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August 2, 2021

Mr. David McCary, Assistant City Manager
Mr. David Newman, Director, Solid Waste Management Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

Subject: TDSL Notice of Rates Adjustments and Mediation

Dear Messrs. McCary & Newman,

By this letter, and on this date, Texas Disposal Systems Landfill, Inc. (TDSL) is invoking the mediation provision (Agreement Section A7) of the contract between TDSL and the City of San Antonio (City) for the operation of the Starcrest Transfer Station (Agreement).

As we have communicated to you numerous times in the past, the Agreement between TDSL and the City, last amended in 2001, requires major updates and adjustments. Adjustments are required due to the increases in costs to operate the Starcrest Transfer Station (Transfer Station), and increases in cost to transport the waste to the TDSL landfill, which go far beyond what has been covered by the particular Consumer Price Index cost covering provision in the current contract. Additional adjustments are required due to the reductions in revenue that have far outpaced what could have been foreseen when rates and services were quoted and negotiated over twenty years ago. Adjustments are also required to cover the significant amount of extra-contractual services the City has required and received from TDSL since 2013, as TDSL has continued to deliver services in good faith to meet the City's solid waste services needs. The combination of these factors, as well as the added cost related to landfilling less compactable bulky waste, which were unforeseen and unforeseeable in 1995 when this contract was initially bid, has rendered the continuation of the status quo commercially impracticable and economically unacceptable under the current contract terms.

As you will recall from our series of discussions in 2011, 2015 and 2017, the specific Consumer Price Index (CPI) designated in the Second Amendment to the Agreement has proven to be completely inadequate to keep up with TDSL's increased costs of operating the Transfer Station and transporting the City's waste to the TDSL landfill. I believe the attached comparisons in Exhibit 1 fairly illustrate the gross inadequacy of the specific CPI in effect since 1998. These are updated versions of the comparisons we have shown you during prior discussions seeking your cooperation regarding our concerns.

You will also recall our discussions regarding the ever-increasing amounts of un-compacted bulky waste diverted from the Transfer Station and then delivered to the Transfer Station by the City from the City's bulky waste collection centers since 2013. As you know, acceptance of this material, which includes mattresses, box springs, carpeting, fencing, etc., drastically impacts the cost of our operations and the efficiency of our Transfer Station load densities (payload weights and landfill compaction operations). It also deprives TDSL of the tipping fee revenue that would have been realized had the material been accepted by TDSL at the then-applicable Transfer Station gate rate, either from the City, or from the citizens were they not provided free close-by disposal options, services which reasonably should have been provided by TDSL at the Transfer Station. This expected revenue, of which the City's unforeseeable actions of establishing its own free bulky waste collection centers have deprived TDSL, was absolutely required to justify the very beneficial contract rates agreed to by TDSL for the receipt, processing, transfer and disposal of the City's compacted curbside collected residential waste.

You may have forgotten that in the Second Amendment to the Agreement, TDSL agreed to accept at the Transfer Station the City's "regularly collected Municipal Solid Waste, as had been processed by the City through the Transfer Station from 1991 to 1996." The waste transferred by the City from its free bulky waste collection centers to the Transfer Station in City-owned roll-off dumpsters falls outside of the terms of the Second Amendment to the Agreement, as it is not regularly collected compacted waste, nor were such types of un-compacted waste regularly received and processed through the transfer station by the City from 1991 to 1996, as referenced in the Agreement. In other words, to our knowledge, the City's bulky waste collection center waste is not "collected" by anyone, let alone "regularly collected" by the City. Also, the operation of the City's free bulky waste collection centers cannot be construed as the types of "citizen cleanup events" that took place from 1991 to 1996. Accordingly, TDSL must be made whole financially for these extra-contractual services required and received by the City since 2013.

Please find the attached invoice and supporting documentation in Exhibit 2 that reflects the difference in the rate between what the City has paid and the full amount due for the receipt, processing, transfer and disposal of contractually acceptable waste at the then-applicable Transfer Station public gate rate for each ton of the subject extra-contractual bulky wastes, as well as the corresponding reconciliation of the 100,000 ton annual guarantee, which are owed to TDSL. Additionally, from this date forward, TDSL will not accept the subject un-compacted bulky waste at the current contract rate for regularly collected municipal solid waste. If the City chooses to continue delivery of this waste to the Transfer Station, and TDSL elects to accept it, the City will be invoiced at the then-effective gate rate for un-compacted bulky waste, which is currently \$40.00/cubic yard, with per unit charges for mattresses, box springs and special waste loads.

There is also an attached invoice, Exhibit 3, which includes the amount due to TDSL, per Section 3(ii)(c) of the Special Addendum to the Second Amendment of the Agreement, for Transfer Station facility modifications requested by the City.

After far too many years of TDSL losing money on the receipt, processing, transfer and disposal of every ton of waste delivered to the Transfer Station by the City due to the issues outlined above, among others, TDSL has no choice but to finally rectify the inequities in our contractual and our City-required extra-contractual services relationship. I am sincerely hopeful that you will now accept our clear justification for the necessary major amendments to our Agreement, and you will join us in negotiating and seeking any necessary Council approval of an equitable solution. In order to put a term on these negotiations, as previously stated, you may consider this letter an invocation of the mediation provision (Agreement Section A-7) that is prerequisite to litigation. I remind you that, pursuant to the Agreement, mediation is

only required until the later of 15 days after initiation of mediation, or 30 days after the request of mediation. Accordingly, and pursuant to the terms of the Agreement, I have instructed my TDSL attorneys to initiate consultation with the Center for Public Policy Dispute Resolution at the University of Texas at Austin for the purposes of acquiring the services of a mediator. You will be copied on that communication so that a firm and expeditious timeline may be established within the contractually required 15 and 30 day periods.

Please let me know if you and/or the City Attorney would like copies of the documents handed out and retrieved in our prior meetings when I sought not to create a trail of publicly available documents, as I sought a solution to this ongoing problem. I see no need at this point to seek a resolution without ending the day-to-day operating losses caused by the receipt of waste from the City's bulky waste collection centers. TDSL is now prepared to discuss, in the formal mediation process, various combinations and amounts of rate increases, an alternative CPI and/or other price escalator provisions, invoice payments, un-compacted waste receipt charges, dead animal special waste disposal surcharges, and contract term adjustments as a solution to the long overlooked and neglected contractual inequities. Perhaps this could be best accomplished through a Third Amendment to the Agreement. TDSL is also prepared to cease acceptance of all City-delivered waste not covered under the Agreement as acceptable waste, implement substantial operating hour and operational changes at the Transfer Station to reduce TDSL operating costs, and seek relief for breach of contract, quantum meruit and any other appropriate and necessary cause of action, as soon as all prerequisites to litigation are fulfilled.

I remain hopeful that the longstanding relationship between TDSL and the City of San Antonio, and the professional relationship I have enjoyed with both of you for many years, can continue long into the future in a manner that is mutually beneficial to both the City and TDSL. I await your response.

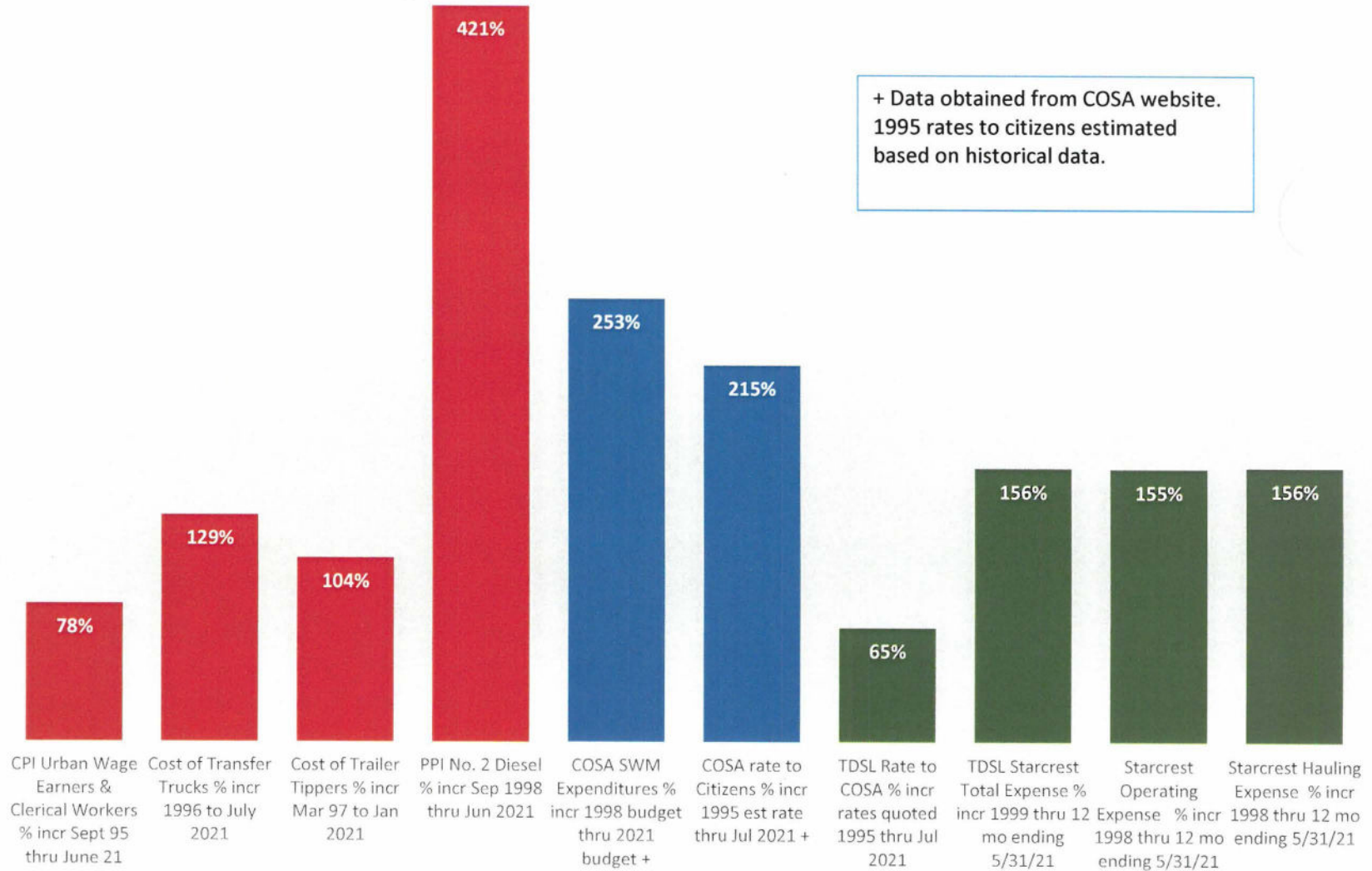
Respectfully,



Bob Gregory
President & CEO
Texas Disposal Systems Landfill, Inc.

Cc: Andrew Segovia, San Antonio City Attorney, Andy.Segovia@sanantonio.gov
Gary Newton, TDSL General Council
Jim Hemphill, Graves, Dougherty, Hearon & Moody
Larry Laine, TDSL Director of Facilities

Exhibit 1 Comparison of City Tipping Fees, City Rates, Expenses and Starcrest Operating Costs to Current CPI Indices





Texas Disposal Systems Landfill, Inc.
 PO Box 17126
 Austin, Tx 78760

INVOICE

Date
 8/2/2021

CITY OF SAN ANTONIO
 PO BOX 839976
 SAN ANTONIO, TX 78283

DATE	# LOADS	NET TONS	CUBIC YARDS	TIPPING FEE	SERVICE DESCRIPTION	AMOUNT
Adjust rolloff tonnage charges at applicable rate						
2013 Jan-Sep	162	603		\$ 29.04	Uncompacted tonnage	\$ (17,511.12)
2013 Oct-Dec	68	245		\$ 29.04	Uncompacted tonnage	\$ (7,114.80)
2014 Jan-Sep	407	1,396		\$ 29.04	Uncompacted tonnage	\$ (40,539.84)
2014 Oct-Dec	100	385		\$ 29.50	Uncompacted tonnage	\$ (11,357.50)
2015 Jan-Sep	362	1,844		\$ 29.50	Uncompacted tonnage	\$ (54,398.00)
2015 Oct-Dec	140	740		\$ 29.21	Uncompacted tonnage	\$ (21,615.40)
2016 Jan-Sep	539	2,997		\$ 29.21	Uncompacted tonnage	\$ (87,542.37)
2016 Oct-Dec	235	1,262		\$ 29.55	Uncompacted tonnage	\$ (37,292.10)
2017 Jan-Sep	903	4,593		\$ 29.55	Uncompacted tonnage	\$ (135,723.15)
2017 Oct-Dec	309	1,356		\$ 30.25	Uncompacted tonnage	\$ (41,019.00)
2018 Jan-Sep	953	4,795		\$ 30.25	Uncompacted tonnage	\$ (145,048.75)
2018 Oct-Dec	352	1,591		\$ 30.75	Uncompacted tonnage	\$ (48,923.25)
2019 Jan - Sep	1,181	5,187		\$ 30.75	Uncompacted tonnage	\$ (159,500.25)
2019 Oct-Dec	351	1,594		\$ 31.08	Uncompacted tonnage	\$ (49,541.52)
2020 Jan- Sep	1,138	5,632		\$ 31.08	Uncompacted tonnage	\$ (175,042.56)
2020 Oct -Dec	307	1,477		\$ 31.49	Uncompacted tonnage	\$ (46,510.73)
2021 Jan-Jul	720	3,679		\$ 31.49	Uncompacted tonnage	\$ (115,851.71)
Total	8,227	39,376				\$ (1,194,532.05)
Roll off yardage charges at 40 cu yds per load						
2013	230		9,200	\$ 17.00	Uncompacted yardage	\$ 156,400.00
2014	507		20,280	\$ 17.00	Uncompacted yardage	\$ 344,760.00
2015 Jan-Feb	52		2,080	\$ 17.00	Uncompacted yardage	\$ 35,360.00
2015 Mar-Dec	450		18,000	\$ 40.00	Uncompacted yardage	\$ 720,000.00
2016	774		30,960	\$ 40.00	Uncompacted yardage	\$ 1,238,400.00
2017	1,212		48,480	\$ 40.00	Uncompacted yardage	\$ 1,939,200.00
2018	1,305		52,200	\$ 40.00	Uncompacted yardage	\$ 2,088,000.00
2019	1,532		61,280	\$ 40.00	Uncompacted yardage	\$ 2,451,200.00
2020	1,445		57,800	\$ 40.00	Uncompacted yardage	\$ 2,312,000.00
2021 Jan-Jul	720		28,800	\$ 40.00	Uncompacted yardage	\$ 1,152,000.00
Total	8,227	-	329,080			\$ 12,437,320.00
Put or Pay shortage charges						
Fiscal year 2015		1,464		\$ 29.50	Put or pay tonnage charges	\$ 43,190.66
Fiscal year 2016		1,746		\$ 29.21	Put or pay tonnage charges	\$ 51,008.25
Fiscal year 2017		5,736		\$ 29.55	Put or pay tonnage charges	\$ 169,505.01
Fiscal year 2018		4,697		\$ 30.25	Put or pay tonnage charges	\$ 142,090.30
Fiscal year 2019		3,303		\$ 30.75	Put or pay tonnage charges	\$ 101,552.49
Fiscal year 2020		0		\$ -	Put or pay tonnage charges	\$ -
Fiscal year 2021 thru Jul (est*)		2,318		\$ 31.49	Put or pay tonnage charges	\$ 72,993.82
Total		19,264				\$ 580,340.53
TOTAL AMOUNT DUE						\$ 11,823,128.48

* estimated based on a put or pay volume of 83,333 tons (8,333 tons X 10 months)

COSA Roll Off dumpster loads delivered to the Starcrest Transfer Station since the opening of the City's Bulky Waste Collection Stations in May of 2013

Year	40 cu. yd Roll off dumpster loads	Net Tons	Amount charged to COSA	Cubic yards in roll off dumpsters	Amount if loads were charged at applicable TDSL gate rate per yd	TDSL Lost revenue due to loads going to City drop off stations (1)
2013	230	847	\$ 24,626	9,200	\$ 156,400	\$ 131,774
2014	507	1,781	\$ 51,898	20,280	\$ 344,760	\$ 292,862
2015	502	2,584	\$ 76,013	20,080	\$ 755,360	\$ 679,347
2016	774	4,259	\$ 124,834	30,960	\$ 1,238,400	\$ 1,113,566
2017	1,212	5,950	\$ 176,742	48,480	\$ 1,939,200	\$ 1,762,458
2018	1,305	6,385	\$ 193,972	52,200	\$ 2,088,000	\$ 1,894,028
2019	1,532	6,782	\$ 209,042	61,280	\$ 2,451,200	\$ 2,242,158
2020	1,445	7,109	\$ 221,553	57,800	\$ 2,312,000	\$ 2,090,447
2021 thru 7/31	720	3,679	\$ 115,852	28,800	\$ 1,152,000	\$ 1,036,148
Totals	8,227	39,376	\$ 1,194,532	329,080	\$ 12,437,320	\$ 11,242,788

(1) This \$ 11,242,788 is revenue the TDSL operated Starcrest Transfer Station operation could have received if the City had not constructed it's Bulky Waste Collection Stations and accepted the loads of bulky items from residential and smaller commercial haulers free of charge; and the amount the City would have paid TDSL if it had paid the Starcrest Transfer Station gate rate for the uncompacted waste not collected by the City on its curbside collection routes.

Impact of Roll off Tonnage (not qualified to be an acceptable waste) on Contract Put or Pay of City's regularly collected MSW

Fiscal year	COSA tons other than Roll off	Put or Pay tonnage Shortage	Rate	Shortfall \$\$
2013	102,365	-		
2014	101,226	-		
2015	98,536	(1,464)	\$ 29.50	\$ (43,191)
2016	98,254	(1,746)	\$ 29.21	\$ (51,008)
2017	94,264	(5,736)	\$ 29.55	\$ (169,505)
2018	95,303	(4,697)	\$ 30.25	\$ (142,090)
2019	96,697	(3,303)	\$ 30.75	\$ (101,552)
2020	100,331	-	\$ 31.08	\$ -
2021 thru 7/31	81,015	(2,318)	\$ 31.49	\$ (72,994)
Totals	867,991	(19,264)	\$	(580,341)

estimated based on a put or pay volume of 83,333 tons (8,333 tons X 10 months)

EXHIBIT 3



Texas Disposal Systems Landfill, Inc.
 PO Box 17126
 Austin, Tx 78760

INVOICE

CITY OF SAN ANTONIO
 PO BOX 839976
 SAN ANTONIO, TX 78283

Date
 8/2/2021

DATE	Vendor	Description	AMOUNT
Starcrest tipping floor modifications as requested by City			
Labor, materials and equipment needed to replace sections of tipping floor			
10/5/2017	CMC Metals	190 pieces 20 ft rebar to reinforce concrete	\$1,788.55
10/9/2017	Acme Iron and Metal	11 - 20 ft lengths of 90lb rail iron @ \$275 per ton	\$2,722.50
10/7/2017	Alamo Concrete	36 cu yds concrete	\$6,040.35
10/6/2017	Home Depot	Rental Saw & Blade	\$103.79
10/6/2017	Vincent Ray Bowers - Welder	10 hours; weld rebar to i-beam for concrete pour	\$650.00
10/9/2017	Santiago Alarcon-	Demo concrete, set rail iron. pour concrete	\$6,622.00
10/18/2017	Hill Engineering	Engineering services- 56.75 hours	\$4,823.75
10/25/2017	Spectrum Concrete Restoration	Tipping floor Anvil top installation	\$35,564.60
TOTAL AMOUNT DUE			\$58,315.54