection vehicle that is loaded at the side;

**Compaction truck:** vehicle furnished with a solid waste compacting mechanism;

**Non-compaction truck:** vehicle unfurnished with a solid waste compacting mechanism;

**Container-carrying truck:** vehicle equipped with a haulage mechanism to lift and place a big size solid waste container on top of its platform;

**Composition of solid wastes:** it is determining the quality and quantity of a solid waste by identifying its contents and interesting properties with a specific purpose;

**Cell of a sanitary landfill:** a determined physical space in a sanitary landfill where wastes are distributed, compacted and covered every day until the cell is sealed;

**Gathering centers:** places where duly separated recyclable material is received, purchased or paid, in order to undergo a partial process and then it is transported to the recycling or storage facilities;

**Community depot center:** place where citizens dispose of on their own of several recyclable materials with no profits in their corresponding recipients;

**Customers or users:** Individuals or companies that receive or are in conditions of receiving the service of solid waste management from those who render the service;

**Health Code (*Codigo de Salud*):** A code created through Legislative Decree No. 955 on May 11<sup>th</sup>, 1988;

**Municipal Code (*Codigo Municipal*):** A code created through Legislative Decree No. 274 on February 5<sup>th</sup>, 1986;

**Compost:** Microbial-controlled degradation of organic solid wastes in order to develop a product with potential value as a land conditioning product;

**Returnable container:** recipients that are returned to the customers;

**Recyclable content:** Materials or products whose elaboration involved raw material that can be recovered, reused or processed to turn it again into raw material or useful products;

**Recycled content:** Material or product whose elaboration involved raw material recovered from other materials or products;

**PSP contract:** Legal document that provides rights and obligations, by means of which private sector participation (PSP) is implemented to render the service after a competitive and open process;

**Control by the enterprise:** it is understood that control will exist by a collection enterprise or the solid waste confinement activity (dump site) when an individual or an enterprise: (i) owns more than (50%) of capital stock, be it directly or by means of a branch, subsidiary or one or more individuals or enterprises; or (ii) has the right to choose most of the people of its board of directors or stockholders' board; or (iii) has the right to veto or void the decisions by its board of directors or stockholders' board; or (iv) has the right to manage it by means of an administration contract, a proxy or similar instruments; or (v) has the right to appoint, replace or remove the manager,



legal representative, chairman, secretary or treasurer of the enterprise; or (vi) has the capacity by itself or by a mediator to compromise the enterprise through an agreement or contract with any market agent, and it is unnecessary that such agreement or contract be approved by the directive board or stockholders' board;

**Correction:** each and every measure to be adopted in order to settle deficiencies;

**Long-term marginal cost:** it is the increment in the total long-term cost for providing a service, considering the increase of one unit in the amount supplied;

**Total long-term cost:** it is the annual constant value required to meet efficient exploitation and investment costs of an optimized project for replacement by the provider of the service, and calculated in order to meet the demand that is consistent with a current net value of such project being 0.

**Waste:** every solid or semisolid animal or vegetal refuse subject to putrefaction, originated from the handling, preparation and consumption of foods;

**Determination of micro-routes:** detailed description of the route to be followed to render the collection, mechanical or manual sweeping of solid wastes;

**Applicable provisions:** All the legal norms in the Sanitary code, Law No. 41 of 1999, the decrees and regulations issued by the Ministry of Health and any other legal provision applicable to the solid waste management sector that are not explicitly or implicitly derogated by this current law, as well as by the provisions applicable to the sector and pronounced by the regulating entity, and the public contracting and private contracting norms applicable to service providers;

**Final disposal:** action of permanently deposit solid wastes in appropriate sites and conditions, in order to avoid damages to the environment and the public health;

**Illegal solid waste disposal:** it is the unauthorized discharge, deposit, injection, spill, percolation or any other means of leaving a solid waste inside or over a water body or the soil, in a way that such wastes or its pollutants can penetrate the lands, pollute the air or are discharged upon superficial or underground waters;

**Legal solid waste disposal:** it is the deposit or processing of solid wastes in disposal facilities that meet the requirements set forth by law;

**Individual protection equipment (IPE):** any device for individual use during the execution of a job that protects the worker's health and physical integrity;

**Technical specifications:** set of norms that describe the minimum features required, the means and ways of rendering the diverse services;

**Transfer station:** facilities in where solid wastes are transferred by the collection vehicles to large hauling trucks, to carry those wastes to a final disposal site (sanitary landfill). The transfer station is regarded as an intermediate management site;

**Recipient:** any product manufactures with any given material use to hold, protect, manipulate, distribute and present merchandise, from raw materials to finished products, and from the manufacturer to the final user or consumer. All disposable items used for the same purpose will also be regarded as recipients;

**Disposal facilities:** installation used for the final disposal of solid wastes;

**Generator:** any individual or enterprise that, as a consequence of their acts or any process, operation or activity, produces solid wastes;

**Impermeable liner:** interposition of a layer, using natural or artificial materials, which prevents or substantially reduces the trespassing of a liquid. Usually, it means the bottom protection of a sanitary landfill against the trespassing of leachate, but also the superficial protection of the landfill against rainwater;

**Incineration:** process of oxidation, with the presence of free oxygen and in a high temperature;

**Vertical integration:** it is the control by the same individual or enterprise, or by its affiliates, of the operation of several activities or functional categories of solid waste management within the same geographical market (see enterprise control);

**Horizontal integration:** it is the control by the same individual or enterprise, or its affiliates, of the operation of a similar functional category or activity of solid waste management (see enterprise control);

**Environmental Law (*Ley del Medio Ambiente*):** Approved through Legislative Decree No. 233 dated March 2<sup>nd</sup>, 1998 and published in Official Gazette No. 339 on May 4<sup>th</sup>, 1998;

**Street cleansing:** a manual or mechanical process that facilitates the removal or collection solid wastes accumulated on public roads that, due to their volume or physical features, they cannot be collected and transported along with the wastes coming from street sweeping or with domestic, commercial or industrial wastes;

**Leaching:** displacing of substances contained in solid wastes due to the flowing of a liquid through them;

**Leachate:** liquid effluent from the leaching, and induced by external humidity sources;

**Post-consumer material:** any type of domestic, residential, commercial or industrial generated product that has met the purpose for which it was manufactured, and such has been deviated from the solid waste flow for purposes of collection, recycling and disposal. Those solid wastes that commonly return to the industrial manufacturing process are excluded;

**Recyclable material:** those materials with a potential of being processed and reutilized as raw material to elaborate other products;

**Recovered material:** a potential recyclable material that has been removed from the rest of solid wastes for their sale, utilization or reutilization, be it by means of separation, collection or processing;

**Collection market:** it is a geographical duly defined where there is no exclusiveness for the collection of special wastes;

**MARN:** The Ministry of Environment and Natural Resources;

**MSPAS:** The Ministry of Public Health and Social Assistance. It is responsible for planning health policies and executing and assessing the activities related to health. It partially regulates the activities related to municipal wastes; it also establishes, regulates, oversees and partially operates, manages and finances wastes from health establishments;

**Monitoring:** obtaining of data indicators about the quality level of an environment, a service, a functioning or any given activity;

**Municipal ordinance:** These are rules of general application within the municipality on local matters. They will become valid eight days after its publication in the Official Gazette (Art. 32 of the Municipal Code);

**Issuing of license for collection service:** process by means of which the regulating entity grants a license to anyone who requests it, as long as it meets the technical requirements set forth by the law and its regulation. Applicants will request it by means of an application available to those interested;

**Contingency plan:** the global set of strategies, actions and procedures previously established in order to control and face the situations that might take place within solid waste management, whose design has considered all the events and sources that can cause such contingent events;

**Collusion price:** those prices that surpass (15%) of the prices estimated by the regulating entity from the costs of an efficient model company for each area and activity;

**Service provider:** the individual or public, private or mixed enterprise responsible of rendering the solid waste management service;

**Public service provider:** it is understood as the central government, public enterprises and municipalities;

**Private service provider:** the individual or enterprise with a proved technical and administrative experience and financial capability to become the provider of the cleansing service, by means of a private sector participation (PSP) contract granted by the competent authority, in compliance with the procedures and formalities set forth in the current law;

**Service rendering with regulated price:** the regulated price of the service applies to long-term investment cases, a term equal or greater than 20 years. For the rendering of the confinement service (dump site), it will be conducted by means of a regulated price, for which the service provider (public or

private) will show the corresponding fee study in compliance with rules set forth in this law and approved by the regulating body;

**Processing:** any method, system or treatment used to change the physical features or the chemical content of solid wastes, including the re-manufacturing of the products;

**Process or competitive bid for market or service awarding:** these are the required formalities to award a contract based on what is set forth in the current law. Such process will be conducted by means of a public tender published domestically and overseas, and at least (3) bids should exist at the moment of opening the proposal;

**Reuse-recycling-reduction-respond program:** it is the integral solid waste management program in which public institutions, service providers and the community in general participate;

**Recycling:** process by means of which solid wastes are picked up, separated, processed and reutilized as raw material or products;

**Reuse:** every operation in which the recipient, planned and designed to achieve a minimum number of circulation or rotations throughout its cycle of duration, is refilled or reutilized with the same purpose for which it was designed;

**Reduction:** it is the strategy tending to reduce the volume and the polluting load of the pouring generated from a productive process;

**Recovery:** process by means of which materials are recuperated from solid wastes;

**Domestic waste:** these are solid wastes generated at residential real estate by the normal activities performed by the occupants, with a specific weight less than  $500 \text{ kg/m}^3$  and that can be stores in plastic bags of up to (100) liters or in containers of up to (380) liters;

**Health establishment wastes:** solid wastes coming from any unit that provides medical assistance to population or animals, as well as from research centers, pharmacology and health development or experiments and deteriorated and expired medications;

**Wastes from a large generator:** wastes generated by commercial, institutional, industrial establishments and/or services whose specific weight is less than  $500 \text{ kg/m}^3$  and their amount generated per day and per generator exceeds a volume of (120) liters or (60) kilos;

**Special waste:** wastes coming from civil construction works, remodeling or demolition of public or private real estate, unusable goods and wastes from pruned tree branches and garden cleansing;

**Wastes from street sweeping and cleansing:** wastes coming from street sweeping activities, including but not limited to, domestic, industrial or commercial wastes illegally dumped on public streets; leaves, tree branches, dust, papers, food waste, human and animal excreta, glass, packages, dead

animals, cardboard, plastic and any other similar solid wastes to the previously mentioned left on public roads;

**Municipal Regulation:** Regulations constitute norms, provisions and mandates on the internal municipal regime and rendering of services. The will become valid eight days after being published (Art. 33 of the Municipal Code);

**Regulating entity (regulator):** *An entity that must be created in order to regulate the rendering of solid waste management services throughout the country;*

**Sanitary landfill:** it is a final disposal method of solid wastes in the ground that does not bothers or endanger public health, the environment or the population's safety. It uses engineering principles to scatter wastes in thin layers and confine them within the smallest area possible, and cover them with a compacted soil layer at the end of every day of operation;

**Industrial wastes:** non-toxic wastes resulting from any type of industrial process, except for the processes related to the construction of works of any nature;

**Hazardous wastes:** it is the waste that, due to its intrinsic features, specially combustibility, reactivity, corrosiveness, toxicity and pathogenicity features, represent a sensitive risk to human health or the environment, and the competent authority is in charge of setting the boundaries for the acceptance of such risk;

**Reutilization:** the usage, more than one occasion, of items for the purpose they were originally created, or for any other use that does not require the processing of such items;

**Collection route:** a zone that encompasses several solid waste collection points, which is attended by a single unit or collection truck;

**Test routes:** routes that have been designed with the specific purpose of testing the validity of the normal times established for each specific task;

**Separation at the source:** systematic classification of solid wastes at the place where they were originated;

**SINAMA:** National Environment Management System;

**Tare calculation system:** a means used to determine the weight of each truck without being loaded. As a result of the effect caused by fuel, lubricants, accumulated and unloaded wastes and other elements upon tare estimated by the manufacturer, empty trucks can be weighted several times during the same month in order to determine the mean tare. Such procedure will also be useful to determine the official weight of solid wastes collected;

**Weighting system:** For official calculation purposes of the weight of wastes collected, only the devices at the transfer station and in the sanitary landfill will be considered as the weighting system, which consists of weighbridges and other instruments utilized to calculate the trucks' weight, loaded or empty and the issuing of official weight certificates;

**Compaction time:** time required to compress solid wastes by means of the compaction mechanism of a truck;

**Cost rate of debt capital:** it is the profitability rate of a secure asset plus a premium for debt risk. The premium for debt risk will be equal to (2%);

**Cost rate of own capital:** it is equal to the profitability of the secure asset plus a premium for market risk. The premium for market risk will be (7%);

**Average cost rate of capital:** it is the estimated average of the debt capital cost and the cost of own capital or property;

**Profitability rate of secure assets:** it is the annual effective average interest rate of the 12 months prior to the date when the fee formulation was set, of the 100-year bonds issued by the government of the Republic of El Salvador;

**Transfer:** action of moving the wastes from collection vehicles to vehicles with a greater capacity, in order to transport a greater amount of them at a lower cost;

**Treatment:** process to which all solid wastes are subject to, in order to make them reusable and/or eliminate their danger, prior to their arrival to the final disposal;

**Verification of effective or competitive costs:** a power by the regulating entity to verify that the prices resulting from a bid or a open process are appropriate, before the contract is awarded in a definitive manner. For such verification, the regulating body will base its decision upon the parameters of an efficient model enterprise;

**On-route trip:** trip within a route to collect solid wastes;

**Off-route trip:** any trip outside the collection routes;

**Collection zone of ordinary services:** the geographical area inside of which the service provider has rights and obligations that are set forth by this law and in the corresponding contract. The collection zone is not exclusive, as free competition is allowed for the collection of special 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 as set out by this agreement on the \_\_\_\_\_ day after the effective date.

**Term** – The term of this contract shall be for a seven (7) year period beginning \_\_\_\_\_, 2000 and terminating \_\_\_\_\_, 2007. 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 \_\_\_\_\_, 2007, that this contract may be extended for an additional period of \_\_\_\_\_ ( ) years, upon the same terms and conditions as set forth in this contract.

### Customers, types and amount of wastes

*The type of users to be served and amount of wastes to be collected and the measuring modality of the wastes should be set herein. In this model of contract we will assume it to be the municipality of San Salvador, where the study recommends that residential users are billed once a month according to a mobile average of six months from their monthly energy consumption times an index. Likewise, ICI clients shall be billed according to a daily discharge average of "volumetric units"*

**Exclusive right** – The municipality, as a grantor, grants the contractor, as a grantee, the exclusive right during the term of this contract to collect and dispose of residential solid waste collected within the area as defined in clause 3 of this contract herein. The municipality warrants that it has the authority to grant such an exclusive right as described in this contract and as delegated to it by the Municipal Code.

The municipality 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.

**Compliance with applicable laws** – The preparation, awarding, formalization and effects of the contract deriving from the bid herein will be subject to the provisions of the Law of Acquisitions and Contracts of Public Administration (LACAP), its code and any other regulations that may apply. If there is a lack of the aforementioned, civil laws shall apply.

Additionally, and for the faithful performance of its contractual obligations, the contractor shall consider the institutional regulations in force on the matter as an integral part of the contract, which includes the following without being comprehensive

- Law on Consumer Protection
- Environmental Law
- Health Code
- Municipal code

- Regulatory cleansing service ordinance
- Regulatory and Institutional Solid Waste Management Framework

**Bankruptcy** – For the purpose of this clause, “insolvent” 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 part may terminate the contract with \_\_\_\_\_( ) days written notice.

**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 municipality 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 \_\_\_\_\_ ( ) days of receipt of such demand return to \_\_\_\_\_ a written statement that explains reasons for non-performance or delayed, partial or substantial performance during that period and any continuation thereof.

**Force majeure** – Neither the contractor nor the municipality 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 municipality.

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

The municipality and the contractor can reach an agreement through an extraordinary reviewing and cost transfer, by calculating the largest generation of solid wastes produced and pay for the service.

**Arbitration and decisions** – The contracting parties will try to settle their differences through a direct agreement; the demanding party will request the other one in writing by setting the day time and place; the party being requested will reply within a term of 15 days after receiving the request. If a solution is not achieved, the parties can then move to the arbitration from peer arbiters.



Each party shall appoint an arbiter and the third arbiter shall be appointed by consensus between the appointed arbiters. In the arbitrage appeal the issues from the direct agreement that were not solved shall be presented.

**Comment**

*See Arts. 161 to 169 of the op.cit. law*

**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 municipality, which consent shall not be unreasonably withheld.

**Change of ownership** – In the event that the contractor's business assets are sold, the municipality maintains the right to hold the original owner solely liable.

If, however, the municipality 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 municipality 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.

**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 or 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 law 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 provisions.

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.

**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 entitle 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.

**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.

### III. Services, 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).

The 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 \_\_\_\_\_ ( ) day(s) 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 municipality 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 municipality and the contractor.

**Routes and schedules of collections** – The contractor shall provide the municipality 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 municipality shall so notify each resident affected in a manner and time as it chooses.

Not less than \_\_\_\_\_ ( ) days (s) prior to commencing service, the contractor agrees to furnish for the municipality'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 an/or schedules will also be subject to the municipality'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 municipality 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 municipality 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 days, 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 municipality's approval.

**Complaints** – The contractor shall receive and respond to all complaints regarding services provided under this contract. Any complaints received by the municipality will be directed to the contractor's office. Should a complaint go unresolved for more than \_\_\_\_\_ ( ) days, the municipality 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 his contract. The vehicles shall be licensed in the Republic of El Salvador and shall operate in compliance with all state and municipal regulations. All vehicles shall be new.

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 20 cms 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.

**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 municipality 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 municipality 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:

**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 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 contractor when placed in the contractor's collection vehicle, removed by the contractor from a container or removed by the contractor from the customers' premises.

**Notification of residents** – The municipality shall inform all residents as to complaints 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 municipality limit, 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 writing notice is required for any purpose of this agreement. Notice will be considered sent either when received at the appropriate address.

Address for notice to municipality:

Address for notice to contractor:

Address for notice to surety.

**IV. Nondiscrimination**

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

**V. Indemnity**

The contractor will indemnify and save harmless the municipality, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney 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 suit, action, legal proceedings, claims, demands, damages, costs, expenses and attorney fees arising out of the award of this contract or a willful or negligent act or omission of the municipality, 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 limit specified below:

Coverage	Minimum limit of liability
Workmen's compensation	Statutory
Employer liability	_____
General liability:	
Bodily injury	_____ each occurrence
	_____ aggregate
Property damage	_____ each occurrence
	_____ aggregate
Automobile liability:	
Bodily injury	_____ each occurrence
	_____ aggregate
Property damage	_____ each occurrence
	_____ global

Employer's liability coverage shall be required of the contractor and any subcontractor where any class of employee engaged in work under this contract is not protected under the Salvadoran workmen laws.

Prior to the commencement of works, the contractor shall furnish the municipality 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) advance written notice.

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

## VII. Bonds

**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 \_\_\_\_\_ ( ) colones in favor of the municipality.

The surety on the bond shall be a duly authorized corporate surety company authorized by the Superintendence of El Salvador's financial system. 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 the 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 municipality 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 municipality \_\_\_\_\_ ( ) 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 municipality a similar bond to be effective for the balance of the contract period.

## VIII. Permits, Licenses and Taxes

The contractor shall obtain and assume the cost of all licenses and permits set by Salvadoran laws (other than the license and permit granted by the contract) and promptly pay all taxes required by the municipality.

## IX. Basis and Method of Payment

**Rates** – The amount of monthly payments will be determined based on the current values presented at the bid offer (Annex \_\_\_\_\_), by paying the 12<sup>th</sup> part of the annual amount duly adjusted, if any, and deducing all the corresponding values for

the services not rendered and the amount of the fines, plus VAT according to the due month payment criterion.

The values indicated are net without VAT and will include all direct, indirect costs, general expenses, insurance, bonds, utilities, equipment and machinery, works and supplies, taxes and any other right or expenditure from the performance of the contract.

The municipality shall pay within (10) business days as from the presentation of the request of payment, which will be followed by all background.

**Total compensation and adjustments for new or discontinued service** – Before commencement of work under this contract, it shall be the municipality's responsibility to provide the contractor with an accurate address list of dwelling units to receive service, as well as the volume of wastes billed to ICI (industries, institutions, etc) units that receive te service and that correspond to the database with which the municipality bills every month the collection service. Every year and as a whole, the municipality and the contractor will calculate the variation percentage of new ad discontinued to residential units and variations of on the total volume of wastes in ICI units, and will set a compensation that will be applied to the amount of the annual value offered in both cases.

**Escalation** – Annual adjustment of the prices that show the general increase in the operating cost shall be conducted. The adjustments will be made annually after this contract becomes effective.

The annual amount offered will be changed with an annual automatic indexing equivalent to the consumer price index (CPI), when it is less than 2% per year. For CPI greater than 2% and less than 5%, only 2/3 of CPI value shall be applied. For CPI greater than 5%, an indexing of only 60% of CPI value shall be applied.

If the contract becomes effective on a day different to the first day of the month, the percentage of increase in the price index for that month will be prorated accordingly.

**Fuel cost adjustment** – Annual compensation shall be made to the contractor to cover fuel cost increases beyond the control of the contractor which exceeds 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 fue 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.

**Cost transfer** – An extraordinary reviewing with cost transfer will be conducted when a climatic occurrence takes place such as a tropical storm or hurricane (Mitch

type), whose occurrence be equal or greater than 50 years. The probability of occurrence or return period of the event will be estimated through a hydrological survey using the average daily rainfall statistics, which will be applied an statistical analysis with a probability function such as lognormal or Gumbell.

**Petition for unusual or unanticipated costs** – The contractor may petition the municipality 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 municipality 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 of rates.

**Expansion of the area to be served** – The contractor will provide service to any territory annexed by the municipality 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.

**Billing and payment** – The contract shall bill the municipality for the services of the due calendar days, within the five (5) business days of the next month for the amount calculated as follows:

- a) Bill for residential units = 
$$\frac{\text{annual offered amount}}{12 \times \text{compensation index} \times \text{price adjustment}}$$
- b) Bill of ICI units = 
$$\frac{\text{annual offered amount}}{12 \times \text{compensation index} \times \text{price adjustment}}$$

The municipality shall remit payment within ten (10) working days following the end of each month. If any dispute arises, the undisputed amount shall be paid.

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 municipality collects from customers for such service.

### Technical Basis

The following are technical basis which are part to this contract and must be regarded and strictly followed by the contractor.

#### 1. Service Quality Standards and Fines

The following are service quality standards that the contractor must observe and the amount of the fines, which are based on minimum urban wages of AMSS.



GENERAL STANDARD	TYPE OF FINE AND AMOUNT RECOMMENDED
Lack of identification of the truck (number, plates)	2 MUS per truck detected
Lack of uniformity in the presentation of vehicles	1MUS per truck every time the infringement is detected
Ask for contributions (gifts)	1 MUS per person caught in the act (proven)
Staff changing their clothes on public thoroughfare	1 MUS per person caught in the act
Not using the uniform	1 MUS per person caught in the act per day
Inappropriate behavior of rudeness towards the public in general by the collection and/or sweeping staff	1 MUS per person

### Technical Quality Standards

TECHNICAL STANDARDS	TYPE OF FINE AND AMOUNT RECOMMENDED
Non-compliance of the days and time of collection of wastes	3 MUS per vehicle every time it is caught in the act
Every act of excessive noise in the collection duty	1 MUS per occurrence
Abandonment of collection vehicle on public thoroughfare	2 MUS per vehicle abandoned per day
Deposit or discharge of wastes from collection at unauthorized places	2 MUS per discharge
Leave wastes on public thoroughfare (scattered wastes) due to an inappropriate loading by the collection vehicle	1 MUS per case detected
Parking of the collection vehicle on public thoroughfare	2 MUS per vehicle every time it is caught in the act
Leaving wastes scattered during the collection task	1 MUS per case detected
Spilling of liquids percolated on public thoroughfare from collection vehicles	2 MUS per truck every time such infringement is detected.
Searching and selection of materials among the wastes transported by the truck staff or by third parties	1 MUS per truck every time such infringement is detected
Deficiencies in the maintenance, replacement and disinfecting of containers	1 MUS per container every time such infringement is detected
Lack of collection of vegetal wastes from persons and/or public areas	1 MUS per case detected

## 2. Information Rules

The following is information that the contractor must provide to the municipality.

DETAIL OF INFORMATION	PERIODICITY OF DELIVERY
Number of customers attended separated per district	Once per year
Ton collected month by month per route and district	Once per year
Number, type and capacity of trucks used for collection zone	Once per month
Detail of routes	Once per year or every time the route is modified
Detail of frequency and collection schedule per district	Once per year or every time it is modified
Number of employees and salaries per functional category	Once per year
General accounting information, which must include balance, balance sheet, patrimony change statement, details of depreciation separately, cash flow statement, detail of assets separated per asset and detail of cash	Once a year
Detail of cost separated per operation and capital cost	Once a month together with collection of bill