

**ORDINANCE NO. 2004-82**

**FRANCHISE AGREEMENT  
FOR THE COLLECTION, HAULING AND DISPOSAL OF  
MUNICIPAL SOLID WASTE IN THE  
TOWN OF TALTY, TEXAS**

**STATE OF TEXAS**

**COUNTY OF KAUFMAN**

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the 13th day of April, 2004, by and between IESI TX Corporation, a Texas Corporation (the "Service Provider"), and the Town of Talty, Texas (the "Town").

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

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

**SECTION 1. DEFINED TERMS.**

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

**Business Day** - Any day that is not a Sunday or other day on which banks are required or authorized by law to be closed in the Town.

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

**Container** • Any receptacle, including, but not limited to, dumpsters, Roll-offs and carts provided by Service Provider for collecting Municipal Solid Waste.

**Hazardous Waste** • Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so

classified by any federal or State of Texas statute, rule, order or regulation.

**Holidays** - The following days:

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

**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.

**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, Texas Health & Safety Code, §361.003(20), as amended.

## **SECTION 2. FRANCHISE GRANT.**

The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, the nonexclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste over, upon, along and across the Town's present and future streets, alleys, bridges, rights-of-ways and public properties.

## **SECTION 3. OPERATIONS.**

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste during Business Days: (i) generated and accumulated by Service Provider's customers, and (ii) placed within Containers by those customers receiving the services of the Service Provider, all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement (the "Services").

B. Nature of Operations. The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, the title to all Municipal Solid Waste or Construction and Demolition Waste collected, hauled and disposed of by the Service Provider over, upon, along and across the present and future streets, alleys, bridges, rights-of-ways and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

#### **SECTION 4. TITLE TO EQUIPMENT.**

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

#### **SECTION 5. RATES AND FEES.**

Subject to adjustment, as provided in Section 5 hereto, the rates and fees to be charged and received by the Service Provider shall not be more than the rates set forth by a Town ordinance or, in the absence thereof, the following rates:

A. Residential Customers. For the services provided to single-family residential customers, the Service Provider shall charge \$20 per month plus an additional \$10 for additional services (as requested). These rates apply to all single-family residential customers that are located within the Town's corporate limits.

B. Commercial/industrial Customers. For the services provided to commercial/industrial customers, the Service Provider shall negotiate rates with these customers.

C. Municipal/School Customers. For the services provided to municipal/school customers, the Service Provider shall negotiate rates with these customers.

D. Construction and Demolition Waste Customers. Service Provider may negotiate an agreement, including rates, on an individual basis with any customer regarding the collection of Construction and Demolition Waste utilizing the Service Provider's Roll-Off containers.

#### **SECTION 6. RATE ADJUSTMENT.**

A. CPI-U Adjustment. After the expiration of the first twelve (12) months of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the Town, to increase or decrease the rates set forth in Section 5 hereto (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index

rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 6.A. The amount of the increase or decrease under this Section 6.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 6. A., at any time during the term of this Agreement, the Service Provider may petition the Town for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations due to, or directly resulting from, increased fuel costs, ad valorem taxes, governmental fees or regulations, or revised federal, state or local laws, ordinances or regulations. At the time of any such petition, the Service Provider shall provide the Town with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment.

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

## **SECTION 7. EXCLUSIONS.**

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, dead animals, auto parts or used tires from any customer; provided, however, that the Service Provider and any customer may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of dead animals, auto parts or used tires by utilizing the Service Provider's Roll-Off Services.

## **SECTION 8. TERM OF AGREEMENT.**

The initial contract period shall be for the period of two years from the date this agreement

is executed (“Execution Date”). This Agreement may be renewed and extended for one additional period of one year provided, that Service Provider makes a request for a renewal to the Town at least sixty (60) days prior to the Expiration Date and has satisfactorily performed all conditions under this Agreement. The Town may deny the renewal of this Agreement by giving notice to the Service Provider within forty-five (45) days after Service Provider has requested a renewal.

## **SECTION 9. ASSIGNMENT.**

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the Town; provided, however, that the Service Provider may assign this Agreement to an affiliate of the Service Provider without the Town’s prior written consent.

## **SECTION 10. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances that will enable the Service Provider to provide the Services set forth herein. The Town also hereby grants to the Service Provider the right of ingress and egress from and upon the property of municipal customers for the purposes of rendering the Services contemplated hereby.

## **SECTION 11. LICENSE FEE.**

In addition to any other license or permit fees, the Service Provider shall pay to the Town a license fee under this Agreement in the amount of 7% percent of all amounts received by the Service Provider for the Services provided pursuant to this Agreement. Such payment shall be made to the Town on or before the twenty-fifth (25<sup>th</sup>) day of each month for amounts received by the Service Provider for the performance of Services during the immediate preceding month. The Town agrees that payments owing from 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 Town for the Services.

Each payment to the Town shall be accompanied with a statement detailing Service Provider’s income and enabling the Town to verify the appropriate payment. The Town may review such of Service Provider’s books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. The Town agrees to treat any information disclosed to it by Service Provider under this Section as confidential, and to disclose it only to employees, representatives, and agents of the Town that have a need to know, or in order to enforce the provisions hereof, except where required by law to disclose such information.

## **SECTION 12. 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 not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste placed outside of the Containers by any customer. The Service Provider may report the location of such conditions to the Town so that the Town can issue proper notice to the customer instructing the customer to properly contain such Municipal Solid Waste. Should excess Municipal Solid Waste continue to be placed outside of the Containers, the Town shall require the customer to increase the frequency of collection of such Municipal Solid Waste, or require the customer to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste will be regularly contained.

## **SECTION 13. HOURS OF SERVICE.**

For all the Services provided hereunder, the Service Provider's hours of service shall be between 6:00 a.m. to 6:00 p.m., Monday through Saturday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

## **SECTION 14. COMPLIANCE WITH APPLICABLE LAWS.**

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 14.

## **SECTION 15. VEHICLES AND EQUIPMENT.**

Vehicles used by the Service Provider for the collection, hauling and disposal of Municipal Solid Waste shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste or Construction and Demolition Waste onto the Town'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. The Town may adopt weight limits and maximum vehicle axle weight limits on vehicles used by Service Provider as the Town may deem appropriate to minimize disruption and damage to the Town's streets, alleys and rights-of-way.

Trucks operated within the Town of Talty must be single axle (1 steering and 1 rear) and may not exceed 40,000 pounds gross weight. Trucks used for commercial and roll-off services may be tandem axle and may not exceed 60,000 pounds gross weight.

**SECTION 16. DUE CARE.**

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

**SECTION 17. 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) Workmen'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 17 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. On an annual basis, or upon the Town’s request, the Service Provider shall furnish the Town with a certificate of insurance verifying the insurance coverage

required by this Section 17. Such policies of insurance shall name the Town as an additional insured and shall contain a provision that requires at least 15 days' notice to the Town in the event of any material change or cancellation in any such policies. The foregoing additional insured requirement and the fifteen (15) day notice requirement shall be shown on the face of the certificate submitted by the service provider.

## **SECTION 18. INDEMNITY.**

The Service Provider assumes all risks of loss or injury to property or persons arising from its performance of the Services. The Service Provider agrees to indemnify, defend and hold harmless the Town 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) incident to its performance of the Services that arise out of 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 arising from the sole negligence of the Town, its agents, directors, employees, officers and servants. Nothing contained within this Section or within this Agreement shall be deemed to waive or in any way alter the Town's sovereign immunity or the Town's official, qualified or legislative immunities. Nothing contained within this Agreement shall in any way be deemed to create or grant rights or benefits to any person not a party to this Agreement.

## **SECTION 19. PERFORMANCE SECURITY. DELETED.**

## **SECTION 19. SEVERABILITY 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 20. TERMINATION.**

A. The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

1. The Contractor has failed to give prompt and courteous attention to, and correct complaints filed by its customers.



2. The Contractor has failed to provide an adequate regular collection service, or is in any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.
3. The failure of the Contractor to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.
4. For cause as determined by the Town Council;
5. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.
6. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.

B. In the event of termination for the reasons set forth in the foregoing paragraphs A (1) through (4) the Town shall notify Contractor of the reasons for consideration of termination and Contractor shall have a period of thirty (30) days to cure such reason.

C. Contractor may terminate this Agreement upon written notice received by the Town not less than one hundred twenty (120) days before the date set forth in said notice for termination.

## **SECTION 21. 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, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

## **SECTION 22. GOVERNING LAW.**

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the laws of the State of Texas. The parties hereby agree that exclusive venue of any action arising under the terms of this Agreement shall be in the state courts of appropriate jurisdiction in Kaufman County, Texas.

## **SECTION 23. NOTICE.**

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

**SECTION 24. MERGER CLAUSE.**

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

**SECTION 25. COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**SECTION 26. RECITALS:**

The recitals to this Agreement are incorporated herein.

Executed in single or multiple originals this 25th day of August, 2004.

IESI TX Corporation

Town of Talty, Texas

By: \_\_\_\_\_  
John Gustafson, Area Manager

By: \_\_\_\_\_  
Allison Weaver, Mayor

(on

August 27, 2004)

ATTEST:

By:

\_\_\_\_\_  
Roberta Owens, Town Secretary

APPROVED AS TO FORM

By: \_\_\_\_\_  
Town Attorney (62441)

