

ORDINANCE NO. 493-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS AMENDING ARTICLE 13.02 "SOLID WASTE" OF THE CODE OF ORDINANCES, CITY OF JOSHUA (THE "CODE"); PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Joshua is a home rule city acting under its charter adopted by the electorate pursuant of Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

**WHEREAS**, on November 19, 2009 the Joshua City Council approved an Exclusive Franchise Agreement for the Collection, Hauling, Recycling, and Disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials in the City of Joshua, Texas, effective December 1, 2009 (the "Agreement"); and

**WHEREAS**, the City of Joshua has agreed to assume the duty to bill its citizens for waste collection services; and

**WHEREAS**, some current provisions contained in Article 13.02 of the Code are inconsistent with the Agreement; and

**WHEREAS**, the legislature and the courts have long recognized the importance of garbage disposal to the enhancement of health and safety; and

**WHEREAS**, the enforcement of a comprehensive garbage plan is clearly within the police power granted to all municipalities; and

**WHEREAS**, it is imperative that the City ensure that fees for waste collection services are promptly paid by the customers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
OF JOSHUA, TEXAS:

SECTION 1.

Article 13.02 of the Code is hereby revised to read as follows:

**"ARTICLE 13.02 SOLID WASTE**

**Sec. 13.02.001 Definitions**

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section. The word "shall" is always mandatory, while the word "may" is merely discretionary.

Bag. Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 35 lbs.

Bulky Item. Any item not 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 other similar household items.

Commercial Unit. Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials during (as defined in the Agreement), or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Contractor. The individual, corporation, or business entity with whom the city contracts for the provision of a garbage, waste, or refuse collection operation or service.

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 and Recyclable Materials.

Residential Unit. A dwelling unit such as a home, trailer or multifamily dwelling, not including hotels and motels. Each unit of a multifamily dwelling shall be considered a separate dwelling unit for purposes of billing.

Waste Containers. Waste disposal containers constructed of metal, rubber, or plastic, including plastic bags, and designed to contain refuse or waste or recycling material in such a manner as to prevent leakage or spillage. Containers should be of such a nature as to deter insects and animals. Thirty-gallon drums and waste disposal containers that weigh in excess of fifty (50) pounds shall be strictly prohibited.

**Sec. 13.02.002      Penalty**

Any person violating any of the provisions this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined in accordance with Section 1.01.009 of this Code.

**Sec. 13.02.003      Use of public collection service required**

(a) All business and residential units within the city shall be required to utilize the public waste collection service.

(b) It shall be an offense to fail to utilize the public waste collection service.

**Sec. 13.02.004      Preparation of waste for collection; service regulations**

(a) Residential units within the city will receive curbside waste collection services twice each week of solid waste in appropriate Waste Containers, Bundles, Bags, or Bulky Items placed within five (5) feet of the curb or as close to the public street or roadway in front of their residence as possible. Tied bundles of brush and trimmings [are] not to exceed four feet in length or fifty (50) pounds in weight. All waste collection containers, Bundles, Bags and Bulky Items must be in place for collection no earlier than 7:00 p.m. on the evening prior to collection and no later than 7:00 a.m. each morning on which pickup is scheduled and removed no later than 7:00 a.m. the next morning.

(b) All Commercial Units and Multi-Family Residential Units within the city whose waste and garbage removal requirements may be met by conventional residential collection will prepare their garbage for collection in the manner identified in subsection (a) above. Those commercial operations having a volume or type of waste or garbage which does not permit collection as in the manner of a conventional residential unit will notify the Contractor of their need for the utilization of a special time or collection or of a special location for pickup.

(c) No single piece or bundle of trash or garbage shall exceed four (4) feet in length or weigh in excess of fifty (50) pounds, or exceed more than three (3) cubic yards in total volume.

(d) Title to all waste materials shall vest in the collector immediately upon being placed in its vehicles.

(e) The service furnished hereunder to the city, and its inhabitants shall be subject to such reasonable rules and regulations as the collector may make from time to time. The city may require reasonable security for the payment of its bills, and may require of every customer a contractual right of ingress and egress upon and from the customer's property, on behalf of the waste service provider.

(f) The Exclusive Franchise Agreement for the Collection, Hauling, Recycling and Disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials in the City of Joshua, Texas, attached hereto and incorporated herein as Exhibit "A", is hereby declared to be the comprehensive plan for the collection of solid waste within the City of Joshua, and all Commercial Units, Residential Units, Multi-Family Residential Units, and other customers are required to adhere to the procedures for waste collection contained therein. A copy of the Agreement shall not be included in this Code, but shall be maintained in the office of the city secretary, and published on the city's website for public inspection.

#### **Sec. 13.02.005 Fees for waste collection services**

(a) All residents and businesses located within the city will be assessed the waste collection fees set forth in Appendix Article A4.000 of this Code. Collection fees will be subject to change upon action of the city council. Fees will be billed to customers on a quarterly basis.

(b) It shall be an offense to fail to pay for waste collection services within 60 days after receipt of a bill for the services.

(c) In addition to other penalties imposed by this Article or by law, fees for waste collection services may be referred to an attorney for collection, and there shall be imposed an additional fee of 30% of the amount owed."

### **SECTION 2. CUMULATIVE CLAUSE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Joshua, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

### **SECTION 3. SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.



**SECTION 4.  
PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense unless the offense constitutes a violation governing fire safety, zoning, or public health and sanitation, in which case the fine may not exceed Two Thousand Dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 5.  
SAVINGS CLAUSE**

All rights and remedies of the City of Joshua are expressly saved as to any and all violations of the provisions of any ordinances affecting curfew which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

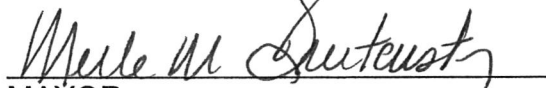
**SECTION 6.  
PUBLICATION IN THE OFFICIAL NEWSPAPER**

The City Secretary of the City of Joshua is hereby directed to publish at least twice in the official newspaper of the City of Joshua, the caption and the penalty clause of this ordinance in accordance with Section 52.013(b) of the Local Government Code.

**SECTION 7.  
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage and it is so ordained.

PASSED AND APPROVED THIS 21<sup>st</sup> DAY OF Jan, 2010.

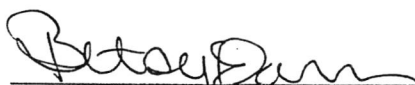
  
MAYOR

ATTEST:

  
CITY SECRETARY

EFFECTIVE: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
CITY ATTORNEY

**EXCLUSIVE FRANCHISE AGREEMENT**  
**FOR THE COLLECTION, HAULING, RECYCLING AND DISPOSAL OF**  
**MUNICIPAL SOLID WASTE, CONSTRUCTION AND DEMOLITION WASTE, AND**  
**RECYCLABLE MATERIALS**  
**IN THE CITY OF JOSHUA, TEXAS**

**DECEMBER 1, 2009**

**EXCLUSIVE FRANCHISE AGREEMENT  
FOR THE COLLECTION, HAULING, RECYCLING AND DISPOSAL OF  
MUNICIPAL SOLID WASTE, CONSTRUCTION AND DEMOLITION WASTE AND  
RECYCLABLE MATERIALS  
IN THE CITY OF JOSHUA, TEXAS**

**STATE OF TEXAS**

**COUNTY OF JOHNSON**

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the 19<sup>th</sup> day of November, 2009, by and between IESI TX Corporation, a Texas Corporation (the "Service Provider"), and the City of Joshua, Texas (the "City").

**WHEREAS**, on or about October 1, 2000, the City and Service Provider entered into an Exclusive Franchise Agreement for solid waste collection services (the "Original Agreement"); and

**WHEREAS**, the City and Service Provider desire to amend, extend, and restate the Original Agreement as more fully described herein.

**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:

**Bag** - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 35 lbs.

**Bulky Item** - Any item not 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 other similar household items.

**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 other day on which banks are required or authorized by law to be closed in the City.

**Commercial Unit** - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials 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, Municipal Solid Waste, Recyclable Materials or Bulky Items.

**Container** - Any receptacle, including, but not limited to, dumpsters, Roll-Offs and Roll-Outs, provided by the Service Provider or the Residential Unit and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials. Containers are designed to hold between eighteen (18) gallons and forty (40) cubic yards of Solid Waste.

**Hazardous Waste** - 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 that are unable to place Municipal Solid Waste or Recyclable Materials at the curbside, and that generates and accumulates Municipal Solid Waste and Recyclable Materials. The identities of a Handicapped Residential Unit shall be certified by the City Manager.

**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, Construction and Demolition Waste, or Recyclable Materials 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 Commission on Environmental Quality ("TCEQ") 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 and Recyclable Materials.

**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.

**Recyclable Materials** -

- (a) Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper;
- (b) Glass bottles and jars (excluding mirrors, windows, ceramics and other glass products);
- (c) Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- (d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5 and #7.

**Recycling Container** - A Container with at least eighteen (18) gallons of capacity and provided by the Service Provider for the collection of Recyclable Materials.

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

**Roll-Off** - A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

**Roll-Out** - A Container with ninety-five (95) gallons 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 and Recyclable Materials.

**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(34) whether such waste is mixed with or constitutes Recyclable Materials.

**White Good** - Any item not 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. EXCLUSIVE FRANCHISE GRANT.**

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider.

## **SECTION 3. OPERATIONS AND SERVICES.**

A. Scope of Operations. It is expressly understood and agreed that the Service Provider will collect, haul and recycle or dispose of all Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials (as provided herein) (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 recycling or disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials, the title to all Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials collected, hauled and recycled or disposed of by the Service Provider under this Agreement over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

## **SECTION 4. SERVICE PROVIDER'S DUTIES AND OBLIGATIONS.**

It shall be the duty and obligation of the 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 Agreement, at its own expense, to adequately, efficiently and properly collect and transport garbage, brush, debris, bulky items, bundled, bagged, or boxed bundled items, 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 Material Collected. Service Provider will dispose of in a legal manner all Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials. All

vehicles used by Service Provider for the collection of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials 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 Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials 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, Construction and Demolition Waste and Recyclable Materials as necessary to fulfill the requirements of this Agreement. 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. Customer Service. The Service Provider agrees to field all inquiries and complaints from Commercial, Industrial and Residential Units relating to the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. However, the City shall handle all calls regarding new residential services.

F. 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 or be in the proper performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider.

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.

## **SECTION 5. 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 and Recyclable Materials once per week; provided, that (i) such Municipal Solid Waste is placed in Containers and/or Bags and Recyclable Materials are placed in Recycling Containers, and (ii) such Containers and/or Bags are 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. Excess or Misplaced Municipal Solid Waste. Notwithstanding anything to the contrary contained herein, the Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers and/or Bags. Municipal Solid Waste and Recyclable Materials in excess of the Containers' and/or Bags' limits, or placed outside or adjacent to the Containers or Bags, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recyclable Materials may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. Although there is no limit on the amount of Container and/or Bags of Municipal Solid Waste that the Service Provider shall be required to collect, the Service Provider shall only be required to collect a maximum of ten (10) Bags of leaves.

C. 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 Containers and/or Bags; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need.

## **SECTION 6. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.**

The Service Provider will collect Municipal Solid Waste and Recyclable Materials from Commercial, Industrial and Multi-Family Residential Units one, two, three, four, five, or six times per week, as provided for in Section 10.B. hereof. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider or Bags. 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 Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereof.

## **SECTION 7. SPECIAL COLLECTIONS AND SERVICES.**

A. Municipal Locations. The Service Provider will provide, at no cost to the City, Containers to collect Municipal Solid Waste at certain municipal locations within the City once

or twice per week, as needed. Specifically, the provisions of this Section 6.A. shall apply to the following locations:

- One (1) Two Cubic Yard Container at City Hall – once per week collection
- One (1) Four Cubic Yard Container at the Fire Department – once per week collection
- One (1) Six Cubic Yard Container at the Street Department – once per week collection
- One (1) Six Cubic Yard Container at the Police Department – once per week collection
- One (1) Six Cubic Yard Container at Animal Control – once per week collection.

B. Special Events. The Service Provider will provide, at no cost to the City an adequate number of Containers to collect Municipal Solid Waste at certain special events in the City, including and four (4) thirty-yard Roll-Off at City facilities up to two (2) times per year for special cleanup and shall haul up to eight (8) loads of the Roll-Off per year at no cost to the City; provided, that the City gives the Service Provider reasonable prior written notice of the date of such special event as well as the number of Containers that will be required. The Container will be delivered on a Thursday and picked up on a Monday. In addition, on two (2) specified days per year agreed to by the Service Provider and the City (one in the Winter and one in the Summer), the Service Provider shall allow residents of the City to dump Municipal Solid Waste at the IESI Turkey Creek Landfill free of charge upon proof of residency by showing their garbage bill.

## **SECTION 8. BULKY ITEMS AND BUNDLES.**

A. Pre-Arranged Collections. The Service Provider will collect Bulky Items and Bundles from Single-Family Residential Units twice per week as part of the Municipal Solid Waste Collection in Section 5, as designated by the Service Provider; provided, that the Bulky Items or Bundles (i) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (ii) are reasonably contained, and (iii) do not exceed three (3) cubic yards in total volume or have any individual item exceeding fifty (50) pounds in weight. Furthermore, the Service Provider shall only be required to collect a maximum of three (3) Bulky Items per collection day from each Single-Family Residential Unit. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Bulky Items and Bundles from those Single-Family Residential Units that have complied with this Section 7.A. White Goods containing refrigerants will not be collected by the Service Provider unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 7.A. does not include the collection of Bulky Items and Bundles comprised of Construction and Demolition Waste, White Goods 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. A Single-Family Residential Unit may also negotiate a collection for loose brush and items that exceed the size limits of a Bulky Item.



## **SECTION 9. 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 10. RATES AND FEES.**

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are as follows:

A. Single-Family Residential Unit Services. For the Services provided to Single-Family Residential Units under Section 4.A. hereof, the Service Provider shall charge the rates contained on Exhibit "A", attached hereto. These rates apply to all Single-Family Residential Units that are located within the City's corporate limits.

B. Commercial, Industrial and Multi-Family Residential Unit Services. For the Services provided to Commercial, Industrial and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge per month for each Container utilizing the rates contained on Exhibit "A", attached hereto.

These rates apply to all Commercial, Industrial and Multi-Family Residential Units that are located within the City's corporate limits.

C. Roll-Off Services. For the Services provided under Sections 7.A. and 11 hereto, the Service Provider shall charge for each Roll-Off utilized the fees contained on Exhibit "A", attached hereto.

The Service Provider will negotiate agreements with each Commercial, Industrial or Residential Units on an individual basis regarding the Roll-Off Services to be provided. The Roll-Off Services will be billed directly to such Commercial, Industrial or Residential Unit and will be collected by the Service Provider. The Roll-Offs provided pursuant to this Section 9.C. must be located within the City in accordance with City ordinances and policies.

## **SECTION 11. RATE ADJUSTMENT.**

A. CPI and Fuel Cost Rate Adjustment.

Beginning December 1, 2010, the rates charged by the Service Provider shall be adjusted upward or downward to reflect changes in the cost of operations, as reflected by fluctuations in the Consumer Price Index for Urban Wage Earners and Clerical Workers (all items) and the Consumer Price Index for Urban Wage Earners and Clerical Workers, Expenditures Category "Gasoline (all types)", both as published by the U.S. Department of Labor, Bureau of Labor Statistics. Service Provider will utilize indexes from the Dallas-Fort Worth TX Metropolitan Area. As of the first of October 2011, and the first of December of each year thereafter (the "Rate

Modification Date”), the rates shall be increased or decreased for the ensuing twelve month period in a percentage amount equal to 100% of the net percentage change of the All Items Index plus 10% percent of the net percentage change of the Gasoline Index. All percentage changes are to be computed as the difference between the index value for the month of July immediately preceding the Rate Modification Date divided by the index value in the July immediately prior to the date of commencement of performance under this Contract.

By September 15 of each year, beginning in 2010, Service Provider shall send to City a comparative statement setting out both the All Items Index and the Gasoline Index:

- (1) The index value for the July prior to the Rate Modification Date;
- (2) The index value for July 2009 (July preceding the date of commencement of performance under the Agreement);
- (3) The net percentage change;
- (4) The composite percentage change equal to the net percentage change in the All Items Index plus the net percentage change in the Gasoline Index; and
- (5) The increase or decrease in the rates which may be charged by the Service Provider.

Beginning on December 1, 2011, and on each December 1 thereafter, the Service Provider shall modify the rates charged by the Service Provider to reflect any changes shown in the comparative statement delivered to the City. The City Council shall have authority, in its reasonable discretion to determine the validity of any change in Service Provider’s rates

B. Other Rate Adjustments:

In addition to the above CPI and Fuel Cost adjustment, Service Provider may petition the City for additional rate adjustment on the basis of unusual changes in its cost of operation, limited to revised laws, ordinance, or regulations; changes in location of disposal sites or changes in disposal charges as a result of revisions to such laws, ordinances or regulations. Such additional rate adjustments may only be made only with City Council approval. Such additional rate adjustments may only be granted to recover increased costs incurred by Service Provider that are not offset by increased revenues. The Service Provider may submit a request to the City Council for such an adjustment in rates. Any such request must be accompanied by supporting documentation detailing the increased costs and their impact for providing the services described in this contract. The City Council shall have authority, in its reasonable discretion to determine the validity of any request for such an adjustment in rates. No request for an increase in the rates set forth in Attachments “A” may be submitted for a period of twelve (12) months from the date of the commencement of the term of this contract and not more than one such request per calendar year may be made thereafter.



C. 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 sales taxes and 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 12. EXCLUSIONS.**

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling, recycling or disposal of any Hazardous Waste, animal or human, dead animals, 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 Construction and Demolition Waste, auto parts, used tires, concrete, dirt, gravel, rock or sand by utilizing the Service Provider's Roll-Off Services.

## **SECTION 13. TERM OF AGREEMENT.**

The term of this Agreement shall be for a period of five (5) years, commencing on December 1, 2009 and concluding on November 30, 2014. At the expiration of the term of this Agreement, the Agreement may be extended for another period of five (5) years upon mutual agreement of the parties.

## **SECTION 14. ASSIGNMENT.**

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City.

## **SECTION 15. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted 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.

## **SECTION 16. PROCESSING, BILLING AND FEES.**

A. Quarterly Statement. On a quarterly basis, the City agrees to bill and collect the rates and fees charged under Section 9 hereto, listed in Exhibit "A", from all Residential Units requiring

the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits (the "Residential Quarterly Statement"). Thereafter, the City will remit to the Service Provider an amount equal to (y) the amount collected from all occupied residential structures from such Residential Quarterly Statement, less (z) a franchise fee equal to six percent (6 %) of the Residential Monthly Statement (the "Residential Franchise Fee"). Such remittance shall be made by the City on or before the 15th day of the month following the previous month (for the immediately preceding month's service) commencing on April 15, 2010. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the number and rate of Residential Units which have been billed for that quarter. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

B. On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged under Section 9 hereto, listed in Exhibit "A", from all Commercial and Industrial Units and to bill and collect the rates and fees charged under Section 9 hereto for all Roll-Off Services requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits (the "Commercial and Roll-Off Monthly Statement"). Thereafter, the Service Provider will remit to the City an amount equal to a franchise fee equal to six percent (6 %) of the gross receipts collected by the Service Provider from the billing to Commercial and Industrial Units and Roll-Off Services (the "Commercial and Roll-Off Franchise Fee"). Along with this Commercial and Roll-Off Franchise Fee, Service Provider agrees to provide City with a computer printout establishing the dollar amount and number of commercial billings per account by Service Provider each month. Said printout, and any amounts due to be provided to the City shall be delivered no later than the twentieth (20<sup>th</sup>) day of the month following the month billed.

C. The City agrees to aggressively enforce the duty of all Residential, Commercial, and Industrial customers (the "Customers") to pay the rates and fees established in the Agreement.

#### **SECTION 17. 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, Construction and Demolition Waste, or Recyclable Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials placed outside of the Containers by any Commercial, Industrial or Residential Unit. The Service Provider may 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, Construction and Demolition Waste or Recyclable Materials. Should excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials continue to be placed outside of the Containers, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as

provided for in Section 9 hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

#### **SECTION 18. NON-COLLECTION AND COMPLAINTS.**

- 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 as directed in Sections 4 and 5 hereof, 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, Construction and Demolition Waste or Recyclable Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials 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, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials may be collected.
- B. 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, and from 8:00 a.m. through noon Saturday, 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.
- C. 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.
- D. 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.
- E.. 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.
- F. 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.

G. 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..

H. Service Provider shall notify all customers about procedures, rules and regulations, and days of collection whenever there is a change in service, 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.

I. City shall send out annual mailings prepared by the Service Provider,, explaining to residential customers about trash, recycling and bulk/brush pick up service requirements, days of collection, procedures, etc. The first distribution shall be executed upon the effective date, the second shall be six (6) months from that date, and so forth.

J. The City Manager or her designee shall be responsible for deciding questions of dispute between the City, Service Provider, and/or a customer as to the validity of any complaint or the decision of the City of Joshua City Manager on such matters shall be final and all parties agree to abide by said decision; provided, however, that when Service Provider challenges any complaint or failure to perform under this Agreement, the City Manager may, in her sole discretion, request a joint inspection by a representative of the City and a representative of Service Provider. (However, such inspection shall not alter the City Manager's discretion to make the final decision regarding such matter.)

K. When the City is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials 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, Construction and Demolition Waste or Recyclable Materials 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, Construction and Demolition Waste or Recyclable Materials 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.

L. 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 Providers inability to make collection.

M. 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 19. 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; provided, however, that the Service Provider shall provide at least one (1) collection day per week.

#### **SECTION 20. COMPLIANCE WITH APPLICABLE 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), 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 Service Provider or assignee.** 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.

#### **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 insure 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.**

Service Provider shall not commence work under this Agreement until Service Provider has obtained all the insurance required under this Agreement, certificates evidencing such coverage are received by the City and such insurance has been approved 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 subService Providers in any insurance policy it carries. The City also shall be named as an additional insured on each policy described in subsections (2) through (5) below and contain a waiver of subrogation against the City. 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 Agreement shall be deemed a breach of this Agreement.

- (1) Workers Compensation Insurance- Service Provider shall maintain, during the life of this Agreement, Worker=s Compensation Insurance in the statutory amounts on all employees to be engaged in work under this Agreement, and for all subService Providers. In case any classes of employees engaged in hazardous work under this Agreement 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 B Service Provider shall procure and shall maintain during the life of this Agreement 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 Agreement, 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.

Scope of Insurance- The insurance required under the above paragraphs shall provide adequate protection for Service Provider and its subService Providers, respectively, against damage claims



Scope of Insurance- The insurance required under the above paragraphs shall provide adequate protection for Service Provider and its subService Providers, respectively, against damage claims which may arise from operations under this Agreement, 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 subService Provider=s work operations.

Local Agent for Insurance and Bonding- 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 an agent or agents having an office located within JohnsonCounty, Texas or a county with a contiguous border to Johnson County, Texas. Each such agent shall be a duly qualified person, 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. If the local insurance representative is not so empowered by the insurance or bonding companies, then such authority must be vested in a local agent or claims officer residing in the Fort Worth-Dallas metropolitan area. 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 Agreement, and any renewals thereof. Service Provider shall furnish to the City a certificate of insurance on a form approved by the City, 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.**

**The Service Provider assumes all risks of loss or injury to property or persons caused by its performance of the Services. The Service Provider agrees to indemnify and hold harmless the City and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants.**

#### **SECTION 25. 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.

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 ACTS OR OMISSIONS OF SERVICE PROVIDER, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, SUBSERVICE PROVIDERS, 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. 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.

#### **SECTION 26. TERMINATION.**

In the event of an alleged breach by Service Provider, if any, of the terms, covenants, or provisions herein contained, City shall notify Service Provider of such alleged breach and if same is not resolved within (5) business days from such notice, City may, upon a determination (at a hearing as described herein) that a substantial breach has occurred and is continuing, terminate this Contract. Notwithstanding the above, if such breach does not involve the failure to pay funds to the City when due, and if Service Provider has diligently pursued resolution of a reported breach and said breach has not been cured within the five business day cure period, then the City will continue to allow Service Provider to diligently pursue the actions necessary to cure the breach, until either Service Provider has ceased diligently pursuing a cure or the breach is cured. The hearing prerequisite to such termination shall not be held until notice of such hearing has been given to the Service Provider at the address shown on the records of the City, and a period of at least ten (10) days has elapsed since the mailing of delivery of such notice. The notice shall specify the time and place of the hearing and shall include the alleged reasons for termination of this Contract.

The hearing shall be conducted in public by the City Council of the City of Joshua and the Service Provider shall be allowed to be present and shall be given full opportunity to respond and defend against such charges and allegations as set out against it in the notice. If, after the hearing is concluded, the City Council shall reasonably determine that a substantial breach of the terms, covenants or provisions of this Contract, as set forth in the notice has occurred, it may terminate this Contract and the same shall be null and void. This Contract may, at the option of the City,

be terminated in the event of the bankruptcy, receivership, or an assignment for the benefit of creditors by the Service Provider.

#### **SECTION 27. 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 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, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

#### **SECTION 28. GOVERNING LAW AND VENUE.**

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. Venue shall lie in Johnson County, Texas.

#### **SECTION 29. ATTORNEYS' FEES.**

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

#### **SECTION 30. MISCELLANEOUS.**

A. 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 now in effect or hereafter adopted pertaining to the collection of brush, debris, garbage, hazardous waste, bulky items, refuse, bundled or boxed items 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 contract. It is the intention hereof that Service Provider be required to perform the terms of this contract regardless of the affect of interpretation of any municipal ordinance 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 Contract.

D. Successors and Assigns. All of the terms, covenants, and agreements contained herein shall be binding upon and shall ensure 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. Governmental Powers. It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers.

G. Taxes. 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.

K. Licenses, Permits, and Fees. 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.

### SECTION 30. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 19th DAY OF November, 2009.

IESI TX CORPORATION

CITY OF JOSHUA, TEXAS

\_\_\_\_\_, Texas \_\_\_\_\_  
By: [Signature]  
Name: JOHN BRIDGES  
Title: VICE PRESIDENT

\_\_\_\_\_  
By: [Signature]  
Name: Merle M. Breitenstun  
Title: Mayor

ATTEST:

By: [Signature]  
Name: MARY BETH THOMA  
Title: City Secretary

**EXHIBIT "A"**  
**City of Joshua, TX Rate Sheet**

**RESIDENTIAL  
CURBSIDE  
COLLECTION - 2x  
Weekly:**     \$12.50     **per  
month**



## IESI TX CORPORATION

4001 Old Denton Rd, Haltom City, Texas 76117

Contact: Paul Hansen; District Manager

Phone: (817) 222-2221

## City of JOSHUA PROPOSED RATE SHEET

Effective: 12/1/2009

RESIDENTIAL CURBSIDE COLLECTION - 2x Weekly: \$12.50 per month

CURBSIDE RECYCLING: \$2.00 per month

COMMERCIAL HAND COLLECT \$22.21 1X per week (includes 96 gallon cart)

2X per week (includes 96 gallon cart)

### COMMERCIAL RATE SCHEDULE

CONTAINER SIZE	Lifts Per Week						Extra-Lifts
	1	2	3	4	5	6	
2 Cubic Yd	63.17	102.21	182.73	258.60	365.24	503.27	77.43
3 Cubic Yd	74.33	133.18	236.92	336.03	466.10	596.18	77.43
4 Cubic Yd	85.17	164.16	261.70	374.75	503.27	619.42	77.43
6 Cubic Yd	125.42	216.78	297.32	405.71	529.60	653.49	77.43
8 Cubic Yd	142.46	252.41	354.62	473.84	616.32	766.52	77.43

Containers w/ Casters

\$ 10.77 per month

Containers w/ Locks or Gates

### CONTAINER

### ROLL OFF OPEN TOP RATES

SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL	DRY RUNS
20 Cubic Yd	267.75	178.08	3.86	\$33.60 per ton	78.75
30 Cubic Yd	267.75	178.08	3.86	\$33.60 per ton	78.75
40 Cubic Yd	267.75	178.08	3.86	\$33.60 per ton	78.75

### CONTAINER

### COMPACTORS ROLL OFF RATES

SIZE	HAUL	DAILY RENT	DISPOSAL	WASH OUTS	DRY RUNS
20 Cubic Yd	267.75	Negotiable	\$33.60 per ton	157.50	78.75
30 Cubic Yd	267.75	Negotiable	\$33.60 per ton	157.50	78.75
35 Cubic Yd	267.75	Negotiable	\$33.60 per ton	157.50	78.75
40 Cubic Yd	267.75	Negotiable	\$33.60 per ton	157.50	78.75
42 Cubic Yd	267.75	Negotiable	\$33.60 per ton	157.50	78.75

### Franchise and Billing Fees:

Residential: 6.0%

Commercial: 6.0%

\* All rates are inclusive of all franchise and billing fees