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CITY SECRETARY

LICENSE AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This License Agreement (hereafter the "Agreement") is entered into as of the 20th day of May, 2008 by and between the *City of McKinney, Texas*, a Texas municipal corporation (hereafter the "City") and *IESI TX Corporation* ("Contractor"), 2138 Country Lane, McKinney, Texas 75069 (hereafter the "Contractor"), both acting by and through their duly authorized agents and representatives. (The City and the Contractor may be hereinafter referred to together as the "Parties.")

RECITALS

WHEREAS, the City and Contractor entered into a license agreement dated September 24, 1996 (the "Original License Agreement"), relating to the provision of services by Contractor to City for solid waste collection, transport, disposal and Recycling services for residential, commercial and industrial customers within the corporate limits of the City;

WHEREAS, the Parties subsequently executed amendments to the Original License Agreement on October 18, 1999, September 20, 2001, and October 31, 2005 (hereinafter, collectively referred to as the "Amendments");

WHEREAS, the Original License Agreement and the Amendments shall collectively make up and be referred to as the Original Agreement; and

WHEREAS, the Parties desire to fully amend and replace the Original Agreement with this Agreement as hereinafter provided.

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein set forth, the Parties mutually agree as follows:

Section 1. DEFINITIONS

Unless otherwise specified herein the following terms shall have the following meanings

1.1 "Agreement Year" shall mean a twelve (12) month period of time commencing upon the Effective Date hereof and, thereafter, a twelve (12) month period of time commencing upon the anniversary of the Effective Date.

1.2 "Bags" shall mean plastic sacks, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Reasonable care and technique should be used when lifting to prevent accidental ruptures of bags. Total weight of a bag and its contents shall not exceed thirty-five (35) pounds.

1.3 "Bin (Commercial/Industrial)" shall mean metal receptacle designed to be lifted and emptied mechanically for use only at Commercial and Industrial Units.

1.4 "Brush" shall mean plants or grass clippings, leaves or tree trimmings.

1.5 "Bulky Wastes" shall mean stoves, refrigerators (only certified CFC removal), water tanks, washing machines, furniture, and other materials other than construction debris, dead animals, hazardous waste, or stable matter with weights or volumes greater than those allowed for a Polycart (toter).

1.6 **"Bundle"** shall mean tree, shrub and brush trimmings securely tied together forming an easily handled package not exceeding four feet (4') in length, or fifty (50) pounds in weight.

1.7 **"City"** shall mean the City of McKinney.

1.8 **"Collect", "Collected", and "Collection"** shall mean and refer to the picking up and transporting, storage, delivery to the appropriate Disposal Site for proper disposal of Solid Waste from Customers and delivery to a recycling processing center for recyclables from Customers that choose to participate in Contractor's Recycling programs.

1.9 **"Commercial"** shall mean and refer to any structure or business including construction sites other than one to four family residential units, including hotels, motels, structures containing more than four (4) dwellings, and residential care facilities.

1.10 **"Commercial Containers"** shall mean containers commonly used by commercial garbage collectors for the storage and transportation of solid waste. Such containers shall be equipped with suitable covers to prevent blowing or scattering of waste and shall be maintained in a first class, sanitary, safe, clean, and efficient working condition. Such containers shall be clearly marked with the Contractor's name, telephone number and an identifying number in letters and numbers not less than two inches (2") in height. Such containers shall be maintained in the City-approved single color or color scheme.

1.11 **"Commercial Garbage"** shall mean all normal waste products of commercial buildings or establishments and structures containing more than four (4) dwellings, other than sewage and body waste, manure, dead animals over ten (10) pounds in weight, large tree trimmings, demolition or remodeling debris, hazardous waste, or any other waste material that cannot be broken down to fit into a commercial container or other approved container, such as a Polycart (toter).

1.12 **"Contractor"** shall mean such private firm designated by the City for the collection, transportation, and/or disposal of solid waste and collection, transportation, and/or processing of recyclable materials.

1.13 **"Customer"** shall mean an occupant of a Residential, Commercial or Industrial Unit who generates Refuse in the city limits of McKinney serviced by Contractor.

1.14 **"Dead Animals"** shall mean animals or portions thereof equal to or greater than ten (10) pounds in weight that have expired from any cause except those slaughtered or killed for human use.

1.15 **"Disposal Site"** shall mean a North Texas Municipal Water District Transfer Station or disposal site designated or approved by the City of McKinney for solid waste disposal.

1.16 **"Environmental Laws"** shall mean any and all state, federal, and local statutes, rules, regulations, and ordinances relating to the protection of human health or the environment including, without limitation, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901, et seq., the Comprehensive Environmental Response Compensation, and Liability Action of 1980, 42 U.S.C. § 9601, et seq., as amended by the Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the United States Environmental Protection Agency's rules concerning Underground Storage Tanks, 53 Fed. Reg. 37082 (9/23/88), the Texas Solid Waste Disposal Act, the Texas Water Code and the Texas Clean Air Act, all as amended now and in the future, and any similar federal, state, and local environmental statutes and ordinances and the rules and regulations, orders and decrees now or hereafter promulgated thereunder.

1.17 **"Equipment"** shall mean all vehicles, containers, machinery, tools, and equipment, as well as related supplies and materials reasonably necessary for the Contractor's performance.

1.18 "License Fee" shall be and mean a percentage of the Contractor's gross receipts as approved by the City Council of the City of McKinney to be paid to the City in consideration of this Agreement. The initial License Fee hereunder shall be in the amount of five percent of the Contractor's gross receipts as described herein below. The License Fee may be increased from time to time by a resolution or ordinance adopted by the City Council, which resolution or ordinance shall automatically modify this provision of the Agreement without the need for a formal written amendment to this Agreement signed by the Parties. The License Fee is separate from and in addition to the money paid by the Contractor to the City from its Recycling revenue as explained in Section 9 below.

1.19 "Garbage" shall mean solid waste consisting of putrescible animal and vegetable waste materials (see residential/commercial garbage).

1.20 "Hazardous Waste" shall mean waste, in any amount, which is defined, characterized, or designated as hazardous by the United States Environmental Protection Agency or appropriate State agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law.

1.21 "Household Hazardous Waste" shall mean waste, in any amount, regulated or non-regulated, as described herein under Hazardous Waste, that is generated in a household.

1.22 "Landscape Waste" shall mean grass clippings, leaves, brush, and tree trimmings, excluding tree limbs that exceed 10" in diameter. Landscape Wastes shall be bagged in bio-degradable bags or securely tied bundles not exceeding 50 pounds per bag or bundle.

1.23 "Polycart (toter)" shall mean a rubber-wheeled receptacle with a maximum capacity of 90 to 96 gallons constructed of plastic, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a polycart and its contents shall not exceed 150 lbs. Polycarts shall be provided to each Residential Unit with ownership retained by Contractor.

1.24 "Premises" shall mean all public and private establishments, including individual residences, all multi-family dwellings, residential care facilities, hospitals, schools, businesses, other buildings, and all vacant lots.

1.25 "Recycling" shall mean the reclamation and/or recovery from Solid Waste of all recyclable matter having economic value

1.26 "Recycling Materials" shall mean:

- (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.

1.27 "Recycling Cart" shall mean a rubber-wheeled receptacle with a maximum capacity of 90 to 96 gallons constructed of plastic, designed for automated or semi-automated Recycling collection system, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of the Recycling Cart and its contents shall not exceed 150 pounds. Recycling Carts shall be provided to each Residential Unit with ownership retained by Contractor.

1.28 "Refuse" or "Rubbish" shall mean non-putrescible solid waste (excluding ashes), consisting of both combustible and non-combustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, used and scrap tires, and similar materials; non-combustible rubbish

includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600 degrees Fahrenheit to 1800 degrees Fahrenheit).

1.29 "Request to Collect" shall mean the City will contact the Contractor requesting collection and/or service at a specific location with the nature of the request. This request may be in the nature of a telephone call, facsimile (FAX), or writing, either hand delivered or mailed.

1.30 "Residential Garbage" shall mean all normal household waste of private residences and multi-family dwellings of not more than four (4) units, especially including putrescible wastes, but not including Landscape Wastes, Unusual Accumulations, sewage and body waste, manure, dead animals over ten (10) pounds in weight, large tree trimmings, demolition or remodeling debris, hazardous waste, or any other waste material that cannot be broken down to fit into a Polycart (toter).

1.31 "Special Waste" shall mean any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics or biological properties require special handling and disposal to protect human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to human health or the environment (as defined in 30 Tex. Admin. Code Chapter 333 (1996), and as amended).

1.32 "Solid Waste" shall mean any garbage, rubbish, refuse, sludge (from a waste treatment plant, water supply, or air pollution control facility) and other discarded material, including solid, liquid semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agriculture operations, and from community and institutional activities.

1.33 "Storage" shall mean the holding of Solid Waste for a temporary period, at the end of which the Solid Waste is processed, disposed of, or permanently stored elsewhere.

1.34 "Unusual Accumulations" shall mean (a) for residences, a regular collection having more garbage than a customer's Polycart(s) will reasonably hold; (b) for commercial establishments, accumulations that would not occur in the ordinary course of business for the type of establishments (based on the history of the establishments); (c) large, heavy, or bulky objects such as furniture or appliances; and (d) materials defined by Federal or State Law to be a hazardous waste.

Section 2. GRANT AGREEMENT DOCUMENTS

This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein specifically including, but not limited to, the Original License Agreement and the Amendments. If there is a conflict between this Agreement and any prior written or verbal representations, this Agreement shall control.

For and in consideration of the covenants, agreements, and promises contained herein, the City grants to the Contractor a revocable license to conduct the business of providing Solid Waste and Recycling Collection to Commercial and Residential Customers in the City of McKinney, Texas, and the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Solid Waste and Recycling Collections located within the City. The Contractor agrees to make such collections available to all Residential and Commercial Customers within the City and agrees that such Collections shall be performed pursuant to and consistent with the terms of this Agreement, as well as all ordinances and regulations of the City governing or relating to the Collection of Solid Waste. The parties agree that the Agreement Documents shall consist of the following:

1. This Agreement
2. The following listed and numbered Exhibits attached to this Agreement:
 - a. Exhibit "A" -Performance Standards;

- b. Exhibit "B" -Compensation Schedule; and
- c. Exhibit "C" -Recyclable Cost Index.

These documents form the Agreement and are part of this Agreement as if fully set forth herein. The Agreement Documents are intended to be complimentary, and what is called for by one shall be as binding as if called for by all Agreement Documents. It is specifically provided, however, that in the event of any inconsistency in any of the provisions of the Agreement Documents, the inconsistency shall be resolved by giving precedence to this Agreement and that this Agreement shall control over the attached Exhibits. In the event of any conflict or inconsistency between the Agreement Documents and Chapter 86 of the Code of Ordinances, City of McKinney, Texas, as amended, Chapter 86 of the Code of Ordinances, City of McKinney, Texas, as amended, shall control. All interpretations of any ambiguities in any Agreement Documents shall be made solely by City and the City's reasonable interpretation shall be binding on Contractor.

Section 3. BASIS AND METHOD OF PAYMENT

3.1 Billing and Collection: City shall provide all residential billing for the Collection services. Contractor shall not bill any residential customers within the City for any Collection or disposal services, and as a component of a Customer's disposal fee, it is understood and agreed that the City may determine the charges to Customers in whatever amount is deemed necessary by the City to cover the costs of billing and Collection services, disposal fees, and other associated Solid Waste collection, disposal, and Recycling costs. The City shall, on or before the 10th day of each month, remit to the Contractor, for residential accounts serviced per City billing records during the preceding month, the net compensation due and payable per the then current contractor's compensation as described in Section 3.4 hereof.

Contractor shall approve or deny all residential adjustment request forms sent by the City to the Contractor within twenty-four (24) hours of receipt thereof. All denied requests shall include a detailed explanation by the Contractor.

The Contractor shall be responsible for billing and collecting from all commercial, industrial and temporary roll-off Customers. The Contractor on or before the 10th day of each month, shall remit to the City the detailed billing of all commercial, industrial, and temporary roll-off customers in a format approved by the City, all landfill disposal charges collected from commercial, industrial, and temporary roll-off Customers, and a percentage of gross receipts based on the compensation described in **Exhibit "B"** shall be charged as a License Fee. The License Fee shall be collected by the Contractor and paid to the City for all Commercial Customers. The Contractor shall only be required to remit to the City based on what is collected from the Customers. In the event that any Customers are in default, the Contractor reserves the right to stop service to those Customers until they have paid their balance in full. The Contractor shall notify the City's Environmental Services Manager at least twenty-four (24) hours prior to initiating any stop service.

3.2 Regular Service for Municipally Owned or Operated Facilities: Contractor shall make no charge for the Collection and disposal of waste or Collection and processing of recyclable materials accumulated by the City at City owned or operated office buildings, facilities and sites, City Parks and other City designated sites as determined by the City's Environmental Services Manager so long as the same may be collected on a regular Collection route of the Contractor.

Contractor shall waive all fees and provide any containers and/or services requested by the City's Environmental Services Manager for City sponsored clean-up projects and/or City temporary projects. The number of containers requested for said clean-up and/or City temporary projects shall not exceed one hundred (100) per year.

3.3 Contractor's Compensation: Compensation paid to the Contractor ("Base Compensation") shall be an amount equal to the compensation described in the attached **Exhibit "B"**. A percentage of gross receipts based on the compensation described in **Exhibit "B"** shall be charged as a License Fee. The License Fee shall be collected and retained by the City for all Residential Customers by reducing the compensation due the Contractor under the License Agreement. Contractor shall bill Commercial, Industrial, and Temporary Roll-Off Customers as provided herein and

shall remit the License Fee along with all other compensation collected from these Customers to the City, net of Contractor's fees outlined in **Exhibit "B"**. The City expressly reserves the right to adjust the charges to Customers while maintaining the Contractor's compensation described in **Exhibit "B"**.

3.4 Modification of Contractor Compensation:

- a. Base Compensation described in **Exhibit "B"** shall remain effective for a period commencing on the date hereof and continuing through September 30, 2009. Thereafter, annually beginning on October 1, 2009, and on each successive October 1 thereafter until the termination of this agreement, the Base Compensation may be adjusted as provided herein below.
- b. If requested by Contractor, the Contractor's Base Compensation shall be considered by the City Council for increase or decrease upon the City's receipt and review of appropriate documentation by Contractor, as the case may be, based on Contractor's ability to cover increases in documented costs resulting from (1) changes in any laws, ordinances, regulatory requirements or guidelines (including changes in construction or interpretation thereof or changes in the manner or method of enforcement thereof); (2) documented increased costs due to changes in location of disposal facilities and/or documented increases in disposal costs; or (3) documented increased direct costs of operations, over and above the CPI, including but not limited to changes in fuel costs. Any proposed adjustment shall be submitted to City no more than once every 12 months, on or before June 1, to be effective on October 1.
- c. Contractor may petition the City Council for CPI adjustments to the Base Compensation described in **Exhibit "B"** no more than once every twelve (12) months, on or before June 1, to be effective October 1, annually during the term of this Agreement, to reflect changes in the cost of operations, as reflected by fluctuations in the Price Wage Earners and Clerical Workers (CPI-U, All Items) published by the U.S. Department of Labor, Bureau of Labor Statistics, Dallas-Fort Worth area, in the "March - April" report. The compensation may be adjusted for the ensuing twelve (12) month period by a percentage not to exceed seventy-five percent (75%) of the net percentage change of the CPI-U, All Items Index.

If the index specified above is discontinued, the parties hereto shall agree by April 1 of the then current year to substitute another equally authoritative measure of change in the purchasing power of the U. S. dollar for CPI as may then be available so as to carry out the intent of this provision. If the Bureau of Labor Statistics designates an index with a new title or code number or table number as being the continuation of the index cited herein, the new index shall be used. If the specific "Dallas-Fort Worth" index is discontinued, but the "U.S. City Average" remains, the latter index shall be used. Otherwise, a substitute shall be agreed upon by the parties.

- d. All changes in the Contractor's Base Compensation, which the Contractor may request or petition to receive under this Agreement, shall require approval by the City Council.
- e. If a customer requests Solid Waste Collection or disposal services that are not described on **Exhibit "B"**, Contractor shall so advise City and propose a reasonable fee for such services. The City Manager, or designee, shall authorize such services at a reasonable fee, as he determines it, for a time not to exceed thirty (30) calendar days, or other time reasonably necessary to obtain City Council approval of and amendment to the City rate and **Exhibit "B"**.

3.5 Deposits: Customer deposits received by the City for existing Commercial, industrial or temporary roll-off Customers are primarily for the purpose of satisfying City requirements for utility services, but the Contractor shall have a claim on any of these funds currently in the City's possession in the event a Commercial, industrial or temporary roll-off Customer that has paid such a deposit to the City defaults on payments due to the Contractor. Furthermore, Contractor shall be entitled to collect deposits from new Commercial, industrial, and temporary roll off Customers consistent with the Contractor's set rate as approved by the City for Commercial Garbage customers.

3.6 Records: Upon request, the Contractor shall provide City, on or before the 14th calendar day after receipt of said request, a statement reflecting all operating revenues and expenses for its Collection, transport, and Recycling service within the City for the preceding month. The City shall have the right to review the books and records kept incident to the operation of the Contractor's business relating to the City. To the extent permitted by the Texas Open Records Act, all information so obtained shall be confidential and shall not be released by the City unless expressly authorized in writing by the Contractor or determined to be public information by the Texas Attorney General's office.

Section 4. TERM

4.1 Primary Term: The Primary Term of this Agreement shall be for a period of nine (9) years and five (5) months commencing May 20, 2008 (the "Effective Date") and, unless renewed according to the terms of Section 4.2, terminating on September 30, 2017.

4.2 Renewal: This Agreement may be extended by mutual agreement of the parties. If either party desires to renew this Agreement, such party should provide the other party written notice of its intent to renew this Agreement at least 180 days prior to the expiration of the Primary Term.

Section 5. GENERAL STATEMENT OF CONTRACTOR'S OBLIGATION; SCOPE OF SERVICE

Contractor hereby agrees to collect all Solid Waste, except Hazardous Waste, generated by Customers within the corporate limits of the City. The Contractor shall, at its own cost and expense, furnish trained personnel and appropriate, well-maintained equipment of the highest quality to collect Solid Waste from Customers; and shall establish and maintain scheduled Collection routes and special schedules as may be necessary to meet the Collection service requirements of the Customers located within the corporate limits of the City. Residential routes are subject to approval by the City prior to implementation or changes. The Contractor may recommend Collection schedules of service to Commercial Customers. Unless otherwise established by City ordinance, Commercial Collection schedules for Solid Waste shall be determined by the Contractor based upon negotiations with its Customers and subject to City-approved rate schedules. The Contractor acknowledges and agrees that the Contractor shall be obligated to take such actions necessary to fulfill its duties and obligations hereunder and that the City may from time to time issue written directions to Contractor defining the scope of Contractor's services to fulfill the intent of this agreement.

5.1 Residential Garbage, Landscape Waste, and Unusual Accumulations Collection Services: The Contractor shall provide automated Residential Garbage Collection to all residences with not more than four (4) units per premises a minimum of once weekly within the City corporate limits. The Contractor, at its sole cost and expense, shall provide and distribute Polycarts to all residences with not more than four (4) units per premises. The Polycarts shall be clearly marked with the Contractor's name, the City's logo and an identifying number. New Residential Customers shall initiate service with the City's Utility Billing Department and schedule delivery of Polycarts. The City shall notify the Contractor by 5:00 p.m. on each regular business day of all requests for delivery of Polycarts for new Residential Customers. The Contractor shall deliver new Polycarts as requested on regular business days. However, the City shall provide at least 24 hours notice (or no sooner than the end of the next regular business day) to Contractor to deliver new Polycarts. The Contractor shall be responsible for the cost of providing new Polycarts and shall retain ownership of all Polycarts. The Contractor shall be responsible for the cost to replace damaged Polycarts. For the Contractor to receive reimbursement from the City for lost or stolen Polycarts, the Contractor shall provide convincing evidence to the City's Environmental Services Manager that the customer intentionally or maliciously damaged the Polycart or the Polycart was stolen from the customer's residence. All Residential Garbage shall be disposed of via the Polycart. The Contractor shall provide additional Polycarts at an extra cost to the Customer as provided in Exhibit "B". Such additional Polycarts shall be collected on the Customer's regularly scheduled Collection day.

In addition to the weekly Collection of Residential Garbage, Contractor shall provide a separate Collection of Landscape Wastes from each residence one time per week. Landscape Wastes shall be collected on the Customer's regularly scheduled Collection day.

In addition to Residential Garbage Collection, the Contractor shall provide a special Collection service for Unusual Accumulations as defined herein. The Contractor agrees, upon request by a Customer, to Collect such Unusual Accumulations which can be lifted and loaded by two employees in five (5) minutes or less, not more than twelve (12) times per calendar year per account, at no charge. Residents will contact Contractor to schedule the Collection of Unusual Accumulations. The Contractor may receive an extra fee for the Collection of Unusual Accumulations starting with the thirteenth such Collection at a residence in a fiscal year.

5.2 Commercial Garbage Collection: The Contractor shall provide regular Commercial Garbage Collection to all Commercial, institutional, and industrial Customers within the city limits of McKinney. The Contractor shall provide Commercial Collection containers to Customers as is necessary to meet specific Customer needs for Solid Waste service as set forth in local, state, and federal mandates. The Contractor is entitled to compensation for such services as provided in this Agreement. Collection containers provided to Customers shall be a high quality container as is commonly used in the Solid Waste Collection industry for storage, collection, and transportation of non-compacted wastes. The Contractor shall be capable of providing specialized compaction containers and equipment to Customers who choose to lease such containers from the Contractor. Customers may lease compaction type containers from suppliers other than the Contractor. The Contractor shall be responsible for hauling all containers.

The Contractor and Commercial Customer shall mutually agree upon service frequencies and size of containers needed to provide adequate service to insure that wastes are removed from properties according to then current City Ordinances. In the event the Contractor and Commercial Customer cannot agree upon service needs the Contractor shall contact the City's Environmental Services Manager to mediate such an agreement to identify and propose adequate service needs. If an agreement between Contractor and any Commercial Customer cannot be reached, the City shall determine appropriate service.

Extra Collections for Commercial Containers, if notified by 10:00 a.m. of the service day, shall be performed that day. Calls for extra Collections made after 10:00 a.m. shall be made the following service day; unless Contractor is able to make the extra Collection the same day.

There shall be an extra charge for extra pickups and disposal of containers as outlined in Exhibit "B" or as might be approved by the City Council in the future.

Collection Containers that have been damaged shall be exchanged or repaired within twenty-four (24) hours of notification. If an unsightly condition develops on the container due to fire, worn paint or other causes beyond the Contractor's control, the container shall be exchanged upon request of the Customer or the City. The Contractor shall exchange containers at reasonable intervals to maintain a good appearance considering type of refuse generated, normal wear, and weathering. The Contractor shall maintain an inventory of containers sufficient to respond to the City's and Customers' needs in a prompt manner to accommodate replacements or new service starts. (This paragraph shall be applicable to Polycart (toter) containers for residential service as well as Commercial and industrial containers.)

Section 6. DISPOSAL OF SOLID WASTE

The Contractor shall deliver all Solid Waste Collected pursuant to this Agreement to the City's designated landfill or to any transfer station which may hereafter be utilized in the future by the City (such site hereafter called the "Disposal Site"). In the event there is no Disposal Site available for the disposal of Solid Waste as contemplated by this Agreement, fees for transport to another site shall, at that time, be negotiated by the Parties in accordance with Section 3.4(e). The City shall be responsible for the disposal fees which it shall negotiate with the alternate disposal site. Contractor shall have no authority to obligate or otherwise bind the City or Customer to disposal fees at or with any disposal site. Any alternative disposal site shall be approved in writing by the City's Environmental Services Manager prior to its use by the Contractor. All laws, rules, and regulations governing hours of operation and disposal practices at the Disposal Site and any alternative disposal site shall be strictly observed by the Contractor.

Section 7. PERFORMANCE

The Parties hereby agree that all services provided by the Contractor pursuant to this Agreement shall be carried out in a competent and businesslike manner and in compliance with the standards and specifications set forth in the attached **Exhibit "A"** (hereafter "Performance Standards"). The Contractor shall not engage any subcontractor without written prior approval of the City. The City shall have the right to revise the Performance Standards as it determines and within its sole discretion, such revisions to be necessary or proper to secure the safety, welfare, and accommodation of the public. Any revised Performance Standards shall be binding immediately on Contractor, unless otherwise stated.

Contractor and City agree to mutually evaluate future developments within the City and work in good faith to incorporate innovative collection processes as reasonably required to accommodate the needs in these developments. Further, Contractor and City agree to work in good faith to establish collection fees as necessary for these potential future services.

Section 8. PROMOTION/INFORMATION ACTIVITIES

Prior to 1) any significant route and service changes, 2) implementation of any new program and service, or 3) any addition to an existing program or service, the Contractor shall submit a strategy for a publicity campaign to the City for approval. The Strategy shall include methods of publicizing the program, a time schedule of advertisements and the location where such advertisements shall appear. Contractor shall develop and provide, at the expense of Contractor, instructional pamphlets for citizens regarding specific Solid Waste management practices as are applicable to the Customers in McKinney. Such pamphlets shall be available to the City for distribution to all citizens. Additional copies of the pamphlets shall be available to the City and any citizen upon request and shall be available for enclosure with water and other utility bills. All promotional activities and other information released as a part of its Strategy shall be reviewed and approved by the City prior to release by the Contractor. On or before October 1 of each Agreement year, the Contractor shall submit an annual Public Information Strategy for the next Agreement year to the City for its review and approval. At no time shall the Contractor mail promotional materials directly to customers in McKinney without prior written notification to and approval of the City.

Section 9. RECYCLING PROGRAM

9.1 General: The Contractor shall provide various Recycling programs for its Customers aimed at meeting the goals established by the United States Environmental Protection Agency and the Texas Commission on Environmental Quality to reduce the impact of waste by Recycling materials which include glass, paper, plastic, tin, aluminum, and corrugated cardboard. This program shall be consistent with federal and state mandates currently in effect or imposed after the effective date or any renewal date of this Agreement. It is specifically understood and agreed that nothing in this Agreement mandates or requires that Customers within the corporate limits of the City participate in the Contractor's Recycling programs; and, that Customers may choose to Recycle through other businesses and facilities.

9.2 Recycling Facility: The Contractor agrees to construct an approximate thirty-thousand (30,000) square foot facility for the purpose of processing recyclable materials ("Recycling Facility"). Contractor shall obtain a Leadership in Environmental and Energy Design ("LEED") rating as awarded by the U.S. Green Building Council for this Recycling Facility. The hours and days of operation shall be agreed upon by both parties. The operation of the Recycling Facility shall include adequate staffing to accommodate needs of users, identification of on-duty personnel (such as a jacket, safety vest, or shirt with company name & emblem, as well as eye protection), consistent flow of traffic, disposal of materials in a safe manner, and assurance of capacity to handle recycled materials. The Recycling Facility shall be maintained in a clean and safe condition by Contractor at all times.

All recyclable materials Collected by Contractor from within the City shall be processed at the Contractor's Recycling Facility, in addition to any recyclable materials delivered by third parties. Revenues generated from recyclable materials shall be used to offset the cost and expense of the Recycling Facility and the operation of said

facility. Net profit associated with the sale of recyclable materials Collected from within the City and processed at the Recycling Facility, if any, shall be calculated in accordance with the recyclable cost index as shown on **Exhibit "C"**. Fifty percent (50%) of any such net profit shall be rebated to the City each quarter.

9.3 Commercial/Industrial/Multi-Family Recycling Program: The Contractor has established and promotes a program of Recycling among its Commercial, industrial and multi-family Customers (hereafter "Commercial Recycling Program"). Under the Commercial Recycling Program, the Contractor shall provide to its Commercial Customers additional recycling bins at a rental rate not to exceed the rate established by the City. The Contractor agrees to use its best efforts to market such recyclable materials. All recyclable materials Collected by the Contractor under the Commercial Recycling Program shall be processed at the Recycling Facility.

9.4 Residential/Single Family Curbside Recycling Program: The Contractor shall continue the existing residential curbside Recycling program for the co-mingled Collection of recyclable materials from all residential dwellings of not more than four (4) residences per premises, once weekly. Under the Residential Recycling Program, the Contractor shall provide every Residential Customer with one Recycling Polycart and provide additional recycling carts at a rental rate not to exceed the rate established by the City. All Recyclable Materials to be Collected by Contractor shall be stored inside the Recycling Polycart. Contractor shall Collect Recyclable Materials from each residence on the regularly scheduled Collection day. All recyclable materials Collected by the Contractor under such program shall be delivered to the Recycling Facility.

Effective October 1, 2010 the Contractor shall eliminate the \$1.52 per month residential Recycling Collection service charge. It shall be the responsibility of the Contractor to provide valid justification to the City that supports any claim by the Contractor that all or a portion of said service charge should be retained.

9.5 City's Minimum Recycling Revenue: The Contractor shall pay forty thousand dollars (\$40,000.00) to the City upon the execution of this Agreement. Once the Recycling Facility is completed and operating, the Contractor guarantees to pay the City a minimum of forty thousand dollars (\$40,000.00) annually (the "Guaranteed Minimum") from its Recycling revenue. In the event the sum of the quarterly payments made to the City in any given fiscal year by Contractor from its Recycling revenue do not exceed the Guaranteed Minimum Contractor shall pay City the difference between the sum of the quarterly payments and the Guaranteed Minimum within 14 calendar days after the close of such fiscal year.

Section 10. LABOR FORCE

The Contractor shall employ only such superintendents, supervisors, and workers who are reasonably careful and competent and fully qualified to perform the duties or tasks assigned. All employees of the Contractor and/or any approved subcontractors, if any, shall comply with all applicable laws and regulations, and shall have sufficient skill, ability, and experience to properly perform the work assigned to them and to operate any equipment necessary to properly carry out the performance of their assigned duties. The Contractor shall maintain a work environment free from the use, possession, distribution, and influence of controlled substances, alcohol, intoxicants, narcotics or other mind-altering substances (referred to hereafter as "Drugs and Alcohol") and to prohibit employees from using, possessing, distributing or being under the influence of Drugs and Alcohol at any time within the course and scope of their employment. The Contractor shall keep on file with the City a copy of its most current substance abuse policy. All drivers operating equipment requiring a commercial driver's license shall at all times maintain a valid, commercial driver's license (CDL).

Section 11. EQUIPMENT

The Contractor, at its sole cost and expense, shall furnish and maintain all Equipment as is reasonably necessary, for performance of this Agreement in an acceptable manner and at a satisfactory rate of progress which shall at no time be less than the specific performance standards set forth herein. All collection vehicles used for handling solid waste and performing any part of the Agreement shall be subject to the inspection and approval of the City. Contractor shall provide Commercial Containers to all Commercial Customers at the beginning of this Agreement,

unless otherwise specifically approved by the City in writing. The equipment shall be maintained in a first class, safe, clean, and efficient working condition throughout the term of the Agreement and any renewal period. The Contractor shall establish a regular preventative maintenance program for all Equipment. The Contractor shall clean the vehicles and equipment on a weekly basis or more frequently as may be necessary to maintain sanitary and safe working conditions. The Equipment shall be used by the Contractor in such a manner as to minimize the risk of injury to employees, citizens and property. The Contractor shall be responsible for initiating, maintaining, and supervising all maintenance programs, safety precautions and programs, in connection with the work and services performed hereunder. The Contractor shall establish reasonable procedures and programs to prevent property loss or damage and personal injury to persons, including, but not limited to, employees performing such work and all other persons who may be affected hereby. The Contractor shall comply with all OSHA rules and regulations when conducting operations pursuant to this Agreement. The Contractor shall maintain files and records of all citations and violations of any laws, statutes, ordinances, or regulations in the ownership, title, maintenance, or operation of the Equipment, and such files and records shall be available at all times for review by the City. The Contractor shall submit a complete written inventory of all Equipment used in the performance of this Agreement and shall make such other submissions as required to reflect the Contractor's current Equipment inventory throughout the term of the Agreement or any renewal period as requested by the City. The City shall have the right to inspect the Contractor's Equipment and operations at any time to ensure compliance with this Agreement and require an equipment replacement schedule. As required by the Texas Property Tax Code, the Contractor shall render a list of all Real and tangible Personal property located and/or operated within the City of McKinney, with a declaration that such property has a taxable status in McKinney, to the Collin County Central Appraisal District, by April 15th of each year. Personal property includes, but is not limited to vehicles, collection containers, office equipment, etc. The list shall include all Personal property in use as of January 1st of each year. The list shall also be filed with the City of McKinney, Finance Department by April 15th of each year throughout the term of this Agreement. The Contractor shall bear the financial responsibility for any annual audit requested by the City. The City, at its sole discretion and choosing, may utilize a private, independent third party auditor for such purposes. The cost incurred by the Contractor for the purpose of a City requested audit shall not exceed one hundred thousand dollars (\$100,000.00) over the term of this Agreement nor exceed \$20,000 annually.

Section 12. PERFORMANCE

Except as provided herein, the Contractor shall furnish to the City a performance bond in a form approved by the City Attorney guaranteeing the faithful performance of this Agreement (hereafter "Performance Bond"). The Performance Bond shall be executed by a surety company licensed to do business in the State of Texas and approved by the City Attorney, and shall be for the term of this Agreement and any renewal term in the amount of ONE MILLION DOLLARS (\$1,000,000.00). The Performance Bond shall be furnished to the City by the Contractor within ten (10) days of the date of the execution of this Agreement or any renewal hereof. Without limiting any other indemnity provisions herein, said Performance Bond shall guarantee full, satisfactory and complete performance of this Agreement by the Contractor and indemnify the City against any loss, expense, cost or damage resulting from any default by the Contractor hereunder or any failure of performance hereunder by the Contractor.

Section 13. VEHICULAR IDENTIFICATION

All vehicles, equipment, and containers used by the Contractor for the Collection of Solid Waste and Recycling shall be clearly marked with the Contractor's name and telephone number in letters of a size sufficient to reasonably identify the vehicle, but not less than two inches (2") in height. The Contractor shall also assign each of its vehicles an identifying number and shall mark the same upon said vehicles in two prominent locations, in figures not less than two inches (2") in height. All vehicles and equipment shall be painted in a color scheme common to the Contractor so as to enhance the appearance and identification of said vehicles and equipment.

Section 14 HEALTH AND SANITATION

The Contractor shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and collection of Solid Waste and Recycling as will tend to prevent the inception and spread of diseases and to effectively prevent littering and the creation of a nuisance on any property either public or private. The

Contractor shall maintain, at its sole expense, copies of all permits and licenses required for its Collection of Solid Waste and Recycling services and provide copies of same to City.

Section 15. RIGHT OF INSPECTION

City hereby reserves the right to inspect and evaluate the Contractor's operations to determine its continuous performance hereunder either on a continuing or random inspection basis.

Section 16. NON-COMPLIANCE, DEFAULT BY CONTRACTOR

16.1 Treatment of Failure to Perform: In the event the Contractor fails, during the primary term hereof or any renewal term, to perform its duties and discharge its obligations in accordance with the terms, provisions, and conditions hereof, the City shall be entitled, at its sole option, either to 1) declare the Contractor to be in non-compliance with the terms of the Agreement (hereafter "Non-Compliance") or 2) declare the Contractor to be in default.

16.2 Default and Immediate Termination: In the event the City declares the Contractor to be in default hereunder, determines that such default is of a nature and magnitude so as to defeat or frustrate the essential purposes hereof, and further determines that such default may or will result in substantial injury to the public health, safety or welfare, the parties agree as follows:

- a. The City shall be entitled to declare immediately that this Agreement and the Contractor's right to proceed hereunder are terminated; and
- b. The City shall be entitled, at its sole option and in addition to its rights under the Performance Bond, to immediate possession of all vehicles, equipment, containers, facilities, or other instrumentalities in possession of the Contractor as may be necessary to permit the City to provide and perform Collection of Solid Waste and Recycling on an interim basis until such time as a satisfactory substitute contractor may be put into place or the parties hereto otherwise agree, in which event the City shall fairly compensate the Contractor for the fair market rental value of such vehicles, equipment, containers, facilities or other instrumentalities, subject to any offsets or claims by the City against the Contractor. Contractor shall obtain any necessary agreements from lien holders to insure City of its rights hereunder.
- c. If Contractor defaults and City terminates this Agreement, Contractor shall automatically grant the City the right and option to purchase, for cash, any or all, equipment and containers (both commercial and residential) for an amount equal to the then existing debt secured by such property.

16.3 Non-Compliance: Subject to Section 21.4, in the event the City finds the Contractor in noncompliance with the terms of this Agreement, written notification to the Contractor specifying the incidents of non-compliance is required. The letter shall provide the Contractor reasonable time to cure the non-compliance; excepting a situation that poses a threat to health and safety of human life wherein immediate compliance is required. The Contractor must reply, in writing, as to resolution of any non-compliance. Failure to cure any non-compliance shall entitle City to declare a default and exercise its remedies under Section 16.2.

Section 17. BOOKS AND RECORDS

The Contractor hereby agrees to maintain, at its local office or principal place of business in McKinney, Texas, adequate books and records relating to the performance of its obligations under this Agreement. The Contractor agrees to maintain separate records in a form sufficient to identify its investment, revenues, and expenses related to its performance under this Agreement, intending thereby to separate the accounting records of the City's operation from its other operations. The records of the Contractor applicable to its performance under this Agreement shall be available for inspection by the City at any time during normal business hours. Contractor shall provide City any financial information required by the City, including audited financial statements and tax returns. The Contractor shall bear the

financial responsibility for any annual audit requested by the City. The City, at its sole discretion and choosing, may utilize a private, independent auditor for such purposes. The cost incurred by the Contractor for the purpose of a City requested audit shall not exceed one hundred thousand dollars (\$100,000.00) over the term of this Agreement nor exceed \$20,000 annually.

Section 18. CONTRACTOR'S INDEMNIFICATION OF THE CITY

18.1 CONTRACTOR HEREBY ASSUMES THE RISK OF LOSS AND/OR INJURY TO PROPERTY AND/OR PERSONS CAUSED BY ANY NEGLIGENT OR WILLFUL ACTS OR OMISSIONS IN THE PERFORMANCE OR NON-PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

18.2 MORE PARTICULARLY, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL ACTIONS, CITATIONS, CLAIMS, LIABILITIES, DAMAGES, DEMANDS, FINES, SUITS, JUDGMENTS, LEGAL PROCEEDINGS, LOSSES, PENALTIES, COSTS OR EXPENSES, INCLUDING BUT NOT LIMITED TO, EXPENSES OF LITIGATION AND ATTORNEYS' FEES, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF THE CONTRACTOR, ITS SUBCONTRACTORS AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS"). CONTRACTOR FURTHER AGREES TO PAY ALL ATTORNEYS' FEES INCIDENT TO ENFORCEMENT, RENEGOTIATION, OR INTERPRETATION OF THIS AGREEMENT.

18.3 WITHOUT LIMITING THE FOREGOING, THE CONTRACTOR FURTHER AGREES THAT THE INDEMNITY PROVIDED FOR HEREIN SHALL EXTEND TO AND INCLUDE ANY AND ALL CLAIMS AGAINST THE CITY ARISING OUT OF OR PREDICATED UPON THE ENVIRONMENTAL LAWS AS DEFINED HEREIN. THE CITY SHALL NOT BE RESPONSIBLE FOR THE NEGLIGENCE OF THE CONTRACTOR, OR ANY OF ITS AGENTS, EMPLOYEES, OR CUSTOMERS.

18.4 BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY

18.5 THE CHOICE OF COUNSEL TO DEFEND OR OTHERWISE HANDLE ALL INDEMNIFIED ITEMS SHALL BE DETERMINED BY PROCEDURES SET FORTH IN THE APPLICABLE INSURANCE AGREEMENTS MAINTAINED BY THE CONTRACTOR OR, IN THE ABSENCE OF SUCH INSURANCE AGREEMENT, AT THE CHOICE OF THE CONTRACTOR SUBJECT TO THE APPROVAL OF THE CITY. CONTRACTOR SHALL RETAIN APPROVED COUNSEL FOR THE CITY WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE CITY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR DOES NOT RETAIN COUNSEL FOR THE CITY WITHIN THE REQUIRED TIME, THEN THE CITY SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONTRACTOR SHALL PAY THESE ATTORNEYS' FEES AND EXPENSES. THE CITY RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY OR ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO. CONTRACTOR SHALL BE RESPONSIBLE TO PAY FOR ALL COSTS AND EXPENSES INCURRED BY THE CITY IN DEFENDING ANY INDEMNIFIED ITEMS.

18.6 NOTHING ABOUT THIS SECTION 18 OR ANY INDEMNIFICATION BY CONTRACTOR OF THE CITY SHALL SERVE AS AN EXPRESS OR IMPLIED WAIVER OF ANY RIGHTS OF GOVERNMENTAL IMMUNITY OR SOVEREIGN IMMUNITY ENJOYED BY THE CITY, ITS OFFICERS AND EMPLOYEES AND/OR THE CONTRACTOR.

Section 19. INSURANCE REQUIREMENTS

19.1 Coverages Required: Before commencing work, the Contractor shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the City of McKinney. The Contractor shall furnish to the City of McKinney Purchasing Manager certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

City of McKinney
c/o Periculum Services Group
Department 72
PO Box 257
Portland, MI 48875-0257

- a. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors (excluding architects, engineers and surveyors) and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
- b. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
- c. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
- d. Umbrella or Excess Liability insurance with minimum limits of \$5,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage (1, 2 and 3).

The total limits required may be satisfied by any combination of primary and excess or umbrella liability insurance provided all policies comply with all requirements. The Contractor may maintain reasonable deductibles or self-insured retentions.

19.2. Endorsements Required: With reference to the foregoing required insurance, the contractor shall obtain endorsements to applicable insurance policies as follows:

- a. A waiver of subrogation in favor of City of McKinney, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
- b. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability and Business Automobile policies, by using endorsement CG2026 or broader .

- c. All insurance policies shall be endorsed to the effect that the insurer issuing any coverage required by this Agreement will provide the City of McKinney at least ninety (90) days written notice prior to cancellation or non-renewal of the policy by the insurer.

19.3. Insurance Carrier Rating: All insurance shall be purchased from an insurance company that meets a financial rating of A-VI or better as assigned by the A.M. BEST Company or equivalent.

Section 20. CONTRACTOR'S LOCAL OFFICE

20.1 Office/Managing Agent. Throughout the term of this Agreement the Contractor shall maintain a local office and authorized managing agent within the City and shall designate in writing the agent upon whom all notices may be served from the City. Service upon the Contractor's agent shall always constitute service upon the Contractor.

20.2 Hours: The Contractor's local office shall be open during Collection hours so that Customers can lodge complaints, requests for information, and requests for service. At a minimum, the Contractor's local office shall be open between the hours of 8:00 a.m. and 5:00 p.m., local time, Monday through Friday.

20.3 Staffing: The Contractor's local office shall have a responsible person in charge during Collection hours on Collection days, shall be equipped with sufficient telephones, a local telephone number, and sufficient personnel to receive telephone calls. Personnel shall receive calls in a courteous and polite manner, record all complaints in writing, and resolve all complaints in an expeditious manner within the following twenty-four (24) hour period. After business hours communications should be provided by the Contractor through the use of an answering machine that shall record all incoming calls.

Section 21. CUSTOMER COMPLAINTS

21.1 Complaints: The Contractor shall within thirty (30) days of the Effective Date establish a written procedure for handling all service complaints from Customers. A copy of such procedure shall be kept at the local office of the Contractor and shall be provided to the City's Environmental Services Manager within such thirty (30) day period. At a minimum, the Customer complaint procedure shall provide that all Customer complaints shall be addressed within twenty-four (24) hours of receipt of such complaint and shall be promptly resolved. Further, the Contractor shall supply the City's Environmental Services Manager with copies of all complaints, at least weekly or as often as may be necessary to expedite resolution of each complaint, indicating the date and hour of the complaint, the nature of the complaint, and the manner and timing of its resolution. In addition, the Contractor shall keep a telephone log on all Customer-related phone calls, both incoming and outgoing calls, and shall supply the City's Environmental Services Manager with a copy at least weekly. All tapes of calls shall be labeled and maintained for a period of three (3) years.

21.2 Non-Collection: Should a dispute arise between the City, Contractor, and/or a Customer as to whether the Contractor actually failed to make a Collection (whether the Contractor missed a pickup) the decision of City's Environmental Services Manager shall be final, and the Contractor agrees to abide by such decision.

If the owner or occupant of any premises 1) fails to place a container out, or 2) is otherwise in violation of the City's ordinances with respect to a) the location of Refuse containers, b) the means by which the waste is containerized or non-containerized, or c) the volume, weight, or composition of Refuse to be removed from the premises renders service impossible, the Contractor may refrain from collecting all or a portion of such Refuse that is rendered uncollectible due to the aforementioned circumstances. The Contractor shall prior to 4 p.m. of the business day notify the City's Environmental Services Manager and the owner or occupant thereof, at the Contractor's option by telephone, but in any event, in writing of the reason for such non-collection. Use of a standard notification tag, approved by the City, shall be utilized whenever appropriate. The use of such tag shall suffice as written notification. The Contractor shall Collect such Refuse on the next scheduled Collection day after the Customer remedies the existing circumstances that inhibit Collection. The Contractor may charge for an extra Collection, as may be applicable, if the Customer requests Collection prior to said Customer's next scheduled Collection day.

Where the City is notified by an owner or occupant that Refuse has not been removed from a subject premises on the scheduled Collection day and where no notice of non-collection or a route change in Collection schedule has been received from the Contractor, the City's Environmental Services Manager shall investigate. If the investigation discloses that the Contractor has failed to Collect Refuse from the subject premises without cause, as supported by notice described herein, the Contractor shall Collect the same within twelve (12) hours after a "Request to Collect" is issued by the City's Environmental Services Manager. Contractor shall abide by the decision. Should the Contractor fail to honor a "Request to Collect", the Contractor shall be subject to such applicable penalty as described herein. It is expressly understood that these rules apply to any type of regularly scheduled service Collections offered to a Customer, such as Recycling service, whether residential or Commercial, and Landscape Waste Collections as may be applicable.

21.3 Penalties: Penalties shall be deducted from the Contractor's monthly compensation for non-delivery of service as is applicable for the following reasons:

- a. Failure to honor a "Request to Collect" on Garbage accounts: Residential accounts: five dollars (\$5.00) per account plus two dollars (\$2.00) per day of non-collection after the first day. Commercial accounts: fifty dollars (\$50.00) per account plus ten dollars (\$10.00) per day of non-collection after the first day. A "Request to Collect" shall be applicable for new service starts.
- b. Failure to honor a "Request to Collect" on Recycling accounts: Residential accounts: two dollars (\$2.00) per account plus one dollar (\$1.00) per day of non-collection after the first day. Commercial accounts: twenty dollars (\$20.00) per account plus two dollars (\$2.00) per day of non-collection after the first day. A "Request "Request to Collect" shall be applicable for new service starts.
- c. Failure to provide records: The City may levy penalties against the Contractor for not providing records to the City under Section 17 and 22 of this Agreement. The penalty shall be one hundred dollars (\$100.00) per week, per record that is not provided to the City in accordance with this Agreement.

The City Manager or his designee has the right to waive any applicable penalties or a portion thereof at his discretion.

21.4 Non-Compliance Penalties: In the event the Contractor shall fail to perform any of the terms or conditions of this Agreement, other than those described in Section 21.3, the City shall promptly notify the Contractor in writing of matters relating thereto. Thereafter, if the event or condition is not corrected or otherwise made to comply with the terms of this Agreement, as determined solely by the City, within a period of time which is reasonable in relation to the nature of the event of non-compliance, but in no case more than fourteen (14) calendar days after the date of written notice of such non-compliance, the same shall constitute an act of non-compliance. For each such act, the City may deduct from the consideration to be paid the Contractor, as penalties, the sum of one thousand dollars (\$1,000.00) per day for each day that each such act of non-compliance shall continue. This remedy is hereby expressly made cumulative of other remedies available to the City, at law or in equity, for the breach of this Agreement.

Section 22. ASSIGNMENT

The Contractor agrees that it shall not, without prior written approval of the City, assign any rights or delegate any duties arising hereunder; the Contractor further agrees that any such assignment or delegation of rights or duties shall not relieve the Contractor of its obligations to the City hereunder unless expressly agreed by the City in writing.

Section 23. MISCELLANEOUS PROVISIONS

23.1 Independent Contractor: The relationship of the Contractor to the City shall be that of an independent contractor, and no master-servant, principal-agent or employer-employee relationship between the parties is created by this Agreement. By entering into this Agreement with the City, the Contractor acknowledges that it shall, in the

performance of its duties under this Agreement, be acting as an independent contractor and that no officer, agent or employee of the Contractor shall be for any purpose an employee of the City and that no officer, agent or employee of the Contractor is entitled to any privileges of a City employee or officer under any provision of the statutes of the State of Texas and ordinances of the City.

23.2 Choice of Law; Venue: The parties agree that this agreement shall be governed by the law of the State of Texas; the parties further agree that venue for all actions arising out of this Agreement shall be in Collin County, Texas.

23.3 Bankruptcy; Insolvency: It is agreed that if the Contractor files for protection under any Bankruptcy Statute (voluntary or involuntarily), then this agreement shall automatically be in default and terminate effective on the day a Bankruptcy petition is filed.

23.4 Discrimination Prohibited: The Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. The Contractor shall be an equal opportunity employer and have an affirmative action plan.

23.5 Right to Require Performance: The failure of one of the parties at any time to require performance by the other party of any provisions hereof shall in no way affect the rights of such party thereafter to enforce the same. Nor shall waiver by a party, whether express or implied, of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provisions itself.

23.6 Unenforceable Provisions: If any provision of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected and shall remain in full force and effect. The City's obligations hereunder shall be subject to and limited by any existing or future law, statute, or ordinance which regulates the performance of Solid Waste or Garbage Collection in municipalities.

23.7 Notices: Any notice required or permitted to be delivered hereunder shall be in writing to the City Manager with a copy to the City's Environmental Services Manager and to the Contractor's Agent, as the case may require.

23.8 Force Majeure: Neither the Contractor nor the City shall be liable for the failure to perform its duties if such failure is caused by a catastrophe, riot, war, governmental order or regulation, strike, act of God, or other similar or different contingency beyond the reasonable control of the Contractor or the City.

23.9 Compliance With Laws: The Contractor, its officers, agents, employees, contractors, and sub-contractors, shall abide by and comply with all laws, federal, state, and local. If the City calls the attention of the Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, the Contractor shall immediately desist from and correct such violation.

23.10 No Third Party Beneficiary: For purposes of this Agreement, including its intended operation and effect, the parties (City and Contractor) specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with City or Contractor or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Contractor.

23.11 No Oral Modification: No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the signatories hereto or their respective heirs, successors and assigns.

23.12 Effective Date: The Effective Date of this Agreement shall be May 20, 2008.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

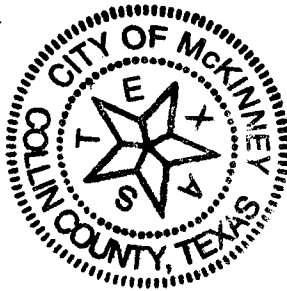
CITY OF MCKINNEY
222 N. Tennessee St.
McKinney, Texas 75069

By: *Frank Ragan*
FRANK RAGAN by Regie Neff, Assistant City
City Manager Manager and authorized signatory

Date Signed: 5-30-08

ATTEST:

Sandy Hart 6/4/08
SANDY HART, TRMC, MMC
City Secretary
BEVERLY COVINGTON, TRMC, CMC
Deputy City Secretary



APPROVED AS TO FORM:

[Signature]
MARK S. HOUSER
City Attorney

IESI TX CORPORATION
2138 County Lane
McKinney, Texas 75069

Signature: *[Signature]*
Typed Name: John Gustafson
Title: Vice President
Date: 5/29/2008

THE STATE OF TEXAS,
COUNTY OF COLLIN

by Regie Neff
BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared FRANK RAGAN, City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to

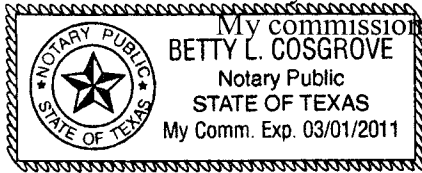
me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 30th
DAY OF May, 2008.

Betty Cosgrove

Notary Public Collin County, Texas

My commission expires 3-1-2011



THE STATE OF TEXAS,
COUNTY OF Collin

This instrument was acknowledged before me on the 29 day of MAY, 2008, by JOHN GUSTAFSON in his capacity as VP of IESI TX CORPORATION, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of IESI TX CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 29th
DAY OF May, 2008

Patsy Deloris Bartlett

Notary Public Collin County, Texas

My commission expires 10-03-2009

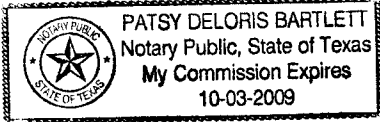


EXHIBIT "A"

CITY OF MCKINNEY

PERFORMANCE STANDARDS

CONTRACTOR RESPONSIBILITIES

- (a) Schedule Available: Monday through Friday and Saturdays as may be applicable.
- (b) Hours of Operation: All collections shall be made as described herein. No collections shall be made on Sunday.
- 1) Residential Collection Hours: Residential collections shall begin no earlier than 7:00 o'clock a.m. and shall not extend beyond 6:00 p.m. All regular collections shall be completed within this time period each collection day, Monday through Friday.
 - 2) Commercial/Industrial Collection Hours: Commercial collections shall begin no earlier than 4:00 o'clock a.m., except in areas that are adjacent to residential areas or noise sensitive areas such as hospitals and nursing homes which areas shall be collected during residential hours, and shall not extend beyond 5:00 p.m., except in the Downtown Business District which is described herein. This provision applies Monday through Friday and Saturdays, as may be applicable.
 - 3) Downtown Business District: The downtown business district encompasses all customers within the areas from McDonald St. to Church St., from Davis St. to Hunt St., and two (2) locations at Louisiana St. and Wilcox St. Curbside solid waste collection for this district shall be five (5) days per week (Monday through Friday of every week) and shall be made between the hours of 5:30 p.m. to 7:30 p.m. only. Curbside Recycling collection for this district shall be two (2) days per week (Monday through Friday of every week) and shall be made between the hours of 5:30 p.m. to 7:30 p.m. only. The City reserves as its exclusive right to request the Contractor to increase the frequency of said Recycling collection, but such Recycling collection shall not exceed five (5) days per week.
 - 4) Holidays: The following shall be holidays for purposes of this contract:
 - New Year's Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Thanksgiving Day
 - Christmas Day
- The Contractor shall be responsible for providing make-up collections for all routes that occur on the specified holidays. Holiday make up collections shall be made the day following the holiday. On Holiday weeks, each service day following the holiday shall be pushed back one day, with the final collections being made on Saturday of the Holiday week.
- (c) Extra Collection: If notified by 10:00 a.m. of a service day, extra pickup shall be performed that day. Calls after 10:00 a.m. shall be made the following service day, unless the Contractor is able to make pickup the same day. There shall be a charge for extra pickups and refills, as approved by the City Council and subject to the provisions of this Agreement.

- (d) Container Maintenance: Collection containers that have been damaged shall be exchanged or repaired within twenty-four (24) hours of notification. If an unsightly container condition develops due to fire, worn paint or other causes beyond the Contractor's control, the container shall be exchanged upon the request of the customer or as requested by the City. Contractor shall exchange containers at reasonable intervals to maintain a good appearance considering type of refuse generated, normal wear, and weathering. The Contractor shall maintain an inventory of containers sufficient to respond to the City's and customer's needs in a prompt manner to accommodate replacements or new service starts.
- (e) Recycling Carts: All new single family residential customers shall receive a Recycling Cart upon the initiation of utility service with the City. The Recycling Cart shall be used for recyclable materials only and shall be the responsibility of the customer. The Contractor shall maintain a supply of Recycling Carts as needed for new customers and replacement requests. The Contractor shall be responsible for delivery of the Recycling Carts upon notification from the Utility Billing Department within twenty-four (24) hours of request. The Recycling Carts shall be delivered in a clean and acceptable condition as determined by the City.
- (f) Container Identification: All containers shall be commonly colored and marked with the Contractor's name and City logo. All previously owned or used containers must be replaced or repainted the common color chosen by the Contractor.
- (g) Odor and Insect Control: The Contractor shall be responsible for odor and insect control in and around commercial containers. In the event that the Contractor uses chemicals to control odor and insects, said chemicals shall be safe for use around humans and environmentally safe.
- (h) Spillage: The Contractor is responsible for the immediate clean up of any spillage, leakage, and/or scattering of waste, refuse, garbage or debris of any kind or nature resulting from the performance of its obligations under this Agreement. Each vehicle shall be equipped with the proper tools to adequately clean up any spillage. In the event that refuse is not collected on the scheduled day, the Contractor shall be responsible for cleaning up trash scattered by animals. In the event of leakage, the Contractor shall be required to clean up the leakage completely and shall be responsible for environmentally safe cleaning procedures. Some cleanup events may require steam cleaning, in which case the Contractor shall consult with the City regarding measures necessary to prevent contaminated run-off.
- (i) Complaint Resolution. The City shall notify the Contractor of each complaint reported to the City. It shall be the duty of the Contractor to take whatever steps necessary to remedy the cause of the complaint and notify the City of its disposition within twenty-four (24) hours after receipt of the complaint by the Contractor. The Contractor shall be capable of a timely response to all complaints received. The City prefers an immediate, same day response whenever possible.
- (j) Damage Claims: The Contractor 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 a result of actions of the Contractor's employees, agents, or subcontractors. In the event of an insurance dispute, arbitration, or litigation, the Contractor shall maintain records indicating an expeditious course of action to resolve the disputed matter.
- (k) Personnel Changes: The Contractor shall notify the City's Environmental Services Manager of changes made in key management personnel fourteen (14) calendar days prior to changes becoming effective.
- (l) Modification: It is anticipated that the parties may from time to time desire to modify these standards. Requested modifications to these standards submitted by the Contractor shall be submitted in writing to the City Manager for approval and shall become part of this Agreement following approval. Any City initiated modifications shall be upon thirty (30) calendar days written notice.
- (m) Communications With Utility Billing: All correspondence between the Contractor and the City's Utility Billing Department concerning accounts (new, updated, changed, ended, etc.) shall be provided daily prior to

5:00 p.m. to expedite and document account activity by hand-delivered copy, fax, or electronic transfer. Any account actions after 5:00 p.m. may be sent on the following business day as early as is reasonably possible. All documentation shall contain accurate and pertinent information about each account to insure proper tracking and serviceability. Contractor shall provide the City a list of all customers missed (did not have container out) at the end of each day's route (before 5:00 p.m.).

- (n) City Field Communications: The Contractor shall provide the City's Environmental Services Manager with a communication device (radio or equivalent) for direct field contact with the Contractor's local dispatch office or route service personnel.
- (o) Cleanliness of Commercial Containers: The Contractor shall, at its own expense, maintain all its commercial containers in a clean, presentable, and wholesome manner to prevent odors, unsightly conditions, public nuisances, and possible health hazards. The Contractor shall respond within twenty-four (24) hours to a request to clean a container in need of attention. Routine cleaning shall occur at least twice per year or more often, as may be necessary, to maintain to required appearance, however, the City may request cleaning as determined necessary for specific containers.
- (p) Routes of Collection: Collection routes shall be established by the Contractor as approved by the City. The City shall be provided route collection maps and container locations. The Contractor shall include in this information current and accurate name and address of customers, container sizes, frequencies and days of collections, type of dumpster (open-top-roll off, front load, compactor, etc.), and special notes concerning accounts with special needs. Routing information shall be submitted to the City's Environmental Services Manager, semi-annually not later than August 15th of each year during the term of this Agreement, and any renewal term.

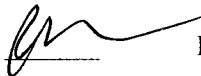
Initials:

IESI TX CORPORATION:



Date: 5/29/2008

City of McKinney:



Date: _____

EXHIBIT "B"

COMPENSATION SCHEDULE

The Current Rate Sheet for the City of McKinney, effective October 1, 2007 shall be put in place of this Exhibit "B".

EXHIBIT "C"

RECYCLABLE COST INDEX

1. At the time the Recycling Facility is completed, the Contractor shall determine its total investment in the building, improvements, and equipment.
2. At the time the Recycling Facility is completed, the Contractor shall also determine the average monthly tonnage for the 12 months preceding the completion of the Recycling Facility. The Contractor shall then determine what percentage of this monthly average originates in the City of McKinney and outside City of McKinney.
3. The Contractor shall determine depreciation schedules for the equipment and building/improvements. Using these depreciation schedules to calculate the monthly cost associated with the investment in building, improvements, and equipment.
4. The Contractor shall assign McKinney's percentage of average monthly tonnage for 12 months preceding completion of building/improvements to the monthly cost for investment in building/improvements. This amount should be defined as the City's portion of the total investment for the purpose of calculating the quarterly profit associated with the sale of recyclable materials collected within the City of McKinney.
5. The Contractor agrees to track and maintain accurate records of monthly operating costs associated with the operation of the Recycling Facility.
6. The Contractor agrees to track and maintain accurate records of monthly tonnages of marketable materials by material type collected within the City of McKinney.
7. The Contractor agrees to track and maintain accurate records of total tonnages of marketable materials by material type processed at the Recycling Facility.
8. On a quarterly basis, the total tons of all marketable materials processed at the facility shall be divided by the total cost of operations at the facility. This shall establish the operating cost per ton for the previous quarter.
9. The quarterly operating cost per ton shall be multiplied by the total tons of marketable material collected within the City of McKinney for the purpose of establishing the total operating costs associated with processing marketable materials collected and processed within the City of McKinney at the Recycling Facility.
10. The City's portions of the total investment and operating costs shall be combined for the purpose of establishing the total cost of processing marketable materials collected and processed at the Recycling Facility. This amount shall be subtracted from the total revenue received from the sale of marketable materials collected within the City and processed at the Recycling Facility. The remaining amount shall be the net profit associated with the sale of materials collected from within the City and processed at the Recycling Facility. Fifty percent (50%) of this remaining amount shall be rebated to the City each quarter.