



TO: Mayor and Councilmembers

FROM: John Moran, City Manager

DATE: October 25, 2011

SUBJECT: Consider, discuss and act upon Ordinance # O-2011-1107-001 adopting and enacting a new Code of Ordinances for the City of Farmersville, Texas; providing for the manner of amending such Code; providing a repealer clause; providing a savings clause; providing a severability clause; providing for governmental immunity; providing for injunctions; providing a penalty clause; and providing for publication and a date when this ordinance and said code shall become effective

Ordinance # O-2011-1107-001 attached

ACTION: Council to approve or disapprove Ordinance # O-2011-1107-001

(III - A)

**CITY OF FARMERSVILLE, TEXAS
ORDINANCE # 2011-1107-001**

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE OF ORDINANCES FOR THE CITY OF FARMERSVILLE, TEXAS; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND A DATE WHEN THIS ORDINANCE AND SAID CODE SHALL BECOME EFFECTIVE.

WHEREAS, the City of Farmersville, Texas ("City") is a Type A General – Law Municipality located in Collin County having a population of less than 5,000 persons as determined by the most recent federal census, created in accordance with the provisions of Chapter 6 of the Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council of the City of Farmersville, Texas, hereinafter referred to as the "City," had heretofore duly enacted a code of ordinances pursuant to the City's authority under Chapter 53 of the Texas Local Government Code; and

WHEREAS, the code of ordinances so adopted was known and designated as "Code of Ordinances, City of Farmersville, Texas," consisting of Articles 1 through 11, adopted June 8, 2004 (the "2004 Code"); and

WHEREAS, the City Council has determined the necessity for a new code of ordinances to be enacted and codified pursuant to the City's authority under Chapter 53 of the Texas Local Government Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS:

SECTION 1. Findings Incorporated

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Farmersville and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. New Code of Ordinances Adopted

The Code entitled "Code of Ordinances, City of Farmersville, Texas" published by Municipal Code Corporation, consisting of chapters 1 through 77, each inclusive, (the "Code") is hereby adopted.

SECTION 3. Repealer

Any and all ordinances, orders, resolutions, rules, regulations, policies or provisions in conflict with the provisions of this Ordinance and of the Code are hereby repealed and rescinded to the extent of any conflict herewith.

SECTION 4. Savings

All rights and remedies of the City of Farmersville are expressly saved as to any and all

violations of the provisions of any Ordinances and the 2004 Code which have accrued at the time of the effective date of this Ordinance and the Code; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances and the 2004 Code, same shall not be affected by this Ordinance and the Code but may be prosecuted until final disposition by the courts.

SECTION 5. Severability

If any section, subsection, clause, phrase or provision of this Ordinance and of the Code, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance and of the Code, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 6. Penalty Clause

Unless another penalty is expressly provided, whenever in this Code or in any ordinance of the City or in any rule, regulation or order promulgated by any officer or department of the City under authority duly vested in such officer or department any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor where no specific penalty is provided, the violation of any provision of this Code or any ordinance, rule, regulation or order that governs fire safety, zoning or public health and sanitation, including dumping or refuse, shall be punished by a fine not exceeding \$2,000.00. The violation of any other provision of this Code or any other ordinance, rule, regulation or order shall be punished by a fine not exceeding \$500.00, unless specifically stated otherwise in this Code. If the maximum penalty provided by this Code for any offense is greater than the maximum penalty provided for the same or a similar offense under the laws of the State of Texas, the maximum penalty for such violation provided for violation provided by the state statute shall be the maximum penalty under this Code; provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the State of Texas. Each act of violation and each day or portion of a day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this Section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is re-enacted in the amendatory ordinance. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits.

SECTION 7. Future Additions and Amendments

Additions or amendments to the Code when passed in such form as to indicate the intention of the City to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

SECTION 8. Ordinances Adopted after July 26, 2011

Ordinances adopted after July 26, 2011, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

SECTION 9. Governmental Immunity

All of the regulations provided in this ordinance and the Code are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance and the Code, acting for the City of Farmersville in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 10. Injunctions

Any violation of this ordinance and the Code can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code.

SECTION 11. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

PASSED on first reading on the 25th day of October, 2011, and second reading on the 8th day of November, 2011 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS 8th DAY OF NOVEMBER, 2011.

APPROVED:

BY: _____
Joseph E. Helmberger, P.E., Mayor

ATTEST:

Edie Sims, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Alan D. Lathrom, City Attorney

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the Farmersville City Council, held on the 8th day of November, 2011.

Edie Sims, City Secretary



TO: Mayor and Councilmembers

FROM: John Moran, City Manager

DATE: October 25, 2011

SUBJECT: Consider, discuss and act upon Ordinance # O-2011-1025-003 amending the Code of Ordinances of the City of Farmersville by amending the Master Fee Schedule adopted through Section 11.122.4, entitled "Water Service Fees"; and amending the Master Fee Schedule adopted through Section 11.122.6, entitled "Sewer Service Fees"; providing a severability clause; providing a savings clause; providing a repealer clause; providing a penalty clause; and providing for publication and an effective date

Ordinance # O-2011-1025-003 attached

ACTION: Council to approve or disapprove Ordinance # O-2011-1025-003

(III - B)

**CITY OF FARMERSVILLE
ORDINANCE #O-2011-1025-003**

AN ORDINANCE OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FARMERSVILLE, TEXAS, BY AMENDING THE MASTER FEE SCHEDULE ADOPTED THROUGH SECTION 11.122.4, ENTITLED "WATER SERVICE FEES"; AMENDING THE MASTER FEE SCHEDULE ADOPTED THROUGH SECTION 11.122.6, ENTITLED "SEWER SERVICE FEES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Farmersville, Texas ("City"), has conducted a Water and Sewer Rate Study and found the current charges for water and sewer service to be insufficient to recover the cost of providing water and sewer service; and

WHEREAS, the City desires to modify the Master Fee Schedule related to the cost of water and sewer service provided by the City; and

WHEREAS, the City Council of the City of Farmersville, Texas, finds that all prerequisites to the adoption of this Ordinance have been met;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS:

Section 1. FINDINGS INCORPORATED

All the above premises are hereby found to be true and correct legislative and factual findings of the City of Farmersville, and they are hereby approved and incorporated into the body of this Ordinance as if restated herein in their entirety.

Section 2. MASTER FEE SCHEDULE FOR WATER SERVICE AMENDED

That the Master Fee Schedule, be, and the same is hereby, amended in part by deleting the current Water Service Fee charges and replacing said fees with new Water Service Fees in accordance with Section 11.122.4 of the Code of Ordinances to read as follows:

| WATER SERVICE | MONTHLY FEE |
|---|-------------|
| Inside City Limits: | |
| Meter Charge (Includes 1,000 gallons) | |
| 3/4 inch or less | \$ 10.47 |
| 1 inch | 17.44 |
| 1 ½ inch | 34.89 |
| 2 inch | 55.82 |
| 3 inch | 62.79 |
| 4 inch | 174.43 |
| 6 inch | 348.86 |
| Volumetric Charges (per 1,000 gallons) | |
| 1,001 to 10,000 gallons | \$ 4.39 |
| 10,001 to 20,000 gallons | 5.88 |
| In excess of 20,000 gallons | 7.35 |
| Outside City Limits: | |
| Residential or Commercial Customers of Record Prior to 1985 | |
| First 1,000 gallons | \$ 15.23 |
| 1,001 to 10,000 gallons | 5.34 |
| 10,001 to 20,000 gallons | 7.16 |
| In excess of 20,000 gallons | 8.76 |
| Residential or Commercial Customers of Record Since 1985 | |
| First 1,000 gallons | \$ 20.30 |
| 1,001 to 10,000 gallons | 7.12 |
| 10,001 to 20,000 gallons | 9.54 |
| In excess of 20,000 gallons | 11.68 |

Section 3. MASTER FEE SCHEDULE FOR SEWER SERVICE AMENDED

That the Master Fee Schedule, be, and the same is hereby, amended in part by deleting the current Sewer Service Fee charges and replacing said fees with new Sewer Service Fees in accordance with Section 11.122.6 of the Code of Ordinances to read as follows:

| SEWER SERVICE | MONTHLY FEE |
|--|--|
| Inside City Single Family Customers: | |
| Minimum monthly charge based on first 1,000 gallons water consumption | \$ 16.70 |
| Water consumption over 1,000 gallons for customers with an annually computer average winter water consumption for Dec/Jan/Feb to a maximum of 15,000 gallons | Based on the lesser of actual consumption or the average winter water consumption at \$5.20 per 1,000 gallons |
| For new customers without a winter average | Based on actual consumption to a maximum of 7,000 gallons at \$5.20 per 1,000 gallons |
| Inside City Customers Other Than Single Family | |
| Minimum monthly charge based on first 1,000 gallons water consumption | \$ 16.70 |
| In excess of 1,000 gallons | \$ 5.20 per 1,000 gallons |
| Outside City Limits: | |
| Residential Customers of Record Prior to 1985 | |
| Minimum monthly charge based on first 1,000 gallons water consumption | \$ 19.21 |
| Water consumption over 1,000 gallons for customers with an annually computer average winter water consumption for Dec/Jan/Feb to a maximum of 15,000 gallons | Based on the lesser of actual consumption or the average winter water consumption at \$ 5.98 per 1,000 gallons |
| For new customers without a winter average | Based on actual consumption to a maximum of 7,000 gallons at \$ 5.98 per 1,000 gallons |
| Residential Customers of Record Since 1985 | |
| Minimum monthly charge based on first 1,000 gallons water consumption | \$ 22.08 |
| Water consumption over 1,000 gallons for customers with an annually computer average winter water consumption for Dec/Jan/Feb to a maximum of 15,000 gallons | Based on the lesser of actual consumption or the average winter water consumption at \$6.88 per 1,000 gallons |
| For new customers without a winter average | Based on actual consumption to a maximum of 7,000 gallons at \$6.88 per 1,000 gallons |
| Commercial Customers of Record Prior to 1985 | |
| Minimum monthly charge based on first 1,000 gallons water consumption | \$ 19.21 |
| Next 49,000 gallons | \$ 5.98 per 1,000 gallons |
| In excess of 50,000 gallons | \$ 5.98 per 1,000 gallons |
| Commercial Customers of Record Since 1985 | |
| Minimum monthly charge based on first 1,000 gallons water consumption | \$ 22.08 |
| Next 49,000 gallons | \$ 6.88 per 1,000 gallons |
| In excess of 50,000 gallons | \$ 6.88 per 1,000 gallons |

Section 4. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any word, 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 words, phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of any such unconstitutional word, phrase, clause, sentence, paragraph or section.

Section 5. SAVINGS CLAUSE

The Code of Ordinances, City of Farmersville, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 6. REPEALER CLAUSE

Any provision of any prior ordinance of the City, whether codified or uncodified, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 7. PENALTY CLAUSE

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

Section 8. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED by the City Council of the City of Farmersville, Texas, on this 25th day of October, 2011.

APPROVED:

Joseph E. Helmberger, Mayor

ATTEST:

Eddie Sims, City Secretary

APPROVED AS TO FORM:

Alan D. Lathrom, City Attorney

City of Farmersville, Texas
Water and Sewer Rate Study
Final Inside-City Customer Water and Sewer Rates ⁽¹⁾

| Water Rates | | | | | | | |
|---|----------|----------|-----------|-----------|-----------|-----------|--|
| | Current | FY 2011 | FY 2012 | FY 2012 | FY 2013 | FY 2014 | |
| Meter Charge: | | | | | | | |
| 3/4 inch or less | \$ 10.15 | \$ 10.15 | \$ 10.47 | \$ 10.78 | \$ 11.53 | \$ 12.31 | |
| 1 inch | 10.15 | 16.92 | 17.44 | 17.97 | 19.21 | 20.51 | |
| 1 1/2 inch | 10.15 | 33.83 | 34.89 | 35.94 | 38.42 | 41.03 | |
| 2 inch | 10.15 | 54.13 | 55.82 | 57.50 | 61.47 | 65.64 | |
| 3 inch | 10.15 | 60.90 | 62.79 | 64.69 | 69.16 | 73.85 | |
| 4 inch | 10.15 | 169.17 | 174.43 | 179.69 | 192.11 | 205.14 | |
| 6 inch | 10.15 | 338.33 | 348.86 | 359.39 | 384.21 | 410.28 | |
| Volumetric Rate (Per 1,000 gallons) | | | | | | | |
| 0 - 1,000 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| 1,001 - 10,000 | 3.56 | 4.00 | 4.39 | 4.73 | 5.08 | 5.45 | |
| 10,001 - 20,000 | 4.77 | 5.36 | 5.88 | 6.33 | 6.80 | 7.30 | |
| 20,001 + | 5.84 | 6.70 | 7.35 | 7.91 | 8.50 | 9.13 | |
| Estimated Residential Monthly Water Bills ⁽²⁾ | | | | | | | |
| 5,000 gallons | \$ 24.39 | \$ 26.15 | \$ 28.03 | \$ 29.70 | \$ 31.85 | \$ 34.11 | |
| Monthly Increase (\$) | | 1.76 | 1.88 | 1.67 | 2.15 | 2.26 | |
| 10,000 gallons | \$ 42.19 | \$ 46.15 | \$ 49.98 | \$ 53.35 | \$ 57.25 | \$ 61.36 | |
| Monthly Increase (\$) | | 3.96 | 3.83 | 3.37 | 3.90 | 4.11 | |
| Sewer Rates | | | | | | | |
| | Current | FY 2011 | FY 2012 | FY 2012 | FY 2013 | FY 2014 | |
| Minimum Charge (Includes 1,000 gallons) | \$ 11.04 | \$ 13.58 | \$ 16.70 | \$ 20.54 | \$ 25.26 | \$ 31.07 | |
| Volumetric Rate (per 1,000 gallons) | | | | | | | |
| Residential ⁽³⁾ | | | | | | | |
| 1,001 - 15,000 | \$ 3.44 | \$ 4.23 | \$ 5.20 | \$ 6.40 | \$ 7.87 | \$ 9.68 | |
| Commercial ⁽⁴⁾ | | | | | | | |
| 1,001 + | \$ 3.44 | \$ 4.23 | \$ 5.20 | \$ 6.40 | \$ 7.87 | \$ 9.68 | |
| Estimated Residential Monthly Sewer Bills | | | | | | | |
| 5,000 gallons | \$ 24.80 | \$ 30.50 | \$ 37.50 | \$ 46.14 | \$ 56.74 | \$ 69.79 | |
| Monthly Increase (\$) | | 5.70 | 7.00 | 8.64 | 10.60 | 13.05 | |
| 10,000 gallons | \$ 42.00 | \$ 51.65 | \$ 63.50 | \$ 78.14 | \$ 96.09 | \$ 118.19 | |
| Monthly Increase (\$) | | 9.65 | 11.85 | 14.64 | 17.95 | 22.10 | |
| Total Estimated Monthly Bill Impact | | | | | | | |
| Estimated Residential Total Monthly Bills | | | | | | | |
| 5,000 gallons | \$ 49.19 | \$ 56.65 | \$ 65.53 | \$ 75.84 | \$ 88.59 | \$ 103.90 | |
| Monthly Increase (\$) | | 7.46 | 8.88 | 10.31 | 12.75 | 15.31 | |
| 10,000 gallons | \$ 84.19 | \$ 97.80 | \$ 113.48 | \$ 131.49 | \$ 153.34 | \$ 179.55 | |
| Monthly Increase (\$) | | 13.61 | 15.68 | 18.01 | 21.85 | 26.21 | |

Notes:

(1) Recommend that amended rates apply to Inside-City Limit Customers Only until such time as current outside-city rates are 1.15x inside-city rates

(2) Assumes 3/4" meter in Residential Bill Calculation

(3) Residential sewer flow based on the lesser of actual consumption of the average winter water consumption to a maximum of 15,000 gal.

(4) Commercial sewer flow based on actual water consumption



TO: Mayor and Councilmembers

FROM: John Moran, City Manager

DATE: October 25, 2011

SUBJECT: Consider, Discuss And Act Upon Ordinance # O-2011-1107-002 granting an exclusive franchise to conduct the business of providing solid waste collection and disposal to commercial and residential customers of the City of Farmersville; granting the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of solid waste collection located within the City; providing a repealer clause; providing a savings clause; providing a severability clause; providing for governmental immunity; providing for injunctions; providing for engrossment and enrollment; providing a penalty clause; and providing for publication and an effective date

Ordinance # O-2011-1107-002 attached

ACTION: Council to approve or disapprove Ordinance # O-2011-1107-002

(III - C)

**CITY OF FARMERSVILLE, TEXAS
ORDINANCE # O-2011-1107-002**

AN ORDINANCE OF THE CITY OF FARMERSVILLE, TEXAS, GRANTING AN EXCLUSIVE FRANCHISE TO CONDUCT THE BUSINESS OF PROVIDING SOLID WASTE COLLECTION AND DISPOSAL TO COMMERCIAL AND RESIDENTIAL CUSTOMERS OF THE CITY OF FARMERSVILLE; GRANTING THE RIGHT TO USE THE PUBLIC STREETS, ALLEYS, AND THOROUGHFARES WITHIN THE CORPORATE LIMITS OF THE CITY FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF SOLID WASTE COLLECTION LOCATED WITHIN THE CITY; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Farmersville, Texas ("City") is a Type A General – Law Municipality located in Collin County having a population of less than 5,000 persons as determined by the most recent federal census, created in accordance with the provisions of Chapter 6 of the Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, pursuant to Section 54.001 of the Texas Local Government Code, the collection and removal of solid waste and recycling collection within the corporate limits of the City is within the police power of the City; and

WHEREAS, the City Council of the City of Farmersville ("City Council"), has determined that the orderly collection and removal of solid waste is essential to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Council possesses the authority through the Texas Local Government Code and the Texas Health & Safety Code to grant a solid waste collection franchise; and

WHEREAS, the City Council further finds and determines that the granting of the proposed solid waste collection franchise is in the best interest of the health, safety, morals, and general welfare of the City of Farmersville, Texas; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:

SECTION 1. Findings Incorporated

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. Granting of Exclusive Franchise

The City Council hereby grants an exclusive franchise to IESI TX Corporation ("IESI") to conduct the business of providing solid waste collection and disposal services to commercial and residential customers of the city. More particularly, IESI has been granted the sole and exclusive franchise, license, and privilege to provide residential and commercial municipal solid waste collection and disposal within the corporate limits of the city and any tracts, territories, and areas hereafter annexed to, or acquired by, the city.

This sole and exclusive franchise, license, and privilege also includes the provision of commercial dumpsters, commercial roll-off containers and any other form or manner of collecting and disposing of waste from residential, commercial and industrial premises.

The exclusive franchise, license and privilege to provide residential and commercial municipal solid waste collection and disposal awarded to IESI hereby and as authorized by the Texas Local Government Code and Texas Health & Safety Code, and any related contract entered into by the City concerning solid waste collection and transportation services, supersedes inside of the City's boundaries any other solid waste franchise granted or contract entered into under the City's Code of Ordinances or otherwise. Every owner, occupant, tenant or lessee using or occupying any building, house or structure in the City and/or possessing a City water meter within the City's corporate limits, as well as all other buildings, houses or structures requiring the collection, hauling and disposal of municipal solid waste within the City's corporate limits, shall be required to utilize and pay for municipal solid waste services provided by the City or its designee, pursuant to the terms of the exclusive franchise agreement, as said franchise agreement may be amended from time to time.

SECTION 3. Exclusions

IESI shall not be obligated to pick up waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law ("Hazardous Waste"). The term Hazardous Waste shall also include, but is not limited to, refrigeration appliances that have not had the chlorofluorocarbons ("CFCs") properly certified as having been removed by a duly licensed individual, motor oil, gasoline, paint and paint cans, tires, automobile/vehicle batteries, petroleum products, and other chemicals and solvents identified as hazardous by the U.S. Environmental Protection Agency. IESI shall, however, have the right of first refusal to provide commercial dumpsters and/or commercial roll-off containers and the collection of dead animals and Hazardous Waste from residential, commercial and industrial premises.

SECTION 4. Granting of Right to use Public Streets, Alleys and Thoroughfares

The City Council hereby grants IESI the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of solid waste collection and recycling collection located within the City.

It shall be unlawful for any person, entity or party other than IESI to conduct or attempt to conduct the business of providing solid waste collection and/or disposal services to any residential, commercial and industrial customers of the City, including but not limited to the provision of commercial dumpsters, commercial roll-off containers and any other form or manner of collecting and disposing of waste from residential, commercial and industrial premises, or to use or traverse the streets, alleys, and public ways and places of the City, including any tracts, territories and areas hereafter annexed to, or acquired by, the City, to conduct such business.

If however, IESI should exercise its right of first refusal as set forth in Section 3, above, it shall notify the City in writing to that effect and the City will issue a license or permit to a qualified contracting party, authorizing that party to collect and dispose of waste from the premises at issue and to use and traverse the streets, alleys, and public ways and places of the City, including any tracts, territories and areas hereafter annexed to, or acquired by,

the City, for that purpose. The license or permit so granted upon IESI's exercise of its right of first refusal shall be subject to reconsideration, renewal and issuance by the City on an annual basis, subject to the duration of the franchise awarded IESI and IESI's continued election to exercise its right of first refusal; provided, however, that the license or permit shall not be abated or revoked before its one-year duration expires should IESI withdraw or change its election to exercise such right within that one-year time-frame.

SECTION 5. Charges, Regulations and Franchise Fees

The charges for providing solid waste collection and disposal services shall be consistent with and as set forth in the Contract for Citywide Solid Waste Collection by and between IESI and City ("Contract"), as such charges may from time to time be amended upon approval of the city council. The Contract is hereby incorporated herein by reference for all purposes allowed by law. The calculation and payment or retention of franchise fees and recycling revenue sharing shall be consistent with and as set forth in the Contract. In addition, the performance of said solid waste collection and disposal services and recycling collection services shall be regulated and controlled by the Contract and the City's Code of Ordinances.

SECTION 6. Term of Exclusive Franchise and License

The granting of the franchise agreement and license shall be in full force and effect for an initial term of five (5) years commencing October 1, 2011 (the "Contract Date"), with an automatic renewal for one (1) additional five (5) year term, unless terminated earlier by either IESI or the City in accordance with the Contract.

SECTION 7. Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 8. Savings

All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 9. Severability

It is hereby declared to be the intention of the City Council of the City of Farmersville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are

severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by valid judgment or final 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, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 10. Governmental Immunity

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Farmersville in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 11. Injunctions

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

SECTION 12. Engrossment and Enrollment

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Farmersville and by filing this Ordinance in the Ordinance records of the City.

SECTION 13. Penalty Clause

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist shall be deemed a separate offense.

SECTION 14. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

PASSED on first reading on the ____ day of _____, 2011, and second reading on the ____ day of _____, 2011 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS ____ DAY OF _____, 2011.

APPROVED:

BY: _____
Joseph E. Helmberger, P.E., Mayor

ATTEST:

Edie Sims, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Alan D. Lathrom, City Attorney