

**CAUSE NO. 2022CI06061**

|                             |   |                         |
|-----------------------------|---|-------------------------|
| TEXAS DISPOSAL SYSTEMS      | § | IN THE DISTRICT COURT   |
| LANDFILL, INC.,             | § |                         |
| Plaintiff,                  | § |                         |
| v.                          | § | BEXAR COUNTY, TEXAS     |
|                             | § |                         |
| CITY OF SAN ANTONIO, TEXAS, | § |                         |
| Defendant.                  | § | 288TH JUDICIAL DISTRICT |

**PLAINTIFF’S INITIAL DISCLOSURES**

TO: City of San Antonio, Texas, by and through its attorneys of record, Bonnie K. Kirkland and Carrie C. Gorner, Dykema Gossett PLLC, 112 East Pecan Street, Suite 1800, San Antonio, Texas 78205.

Now comes Plaintiff Texas Disposal Systems Landfill, Inc. (“Plaintiff” or “TDSL”) and hereby submits its Initial Disclosures.

Respectfully submitted,

GRAVES DOUGHERTY HEARON & MOODY  
A Professional Corporation  
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By: /s/ James A. Hemphill  
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ATTORNEYS FOR PLAINTIFF  
TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been sent to counsel listed below, via electronic mail and/or electronic service as available, on June 21, 2022:

Bonnie K. Kirkland  
[bkirkland@dykema.com](mailto:bkirkland@dykema.com)  
Carrie C. Gerner  
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112 East Pecan Street, Suite 1800  
San Antonio, Texas 78205  
Counsel for Defendant

*/s/ James A. Hemphill*  
James A. Hemphill

## PLAINTIFF'S INITIAL DISCLOSURES

1. The correct names of the parties to the lawsuit.

**RESPONSE:** Plaintiff is correctly named, and believes Defendant is correctly named.

2. The name, address, and telephone number of any potential parties.

**RESPONSE:** Plaintiff is currently unaware of any other potential parties.

3. The legal theories and, in general, the factual bases of the responding party's claims or defenses.

**RESPONSE:** Plaintiff has set forth its legal theories and the factual bases therefor, in detail, in its Original Petition. In sum, they are as follows:

**Breach of Contract:** TDSL provides waste disposal services to the City under a written contract properly executed on behalf of the City, as amended and supplemented (collectively, the "Contract"). The City has directed TDSL to perform additional work in connection with the Contract for which the City has outstanding amounts owed. Specifically, the City directed TDSL to dispose 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. Suits against municipal entities for payment of amounts owed for additional work directed by the municipal entity in connection with a written contract is specifically authorized by Texas Local Gov't Code § 271.153(a)(2).

Additionally or in the alternative as necessary, the City has declined to cooperate with TDSL to the extent necessary for the Contract's performance and/or has hindered, prevented, or interfered with TDSL's ability to perform its duties under the Contract for the contracted-for rate. 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. 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.

Additionally or in the alternative if necessary, the City has refused to consider a good-faith request by TDSL to adjust payment rates, and thereby the City has violated 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 is 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.

Additionally or in the alternative as necessary, TDSL and the City have a "put-or-pay" provision in their Contract that requires the City to deliver at least 100,000 tons of regularly collected Municipal Solid Waste to the Starcrest Transfer Station, and if this minimum is not delivered, the City must pay TDSL as if the minimum amount was delivered. The roll-off tonnage from the City's free bulky waste collection centers does not count toward the 100,000-ton minimum, and thus the City has failed to meet the put-or-pay requirement. 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. Suits against municipal entities for payment of amounts due and owed under a contract is specifically authorized by Texas Local Gov't Code § 271.153(a)(1).

Additionally, TDSL repaired the Starcrest drop-off area at the City's request but has not been reimbursed by the City. The parties' Contract specifies that TDSL has no obligation to pay for alterations to the Starcrest facility requested 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. Suits against municipal entities for payment of amounts due and owed under a contract is specifically authorized by Texas Local Gov't Code § 271.153(a)(1).

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. Suits against municipal entities for payment of amounts owed for additional work directed by the municipal entity in connection with a written contract is specifically authorized by Texas Local Gov't Code § 271.153(a)(2).

**Quantum meruit:** Additionally or in the alternative to one or more of the breach of contract theories described above, 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," as specified in the Contract. 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.

**Declaratory judgment:** 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.

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.

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.

Additionally or in the alternative as necessary, TDSL seeks declaratory judgment that it is not required under the Contract to accept uncompactable 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 uncompactable 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 uncompactable and uncompactable waste has increased well beyond the normal range of cost increases that could be anticipated, due to the uncompactable 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 uncompactable 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 uncompactable 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 uncompactable 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 uncompactable 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.

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.

4. The amount and any method of calculating economic damages.

**RESPONSE:**

See Exhibit 2 to the August 2, 2021 correspondence from Bob Gregory to David McCary and David Newman, calculating damages in the amount of \$11,823,128.48 for the receipt of uncompacted waste together with put or pay shortage charges.

See Exhibit 3 to the August 2, 2021 correspondence from Bob Gregory to David McCary and David Newman, calculating damages in the amount of \$58,215.54 for Starcrest tipping floor modifications as requested by the City but not reimbursed to TDSL.

5. The name, address, and telephone numbers of persons having knowledge of relevant facts, and a give a brief statement of each identified person's connection with the case.

**RESPONSE:**

Bob Gregory, President & CEO  
Texas Disposal Systems Landfill, Inc.  
Gary Newton, TDSL General Counsel  
Larry Laine, TDSL Director of Facilities  
Brandon Smitheal, Director of Off-Site Operations  
Ryan Hobbs, Business Development  
Adam Gregory, Business Development  
Rebecca Hilt, FPA Manager  
Randy Meier, Director of Finance  
Thomas Mistler, COO, CFO  
c/o James A. Hemphill  
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Hailey L. Suggs  
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Austin, Texas 78701  
(512) 480-5618 (Telephone)  
(512) 480-5818 (Telecopier)  
Plaintiff and its employees and/or agents

David McCary, Assistant City Manager, Former Director Solid Waste Operations  
David Newman, Director of Solid Waste Management  
c/o Bonnie K. Kirkland  
[bkirkland@dykema.com](mailto:bkirkland@dykema.com)  
Carrie C. Gorner  
[cgorner@dykema.com](mailto:cgorner@dykema.com)  
Dykema Gossett PLLC  
112 East Pecan Street, Suite 1800

San Antonio, Texas 78205  
(210) 554-5500 – Telephone  
(210) 226-8395 – Telecopier  
Defendant and its employees and/or agents

Alexander Briseno, Former City Manager for City of San Antonio  
Address and phone number unknown at this time, will supplement  
Former City Manager for City of San Antonio, signatory of and presumably has knowledge of  
the original Agreement between the parties, First Amendment to the Agreement and Second  
Amendment to the Agreement

Christopher Brady, Former City Manager for City of San Antonio  
Address and phone number unknown at this time, will supplement  
Former City Manager for City of San Antonio, signatory of and presumably has knowledge of  
the Special Addendum executed March 22, 2001

David Lopez, Former City employee  
Address and phone number unknown at this time, will supplement  
Corresponded to TDSL personnel regarding agreements

Peter Zanoni, Former Assistant City Manager for City of San Antonio (current City Manager of  
Corpus Christi)  
Address and phone number unknown at this time, will supplement  
Corresponded to TDSL personnel regarding agreements

6. A copy—or description by category and location—of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment.

**RESPONSE:**

Agreements between the parties:

- Sept. 20, 1993 Agreement between Texas Disposal Systems Landfill, Inc. (TDSL) and the City of San Antonio for Municipal Solid Waste Disposal;
- June 1, 1995 First Amendment to Agreement extending term to September 30, 2025;
- Jan. 15, 1998 Second Amendment to Agreement allowing for the lease, management, use and operation of the Starcrest Transfer Station, ending January 15, 2023;
- March 22, 2001 Special Addendum to the Agreement Documents executed, “For Conveyance of TNRCC Permit (MSW No. 1443) for Starcrest Transfer Station”.

City of San Antonio Ordinances:

- #78715 dated 9/15/93, authorizing the City Manager to execute contracts with TDSL for solid waste disposal services;



- #82315 dated 5/31/95, authorizing the City Manager to enter into the amended contract with TDSL for a term ending 9/30/25;
- #85263 dated 12/5/96, authorizing the city manager to execute an amendment to and enlargement of existing solid waste disposal contact with TDSL and enable privatization and transfer of operations maintenance of Starcrest to TDSL
- #93272 dated 1/18/01, authorizing the City Manager to make amendments to the Starcrest Transfer Station contract

Various correspondences between the parties and their agents concerning the ongoing dispute(s) spanning from December 2010 to the present.

Exhibits attached to correspondence from TDSL to the City of San Antonio dated August 2, 2021 as described below:

- Exhibit 1 titled "Comparison of City Tipping Fees, City Rates, Expenses and Starcrest Operating Costs to Current CPI Indices";
- Exhibit 2, Rolloff Summary Invoice in the amount of \$11,823,328;
- Exhibit 3, Tipping Floor Invoice in the amount of \$58,315.54.

Powerpoint Presentations as described below:

- Prepared by TDSL representatives and furnished to the City of San Antonio at May 19, 2015 meeting between TDSL representatives and City of San Antonio representatives
- Prepared by TDSL representatives and furnished to the City of San Antonio at July 30, 2015 meeting between TDSL representatives and City of San Antonio representatives

Plaintiff possesses these documents and will produce to Defendant.

7. Any indemnity and insuring agreements described in Rule 192.3(f).

**RESPONSE:** Plaintiff is not aware of any such agreements at this time.

8. Any settlement agreements described in Rule 192.3(g).

**RESPONSE:** Plaintiff is not aware of any such agreements at this time.

9. Any witness statements described in Rule 192.3(h).

**RESPONSE:** Plaintiff is not aware of any such statements at this time.

10. In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonable related to the injuries or damages asserted, or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

**RESPONSE:** Not applicable.

11. In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

**RESPONSE:** Not applicable.

12. The name, address, and telephone number of any person who may be designated as a responsible third party.

**RESPONSE:** Plaintiff is not aware of any potentially responsible third parties at this time.