

**Special Addendum
To Contract Documents
Between the City of San Antonio
And
Texas Disposal Systems Landfill, Inc.
For Conveyance of TNRCC Permit for Starcrest Transfer Station**

General Description of this Special Addendum: Conveyance by the City of San Antonio (City / Owner) to Texas Disposal Systems Landfill, Inc., (TDSL / Operator), collectively referred to as the "parties", of the Texas Natural Resource Conservation Commission (TNRCC) Municipal Solid Waste (MSW) Permit No. MSW-1443 (the Permit), which conveyance shall be for a fixed period of time cited herein under conditions as described below.

Background and Authority. This supplemental authorization is made consistent with an Agreement made between the City and TDSL under authority of Ordinance No 85263, passed December 5, 1996, which Ordinance enabled an agreement known as the 2nd Amendment to Agreement which authorized privatization of the City's Starcrest Transfer Station (Station), which 2nd Amendment, also known as the Starcrest Transfer Station Privatization Agreement ("Privatization Agreement"), became effective as a contract on January 7, 1998.

This Special Addendum is immediately enabled by Ordinance No. 93272, passed on January 18, 2001, by which Ordinance the City Council consented to and made further modifications to the Privatization Agreement.

According to the "Addendum Sections" below, numbers 1 through 10, the parties acknowledge and agree as follows:

1. The City Manager of the City of San Antonio, as recited in the enabling Ordinance, shall execute all documents and perform all actions as may be necessary to convey the Permit to TDSL. A draft copy of the permit transfer application is attached hereto as Exhibit 1.
2. The parties conferred with TNRCC prior to submitting the permit transfer application and have been apprised by respective legal counsels of responsibilities, liabilities, and obligations that reside with permit ownership and facility ownership. As between the City as the owner and TDSL as the operator, the parties agree that as of the date the Transfer Station Permit is issued to TDSL and signed by the TNRCC (the "Effective Date") TDSL will assume all responsibilities and liabilities for activities involving the Station in consideration of the permit transfer as follows:
 - (i) TDSL shall be solely responsible for compliance with the Permit, including, without limitation, all of the terms, provisions, conditions, limitations and other restrictions embodied in the permit and with all applicable regulations of the TNRCC for municipal solid waste facilities, including maintaining financial assurance acceptable to the TNRCC.
 - (ii) TDSL shall be solely responsible for responding to enforcement actions, payment of all penalties and fines, and compliance with corrective action orders that may be issued concerning the operation and management of the Station.
 - (iii) TDSL shall be solely responsible for the cost and implementation of investigations, assessments and corrective action requirements related to spills, releases or discharges that occur after the Effective Date and which result in environmental contamination or threaten environmental contamination at the Station. TDSL's responsibility shall extend to any off-site impacts that may result as a consequence of on-site activities.

- (iv) Except for wastes transported to the Station by the City, TDSL shall be solely responsible for all wastes managed through the Station that become the subject of any state or federal Superfund investigation.
3. Conveyance of the Permit to TDSL will shift liabilities as described in Section 2 of this Addendum and will therefore necessitate clarification of each party's duties and responsibilities under the Privatization Agreement. The City and TDSL agree that as of the Effective Date, specific provisions of the Privatization Agreement are superseded by this Addendum as follows:
- (i) Section 6 - DISPOSAL RATES
- a. Paragraph F: TDSL and the City shall establish appropriate methodology for compliance with service requests for City contractors and designated City haulers, entitled to City priority services from TDSL, and creation of such methodology shall be expedited by means of informal letters of agreement or memorandums of understanding between the City and TDSL rather than by means of a Technical Operations Manual.
- b. Paragraph I: TDSL is not required to notify the City of the receipt and nature of unacceptable waste.
- (ii) Section 18 - TRANSFER STATION
- a. Paragraph A: The Transfer Station shall be operated by TDSL in accordance with TDSL's TNRCC permit, as modified or amended.
- b. Paragraph E: TDSL shall be responsible for ensuring compliance at the facility at all times. The City's on-site Program Manager shall instead become the City's on-site "Contracts Servicing Representative" and is not responsible for compliance oversight of the TDSL operations.
- c. Paragraph K: TDSL shall not bear the cost for any modifications to the permit or facility requested of TDSL by the City, which request may be made subsequent to the Permit conveyance to TDSL and which request may exceed requirements of the parties' Privatization Agreement.
- d. Paragraph M: TDSL shall apply for and acquire all future permits, permit modifications, business operational licenses and permits at the cost of TDSL. The City does not own the permit and is not required to assist TDSL in processing or executing permit revisions, except for licenses, permits or authorization issued by the City. The City will cooperate with TDSL in permitting activities to the extent approval is required by the property owner which said approval, if not in conflict with the City's municipal governmental obligations as determined under the City Charter, shall not be unreasonably withheld or delayed. The Charter is found at the City's website. All proposed permit revisions are subject to Sections 4 and 5 of this Addendum.
- e. Paragraph P: TDSL shall be responsible for obtaining other required permits, including a state stormwater permit, business operational licenses, and governmental approvals, and permit modifications or amendments for any improvements to or operation of the Transfer Station on its own behalf and on behalf of the City only to the limited extent that the City is the Owner of the facility. The City does not own the permit and is not required to assist TDSL in processing or executing permit revisions, except for licenses, permits or authorization issued by the City. The City will cooperate with TDSL in permitting activities to the extent approval is required by the property owner which said approval, if not in conflict with the City's municipal governmental obligations as determined under the City's Charter, shall not be unreasonably withheld or delayed. The City's Charter is found at the City's website. All proposed permit revisions are subject to Sections 4 and 5 of this Addendum.

- f. Paragraph Q: In accordance with Section 5 of this Addendum, TDSL shall not reduce the capacity of the Transfer Station to receive or process solid waste materials during the term of the Privatization Agreement.
- g. Paragraph X: TDSL shall be solely responsible to develop a technical operations manual for the Transfer Station, and shall provide a current and updated copy of the manual to the City. If no updates are made during the year, TDSL will insert a short written statement to that effect to accompany each annual lease payment on those dates when the lease fee is due and payable to the City. The parties acknowledge the lease payment schedule has been modified according to certain amendments effected by Ordinance No. 93272 noted below.

(iii) Section 19 - DISPUTE RESOLUTIONS

- a. Paragraphs A-D are supplemented with an understanding that TDSL holds the permit for the Station and is solely responsible for all compliance issues concerning the facility operations. Citizen complaints that are reported to the City shall be handled as described in this section. The City retains any and all governmental powers to protect the public health, safety and welfare, as may be the City's governmental duty, for protection of the public health, safety, and welfare, including but not limited to abatement of common law and statutory nuisance and exercise of authority under the Texas Solid Waste Disposal Act. The City continues to require TDSL to abide by all state, federal, and local laws, rules and regulations applicable to the Transfer Station operation.
4. Each party shall bear its respective administrative, legal, and other costs that may be incurred through transfer of the permit.
 5. TDSL shall provide 60 days advanced notice to the City prior to application for any proposed modification or amendment of the Permit. An exception to 60 days advanced notice may be had if TDSL must make a permit alteration submission in response to a compliance or enforcement action by TNRCC affording less than 60 days for response. In that case, TDSL must notify the City of the TNRCC directive or "compliance concern" for permit alteration immediately upon receipt of the NOV or letter or notice of concern in which TNRCC identifies permit alteration as a remedy. To maintain the value of the Permit, TDSL may not modify or amend the Permit to limit the nature or type of waste, limit the volume of waste, reduce the operational hours of the facility, suspend or revoke the permit, or otherwise diminish the waste management authorization under the Permit, without the prior written approval of the City. Consideration for the Permit conveyance is TDSL's promise the company will not apply to enlarge the Permit's industrial waste stream to include Class 1 Industrial Waste and TDSL agrees not to seek any such authorization without the permission of the City. TDSL will not service hazardous waste at the Station, except for materials authorized under state and federal law for disposal at a Type I municipal solid waste landfill as described in 30 TAC Section 330.41(a) and (b), nor will TDSL store hazardous waste at the facility, not even on a temporary basis.
 6. TDSL shall inform the City of each NOV or enforcement action. By January 31 of each year, TDSL shall provide a summary of the prior year's environmental performance, including how many times the facility was inspected by TNRCC, the number of NOV's issued, whether enforcement actions were commenced, and the results of any enforcement actions
 7. Upon termination of the lease term provided in the Privatization Agreement, whether by exhaustion of the lease term, contract termination, or any other legal or equitable means by which

TDSL shall no longer have or exercise control or occupation of the premises, subject of the Starcrest Privatization Agreement (2nd Amendment), TDSL shall, upon instruction from the City, either re-convey the permit to the City pursuant to the protocols directed by TNRCC regulations, revoke the Permit under TNRCC protocols that will effect destruction of the permit, suspend the permit for a specified period of time, or convey the Permit to another party, all at the City's discretion. Six months prior to termination or expiration of the parties' contractual relationship concerning the Starcrest Transfer Station for whatever reason, TDSL shall notify the City of its intent to relinquish the permit and shall request the City to issue an instruction for disposition of the permit. Following receipt of TDSL's notice, it shall be the City's responsibility to issue instruction to TDSL no later than 60 days prior to termination of the parties' contractual relationship. If the City does not provide instructions to TDSL within the required timeframe, then TDSL shall submit a request for revocation of the permit to TNRCC prior to the termination of the parties' contract.

- 8. In consideration for permit transfer, TDSL promises it shall not diminish the level, quality, and expeditiousness of service being provided to the City, which level, quality, and expeditiousness was achieved prior to the conveyance of the permit. And in further consideration and in affirmation of the terms and intentions of the Privatization Agreement, TDSL promises to expedite ability for Third Parties to enter into reasonable contractual and insurance requirements to use the transfer station facilities to enable the City to realize royalties anticipated under the Privatization Agreement.
- 9. Upon and by operation of termination of the parties' contractual relationship concerning the Station, termination of the lease term, or end to TDSL's occupation or control of the Station, TDSL shall be divested of all right, title, and interest in the Permit, subject to any and all liabilities that may have attached during TDSL's ownership.
- 10. The changes to the Privatization Agreement in Section 18S and Section 18T as adopted in Ordinance 93272 are hereby specifically incorporated by reference into the Privatization Agreement.

Executed this 22 day of March, 2001.

CITY OF SAN ANTONIO

TEXAS DISPOSAL SYSTEMS
LANDFILL, INC.

by *Christopher J. Brady*
for City Manager

by: *Bob Gregory*
printed name: Bob Gregory
Title: Chairman and CEO

Approved as to form: *Sally Clare Farris*
for City Attorney