

MEMORANDUM OF UNDERSTANDING
INDEPENDENT COLLECTION CONTRACTOR AUTHORIZATION

- ✓ THIS MEMORANDUM OF UNDERSTANDING AND AUTHORIZATION (hereinafter "Memorandum") is made this _____ day of _____, 20____, by and between MONTGOMERY COUNTY, MARYLAND (hereinafter, "County"), and _____, (hereinafter, "Contractor").

R E C I T A L S

A. Pursuant to County Council Resolution No. 12-944, adapted December 8, 1992, the Solid Waste Collection and Disposal District was expanded to include the entire unincorporated area of the County.

B. The expanded Solid Waste Collection and Disposal District consists of two Subdistricts, namely Subdistrict A and Subdistrict B. Subdistrict A consists of the Solid Waste Collection and Disposal District, as it existed on December 8, 1992. Subdistrict B is the remainder of the unincorporated areas of the County.

C. Montgomery County Code 1994, as amended, Section 48-29(b) provides in pertinent part:

"Within the solid waste collection district, no person, firm, or corporation shall engage in the business of collecting solid waste as herein defined from any single-family or double-family dwelling unit. The county or its contract agent shall be the exclusive collection agency for these dwelling units. The county or its contract agent shall also be the exclusive collection agency for any multi-family dwelling or multiple-group dwelling (apartment house) comprised of at least three (3) but no more than six (6) dwelling units, unless the owner(s) of such multi-family dwelling or multiple-group dwelling shall request, in writing, to the director that his (or her) property be excluded from the county solid waste collection Services".

D. The County desires to provide collection services to its residents and the Contractor desires to provide these services on the County's behalf.

E. The County desires to designate the Contractor as its authorized collector for the purpose of providing collection services on behalf of the County within Subdistrict B.

F. The Contractor desires to be designated as the County's authorized collector for the purpose of collecting, on behalf of the County, non-recyclable solid waste generated by county residents.

G. The Contractor will make arrangements for collection directly with the residences. Therefore, in Subdistrict B the disposal charge will be billed on the tax bill and the Contractor will bill the collection charge directly to the resident.

H. Residences have the ability to move from Subdistrict A to Subdistrict B or Subdistrict B to Subdistrict A provided that the requirements of Resolution 12-944 are met. If a household moves from Subdistrict A to Subdistrict B, the Contractor may provide collection services on behalf of the County to such household. If a household moves from Subdistrict B to Subdistrict A, the Contractor will no longer be authorized to provide collection services on behalf of the County to such household.

I. The health, safety, and welfare of the residents of Montgomery County, Maryland, are protected by the County's provision of proper disposal facilities for all municipal solid waste generated within the County.

J. The County's arrangements for collection and disposal of solid waste protect the residents from unlimited exposures to "Superfund" sites and potential liabilities.

K. The County's arrangements for collection and disposal assure that its residences are billed only for actual solid waste management costs incurred.

L. The parties acknowledge that once a resident puts solid waste out for disposal by the County, the County is the owner of the solid waste from the point of pick-up even when the solid waste is picked up by an authorized collector on behalf of the County.

W I T N E S S E T H

NOW WHEREFORE, in consideration of the mutual terms and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Designation of Authorized Collector. Contractor is designated as the County's independent authorized collector for the purpose of collecting non-recyclable solid waste for disposal on behalf of the County from residents within Subdistrict B. This designation is expressly conditioned upon the terms of this Memorandum. The Contractor, its' employees or agents, are not agents of the County. The Contractor is not authorized by this Memorandum to pick up solid waste that is set out for recycling (including yard waste for composting).
2. Term. This Memorandum is effective upon its execution by both parties and unless otherwise terminated according to the terms of this Memorandum, expires upon the earlier to occur of one year of the anniversary of the effective date of this Memorandum (unless otherwise renewed) or expiration of the Contractor's license issued pursuant to Montgomery County Code 1994, as amended, authorizing it to collect solid waste within Montgomery County.
3. Collection of Solid Waste
 - a. Arrangements with residents. Contractor must collect non-recyclable solid waste from residences with six or fewer dwelling units with which it individually contracts within Subdistrict B. Contractor will bill the residences for the costs of collection only. Contractor must not bill the residences for any disposal costs whatsoever.
 - b. Performance of Collection. (1) Collection service must be provided regularly and in full accordance *with* the approved statement of service furnished to the customer. Collections shall not be made prior to 7:00 a.m. (9:00 a.m. on federal holiday and Sundays) nor after 9:00 p.m. on any weekday (Monday through Sunday, including federal holidays). (2) Care must be taken in the loading and transportation of solid waste so that it is performed in a sanitary manner and none of it is scattered or spilled either on private property, or public streets. Any solid waste spilled by the Contractor must be immediately picked up and removed by the Contractor.
 - c. Hold Harmless. (1) The Contractor is responsible for any damage to private property caused by the Contractor's collectors in the course of performance of this Memorandum. The Contractor must replace or restore to its original condition any such damaged property at no cost to the occupant or the County. (2) The Contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the Contractor's negligence or failure to perform any contractual obligation under this memorandum or any contract for collection with any resident within Subdistrict B. The Contractor must indemnify and save the County harmless from any loss, cost, damage, and other expenses; including attorney's fees and litigation expenses, suffered or interred due to the Contractor's intentional or negligent actions or failures to act. The Contractor must defend the County in any action or suit brought against the County arising out of the Contractor's negligence, errors, act, or omissions under this memorandum or any contract for collection services. The negligence of any agent, subcontractor or employee of the Contractor is deemed to be the negligence of the Contractor. For the purpose of this paragraph, County includes it's boards, agencies, agents, officials, and employees.

d. Delivery of Non-recyclable Solid Waste. The Contractor agrees that in consideration of the County authorizing it to be the County's independent contractor to collect solid waste within Subdistrict B on behalf of the County that it will deliver the solid waste collected under this Memorandum to the County's transfer station in Derwood, Maryland (the "Transfer Station"), unless otherwise directed by the County to another location within Montgomery County, Maryland.

4. Non-commingling of Waste

a. Rule. The Contractor must not commingle solid waste collected from residential units authorized for service within Subdistrict B with any other solid waste. The Contractor's collection vehicles used for collection of solid waste under this Memorandum must be identified with the County's decal referenced in Section 7 and shall only be used in the collection of solid waste under this Memorandum unless the County is notified otherwise.

b. Inspection of Loads. The County has the right to monitor, inspect, and evaluate all loads of solid waste brought by the Contractor to the Transfer Station or such other facility as the County may designate to assure that only -materials appropriate for disposal are contained in the load, that the solid waste collected on behalf of the County is not commingled with waste from others outside of Subdistrict B or for any other lawful reason.

c. Procedure for Inspection of Loads. The County may inspect a load of solid waste brought in by the Contractor in accordance with the following procedures: (1) If the County designates a truck to be examined, the County will promptly attempt to contact the Contractor by either telephone call or telefax at the number indicated below (unless the Contractor has designated a different phone or telefax number in writing) to advise the Contractor that the County intends to inspect the load. (2) The County will wait a maximum of-four hours for a representative of the Contractor before inspecting the load, if the Contractor has either been unreachable or has indicated that it desires to have a representative resent at the time of inspection of the load. At the expiration of four hours from initial designation of the load for inspection, the County will inspect the load whether or not the Contractor is present. If it appears from an inspection of the load that solid waste has been commingled from sources other than residences within Subdistrict B, the County will remove the suspect material from the load, retain the weigh scale ticket and other pertinent information on the load, and issue a notice to the Contractor of the alleged breach of this Memorandum prohibiting the commingling of solid waste.

d. Cooperation with Investigation. The Contractor agrees to cooperate by providing requested information as to the origin and collection of the suspicious material. If upon investigation, the County determines that the suspect material in fact originated from a source other than legitimately in Subdistrict B, the County will issue a notice to the Contractor that the Contractor has breached this Memorandum.

e. Liquidated Damages for Commingling of Solid Waste. The Contractor acknowledges that determination of actual damages for commingling of Subdistrict B and non-Subdistrict B waste is impractical and would be uncertain. The Contractor further specifically acknowledges that the liquidated damages set forth in this article are fair and reasonable compensation to the County for the Contractor's breach as follows: (1) For a first time breach, the Contractor must pay as liquidated damages the disposal charge billed at the Transfer Station for the load which contained solid waste collected from residences inside Subdistrict B and residences and other sources outside of Subdistrict B. (2) For a second breach, the Contractor must pay as liquidated damages the disposal charge billed at the Transfer Station for any load which contains solid waste collected from residences inside Subdistrict B and residences and other sources outside of Subdistrict B plus the sum of \$750.00. (3) For the third through the fifth breach, the Contractor must pay as liquidated damages the disposal charge billed at the Transfer Station for any load which contains solid waste, collected from residences inside Subdistrict B and residences and other sources outside of Subdistrict B. Additionally, the Contractor must pay the tip fee at the Transfer Station for all loads brought to the Transfer Station by or on behalf of the Contractor for a period of two weeks following each breach. (4) For a sixth breach, the Contractor must pay as liquidated damages the disposal charge billed at the Transfer Station for any load which contains solid waste collected from residences inside Subdistrict B and residences and other sources outside of Subdistrict B. Additionally, the Contractor must pay the tip fee at the Transfer Station for all loads brought to the Transfer Station by or on behalf of the Contractor until termination of this Memorandum. If the Contractor breaches this Memorandum six or more times by bringing in commingled loads, the County may terminate this Memorandum at any time upon forty-five (45) days advance written notice as described in Section 9 of this Memorandum.

f. Prohibition against "pass - through" of liquidated damages. Any disposal charge and other amounts imposed, as liquidated damages under this Memorandum must not be passed through to residences within Subdistrict B. Pass-through of any such amount is grounds for the County to terminate this Memorandum upon forty-five (45) days notice, per Section 9 of this Memorandum, without regard to the number of prior breaches of this provision of the Memorandum.

5. Notice to Residences. The Contractor must issue a copy of an approved written statement of service, as described in Montgomery County Code 1994, as amended, Section 48-21 (a) (3), to its contracted households in Subdistrict B no later than August 22, 1993. The statement of service must include notification that the Contractor will no longer be billing the resident for disposal charges and must include the following statement or an equivalent alternative statement acceptable to the Department of Environmental Protection:

"EFFECTIVE WITH THE 1994 FISCAL YEAR BEGINNING JULY 1, 1993, YOUR HOUSEHOLD IS INCLUDED IN SUBDISTRICT B OF THE COUNTY'S SOLID WASTE COLLECTION AND DISPOSAL DISTRICT. EXCEPT FOR THE COLLECTION SERVICE PROVIDED BY OUR COMPANY, YOU WILL PAY FOR ALL SOLID WASTE SERVICES WITH YOUR TAX BILL. THIS REDUCES OUR COSTS BECAUSE AS OF SEPTEMBER 1, 1993, THE COUNTY WILL NO LONGER CHARGE *OUR TRUCK* A DISPOSAL FEE. THE COUNTY IS REQUIRING US TO ASSURE YOU THAT OUR BILLING COSTS TO YOU DO NOT INCLUDE ANY COUNTY DISPOSAL FEES. THE IMPACT OF THIS CHANGE ON YOUR BILL IS: (fill in statement of billing impact)".

During the term of this Memorandum an approved written statement of service, including the following statement or an equivalent alternative statement, acceptable to the Department of Environmental Protection must be provided to any new customers within Subdistrict B:

"YOUR HOUSEHOLD IS INCLUDED IN SUBDISTRICT B OF THE COUNTY'S SOLID WASTE COLLECTION AND DISPOSAL DISTRICT. EXCEPT FOR THE COLLECTION SERVICE PROVIDED BY OUR COMPANY, YOU PAY FOR ALL SOLID WASTE SERVICES WITH YOUR TAX BILL. THIS REDUCES *OUR COSTS* BECAUSE THE COUNTY DOES NOT CHARGE *OUR TRUCK* A DISPOSAL FEE. WE ARE REQUIRE.D BY THE COUNTY TO ASSURE YOU THAT OUR BILLING COSTS TO YOU DO NOT INCLUDE ANY COUNTY DISPOSAL FEES."

6. Information to be Provided by the Contractor. (N/A)

~~a. Attached to the Memorandum. (1) The Contractor represents that Exhibit A attached to this Memorandum is a true and correct list of collection vehicles used or to be used by or on behalf of the Contractor in carrying out collection services under this Memorandum. Exhibit A includes the vehicle license number, Montgomery County Code 1994, as amended, Chapter 48 registration number identification of other jurisdictions in which the vehicle is authorized to collect solid waste, the year of the vehicle, the capacity of the vehicle and an indication whether the vehicle is to be used to collect solid waste within Montgomery County other than from residences within Subdistrict B. (2) The Contractor represents that Exhibit B attached to this Memorandum is a true and correct list of collection vehicles used or to be used by or on behalf of the Contractor to collect waste other than residential waste within Subdistrict B. Exhibit B includes the vehicle license number, Montgomery County Code 1994, as amended, Chapter 48 registration number, identification of other jurisdictions in which the vehicle is authorized to collect solid waste, the year of the vehicle, and the capacity of the vehicle.~~

b. During the term of the Memorandum. (1) During the term of this Memorandum the Contractor must provide the County with quarterly updates of Exhibits A and B. (2) Commencing September 1, 1993, the Contractor must provide the County Transfer Station and Solid Waste Regulation and Collection Section, by 7:00 a.m. of each morning, daily telefaxes or hand delivered notices, or notice supplied by alternative methods approved by the Department of Environmental Protection, identifying the trucks which will be used that day to collect solid waste from residences within Subdistrict B. The information must include the vehicle license number, County registration number, and number of the decal issued by the County under this Memorandum. (3) The contractor must maintain, keep at all times, and make available to the County, a separate list of names and addresses of all

customers receiving service with-in Subdistrict B as a part of the list required in Montgomery County Code 1994, as amended, Section 48-1 9 (b) (3).

7. Decals. The County will issue decals to the Contractor based upon indications in Exhibit A and its updates to be applied to the vehicles for identification when the vehicles arrive at the Transfer Station. The Contractor must apply the decals to the vehicles used by it or on its behalf so that they are readily visible.
8. Insurance. The Contractor must maintain insurance coverage's as required by the State of Maryland.
9. Termination.
 - a. Default. The County may terminate this Memorandum upon forty-five (45) days advance written notice for a default under this Memorandum. Upon the effective date of such termination, Contractor will no longer be authorized to collect solid waste on behalf of the County within Subdistrict B. Notwithstanding the foregoing, the County may only terminate for commingling of Subdistrict B and non-Subdistrict B solid waste if the breach is at least the sixth cited commingling breach of this Memorandum.
 - b. Other. The County may terminate this Memorandum upon ninety (90) days advance written notice if it determines that it will bid routes or provide for collection of solid waste with its own forces. This Memorandum will automatically cease to apply within any area of Subdistrict B that opts to be included within Subdistrict A upon the effective date of any such transfer. The County shall give the Contractor at least forty-five (45) days notice of such transfer.
 - c. By the Contractor. The Contractor may terminate this Memorandum upon forty-five (45) days notice to the County.
 - d. Notice to Customers due to Termination. Upon notice of termination under (a) or, (c) above, the Contractor must give its customers in Subdistrict B thirty (30) days notice of discontinued service. The Contractor shall, within fifteen (15) days of the notice to terminate, either (1) provide to the County evidence of such notice to discontinued service to its Subdistrict B customers or (2) provide the County with its list of names and addresses of such customers.
10. Damages. In addition to liquidated damages in Section. 4 of this Memorandum, the County may recover from the Contractor other damages, incidental and consequential, which is may incur by reason of any act or failure to act by the Contractor.
11. Hazardous and Toxic Substances. Manufacturers and distributors are required by the federal "Hazard Communication Standard" (29 CFR 1910:1200), and the Maryland "Access to Information About hazardous and Toxic Substances" law to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The Contractor must comply with these laws, to the extent applicable, and must provide the County with copies of all applicable and relevant documents, including Material Safety Data Sheets prior to performance of services or contemporaneous with delivery of goods.
12. Immigration Reform and Control Act. The Contractor warrants that both the Contractor and any subcontractor do not and shall not hire, recruit or refer for a fee, for employment under this Memorandum, an alien knowing the alien is an unauthorized alien and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (the "Act"), including but not limited to any verification and record keeping requirements. The Contractor further assures the County that, in accordance with the Act, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual's from employment because of such individual's national origin or in the case of a citizen or in intending citizen, because of such individual's citizenship status.
13. Non-discrimination in Employment. The Contractor agrees to comply with the non-discrimination in employment policies in County contracts as required by Section. 118-3 and Section 27-19 of the Montgomery

County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or handicap. The Contractor must include the provisions of this section in all subcontracts.

14. Entire Agreement. There are no promises, terms, conditions, or obligations other than those contained in this Memorandum; and this Memorandum supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into this Memorandum.

15. Applicable Law. This Memorandum must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Contractor must, at no cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal and state and local laws, codes, and regulations. For purposes of litigation involving this contract, exclusive venue, and jurisdiction is in the Circuit Court for Montgomery County, Maryland, or the District Court of Maryland for Montgomery County.

16. Payment's. No payment is to be made by the County under this Memorandum.

17. Recitals. The Recitals at the beginning of the Memorandum are incorporated herein as if fully set fourth.

18. Montgomery County Code. Nothing contained herein constitutes a waiver or modification of the Montgomery County Code, 1994, as amended.

✓ IN WITNESS WHEREOF, this Memorandum is executed this _____ day of _____, 20____.

ATTEST:

Witness Signature

Company Name

By: _____
Owner, Corporate President, or Authorized Agent

Address of Company

Company Phone Number

MONTGOMERY COUNTY, Maryland