

**Sullivan County Legislature  
Special Meeting  
December 29, 2009 at 9:00AM**

The Special Meeting of the County Legislature was called to order at 11:50AM by Chairman Rouis with the Pledge of Allegiance.

Roll Call indicated Mr. Sager absent.

The Clerk Read the following Meeting Notice:

A Special Meeting of the County Legislature has been called for **Tuesday, December 29, 2009 at 9:00AM** in the Legislative Chambers of the County Government Center, Monticello, N.Y. The purpose of the meeting is to handle year end transactions and any other business that may come before the Legislature.

Chairman Rouis stated we have a presentation today. Unfortunately at the full board meeting last week, Judge Kane had to be up in Albany but we do want to recognize the Judge for all his work. Chairman Rouis presented Anthony T. Kane with a plaque.

Judge Kane stated he wanted to thank the board and the citizens of Sullivan County for this recognition of the contributions that he has made as a Judge over the past 25 years. He always considered it to be an honor and privilege to serve our community as a Judge. He also would like to thank this board and prior legislative bodies for the cooperation he received in their attempts to improve the delivery to citizens of Sullivan County. Together we made a Family Court Facility with better coordinated and delivery of human services and renovated the Courthouse. None of this would have been possible without the legislative commitment. Again, thank you for this recognition and your contribution to our community. Thank you.

Chairman Rouis recognized the following speaker:

1. Lou Setren stated he tries not to become emotional when he comes up here to speak and he is not always successful. He is here to talk about the landfill and solid waste operations in Sullivan County. This agenda indicates year end transactions and any other business. He asked a few weeks ago at the Executive Committee session if landfill issues would be handled separately within the budget process. On the evening of December 17<sup>th</sup> after making his comments about a Teamster Supervisory employee with over 21 years experience at the Sullivan County Landfill, he learned that this position was targeted for abolishment and he would be terminated effective December 31<sup>st</sup>. This particular individual who he will not name, has held several positions during the 21 years in the Department of Public Works. He has always provided good service, he has never been the subject of a disciplinary action. He noted that Teamster Local 445 was never afforded an opportunity to preserve this position for find another position for this dedicated employee. We have no choice but file a grievance with the Division of Public Works. It was his sincere hope that at the 11<sup>th</sup> hour, there would be some way to save this particular individual's position. He was advised this morning that in order to save this individual with vast amount of experience and dedication to Sullivan County, another employee will need to face layoff. He is sure that there is a mechanism that remains to preserve this position of this employee. So he will call that other business for this legislature in hope there will be some mechanism to come to a mutual agreement. He is thankful for the number of positions that this legislature has restored to the 2010 budget. He knows that it is not possible in the present economic climate to save every single position that were called for layoff. He wished the legislature a happy and healthy new year.

Chairman Rouis indicated this is the same agreement that was sent last week. The only outstanding issue is a temporary scale at the Mamakating facility until we

can have the central transfer station. We will have to move forward with the most cost effective scale for that facility through IESI or finding one of our own.

County Attorney Yasgur stated there is some very minor word smithing that he believes would fall under the authorization and given the County Manager to execute subject to approval by the County Attorney's Office as to form.

**RESOLUTION NO. 548-09 INTRODUCED BY THE EXECUTIVE COMMITTEE TO AUTHORIZE THE COUNTY MANAGER TO ENTER INTO AN AGREEMENT WITH IESI FOR THE MANAGEMENT AND DISPOSAL OF SOLID WASTE**

**WHEREAS**, on July 17, 2009 the County issued an RFP soliciting proposals from vendors for the management and disposal of solid waste, and

**WHEREAS**, following a review of all of the proposals submitted and follow up interviews with the three proposers deemed the most acceptable, the County selected IESI as the company with whom to negotiate an Agreement, and

**WHEREAS**, the County Landfill is scheduled to close December 31, 2009, and

**WHEREAS**, the County requires an agreement to be in place effective January 1, 2010 pursuant to which a vendor will operate the County's transfer stations and Materials Recovery Facility; and will transport, and dispose of, the County's municipal solid waste at an approved landfill out of the County, and

**WHEREAS**, County staff has negotiated the terms of an agreement with IESI pursuant to which IESI will operate the County's transfer stations and Materials Recovery Facility and will transport the County's municipal solid waste to, and dispose of it at, IESI's Seneca Meadows Landfill or such other landfill that may be approved by the County, and

**WHEREAS**, the proposed agreement has an initial term of ten years and three five year options subject to mutual agreement, and

**WHEREAS**, County staff and the County Legislature believe it would be in the best interests of the County to enter into the aforesaid agreement,

**NOW THEREFORE BE IT RESOLVED:**

1. The County Manager is hereby authorized to execute the above referenced contract with IESI, which contract shall be in a form to be approved by the County Attorney.

**Moved by Mr. Wood, seconded by Mr. Hiatt, put to a vote with Mr. Sager absent, unanimously carried and declared duly adopted on motion December 29, 2009.**

**AN AGREEMENT FOR SOLID WASTE MANAGEMENT AND DISPOSAL PURSUANT TO NEW YORK GENERAL MUNICIPAL LAW, SECTION 120-W**

This Agreement ("Agreement") is being entered into this \_\_\_\_ day of December, 2009, by and between the County of Sullivan, a Municipal Corporation of the State of New York, with an office and principal place of business at the County Government Center, 100 North Street, Monticello, NY 12701 ("County") and IESI NY Corporation, ("IESI") a Delaware corporation authorized to do business in the State of New York, having an office and principal place of business at 1099 Wall Street West, 2<sup>nd</sup> Floor, Suite 250, Lyndhurst, NJ 07071.

**RECITALS:**

**WHEREAS**, this Agreement is being entered into pursuant to New York General Municipal Law, Section 120-W for the Management and Disposal of Solid Waste.

**WHEREAS**, except for those functions specifically reserved to the County in this Agreement, the County desires to have IESI undertake the management and disposal of solid waste in the County.

**WHEREAS**, the County currently owns a convenience station located off New York State Route 17, outside the Village of Liberty and approximately twelve (12) miles northwest of the Sullivan County Landfill (the “County Landfill”), the legal description of which is found on Exhibit “A” (the “Ferndale Station”) which is currently registered with the New York State Department of Environmental Conservation (“NYSDEC”) and with respect to which the County has applied for a permit to utilize the station at the rate of 30,180 tons per year which station, until a new centralized transfer station is constructed at the existing Sullivan County Landfill site, will temporarily function as a long haul transfer station and which, upon the completion of the new centralized transfer station, will revert to being a convenience station;

**WHEREAS**, the County currently owns a convenience station located in the southern part of the County, north of the community of Wurtsboro, and 1.5 miles from New York State Route 17, the legal description of which is found on Exhibit “B” (the “Mamakating Station”) which is currently registered with the NYSDEC and with respect to which the County has applied for a permit to utilize the station at the rate of 30,180 tons per year which station, until a new centralized transfer station is constructed at the existing Sullivan County Landfill site, will temporarily function as a long haul transfer station and which, upon the completion of the new centralized transfer station, will revert to being a convenience station;

**WHEREAS**, the County currently owns a convenience station located in the western part of the County, approximately thirty (30) miles from the County Landfill, the legal description of which is found on Exhibit “C” (the “Highland Station”) which is registered with the NYSDEC;

**WHEREAS**, the County currently leases a convenience station from the Town of Rockland that is located outside the community of Livingston Manor, 13 Overlook Drive, Livingston Manor, New York, the legal description of which is found on Exhibit “D” (the “Rockland Transfer Station”) which is registered with the NYSDEC;

**WHEREAS**, the County currently leases a convenience station from the Town of Cohecton located on 433 Mitchell Pond East Road, Cohecton, New York, the legal description of which is found on Exhibit “E” (the “Cohecton Station”, also known as the “Western Sullivan Station”) which is registered with the NYSDEC;

**WHEREAS**, the Ferndale, Mamakating, Highland, Rockland and Cohecton Stations shall hereinafter collectively be referred to as the “Old Convenience Stations”;

**WHEREAS**, the County owns a Materials Recovery Facility (“MRF”), scale and resident drop-off convenience area at the existing County Landfill;

**WHEREAS**, the County intends to construct a new centralized long haul transfer station (the “New Transfer Station”) combined with a new MRF at the County Landfill;

**WHEREAS**, IESI has the requisite staff and experience to operate a transfer station and MRF and will, for the term of the Agreement, temporarily operate the Ferndale Station as a long haul transfer station and will operate the New Transfer Station and MRF covered by this Agreement in a professional and efficient manner and in full compliance with any and all Applicable Laws;

**WHEREAS**, IESI is in the business of providing transportation services for Acceptable Waste (as defined herein), either directly or through subcontractors;

**WHEREAS**, IESI is authorized by the U.S. Department of Transportation (“U.S. DOT”) and has proper permits and licenses to operate as a contract carrier and is authorized to transport Acceptable Waste;

**WHEREAS**, IESI owns and operates a landfill located at 1786 Salcman Road, Waterloo, New York (the “Seneca Meadows Landfill”);

**WHEREAS**, the County also desires to have IESI transport all Acceptable Waste from the long haul Transfer Stations to the Seneca Meadows Landfill or such other landfill as may be approved by the County in accordance with this Agreement;

**WHEREAS**, the County also desires to have IESI transport Recyclable Materials from the Ferndale Station, during such interim period when IESI is operating said station, to the existing MRF; and

**WHEREAS**, at such time as the new centralized long haul transfer station and new MRF commence operation at the existing Sullivan County Landfill site, the County will take over operating the Ferndale Station as a convenience station and will transport Recyclable Materials from the Ferndale Station to the new MRF;

**WHEREAS**, the parties desire to enter into this Agreement, subject to the terms and conditions set forth herein.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

**I Incorporation of Whereas Clauses**

- A. The representations and facts in the above set forth Whereas Clauses are incorporated herein with the same force and effect as if a part of the body of this Agreement.

**II Definitions**

The following terms shall have the meaning prescribed below with regard to this Agreement.

- A. "Acceptable Waste" shall mean and include all types of waste such authorized to be accepted at the transfer stations for disposal pursuant to Applicable Law. Notwithstanding the foregoing, Acceptable Waste shall not include any Unacceptable Waste as defined below, without regard to whether such waste would otherwise be authorized for acceptance at the facility under Applicable Law.
- B. "Applicable Law" shall mean and include all binding legal requirements imposed by federal, state, or local statute, law, ordinance, rule, regulation, order, permit, or license, and any other binding legal requirement lawfully imposed by a governmental agency or authority.
- C. "Approved Commercial Haulers" shall have the meaning set forth below in this Agreement.
- D. "County Residents" shall be defined as individuals who have a residence in the County and who are delivering Acceptable Waste to the Convenience Stations.
- E. Convenience Stations shall include the Ferndale, Mamakating, Highland, Rockland and Cochection Station and, if applicable, the residents drop-off area at the County Landfill.
- F. "Fees" shall have the meaning set forth below in this Agreement.

- G. "Landfill" shall mean any facility or area of land receiving Acceptable Waste and operating under the regulation and authority of the NYSDEC, or the appropriate governing agency for landfills located outside the State of New York.
- H. "MRF Operating Rate" shall have the meaning set forth below in this Agreement.
- I. "Transfer Station Operating Rate" shall have the meaning set forth below in this Agreement.
- J. "IESI" shall mean IESI NY Corporation or, if applicable, its County approved subcontractor(s).
- K. "Unacceptable Waste" shall mean and include, with respect to a particular solid waste facility:
  - 1. Any material which by reason of its composition, characteristics or quantity is hazardous waste as defined in the Resource Conservation and Recovery Act of 1976, and the regulations thereunder, as may be amended from time to time, or any other chemicals, materials or substances defined as or included in the definition of "hazardous materials", "hazardous wastes", "hazardous substances", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic wastes", "toxic pollutants", "contaminants", "pollutants", "infectious wastes", "medical wastes", "radioactive wastes", or "sewage sludges" as defined in or under any Applicable Law and any other materials which any governmental agency or unit having or claiming appropriate jurisdiction shall determine from time to time to be harmful, toxic or dangerous, or otherwise ineligible for acceptance at such facility; and
  - 2. Agricultural waste, explosive materials, corrosive materials, pathological waste, biological waste, offal (entrails, etc., of butchered animals), radioactive materials, ashes, foundry sand, mining waste, human and animal remains, motor vehicles, major motor vehicle parts (including transmissions, rear ends, springs, fenders, batteries, battery cables, exhaust systems and gasoline tanks), agricultural and farm machinery and equipment and major parts thereof, marine vessels and major parts thereof, any other large types of machinery or equipment, including thick walled or solid metallic objects such as castings, forgings, gas cylinders, 55 gallon drums, asbestos in any form, closed metal containers, barrels, buckets, or large motors, solid blocks of rubber or plastic, large rolls of carpet or fencing over 12 inches in diameter, steel or nylon rope, chains, cables or slings, logs larger than usually accepted according to the receiving party's normal operating procedure at such receiving party's facility, tree stumps, liquid waste, including liquid chemical wastes, sewage and other highly diluted water-carried materials or substances and those in gaseous form, or special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, incinerator ash, contaminated soil, oil/fuel filters, gas, Freon, PCBs, or Class 2 Industrial Waste.
- L. "Special Waste" shall mean and include: automobile and truck tires, white goods such as refrigerators, freezers, air conditioners, stoves and washing machines, waste motor oil, televisions, microwaves, computer monitors, or other items reasonably considered from time to time to be scrap metal or saleable scrap, batteries, cell phones, anti-freeze, textiles, florescent bulbs and leaves. IESI shall permit such Special Waste items to be deposited at the appropriate locations at the Transfer Stations. The County, as set forth below

will arrange for the removal of such items, other than tires, directly from all Transfer and convenience Stations. IESI shall transport all Special Waste collected at the Ferndale Station to the appropriate location at the New Transfer Station for final removal by the County or its subcontractor. The County shall be solely responsible for the disposal of all Special Waste.

M. "Recyclable Materials" shall mean and include:

- a. Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper and corrugated cardboard;
- b. Glass bottles and jars (excluding mirrors, windows, ceramics and other glass products);
- c. Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- d. Plastic containers including all varieties of the types designated as #1 - #7.

### **III Operation of the Transfer Stations and MRF**

- A. IESI, as an independent contractor of County, shall, either directly or through one or more independent contractor(s) to be approved by the County in writing pursuant to a written request from IESI, which approval will not be unreasonably withheld, be responsible for providing all equipment, material and personnel sufficient to operate the Ferndale Station during the interim period until the new centralized, long haul Transfer Station is operational, the New Centralized Transfer Station and new MRF in compliance with all Applicable Laws. Such operation shall include loading all of the Acceptable Waste for disposal at the Seneca Meadows Landfill (or such other authorized and permitted disposal facility as may be determined by IESI with prior written approval from the County) and to transport and dispose of all such Acceptable Waste. The operation shall also include the transfer of Recyclable Materials from the Ferndale Station, during the above referenced interim period, and from the New Transfer Station to the New MRF. It is agreed that, as of the date of execution of this Agreement, Riccelli Enterprises, 6131 East Taft Road, North Syracuse, New York 13212, is an approved sub-contractor.
- B. IESI shall maintain the Transfer Stations which it is required to operate pursuant to this Agreement and the new MRF, at IESI's cost, in such condition and in accordance with Applicable Law, ordinary wear and tear excepted.
- C. IESI agrees to repair any damage caused to the any equipment, at such Transfer Stations it is required to operate pursuant to the terms of this Agreement, by its employees, agents or contractors.
- D. With respect to any equipment at the Transfer Stations IESI is required to operate pursuant to this Agreement and new MRF requiring repair in the normal course of operation and not caused by IESI's employees, agents or contractors, or if caused by a third party, IESI agrees to make such repair but shall only be responsible for the first Four Thousand Dollars (\$4,000.00) of the cost of such repairs per occurrence and the County shall be liable for the amount in excess. Nothing herein shall limit IESI's right to pursue any claims against any third parties causing damage to such equipment.
- E. With respect to any damage to any equipment caused by the County or its employees or other agents IESI, or the County at the County's option, shall be

responsible to repair such equipment at the sole cost of the County. If such repair is undertaken by the County, it must be performed in a timely manner.

- F. Unless directed otherwise by the County in writing, IESI is only authorized to accept waste from County Residents and from commercial haulers that have been previously approved by the County in writing (“Approved Commercial Haulers”).
- G. All waste to be delivered to the Ferndale Station during the above referenced interim period and to the new centralized Transfer Station shall be weighed using the County’s scales at said Stations.
- H. All waste to be transported by IESI pursuant to this Agreement shall be weighed on County scales and/or Seneca Meadows Landfill scales pursuant to a written protocol to be agreed upon, from time to time, between the County and IESI.
- I. With respect to the operation of the MRF and the Transfer Stations, IESI or its subcontractor(s) shall give preference to interviewing from the pool of current County workers.

#### **IV Rates and County’s Payment Obligations**

- A. Interim Rate – Ferndale Station: The rate per ton for the operation of the Ferndale Stations, including the transportation to and disposal at the Seneca Meadows Landfill for the period commencing January 1, 2010 and terminating on the date the New Transfer Station at the County Landfill site begins operations shall be \$65.50 per ton.
- B. Annual Rate for Operation of the MRF: IESI shall be paid \$650,000 per year for the operation of the MRF (existing and new) for the calendar year 2010. Thereafter the annual charge shall be \$650,000 as adjusted by the cost of living provision set forth below. In the event IESI shall operate the New MRF for less than a full calendar year the annual rate shall be adjusted pro rata for the portion of the year it shall operate such MRF. The foregoing notwithstanding the Count shall, at all times during the life of this Agreement, have the right, on thirty (30) days prior written notice to have IESI cease operating the MRF. In the event the County shall exercise this right the County’s sole obligation to IESI for such modification of this Agreement shall be payment to IESI, at the then current rates, of any monies then owed to IESI for operation of the MRF to the date IESI ceases operation of the MRF pursuant to such notice.
- C. Interim Haul & Dispose Rate – Mamakating: During the period commencing January 1, 2010 and terminating on the date the New Transfer Station at the County Landfill site begins operation, the fee for hauling waste from the Mamakating Station and disposing of it at the Seneca Meadows landfill shall be \$56.00 ton.
- D. Haul and Dispose Rate: IESI shall be paid an all-inclusive per ton fee for the operation of the New Transfer Station, the transportation of the solid waste to the disposal site and the disposal of solid waste. Said fee shall be:
  - i. \$57.50 per ton for all tons, during calendar 2010. Said rate shall adjusted annually pursuant to the cost of living provision below.

- ii. In the event the annual tonnage disposed of in any calendar year shall drop below 50,000 tons the base per ton fee shall be increased by \$1.50 per ton adjusted by CPI-U.
  - iii. In the event the annual tonnage disposed of in any calendar year shall drop below 45,000 tons the base per ton fee shall be increased by \$3.00 per ton adjusted by CPI-U
  - iv. In the event the annual tonnage disposed of in any calendar year shall drop below 40,000 tons the base per ton fee shall be increased by \$4.50 per ton adjusted by CPI-U.
  - v. In the event the annual tonnage disposed of in any calendar year shall drop below 35,000 tons the base per ton fee shall be increased by \$6.00 per ton adjusted by CPI-U.
- E. **CPI-U Adjustment:** On each September 1st, subject to any other agreement of the Parties in writing, the rates set forth herein shall be increased or decreased, effective the following January 1<sup>st</sup>, 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 less energy) for the Northeast Region, 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 latest CPI-U published by the Bureau prior to each September 1<sup>st</sup>. The amount of the increase or decrease under this Section shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period ending August 31<sup>st</sup>. The foregoing notwithstanding, in the event that, in any year during the term of this Agreement, IESI shall demonstrate to the County by means of audited financial records that its actual costs incurred in performing its obligations to the County increased by at least three quarters of one percent (0.75%) from the previous year, then IESI shall be entitled to an increase in its rates under this Agreement of three quarters of one percent (0.75%) in the following year even if the application of the CPI-U as set forth above would have resulted in an increase of less than three quarters of one percent (0.75%) or a decrease in the rates for that following year.

## **V Transportation and Disposal Obligations of IESI**

- A. On the terms and subject to the conditions contained in this Agreement, IESI will transport and deliver such Acceptable Waste to the Seneca Meadows Landfill or other disposal facility reasonably acceptable to the County. At all times during the term of this Agreement, IESI shall utilize and have available a sufficient number of its tractor and trailer combinations in order to fulfill IESI's transportation obligations hereunder. IESI will coordinate such transportation in accordance with normal industry working conditions, and IESI will use its best efforts to fulfill its transportation obligations hereunder.

## **VI Payment Obligations**

- A. **Payment to IESI.** During the term of this Agreement, the County shall make payments to IESI within forty-five (45) days after receipt from IESI of an invoice and County voucher for any amounts incurred during any calendar month in accordance with the terms of this Agreement. If the full amount of the invoice is not paid within forty-five (45) days after the issuance of an invoice, interest shall accrue on the unpaid amount at the rate of 1.0% per month or, if less, the maximum rate permitted by applicable Law.
- B. **Billing County Residents and Approved Commercial Haulers.** The County shall be solely responsible for billing the County Residents and Approved

Commercial Haulers. IESI shall not be responsible for any bad debt or amount unpaid by any County Resident or Approved Commercial Hauler. However, IESI shall, at the Transfer Stations which it operates, be responsible for collecting such per bag coupons, or other indicia of payment from residents as the County shall, from time to time determine. IESI shall not accept cash from residents for use of such stations.

- C. Fuel. The County shall provide IESI with fuel for the operation of the Transfer Stations and hauling of County solid waste pursuant to a written operational protocol to be agreed upon from time to time between the County and IESI.

**VII Rate Adjustments**

- A. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the “Fees”). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be increased by the amount of any such increase in Fees or additional Fees.
- B. Fuel Cost Adjustment. In the event the County shall be unable to provide IESI the fuel as set forth above, all of the rates herein shall be adjusted in accordance with Exhibit “F” hereof.

**VIII Term**

The term of this Agreement shall be for a period of ten (10) years, commencing on January 1, 2010 and concluding on December 31, 2020. At the expiration of the term of this Agreement, the Agreement may be extended for three (3) successive periods of five (5) years upon mutual Agreement of the parties. Any Party desiring to extend the Agreement pursuant to this paragraph shall give the other Party written notice of such intention prior to the end of June in the last year of any then current term.

**IX Records**

Subject to the Audit requirements set forth below, IESI shall maintain and make available to the County adequate records that show receipts of solid waste collected and processed. IESI shall provide a copy of such records electronically, at no charge, to the County monthly. The County and its authorized representatives may examine IESI’s original records during regular business hours.

**X Acceptance of Title to Waste**

Title to, and risk of loss and responsibility for, Acceptable Waste delivered to the Transfer Station(s) operated by IESI shall pass to IESI at the time such waste is removed from the delivery vehicle at the Transfer Stations. Title to Unacceptable Waste shall remain with the delivering party and shall not be deemed to pass to IESI.

**XI Utilities and Other Responsibilities**

- A. The County will pay or cause to be paid all charges for water, heat, gas, electricity, sewerage, leachate disposal, and all other utilities, except telephone, used at the Transfer Stations and MRF throughout the Term of this Agreement.
- B. The County will continue to be responsible for disposal of the Special Waste items presently accepted for disposal by the County, through subcontractors. (Once refrigerants are removed from items having refrigerants IESI will place such items in the appropriate scrap metal containers for disposal by the County's scrap metal contractor.)
- C. The County will make available to IESI, as part of the consideration for this Agreement, access to and use of the County Landfill maintenance building.
- D. IESI has received copies of and shall comply with the County's: "Interim Solid Waste Handling Plan for the Ferndale Transfer Station" and all of the County's applicable permits.
- E. IESI will maintain such logs, records and documents at each Transfer Station it is required to operate pursuant to this agreement and the New MRF as may be required, customary or appropriate and will, at all times during the term of this Agreement, make such records available to the County and to any applicable regulatory agencies.

**XII Hours of Operation & Holidays**

The Transfer Stations and MRF shall be open on the following dates and times, as reasonably amended from time to time. The County will provide IESI two weeks notice of any proposed change of hours. In the event such a change increases the amount of hours that the Transfer Stations to be operated by IESI pursuant to this Agreement are open, the rate schedule shall be equitably adjusted.

New Transfer Station:	Monday – Friday; 7:45 a.m. – 2:45 p.m. Saturday; 7:45 a.m. – 12:00 p.m.
Ferndale Transfer Station a.m. –until New Transfer Station is Opened a.m.	Monday through Friday and Sunday; 7:45 2:45 p.m. Sunday: No commercial haulers after 10:00
Mamakating Transfer Station a.m. –until New Transfer Station is Opened a.m.	Monday through Friday and Sunday; 7:45 2:45 p.m. Sunday: No commercial haulers after 10:00
Highland Transfer Station: 2:45 p.m.	Tuesday, Thursday, Saturday; 7:45 a.m. –  Saturday: No commercial haulers after 10:00 a.m.
Rockland Transfer Station: 2:45 p.m. haulers after 10:00 a.m.	Tuesday, Thursday, Saturday; 7:45 a.m. – Saturday: No commercial
Western Sullivan Transfer Station:	Wednesday, Saturday; 7:45 a.m. – 2:45 p.m. No commercial haulers
County Landfill Drop-off Area: p.m.	Monday through Friday; 7:45 a.m. – 2:45 Saturday; 7:45 a.m. – 12:00 p.m.

IESI's and the County's vehicles shall not be limited to the above hours of operation. The County and IESI agree that the Transfer Stations will not be open on the following recognized holidays:

New Year's Day  
 Memorial Day  
 Independence Day  
 Labor Day  
 Thanksgiving Day  
 Christmas Day

In the event the Holiday falls on a Saturday, the station will be closed additionally on the previous day. If a Holiday falls on a Sunday, the station will be closed additionally on the subsequent day.

### **XIII Permits and Registrations**

- A. The County will be responsible for securing and maintaining any necessary registrations, permits or approvals from the NYSDEC, or other governmental authorities, necessary to operate the Transfer Stations under its name. IESI agrees to operate the Transfer Stations in accordance with Permits already secured by the County, the numbers of which are attached on Exhibit "G" and any applicable after acquired permits.

### **XIV Inspection**

- A. IESI will permit the NYSDEC, the County and County's agents, servants, and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purpose of conducting any and all inspections and sampling during regular business hours, and during other hours either by agreement of the parties or, in the event of an environmental emergency. IESI may not restrict access to any part of the premises, and IESI may not impose any conditions to access. If County's inspection includes sampling and testing of the premises, County must use its best efforts to avoid interfering with IESI's use of the premises, and on completion of sampling and testing must repair and restore the affected areas of the premises as made necessary by any sampling and testing.

### **XV Construction During Term**

- A. In the event an applicable regulatory agency shall, during the term of this Agreement, request or direct that the County erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the premises of the Transfer Stations and/or MRF, and correct and change the contour of the premises, such work shall be done, subject to the following:
1. The County shall immediately notify IESI of any request or direction from the applicable regulatory agency if it receives the request or direction and IESI shall immediately notify the County of any such request or direction from the applicable regulatory agency if it receives the request or direction;

2. The County, in its sole discretion, shall have the right to either perform such work itself or to have IESI perform such work.
  3. In the event the County shall have IESI perform the work the County shall bear the reasonable cost of any such work;
  4. In the event IESI is to perform the work the premises must at all times be kept free of mechanics' and materialmen's liens;
  5. The construction shall full comply with the requirements of the regulatory agency requesting the same.
- B. IESI may with County approval, at any time and from time to time during the term of this Agreement, erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the premises of the Transfer Stations and/or MRF, and correct and change the contour of the premises, subject to the following:
1. The County bears the reasonable cost of any such work;
  2. The premises must at all times be kept free of mechanics' and materialmen's liens; and
  3. The County must be notified of the time for beginning and the general nature of any such work, other than routine maintenance of existing buildings or improvements, at the time the work begins, and
  4. The construction shall full comply with the requirements of the regulatory agency requesting the same.
- C. If the County does not approve such construction by IESI and such work is required to be done the County shall cause such construction to be performed in a timely manner.
- D. Ownership of Buildings, Improvements, and Fixtures. Any buildings, improvements, additions, alterations, and fixtures (except equipment, furniture, and trade fixtures) constructed, placed, or maintained on any part of the premises during the lease term are considered part of the real property of the premises and must remain on the premises and become County's property when this Agreement terminates. Additional sorting equipment lines and scales, if any, provided by IESI shall remain the property of IESI.
- E. Right to Remove Improvements. IESI may, at any time while it occupies the premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by IESI in, under, or on the premises, or acquired by IESI, whether before or during the term of this Agreement, but may not remove any items during the term if such removal will impair IESI's ability to perform its obligations under this Agreement. Before this Agreement terminates, IESI must repair any damage to any buildings or improvements on the premises resulting from the removal, reasonable wear and tear accepted.

## **XVI Repairs and Maintenance**

- A. At all times during this Agreement, County will keep and maintain, or cause to be kept and maintained, all buildings and improvements erected on the premises in a good state of appearance and repair (except for reasonable wear and tear) at County's own expense, unless such maintenance or repair is

required due to damage caused by the negligence of IESI, or unless provided otherwise herein.

- B. Allocation of Environmental Cleanup Costs. IESI shall be responsible for the payment of that portion of any cleanup costs necessary for compliance with hazardous materials laws that are caused by IESI's discharge of hazardous materials on the premises, if any, during IESI's occupancy of the premises. Notwithstanding anything to the contrary, IESI shall be responsible for the payment of any non-hazardous cleanup costs necessary for compliance with the Applicable Laws that are caused by IESI, if any, during IESI's occupancy of the premises.

## **XVII Modifications to Transfer Station**

- A IESI, through its subcontractor, Riccelli Enterprises ("Riccelli"), will provide for the removal of the packer system presently installed at its Ferndale Transfer Station located at C.R. 72 (LT. J. G. Brender Highway), Ferndale, New York.
- B IESI will provide this modification at a cost of Twenty-four Thousand Five Hundred Dollars and no/100 (\$24,500.00).
- C At the request of the County, the following items will be set aside for the County:
  - a. All Hydraulic Cylinders (3)
  - b. All Hydraulic Hoses
  - c. The hydraulic Holding Tank



- C. Microsoft Office Access 2007.lnk IESI, through its sub-contractor Riccelli, and at its sole cost, will provide and install temporary scales at the Mamakating Station.

## **XVIII Trade Fixtures and Signs**

- A. Trade Fixtures. IESI may, at all times, erect or install machinery, equipment, or other trade fixtures, in, on, or about the premises, if IESI complies with all applicable governmental laws, ordinances, and regulations regarding same. IESI may remove all trade fixtures machinery and equipment when this Agreement terminates, if the same can be removed without structural damage. IESI must repair any damage to the premises caused by removing trade fixtures, and all the repairs must be completed before the Agreement terminates. Any trade fixtures not removed within thirty (30) days after this Agreement terminates are considered abandoned by IESI and will become the County's property.
- B. Signs. IESI may erect one sign identifying IESI together with additional safety and directional signage on any portion of the premises, including but not limited to the exterior walls, and at any accessway from the premises to the public roadways, subject to applicable laws, ordinances, regulations, and County approval as to the actual location, size and appearance of the signs. IESI must remove all signs when this Agreement terminates and repair any damage resulting from erecting or removing the signs.

## **XIX Insurance**

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

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker’s Compensation	Statutory
(2) Employer’s Liability	\$1,000,000
(3) General Liability/Bodily (except automobile)	\$1,000,000 per occurrence; \$2,000,000 in the aggregate
(4) General Liability/Property (except automobile)	\$1,000,000 per occurrence; \$2,000,000 in the aggregate
(5) Automobile Liability	\$1,000,000 per person; \$1,000,000 per occurrence
(8) Excess and	\$15,000,000 per occurrence
	In the aggregate

A. Before commencing any of the work under this Agreement, IESI shall file with the County valid Certificates of Insurance shall list the County as an additional insured. Such certificates shall contain a provision that states coverages afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to the County. Any changes in insurance coverages or in the parties insured thereby pursuant to this Agreement, shall be reflected in revised or amended Certificates of Insurance which shall be filed with the County within ten (10) days of the effective date of change. IESI shall also file with the County valid Certificates of Insurance covering all subcontractors. Insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of IESI under the terms of this Agreement. IESI shall procure and maintain, at its sole cost and expense, any additional kinds and amounts of insurance that in its own judgment may be necessary for proper protection in the prosecution of its work. IESI may satisfy its insurance obligations under this Agreement through blanket coverages or umbrella policies or through self-insurance. The insurance coverage obtained by IESI shall be solely for the protection of IESI’s equipment and damage or injury caused by IESI’s equipment. The County shall be responsible for obtaining insurance on the Transfer Stations and MRF.

B Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the County with respect to its interests, (ii) it shall not be canceled, including, without limitation, for non-payment of premium, or materially amended, without 30 days' prior written notice to the County, directed to the County's Director of Risk Management and Insurance, and the County shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to IESI.

C To the extent it is commercially available, each policy of insurance shall be provided on an “occurrence” basis. If any insurance is not so commercially available on an “occurrence” basis, it shall be provided on a “claims made” basis, and all such “claims made” policies shall provide that:

- i. Policy retroactive dates coincide with or precede IESI’s start of the performance of the services (including subsequent policies purchased as renewals or replacements);

- ii. Immediate notice shall be given to the County through the County's Director of Risk Management and Insurance of circumstances or incidents that might give rise to future claims with respect to the services performed under this agreement.
- iii. Contractor shall obtain replacement insurance within thirty days, in the absence of which Contractor shall be in breach of this Agreement.

**XX Liquidated Damages and Security:**

- A. In the event the County shall exercise its right to terminate this Agreement without cause pursuant to the terms of this Agreement, the County shall pay to IESI, as liquidated damages, an amount equal to three times the then current monthly payment being made to IESI pursuant to this Agreement. Such payment shall be made within thirty (30) days of such termination.
- B. In the event IESI shall default on its obligations pursuant to the terms of this Agreement and be terminated by the County for cause, IESI shall pay to County, as liquidated damages, an amount equal to three times the then current monthly payment being made to IESI pursuant to this Agreement. Such payment shall be made within thirty (30) days of such termination.
- C. IESI shall provide to the County, by January 1, 2010, a Performance/Surety Bond from a surety authorized to do business in New York State, or, in the sole discretion of the County, a satisfactory corporate guarantee from IESI's parent corporation which includes a backup Performance/Surety Bond under designated circumstances, in an amount equal to the sum which would be due to the County upon a termination pursuant to subparagraph "B" next above. Such Performance/Surety Bond shall be adjusted every two years, during January of each such year, so that such Performance/Surety Bond is at all times equal in amount to the amount which would be due to the County pursuant to subparagraph "B" next above.

**XXI Force Majeure**

- A. Except for County's obligation to make payments to IESI under this Agreement, any party's obligations under this Agreement may be delayed in the event of: (a) an occurrence beyond the reasonable control of that Party which materially adversely affects the ability of such party to perform its obligations hereunder or to comply with the requirements of any governmental order, license, permit or other approval, but only for such additional period of time as the affected party actually requires to perform notwithstanding such occurrence; (b) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, severe weather, fires, explosions, floods, acts of a public enemy, war, terrorist acts, blockades, insurrections, riots or civil disturbances directly and adversely affecting a parties performance, but only for such additional period of time as actually necessary to provide performance in view of such occurrences; (c) strikes or work stoppages not caused by a party; or (d) orders and/or judgments of any federal, state or local court, administrative agency or governmental authority, which were not the result or consequence of the action or non-action of a party.

**XXII Default**

- A. Events of Default. Each of the following shall be an event of default under this Agreement:

1. A party fails to timely pay any amounts which become due to another party hereunder for a period of thirty (30) days after written notice to such party of the failure to pay and request that it be remedied; or
2. A party fails to observe and perform any material term, covenant or agreement contained in this Agreement on its part to be performed and continuance of such failure for a period of thirty (30) days after written notice to such party specifying the nature of such failure and requesting that it be remedied; or
3. A party makes a general assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property or suffers such custodianship, receivership or trusteeship to continue undismissed for a period of 60 days or more.

B Remedies on Default. Whenever any event of default shall have occurred and be continuing, the non-defaulting Party shall be entitled to: (i) terminate this Agreement on sixty (60) days notice and pursue its rights under this Agreement, including immediate payment of all amounts then-accrued, or (ii) without terminating this Agreement, stop providing services pursuant to this Agreement until such default is cured or this Agreement is terminated.

### **XXIII Indemnification**

- A IESI assumes all risks of loss or injury to property or persons caused by its performance of the services. IESI agrees to defend, indemnify and hold harmless the County and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of IESI, its officers, employees and subcontractors, or any failure to comply with any permit, law, rule or regulation. However, IESI shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of a willful or negligent act or omission of the County, its agents, directors, employees, officers and servants.
- B The County shall defend, indemnify and hold IESI harmless from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses caused by a willful or negligent act or omission of the County, its officers and employees and or any failure of the County to comply with any permit, law, rule or regulation. However, the County shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of a willful or negligent act or omission of IESI, its agents, directors, employees, officers, servants and subcontractors.

### **XXIV Independent Contractor**

IESI shall perform its obligations under this Agreement as an independent contractor, and, as such, shall maintain control over its employees, agents and subcontractors during the performance of its obligations.

### **XXV Subcontracting, Assignment; Binding Effect**

Except under Sections XVII and XVIII, IESI may not subcontract any responsibility to be performed hereunder without County's prior written consent, which consent may not be unreasonably withheld. This Agreement may not be assigned by IESI except to another corporate entity within IESI's existing corporate structure and then,

only with the prior written approval of the County. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assignees.

**XXVI Entire Agreement; Amendment**

This Agreement supersedes all prior agreements, written or oral, with respect to the subject matter of this Agreement. This Agreement may be modified only by a written instrument signed by the parties.

**XXVII Severability**

In the event that any one or more of the provisions, clauses, paragraphs or terms contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the other provisions, clauses, paragraphs or terms of this Agreement, and all other provisions shall remain in full force and effect and the rest and remainder of this Agreement shall be interpreted, to the maximum extent possible, by reading the entirety of this Agreement.

**XXVIII Waiver**

No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on any occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

**XXIX Notice**

All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier, or by delivering the same in person to such party, addressed as follows:

If to Sullivan County:

100 North Street, P.O. Box 5012  
Monticello, NY 12701  
Fax: (845) 794-4263

With a copy to the County Attorney at the same address.

If to IESI, addressed to it at:

IESI NY Corporation  
1099 Wall Street West  
2<sup>nd</sup> Floor, Ste. 250  
Lyndhurst, NJ 07071  
Fax: (201) 443-3020  
Attn.: District Manager

With a copy to:

IESI Corporation  
2301 Eagle Parkway, Suite 200  
Fort Worth, Texas 76177  
Attention: General Counsel

Notice shall be deemed given and effective the day received, as evidenced by the return receipt. Any party may change the address for notice by notifying the other parties of such change in accordance with this Section.

**XXX Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York except for its provisions with respect to choice of laws. All disputes relating to this agreement shall be heard in a court of competent jurisdiction having venue in Sullivan County.

**XXXI Warranty of Authority**

The party representatives signing below each warrant and represent that they are fully authorized to execute this Agreement.

**XXXII Representations of IESI**

IESI represents and warrants to the County that IESI is licensed to the extent required by law and has the knowledge and experience necessary to perform this agreement; that IESI has not been convicted of a crime under the laws of the United States or of any state; that IESI has not been disqualified from performing any contract funded by the United States or the State of New York and that there is no proceeding pending or threatened against IESI by either government; that no officer or employee of IESI has an interest in this agreement which would disqualify IESI from performing this agreement and receiving payment therefore; that IESI's facilities, if used in the performance of this agreement, are accessible to the handicapped or will be made accessible to the handicapped in accordance with applicable regulations.

**XXXIII Appropriations**

If this Agreement is funded by a grant or contract between the County and the State or Federal governments or is otherwise subject to legislative appropriation, the County shall not be liable beyond the funds authorized by such legislation or provided by the County, State or Federal governments. In the event that such funding shall be terminated or reduced, this Agreement shall end on the effective date of notice of termination. The County shall remain liable for all charges and expenses incurred prior to the date of termination. If funding is reduced below the level authorized by the County and neither party desires to terminate this Agreement, funding shall be deemed to have been reduced to the amount authorized by the State or Federal government as set forth in notice given by the County to IESI.

**XXXIV Audit**

The County, the State of New York, and the United States shall have the right at any time during the term of this Agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. IESI shall comply with any reasonable demands made by the County to provide information with respect to the payment of monies hereunder during the period

covered by this paragraph. IESI shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this Agreement. The revenues and expenditures of IESI in connection with this Agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. IESI agrees to provide to or permit the County to examine or obtain copies of any documents relating to the payment of money to IESI or expenditures made by IESI for which reimbursement is made to IESI by the County. IESI shall maintain all records required by this paragraph for five (5) years after the date this Agreement is terminated or ends.

If IESI has expended, in any fiscal year, \$300,000.00 or more in funds provided by a Federal financial assistance program from a Federal agency pursuant to this Agreement and all other contracts with the County, IESI shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act. In addition to the foregoing, if this Agreement is financed by Medicare reimbursements, then until the expiration of four years after the furnishing of the services provided under this agreement, IESI will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this agreement and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If IESI carries out the duties of the agreement through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.

#### **XXXV Monitoring of Performance**

The County shall have the right during the term of this Agreement and for the period limited by the applicable statute of limitations to ensure that the services to be provided by IESI have been provided as agreed. IESI hereby consents to the examination of IESI's records and agrees to provide to or permit the County to obtain copies of any documents relating to the performance of this Agreement. IESI shall maintain all records required by this paragraph for five (5) years after the date this Agreement is terminated or ends.

#### **XXXVI Termination**

The County may, by written notice to IESI effective upon mailing, terminate this agreement at any time upon IESI's failure to cure a material default.

The County may terminate this Agreement prior to the expiration of a term or renewal term without cause in the event, but solely in the event, that the County shall determine to cease being responsible for the disposal of solid waste in the County or in the event the County shall determine that it would be in the County's best interest to take over the management and operation of the Transfer Station(s) and the new MRF. In such event the County shall provide IESI ninety (90) days prior written notice. In the event the County shall determine to take over the operation of the Transfer Station(s) and the new MRF the County will follow applicable procurement procedures in selecting a vendor for remaining disposal services and IESI will be permitted to submit a proposal/bid to provide such services.

Upon termination of this agreement, IESI shall comply with all County close-out procedures, including, but not limited to (1) accounting for and refunding to the County within 30 days, any unexpended funds which have been paid to IESI pursuant to this agreement, (2) not incur any further obligations pursuant to this

agreement after the termination date; (3) submit to the County, within 30 days of termination, a full report of receipts and expenditures of funds, program activities, and obstacles, if any, attendant to Contractor's performance of this Agreement; and (4) furnishing within 30 days an inventory to the County of all equipment, appurtenances and property purchased by IESI through or provided under this agreement, and carrying out any County directive concerning the disposition thereof.

If the County terminates this agreement for cause, the County may procure, upon such terms and in such manner as it deems appropriate, services similar to those so terminated, and any services so procured by the County to complete the services herein will be charged to IESI and/or set off against any sums due IESI.

Notwithstanding any other provisions of this agreement, IESI shall not be relieved of liability to the County for damages sustained by the County by virtue of IESI's breach of the agreement or failure to perform in accordance with applicable professional standards, and the County may withhold payments to IESI for the purpose of set-off until such time as the exact amount of damages due to the County from IESI is determined. The rights and remedies of the County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this agreement.

#### **XXXVII Modification**

This Agreement may be modified only by a writing signed by both parties.

#### **XXXVIII Non-Discrimination**

IESI acknowledges receipt of a copy of the County Equal Employment Opportunity Statement. IESI will comply with all applicable laws and regulations prohibiting discrimination in employment on the grounds of race, religion, creed, color, national origin, sex, disability, marital status and other non-merit factors. IESI understands and agrees that this Agreement can be terminated upon a finding by any governmental agency that the undersigned is in violation of applicable discrimination laws and that such finding will also disqualify IESI from future contracts with the County. IESI certifies to the County that there is no pending or outstanding decision, ruling or order against IESI finding IESI in violation of laws against discrimination nor is any such action pending or threatened.

The provisions of this paragraph shall apply to all of IESI's subcontractors, and IESI shall attach the provisions of this paragraph to any subcontract which is executed pursuant to this agreement. This subparagraph shall not be construed to limit the applicability of any portion of this rider or the agreement to subcontractors.

#### **XXXIX Equal Employment Opportunity Policy Statement**

The County of Sullivan will take positive action to ensure equal employment opportunity without regard to age, race, religion, creed, color, national origin, sex, disability, marital status, and other non-merit factors in compliance with state and federal law.

The activities encompassed by the Affirmative Action Plan include advertising, recruiting, interviewing, testing, training, transfers, compensation, promotion, discipline, termination, employee benefits, supplier relations, access to programmatic benefits, and maintenance of Sullivan County facilities on a non-discriminatory basis.

Sullivan County will employ all necessary procedures to ensure that this employment policy continues to be fully supported and expects that all elected or appointed department heads, in all activities, undertake a personal commitment to

assure themselves that the principles of equal employment opportunity are fully implemented in every action they take.

IN WITNESS WHEREOF, the undersigned have entered this Agreement on the date first written above.

SULLIVAN COUNTY, NEW YORK

By: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

IESI NY CORPORATION,  
A Delaware corporation

By: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "F"**

**RESOLUTION NO. 549-09 INTRODUCED BY JONATHAN F. ROUIS,  
CHAIRMAN OF THE LEGISLATURE TO AUTHORIZE THE COUNTY  
MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT WITH  
LABORERS INTERNATIONAL UNION LOCAL 17 RELATED TO THE SOLID  
WASTE SYSTEM**

**WHEREAS**, the County Landfill will cease disposal operations at the close of business on December 31, 2009; and

**WHEREAS**, the County has created a Garbage and Refuse Special Revenue Fund to provide for the all-in costs associated with the Sullivan County Solid Waste System; and

**WHEREAS**, the County has negotiated an agreement with an external vendor under the provisions of General Municipal Law Section 120W for an initial term of ten (10) years, with renewals up to twenty-five (25) years; and

**WHEREAS**, the County Manager has negotiated a Memorandum of Agreement (MOA) with Laborers International Union Local 17 (LIU 17) related to the Sullivan County Solid Waste System; and

**WHEREAS**, the Commissioner of the Division of Public Works has concurred with the MOA related to the Solid Waste System Operations of Sullivan County.

**NOW, THEREFORE, BE IT RESOLVED**, that the Sullivan County Legislature hereby authorizes the County Manager to execute a Memorandum of Agreement with Laborers International Union Local 17 related to the Solid Waste System within the Division of Solid Waste in the Division of Public Works, attached hereto as Schedule "A".

**Moved by Mrs. LaBuda, seconded by Mrs. Binder , put to a vote with Mr. Sager absent, unanimously carried and declared duly adopted on motion December 29, 2009.**

## **MEMORANDUM OF AGREEMENT**

**WHEREAS**, the County of Sullivan (“County”), and Laborers Local Union No. 17 (“Union”) are parties to a collective bargaining agreement (“contract”) governing terms and conditions of employment, and

**WHEREAS**, the County, and Union, due to current economic conditions, wish to establish and modify the terms of the contract in order to preserve employment of unit members, and avoid potential arbitration, legal recourse, or the County totally abolishing the service of solid waste removal it now offers the residents of Sullivan County; and

**WHEREAS**, such changes would benefit the County and Union; and

**WHEREAS**, the County and the Union desire to enter into this memorandum of agreement to establish agreed upon modifications to the contract.

**NOW, THEREFORE, IT IS HEREBY AGREED** as follows:

1. The County will have an external vendor operate the long-haul transfer station (Ferndale), until the to be constructed transfer station/MRF is permitted and constructed, at which time Ferndale will revert back to Sullivan County as a convenience station.
2. Sullivan County will operate convenience centers, as necessary, at Highland, Mamakating, Western Sullivan, Rockland, and at the solid waste complex in Monticello with County personnel for the term of the external vendor’s agreement and renewals thereof.
3. The County will, consistent with Civil Service Law, initially create fifteen (15) Solid Waste Operator positions to staff the above locations, with more being created as necessary for the term of the external vendor’s agreement and renewals thereof. The County will maintain necessary staffing levels, as the Solid Waste System utilization requires.
4. The Solid Waste Operator positions will be paid at \$21.98/hr., with no changes to current vacation and holiday schedules. (However, the hourly rate will buy back personal/sick days to provide for a maximum of seven (7) annually). This clause would apply to Solid Waste Operators only.
5. The external vendor would agree to employ dislocated Sullivan County DPW workers as a result of the December 2009 layoffs; the external vendor would employ three to four (3 – 4) workers at Ferndale, and thereafter, a total of five to six (5 to 6) at the centralized transfer station/MRF, for the term of the external vendor’s agreement and renewals thereof.
6. It is understood and agreed that this Memorandum of Agreement will be implemented immediately upon signing and ratification by the parties.
7. This agreement is neither meant nor intended to establish a precedent or past practice with regard to any other privatization of operations by the County of Sullivan. Section 2101 of the Collective Bargaining Agreement between the County and LIU 17 remains in effect.
8. This agreement will continue in force and effect for the same period as the current contract or continuation thereof or as modified by mutual consent, with the exception of the above staffing requirement of the County and external vendor which shall remain in place for the term of the external vendor’s agreement and renewal(s) thereof.
9. Solid Waste Operators shall receive a four percent, plus an adjustment of \$0.35 per hour(4% + \$0.35 per hour) salary increase effective January 1, 2011, and a four and one-half percent (4.5%) salary increase effective January 1, 2012, in accordance with the Collective Bargaining Agreement.

DAVID FANSLAU      DATED  
County Manager

**RESOLUTION NO. 550-09 INTRODUCED BY JONATHAN F. ROUIS,  
CHAIRMAN OF THE LEGISLATURE TO CREATE 15 SOLID WASTE  
OPERATOR POSITONS WITHIN THE DIVISION OF SOLID WASTE IN THE  
DIVISION OF PUBLIC WORKS, APPROPRIATED THROUGH THE  
GARBAGE AND REFUSE SPECIAL REVENUE FUND**

**WHEREAS**, the County Landfill will cease disposal operations at the close of business on December 31, 2009; and

**WHEREAS**, the County has created a Garbage and Refuse Special Revenue Fund to provide for the all-in costs associated with the Sullivan County Solid Waste System; and

**WHEREAS**, the County has negotiated an agreement with an external vendor under the provisions of General Municipal Law Section 120W for an initial term of ten (10) years, with renewals up to twenty-five (25) years; and

**WHEREAS**, the County Manager has negotiated a Memorandum of Agreement (MOA) with Laborers International Union Local 17 (LIU 17) related to the Sullivan County Solid Waste System; and

**WHEREAS**, the County Manager has recommended that the Solid Waste System Convenience Centers be operated by County Personnel in accordance with the MOA with LIU 17; and

**WHEREAS**, the Commissioner of the Division of Public Works has concurred that there is a need to staff the Solid Waste System Operations with fifteen (15) Solid Waste Operator positions.

**NOW, THEREFORE, BE IT RESOLVED**, that the Sullivan County Legislature hereby authorizes the creation of the following positions within the Division of Solid Waste in the Division of Public Works, appropriated through the Garbage and Refuse Special Revenue Fund, and fixes the compensation for same in accordance with the Sullivan County Charter, effective January 1, 2010:

CREATE:

CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
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CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR
CL8160	SOLID WASTE OPERATOR	\$21.98/HOUR

**Moved by Mrs. LaBuda, seconded by Mrs. Binder, put to a vote with Mr. Sager absent, unanimously carried and declared duly adopted on motion December 29, 2009.**

**RESOLUTION NO. 551-09 INTRODUCED BY JONATHAN F. ROUIS, CHAIRMAN OF THE LEGISLATURE, TO AUTHORIZE CONTRACT EXTENSIONS**

**WHEREAS,** there are contracts that will expire on December 31, 2009, and

**WHEREAS,** the County wishes to minimize disruptions to services that may result from the 2010 resolution process to renew contracts.

**NOW, THEREFORE, BE IT RESOLVED,** that the County Manager shall have the authority to extend those contracts for a period not to exceed sixty (60) days under the same terms and conditions.

**Moved by Mrs. Binder, seconded by Mr. Wood , put to a vote with Mr. Sager absent, unanimously carried and declared duly adopted on motion December 29, 2009.**

**RESOLUTION NO. 552-09 INTRODUCED BY JONATHAN F. ROUIS, CHAIRMAN OF THE LEGISLATURE, TO CREATE TEMPORARY POSITIONS IN THE SULLIVAN COUNTY SHERIFF’S OFFICE**

**WHEREAS,** there are a number of vacancies in Correction Officer positions needed to staff the Sullivan County Jail, and

**WHEREAS,** the due diligence and background check process is time consuming to appoint Correction Officers from a Civil Service list, and

**WHEREAS,** in order to meet the staffing needs of the Sullivan County Jail, it is the wish of the Sullivan County Sheriff to create six (6) temporary Correction Officer positions in the Sullivan County Sheriff’s Office, and

**WHEREAS,** these temporary Correction Officers will be employed for a time period not to exceed ninety (90) days.

**NOW, THEREFORE, BE IT RESOLVED,** that the Sullivan County Legislature hereby authorizes the creation of six (6) temporary Correction Officer positions in the Sheriff’s Office for the temporary staffing needs at the Sullivan County Jail, and

**BE IT FURTHER RESOLVED** that any currently employed full-time Sullivan County employees that would otherwise be separated from employment as part of the adopted 2010 budget, shall continue to enjoy uninterrupted health benefits, if they are appointed by the Sheriff to one of the created six (6) temporary Correction Officer positions, and

**BE IT FURTHER RESOLVED** due to the significant resources and time involved in performing due diligence checks and background checks, the created six (6) temporary Correction Officer positions shall be entitled to health benefits in accordance with the usual wait period associated with new employees; however, this shall not set a

precedent associated with any other current or future temporary positions that have been or may be created by the County Legislature.

**Moved by Mrs. Binder, seconded by Mr. Armstrong, put to a vote with Mr. Sager absent, unanimously carried and declared duly adopted on motion December 29, 2009.**

**RESOLUTION NO. 553-09 INTRODUCED BY JONATHAN F. ROUIS,  
CHAIRMAN OF THE LEGISLATURE, AMENDING RESOLUTION NO. 276-01  
TO SET ASIDE FUNDS TO OFFSET THE COST OF CONSTRUCTION AND  
REPAIR OF BUILDINGS**

**WHEREAS**, the County of Sullivan had previously appropriated \$3.5 million from the general fund unreserved fund balance to be used to offset the costs of construction and repair of buildings, and

**WHEREAS**, this designation was established prior to the County having formally adopted an official Capital Plan and Budget, and

**WHEREAS**, there exists an adopted Capital Plan and Budget that anticipates future funding requirements as they relate to the construction and repair of buildings, and

**WHEREAS**, there exists an adopted Strategic Plan that provides the foundation of legislative intent for the construction and repair of buildings, which does not designate the use of the designation of “construction and repair of buildings”, and

**WHEREAS**, it is the desire of the County of Sullivan to eliminate and the previously established designation of fund balance which was created for the purposes of offsetting the costs of construction and repair of buildings.

**NOW, THEREFORE, BE IT RESOLVED**, that the \$3.5 million designated fund balance established through resolution 276-01 that was designated to be used to offset the cost of construction and repair of buildings be eliminated, and that said \$3.5 million revert to the general fund undesignated unreserved fund balance.

**Moved by Mr. Wood, seconded by Mrs. Binder, put to a vote with Mr. Sager absent, unanimously carried and declared duly adopted on motion December 29, 2009.**

**RESOLUTION NO. 554-09 INTRODUCED BY JONATHAN F. ROUIS,  
CHAIRMAN OF THE LEGISLATURE, TO CREATE A PERSONNEL  
ASSISTANT POSITION IN THE PERSONNEL OFFICE**

**WHEREAS**, there is a need to create a Personnel Assistant position in the Personnel Office to assist with Civil Service matters and to administer the Electrical Licensing application and testing procedures, and

**WHEREAS**, position number 2197 was abolished through the adoption of the 2010 Sullivan County budget, and

**WHEREAS**, the Personnel Officer wishes to retain the incumbent in position number 2197 shall continue as a Personnel Assistant in the Personnel Office.

**NOW, THEREFORE, BE IT RESOLVED**, that the Sullivan County Legislature hereby creates a Personnel Assistant position in the Personnel Office at a 2010 salary set at \$29,631, and

**BE IT FURTHER RESOLVED**, that the Personnel Officer wishes to retain the incumbent in position number 2197, and the incumbent shall continue as a Personnel Assistant in the Personnel Office, and

**BE IT FURTHER RESOLVED**, that the Personnel Office shall be responsible for the administration of the application and testing procedures in accordance with Chapter 103 of the Code of the County of Sullivan effective January 1, 2010.

**Moved by** Mrs. Binder, **seconded by** Mr. Wood , put to a vote with Mr. Sager absent, unanimously carried and **declared duly adopted on motion** December 29, 2009.

**RESOLUTION NO. 555-09 INTRODUCED BY JONATHAN F. ROUIS, CHAIRMAN OF THE LEGISLATURE, TO CREATE AN EMPLOYMENT AND TRAINING SPECIALIST POSITION IN THE CENTER FOR WORKFORCE DEVELOPMENT**

**WHEREAS**, there is a need to create an Employment and Training Specialist position in the Center for Workforce Development to assist with job training programs associated with federal stimulus funding, and

**WHEREAS**, position number 1218 was abolished through the adoption of the 2010 Sullivan County budget, and

**WHEREAS**, the Director of the Center for Workforce Development wishes to retain the incumbent in position number 1218, and the incumbent shall continue as an Employment and Training Specialist in the Center for Workforce Development.

**NOW, THEREFORE, BE IT RESOLVED**, that the Sullivan County Legislature hereby creates an Employment and Training Specialist position in the Center for Workforce Development, as a position covered by the Teamsters 445 Collective Bargaining Agreement, and

**BE IT FURTHER RESOLVED**, that the Director wishes to retain the incumbent in position number 1218 shall continue as an Employment and Training Specialist in the Center for Workforce Development.

**Moved by** Mrs. Binder, **seconded by** Mrs. LaBuda , put to a vote with Mr. Sager absent, unanimously carried and **declared duly adopted on motion** December 29, 2009.

**RESOLUTION NO. 556-09 INTRODUCED BY JONATHAN F. ROUIS, CHAIRMAN OF THE LEGISLATURE TO MODIFY THE 2009 COUNTY BUDGET**

**WHEREAS**, the County of Sullivan 2009 Budget requires modification,

**NOW, THEREFORE, BE IT RESOLVED**, that the attached budgetary transfers be authorized.

**Moved by** Mrs. Binder, **seconded by** Mr. Wood, put to a vote with Mr. Sager absent, unanimously carried and **declared duly adopted on motion** December 29, 2009.

See Attached.

**RESOLUTION 557-09 INTRODUCED BY JONATHAN F. ROUIS, CHAIRMAN OF THE LEGISLATURE, TO ABOLISH A SENIOR ACCOUNT CLERK/TYPIST AND TO CREATE AN ACCOUNT CLERK/TYPIST IN THE DEPARTMENT OF COMMUNITY SERVICES**

**WHEREAS**, there is a need to abolish position number 1674, Senior Account Clerk/Typist in the Department of Community Services, and

**WHEREAS**, there is a need to create an Account Clerk Typist in the Department of Community Services, and

**WHEREAS**, the Director of the Department of Community Services wishes to appoint the current Administrative Assistant in the Department of Community Services, as an Account Clerk/Typist in the Department of Community Services, and

**WHEREAS**, the Administrative Assistant position in the Personnel Office has been abolished effective December 31, 2009, and the incumbent in said position has been placed on the preferred list for Administrative Assistant, and

**WHEREAS**, the incumbent Administrative Assistant in the Personnel Office shall be appointed from the preferred list for Administrative Assistant to the Administrative Assistant position in the Department of Community Services, effective January 1, 2010..

**NOW, THEREFORE, BE IT RESOLVED**, that the Sullivan County Legislature hereby abolishes position #1674 Senior Account Clerk/Typist in the Department of Community Services, and

**BE IT FURTHER RESOLVED**, an Account Clerk/Typist position is hereby created in the Department of Community Services, to be occupied by the incumbent Administrative Assistant in the Department of Community Services, and

**BE IT FURTHER RESOLVED**, that the incumbent Administrative Assistant in the Personnel Office shall be appointed from the preferred list for Administrative Assistant to the Administrative Assistant position in the Department of Community Services, effective January 1, 2010.

**Moved by** Mrs. Binder, **seconded by** Mrs. Goodman , put to a vote with Mr. Sager absent, unanimously carried and **declared duly adopted on motion** December 29, 2009.

Chairman Rouis stated we have one final presentation today he called Alexis Eggleton, Ron Hiatt, Kathy LaBuda and Leni Binder up to the podium.

The following certificate was presented to Alexis Eggleton. Mr. Hiatt read the plaque. Mrs. LaBuda stated she has never seen such a dedicated worker as Alexis Eggleton. A few weeks ago she was texting her at 10:45 at night. Her husband asked who are you texting she stated Alexis. Her husband stated isn't late and she said yeah but she doesn't mind. The second quick story was she called her on a Friday night and she stated "can I call you back, I am on a date" so she texted her and stated don't ever pick up your cell phone when you are on a date. She stated she will truly truly miss Alexis. Mrs. Binder stated that she and Mrs. Goodman always tell her how much they appreciate her. She is a gem and she is talented. She thinks we always knew that we would not keep her but yet lucky to have her for the time we had her. We will certainly miss her. Ms. Eggleton stated it has been an honor and privilege to work here for the last three years and she has learned so much. It has been a wonderful experience.

There being no further comments, Mr. Hiatt moved to adjourn, seconded by Mr. Armstrong, put to a vote and carried. The Special Meeting was declared closed at 9:25AM subject to the call of the Chairman.

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ANNMARIE MARTIN, Clerk of the Legislature