

VILLAGE OF POINT VENTURE

ORDINANCE NO. 2006-11-12

AN ORDINANCE OF THE VILLAGE OF POINT VENTURE, TEXAS, AUTHORIZING THE EXECUTION OF A CONTRACT FOR EXCLUSIVE SOLID WASTE SERVICES IN THE VILLAGE; REQUIRING ALL RESIDENTIAL AND COMMERCIAL INHABITANTS OF THE VILLAGE TO USE SUCH SERVICES; PROHIBITING OTHER SOLID WASTE PROVIDERS FROM PROVIDING SOLID WASTE SERVICE WITHIN THE VILLAGE; PROVIDING FOR ENFORCEMENT, PENALTIES, FOR NON-COMPLIANCE, A REPEALER CLAUSE; SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE

WHEREAS, the Village of Point Venture is authorized under state law to enter into an exclusive agreement for solid waste collection, recycling, transportation, and disposal services within the corporate limits of the Village; and

WHEREAS, whereas the Village Council has determined that it is in the best interests of the citizens of the Village of Point Venture to enter into such an agreement with IESI TX Corporation;

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF POINT VENTURE, TEXAS THAT:

The foregoing recitals are adopted and incorporated herein for all purposes.

The Mayor of the Village of Point Venture is authorized to execute the "Contract for the Collection and Disposal of Solid Waste and Recycling Services" (Contract") with IESI TX Corporation that is attached hereto as Exhibit "A", the terms and conditions of which are incorporated herein for all purposes.

Said Contract being exclusive, no person residing within the Village of Point Venture may engage the services of any other solid waste service provider for any purpose covered by the Contract, and no solid waste service provider other than IESI TX Corporation may provide any service covered by the Contract within the corporate limits of the Village.

Violation of this Ordinance is a Class C Misdemeanor, and may be punished by a fine of not more than Five Hundred Dollars (\$500.00) for each day of violation, each such day being a separate offense.

It is hereby declared to be the intention of the Village Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase,

clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

Any ordinance or portion of and ordinance of the Village that is in conflict with this Ordinance is repealed to the extent of the conflict.

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

ADOPTED, PASSED AND APPROVED this 11 day of December, 2006, by the Village Council of the Village of Point Venture, Texas.

VILLAGE OF THE POINT VENTURE

Kevin Sheffer
Kevin Sheffer, Mayor

ATTEST:

Chance Chatham
Chance Chatham, Village Secretary

EXHIBIT "A"

TO

VILLAGE OF POINT VENTURE ORDINANCE NO. _____

**VILLAGE of POINT VENTURE and
IESI TX CORPORATION**

**CONTRACT FOR THE
COLLECTION AND DISPOSAL OF SOLID WASTE
AND RECYCLING SERVICES**

**CONTRACT FOR THE COLLECTION AND
DISPOSAL OF SOLID WASTE AND RECYCLING SERVICES**

This Contract for the Collection and Disposal of Solid Waste and Recycling Services (this "Contract") is made and entered into this the 1st day of January, 2007, by and between the Village of Point Venture, a Texas municipal corporation, (hereinafter the "City"), and IESI TX Corporation (hereinafter "CONTRACTOR").

WITNESSETH:

Whereas, the City Council of the City has found that contracting with the Contractor for collection and disposal of solid waste and recycling services to be in the best interest of the City and necessary to preserve and protect the public health;

NOW, THEREFORE, in consideration of the terms and conditions of this Contract and the following mutual agreements and covenants, the City and the Contractor hereby contract, covenant and agree as follows:

(1) The Contractor is hereby granted the sole and exclusive contract by the City for the collection and disposal of solid waste and recycling from Residential Units and Commercial units within the territorial jurisdiction of the City, and the Contractor shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide the collection, removal, disposal and recycling services for all Residential Units and Commercial units as specified and to perform all of the work called for and described in the Contract Documents. The Contractor is hereby further granted a franchise and license to use the City streets and public right-of-ways to provide the services authorized pursuant to this Contract to both Residential and Commercial Customers; provided that the term of such franchise and license shall be only for the initial and any extended term of this Contract.

(2) All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the approval of the City Council of the City and the formal written consent of the City and Contractor. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.

(3) This Contract is entered into subject to the following conditions:

(a) Contractor shall procure and keep in full force and effect throughout the term of this Contract all of the insurance policies specified in, and required by, the Contract Documents.

(b) Contractor shall provide the services, and the quality and standard of services, set forth in this contract. In the event of a conflict regarding the level

of services, the required services, or the standard or quality of services, the higher standard and requirement shall govern and control.

(c) Contractor shall not be liable for the failure to provide the residential and commercial services specified in this Contract, if such failure is caused by a catastrophe, riot, war, government order or regulation, strike, fire, accident, act of God, or similar or different contingency beyond the reasonable control of the Contractor.

(d) If any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable. Then, such provisions or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion thereof within the Contract Document; provided that, if Contractor seeks to invalidate or void any term or provision of this Contract, this Contract shall, at the sole discretion of the City, be terminated and become null and void.

(e) At the discretion and option of the City, upon the adoption of an ordinance imposing a license, permit or franchise fee on residential or commercial solid waste collection and disposal services within the City, Contractor shall pay a license, permit and franchise fee to the City, during the initial and any extended term of this Contract, equal to the fee established by such ordinance.

(f) Contractor shall, in the operation of its vehicles on the public streets and the provision of services pursuant to this Contract, be and remain subject to the ordinances, regulations and police powers of the City; provided that no such rule, regulation or ordinance shall modify or amend this Contract, or require a higher quality or level of services to be provided by Contractor, without the written agreement of Contractor.

IN WITNESS WHEREOF, we, the contracting parties, by our fully authorized agents, hereto affix our signatures and seals at Village of Point Venture, Texas, as of this the 1st day of January, 2007.

Village of Point Venture, Texas

Kevin Sheffer, Mayor

Attest:

, Village Secretary

IESI TX Corporation

Jeff Peckham, Vice President

CONTRACT
for the
COLLECTION AND DISPOSAL OF SOLID WASTE
AND RECYCLING SERVICES

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1.00 DEFINITIONS

- 1.01 Bulky Waste - Stoves, refrigerators(if the refrigerator is bearing a sticker certifying that the Freon has been removed), hot water heater, washer and dryer machines, furniture and other similar household waste materials.
- 1.02 Bundle - Tree, shrub and brush trimmings or newspaper and magazines securely tied together, forming an easily handled package not exceeding four feet in length or 50 pounds in weight.
- 1.03 Cart(s) - Waste receptacle provided by the Contractor not to exceed ninety six (96) gallon capacity.
- 1.04 City – City of the Village of Point Venture.
- 1.05 Construction Debris - Waste building materials resulting from construction remodeling, repair or demolition operations.
- 1.06 Container - A receptacle for recyclable materials with a capacity of not greater than 20 gallons, but not less than 18 gallons, constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting, and having a tight fitting lid capable of preventing entrance into the container by vectors. The top of the container shall have a diameter greater than or equal to that of the base. The total weight of a container and its contents shall not exceed 50 pounds.
- 1.07 Contract Documents - This term means the ‘Contract Documents’ as defined in the Contract for the Collection and Disposal of Solid Waste and Recycling Services.
- 1.08 Contract Year - Each 365 or 366 day period during the term hereof commencing upon the Commencement Date of the agreement and each anniversary thereafter and ending the day prior to the next such anniversary date.
- 1.09 Contractor - Means IESI TX Corporation.
- 1.10 Customer - An occupant of a Residential Unit or Commercial Establishment who generates Refuse.
- 1.11 Dead Animals - Animals, or portions thereof, of any and all household animals, less than 10 pounds in weight, that have expired from any cause, except those slaughtered or killed for human consumption. The term shall not include any dead animal that is more than ten (10) pounds in weight.

- 1.12 Disposal Site - A refuse depository licensed or permitted by the State of Texas, including but not limited to, sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted, or approved to receive for processing or final disposal of refuse and Dead Animals by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals.
- 1.13 Garbage - Any and all Dead Animals; every accumulation of waste (animal, vegetable and/or other matter) that results from the customary function of a Residential Unit, or from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers. and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents), except any matter included in the definition of Bulky Waste, Construction Debris, Dead Animals, Hazardous Waste, Rubbish or Stable Matter.
- 1.14 Hazardous Waste - Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency, or appropriate agency of the state, to be ‘hazardous’ as that term is defined by or pursuant to Federal or State law.
- 1.15 Landfill - A permitted sanitary landfill of the Contractor’s selection.
- 1.16 Producer - An occupant of a Residential or Commercial Unit who generates Refuse.
- 1.17 Recyclable Material - This term shall mean and include the following materials, and none other: newsprint, cardboard, aluminum cans, steel food cans and plastic drink bottles (HDPE or PET).
- 1.18 Recycling - “Recycle” or “Recycling” means any process or portion thereof by which solid waste or materials which would otherwise become solid waste are separated, collected and processed for reuse or returned to use or to market in the form of raw materials or products.
- 1.19 Refuse - This term shall refer to Residential and Commercial Refuse, as defined below, Bulky Waste, Construction Debris and Stable Matter generated at a Residential or Commercial Unit, unless the context otherwise requires.
- 1.20 Residential and Commercial Refuse - All garbage, trash and rubbish generated by a Producer at a Residential or Commercial Unit.

- 1.21 Residential Unit A dwelling unit for one family within the corporate limits of the City, which is located in a building or structure having four (4) or less dwelling units. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto.
- 1.22 Rubbish - All waste wood, wood products, tree trimmings, grass cutting, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, used and discarded shoes and boots, combustible waste pulp and other products, such as those used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweeping, glass, mineral or metallic substances, paper, and any and all other waste materials not included in the definition of Bulky Waste, Construction Debris, Dead Animals, Garbage, Hazardous Waste or Stable Matter.
- 1.23 Stable Matter - All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

2.00 SCOPE OF WORK. The work under this Contract shall consist of the items contained in this Contract, including all the supervision, materials, equipment, labor and all other items necessary to complete said work in accordance with the Contract Documents.

3.00 SERVICE AND COLLECTION.

3.01 Residential Unit Service

(a) Contractor shall provide curbside collection of Garbage, for Residential Units one (1) time per week. Carts shall be placed at curbside by 7:00 a.m. on the designated collection day(s).

(b) Contractor shall provide for the special collection of hauling from Residential Units of Construction Debris at Residential Units upon reasonable terms as Contractor shall specify

3.02 Recycling Services - Contractor shall provide Recycling Services one time each week for all Residential Units. At the Cities designated drop off centers..

3.03 Service to City - Contractor shall provide service to all City occupied buildings and parks, at mutually agreed upon rate.

- 3.04 Location of Carts and Bundles for Collection - Each Cart shall be placed at curbside on one side of the road or the other for collection. Curbside refers to that portion of right-of-way adjacent to paved or traveled City Roadways (including alleys). , Carts and Bundles shall be placed as close to the roadway as practicable to an access point for the collection vehicle. Contractor may decline to collect any Cart, or Bundle not so placed or any Residential Refuse not in a Cart, or Bundle.
- 3.05 Construction Debris and Other Waste - Contractor will provide special collection from Residential Units of Construction Debris, at a reasonable rate to be determined by Cart, Container or load size, and time required. Contractor and the Producer of the waste will negotiate total charge prior to collection. Contractor will not provide for the special collection of hazardous waste.
- 3.06 Initial Bins - Contractor shall deliver the initial bins or containers to all customers and provide at least 30 bins to the City for distribution to new customers.

4.00 OPERATION

- 4.01 Hours of Operation - Collection of Refuse and Recyclable Material shall not start before 7:00 a.m. or continue after 7:00 p.m. on the same day. Exceptions to collection hours shall be effected only upon the mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances.
- 4.02 Routes of Collection - Collection routes shall be established by the Contractor. Contractor shall submit to City for review and approval a map designating the collection routes, which approval shall not be unreasonably withheld. Contractor may from time to time propose to the City for approval changes in routes or days of collection, which approval shall not be unreasonably withheld. Upon City's approval of the proposed changes, Contractor shall promptly give written or published notice to the affected Residential Units.
- 4.03 Holidays - The following shall be holidays for purposes of this Contract:
- | | |
|----------------|------------------|
| New Year's Day | Thanksgiving Day |
| Christmas Day | |

Contractor may observe any or all of the above mentioned holidays by suspension of collection service on the holiday, but such shall in not

relieve Contractor of its obligation to provide collection service at least once per week.

- 4.04 Complaints - All complaints shall be made directly to the Contractor and shall be given prompt and courteous attention. In the case of alleged missed scheduled collections, the Contractor shall investigate and, if such allegations are verified, shall arrange for the collection of the Refuse not collected within 24-hours after the complaint is received. The Contractor shall keep and maintain a record of all complaints received during the Term and any extended Term of this Contract, and shall report all such complaints and the disposition thereof to City not less frequently than each calendar quarter.
- 4.05 Collection Equipment - Contractor shall provide an adequate number of vehicles for regular collection services and recycling services. All vehicles and other equipment shall be kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the identity and telephone number of the Contractor.
- 4.06 Office - Contractor shall maintain an office or such other facilities through which it can be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. on regular collection days. A toll free telephone number shall be available to all Customers.
- 4.07 Hauling - All Refuse and Recyclable Material hauled by the Contractor shall be so contained, tied or enclosed that leaking, spilling or blowing are minimized.
- 4.08 Disposal - All Refuse collected for disposal by the Contractor shall be hauled to a disposal site. The charge for disposal shall be included in the rate set forth in the proposal for each Residential Unit serviced by the Contractor.
- 4.09 Notification - The Contractor shall notify all Producers about complaint procedures, rates, regulation, and day(s) for scheduled collection of Refuse and Recyclable Materials. Notification will be made via newspaper or direct mail.
- 4.10 Point of Contact - Contact regarding legal issues shall be expressly between the Contractor and the City Manager, or an employee of City designated by the City Manager.

5.00 COMPLIANCE WITH LAWS. Contractor shall conduct operations under and provide all services pursuant to this Contract in compliance with all applicable laws, rules, regulations, including municipal ordinances.

6.00 EFFECTIVE DATE. This Contract shall be effective upon execution and the performance of such Contract shall begin on January 1, 2007, when Contractor shall commence the collection and disposal services to be provided by Contractor pursuant hereto.

7.00 NONDISCRIMINATION. Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

8.00 INDEMNITY. Contractor will indemnify and save harmless the City, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees, arising out of a willful or negligent act or omission of the Contractor, its officers, agents, servants and employees; provided, however, that this indemnity shall not apply to any claims, demands, damages, costs, expenses and attorneys' fees arising out of the award of this Contract based upon any willful or negligent act or omission of the City, its officer, agents, servants and employees.

9.00 LICENSES AND TAXES. Contractor shall obtain and maintain, during the Term and any extended term of this Contract, all licenses and permits required by any applicable law, rule or regulation, and shall promptly pay all taxes, permits and fees required by the City.

10.00 TERM. The term of this Contract shall be for a five (5) year period beginning on January 1, 2007, and ending five (5) years thereafter (the Term). The City and Contractor may, by written notice given on or before the expiration of this Contract, extend this Contract for additional terms not to exceed five (5) years each; provided that in the absence of such written notice or a notice of termination given by the City.

11.00 INSURANCE. Contractor shall at all times during this Contract maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage Insurance. All insurance shall be maintained with insurers licensed and approved to do an insurance business in the State of Texas. Before commencement of work hereunder, the Contractor agrees to furnish to the City Certificates of Insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

“This is to certify that the policies of insurance described herein have been issued to the insured for which this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder.”

For the purpose of this Contract, Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverage's</u>	<u>Limits of Liability</u>
Workmen's Compensation	Statutory
Employers' Liability	\$ 500,000.00
Bodily Injury Liability Except Automobile	\$ 500,000.00 each occurrence \$1,000,000.00 aggregate
Property Damage Liability Except Automobile	\$ 500,000.00 each occurrence \$1,000,000.00 aggregate
Automobile Bodily Injury Liability occurrence	\$ 500,000.00 each person \$1,000,000.00 each
Automobile Property Damage Liability	\$ 500,000.00 each occurrence
Excess Umbrella Liability	\$5,000,000.00 each occurrence

A Certificate of Insurance from the Contractor to the City must be provided. The City must be named on the Contractor's Insurance Policy as Certificate Holder.

12.00 BASIS AND METHOD OF PAYMENT.

12.01 Rates

(a) For collection and disposal services required to be performed pursuant to Section 3.01(a), the charges payable to the Contractor shall not exceed \$14.50 for 460 Residential Unit per month and \$100.00 per month per recycling center, as adjusted in accordance with Section 12.02: provided that the rates and fees charged by the City to its residents for such services shall be in the discretion of the City Council and shall include sufficient sums to recover its fees and charges for billing and accounting. The actual rates charged to the residents shall be as set by the City Council from time to time.

[*plus one 40 yard roll-off container and 3 front load containers at quoted rates.](#)

(b) For special collection provided by the Contractor pursuant to Section 3.01(b), the charges are to be negotiated between the Contractor and Producer prior to collection. If agreement cannot be reached, the matter may be submitted to the City for determination of a reasonable fee.

(c) The refuse collection charges provided by Section 12.01(a) and (b), shall include all disposal and related costs.

12.02 Modification of Rates

(a) The fees which may be charged by the Contractor for the second and subsequent years of the Term hereof shall be adjusted upward to reflect changes in the cost of operations, as reflected by fluctuations in the Consumer Price Index for Urban Wage Earners and Clerical Workers (All items) as published by the U.S. Department of Labor, Bureau of Labor Statistics. Contractor will give the City ninety (90) days notice of change in rates prior to the anniversary date.

(b) In addition (a) above, the Contractor may petition the City at any time for additional rate and price adjustments at reasonable times on the basis of unusual changes in its cost of operations, such as revised laws, ordinance, or regulations; changes in location of disposal sites or changes in disposal charges, fuel cost increases; and increase in the number of Residential Units as a result of City growth or annexation; and for other reasons. Such rate and price adjustments shall not be unreasonably withheld.

12.03 City to Act as Collector - The City shall submit monthly statements to and collect from all Residential Units for services provided by the Contractor pursuant to Section 3.01(a), including those accounts that are delinquent. The Contractor shall collect directly from all Residential Units for services provided pursuant to Section 3.01(b), and from all Commercial Customers served by Contractor, and shall quarterly itemize and report such collections to City and pay the franchise fee on such collections.

12.04 Delinquent and Closed Accounts - Contractor shall discontinue Refuse collection service at any Residential Unit as set forth in written notice sent to it by the City. Upon further notification by the City, the Contractor shall resume Refuse collection on the next regularly scheduled collection day.

12.05 Contractor Billing to City - Contractor shall bill the City for services rendered to Residential Units within ten (10) working days following the end of the month and the City shall pay the Contractor on or before the 25th day following the end of said month. Such billing and payment shall be based on the rates and schedules set forth in the Contract Documents. Contractor shall be entitled to payment for services rendered to Residential Units irrespective of whether or not the City collects from the customer.

13.00 TRANSFERABILITY OF CONTRACT. No Assignment of the Contract or any right occurring under this Contract shall be made in whole or in part by the Contractor without the express written consent of the City, which will not be unreasonably withheld.

14.00 RIGHTS OF CONTRACTOR. During the term of this Contract, except as specifically provided herein, City shall not enter into any contract with a third party to obtain the services performed by the Contractor under this Contract. The Contractor shall at all times have the right of first refusal to the collection of Dead Animals from Residential Units which right shall be exercised or waived immediately on notice from the Residential Unit, and shall be deemed waived if the Residential Unit so elects upon a lower cost being offered by any third party.

15.00 OWNERSHIP. Title to Garbage, Refuse, Bulky Waste, Dead Animals and Recyclable Materials shall pass to the Contractor when placed in Contractor's collection vehicle, removed by Contractor from a Cart or Container, or removed by Contractor from the Customer's premises, whichever last occurs.

16.00 EXCLUSIONS. This Contract shall not cover Hazardous Waste nor be interpreted to prevent the removal of trash or rubbish by the generator of such trash or rubbish. Contractor may contract, but shall not be required, pursuant to this Contract, to collect or dispose of human waste or Stable Matter, Hazardous Waste, auto parts, rocks, concrete, sand, gravel, dirt, or Construction debris; provided that Contractor shall be responsible for and the Owner of any such materials the Contractor agrees to collect or dispose of.

17.00 SUBCONTRACTORS. Use of Subcontractors by the Contractor, or subsidiaries or affiliates of the Contractor for technical or professional services shall not be considered an assignment of this Contract; provided that in any such event the Contractor shall be and remain responsible for all services and performance provided under this Contract. However, the City reserves the right to approve in writing the use of any, and all, subcontractors.

18.00 RIGHTS OF THE CITY.

- (a) The City shall have the right and option to terminate this Contract, after notice to Contractor and hearing, for breach of this Contract or for inadequate service or inadequate quality of service; provided that Contractor shall be given a thirty (30) day period after the hearing in which to cure such breach or inadequate service. In the event a period for curing such breach or inadequate quality of service is provided, a second hearing shall be held at the expiration of the cure period and this Contract shall not be terminated if it is found that the breach or inadequate quality of service has been cured and resolved during such cure period. The decision of the City Council shall be determinative of, and final and binding on Contractor regarding, all issues, matters and claims with respect to any such termination of this Contract, other than the sums and amounts due or owing to

Contractor for service rendered prior to the date of termination.

(b) The City Council shall be entitled to establish the amounts to be billed by the City for the services to be provided pursuant to this Contract, to include the contract fees and charges payable to the Contractor, a fee established by the City Council for the cost of billing and accounting for such services, and any other reasonably related fees and charges.

(c) The City Council shall have the power and authority to regulate any fees and charges established or imposed by the Contractor within the City for any refuse collection and disposal services provided and for which the rates are not established pursuant to this Contract.