

CAUSE NO. 2022CI06061

TEXAS DISPOSAL SYSTEMS	§	IN THE DISTRICT COURT
LANDFILL, INC.,	§	
Plaintiff,	§	
v.	§	BEXAR COUNTY, TEXAS
	§	Bexar County - 288th District Court
CITY OF SAN ANTONIO, TEXAS,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION
OF TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Plaintiff Texas Disposal Systems Landfill, Inc. (“Plaintiff” or “TDSL”), and files this Original Petition complaining of Defendant City of San Antonio, Texas (the “City”), and would show as follows:

SUMMARY

1. TDSL has provided waste disposal services to the City since 1993, under a written contract for services that is properly executed on behalf of the City and that has been amended and supplemented numerous times. The City collects municipal solid waste and hauls the waste to the Starcrest Transfer Station, where it is transferred to larger vehicles that then haul multiple loads of waste to the TDSL facility in Travis County.

2. The City has directed TDSL to perform additional work in connection with the contract for which the City has outstanding amounts owed. Such additional work entailed increased cost to TDSL, for which the City has not compensated TDSL. TDSL seeks compensation for this breach of contract.

3. Additionally or in the alternative, TDSL has provided services to the City that are outside the scope of the parties’ contract and has not received payment from the City in an

amount that represents the fair market value of those services, nor the rates allowed under the contract. TDSL seeks recovery for the value of those services.

4. Additionally or in the alternative, continued performance of the parties' contract is impracticable due to the occurrence of events (some of which were outside the control of the parties, and all of which were outside the control of TDSL), the non-occurrence of which was a basic assumption on which the contract was made. TDSL thus seeks a declaratory judgment that it has no obligation to continue to perform under the contract due to impracticability, and additionally or in the alternative that TDSL is not required to provide services to the City that result in a loss to TDSL.

PARTIES

5. Plaintiff Texas Disposal Systems Landfill, Inc. is a Texas corporation with its primary place of business in Travis County, Texas.

6. Defendant City of San Antonio is a Texas home-rule municipality. It can be served with process to its Mayor, Ron Nirenberg, or City Manager, Erik Walsh, at 115 Plaza de Armas, 2nd Floor, San Antonio, Texas 78283.

DISCOVERY, JURISDICTION AND VENUE

7. Plaintiff intends to conduct discovery under Level 3, Rule 190.4, Texas Rules of Civil Procedure.

8. The Court has jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limit. Pursuant to Texas Rule of Civil Procedure 47(c), TDSL seeks monetary relief of more than \$1,000,000, and non-monetary relief.

9. Venue is proper in Bexar County, Texas, under the general venue provisions of Section 15.002(a)(1), Texas Civil Practice & Remedies Code. All or a substantial part of the

events giving rise to TDSL's claims occurred in Bexar County, Texas. Additionally, the parties contractually agreed to venue in Bexar County.

FACTS

A. Background and Summary of the TDSL-City Agreement.

10. TDSL and the City first contracted in 1993 for an arrangement in which the City would use TDSL's waste disposal facilities for some of the waste collected by the City in the northern areas of San Antonio. That contract has been amended and supplemented several times, as described in part herein. Unless specifically described otherwise, use of the term "Contract" herein will refer to the agreement between TDSL and the City, as currently amended and supplemented.

11. The City collects household municipal solid waste from residential locations, which residents set out in specially designed wheeled containers provided by the City that are designed for use in the City's curbside collection system. The waste is picked up and hauled by City route trucks that feature a compacting mechanism. Compaction increases the bulk density of waste materials, which is important to increase efficiency of waste collection and disposal. Without compaction, the City's route trucks would fill up much more quickly, requiring significantly more trips to empty the trucks so additional waste can be collected. Such compaction also improves the efficiency of waste being processed through the Starcrest Transfer Station and the compaction of waste into legally allowed payloads transferred to the TDSL landfill.

12. When a City garbage route truck is full, the driver takes the load to the Starcrest Transfer Station ("Starcrest"), which is located north of the San Antonio International Airport. At the transfer station, the route truck's contents are transferred to a large trailer that holds

several route truckloads. The trailer, when full, is pulled by a truck to the TDSL landfill facility in southern Travis County. Under the Contract as originally agreed upon, TDSL operated Starcrest, while the City held the TCEQ permit allowing Starcrest to operate, as well as owning the real property where Starcrest is located.

13. Compaction of waste by route trucks is essential to the viability of TDSL's Starcrest operation. Landfills charge by the ton for disposal of waste, and the landfill's cost for disposal likewise is affected by both weight and volume. When waste is compacted, the trailers that haul waste to the TDSL landfill can hold more waste by weight (in other words, more weight in the same volume) than it could if the waste were not compacted and/or noncompactable. The hauling of non-compacted waste requires significantly more trips between Starcrest and the TDSL landfill, with accompanying materially increased expenditure. Once the waste is deposited into a trailer at Starcrest, it is difficult and time consuming to further compact, so the compaction must be done by the City route trucks.

14. The Contract provides per-ton rates the City will pay TDSL for city-collected waste brought to Starcrest. The Contract also provides that the City will bring a minimum of 100,000 tons per year to Starcrest. The rates agreed upon by TDSL and the City were based in part on the waste delivered by City route trucks being compacted residential waste that could be hauled to the landfill more efficiently. The rates were also based in part on the shared understanding that the waste subject to the contract would be the same type of regularly collected waste materials that were delivered and processed by the City through Starcrest from 1991 through 1996.

15. In addition to receiving waste from City route trucks, TDSL is allowed to accept waste at Starcrest from private haulers and members of the public. TDSL may establish its own

rates for accepting such waste and is not restricted by the discounted rates charged to the City. The rates agreed upon by TDSL and the City were based in part on TDSL's ability to generate additional revenue per ton of waste through these sources.

16. At the time the Contract was entered, the City conducted twice-yearly collections of bulky waste from residences. As defined by City ordinance "bulky waste" consists of "irregularly sized items that do not readily fit into refuse containers." Bulky waste includes appliances, mattresses and box springs, among other large items. During the City's bulky waste collections, the City collected the waste using trucks with compacting ability, so that bulky waste was delivered to TDSL at Starcrest in a compacted state. At other times, residents and other private haulers could bring bulky items directly to Starcrest, and would be charged rates set by TDSL that were higher than those it charged to the City, in recognition of the fact that non-City-hauled bulky waste would typically be non-compacted and thus would be significantly more expensive for TDSL to process through Starcrest and haul to its landfill and dispose of there.

17. The Contract does not generally require TDSL to accept "special waste" from the City at Starcrest at the discounted City rate. "Special waste" is typically defined as non-hazardous waste that requires special handling beyond that required for municipal solid waste; the City's ordinances define special waste in a manner consistent with this usage. Although dead animals are considered special waste, the Contract provides that TDSL will provide for disposal of dead animals that are collected on City streets and alleys as part of the City's typical municipal solid waste collection. The Contract does not provide for the bulk disposal of dead animals, such as may be collected from veterinary or other facilities.

18. The Contract provides that annual adjustments in the rate charged the City by TDSL will be based on the Consumer Price Index (CPI) for All Urban Wage Earners and

Clerical Workers, All Items, for the Southern Region of the United States. A basic assumption of the parties, at the time the Contract was entered, amended and supplemented, was that the use of this CPI would serve as an adequate proxy for the increased expenses over time that TDSL would incur in connection with the Starcrest operations, the transfer of waste to the TDSL landfill, and the disposal of waste in the landfill.

19. Through amendments and supplements to the Contract, TDSL now holds the TCEQ permit to operate Starcrest. The termination provisions of the Contract now differ between those governing TDSL's operations in accepting City-hauled waste, and those regarding the operation of Starcrest. While either party may terminate the former provisions upon five years' notice, TDSL may continue operating Starcrest after such termination, in recognition of TDSL's significant investment in improving the Starcrest facilities. Contract amendments and supplements also provide that both TDSL and the City intend "to increase the operating efficiency of the [Starcrest] Transfer Station."

20. The Contract provides that TDSL "shall use reasonable care" to service City trucks at Starcrest so that the trucks are not "required to wait more than 30 minutes," with some specific allowances for periods of heavy demand.

21. The Contract also provides that TDSL will not bear the cost for modification to Starcrest requested by the City.

B. Subsequent Events Relevant to the TDSL-City Relationship.

22. The Contract's use of the CPI as the guide for future rate increases due to rising costs of doing business was based on the parties' mutual understanding that the CPI would be an accurate proxy for such costs. However, neither party anticipated that costs associated with TDSL's operation of Starcrest would increase in a manner far outpacing the CPI; the non-

occurrence of such an event was a basic, shared assumption of the parties at the time the Contract was entered. The CPI's failure as such a proxy has been recognized by the development of indices that are more indicative of the cost of running a waste operation, such as the Refuse Rate Index, which takes into account the price of diesel fuel, labor costs, and vehicle and equipment repair and maintenance. The increased costs for many of these items have significantly outpaced the overall CPI. The failure of CPI as an adequate proxy is an event outside the control of the parties and was not anticipated by the parties at the time they agreed to use the CPI.

23. The City also has unilaterally changed its bulky waste practices in a manner not anticipated by the parties, and the non-occurrence of which was a basic assumption on which the contract was made. In addition to conducting twice-yearly bulky waste collection with compacting trucks, the City has established four separate bulky waste drop-off sites that residents can use at any time, at no charge. The City then hauls this bulky waste to Starcrest in roll-off containers without compacting it, directing TDSL to perform additional work in connection with the Contract, resulting in increased cost for TDSL. As a result, TDSL has disposed of thousands of tons of uncompacted bulky waste, including thousands of items such as mattresses and box springs that could be compacted significantly, had the City collected the waste at curbside in its compactor trucks. Hauling these uncompacted bulky items to the TDSL landfill greatly reduces the efficiency of the Starcrest operations, increasing TDSL's costs with no offsetting increased revenue, as well as increasing the costs of disposing of the material at the landfill. Moreover, before the City offered this free bulky waste drop-off service, residents needing to dispose of bulky waste at time other than the scheduled twice-yearly City pickups would bring their bulky waste to Starcrest, for which TDSL could charge rates commensurate with the cost of hauling and disposing such uncompacted waste rather than the discounted rates for disposal of City

waste. The City's post-Contract change in policy deprived TDSL of this income stream, thus effectively rendering the disposal of bulky items even more costly. Moreover, one of the City's four bulky waste drop-off sites is less than one mile from Starcrest; records indicate that in 2019, this site had the most traffic of the four sites.

24. The City demanded that repairs be done at Starcrest, including to the unloading area, which repairs TDSL accomplished. The Contract, as amended by the Special Addendum, provides that TDSL "shall not bear the cost for any modifications to the permit or facility requested of TDSL by the City." The City has not reimbursed TDSL for the cost of this repair.

25. The extent, if any, to which the City has been engaged in bulk hauling of dead animals to Starcrest (as opposed to the incidental collection of dead animals from streets and alleys as mixed with other municipal solid waste) is unknown to TDSL at this time. If such hauling has taken place, the City has not informed TDSL, and the City would be required to pay the higher rate TDSL is allowed to charge for special waste.

26. Due to the increased costs to TDSL discussed herein, TDSL has been forced to reduce the expenses it incurs in operating Starcrest. It is possible that at certain times and days, despite the use of reasonable care, TDSL will not be able to service all City vehicles within 30 minutes, including in periods of heavy demand.

CAUSES OF ACTION

I. Breach of Contract.

27. TDSL restates all preceding paragraphs as if set forth fully herein.

28. TDSL provides waste disposal services to the City under a written contract properly executed on behalf of the City. The City has directed TDSL to perform additional work in connection with the Contract for which the City has outstanding amounts owed. Such

additional work includes, without limitation, the delivery of excess uncompacted bulky waste and, upon information and belief, bulk-collected dead animals. Complying with this additional work directed by the City entailed increased cost to TDSL, for which the City has not compensated TDSL. TDSL seeks damages for breach of contract, along with court costs and attorneys' fees as provided in the Contract and Section 38.001, Texas Civil Practice & Remedies Code.

29. Additionally or in the alternative as necessary, parties to a contract have a duty to cooperate to the extent necessary for the contract's performance. A party cannot hinder, prevent, or interfere with another's ability to perform its duties under a contract. The City's actions have included without limitation the City's management of bulk hauling of uncompacted and uncompactable bulky waste, thus depriving TDSL profitable tipping fee revenue by providing free bulky waste collection centers (transfer stations) both close by and elsewhere within the City, and potentially the commercial collection of dead animals to the Starcrest Transfer Station. These actions have hindered, prevented, or interfered with TDSL's ability to perform its duties under the contract for the contracted-for rate. This constitutes a breach of the Contract by which TDSL has been damaged. TDSL seeks damages for breach of contract, along with court costs and attorneys' fees as provided in the Contract and Section 38.001, Texas Civil Practice & Remedies Code.

30. Additionally or in the alternative if necessary, if the City refuses to consider a good-faith request by TDSL to adjust payment rates, the City would violate Section 4 of the parties' 1995 and subsequently amended Contract. That provision specifically allows TDSL to propose changes in the payment rate, and allows the City access to certain financial documents if such a proposal is made by TDSL. This provision must be read to impose some obligation on

the City. A fundamental principle of contract interpretation is that all provisions of a contract should be harmonized and given effect such that no provision will be rendered meaningless. Even absent this provision, TDSL would always have the right to request an adjustment in payment rates. By specifically mentioning this right in the contract, some commensurate obligation must be imposed on the City, or else the provision allowing TDSL to propose payment rate changes would be rendered meaningless. The City has continued to ignore the TDSL request for a rate increase and/or for an alternate source of profitable revenue for years. This constitutes a breach of the Contract by which TDSL has been damaged. TDSL seeks damages for breach of contract, along with court costs and attorneys' fees as provided in the Contract and Section 38.001, Texas Civil Practice & Remedies Code.

31. Additionally or in the alternative as necessary, the roll-off tonnage from the City's free bulky waste collection centers does not count toward the 100,000 ton minimum of regularly collected Municipal Solid Waste required to be delivered by the City each year to the Starcrest Transfer Station. This constitutes a breach of the Contract by which TDSL has been damaged in the amount of the difference in tons between the minimum Put or Pay shortage tonnage less the roll off tonnage from the City's free bulky waste collection centers. TDSL seeks damages for breach of contract, along with court costs and attorneys' fees as provided in the Contract and Section 38.001, Texas Civil Practice & Remedies Code.

32. Additionally, under the Contract, TDSL has no obligation to pay for alterations to the Starcrest facility requested by the City. TDSL repaired the Starcrest drop-off area at the City's request, but has not been reimbursed by the City. This constitutes a breach of the Contract by which TDSL has been damaged in an amount equal to that it expended in accomplishing the City's request. TDSL seeks damages for breach of contract in that amount, along with interest,

court costs and attorneys' fees as provided in the Contract and Section 38.001, Texas Civil Practice & Remedies Code.

33. Additionally, to the extent that the City has engaged in hauling of commercially collected dead animals or dead animals that were not collected from streets or alleys to Starcrest, the City has not paid TDSL the Contract rate for special waste applicable to such hauling. If such bulk hauling has occurred, it constitutes a breach of the Contract by which TDSL has been damaged in an amount equal to that the City is obligated to pay under the Contract. TDSL conditionally seeks damages for breach of contract in that amount, along with court costs and attorneys' fees as provided in the Contract and Section 38.001, Texas Civil Practice & Remedies Code, if the City has engaged in such bulk hauling.

II. Quantum Meruit.

34. TDSL restates all preceding paragraphs as if set forth fully herein.

35. Additionally or in the alternative as necessary, TDSL has rendered valuable services for the City that were accepted by the City, but were not within the scope of the parties' Contract. The City was reasonably notified that TDSL expected to be paid for those services. Specifically, TDSL's services in transferring and disposing of uncompacted and uncompactable bulky waste from the free citizens' drop-off (transfer station) facilities are outside the Contract's scope, and the reasonable value of such services is significantly greater than the Contract rate for processing, transfer, and disposal of "regularly collected Municipal Solid Waste, as had been processed by the City through the transfer station from 1991 to 1996." TDSL seeks damages under quantum meruit for the reasonable value of its services that has not been paid by the City, along with court costs and attorneys' fees as provided in Section 38.001, Texas Civil Practice & Remedies Code.

III. Declaratory Judgment.

36. TDSL restates all preceding paragraphs as if set forth fully herein.

37. Additionally or in the alternative as necessary, TDSL seeks declaratory judgment as stated herein, pursuant to the Texas Uniform Declaratory Judgment Act, Chapter 37, Texas Civil Practice & Remedies Code. Specifically, as a person interested in the Contract, TDSL seeks a declaration of its rights, status, or other legal relations under the Contract, as set forth herein, pursuant to Section 37.004, Texas Civil Practice & Remedies Code.

38. TDSL seeks declaratory judgment that it is no longer required to provide waste disposal services to the City through Starcrest at the Contract rates, because such performance has become impracticable. Since the formation of the Contract, events have occurred, the non-occurrence of which was a basic assumption on which the Contract was made. Specifically, the CPI has failed to serve as an adequate proxy to TDSL's increased costs in performing its obligations under the Contract. The cost to TDSL in performing the City's request for services under the Contract has increased well beyond the normal range of cost increases that could be anticipated, in 1995 and afterwards, and TDSL's prospect for the receipt of revenue from parties other than the City were rendered unfeasible by unpredictable City actions. The failure of the CPI as an adequate proxy was unforeseen and unforeseeable by both parties to the Contract, as was the City's development and operation of free bulky waste collection centers (transfer stations) for residents and other haulers with their own vehicles and trailers. Both parties held a basic assumption that adjustment of the Contract price based on the CPI would adequately provide for TDSL's increased costs; this basic assumption has proven untrue, particularly since TDSL was deprived of the profitable revenue that would have come from the residents and small haulers who deliver bulky waste to the City's free bulky waste collection centers (transfer

stations). TDSL's burden in performing under the Contract has become so great as to be unreasonable under the current circumstances. The failure of the CPI as an adequate proxy is due to circumstances outside the control of either TDSL or the City. TDSL has employed reasonable efforts to overcome the greatly increased costs of performance under the Contract, which reasonable efforts have failed. Due to this impracticability, TDSL's duty to render waste transfer performance under the terms of the Contract is discharged. TDSL seeks a declaratory judgment that it is no longer obligated to perform under the Contract due to the above-described impracticability.

39. TDSL seeks declaratory judgment that the Contract's requirement for TDSL to use "reasonable care to ensure that no vehicle of the City or its designated haulers will be required to wait more than 30 minutes" does not obligate TDSL to provide a level of service that guarantees no City vehicle will wait more than 30 minutes if doing so would result in TDSL experiencing a net negative revenue in servicing the City, and/or that the "reasonable care" provision does not require TDSL to operate in a net negative revenue fashion in servicing the City.

40. Additionally or in the alternative as necessary, TDSL seeks declaratory judgment that the Contract does not require it to accept uncompacted bulky waste from the City's bulky waste collection centers (transfer stations) at the rates set forth for "regularly collected Municipal Solid Waste, as had been processed by the City through the transfer station from 1991 to 1996." The processing of such uncompacted bulky waste is outside the scope of the Contract and is not qualified to be an acceptable waste under the Contract Put or Pay of the City's regularly collected municipal solid waste.

41. Additionally or in the alternative as necessary, TDSL seeks declaratory judgment that it is not required under the Contract to accept uncompacted bulky waste from the City's bulky waste collection centers (transfer stations) at the rates set forth in the Contract, due to impracticability. Since the formation of the Contract, events have occurred, the non-occurrence of which was a basic assumption on which the Contract was made. Specifically, the City has materially changed the manner in which it handles bulky waste and the manner in which such waste is brought to Starcrest for TDSL to process. While at the time the Contract was entered into such compactable waste was brought to Starcrest in compacted form, and much bulky waste was hauled by residents and commercial haulers to area landfills, the City subsequently opened its own citizens bulky waste collection centers (transfer stations) to receive loads of waste from residents and small haulers, and began bringing large volumes of such waste in roll off container loads in uncompacted form, necessitating different processing, transfer, and disposal by TDSL at a materially higher cost and depriving TDSL from receiving the same bulky waste loads into the Starcrest Transfer Station at a profitable tipping fee. The cost to TDSL in processing, transferring, and disposing of such uncompacted and uncompactable waste has increased well beyond the normal range of cost increases that could be anticipated, due to the uncompacted nature of the waste and the City offering free disposal of bulky waste at its transfer stations. The change in the City's policy and practices was unforeseen and unforeseeable by TDSL at the time of contracting, and the City did not inform or disclose to TDSL any plans to change the basic assumptions that (1) bulky waste from the City would be managed differently, and (2) TDSL could charge higher rates for uncompacted and uncompactable bulky waste from non-City sources, both of which were basic assumptions that have proven untrue. If TDSL is required to process either the City's compacted or uncompacted bulky waste through Starcrest for the

Contract's rates, TDSL's burden in performing under the Contract has become so great as to be unreasonable under the current circumstances. The change in the City's policy and practices was outside the control of TDSL. TDSL has employed reasonable efforts to overcome the greatly increased costs of performance under the Contract, which reasonable efforts have failed. Due to this impracticability, TDSL's duty to render performance of the transfer of the City's uncompacted and uncompactable bulky waste, as well as the City's compacted waste, under the terms of the Contract is discharged. Should it be held that the Contract obligates TDSL to process and transfer the City's uncompacted and uncompactable bulky waste at the Contract's rate, TDSL seeks a declaratory judgment that it is no longer obligated to perform the transfer of waste under the Contract due to the above-described impracticability.

42. TDSL further seeks recovery of court costs, and of its reasonable and necessary attorneys' fees for bringing this declaratory judgment action, pursuant to Section 37.009, Texas Civil Practice & Remedies Code.

JURY DEMAND

43. TDSL demands a trial by jury and tenders the appropriate jury fee.

LIMITATIONS

44. The parties have entered into a series of tolling agreements beginning August 2, 2021 and extending through the date of filing of this Petition. Therefore, all causes of action and damages claims that existed on August 2, 2021 remain within the statute of limitations.

CONCLUSION AND PRAYER

Wherefore, premises considered, Plaintiff Texas Disposal Systems Landfill, Inc. seeks judgment against Defendant City of San Antonio, Texas as set forth herein for breach of contract and additionally or in the alternative for quantum meruit and for damages caused by the City's

actions under such legal theories; and additionally or in the alternative seeks declaratory judgment regarding its obligations or lack of same under the Contract as set forth herein; and recovery for court costs and attorneys' fees as provided in the Contract, in Section 38.001 and/or Section 37.009 of the Civil Practice & Remedies Code; and for all such further relief, in law or in equity, as it may show itself justly entitled.

Respectfully submitted,

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