

ORDINANCE NO. 558

FRANCHISE AGREEMENT

**FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE
IN THE CITY OF EVERMAN, TEXAS**

APRIL 1, 2005

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MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE
IN THE CITY OF EVERMAN, TEXAS**

STATE OF TEXAS

COUNTY OF TARRANT

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of April 1, 2005, by and between IESI TX Corporation, a Texas Corporation (the "Service Provider"), and the City of Everman, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider a franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bulky Item - Any item measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and tree trimmings.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers and tree trimmings.

Business Day - Any day that is not a Saturday, a Sunday or holiday.

Commercial Unit - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Construction and Demolition Waste - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.

Container - Any receptacle, including, but not limited to, dumpsters and Roll-Offs provided to the City by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste or Construction and Demolition Waste. Containers are designed to hold between thirty (30) gallons and thirty (30) cubic yards of Municipal Solid Waste or Construction and Demolition Waste.

Hazardous Waste - Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Handicapped Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste at the curbside, and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by the City Manager and agreed to by the Service Provider.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Industrial Unit - Any manufacturing, mining or agricultural facility that generates and accumulates Municipal Solid Waste during, or as a result of, its operations.

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Department on Environmental Quality ("TDEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Multi-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste.

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Residential Unit - Any residential dwelling that is either a Single-Family Residential Unit or a Multi-Family Residential Unit.

Roll-Off - A Container with twenty (20) cubic yards to thirty (30) cubic yards of capacity.

Single-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(38), regardless of whether such waste is mixed with or constitutes recyclable materials.

White Good - Any item measuring in excess of either three (3) cubic feet in size or fifty (50) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

SECTION 2. FRANCHISE GRANT.

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, a franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste over, upon, along and across the present and future streets, alleys, bridges and public properties within the territorial jurisdiction of the City. The City agrees that it will not, throughout the term of this Agreement, issue a permit for the collection, removal, transportation or disposal of refuse within the City pursuant to Section 9-10 of the Everman Code to any person or entity other than the Service Provider unless the City reasonably determines that such action is necessary to ensure the welfare of its residents.

SECTION 3. TERM.

The term of this Agreement shall be for a period of five (5) years, commencing on April 1, 2005 and concluding on March 31, 2010.

SECTION 4. OPERATIONS.

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste and Construction and Demolition Waste (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Services").

B. **Nature of Operations.** The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, the title to all Municipal Solid Waste and

Construction and Demolition Waste collected, hauled and disposed of by the Service Provider over, upon, along and across the present and future streets, alleys, bridges and public properties within the territorial jurisdiction of the City. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 5. SERVICE PROVIDERS DUTIES AND OBLIGATIONS.

It shall be the duty and obligation of Service Provider to perform the following services:

- A. Provisions of Equipment and Facilities. Service Provider agrees to furnish trucks, equipment, machinery, tools, personnel, labor, disposal, and any and all other items necessary and sufficient to fulfill its obligations under this contract, at its own expense, to adequately, efficiently and properly collect and transport Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse from residential and commercial properties within the corporate limits of the City in a systematic, clean, healthful and sanitary manner.
- B. Disposal of Refuse. Service Provider will dispose of in a legal manner all Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse collected. All vehicles used by Service Provider for the collection of Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse shall be protected at all times while in transit to prevent leakage or the blowing or scattering of refuse onto the public streets of City or property adjacent thereto. Further, such vehicles shall be clearly marked with Service Provider's telephone number and name in letters and numbers not less than four (4) inches in height.
- C. Sanitation and Health. All collection equipment shall be washed and deodorized as necessary, but a minimum of once per week. Service Provider shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and disposal of refuse as will tend to prevent the inception and spread of infectious or contagious disease and to effectively prevent the creation of a nuisance on any property, either public or private.
- D. Routes and Schedules. Service Provider agrees to establish daily routes and special schedules for the collection of Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse as necessary to fulfill the requirements of this contract. Further, Service Provider will utilize written route books for use in the collection of refuse from all customers. A copy of each route book currently in use by Service Provider will be provided to City upon request and updated monthly so that City shall at all times have full knowledge of the designated route to be followed by Service Provider. City shall have the right to require alteration of service to any premises where unsightly or unsanitary conditions have resulted from inadequate commercial containers or an insufficient number of collections.
- E. Labor Force and Equipment. Service Provider shall employ only superintendents, supervisors, and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall secure the summary dismissal of any person or persons

employed by the Service Provider in or about or on the work who shall misconduct themselves in the performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider.

F. All workers shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties.

G. Service Provider shall furnish and maintain all equipment as is considered to be necessary for performance of work other than that used for daily residential pick up in an acceptable manner and at a satisfactory rate of progress. Service Provider shall agree to furnish and maintain equipment for daily residential pick up. All equipment, tools, machinery used for handling materials and executing any part of the work shall be maintained in a satisfactory, safe, and efficient working condition. Service Provider's equipment shall be of a size and weight as to not adversely effect or create unnecessary damage to existing city streets and roadways.

H. Such equipment shall also be kept in a neat and sanitary condition. Service Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work and services performed hereunder. Service Provider shall provide reasonable protection to prevent property loss or damage to both real and personal property and/or personal injury to persons, including but not limited to employees performing such work and all other persons who may be affected thereby.

SECTION 6. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.

A. Single-Family Residential Units. The Service Provider will collect Municipal Solid Waste from Single-Family Residential Units twice per week on Tuesdays and Fridays; provided, that (i) such Municipal Solid Waste is placed at the curb in plastic bags and/or cans and (ii) such waste is placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day.

B. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their bags and/or containers; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need.

SECTION 7. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.

The Service Provider will collect Municipal Solid Waste from Commercial, Industrial and Multi-Family Residential Units up to six times per week, as provided for in Attachment I. hereto. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste or Construction and Demolition Waste placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase

or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste and Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment 1 hereto.

SECTION 8. SPECIAL COLLECTIONS AND SERVICES.

A. City Landfill Use. The City is permitted to dispose 24 dump truck loads per year of Construction and Demolition Waste at the Fort Worth C & D Landfill at no cost to the City.

B. Residential Landfill Use. In addition, the Service Provider will allow each Residential Unit to deliver 4 loads of Construction and Demolition Waste per year to the IESI Fort Worth C&D Landfill at no charge to the resident. Each load shall not exceed (2) two cubic yards.

SECTION 9. BULKY ITEMS AND BUNDLES.

A. Pre-Arranged Collections. The Service Provider will collect Bulky Items and Bundles from Single-Family Residential Units at the time designated in the regular pick-up schedule, as designated by the Service Provider; provided, that (i) the Bulky Items or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed two (2) cubic yards in total volume or have any individual item exceeding fifty (50) pounds in weight. The Service Provider shall only be responsible for collecting, hauling and disposing Bulky Items and Bundles from those Single-Family Residential Units that have complied with this Section 9.A.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 9.A. does not include the collection of Bulky Items and Bundles comprised of Construction and Demolition Waste or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Single-Family Residential Unit regarding the collection of such items by utilizing the Service Provider's Roll-Off Services.

SECTION 10. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 11. RATES AND FEES.

Subject to adjustment, as provided in Section 12 hereto, the rates and fees to be charged and received by the Service Provider are provided in Attachment 1:

SECTION 12. RATE ADJUSTMENT.

A. CPI-U Adjustment. After the expiration of the first twelve (12) months of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving sixty (60) days prior notice to the City, to increase or decrease the rates set forth in Section 11 hereto (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the index entitled "CPI-U 'Dallas-Fort Worth, Texas area'" published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 12.A. The amount of the increase or decrease under this Section 12.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 12.A., at any time during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations due to, or directly resulting from, increased fuel costs, ad valorem taxes, or revised federal, state or local laws, ordinances or regulations. Rates may be adjusted only to recover increased costs incurred by the Service Provider not offset by increased revenues. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The City Council shall have the right, in its sole discretion, to determine the validity of any request for a change in rates. No request for an increase in the rates may be submitted for a period of eighteen (18) months from the date this Agreement is executed.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a Landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right to dispose of the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement at another Landfill of its choosing, and (ii) shall have the right, upon giving sixty (60) days prior notice to the City, to increase the Initial Rates by an amount equal to the sum of (x) the amount, if any, that the disposal fees charged to the Service Provider at such other Landfill exceed those previously charged to the Service Provider at the Initial Landfill(s), and (y) the amount, if any, that the transportation costs incurred by the Service Provider in connection with transporting the Municipal Solid Waste and Construction and Demolition Waste to such other Landfill exceed those that would have been incurred by the Service Provider if such Municipal Solid Waste and Construction and Demolition Waste was transported to the Initial Landfill(s), provided however, if the increase in the Initial Rate in accordance with this paragraph 12.C. is unacceptable to the City, the City shall have the right to terminate this Agreement within sixty (60) days after receiving notice of the increase.

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

SECTION 13. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, animal or human waste, auto parts, used tires, concrete, dirt, gravel, rock or sand from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of auto parts, used tires, concrete, dirt, gravel, rock or sand by utilizing the Service Provider's Roll-Off Services.

SECTION 14. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances that will enable the Service Provider to provide the Services set forth herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers. The City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Residential Monthly Statement. On a monthly basis, the City agrees to bill and collect the rates and fees charged under Section 11 hereto from all Residential Units possessing active water meters within the City's territorial jurisdiction, as well as from all Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste within the City's territorial jurisdiction (the "Residential Monthly Statement"). Thereafter, the City will remit to the Service Provider an amount equal to (x) the amount set forth in such Residential Monthly Statement, less (z) a franchise fee equal to ten percent (10%) of the amount set forth in the Residential Monthly Statement. Such remittance shall be made by the City on or before the 15th day of each month (for the immediately preceding month's service) commencing on April 15, 2005. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein. The Service Provider shall not be held responsible for the collection of any "bad debt" billed by City to the Residential Units.

B. Commercial Monthly Statement. On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged under Section 11 hereto from all Commercial and Industrial Units requiring the collection, hauling and disposal of Municipal Solid Waste or Construction and Demolition Waste within the City's territorial jurisdiction (the "Commercial Monthly Statement"). Thereafter, the Service Provider will remit to the City an amount equal to (z) a franchise fee equal to ten percent (10%) of the amount set forth in the Commercial Monthly Statement. Such remittance shall be made by the Service Provider on or before the 15th day of each month (for the immediately preceding month's service) commencing on April 15, 2005. The City shall not be held responsible for the collection of "bad debt" relating to any amounts billed by the Service Provider to Commercial and Industrial Units.

SECTION 16. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Construction and Demolition Waste not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Construction and Demolition Waste placed outside of the Containers or bags by any Commercial, Industrial or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste or Construction and Demolition Waste. Should excess Municipal Solid Waste or Construction and Demolition Waste continue to be placed outside of the Containers or bags, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste or Construction and Demolition Waste, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste or Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment 1 hereto, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container or bag as directed in Sections 6 and 7 hereto, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste or Construction and Demolition Waste to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste or Construction and Demolition Waste and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial or

Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial or Residential Unit's failure to timely place the Containers, bags, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or bag or the uncollected Municipal Solid Waste or Construction and Demolition Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste or Construction and Demolition Waste may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the City is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste or Construction and Demolition Waste has not been removed from such Commercial, Industrial or Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste or Construction and Demolition Waste from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or Construction and Demolition Waste on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such original non-collection or late collection so long as the Service Provider makes such collection within such time.

C. Penalties for Noncollection. Failure to resolve a valid service complaint as determined by the Service Provider or the City Manager in the time prescribed shall subject the Service Provider to the penalties provided in this Section and it is agreed that the City may deduct from payments due or to become due to the Service Provider, the following amounts as liquidated damages:

1. Failure to clean up material amounts of spilled refuse – each incident: \$35.00.
2. Failure to neglect to collect refuse from any premises at those times as provided by the Agreement within 24 hours of the delivery of notice of such failure to the Service Provider: \$50.00.
3. Failure or neglect to correct chronic problem in any category avbove (chronic shall mean three or more similar incidents at the same premises within a three month period) – each instance: \$150.00.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

SECTION 19. CUSTOMER SERVICE.

A. Office Hours. Service Provider's local office shall be open so that customers can make complaints, requests for information, requests for service, etc. during the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding legal holidays. Service Provider agrees to secure an annual listing in the Fort Worth Telephone Directory under the name by which it conducts business in the community.

B. Office Personnel. Service Provider's local office shall have a responsible person in charge during collection hours on collection days and shall be equipped with sufficient attendants to receive telephone calls. Attendant(s) shall respond to calls in a courteous manner within the following twenty-four (24) hour period.

C. Managing Agent. Throughout the term of the Agreement, Service Provider shall establish and maintain an authorized Managing Agent and shall designate in writing to the City Manager the name, telephone number, and address of such agent to whom all notices may be served by the City of complaints received from citizens of the City.

D. Service Complaints. All service complaints shall initially be directed to Service Provider and shall be resolved within twenty-four (24) hours. Service Provider shall supply the City with copies of all complaints on a form approved by the City indicating the disposition of each complaint. The form shall indicate the day and hour on which the complaint was received and resolved. When a complaint is received on the day preceding a holiday or a weekend, it shall be serviced on the next working day.

E. Notification of Complaints. The City shall notify Service Provider of each complaint reported to the City in order for the Service Provider to take whatever reasonable steps are necessary to remedy the cause of the complaint. Service Provider shall notify the City of its disposition within twenty-four (24) hours after receipt of the complaint.

F. Explanation of disposition of Complaints. Service Provider shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as the result of actions of Service Provider's employees, agents, and subcontractors in connection with the performance of this Agreement.

G. Notification of Procedures. Service Provider shall notify all customers about procedures, rules and regulations, and days of collection on an annual basis and whenever there is a change in service, days of collection, procedures, etc. Notice is to be in the form of printed matter distributed by Service Provider to all premises served by Service Provider at least thirty (30) days prior to any change in the procedures, rules and regulations, days of collection, service, etc. Such notice must be approved by the City prior to distribution.

H. Noncollection. It is understood and agreed by and between the City and Service Provider that if any customer maintains improper or inadequate containers for the nature, volume, or weight of refuse to be removed from the premises, or if any customer improperly places debris or

Bulky Items for collection, Service Provider may refrain from collecting all or a portion of such refuse and shall notify the City and the customer of the reason for such non-collection. When the City is notified by a customer that refuse has not been removed from his or her premises on the scheduled collection day and where no notice of non-collection nor a change in collection schedule has been received from Service Provider, the City may investigate.

I. Dangerous Animals. Employees of Service Provider shall not be required to expose themselves to the danger of vicious animals in order to accomplish refuse collection in any case where the owner or tenants have animals at large, but Service Provider shall immediately notify the City, in writing, of such condition and of Service Provider's inability to make collection.

J. Hazardous Weather. Service Provider may cancel a portion or all of a scheduled service day due to hazardous weather conditions, and shall notify the City, in writing, of such cancellation.

SECTION 20. SERVICE PROVIDERS RELATION TO CITY.

A. Service Provider as Independent Contractor. It is expressly agreed and understood that Service Provider is in all respects an independent contractor as to the work, duties, and rights granted herein, notwithstanding the fact that Service Provider is bound to follow the direction of designated City officials, and that neither Service Provider nor any person performing any of the work covered under this contract is in any respect an agent, servant, officer, or employer of the City. This contract specifies the work to be done by Service Provider, but the method to be employed to accomplish this work shall be the exclusive responsibility of Service Provider, and under Service Provider's exclusive contract and right of control. The doctrine of *respondeat superior* shall not apply between the City and Service Provider, or any of Service Provider's agents, servants, employees, or subcontractor's and nothing herein shall be construed as creating a partnership or joint enterprise between the City and Service Provider.

B. Subletting and Assignment. This contract, or any portion thereof, shall not be sublet or assigned except with the prior written consent of the City Council of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

No such consent will be construed as making the City a party to such subcontract or assignment, or as subjecting the City to liability of any kind to any subcontractor or assignee unless otherwise agreed to by the City. No subcontractor shall, under any circumstances, relieve Service Provider of its liability and obligation under this contract; and despite any such subletting, the City shall deal through Service Provider unless otherwise agreed by the City. Subcontractor will be dealt with as workers and representatives of Service Provider, and such shall be subject to the same requirements as to character and competence as are other employees of Service Provider.

C. Inspection of Performance. The City Manager may inspect Service Provider's operations, equipment, and performance at any reasonable time, and Service Provider shall furnish the City Manager with every reasonable opportunity to inspect Service Provider's operations or

equipment or for otherwise ascertaining whether or not the work is being performed in accordance with the requirements of this contract.

D. Insurance Coverage. The insurance coverage specified in Section 23 constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability or responsibility of Service Provider under the terms of this contract. Service Provider shall procure and maintain, at its own cost and expense, any additional kinds and amount of insurance, that, in its own judgement, may be necessary for proper protection in the prosecution of its work under this Agreement.

SECTION 21. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 22. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will ensure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 23. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

A. Insurance. Service Provider shall not commence work under this contract until Service Provider has obtained all the insurance required under this contract and certificates evidencing such coverage are received by the City, Service Provider shall be responsible for delivering to the City Service Provider's certificate of insurance for approval. Service Provider shall include the coverage of all subcontractors in any insurance policy it carries. The City also shall be named as an additional insured on each policy described in subsections 2 through 4 below. All insurance policies shall contain a provision that states that coverage under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the City. The failure by the Service Provider to keep in full force and effect any insurance required by this contract shall be deemed a breach of this contract.

1. Workers Compensation Insurance- Service Provider shall maintain, during the life of this contract, Worker's Compensation Insurance in the statutory amounts on all employees to be engaged in work under this contract, and for all subcontractors. In case any classes of

employees engaged in hazardous work under this contract are not protected under the Worker's Compensation Statute, the Service Provider shall provide adequate employer's general liability insurance for the protection of such employees not so protected.

2. Comprehensive General Liability Insurance – Service Provider shall procure and shall maintain during the life of this contract Public Liability and Property Damage Insurance in an amount not less than \$5,000,000 covering each occurrence on account of bodily injury, including death, and in an amount not less than \$1,000,000 covering each occurrence on account of property damage.

3. Automobile Insurance- Bodily Injury and Property Damage- Service Provider shall procure and maintain during the life of this contract, Comprehensive Automobile Liability Insurance in an amount not less than \$500,000 for injuries including accidental death to any one person and, subject to the same limit for each person, an amount not less than \$1,000,000 on account of one accident, and automobile property damage insurance in an amount not less than \$500,000.

4. Additional Coverage- Any insurance coverage that is required by statute, which is not expressly stated herein, shall be maintained in accordance with statutory requirements.

5. Excess Umbrella Liability Insurance- \$5,000,000 per occurrence. Notwithstanding the above, the Service Provider may satisfy any of the above policy limits with excess coverage.

6. Scope of Insurance- The insurance required under the above paragraphs shall provide adequate protection for Service Provider and its subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by the insured. All insurance requirements made upon Service Provider shall apply to a subcontractor's work operations.

7. Insurance and Bonding Companies- The insurance and bonding companies with whom Service Provider's insurance and performance bonds are written shall be authorized to do business in the State of Texas and shall be represented by a duly qualified agent or agents upon whom service of process may be had, and must have authority and power to act on behalf of the insurance and/or bonding company to negotiate and settle with the City, or any other claimant, any claims that the City or other claimant, or any property owner who has been damaged, may have against Service Provider or its insurance or bonding company. The name of the agent or agents shall be set forth on all such bonds and certificates of insurance. Service Provider shall keep the required insurance in full force and effect at all times during the term of this contract, and any renewals thereof. Service Provider shall furnish to the City a certificate of insurance, evidencing that Service Provider has obtained the required insurance coverage. All policies shall provide that they may not be changed or canceled by the insurer in less than five (5) days after the City has received written notice of such change or cancellation.

SECTION 24. INDEMNITY.

A. SERVICE PROVIDER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR AND HEREBY COVENANTS AND AGREES TO FULLY INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, JUDGEMENTS, ASSESSMENTS, COSTS, AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS OF WHATSOEVER KIND OR CHARACTER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE, ATTEMPTED PERFORMANCE OR NON-PERFORMANCE OF THE WORK AND SERVICES DESCRIBED HEREUNDER OR IN ANY WAY RESULTING FROM OR ARISING OUT OF THE COLLECTION, TRANSPORTATION, AND DISPOSAL OF SOLID WASTE OR REFUSE UNDER THIS CONTRACT, INCLUDING THE WORK, SERVICES, OPERATIONS, AND LEGAL DUTIES OF SERVICE PROVIDER, ITS OFFICERS, AGENTS SERVANTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, OR INVITEES, IF ANY. IN THE EVENT OF JOINT AND CONCURRENT RESPONSIBILITY OF SERVICE PROVIDER AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE TEXAS LAW, WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON.

B. SERVICE PROVIDER SHALL LIKEWISE ASSUME ALL RESPONSIBILITY AND LIABILITY FOR AND SHALL INDEMNIFY AND HOLD HARMLESS THE CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF SERVICE PROVIDER, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, OR INVITEES, INCLUDING WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS, EXPENDED BY THE CITY IN ANY SUIT OR CLAIM AGAINST THE SERVICE PROVIDER.

SECTION 25. MISCELLANEOUS.

A. Compliance with laws. Service Provider hereby agrees to comply with all applicable federal, state, and local laws including the Fair Labor Standards Act and rules, regulations orders and decrees of the Texas Department of Health, the Texas Commission on Environmental Quality (formerly the Texas Natural Resources Conservation Commission), and the United States Environmental Protection Agency. Service Provider shall indemnify and hold harmless the City, its officers, representatives, agents, and employees against any claim or liability arising from or based on the violation of any such laws, regulations, ordinances, order or

decree, whether such violation was by Service Provider, its agents or employees, or any subcontractor. Service Provider shall not be required to collect or dispose of any oil, sludge, fecal material or any radioactive, pathological, toxic, acidic or volatile material, or other hazardous waste or improper waste from any commercial or residential customer. Should Service Provider elect to dispose of such materials, Service Provider shall take such steps and precautions as are required by the applicable laws governing disposal of such material.

Service Provider shall at all times observe all City ordinances controlling or limiting those engaged performing work under this contract; provided, however, that nothing contained in any ordinance not in derogation of this Agreement now in effect or hereafter adopted pertaining to the collection of Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles or other trash shall in any way be construed to affect, change or modify or otherwise alter the duties, responsibilities and operation of Service Provider in the performance of the terms of this Agreement. It is the intention hereof that Service Provider be required to perform the terms of this Agreement regardless of the affect of interpretation of any municipal ordinance not in derogation of this Agreement which in any way relates to brush, debris, garbage, hazardous waste, bulky items, refuse, bundled or boxed bundled items or trash.

B. Multiple Originals. This Agreement may be executed in multiple originals, each of which shall be deemed for all purposes to be an original, and all of which are identical.

C. Paragraph Headings. The paragraph headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

D. Successors and Assigns. All of the terms, covenants, and agreements contained herein shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

E. Notices. Notices by either party to the other party shall be sufficient if sent by certified mail, postage paid, return receipt required, addressed to the other party at the addresses designated below each party's signature hereunder.

F. Venue. Should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Tarrant County, Texas.

G. Governmental Powers and Immunity. It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers, or sovereign immunity.

H. Taxes. Subject to Section 12(d) above, Service Provider shall pay all federal, state, and local taxes including sales tax, social security, worker's compensation, unemployment insurance, and any and all other required taxes which may be chargeable against labor, material, equipment, real estate, and any other items necessary to and in performance of this contract.

I. Licenses, Permits, and Fees. Subject to Section 12(d) above, Service Provider agrees to obtain and pay for all licenses, permits, certificates, inspections and all other fees required by law or otherwise necessary to perform the services prescribed hereunder. Service Provider shall also pay, at Service Provider's own expense, all disposal fees associated with the collection, removal and disposal of refuse; provided, however, that nothing herein shall impede Service Provider's rights to adjust the rates hereunder as may be specifically set forth in this Agreement.

J. Performance Bond. Service Provider agrees that upon the execution of this Contract and before beginning work, it shall make, execute, and deliver to the City a good and sufficient surety bond, to secure the faithful performance of the terms and conditions herein. Such bond shall be in the amount of One Hundred Thousand Dollars (\$100,000), and signed by an authorized officer of the Service Provider, together with the signature of the corporate secretary and the corporate seal, if any. The surety shall be a surety company duly authorized to do business in the State of Texas, and approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

K. Savings Provision. In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

L. Audit. Either Service Provider or the City may request an audit of all account records by the City's or, as applicable, Service Provider's outside, independent audit firm then engaged by the City or, as applicable, the Service Provider at the time of the request. Such audit shall be at the expense of the party requesting same. Further, supporting documentation of billings will be provided to the City or Service Provider upon request by the other party.

M. Force Majeure. The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond the reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

N. Attorneys Fees. The prevailing party in any suit, action or proceeding arising out of or involving the enforcement, interpretation or application of this Agreement shall be entitled to recover all reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

SECTION 26. TERMINATION.

A. Any failure by the Service Provider or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the City (and signed by the City Manager), constitute grounds for forfeiture and immediate termination of all the Service Provider's rights that would have otherwise accrued

after the date of such termination under this Agreement, and all such rights shall become null and void.

- B. Any failure by the City to pay any amounts owed to Service Provider under this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from Service Provider, constitute grounds for forfeiture and immediate termination of all the City's rights that would have otherwise accrued after the date of such termination under this Agreement, and all such rights shall become null and void.

SECTION 27. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF EVERMAN, TEXAS COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 8th DAY OF MARCH, 2005.

IESI TX CORPORATION
2301 Eagle Parkway, Suite 200
Fort Worth, Texas 76177

By: _____

Jeff Beckham
Jeff Beckham
Vice President

CITY OF EVERMAN
212 North Race Street
Everman, Texas 76140

By: _____

Jim Stephenson
Name: Jim Stephenson
Title: Mayor

ATTEST:

By: _____

Judy Thompson
Name: Judy Thompson
Title: City Secretary



WASTE CONNECTIONS LONE STAR, INC.

4001 Old Denton Rd, Haltom City, Texas 76117
 Contact: Marty Grant, District Manager
 Phone: (817) 222-2221

EXHIBIT A
City of Everman, TX
RATE SHEET

Effective: April 1st, 2020 BILLING

RESIDENTIAL CURBSIDE COLLECTION: \$18.97 per month, per residential unit
 Additional Cart: n/a per month, per residential unit per each additional Cart
 RESIDENTIAL RECYCLING CURBSIDE COLLECTION: \$4.00 per month, per Single-Family Residential Unit
 Additional Recycling Container: n/a per month, per residential unit per each additional Recycling Container
 Senior Citizen Rate: \$9.98 per month, per residential unit

COMMERCIAL RATE SCHEDULE

CONTAINER SIZE	Lifts Per Week						Extra-Lifts
	1	2	3	4	5	6	
95 gallon Cart		24.87					28.20
2 Cubic Yd	62.39	101.39	115.65	175.48	204.08	245.68	37.92
3 Cubic Yd	71.60	119.56	165.96	201.46	245.80	324.92	53.07
4 Cubic Yd	86.41	149.63	202.75	269.04	303.88	378.20	60.68
6 Cubic Yd	107.89	202.75	283.85	300.24	395.01	465.60	68.24
8 Cubic Yd	133.89	243.05	338.61	392.52	466.59	595.24	71.28

FRONT LOAD COMPACTOR RATES

CONTAINER SIZE	1	2	3	4	5	6	Extra-Lifts
6 Cubic Yd							
8 Cubic Yd							

Residential goes thru the City

FRONT LOAD RECYCLE RATES

CONTAINER SIZE	1	2	3	4	5	6	Extra-Lifts
6 Cubic Yd	89.68	162.78	215.98				31.81
8 Cubic Yd	94.83	163.31	226.52				31.69

We Bill all Commercial & Roll Off- Co Id 004 Srv Area is EVM

other commercial front load fees

Containers w/Casters	\$7.35	*Delivery and/or Removal Fee	\$57.95
Containers w/locks	\$7.35	Exchange Fee	\$79.02

*Delivery or Removal fees are not charged during the initial start-up or termination of the agreement

Temporary Front Load Rates

per lift DELIVERY DAILY RENT DISPOSAL

6 Cubic Yd	131.69	57.94	1.09	n/a		
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ROLL OFF RATE SCHEDULE

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd	303.99	82.90	5.25	n/a
30 Cubic Yd	392.43	82.90	5.25	n/a
40 Cubic Yd	421.52	82.90	5.25	n/a

ROLL OFF COMPACTOR RATE SCHEDULE

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd				
24 Cubic Yd				
30 Cubic Yd				
36 Cubic Yd				
40 Cubic Yd				
42 Cubic Yd				

Franchise and Billing Fees:

Residential: 10.0%
 Commercial: 10.0%

* All rates are inclusive of all franchise and billing fees

* Rates do not include any Sales Tax

* Rates do not include any Fuel Surcharges