

MAY 11 2018

Approved

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: April 25, 2018

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: May 11, 2018

SPECIFIC AGENDA WORDING: Consider and authorize Judge to sign Non-Hazardous Waste Disposal Agreement and Johnson County Contract Terms Addendum with IESI TX Landfill LP, Turkey Creek Landfill.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL: (See attached)

TIME: 5 min

(Anticipated number of minutes needed to discuss item)

**ACTION ITEM: X
WORKSHOP**

**CONSENT:
EXECUTIVE:**

STAFF NOTICE:

**COUNTY ATTORNEY:
AUDITOR:
PERSONNEL:
BUDGET COORDINATOR:**

**IT DEPARTMENT:
PURCHASING DEPARTMENT:
PUBLIC WORKS:
OTHER:**

*******This Section to be completed by County Judge's Office*******

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____



NON-HAZARDOUS WASTE DISPOSAL AGREEMENT

<u>Customer Billing Information</u>		<u>Waste Connections Subsidiary ("Service Provider")</u>
Name:	<u>JOHNSON COUNTY PRECINCT #3</u>	<u>IESI TX Landfill LP</u>
Address:	<u>10420 E FM 917</u>	<u>TURKEY CREEK LANDFILL</u>
City:	<u>ALVARADO</u>	<u>9100 S I-35W ALVARADO TX. 76009</u>
State:	<u>TEXAS</u> Zip: <u>76009</u>	
Phone:	<u>817-790-5333</u> Fax: _____	<u>GARY BARTELS 817-790-0311</u>
Contact:	_____	_____

Project: n/a County of Origin: Various

Additional Information: _____

1. Waste Service. Subject to the terms and conditions contained herein, Service Provider and Customer agree to be legally bound hereby and Service Provider agrees to accept at its Facility, "Solid Waste" as defined in V.T.C.A. Health & Safety Code § 361.003(3-4) and additional regulations promulgated thereunder, and as further defined in any site specific operating permits for the Facility (hereinafter referred to as "Acceptable Waste") delivered by Customer, and which is acceptable to Service Provider as herein provided.

2. Intentionally Omitted.

3. (A) Rules for Disposal:

<u>Waste</u>	<u>Disposal Method</u>	<u>Disposal Rate:</u>	<u>Fees / Taxes / Misc.</u> \$0.94 Environmental charge + Fuel Surcharge (varies)	<u>Transportation</u>
<u>MSW & C&D</u>	<u>Landfill</u>	<u>\$39.67 per ton</u>		<u>N/A</u>

Additional Information: Fuel Surcharge subject to change monthly with the national average

Customer shall also be liable for all taxes, fees, or other charges imposed by federal, state, local or provincial laws and regulations.

County and State of origin of Waste: County (Various), State (Texas)

Cannot exceed daily volume of _____ without prior approval of Service Provider.

(B) Incorporation by Reference. In addition to the Terms and Conditions of Non-Hazardous Waste Disposal Agreement set forth on the reverse side of this document, the following documents are incorporated by reference into this Agreement as if fully set forth herein.

- 1) _____
- 2) _____

4. Term of Agreement. This Agreement is effective for 12 months, commencing 01/01/2018.

SERVICE PROVIDER AND CUSTOMER, IN CONSIDERATION OF THE MUTUAL OBLIGATIONS CONTAINED HEREIN, AGREE THAT THIS IS A LEGALLY BINDING AGREEMENT WHICH IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND ON THE REVERSE SIDE OF THIS DOCUMENT.

x _____
 CUSTOMER SIGNATURE (AUTHORIZED REPRESENTATIVE)

x Gary Bartels
 SERVICE PROVIDER SIGNATURE (AUTHORIZED REPRESENTATIVE)

x Rick Bailey - Comm. Pet. #1
 CUSTOMER NAME AND TITLE (PLEASE PRINT)

x Gary Bartels
 SERVICE PROVIDER NAME AND TITLE (PLEASE PRINT)

x 5/11/18
 DATE

x 4/13/18
 DATE

Terms and Conditions of Non-Hazardous Waste Disposal Agreement

3. **The Agreement.** This Non-Hazardous Waste Disposal Agreement (this "Agreement") for the disposal of Acceptable Waste shall consist of this Agreement, riders to the Agreement (if any) and any application, permit and/or approval that may be applicable to such Waste.
4. **Waste Accepted at Facility.** Customer represents, warrants and covenants that the Waste delivered to Service Provider at its Facility hereunder will be Acceptable Waste, and will not contain any radioactive, volatile, corrosive, highly flammable, explosive, flammable, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations (collectively referred to as "Unacceptable Waste"). Customer shall in all matters relating to the collection, transportation and disposal of the Waste hereunder, comply with all applicable federal, state and local laws, regulations, rules and orders regarding the same. The word "Facility" shall mean any landfill, transfer station or other location used to transfer, process or otherwise dispose of such Acceptable Waste.
7. **Acceptable Waste.** Customer represents, warrants and covenants that the waste delivered to Service Provider hereunder will not contain any Unacceptable Waste. The parties may incorporate special waste streams as part of this Agreement. In prior to delivery of such special waste to Service Provider, Customer has provided an application for such special waste and Service Provider has approved disposal of such special waste within the limitations and conditions contained in Service Provider's written notice of approval of special waste disposal. This to any and all Unacceptable Waste, handled or disposed of by Service Provider shall at all times remain with Customer and any agent of Customer (if an agent is involved).
8. **Right of Refusal/Rejection.** Customer shall inspect all waste at the place(s) of collection and shall remove any and all Unacceptable Waste. Service Provider has the right to refuse, or to reject after acceptance, any load(s) of waste(s) delivered to its Facility including if Service Provider believes Customer has breached (or is breaching) its representations, warranties, covenants or agreements hereunder, or any applicable federal, state or local laws, regulations, rules or orders, even if only a portion of such waste load is unacceptable. Service Provider shall have the right to inspect all vehicles and containers of waste haulers, including Customer's vehicles, in order to determine whether the waste is Acceptable Waste or Unacceptable Waste pursuant to this Agreement and all applicable federal, state and local laws, rules and regulations. Service Provider's exercise, or failure to exercise, its rights hereunder shall not operate to relieve Customer of its responsibilities or liability under this Agreement. Customer shall be responsible for, and bear all reasonable expenses and damages incurred by Service Provider, as a result of the Unacceptable Waste and in the reloading and removal of Unacceptable Waste disposed in the Facility. Service Provider, may also, in its sole discretion, require Customer to promptly remove the Unacceptable Waste.
9. **Limited License to Enter.** This Agreement provides Customer with a license to enter the Facility for the limited purpose of, and only to the extent necessary for, off-loading Acceptable Waste at the Facility in the manner directed by Service Provider. Except in an emergency, Customer's personnel shall not leave the immediate vicinity of their vehicle. After off-loading the Acceptable Waste, Customer's personnel shall promptly leave the Facility. Under no circumstances shall Customer or its personnel engage in any scavenging of waste or other materials at the Facility. Service Provider reserves the right to make and enforce reasonable rules and regulations concerning the operation of the Facility, the conduct of the drivers and others on the Facility premises, quantities and sources of waste, and any other matters necessary or desirable for the safe, legal and efficient operation of the Facility including, but not limited to, speed limits on haul roads imposed by Service Provider, and the wearing of hard hats and other personal protection equipment by all individuals allowed on the Facility premises. Customer agrees to conform to such rules and regulations as they may be established and amended from time to time. Service Provider may refuse to accept Waste from and shall deny an entrance license to, any of Customer's personnel whom Service Provider believes is under the influence of alcohol or other chemical substance. Customer shall be solely responsible for its employees and subcontractors performing their obligations in a safe manner when at the Facility of Service Provider.
10. **Charges and Payment.** Payment shall be made by Customer within thirty (30) days after receipt of invoice from Service Provider. In the event that any amount is overdue, Service Provider may terminate this Agreement. Customer agrees to pay a finance charge equal to the maximum interest rate permitted by law. Customer shall be liable for all taxes, fees, or other charges imposed upon the disposal of the Waste by federal, state, local or provincial laws and regulations. In addition, Customer shall be liable for all fees and other charges associated with handling and processing payments made by Customer, including, without limitation, credit card surcharges and processing fees. Service Provider, from time to time, may modify its rates upon thirty (30) days written notice to Customer.
11. **Termination.** Customer's obligations, representations, warranties and covenants regarding the waste delivered and all indemnities shall survive termination of this Agreement. Should Customer materially default in any of its obligations hereunder, then Service Provider may immediately terminate this Agreement and Customer shall be liable for all costs and damages incurred by Service Provider.
12. **Driver's Knowledge and Authority.** Customer represents, warrants and covenants that its drivers who deliver Acceptable Waste to Service Provider's Facility have been advised by Customer of Service Provider's prohibitions on deliveries of hazardous materials or substances, radioactive materials or substances, or toxic waste or substances or any other Unacceptable Waste to the Facility of Service Provider's restrictions on deliveries of Acceptable Waste to the Facility, of the definitions of "Hazardous Waste" and "Hazardous Substance" as provided by applicable federal, state and local law, rules and regulations and "Acceptable Waste" as provided herein, and of the terms of this license to enter Service Provider's Facility.
13. **Indemnification.** Customer shall indemnify, defend and hold harmless Service Provider and its subsidiaries, affiliates and parent corporations, as applicable, and their respective officers, directors, lenders, employees, subcontractors and agents from and against any and all claims, suits, losses, liabilities, settlements, damages, fines, costs and expenses, including reasonable attorneys fees arising under federal, state or local laws, regulations or ordinances, or relating to the content of the waste, or arising out of or in connection with any breach of this Agreement or arising out of the negligence or willful misconduct of Customer or Customer's employees, agents, subcontractors or representatives thereof, including, without limitation, the negligent collection, transportation and disposal of Waste by Customer or Customer's employees, agents, subcontractors or representatives thereof. Customer shall also be responsible for increased inspection, testing, study and analysis costs made necessary due to reasonable concerns of Service Provider as to the content of the waste, following discovery of Unacceptable Waste. This indemnification and other obligations stated in this Section 13 shall survive the termination of this Agreement.
14. **Insurance.** Customer shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the amounts specified below:

Coverage	Minimum Amount of Insurance
(a) Worker's Compensation	Statutory
(b) Employee's Liability	\$1,000,000 per incident
(c) General Liability	\$2,000,000 combined single limit
(d) Automobile Liability	\$2,000,000 combined single limit (must include MCS-90 endorsement)
(e) Excess / Umbrella Liability	\$2,000,000 in excess of (b), (c), and (d) above

CUSTOMER: X 

All insurance will be by insurers authorized to do business in the state in which the Facility is located. Prior to Customer being allowed on Facility premises, Customer shall provide Service Provider with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force. All policies, except workers' compensation, must add Service Provider as an additional insured, must contain waivers of subrogation in favor of Service Provider, and must be primary and non-contributory to any insurance policies carried by Service Provider. Said policies shall not thereafter be cancelled, be permitted to expire or lapse, or be changed without thirty (30) days advance written notice to Service Provider. Customer warrants that it will secure the above minimum amounts of insurance from any transportation of the Acceptable Waste to the Facility.

15. **Failure to Perform.** Neither party hereto shall be liable for its failure to perform hereunder due to circumstances not its fault and beyond its reasonable control, including, but not limited to, strikes or other labor disputes, riots, protests, civil disturbances or sabotage, changes in law, fires, floods, compliance with government requests, epidemics, accidents, weather, lack of required natural resources, or acts of God affecting either party hereto. In the event of any of the circumstances provided for in the preceding sentence, including, but not limited to, whether any federal, state or local court or governmental authority takes any action which would (i) close or restrict operations at the Facility, (ii) limit the quantity or prohibit the disposal of Acceptable Waste at the Facility, or (iii) limit the ability of or prohibit Customer from delivering Acceptable Waste to the Facility, Service Provider shall have the right, at its option, to reduce, suspend or terminate Customer's access to the Facility immediately, without prior notice and without any additional liabilities between the parties, other than Customer's payment obligations hereunder. Neither Party is required hereunder to scale any labor dispute against its own best judgment.

16. **Other Termination.** The occurrence of any of the following events shall also constitute an event of default by Customer and shall give Service Provider the right to immediately terminate this Agreement:

- (A) A petition for reorganization or bankruptcy filed by or against Customer.
- (B) Failure by Customer to pay any amounts due to Service Provider.
- (B) Any breach by Customer of any of its obligations pursuant to the Agreement.

Customer shall be liable for and shall indemnify, defend and hold harmless Service Provider from any losses, claims expenses or damages incurred by Service Provider as a result of termination hereunder.

17. **Assignment.** Customer may not assign, transfer or otherwise vest in any other Service Provider, entity or person, in whole or in part, any of its rights or obligations under the Agreement without the prior written consent of Service Provider, provided, however, that Service Provider may without any such prior written consent, assign its rights and/or obligations under the Agreement to a subsidiary or affiliate corporation.

18. **Right of Disposal.** This Agreement does not grant any rights to dispose of Acceptable Waste other than as accordance herewith. Additionally, the ability to dispose of Acceptable Waste at the Facility may be limited at any time, and from time to time, by Service Provider in connection with the Facility's permit(s), and capacity constraints, in addition to applicable laws, rules, and regulations. Service Provider reserves the right to immediately terminate access to the Facility by Customer and Customer's personnel in the event of breach or violation by Customer of any of the terms of this Agreement, Service Provider's operating rules or payment policies or any applicable laws or regulations.

19. **Continuing Compliance.** Customer has a continuing obligation to inform Service Provider of any new information or information not previously provided to Service Provider by Customer which may affect the acceptability of the waste by Service Provider. Further, Customer shall comply with all Service Provider requests for evidence of Customer's continuing compliance with the terms of the Agreement including but not limited to the following: (i) providing new, updated waste profiles on the Acceptable Waste(s) offered for disposal or, (ii) providing appropriate certification that the Acceptable Waste being offered for disposal is accurately reflected by the appropriate application or, (iii) re-sample the Acceptable Waste at Customer's expense if reasonable cause exists as to its acceptability under the terms of this Agreement or, (iv) allow Service Provider to re-sample the Acceptable Waste if reasonable cause exists as to its acceptability under the terms of this Agreement (and Customer shall be responsible for all costs and expenses associated with such sampling if such waste is determined to be Unacceptable Waste), or (v) all of the above.

20. **Notice.** All notices herein provided for shall be considered as having been given upon being placed in the mail, certified postage prepaid addressed to Service Provider or Customer at the address herein set forth in this Agreement or to such other address as may be given to the other party in writing.

21. Miscellaneous.

- (A) This Agreement shall be governed by the laws of the State of Texas.
- (B) No waiver of a breach of any of the obligations contained in the Agreement shall be construed to be a waiver of any prior or succeeding breach of the same obligation or of any other obligation of this Agreement.
- (C) No modification, release, discharge or waiver of any provision or obligation hereof shall be of any force, or effect, unless in writing signed by all parties to this Agreement.
- (D) Customer shall treat as confidential and not disclose to others during or subsequent to the term of this Agreement, except as is necessary to perform this Agreement, or to comply with any applicable law or regulation any information (including any technical information, experience or data) regarding Service Provider's plans, programs, plants, processes, products, costs, equipment or operations which may come within the knowledge of Customer or its employees in the performance of this Agreement, without in each instance securing the prior written consent of Service Provider.
- (E) If any term, phrase, obligation or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall remain in effect and be construed without regard to such term, phrase, obligation or provision.
- (F) This Agreement constitutes the entire understanding between the parties, replacing and amending any prior agreements between the parties, and shall be binding upon all parties hereto, their successors, heirs, representatives and assigns. Any provision, term or condition in any acknowledgment, purchase order or other response by Customer which is in addition to or different from the provisions of this Agreement shall be deemed objected to by Service Provider and shall be of no effect.
- (G) Customer represents, warrants and covenants that it is and, during the term of this Agreement will remain, in compliance with and will perform its obligations pursuant to all applicable laws and regulations and shall indemnify, defend and hold harmless Service Provider from any breach thereof.

SERVICE PROVIDER: X 

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – WASTE CONNECTIONS SUBSIDIARY IESI TX Landfill LP

2018

This Addendum is part of an Agreement between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as “**COUNTY**”), and **IESI TX Landfill LP** (hereinafter referred to as **IESI** or **LANDFILL** or **SERVICE PROVIDER**). The **County** and **IESI** may be collectively referred to as the “**PARTIES**”. This is an Addendum to the **IESI NON-HAZARDOUS DISPOSAL AGREEMENT**,

The “**IESI NON-HAZARDOUS DISPOSAL AGREEMENT**” and this Addendum shall constitute the entire and complete **Agreement** between the Parties.

1. This Agreement will be governed by and construed according to the laws of the State of Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.
2. Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.
3. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.
4. The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.
5. The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County’s general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said insurance coverage is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.
6. The Parties agree and understand that County will not agree to waive any rights and remedies

available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

7. The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

8. The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

9. Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

10. No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

11. To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act.

12. Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

13. Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.
14. It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.
15. Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.
16. If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by IESI pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 60 months from the date the date of execution of this Addendum without specific consideration and approval by the commissioners Court of Johnson County, Texas.
17. IESI certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. IESI states that it is not ineligible to receive State or Federal funds due to child support arrearages
- 18. IESI verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. IESI further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.**
19. In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted.

APPROVED AS TO FORM AND CONTENT:

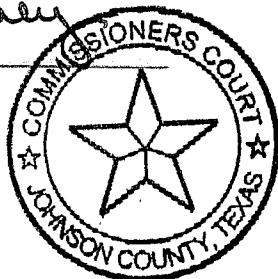
JOHNSON COUNTY.

~~Roger Harmon~~ Rick Bailey, Comm. Ct. #1
~~As Johnson County Judge~~ presiding

5/11/18
Date

Attest: Becky Drey
County Clerk, Johnson County

5/11/18
Date



IESI TX LANDFILL LP:

Gary J Bartels
Authorized Representative of IESI TX
LANDFILL LP

4/13/18
Date

Printed Name: GARY J BARTELS

Title: DISTRICT MANAGER