

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

FEBRUARY 1, 2010

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IN THE CITY OF PFLUGERVILLE, TEXAS**

STATE OF TEXAS

COUNTY OF TRAVIS

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the 16TH day of November, 2009, to be effective on February 1, 2010 (the "Effective Date") by and between IESI TX Corporation, a Texas Corporation (the "Service Provider"), and the City of Pflugerville, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste and Recyclable Materials (as such terms are defined herein) within the City's corporate limits, expanded areas, and extraterritorial jurisdiction.

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 measuring in excess of either forty-eight (48) inches in length, four (4) inches in diameter, or two (2) cubic yards, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and other similar household item.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or forty (40) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers, Christmas trees and tree trimmings.

Business Day - Any day that is not a Saturday, a Sunday or other day on which City offices are closed.

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. (Some of these items may include, 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 to the City by the Service Provider 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 thirty (30) 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.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) 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.

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, office paper, envelopes, cereal and soda drink boxes, corrugated cardboard, phone books or other paper;

- (b) Glass bottles and jars (excluding mirrors, windows, ceramics, light bulbs, dishes, cups, and other glass products);
- (c) Metal cans composed of tin, steel or aluminum, metal lids from glass jars, empty aerosol cans (excluding scrap metal); and
- (d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5, #6 and #7.

Recycling Container – A Container with at least ninety-five (95) gallons of capacity and provided by the Service Provider for the collection of Recyclable Materials.

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.

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-Stream Recycling - A recycling process in which all Recyclable Materials are commingled and collected with no sorting required.

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.

Special Needs Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically 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 the members of a Special Needs Residential Unit shall be certified by the City Manager and agreed to by the Service Provider.

White Good - Any item measuring in excess of either three (3) cubic feet in size, 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 and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid 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. In the event that the City fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the City against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual damages arising from the City's failure to enforce this Agreement. Furthermore, the Service Provider shall retain any and all remedies afforded to it by contract or law including, but not limited to, specific performance.

SECTION 3. OPERATIONS.

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 and Recyclable Materials (as provided herein) (i) generated and accumulated by Residential Units, and (ii) placed within Containers by those Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential Units), all within the City's corporate limits, including the City extra territorial jurisdiction ("ETJ") and/or expanded service areas or 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 and Recyclable Materials, the title to all Municipal Solid Waste and Recyclable Materials collected, hauled and recycled or disposed of by the Service Provider 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. COLLECTIONS OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.

A. Residential Units. The Service Provider will collect Municipal Solid Waste from Residential Units once per week and Recyclable Materials from Residential Units once every other week; provided, that (i) such Municipal Solid Waste and Recyclable Materials are placed in Containers provided by the Service Provider, and (ii) such Containers 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. The Service Provider shall not provide the Services before 7:00 a.m. or after 7:00 p.m. Roll-Outs for new Residential Units will be delivered within seven (7) Business Days from the date of notice to the Service Provider. Replacements for damaged or stolen Roll-Outs will be delivered within seventy-two (72) hours from the date of notice to the Service Provider. The Service Provider's failure to deliver the appropriate Containers to a Residential Unit will subject the Service provider to a penalty of \$25.00 per occurrence.

B. Excess or Misplaced Municipal Solid Waste. Notwithstanding anything to the contrary contained in Section 7 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 provided by the Service Provider. Municipal Solid Waste and Recyclable Materials in excess of the Containers' limits, or placed outside or adjacent to the Containers, 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. If the excess or misplaced Municipal Solid Waste and/or Recyclable Materials continues, the City shall require the Single-Family Residential Unit to utilize an additional Container so that the excess or misplaced Municipal Solid Waste and/or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.A. hereto.

C. Special Needs Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Special Needs Residential Units with house-side collection of their Containers; provided, that the Service Provider receives prior written notice from the Special Needs Residential Unit of such special need. The City shall be solely responsible for all other modifications and accommodations required by the Americans with Disabilities Act or any other applicable law or regulation in connection with the services provided hereunder to Residential Units.

D. Collection Routes. The Service Provider shall establish routes for collection of Municipal Solid Waste and Recyclable Materials from Residential Units. The Service Provider will submit a map to the City designating the collection routes on an annual basis, or more frequently upon the request of the City. The Service Provider will, at its own expense, publish the map of the collection routes in the Community Impact once per year. The published map shall be of such size to clearly show all pertinent information. The Service Provider may, at any time during the term of this Agreement, request from the City changes to the collection routes. The

City's approval to changes in the collection routes shall not be unreasonably withheld. Upon the City's approval of such changes, the Service Provider will provide written or published notice of the route changes.

E. Recycling Facility. The Service Provider is currently in the planning stages for the development of a facility to process Recyclable Materials in the Greater Austin area (the "Recycling Facility"). In the interim, the Service Provider has identified alternative recyclable processing scenarios for the Recyclable Materials collected as part of the Single-Stream Recycling program in the City as outlined in this Agreement. The Recycling Facility shall be fully operational prior to the expiration of this Agreement. Once completed, the Recycling Facility shall receive all of the City's Recyclable Materials.

SECTION 5. PUBLIC EDUCATION & OUTREACH PROGRAM.

A. Quarterly Public Service Announcement. Service Provider will provide a quarterly public service announcement in the Community Impact each year and one (1) publication per year, upon review and approval by the City.

B. Ongoing Recycling Program & Additional Recycling Event. Service Provider will schedule, publicize and conduct an ongoing Single-Stream Recycling education program annually that has had the prior review and approval of the City Council and Staff. In addition, the Service Provider will present at least one (1) educational or marketing event to the City each year, and such event shall only be implemented with the prior the approval of the City Council. The Service Provider will provide assistance in developing recycling programs to City sponsored events that require recycling assistance.

C. Community Outreach Meeting. Prior to the start-up of the Single-Stream Recycling program, the Service Provider will host and facilitate in coordination with the City, a community outreach meeting to discuss, promote and educate the community on the Single-Stream Recycling program. The community outreach meeting will be scheduled as mutually agreed upon by the City and the Service Provider, and will be advertised in the Community Impact, at no cost to the City.

D. Marketing and Quarterly Reports. The Service Provider will retain responsibility for the marketing of all Recyclable Materials. The Service Provider will provide the City with a quarterly report containing participation, the type of Recyclable Materials collected, the volume of Recyclable Materials collected and the name of the processing facility where the Recyclable Materials were delivered. A sample form of the report has been attached as Exhibit "A".

E. Substantial Compliance. In the event that the Service Provider fails to substantially comply with Section 5 herein, the Service Provider shall pay to the City a liquidated damages fee of \$1500.00 per occurrence.

SECTION 6. SPECIAL COLLECTIONS AND SERVICES.

A. Municipal Locations. The Service Provider will provide, at no cost to the City, an adequate number of Roll-Outs and Recycling Containers to collect Municipal Solid Waste at all current and future municipal locations within the City once per week.

B. Special Events. In addition, 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 those events listed below; 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.

- Deutschen Pfest
- Easter Pfestival
- Annual Lake Pflugerville Triathlon
- Pflugerville Pfirecracker Pfestival
- Pflugerville Fall Pfest and Craft Show
- Holidays at Heritage Park
- Old Town Holiday Stroll and Parade
- Nature Pfest
- City Wide Clean-up
- National Night Out
- Chili Pfest
- KidFish
- Farmer's Market

The Service Provider shall provide services to the City for up to five (5) additional special events during the term of this Agreement, at no cost to the City. In excess of the five (5) additional special events, the Service Provider will provide additional services for such additional events that are not listed or mutually agreed upon by both parties at a rate quoted by the Service Provider at the time of the request.

SECTION 7. BULKY ITEMS, BAGS, AND BUNDLES.

A. Pre-Arranged Collections. In excess of the Containers, the Service Provider will collect up to an aggregate of six (6) Bulky Items, Bags, or Bundles from Residential Units once per week as part of the regular collections in Section 4, as designated by the Service Provider; provided, that the Bulky Items, Bags, or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed two (2) cubic yards in total volume (3'x3'x6'). The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Bulky Items and Bundles from those Residential Units that have complied with the definitions in Section I and 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, Bags, 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 Residential Unit regarding the collection of such items by utilizing the Service Provider's Roll-Off Services.

SECTION 8. 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 9. RATES AND FEES.

Subject to adjustment, as provided herein, the rates and fees to be charged and received by the Service Provider are as attached on Exhibit "B".

SECTION 10. RATE ADJUSTMENT.

A. Operating Cost Adjustment. In addition to any other rate adjustments provided for herein, beginning on February 1, 2012 and at any time thereafter during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment.

B. 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 11. 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 Residential Unit; provided, however, that the Service Provider and the owner or occupant of a 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 12. TERM OF AGREEMENT & TRANSITION ASSISTANCE.

The term of this Agreement shall be for a period of three (3) years, commencing on February 1, 2010 and concluding on January 31, 2013. At the expiration of the term of this Agreement, the parties may mutually agree to extend this Agreement for one (1) additional period of two (2) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 180 days prior to the expiration date of this Agreement. Beginning 180 days prior to the termination of this Agreement, the parties shall begin discussions regarding a mutually agreeable two (2) year extension period.

Upon the expiration of this Agreement, the Service Provider shall act in good faith in providing assistance to the City and any subsequent contractor in transitioning the Solid Waste services to the new contractor.

SECTION 13. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.

SECTION 14. 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 Residential Units utilizing such Containers. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Monthly Statement. On a monthly basis, the City agrees to bill and collect the rates and fees charged under Section 9 hereto from all Residential Units possessing active water meters within the City's corporate limits, as well as from all other Residential Units requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits, including the City's ETJ and/or expanded service areas or areas annexed by the City (the

"Monthly Statement"). The City shall provide the Service Provider with revised Residential Unit counts by the 10th day of each month. The Service Provider will submit the Monthly Statement to the City on or before the 15th day of each month for all Solid Waste and recycling Services rendered for the immediately preceding month. Thereafter, the City will remit to the Service Provider an amount equal to such Monthly Statement within 30 days of receipt of the Monthly Statement. 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 month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

B. Taxes. In addition to the amounts billed and collected by the City under Section 15.A., the City shall also be responsible for paying any and all sales, use and service taxes assessed or payable in connection with the Services.

C. Bad Debt; Unpaid Rates/Fees. The City agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owed to City for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Residential Unit.

D. Billings for Roll-Off Services. Notwithstanding the above, the Service Provider will bill and collect all Residential, Commercial and Industrial Units for services performed with respect to Roll-Off Containers.

SECTION 16. SPILLAGE

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or 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 or Recyclable Materials improperly placed outside of the Containers by any 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 Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste or Recyclable Materials. Should excess Municipal Solid Waste or Recyclable Materials continue to be improperly placed outside of the Containers, the City shall require the Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid 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 17. NON-COLLECTION NOTICE AND FOLLOW-UP

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Residential Unit fails to timely place a Container as directed in Section 4 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 or Recyclable Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid 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 Residential Unit of the reason for such non-collection, unless such non-collection is the result of the 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 or Recyclable Materials may be collected.

B. Notice from a Residential Unit. When the City is notified by an owner or occupant of a Residential Unit that Municipal Solid Waste or Recyclable Materials has not been removed from such Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste or Recyclable Materials from the Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or 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 twenty-four (24) hours of the next 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. In the event that Service Provider does not make the collection within such time, the Service Provider shall be charged a liquidated damages fee in the amount of one (1) month's rate for one (1) Residential Unit and such fee shall be deducted from the next payment due to the Service Provider.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 5:00 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 such services on the immediately following business day.

SECTION 19. CUSTOMER SERVICE.

The City agrees to field all inquiries and complaints from Residential Units relating to the collection, hauling, recycling and disposal of Municipal Solid 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. In order to assist the City in its obligations under this Section 19, the Service Provider agrees to provide City Hall with a primary contact and toll free telephone number, email address and email correspondence, as well as Service

Request Forms for customer service issues such as changes in service, container repair requests and missed collections.

A log of service questions, concerns, complaints, including the resulting resolution of each, shall be maintained and a copy provided to the City on a daily basis and will be summarized on a monthly report to the City.

The Service Provider will send a representative to City Council Meetings on a semi-annual basis or upon request of the City Manager.

SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 20.

SECTION 21. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste and Recyclable Materials onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week, or as deemed necessary. The Service Provider will make every reasonable effort to use vehicles that do not leak oil, hydraulic fluid or other substances, or present an unhygienic or unsafe appearance. If there should be a leak from a truck, the Service Provider will clean up the spill within seven (7) days of verifying that the Service Provider caused the spill. The City shall have the right to view any of the vehicle condition reports (for trucks used to provide the Services in the City) maintained by the Service Provider in compliance with the Texas Department of Transportation. The Service Provider reserves the right to contest that it was the cause of such spillage. If the Service Provider fails to clean up the spill within the seven (7) days of verification by the parties that the Service Provider's truck caused the spill, the City may impose a \$250/day fine for each day thereafter that the spill remains uncleaned. The City shall notify the Service Provider twenty-four (24) hours prior to imposing such a fine.

SECTION 22. 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 23. 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.

Performance goals shall be established to enhance sanitary and aesthetic living conditions for City residents; protect the environment; deliver consistent, reliable, convenient, safe services; provide for respectful, friendly, responsive communications with customers; and to show a commitment to the community.

Initial performance standards shall include:

- 1) Roll-Outs shall be replaced within five (5) feet of Residential Units' placement without obstructing traffic or damaging landscaping. Containers' lids will be closed after servicing.
- 2) Recycling Containers shall be placed upright with lid closed within five (5) feet of Roll-Out. Containers' lids will be closed after servicing.
- 3) Residential collection areas shall be free of litter and debris within a ten-foot (10) radius of the Containers. Service Provider is not required to clean up, collect or dispose of any loose or spilled litter and debris not caused by the Service Provider.
- 4) Service Provider shall make all reasonable efforts to collect Municipal Solid Waste and Recyclable Materials regardless of barriers (i.e. blocked streets) except when safety and health of the Service Provider's employees or the public is placed in danger. Service Provider will notify the City by the end of the day if service is not provided.
- 5) Service Provider will not provide collection service one-half (1/2) hour before or one (1) hour after dismissal on a school day on streets that are directly adjacent to the school campus.
- 6) During inclement weather all operation supervisors begin street patrol to begin safety evaluations.
- 7) The Service Provider's Division Manager or Operations Manager will contact the designated City's representative to review the weather situation. It will be the decision of both the Division Manager or Operations Manager and the designated City representative whether to delay or cancel scheduled routes.

- 8) Upon delays in routes due to inclement weather designated radio stations and television stations and the City's webpage will be notified to announce the situation.
- 9) The Service Provider's Division Manager or Operations Manager is responsible for coordinating all make-up schedules with designated City representative.
- 10) Customer Service Center utilizes a closed loop process for the day's service. The Customer Service Center generates an electronic summary of any issues for the day, and how we responded, and resolved the issue for the day.

SECTION 24. INSURANCE COVERAGE.

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

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker's Compensation	Statutory
(2) Employer's Liability	\$500,000
(3) Bodily Injury Liability (except automobile)	\$500,000 per occurrence; \$1,000,000 in the aggregate
(4) Property Damage Liability (except automobile)	\$500,000 per occurrence; \$500,000 in the aggregate
(5) Automobile Bodily Injury Liability	\$500,000 per person; \$1,000,000 per occurrence
(6) Automobile Property Damage Liability	\$500,000 per occurrence
(7) Excess Umbrella Liability	\$5,000,000 per occurrence

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. Upon the City's request, the Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by this Section 24.

SECTION 25. INDEMNITY.

To the extent covered by applicable insurance, 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 26. 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 27. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 28. 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. In the event that the City is declared a disaster area by the Governor of Texas, the City shall first be required to contact the Service Provider regarding its ability to provide cleanup services. To the extent that the Service Provider is unable to assist the City in its cleanup, the City may only then be allowed to enter into an agreement with another company to provide cleanup services in the City.

SECTION 29. GOVERNING LAW.

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. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably

agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court and venue shall be in Travis County, Texas. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

SECTION 30. 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 31. REPRESENTATIONS AND WARRANTIES BY SERVICE PROVIDER.

The Service Provider warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Service Provider has been duly authorized to act for and bind Service Provider.

SECTION 32. FRANCHISE TAX CERTIFICATION.

A corporate or limited liability company Service Provider certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

SECTION 33. PAYMENT OF DEBT OR DELINQUENCY TO THE CITY.

Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Service Provider agrees that any payments owing to Service Provider under the Agreement may be applied directly toward any debt or delinquency that Service Provider owes the City of Pflugerville, until such debt or delinquency is paid in full.

SECTION 34. TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION.


Service Provider certifies to the best of its knowledge that it is not delinquent in any court orders that it is obligated to pay on behalf of its officers of the corporation and therefore Service Provider is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate after being put on notice by the State of Texas and failing to pay.


SECTION 35. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF PFLUGERVILLE CITY COUNCIL AT A MEETING AND TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 10TH DAY OF NOVEMBER, 2009.

IESI TX CORPORATION
P.O. Box 141697
Austin, TX 78714

CITY OF PFLUGERVILLE, TEXAS
100 East Main Street
P.O. Box 589
Pflugerville, TX 78691

By: 
Name: John Gustafson
Title: VICE PRESIDENT

By: 
Name: Jeff Coleman
Title: Mayor

ATTEST:

By: 
Name: Karen Thompson
Title: City Secretary

EXHIBIT "A"

IESI TX Corporation

Month _____

Year _____

Number of Residences Collected:

Week 1 _____

Week 4 _____

Week 2 _____

Week 5 _____

Week 3 _____

Percentage of Residences Participating in Recycling:

Week 1 _____

Week 2 _____

Week 3 _____

Week 4 _____

Week 5 _____

Recycling Receipts: Copies of receipts from the company accepting the recycled materials which have been collected in the District shall be attached as exhibits to this report.

Recycling Revenues: Total recycling revenues for the month covered by this report have been \$ _____.

Complaint Log:

<u>Date and Time</u>	<u>Name</u>	<u>Address</u>	<u>Complaint</u>	<u>Resolution</u>
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Special Notes:

APPROVED:

IESI TX Corporation

By: _____

Printed Name: _____

Title: _____

EXHIBIT "B"
(3 year fixed rate)

Rates for Services in the City of Pflugerville, TX

Residential Unit Services. For the Municipal Solid Waste collection Services provided to Residential Units under Section 4.A. hereof, the Service Provider shall charge (i) \$12.12 per month for each Residential Unit utilizing one Roll-Out, plus (ii) \$6.00 per month for each additional Roll-Out utilized by such Residential Unit. For the recycling Services provided to Residential Units under Section 4.A. hereof, the Service Provider shall charge (i) \$2.54 per month for each Residential Unit utilizing one Recycling Container, plus (ii) \$2.50 per month for each additional Recycling Container utilized by such Residential Unit. These rates apply to all Residential Units that are located within the City's corporate limits, the City's ETJ, and/or expanded service areas or and billed by the City for water and sewer services.