

AGREEMENT

This Agreement is executed by and between Texas Disposal Systems Landfill, Inc., a Texas Corporation (hereafter TDSL) and the City of San Antonio (hereafter City) pursuant to Ordinance 78715 of September 15, 1993.

The City solicited bids for Municipal Solid Waste Disposal Service through Request for Proposal 93-227 and its Addendum, (hereafter RFP) and TDSL responded thereto and the parties have therefore entered into this Agreement. True copies of the RFP and TDSL's response thereto are attached hereto and incorporated herein for all purposes as respectively Exhibits A and B. The provisions of this Agreement shall control in the event of any conflict between the provisions contained herein and Exhibits A and B attached hereto.

1. Term.

This Agreement shall be effective until midnight September 20, 1998. It is further provided that this Agreement may be extended by the parties hereto for not more than five (5) consecutive one year terms beginning at the end of the initial five (5) year term through written agreement not less than ninety (90) days prior to the end of the initial term and each consecutive one year term thereafter.

2. Binding Effect.

Section 13.00 of the RFP is modified as follows:

This Agreement shall be binding upon Texas Disposal Systems Landfill, Inc. (TDSL), its successors and assigns. TDSL shall require as a condition to any sale or transfer of a substantial amount of the assets of TDSL that the purchaser or

assignee expressly assume and perform the obligations of this Agreement. Any subsequent purchaser or assignee holding a substantial amount of the assets of TDSL shall be deemed to have assumed the obligations of this Agreement and shall have the same liability for the performance of these terms as if such purchaser or assignee had executed this Agreement originally. For the purpose of this Agreement, the term "substantial" shall mean a majority in asset value.

3. Performance Bond.

Section 10.0 of the RFP is modified to delete the requirement for a performance bond. In lieu of a performance bond, upon any default under this Agreement, the City shall have a right of specific performance to enforce the terms of this Agreement against TDSL. In the event of default under the terms of this Agreement, the City not being in default, will have the right to dispose of its municipal solid waste at one or more alternative landfills within 90 miles of the Starcrest Drive Transfer Station and will be reimbursed for any increased costs to dispose of its waste at the alternative landfill. The liability of TDSL for such cost differential shall be limited to six months immediately following the date of default.

4. Financial Statements.

Section 11.01 of the RFP is hereby deleted. Notwithstanding any other provision of the RFP to the contrary, TDSL shall not be obligated to furnish to the City financial information concerning its operations. However, if for any reason, TDSL proposes changes in the payment rate (cost per ton), the City will have the opportunity to review current financial information of TDSL directly related to this Agreement, and supporting cost accounting data to justify the proposed increase.

5. Close Proximity.

City deems the TDSL landfill site to be in "close proximity to Bexar County" whenever such term is used in the RFP.

6. Disposal Rates.

Subject only to the adjustments set forth in this Agreement, TDSL will accept the City's solid waste at the TDSL landfill at 7500 FM 1327, Buda, Texas, 78610, at the following rates:

All Rates Quoted

Per Ton:	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6-10
Base Rates:	\$9.40	\$9.40	\$10.90	\$10.90	\$11.40	\$11.40

The following terms and conditions are applied to the above rates:

- A. The base rate may increase to \$10.90 per ton for the 3rd and 4th year of this Agreement, and in the 5th year and any extension the base rate may increase to \$11.40 per ton, to cover the increased costs of Subtitle D of RCRA. Such increase shall be at the sole discretion of TDSL.
- B. It is agreed that there will be no rate increases to the base rates provided for in this Section 6 of the Agreement due to the rate of change of the consumer price index for the first three (3) years of this Agreement. Provided, however that the consumer price index rate of change for the third contract year shall be added or subtracted from the base rate of the third contract year prior to the application of the consumer price index rate then current at the beginning of the fourth contract year, to establish the adjusted base rate for

the fourth contract year.

However, the increase so provided for the fourth year shall not exceed 5% of the base rate for the third contract year but any remaining percentage not applied in the fourth contract year may be carried over to the subsequent contract years, but shall not exceed 5% for the subsequent contract years including the addition of the then current consumer price index rate of change.

Example of Application, CPI Adjustment for the 4th year:

10.90 ± CPI rate for year 3 = _____, ±
CPI rate for year 4 = _____
rate for the fourth year, but capped at 5% of 10.90

A rate increase for any extension of this Agreement, attributable to the rate of change in the consumer price index (CPI), shall be calculated by applying the then current annual rate of the consumer price index and any remaining unused portion of the CPI impact for the third contract year with a cap of not more than a 5% increase for any contract year.

- C. Any fees or charges attributable to the volume of waste received from the City of San Antonio levied by the Texas Natural Resources Conservation Commission or other governmental authority which are applicable to one or more landfills then being used by the City, shall be passed on directly to the City in proportionate amount. Any fees or charges which are not applicable to one or more of the City's other landfills are subject to review with respect to whether the charges should be passed on to the City. If the parties cannot mutually agree upon the assessment of these fees, either party may terminate

this Agreement without penalty within sixty (60) days following written notification of such intent.

- D. Any state fees levied by the Texas Natural Resources Conservation Commission (TNRCC), which impact Type I landfills in the state and are not location specific, will be passed on directly to the City. The State fee at the initiation of this Agreement is \$1.25 per ton.

- E. These rates do not include special wastes as such term is defined in the RFP. The rate for special waste shall be the same rate charged to all other similar customers of TDSL for that waste.

- F. TDSL agrees to accept up to 350,000 tons per year of City waste hauled by any City vehicle or designated hauler during the term of this Agreement at the rates set forth above. All waste accepted by TDSL under this contract shall be deemed to be the City's waste or within the responsibility or control of the City. The City agrees to deliver to TDSL approximately 100,000 tons of solid waste per year during the term of this Agreement. The City shall deliver its waste on a regular basis, but the weekly volume may vary depending upon the City's work schedule and disposal plan. The operations and maintenance of the City's Starcrest Transfer Station will also affect the weekly volume. The City does not guarantee delivery of any set tonnage or volume of waste to TDSL during any one year or over the term of this contract but does intend to haul to TDSL waste processed through the Starcrest Drive Transfer Station.

- G. The City and TDSL agree to enter into negotiations regarding the use of the City's Starcrest Transfer Station by Texas Disposal Systems, Inc. (TDS) for disposal of commercial solid waste collected in San Antonio provided; however, no commitments are made by either party at this time.
- H. TDSL agrees to assist the City in expanding its citizens drop off center at the Starcrest Transfer Station. Such assistance shall include providing ten (10) sixty (60) cubic yard roll off containers at no additional cost. TDSL will also provide daily roll off truck service to dump the roll off boxes into open top transfer trailers, and a transfer trailer tipper at the TDSL Landfill to dump the City's open top transfer trailers. The TDSL commitment is subject to the City purchasing open top transfer trailers, building the citizens drop off center, transporting approximately 220,000 tons per year of municipal solid waste to TDSL, and providing TDS with truck access to the remaining operating capacity of the Starcrest Transfer Station at City cost for dumping municipal solid waste collected in the San Antonio area.

7. Indemnity.

Section 7.00 of the RFP shall be modified as follows:

Contractor covenants and agrees to fully indemnify, defend and hold harmless City and the agents, employees, officers, directors and representatives of City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon City directly arising out of, resulting from or related to Contractor's activities under this contract, including any

acts or omissions of Contractor, any agent, officer, director, representative, employee, contractor or subcontractor of contractor, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Contract. Contractor shall promptly, hereof, advise City in writing of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation of and defense of such claim or demand.

Contractor agrees to list City as additional insured on coverages as specified in City of San Antonio Request for Proposal #93-227 dated March 30, 1993.

8. Office.

Paragraph 3.07 of the RFP is amended to provide that TDSL shall not be obligated to maintain an office or other such facilities in the City, but must provide the name of an emergency contact person and a current telephone number and local pager number where that person can be reached in an emergency.

9. Recycling Area.

The requirement set forth in Paragraph 3.08 of the RFP for TDSL to maintain a ten (10) acre recycling site at the TDSL landfill is waived.

10. Discontinued/Interruptions of Operations.

Paragraph 3.09 of the RFP is amended as follows:

In the event TDSL is required to discontinue or interrupt its operations, City shall have the right to terminate this Agreement if such discontinuance or interruption

is the fault of TDSL provided; however, that any interruption of six months, for whatever cause, will give the City the right to terminate this Agreement.

11. Hours of Operation.

Section 3.04 of the RFP is modified as follows:

The obligations for TDSL to maintain normal hours of operation in Paragraph 3.04 shall be modified to apply to the hours of 7:00 a.m. to 7:00 p.m. on Monday thru Saturdays. However, TDSL will agree on an emergency basis to extend its hours of operation for receiving the City's waste. To initiate emergency operations the City is required to notify TDSL by phone prior to 4:00 p.m. on the day that such extended service is needed.

12. Termination.

This contract may be terminated by the City at the end of either the third or the fourth year of this Agreement in order to initiate City operation of its Regional Environmental Enterprise Zone (REEZ) landfill/resource recovery facility. Such termination requires 60 days written notice to TDSL and only applies if the City has permitted and prepared for opening a new municipal solid waste landfill to receive this waste. There shall be no penalty for such termination.

13. Dead Animals.

Dead animals collected by the City shall be allowed to be commingled with the residential solid waste stream and will be charged according to rates identified in Section 5 of this Agreement.

14. Compliance with RFP.

TDSL shall be deemed to be in compliance with the RFP (Exhibit A) upon the execution of this Agreement. To the extent of a conflict between the terms of this Agreement and RFP (Exhibit A), the terms of this Agreement shall control.

15. Notices.

Whenever written notice is required herein to the City, it shall be given to the public works director at the address noted in Exhibit A. Whenever written notice is required herein to TDSL, it shall be given to the address notice in Exhibit C. All written notices required by this Agreement shall be given by certified mail, return receipt requested.

SIGNED AND EXECUTED this 11th day of January, 1994. ^(B)

CITY OF SAN ANTONIO FMS

ATTEST:

[Signature]
Title: City Clerk

[Signature]
ALEXANDER E. BRISENO
City Manager

ACCEPTED AND AGREED TO IN ALL THINGS this 4th day of January 1994. ^(B)

TEXAS DISPOSAL SYSTEMS
LANDFILL INC

ATTEST:

[Signature]
Title: Vice Pres. & Sec.

By: [Signature]
Printed Name: Bob Gregory
Title: President

FIRST AMENDMENT TO AGREEMENT

Pursuant to City of San Antonio ("City") Ordinance 78715 of September 15, 1993, the City and Texas Disposal Systems Landfill, Inc., a Texas corporation ("TDSL") entered into an Agreement for municipal waste disposal ("Agreement").

The City subsequently determined it is in the City's interest to address its waste disposal needs in a more comprehensive manner over a longer term. The City solicited bids for Municipal Solid Waste Disposal Services through a Request for Proposal dated April 19, 1995 and its Addenda dated April 24, 1995, May 1, 1995 and May 2, 1995 ("Second RFP"). A true copy of the Second RFP and TDSL's response thereto is attached and incorporated for all purposes as Exhibit C. All references to "RFP" include collectively the Request for Proposals referenced in the Agreement and the Second RFP. The provisions of the Agreement and this Amendment shall control in case of any conflict with Exhibits, A, B or C.

The City and TDSL desire to amend and extend the term of the Agreement in response to the Second RFP and the City's goals and objectives.

For a full and valuable consideration and the mutual covenants and benefits to each of the parties, the City and TDSL have agreed to amend the Agreement as follows:

A-1 TERM.

Section 1, Term shall be amended to read as follows:

"1. Term.

This Agreement became effective as of September 20, 1993 and shall remain in effect until midnight September 30, 2025. It is further contemplated that this Agreement may be extended by the parties for five (5) consecutive one-year terms beginning at the end of the initial term through written agreement of the City and TDSL not less than ninety (90) days prior to the end of the initial term and the end of each consecutive one-year term. This Agreement may be terminated by the City at any time upon (i) the delivery of written notice to TDSL, and (ii) the expiration of five (5) years from the date such notice was delivered."

A-2 DISPOSAL RATES.

Section 6 (paragraphs A, B, C, D, E, F, G, H & I), Disposal Rates shall be amended as follows:

"6. Disposal Rates.

Subject only to the adjustments set forth in this Agreement, TDSL will accept the City's solid waste at the TDSL landfill at 7500 FM 1327, Buda, Texas, 78610, at the following rates which shall in no event be higher than the then published gate rate at the TDSL landfill for similar type waste ("Base Rate"):

Rates for direct delivery to TDSL landfill (without state fee).

Year Beginning:	9/20/93	9/20/94	9/30/95	9/30/96	9/30/97	and all subsequent years
Base Rates						
Per Ton:	\$9.40	\$9.40	\$10.90	\$10.90	\$11.40	

The following terms and conditions are applied to the Base Rate:

- A. The Base Rate may increase to \$10.90 per ton for the third and fourth years beginning 9/30/95 and 9/30/96 of this Agreement, and with the fifth year beginning on 9/30/97 the

Base Rate may increase to \$11.40 per ton, to cover the increased costs of Subtitle D of RCRA. Such increase shall be at the sole discretion of TDSL."

B. The following sentence shall be added to the end of paragraph B:

"Notwithstanding anything to the contrary, there shall be no limitation on the amount of CPI adjustment for the period beginning on 10/01/2005 and each contract year thereafter. CPI, as used herein, means the "Consumer Price Index" determined by the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Wage Earners and Clerical Workers, All Items, for the Southern Region of the United States, or the successor of such index, or if no successor index is designated, then such other index as may be agreed by the parties hereto. The base index shall be September, 1995."

C. "Any fees or charges imposed subsequent to the effective date of this First Amendment attributable to the volume of waste received from the City of San Antonio levied by the Texas Natural Resource Conservation Commission or other governmental authority which are applicable to one or more Type I landfills then being used by the City, shall be passed on directly to the City in proportionate amount. Any fees or charges which are not applicable to one or more of the City's other similar Type I landfills are subject to review with respect to whether the charges should be passed on to the City."

D. "Any state fees levied by the Texas Natural Resources Conservation Commission (TNRCC), which impact Type I landfills in the state and are not location specific, will be passed on directly to the City. The State fee at the initiation of this Agreement is \$1.25 per ton."

E. "These rates do not include special wastes as such term is defined in the RFP. The rate for special waste shall be the same rate charged to all other similar customers of TDSL for that waste."

- F. "TDSL agrees to accept up to 500,000 tons per year of City waste hauled by any City vehicle or designated hauler during the term of this Agreement at the rates set forth above. All waste accepted by TDSL under this contract shall be deemed to be the City's waste or within the responsibility or control of the City. The City guarantees to deliver to TDSL a minimum of 50,000 tons of solid waste per year during the term of this Agreement. The City shall deliver its waste on a regular basis, but the weekly volume may vary depending upon the City's work schedule and disposal plan. The operations and maintenance of the City's Starcrest (Northeast) Transfer Station will also affect the weekly volume. The City intends to haul to TDSL waste processed through the Northeast Transfer Station. TDSL shall provide the City with written reports on a monthly basis which show the amount of volume delivered to TDSL under this Agreement."
- G. "The City and TDSL agree to enter into negotiations regarding the use of the City's Starcrest (Northeast) Transfer Station by Texas Disposal Systems, Inc. (TDS) for disposal of commercial solid waste collected in San Antonio. It is the intent of the City and TDSL to negotiate an agreement on or before November 16, 1995 regarding the use of Starcrest (Northeast) Transfer Station."
- H. "Upon written request by the City, TDSL agrees to assist the City in expanding the use of the Northeast Transfer Station. Such assistance shall include TDSL providing a transfer trailer tipper at the TDSL landfill to dump the City's open top transfer trailers. The TDSL commitment is subject to the City utilizing open top transfer trailers, transporting approximately 100,000 tons per year of City municipal solid waste to TDSL, and providing TDS with truck access to the remaining operating capacity of the Northeast Transfer Station at City cost for dumping municipal solid waste collected in the San Antonio area."

I. TDSL shall not accept and shall reject any waste brought to the disposal site that TDSL, in its sole discretion, considers to be unacceptable. TDSL will notify the City of the receipt and nature of unacceptable waste. The City and TDSL will cooperate to arrange for the removal of the unacceptable waste, the expense of removal to be borne by the City or the City's agent. Unacceptable waste is defined herein as any waste that TDSL is not permitted to accept at its disposal location by state or federal law or regulation.

A-3 RECYCLING AREA.

The following shall be added at the end of Section 9:

"TDSL shall work with the City to identify and secure a site located in the northern sector of the City which is a minimum of three acres in size for brush processing and grinding. TDSL, at its cost, shall provide the site for use by the City and TDSL, conditioned upon TDSL receiving appropriate zoning and permits for brush storage, grinding and processing."

A-4 TERMINATION.

Section 12. Termination of the Agreement shall be amended to read as follows:

"12. Termination - REEZ.

This contract may be terminated by the City after the fourth year of this agreement in order to initiate City operation of its Regional Environmental Enterprise Zone (REEZ), landfill resource facility. Such termination requires 60 days written notice to TDSL and only applies if the City has permitted and prepared for opening a new municipal solid waste landfill to receive this waste.

There shall be no penalty for such termination."

A-5 DEAD ANIMALS.

Section 13, Dead Animals, is amended to change the reference from Section 5 to Section 6.

A-6 FREE DISPOSAL DAYS.

A new section shall be added as follows:

"16. Free Disposal Days.

In recognition that the TDSL landfill is not located within the City, TDSL agrees to work with the City in developing a program of relative economic value with goals similar to the City's free disposal days program referenced in Section 1.13 of the Second RFP."

A-7 DISPUTE RESOLUTIONS.

A new section shall be added as follows:

"17. Dispute Resolution.

In the event the parties are unable to agree upon any issue which requires interpretation including periodic adjustments to the Base Rate, the parties agree to comply with non-binding mediation before initiating legal action in a court of law. All information required or requested of the parties during mediation under this section shall be confidential between the parties and the mediator. Such materials shall not be retained or distributed by the City in any manner which would subject them to the Texas Open Records Act or any other similar discovery procedure. At the conclusion of the mediation, each party shall return all copies and recordings of materials and information to the party furnishing such materials or information. In no event shall TDSL be required to release or disclose any financial information until all parties to the mediation have entered into a mutually agreeable confidentiality agreement. Information requested of TDSL shall be limited to that which is directly related to the issue in dispute.

Prior to initiating legal proceedings against each other, the parties shall participate in non-binding mediation. The parties shall consult with the Center for Dispute Resolution of the University of Texas at Austin School of Law (or other similar body if it ceases to exist) for purposes of mediator selection and the procedures to be followed. The parties shall then participate in good faith in non-binding mediation. Neither party shall be obligated to continue the mediation if it does not resolve the issue within fifteen (15) days after the mediation is initiated or thirty (30) days after mediation is requested whichever is later. The parties shall share equally in the costs of the mediation."

Except as modified by this First Amendment, the Agreement shall remain in full force and effect as written. The Agreement as amended by this First Amendment shall be deemed to control in the event of any conflict with Exhibits A, B, or C.

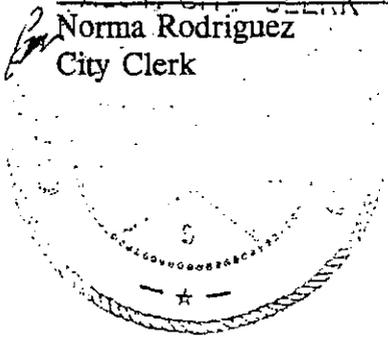
Executed as of this 8th day of JUNE, 1995.

ATTEST:



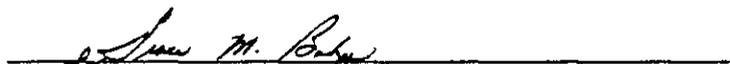
ASST. CITY CLERK

Norma Rodriguez
City Clerk



CITY OF SAN ANTONIO

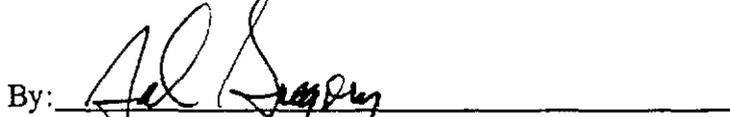
By:



Alexander E. Briseño, City Manager

Date: 6/8/95

TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

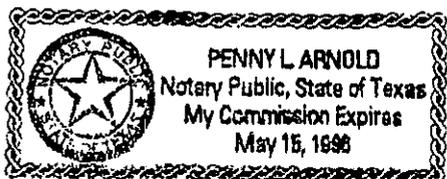


Bob Gregory, President

Date: June 1, 1995

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 1st day of June, 1995, by Bob Gregory, President of Texas Disposal Systems Landfill, Inc., on behalf of said corporation.



Penny L. Arnold
Notary Public in and for the
State of Texas

AN ORDINANCE 82315

AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO AN AMENDED CONTRACT WITH TEXAS DISPOSAL SYSTEMS LANDFILL, INC. FOR A TERM ENDING SEPTEMBER 30, 2025 TO PROVIDE SOLID WASTE DISPOSAL SERVICES TO THE CITY, PROVIDING A MINIMUM GUARANTEE OF MUNICIPAL SOLID WASTE PER YEAR FROM ALL CITY SOURCES; ESTABLISHING A RATE THROUGH SEPTEMBER 20, 1995 WITH THE RATE THEREAFTER SUBJECT TO INCREASE AS PROVIDED THEREIN.

* * * * *

Whereas, the City of San Antonio has determined that it is in its best interest to address its waste disposal needs over a long term; and

Whereas, the City solicited proposals through a Request for Proposal for Municipal Solid Waste Disposal Services dated April 19, 1995 and Addenda dated April 24, 1995, May 1, 1995 and May 2, 1995; and

Whereas, Texas Disposal Systems Landfill, Inc. responded to such proposal; and

Whereas, the City has determined that the response of Texas Disposal Systems, Inc. to Option II of the proposal is acceptable and in the public interest, **NOW THEREFORE**,

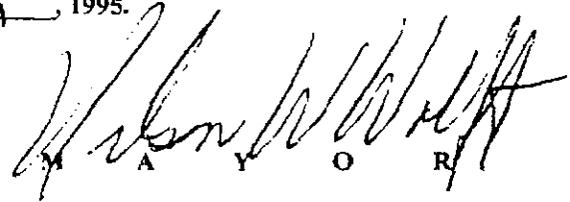
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

Section 1. The City Manager or his designated representative is authorized to execute a contract with Texas Disposal Systems Landfill, Inc. that is in substantially the form of the Contract attached hereto and incorporated herein between the City of San Antonio and Texas Disposal Systems Landfill, Inc., a Texas corporation, for the provision of landfill disposal services to the City of San Antonio for a term of not more than 30 years.

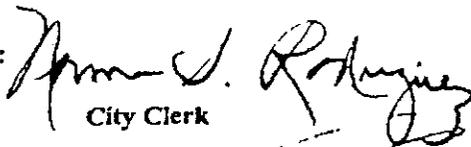
Section 2. Payment for disposal services to be provided by Texas Disposal Systems Landfill, Inc. is hereby authorized from Fund 55, Object Code 02-160, Index Code 481390 and Activity Number 55-01-02.

Section 3. This ordinance shall be effective ten days after passage.

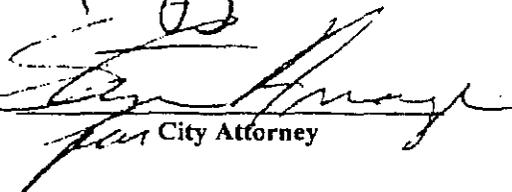
PASSED AND APPROVED this 31st day of May, 1995.



ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney