

CAUSE NO. 2022-CI-06061

TEXAS DISPOSAL SYSTEMS
LANDFILL, INC.,

Plaintiff,

VS.

CITY OF SAN ANTONIO, TEXAS,

Defendant.

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IN THE DISTRICT COURT

288TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**Defendant the City of San Antonio’s Plea to the Jurisdiction and
Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant/Counter-Plaintiff the City of San Antonio (“City” or “Defendant/Counter-Plaintiff”) files this Plea to the Jurisdiction and Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction as to the quantum meruit and declaratory judgment claims asserted by Texas Disposal Systems Landfill, Inc. (“TDSL”), and shows the Court as follows:

INTRODUCTION

The City of San Antonio has governmental immunity from TDSL’s quantum meruit and declaratory judgment claims. This case arises from a waste disposal contract between the City of San Antonio and TDSL. The parties contracted in 1998 for TDSL to operate the City-owned waste transfer station located in North San Antonio. The contract gave the City priority—in service and capacity—to dispose of waste at the transfer station at a set contractual rate. Both sides performed under the contract for over twenty years—until 2021.

In 2021, TDSL began making extracontractual demands of the City, premised on an allegation that the City had breached the contract first (it had not), and assertions that the contract requirements had become impractical. TDSL then invoiced the City for over \$12 million dollars

over and above the contracted-for price of services, which the City had already paid. TDSL’s \$12 million invoice included concocted charges reaching back to 2013.

The City refused to capitulate to TDSL’s demands, the relationship between the parties deteriorated, and San Antonio’s waste collection efforts suffered, and continue to do so daily. TDSL’s insistence that it was owed more money than it contracted for culminated in this lawsuit. TDSL sued the City for breach of contract and quantum meruit, and seeks declaratory judgment to modify the contract. Merits of these claims aside (they are all meritless),¹ the City has governmental immunity as to the quantum meruit and declaratory judgment claims.

FACTUAL BACKGROUND

Where the City’s trash goes. The City provides regular waste collection services to over 368,000 customers, including collection of recycling and organic materials. Exhibit A, Affidavit of David Newman, ¶ 3. Such services are managed by the City’s Solid Waste Management Department (“SWMD”). *Id.* Via its weekly curbside collections and other litter-cleanup around the city, SWMD collects approximately 600,000 tons of waste per year in a logistically complex process of pickup routes and drop-off locations. *Id.* And all that waste has to go somewhere—that is where TDSL comes in.

Until the 1990s, the City owned its own landfill. *Id.* ¶ 7. When the permit for the landfill expired, and new landfill regulations came into effect, the City closed its landfills and sought third-party disposal services for City trash. *Id.* This culminated in three contracts with private waste-disposal companies for use of their landfills, including the one at issue here with TDSL. *Id.*

¹ Indeed, the City has already obtained injunctive relief, which required the trial court to determine that the City was likely to win on the merits.

The contracts with TDSL. The City entered into its Original Contract (Ex. B) with TDSL in 1993. *Id.* Later amendments to the contract—the “First Amendment” (Ex. C) and “Second Amendment” (Ex. D)—brought the contract to its current state. *Id.* at 10. The contract provides that TDSL is obligated to receive a certain tonnage of City trash annually at the TDS landfill in Buda. Ex. D, Second Amendment, ¶ T, pg. 26–27. In return, the City pays TDSL on a per-ton basis at a contractually agreed rate. *Id.* The parties also agreed to a scheme for the increase of that rate over time. *Id.* pg. 26–27.

The Second Amendment was an agreement between the parties for TDSL to operate a transfer station owned by the City called Starcrest Transfer Station (“Starcrest”). *Id.* pg. 1. A transfer station is different than a landfill. Ex. A, Affidavit of David Newman, ¶ 9. It is not a permanent place for trash disposal, but instead a hub where the waste collected by the City is consolidated and sorted—such as into landfill waste and recycling—for transport to its final destination. *Id.*

The parties further executed a Memorandum of Agreement and Special Addendum memorializing and governing their relationship. Ex. E. Together with the Original Contract, First Amendment, and Second Amendment, the City will collectively refer to this as the “Agreement.” Under the Agreement, TDSL was to give City trash haulers priority over others dumping trash at Starcrest, but it could accept non-City waste (waste from commercial haulers or private citizens) and charge whatever rate it chose for this other waste. *Id.*

As part of their working relationship, TDSL accepted “bulky” waste—essentially oversized trash that does not easily fit into the waste containers—from the City, billing the City separately for bulky waste dumped at its site. Ex. A, Affidavit of David Newman, ¶ 13. The City

always paid these invoices upon receipt, and TDSL long accepted bulky waste without complaint. *Id.* That changed in 2021.

TDSL breaches the contract, wreaking havoc on San Antonio's trash collection services. On August 2, 2021, TDS sent the City a letter invoking the mediation clause of the Agreement as a prerequisite to litigation. Ex. F. In the letter, TDSL claimed that the annual contractual increase of the disposal rate paid by the City—to which TDSL had agreed—was insufficient in light of a reduction in their revenue and increase in costs (including costs driven by the City's allegedly improper dumping of bulky waste at Starcrest). *Id.* TDSL included two invoices both dated with the same date as the letter. Ex. G, Ex. H. One invoice was for alleged lost revenue and tonnage shortages associated with bulky waste delivered to Starcrest by the City from January of 2013 through 2021. Ex. G. The second invoice was for alleged costs to make a repair at the facility in October of 2017. Ex. H. TDSL further accused the City of improperly dumping animal carcasses (the Agreement allowed for the dumping of animal carcasses) and informed the City that it would stop accepting the dead animals. Ex. A, Affidavit of David Newman, ¶ 13.

To avoid further issue until the dispute could be resolved, the City immediately ceased delivering bulky waste to Starcrest as of August 3, 2021, and has not delivered bulky waste to the site since that date; thereby curing any alleged default caused by the delivery of bulky waste to Starcrest. *Id.* However, the City disagrees that it owes TDSL any payment for either invoice. *Id.*

The parties tried to resolve the dispute informally, including through their contractual obligation to mediate prior to any litigation. These efforts failed. After mediation in March of 2022 (as in, the day after), the City began to experience significant delays in service at Starcrest because TDSL was not prioritizing City haulers or allowing the City to dump in a timely manner

per the Agreement. *Id.* ¶ 15. While they were supposed to receive service in under 30 minutes per the Agreement, City trucks began experiencing wait times of over an hour to dump their collections—this caused significant delays in the City’s collections and logistical issues with timely completing trash pickup routes.

The City sent TDSL a Notice to Cure informing TDSL of the default and affording TDSL the opportunity to fix the issue with the delays and the acceptance of dead animals. *Id.* ¶ 15; Ex. I (First Notice of Cure). TDSL failed to cure the issue, and the City was forced to begin diverting trucks to other landfills in order to salvage their operations. Ex. A, Affidavit of David Newman, ¶ 16. TDSL continued to refuse to accept dead animals. *Id.*

The lawsuit. On March 31, 2022, TDS filed its lawsuit against the City alleging claims of breach of contract and quantum meruit, as well as seeking declaratory judgment. To preserve the City’s trash collection service for San Antonians, the City sought—and this Court approved—a temporary injunction to maintain the status quo of the parties’ operations at Starcrest and the Buda landfill during the pendency of the lawsuit.

ARGUMENTS AND AUTHORITIES

A. Legal Standard.

The purpose of a plea to the jurisdiction is to defeat a cause of action without regard to whether the claim has merit. *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). When a plea to the jurisdiction challenges the plaintiff’s pleadings, the Court must determine if the pleader has alleged facts that affirmatively demonstrate the Court’s subject matter jurisdiction to hear the cause of action. *Tex. Dep’t of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004). In making this determination, the Court can and must consider evidence relevant to the jurisdictional facts. *Id.* Although the Court must construe the pleadings in favor of the

pleader, the party suing the governmental entity bears the burden of showing that the trial court has jurisdiction to hear the case. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012); *Tex. Dep't of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001).

Subject matter jurisdiction is essential to the authority of courts or tribunals to decide a case, for without it, courts or tribunals cannot render a valid judgment. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993) (noting the court may neither presume nor waive subject matter jurisdiction). Whether the Court has subject matter jurisdiction is a question of law. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998); *Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 476 (Tex. 2012).

This plea to the jurisdiction is based upon the governmental immunity of the City.² Absent an express statutory waiver, the State and its subdivisions, including the City of San Antonio, are immune from suit. *City of Houston v. Swinerton Builders, Inc.*, 233 S.W.3d 4, 10 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Immunity from suit deprives the court of subject matter jurisdiction. *Id.*; *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999); *City of New Braunfels v. Carowest Land, Ltd.*, 549 S.W.3d 163, 169 (Tex. App.—Austin 2017, no pet.) (governmental immunity protects political subdivisions of the State from suit, depriving the court of subject matter jurisdiction) (citing *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n.3 (Tex. 2003)). If the Court sustains this motion, the challenged claims must be dismissed. *Speer v. Stover*, 685 S.W.2d 22, 23 (Tex. 1985) (per curiam).

² The City of San Antonio is an incorporated “home-rule” city that derives its power from the Texas Constitution. City of San Antonio, Texas Charter art. I, §§ 1, 3; TEX. CONST. art. XI, § 5; *see also* TEX. LOC. GOV'T CODE § 54.004 (home-rule cities may “enforce ordinances necessary to protect health, life, and property . . . of the municipality and its inhabitants”); TEX. LOC. GOV'T CODE §9.008 (recorded city charters are public acts and “Courts shall take judicial notice of them...”).

B. The Court should consider this motion before any other matter.

Jurisdictional requirements may not be waived and can be—and if in doubt, must be—raised by a court on its own at any time. *City of Austin v. Util. Assocs.*, 517 S.W.3d 300, 307 (Tex. App.—Austin 2017, pet. denied). When a party raises the court’s lack of subject matter jurisdiction, the court can and should address the jurisdictional inquiry at the earliest opportunity.

C. The Court lacks subject matter jurisdiction over Plaintiff’s claim for quantum meruit.

Seemingly acknowledging that its requests for relief are founded outside of the written agreements between the parties, TDSL seeks relief in quantum meruit. The City is immune from this claim.

First, the City has immunity for governmental functions related to sanitation and garbage removal. “A municipality . . . retains immunity for those governmental functions defined by the legislature, except to the extent immunity is waived.” *Fox v. City of Austin*, No. 03-06-00172-CV, 2006 Tex. App. LEXIS 10319, at *8–9 (Tex. App.—Austin Dec. 1, 2006, no pet.). The legislature has compiled a statutory list of “governmental functions;” per the list, “health and sanitation services” and “garbage and solid waste removal, collection, and disposal” are governmental functions as a matter of law. TEX. CIV. PRAC. & REM. CODE ANN. § 101.0215(a)(2), (6). “Where a function is included in this nonexclusive list of governmental functions, it has been deemed governmental in nature by the legislature, and [courts] have no discretion or authority to hold otherwise.” *Fox*, No. 03-06-00172-CV, 2006 Tex. App. LEXIS 10319, at *8–9. “By designating the activities of health and sanitation services and garbage and solid waste removal, collection, and disposal as governmental functions, the legislature has conferred immunity from suit unless a claim falls within a specific area of liability for which immunity is waived.” *Id.*

Second, there is **no** waiver of governmental immunity for quantum meruit claims. *City of San Antonio v. Wheelabrator Air Pollution Control, Inc.*, 381 S.W.3d 597, 602 (Tex. App.—San Antonio 2012, pet. denied). The Legislature has waived immunity for certain contractual claims against a municipality for contracts for goods or services, but “it consciously excluded quasi-contractual claims based on an implied contract or quantum meruit from the waiver.” *Id.*; see TEX. LOC. GOV’T CODE § 271.152 (waiving governmental immunity for certain breach-of-contract claims).

To that end, the Fourth Court of Appeals has concluded that “based on its plain language, [Texas Local Government Code Code] section 271.152 applies only to written contracts, and that quantum meruit claims, being based in equity, ‘are simply not included in section 271.152’s limited waiver of governmental immunity.’” *Wheelabrator Air Pollution Control, Inc.*, 381 S.W.3d at 602 (quoting *Somerset Indep. Sch. Dist. v. Casias*, No. 04-07-00829-CV, 2008 Tex. App. LEXIS 2895, 2008 WL 1805533, at *3 (Tex. App.—San Antonio Apr. 23, 2008, pet. denied) (mem. op)). Other courts have confirmed this interpretation of the waiver statute. *See, e.g., Harris Cnty. Flood Control Dist. v. Great Am. Ins. Co.*, 309 S.W.3d 614, 617 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (section 271.152 does not apply to quantum meruit claims, which are barred by governmental immunity); *Vantage Sys. Design, Inc. v. Raymondville Indep. Sch. Dist.*, 290 S.W.3d 312, 316-17 (Tex. App.—Corpus Christi 2009, pet. denied) (holding section 271.152’s waiver of immunity does not extend to quantum meruit claims); *City of Houston v. Swinerton Builders, Inc.*, 233 S.W.3d 4, 12-13 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (plain language of section 271.152 limits waiver of sovereign immunity to breach of contract, and “lists no other claims, either in law or in equity;” thus, legislature did not intend to include quantum meruit claims within the waiver).

Because there is no waiver of immunity for quantum meruit claims, the City retains its immunity as to that claim, and this Court has no subject matter jurisdiction over TDSL's quantum meruit claim. It must therefore be dismissed.

D. The Court lacks subject matter jurisdiction over Plaintiff's UDJA claim for declaratory relief.

In addition to its quantum meruit and breach of contract claims, TDSL also seeks declaratory relief under the Texas Declaratory Judgment Act ("UDJA"). TDSL First Am. Pet. ¶ 43. Specifically, "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." *Id.* TDSL's claim for declaratory relief is essentially a repackaging of its quantum meruit claim, in which it asks the Court to declare that the contract it agreed to is now unfair, and asks the Court to rewrite its requirements.

Once again, there is no statutory waiver of governmental immunity for the declaratory judgment as asserted by TDSL. "There is no general right to sue a state agency for a declaration of rights." *Williams v. Tex. Tech Univ. Health Scis. Ctr.*, No. 10-15-00005-CV, 2015 WL 2452513, at *2 (Tex. App.—Waco May 21, 2015, no pet.) (quoting *Tex. Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 388 (Tex. 2011)). The "[Uniform Declaratory Judgment Act] does not contain a general waiver of sovereign immunity, providing only a limited waiver for challenges to the validity of an ordinance or statute." *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 552 (Tex. 2019) (emphasis added). "UDJA claims requesting other types of declaratory relief are barred absent a legislative waiver of immunity with respect to the underlying action." *Id.* at 553. Other than waiving immunity for claims challenging the validity of ordinances or statutes, the UDJA does not alter a trial court's jurisdiction. *Holms v. W. Travis Cty. Pub. Util. Agency*, No. 03-17-00584-CV, 2019 WL 1141870, at *4 (Tex. App.—Austin Mar. 13, 2019, no

pet.) (citing *Sawyer*, 345 S.W.3d at 388). Texas courts have consistently held that the UDJA does not enlarge the trial court’s jurisdiction, but “is merely a procedural device for deciding cases already within a court’s jurisdiction.” *Id.*

TDSL’s declaratory judgment action is no more than a veiled claim for relief in quantum meruit. TDSL asks the Court to interpret rights and obligations in equity outside of the actual text of the contract. TDSL is thus really seeking declarations of its “rights” in quantum meruit. For example, 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;”
- “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;”
- “a declaration that the Contract imposed an obligation on the City to consider TDSL’s proposals for rate increase in good faith;”
- “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.”

TDS First Am. Pet. ¶¶ 45, 47, 48, 51.

These arguments are not based on contractual provisions, but rather seek declarations in spite of the text of the agreements between the parties. These requests that the Court declare that TDSL should be paid more than it is owed sound in equity. *See Excess Underwriters at Lloyd’s, London v. Frank’s Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42, 49-50 (Tex. 2008) (equitable theory of recovery based on quantum meruit is a quasi-contractual doctrine under which one who provides valuable services may establish that recipient has implied-in-law obligation to pay for

value of services when on reasonable notice that provider expects to be paid). They are thus repackaged claims for quantum meruit over which this court has no jurisdiction. *See City of New Braunfels v. Carowest Land, Ltd.*, 549 S.W.3d 163, 170–71 (Tex. App.—Austin 2017), *vacated*, 615 S.W.3d 156 (Tex. 2020) (explaining that “a litigant’s couching its requested relief in terms of declaratory relief does not alter the underlying nature of the suit”).

Thus, even if this Court has jurisdiction over TDSL’s breach of contract claim, it does not have jurisdiction over TDSL’s declaratory judgment claims as an avenue to get at quantum meruit relief. A party cannot use a declaratory judgment action as a vehicle to obtain relief it is not otherwise entitled to receive. *See, e.g., MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 669–70 (Tex. 2009) (rejecting “a claim for declaratory relief [that] is merely tacked onto a standard suit based on a matured breach of contract”).

TDSL is attempting to use the UDJA to rewrite its contract with the City on principles of equity—the Court simply does not have jurisdiction to do that because the City is immune from these sorts of equitable claims. *See Wheelabrator Air Pollution Control, Inc.*, 381 S.W.3d at 602. TDSL’s claims under the UDJA, too, should be dismissed for lack of subject matter jurisdiction.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the City of San Antonio respectfully moves the Court upon notice and hearing to grant this Plea to the Jurisdiction and Partial Motion to Dismiss for Lack of Subject Matter Jurisdiction, and dismiss with prejudice for lack of subject matter jurisdiction the claims for quantum meruit and declaratory judgment asserted against it by Plaintiff, Texas Disposal Systems Landfill, Inc. Defendant further prays that, upon granting this

motion, the Court award attorney's fees and costs to Defendant as the prevailing party under the UDJA.³ Defendant further prays for such other relief to which it may be entitled.

Respectfully Submitted,

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³ TEX. CIV. PRAC. & REM. CODE § 37.009; *City of New Braunfels*, 549 S.W.3d at 178 (trial court can award attorney's fees under UDJA following dismissal of declaratory judgment claim for lack of jurisdiction).

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2023, in accordance with the TEXAS RULES OF CIVIL PROCEDURE, I electronically filed the foregoing document with the Clerk of Court using the efile Texas electronic filing system, which will send notification of such filing to the following:

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EXHIBIT A

CAUSE NO. 2022-CI-06061

TEXAS DISPOSAL SYSTEMS
LANDFILL, INC.,

Plaintiff,

VS.

CITY OF SAN ANTONIO, TEXAS,

Defendant.

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IN THE DISTRICT COURT

288TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

AFFIDAVIT OF DAVID NEWMAN

STATE OF TEXAS)
)
COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, personally appeared David Newman, who, after being first duly sworn and cautioned upon his oath, deposes and states:

1. My name is David Newman. I am over 18 years of age, and I am fully competent in all respects to make this Affidavit. All statements herein are true and correct and within my personal knowledge. I submit this application in support of Defendant’s Original Counterclaim and Application for Injunctive Relief (“Counterclaim”).

2. I am employed by the City of San Antonio as the Director of the Solid Waste Management Department (“SWMD”). I have worked for the City of San Antonio since 1997 and in the SWMD in particular since 2008. As Director, I oversee the daily operations of the Department as part of my duties.

Solid Waste Management Department

3. The SWMD manages the City’s waste collection services that are provided to its customers (the residents of the City). SWMD provides weekly curbside collection of residential garbage, recycling, and organics materials to over 368,000 customers, including collection of

recycling and organic materials. SWMD also provides curbside brush and bulky item collection two times per year. SWMD operates four bulky waste drop-off sites, three household hazardous waste drop-off sites, and two brush drop-off sites. Additionally, SWMD offers special collections such as dead animal collection from city streets, bagged leaf collection, and special out-of-cycle collections. SWMD also collects the downtown litter baskets and over 9,000 illegal dumping locations and over 250 miles of litter across the City. In total, the City collects more than 600,000 tons of waste each year.

4. Weekly curbside collections makes up approximately 350,000 tons of that total. After being collected by SWMD, depending on the material at issue, the material is transported to either a contracted recycling company, a contracted organics composting company, or a disposal site. SWMD currently has three contracts for disposal, including the agreement with TDS, which provide access to three disposal sites within the City. For curbside collection, collection workers are scheduled to work a 10-hour day and must complete his or her entire route each day before logging out.

5. Garbage routes are designed to be completed in two truckloads. The collection drivers will collect the waste from the customers on their assigned routes until the truck is full. Once full, the drivers travel to a designated dump site (geographically determined) to empty the load and then return to the route. The drivers then complete the collection of their route and, once the collection is finished, empty the second load at the disposal site to complete their day. Any delays in traffic or at the dump site greatly affect the drivers' ability to finish on time and provide the necessary service for the citizens of San Antonio.

6. Given the various services provided and the complexities of SWMD's operations, providing proper and efficient waste collection services is logistically complicated and requires

the detailed coordination of employees, equipment, and operations. To provide its services, SWMD employs more than 800 individuals operating out of twelve (12) locations. For curbside collections alone, we operate over 160 trucks daily. Additionally, there are approximately another 130 SWMD vehicles operated daily collecting other materials, including bulky waste/brush, litter, and dead animals. Given the necessary coordination to ensure timely service on a daily basis, any unforeseen complication can have a ripple effect significantly affecting operations.

7. In the 1990's, the City-owned landfill was coming to the end of its permitted life and new changes in landfill regulations were going into effect, so the City permanently closed all of its City-owned landfills. In 1993, after engaging in the bid procurement process, the City entered into three separate contracts with Waste Management, Inc., Browning Ferris (now Republic Services), and TDS related to the disposal of the City's regularly collected solid waste.

8. The City originally entered into a contract with TDS for landfill disposal in 1993 ("the Original Contract"). The Original Contract was set to expire in 1998.

9. As part of the Original Agreement, the City and TDS agreed to enter into negotiations concerning TDS's potential use and operation of the City's Starcrest Transfer Station ("Starcrest"). A transfer station is a site where recyclables and waste are collected from multiple sources, sorted, and bundled in preparation for processing or transport to a landfill. At Starcrest, SWMD would have its collection trucks (those nearby to the facility geographically) dump their collected loads at the facility. These loads would be dumped into larger tractor trailer trucks that would then transport the load to a landfill or another facility as appropriate (*i.e.*, for recyclables). By gathering multiple smaller loads into one larger load for transport, the City could transport the waste or other materials to their ultimate destination more efficiently and cost

effectively by making fewer trips. Third parties such as residents or commercial trash haulers could also dump waste at the facility for a proscribed fee (providing a revenue source for the City). The City had owned and operated Starcrest since July 1982. At the time, the City was using city-operated trucks loaded at Starcrest to haul waste to TDS's disposal site in Buda to satisfy the contractual requirements of the Original Agreement.

10. The Original Contract was amended in 1995 to extend the contract duration to September 30, 2025 ("the First Amendment"), which made some modifications to the tonnage requirements for both parties. In 1998, the City and TDS finalized negotiations related to Starcrest and executed a second amendment to the Original Contract ("the Second Amendment"). Under the Second Amendment, TDS would operate Starcrest. The Second Amendment was set to expire on January 15, 2023, unless TDS chose to extend the contract to expire in 2025 to coincide with the expiration of the First Amendment.

11. Together, the Original Contract, First Amendment, and Second Amendment are referred to as the Agreement. *A true and correct copy of the Agreement is attached as Exhibit B to the Counterclaim.* Under the Agreement, the City has an obligation to deliver a certain amount of solid waste to TDS for disposal annually (either via delivery to the landfill in Buda or dumping at Starcrest currently operated by TDS). For its part, in addition to other requirements, TDS has an obligation to accept up to a certain tonnage from the City at the contract rate. In operating Starcrest, TDS could accept non-City waste (waste from commercial haulers or private citizens) so long as TDS gave city-haulers priority of service as set out in the Agreement.

12. On August 2, 2021, TDS sent the City a letter invoking the mediation clause of the Agreement. *A true and correct copy of the Agreement is attached as Exhibit C to the Counterclaim.* In the letter, TDS claimed that that the annual increases on the disposal rate were

insufficient and attached two invoices to the City. One invoice was for alleged extra costs associated with bulky waste delivered to Starcrest by the City from January of 2013 through 2021. The second invoice was for alleged costs to make a repair at the facility in October 2017.

13. TDS had accepted bulky waste at Starcrest without complaint since 2013. Additionally, TDS had been billing and invoicing the City separately for any bulky waste dumped at the site, which the City had paid as received. Regardless, to avoid further issue until the dispute could be resolved, the City immediately ceased delivering bulky waste to Starcrest as of August 3, 2021, and has not delivered bulky waste to the site since that date. However, the City disagreed that it owed TDS any payment for either invoice.

14. On November 19, 2021, the City informally met with TDS to try to resolve the issues raised in TDS's August letter. In the meeting, TDS requested an increase in the disposal fee beyond that required by the Agreement and sought to change how future increases would be calculated. The City did not agree to the changes because the changes were inconsistent with, and not required by, the Agreement. Three days later, TDS informed the City that it would no longer accept dead animals at Starcrest on the belief that the City was collecting commercially collected dead animals (*i.e.*, animals from vet offices and not off the street) and dumping them at Starcrest. I communicated with TDS to provide assurances that the City was not dumping commercially collected dead animals at Starcrest. After that conversation, TDS agreed to resume accepting dead animals on November 24th. However, two weeks later, TDS announced that dead animals could no longer be dumped on Saturdays. Additionally, TDS also announced that Starcrest would close earlier each weekday and would not be available after hours or on the weekends as it had been before.

15. On March 9, 2022, the City and TDS unsuccessfully mediated the contract dispute. The next day after the mediation failed, we began to experience significant delays in service at Starcrest. TDS reduced personnel at Starcrest and added additional steps for dumping. Where it had previously rarely taken our collection trucks more than thirty minutes to dump a load at Starcrest, the trucks now began to experience regular delays of more than an hour (with some incidents of trucks waiting almost two hours) causing huge delays in servicing the City's routes and increasing operational issues. The day after the mediation, TDS also stated that it would accept no dead animals on any day at Starcrest and has refused to accept collected dead animals since this date. TDS then filed suit against the City.

16. On May 16, 2022, the City sent its first Notice to Cure to TDS advising TDS to cure the service delays issues and to accept dead animals at Starcrest in accordance with the Agreement. *A true and correct copy of the Agreement is attached as Exhibit D to the Counterclaim.* While there were minor improvements in the services times after receiving the Notice, long delays remained such that the City had to begin diverting trucks to other landfills for dumping to attempt to prevent the excessive delays from impacting operations. Additionally, TDS continued to refuse to accept dead animals. The parties later agreed to a second mediation.

17. In September 2022, pending mediation, the City sent a second Notice to Cure regarding TDS's failure to provide priority to City trucks as required by the Agreement and failure to maintain equipment at Starcrest. *A true and correct copy of the Agreement is attached as Exhibit E to the Counterclaim.* SWMD's collection drivers were reporting that TDS was not keeping with the proper ratio of servicing the City's haulers before other haulers required by the Agreement. Also, a scale at the facility was reportedly broken. Both issues were (on top of the ongoing service issues) contributing to continued delays in service of the City's trucks. Because

of the service issues and conduct of TDS, despite its best efforts, the City did not meet its tonnage requirements for 2022 for the first time during the decades-long duration of the Agreement.

18. On November 22, 2022, TDS sent its response to the City's default notices. *A true and correct copy of the Agreement is attached as Exhibit F to the Counterclaim.* The letter also served as TDS's Notice to Cure to the City regarding alleged defaults by the City related to the Agreement. The Notice gave the City until January 15, 2023 to cure the alleged defaults (including payment of over \$12,000,000 in alleged amounts owed). Per the Notice, if the City does not meet TDS's demands, TDS will deny the City access to Starcrest or, alternatively, will allow the City access so long as the City pays the standard gate rates charged to third-party customers (*i.e.*, not the reduced contractual rate in the Agreement). If the City refuses to pay the gate rate, TDS will prevent the City from using the Starcrest facility. Besides being inconsistent with the Agreement, using the public gate rate creates additional problems because the public gate rate uses a different measurement for disposal loads than the contractual measurement such that it would be impossible for the City to reconcile what amount should be paid for each load under the Agreement as opposed to what TDS will attempt to charge. As a clear indication that TDS intends to move forward with its threat to charge the public gate rate, TDS recently requested a list of City vehicles that would be accessing Starcrest and their cubic yard capacity. *A true and correct copy of the Agreement is attached as Exhibit G to the Counterclaim.*

19. At the end of the November Notice, the letter also exercised TDS's option to extend the Agreement for an additional two years to 2025.

20. By separate letter, TDS also sent its annual notice of proposed rate increase to the City, which acknowledged what the rate should be under the Agreement while also demanding a

higher rate. *A true and correct copy of the Agreement is attached as Exhibit H to the Counterclaim.* The City responded that the appropriate rate, and thus what the City will pay, is the rate set by the Agreement.

21. The City does not believe it has any obligation to pay the invoices sent by TDS or that there is any default by the City that needs to be cured. Therefore, the City will not meet TDS's demands in its November 22nd letter and, based on TDS's threats, as of Tuesday, January 17, 2023, TDS will begin to charge the City the public gate rate to dump at Starcrest. If the City fails to pay the invoices for the inflated fees, it is our understanding that TDS will then deny the City access to Starcrest.

22. This creates two immediate problems. First, charging the City the public gate rate is inconsistent with the contract as noted above and will make it impossible for the City to pay in accordance with the Agreement given the differences in how the public gate rate and contract disposal rate are calculated (see ¶18 above). In short, TDS will create a situation where the City has no ability to track the tonnage dumped at Starcrest so that the City can properly issue payment per the Agreement.

23. Second, even more critically, denying the City access to Starcrest would impact SWMD's ability to complete daily collections in a timely and efficient manner, which will have a ripple effect throughout the Department's operations (including increased costs for equipment and personnel). The City contracted for three disposal sites, and contracted for priority of service at Starcrest, because it is critical that the City have sufficient disposal access to meet its daily operational needs and failure to have such access, even for one day (or as little as a couple of hours), impacts the City's ability to provide the services depended on by its residents and, ultimately, public health if it cannot meet those needs. Waste services is an essential City-

service. If TDS were permitted to deny access to Starcrest and deprive the City of that disposal site, the City, and the public's health and safety, will be exposed to probable and imminent harm as the City's services will be immediately impacted.

24. I am a custodian of records for the SWMD. Attached to the Counterclaim are five documents:

Exhibit B — The Agreement (the Original Contract, First Amendment, and Second Amendment)

Exhibit C — TDS's 08/02/2021 correspondence invoking mediation

Exhibit D — The City's 5/16/2022 Notice of Default to TDS

Exhibit E — The City's 9/16/2022 Notice of Default to TDS

Exhibit F — TDS's 11/22/2022 correspondence regarding "default"

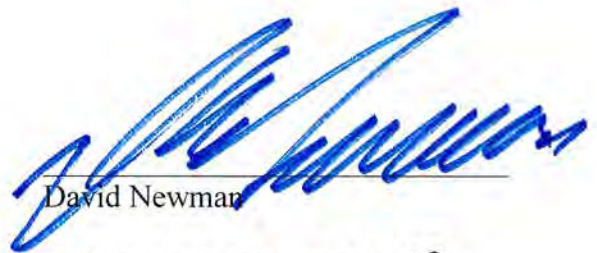
Exhibit G — TDS 1/11/2023 correspondence regarding truck information

Exhibit H — TDS's 11/22/2022 correspondence regarding 2023 rates

These documents are kept in the regular course of business, and it was the regular course of business of the City for an employee or representative with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; the record was made at or near the time or reasonably soon thereafter.

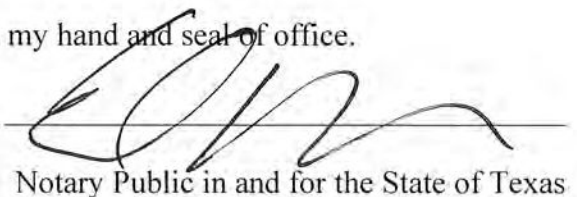
25. The attachments to the Counterclaim, Exhibits B through H, are the originals or exact duplicates of the originals."

Further affiant sayeth not.



David Newman

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 12 day of January, 2018, to certify which witness my hand and seal of office.



Notary Public in and for the State of Texas

EXHIBIT B

AN ORDINANCE

AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH TEXAS DISPOSAL SYSTEMS AND BROWNING-FERRIS INDUSTRIES FOR PROVISION OF SOLID WASTE DISPOSAL SERVICES, ALLOWING FOR TERMINATION UPON PERMIT ISSUANCE FOR THE REGIONAL ENVIRONMENTAL ENTERPRISE ZONE FACILITY, PROVIDING FOR TIPPING FEES AND OTHER TERMS OF THE CONTRACTS; AND APPROVING A BUDGET.

* * * * *

WHEREAS, the City of San Antonio finds it necessary to close and is involuntarily closing the Nelson Gardens Landfill, its facility for disposal of solid waste, and is now planning, designing, and developing a new facility which will serve such purposes, (a regional environmental enterprise zone) which will not be permitted and operational for several years; and

WHEREAS, it is necessary for the City to locate and contract for alternative landfill sites on an interim basis, and landfills are available, owned and operated by Texas Disposal Systems, Browning-Ferris Industries and others; and

WHEREAS, City staff has sought and been provided, informed and competitive proposals from those firms which have Class I landfill space available; and

WHEREAS, the City staff has prepared evaluation and comparison of those proposals; and

WHEREAS, the City Council has considered the cost of interim services, the quality of service, the various terms and conditions of the various proposals and is now prepared to select the proposals for negotiation and development of a detailed contract; and

WHEREAS, Texas Disposal Systems and Browning-Ferris Industries, the two firms which have been selected, have submitted proposals deemed in the best interests of the City; **NOW THEREFORE:**

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

SECTION 1. That the City Manager and his staff are authorized to finalize negotiation of contracts with Browning-Ferris Industries and Texas Disposal Systems for interim landfill services. The contracts should be prepared on the basis of the business terms set out in the proposals which have been submitted and addendums and additions thereto, incorporated herein by reference, and on file in the Office of the Director of Public Works.

SECTION 2. The final contracts shall provide for City use of the landfills as set out in the two proposals with volume allocated at approximately 100,000 tons each per year.

SECTION 3. Said contracts will provide for the City to have the option to terminate upon issuance of a permit for the Regional Environmental Enterprise Zone Facility which the City is currently planning.

SECTION 4. Fees to be charged the City (tipping fees) shall be in accordance with the proposals submitted. Attached hereto and incorporated herein are schedules showing the costs of each proposal (rate per year and also a cumulative total).

SECTION 5. The amount of \$2,900,000.00 is appropriated and encumbered into the Solid Waste Operating Fund for Fiscal Year 93-94 as follows: Fund No. 55-001, Activity No. 55-01-03, Index Code 482604 and authorized to be paid to Browning-Ferris Industries.

The amount of \$1,100,000.00 is appropriated and encumbered into the Solid Waste Operating Fund for Fiscal Year 93-94 as follows: Fund No. 55-001, Activity No. 55-01-03, Index Code 482604 and authorized to be paid to Texas Disposal Systems.

Funding for the following fiscal years will be provided for during the regular budget process and approved by the City Council. The contract shall contain an option for termination should insufficient funds be provided for such purposes in any future City budget.

PASSED AND APPROVED this _____ day of _____, 1993.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM:

Tom Finlay
City Attorney

78715
ORD. NO.

SEP 15 1993

Norma S. Rodriguez
CITY CLERK

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.

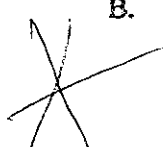
Subject only to the adjustments set forth in this Agreement, TDSL will accept the City's solid waste at the TDSL landfill at 7500 FM 1327, Buda, Texas, 78610, at the following rates:

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. ⁽¹⁶⁾

CITY OF SAN ANTONIO ⁽¹⁷⁾

ATTEST:

[Signature]
Title: City Clerk

[Signature]
ALEXANDER E. BRISENO
City Manager

ACCEPTED AND AGREED TO IN ALL THINGS this 4th day of January 1994. ⁽¹⁶⁾

TEXAS DISPOSAL SYSTEMS
LANDFILL INC.

ATTEST:

[Signature]
Title: Vice Pres. & Sec.

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

SUMMARY OF COST PROPOSALS

COMPANY Texas Disposal Systems
 TONNAGE 100,000 annually

OPTION# TIC
 DATE 9/9/93

| <u>YEAR</u> | <u>TONNAGE</u> | <u>RATE*</u> | <u>TOTAL</u> | <u>CUMULATIVE</u> |
|-------------|----------------|--------------|--------------|-------------------|
| 1 | 100,000 | \$12.65 | \$1,265,000 | \$1,265,000 |
| 2 | 100,000 | \$12.65 | \$1,265,000 | \$2,530,000 |
| 3 | 100,000 | \$14.15 | \$1,415,000 | \$3,945,000 |
| 4 | 100,000 | \$14.15 | \$1,415,000 | \$5,360,000 |
| 5 | 100,000 | \$14.65 | \$1,465,000 | \$6,825,000 |

TOTAL: 500,000 Avg.: \$13.65 \$6,825,000

PRESENT VALUE: \$5,566,226

ASSUMPTIONS: a) 100,000 is not "take or pay". b) Transportation is by City at \$2.00/ton. c) All waste is processed through Starcrest transfer station.

*Rate is to be adjusted as follows:

Rate per ton shown \$12.65 first 2 years

Subtract \$2.00 per ton (City will provide transportation to disposal site) -2.00

To be paid to TDS \$10.65

Includes \$1.25 State fee (base rate is \$9.40 per ton).

SUMMARY OF COST PROPOSALS

COMPANY BROWNING-FERRIS INDUSTRIES
 TONNAGE 100,000 annually

OPTION# B3A
 DATE 9/9/93

| <u>YEAR</u> | <u>TONNAGE</u> | <u>RATE*</u> | <u>TOTAL</u> | <u>CUMULATIVE</u> |
|-----------------------|----------------|-------------------------|--------------------|-------------------|
| 1 | 100,000 | \$11.25 | \$1,125,000 | \$1,125,000 |
| 2 | 100,000 | \$13.25 | \$1,325,000 | \$2,450,000 |
| 3 | 100,000 | \$14.25 | \$1,425,000 | \$3,875,000 |
| 4 | 100,000 | \$14.25 | \$1,425,000 | \$5,300,000 |
| 5 | 100,000 | \$14.25 | \$1,425,000 | \$6,725,000 |
| <u>TOTAL:</u> | | Avg.: <u>\$13.45</u> | <u>\$6,725,000</u> | |
| <u>PRESENT VALUE:</u> | | | <u>\$5,475,064</u> | |

ASSUMPTIONS: a) \$9.00/ton tonnage billed first, this amount second. b) No growth in volume. c) Years 3, 4 and 5 include 5% CPI increase. d) BFI will accept 100,000 tons.

*Rate is to be adjusted as follows:

| | | |
|------------------------------|-------------|------------|
| Rate shown per ton | \$11.25 | first year |
| State fee | <u>1.25</u> | |
| Base rate | \$10.00 | per ton |

The quoted rate includes the \$1.25 State fee (base rate is \$10.00 per ton)

CITY OF SAN ANTONIO

ADDENDUM

SUBJECT: Request for Proposal- TYPE IV SOLID WASTE DISPOSAL SERVICE (93-226)
- scheduled to open April 19, 1993; dated March 30, 1993

and

SUBJECT: Request for Proposal- MUNICIPAL SOLID WASTE DISPOSAL SERVICE (93-227)
- scheduled to open April 19, 1993; dated March 30, 1993

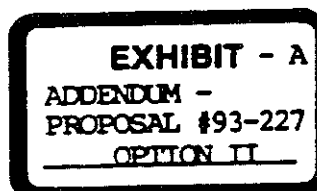
FROM: Archie J. Titzman, Director, Purchasing and General Services

Date: April 9, 1993

THE ABOVE MENTIONED REQUESTS FOR PROPOSALS ARE HEREBY AMENDED AS FOLLOWS:

The changes are as follows:

1. The bidders may use any standard form used for performance and bid bonds by issuing agencies (Section 4, Page 4).
2. For the Type IV landfill bid, a performance bond and bid bond are required, but the bond issued for Type I landfill services may also be used to cover the liability on Type IV, provided legal documents are prepared tying the one bond to both bids (Type IV, Section 4, Page 4).



CITY OF SAN ANTONIO
DEPARTMENT OF PUBLIC WORKS

MARCH 30, 1993

CONTRACT DOCUMENTS

&

SPECIFICATIONS

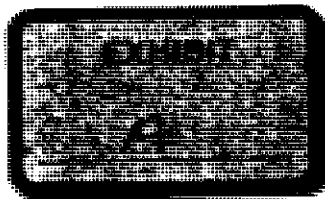
FOR

MUNICIPAL SOLID WASTE DISPOSAL SERVICE

PREPARED BY:

Public Works Department
City of San Antonio

(Proposal #93-227)



Sealed Proposals are invited and will be received by the City of San Antonio, Texas, at the Municipal Solid Waste Disposal Service.

Proposals must be made on the Proposal Forms and in accordance with instructions to Proponents furnished by the Department of Public Works (the "Department"). Copies of the Proposed Forms are attached hereto.

The defined terms appearing in the General Specifications apply to all contract documents.

Proposals must be made upon forms published by the Department. The Department will furnish copies of the contract documents and Form of Contract to prospective Proponents upon request.

Proposals, along with five copies of the Proposal, must be delivered to, and be on file with, the Office of the City Clerk second floor, City Hall, 100 Military Plaza, San Antonio, TX 78283-3966 on or before April 19, 1993 at 2:00 p.m. The envelope containing the Proposal must be sealed and plainly marked "Proposal for Municipal Solid Waste Disposal Service".

Proposals will be evaluated and a selection will be made within 120 days. The selected Proponent will be awarded the contract through an ordinance of the City approving and adopting the contract documents, providing for its enforcement and penalties as provided by law.

A proposal bond or certified check must accompany the Proposals, in accordance with the Instructions to Proponents. The City reserves the right to reject any or all Proposals, to waive irregularities and/or informalities in any Proposal, and to make an award in any manner, consistent with law, deemed in the best interest of the City.

City of San Antonio
By: Department of Public Works
City of San Antonio

Date: March 30 , 1993

1. RECEIPT AND OPENING OF PROPOSALS

The City of San Antonio (the "City") invites and will receive Proposals on the forms attached hereto, all information on which must be appropriately filled in. Proposals will be received at the office of the City Clerk, City Hall, second floor, 100 Military Plaza. P.O. Box 839966, San Antonio, Texas 78283-3966, and plainly marked "Proposal for Municipal Solid Waste Disposal Service".

2. INSTRUCTIONS

All requests for clarification on any item in this RFP shall be submitted in writing by April 12, 1993. A pre-proposal conference will be held at Public Works, 114 W. Commerce, 6th floor, Conference Room on April 5, 1993 at 1:00 p.m. Any amendments or clarifications will be developed as expeditiously as possible and distributed to all proponents.

Selection of contractor will be made on the basis of information contained in the proposals. At its discretion, the City may ask for a direct presentation.

3. PREPARATION OF THE PROPOSAL

All Proposals must be prepared and signed by the Proponent in the form attached hereto. Additional copies of the Proposal Form may be obtained from the City upon request. All blank spaces in each Proposal Form together with appropriate schedules must be (completed in full in ink) or typewritten, in both words and figures.

If a rate price already entered by the Proponent is to be altered, it shall be crossed out with ink and the new unit price or lump sum bid entered above or below it, and initialed by the Proponent in ink.

The Proposals received will be compared on the basis of the summation of the lump sum amounts bid and the products of the quantities of items listed at the rate price bid. In case of a discrepancy between the total shown in the Proposal and that obtained by adding the products of the quantities of items at the unit prices, the unit prices as written out in words in the Proposal Form shall govern any errors found in said products, and in addition, will be corrected.

Each Proposal, together with appropriate schedules, must be submitted in a sealed envelope bearing on the outside the name of the Proponent, his address, phone number, fax number, and plainly marked "Proposal for Municipal Solid Waste Disposal Service". If forwarding by mail, the sealed envelope containing the Proposal must be enclosed in another envelope addressed as specified in the Proposal. The City may consider informal any Proposal not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all Proposals.

Any Proposal received after the time and date specified above shall not be considered.

4. PROPOSAL SECURITY AND EVIDENCE OF INSURANCE

Each Proposal must be accompanied by a bond or a certified check of the Proponent, drawn on a national bank, in an amount equal to one million dollars (\$1,000,000.00), as a guarantee on the part of the proponent that he will, if called upon to do so, accept and enter into a contract on the attached form (or such form as may be mutually agreed upon by the City and the selected Proponent), to perform the work covered by such proposal and the rates stated therein and to furnish a corporate surety for its faithful and entire fulfillment. Checks and bonds will be returned promptly after the City and the selected Proponent have executed the contract, or, if no proponent's Proposal has been selected within one hundred twenty (120) days after the date of the opening of Proposals, upon demand of the Proponent at any time thereafter, so long as he has not been notified of the acceptance of his Proposal. Each Proposal must also be accompanied by a certificate of insurance evidencing the coverages set forth in Section 9.00 of the General Specifications.

5. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO THE CONTRACT

The contract shall be deemed as having been awarded when formal notice of award shall have been mailed by the City to the Proponent by certified mail, return receipt requested.

The Proponent to whom the contract shall have been awarded will be required to execute five (5) copies of the contract on the form attached hereto (or such form as may mutually be agreed upon by the City and the selected Proponent) and to furnish insurance certificates, all as required. In case of his refusal or failure to do so within twenty (20) days after his receipt of formal notice of award, Proponent will be considered to have abandoned all his rights and interests in the award, Proponents proposal security may be declared forfeited to the City as liquidated damages and the award may then be made to the next best qualified Proponent or the work may be re-advertised for Proposals as the City may elect. Such forfeited security shall be the sole remedy of the City.

6. SECURITY FOR FAITHFUL PERFORMANCE

The Proposal shall be accompanied by a letter from a corporate surety satisfactory to the City stating that the Performance Bond will be furnished by it to the person submitting the Proposal in the event he is the successful Proponent. Such letter is to be signed by an authorized representative of the surety together with a certified and effectively dated copy of his power of attorney attached thereto.

The successful Proponent will be required to furnish a performance bond as security for the faithful performance of this contract. Said performance bond must be in an amount equal to the full contract price, but said bond may provide for a pro rated reduction therein annually over the term of the contract.

certificate from the surety company and full shall accompany the bond.

The form of the bond is appended hereto.

The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas.

7. POWER OF ATTORNEY

Attorneys-in-fact who sign bonds must file with each bond a certified and effectively dated copy of their power of attorney.

8. SCOPE OF WORK

The work under this contract shall consist of the items contained in the Proposal, including all incidentals necessary to fully complete said work in accordance with the contract documents.

9. CONDITIONS

Each proponent shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the contract. Proponents shall thoroughly examine and be familiar with the General Specifications.

The contractor will provide a Disposal Site for disposal of municipal solid waste collected by the City. It is also expected that the Proponent will divulge information concerning the conditions at the disposal site and at other locations that may affect this work.

The failure or omission of any Proponent to receive or examine any form, instrument, addendum or other document, or to acquaint himself with conditions existing, shall in no way relieve him of any obligations with respect to his Proposal or to the contract. The City shall make all such documents available to the Proponents.

The Proponent shall make his own determination as to conditions and shall assume all risks and responsibility and shall complete the work in and under conditions he may consider or create, without extra cost to the City.

The Proponent's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the work to be performed shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full in the contract.

10. ADDENDA AND EXPLANATIONS

Explanations desired by a prospective Proponent shall be requested from the City in writing, and if explanations are necessary, a reply shall be made in the form of an Addendum, a copy of which will be forwarded to each Proponent. Every request for such explanation shall be in writing addressed to Mr. John L. German, P.E., Director of Public Works, Public Works Department, City of San Antonio, P.O. Box 839966, San Antonio,

previous work.
Addenda issued to prospective Proponents prior to date of receipt of Proposals shall become a part of the contract documents, and all Proposals shall include the work described in the Addenda.

No inquiry received within seven (7) days of the date fixed for the submission and opening of Proposals will be given consideration.

Any and all such interpretations and any supplemental instructions will be in the form of written Addenda, which, if issued, shall be mailed by certified mail, return receipt requested, to all prospective Proponents (at the respective addresses furnished for such purposes), not later than five (5) days prior to the date fixed for the opening of Proposals.

The City reserves the right to request additional information from contractor during any phase of the proposal evaluation process. The City reserves the right to negotiate minor conditions prior to contract award.

The City shall not be responsible for any costs incurred by the contractors in connection with this RFP. Contractors shall bear all costs associated with proposal preparation and submission, attendance at the pre-proposal conference and attendance at final selection interview.

11. NAME, ADDRESS AND LEGAL STATUS OF THE PROPONENT

The Proposal must be properly signed in ink and the address of the Proponent given. The legal status of the Proponent, whether corporation, partnership, shall also be stated in the Proposal.

A corporation shall execute the Proposal by its duly authorized officers in accordance with its corporate by-laws and shall also list the State in which it is incorporated. A partnership Proponent shall give full names and addresses of all partners. Partnership and individual Proponents will be required to state in the Proposal the names of all persons interested therein.

The place of residence of each Proponent, or the office address in the case of a firm or company, with county and state and telephone number, must be given after his signature.

If the Proponent is a joint venture consisting of a combination of any or all of the above entities, each joint venturer shall execute the Proposal.

Anyone signing a Proposal as an agent of another or others must submit with his Proposal, legal evidence of his authority to do so.

12. COMPETENCY OF PROPONENT

The opening and reading of the Proposal shall not be construed as an acceptance of the Proponent as a qualified, responsible Proponent. The City reserves the right to determine the competence and responsibility of a Proponent from its knowledge of the Proponent's qualifications and from other sources.

data regarding whether he is a qualified, responsible Proponent. The Proponent is required to furnish the following information sworn to under oath by him:

- (a) An itemized list of the Proponent's equipment available for use on the contract.
- (b) A copy of the latest available financial statements of the Proponent (or its parent corporation if individual subsidiary or division financial statements are not prepared and generally available) certified by a nationally recognized firm of independent certified public accountants.
- (c) Evidence that the Proponent is in good standing under the laws of the State of Texas, and, in the case of corporations organized under the laws of any other State, evidence that the proponent is licensed to do business and in good standing under the laws of the State of Texas or a sworn statement that it will take all necessary action to become so licensed if its Proposal is accepted.

In the event that the City shall require additional certified supporting data regarding the qualifications of the Proponent to determine whether he is a qualified, responsible Proponent, the Proponent may be required to furnish any or all of the following information sworn to under oath by him:

- (a) Evidence that the Proponent is capable of performing services as required in the contract documents.
- (b) Evidence, in form and substance satisfactory to City, that Proponent has been in existence as a going concern for more than five (5) years and possesses not less than five (5) years actual operating experience as a going concern in Type I landfill operation.
- (c) Evidence, in form and substance satisfactory to City, that Proponent possesses as a going concern the managerial and financial capacities to perform all phases of the work called for in the contract documents.
- (d) Evidence, in form and substance satisfactory to City, that Proponent's experience as a going concern in Type I landfill operation derives from operations of comparable size to that contemplated by the contract documents.
- (e) Contractor guarantees that contractor has adequate landfill capacity for the duration of the contract period. During the contract period, should the estimated facility life be less than three (3) years, the contractor must notify the City in writing of this status and explain steps being taken by contractor to comply with contractual obligations.
- (f) Such additional information as will satisfy the City that the Proponent is adequately prepared to fulfill the contract.

requirements of this proposal and subsidiaries of the parent.
qualifications of its parent corporation and subsidiaries of the parent.

13. Disqualification of Proponent

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following causes, among others, may be considered sufficient for the disqualification of a proponent and the rejection of his proposal.

- (a) Evidence of collusion among Proponents.
- (b) Lack of competency as revealed by either financial statements, experience or equipment statements as submitted, or other factors.
- (c) Lack of responsibility as shown by past work, judged from the standpoint of workmanship as submitted.
- (d) Default on a previous City contract for failure to perform.

14. BASIS OF THE PROPOSAL

Proposals with respect to "Municipal Solid Waste Disposal Service" are solicited on the basis of rates for operation of the landfill. Proposals will be compared on the basis of the rates proposed. The rates as written out in words in the Proposals shall govern and any errors found will be corrected.

15. QUANTITIES AND DISPOSAL RATE BIDS

During the course of this contract the City will transport solid waste to sites located within Bexar County or in close proximity thereto. Upon receipt and analysis of the submitted bids, the city reserves the right to award a single or multiple contracts. All submitted bids must include the cost of operation and compliance with Texas Water Commission regulations inclusive of Subtitle D compliance cost as may be effective after October 9, 1993. Future disposal cost increases after the first two years, will be tied to the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (All Items) and will be capped at a level not to exceed a 5% increase per contract year during and after the third year of the contract. The City of San Antonio is requesting individual bids for the following Disposal Service Options:

OPTION I

Solid wastes will be transported to the City's transfer station. This facility is permitted to handle 100,000 tons of waste per year. Under this option, the City guarantees the delivery of 60,000 tons of waste per year. During the course of this contract, the City will operate and maintain the transfer station. However, the City will consider the leasing of its long hauling transportation equipment to the successful contractor. The cost attributed to hauling, for the purpose of this contract, will be estimated \$1.00 per mile.

B. Disposal at the contractors disposal facility.

OPTION II

City will guarantee the delivery of 50,000 tons of solid wastes at the contractor's disposal facility. It is anticipated that this tonnage may increase to as much as 100,000 tons, but the City does not guarantee this amount.

Disposal at the contractors disposal facility.

OPTION III

City will guarantee the delivery of 100,000 tons of solid wastes at the contractor's disposal facility. It is anticipated that this tonnage may increase to as much as 150,000 tons, but the City does not guarantee this amount.

Disposal at the contractors disposal facility.

OPTION VI

City will guarantee the delivery of 200,000 tons of solid wastes at the contractor's disposal facility. It is anticipated that this tonnage may increase to as much as 350,000 tons, but the City does not guarantee this amount.

Disposal at the contractors disposal facility.

16. METHOD OF AWARD

The City reserves the right to accept any Proposal or to reject all Proposals, and to waive defects or irregularities in any Proposal. In particular, any alteration, erasure or interlineation of the contract documents and of the Proposal shall render the accompanying Proposal irregular and subject to (but not requiring) rejection by the City. The City intends that the contract shall be awarded within one hundred twenty days (120) following the date the Proposals are submitted. The contract shall become effective 10 days after City Council approval.

CONTRACTOR'S PROPOSAL

FOR

MUNICIPAL SOLID WASTE DISPOSAL SERVICE

TO: The Director of Public Works of the City of San Antonio

Proposal of _____

(a partnership) (a corporation duly organized under
the laws of the State of _____),

The undersigned having carefully read and considered the terms and conditions of the contract documents for Municipal Solid Waste Disposal Service for the City of San Antonio, does hereby offer to perform such services on behalf of the City, of the type and quality and in the manner described, and subject to and in accordance with the terms and conditions set forth in the contract documents at the rates (expressed in words and figures) hereinafter set forth:

DISPOSAL RATES

During the course of this contract the City will transport the majority of its solid waste to sites located within Bexar County or in close proximity thereto. Upon receipt and analysis of the submitted bids, the City reserves the right to award a single or multiple contracts. All submitted bids must include the cost of operation and compliance with Texas Water Commission regulations inclusive of Subtitle D compliance cost as may be effective after October 9, 1993. Future disposal cost increases after the first two years, will be tied to the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (All Items) and will be capped at a level not to exceed a 5% increase per contract year during and after the third year of the contract. The City of San Antonio is requesting individual bids for the following Disposal Service Options:

OPTION I

Solid wastes will be transported to the City's transfer station. This facility is permitted to handle 100,000 tons of waste per year. Under this option, the City guarantees the delivery of 60,000 tons of waste per year. During the course of this contract, the City will operate and maintain the transfer station, though the City will consider the leasing of its long hauling transportation equipment. The cost attributed to hauling, for the purpose of this contract, is estimated at \$1.00 per mile.

\$ _____ per ton (year one and two)

_____ written amount

B. Disposal at the contractor's disposal facility

\$ _____ per ton (year one and two)

_____ written amount

OPTION II

City will guarantee the delivery of 50,000 tons of solid wastes at the contractor's disposal facility. It is anticipated that this tonnage may increase to 100,000 tons, but the City does not guarantee this amount.

Disposal at the contractors disposal facility

\$ _____ per ton (year one and two)

_____ written amount

OPTION III

City will guarantee the delivery of 100,000 tons of solid wastes at the contractor's disposal facility. It is anticipated that this tonnage may increase to 150,000 tons, but the City does not guarantee this amount.

Disposal at the contractors disposal facility

\$ _____ per ton (year one and two)

_____ written amount

City will guarantee the delivery of 200,000 tons of solid waste at the contractor's disposal facility. It is anticipated that tonnage may increase to 350,000 tons, but the City does not guarantee this amount.

Disposal at the contractors disposal facility

\$ _____ per ton (year one and two)

_____ written amount

_____ PROPONENT

By: _____

Principal Office

Address: _____

_____ (City) (County) (State)

_____ (Phone Number) (Fax Number)

1.00 DEFINITIONS

- 1.01 City
- 1.02 Contract Documents
- 1.03 Contractor
- 1.04 Department
- 1.05 Director
- 1.06 Disposal
- 1.07 Disposal Site
- 1.08 Hazardous Waste
- 1.09 Landfill
- 1.10 Municipal Solid Waste
- 1.11 Residential Unit
- 1.12 Special Waste
- 1.13 Vehicle

2.00 SCOPE OF WORK

3.00 OPERATION OF LANDFILL

- 3.01 Materials to be Accepted for Disposal
- 3.02 Health and Safety
- 3.03 Inspection
- 3.04 Hours of Operation
- 3.05 Holidays
- 3.06 Scale
- 3.07 Office
- 3.08 Recycling Area
- 3.09 Discontinued/Interruption of operation
- 3.10 Change in Operation Plan

5.00 EFFECTIVE DATE AND TERM

6.00 NON-DISCRIMINATION

7.00 INDEMNITY

8.00 LICENSE AND TAXES

9.00 INSURANCE

10.00 BOND

10.01 Performance Bond

10.02 Power of Attorney

10.03 Sole Remedy

11.00 RECORDS, REPORTS AND AUDIT RIGHTS

12.00 BASIS AND METHOD OF PAYMENT

12.01 Disposal Rates

12.02 Contractor Billings to City

13.00 TRANSFERABILITY OF CONTRACT

13.01 Written City Consent of Contractor Assignment

13.02 Written Notification to City of Assignment

13.03 City Review of Assignment

13.04 City Approval/Disapproval of Assignment

13.05 Nullification of Assignment

13.06 Subcontractors

13.07 City and Contractors Rights

15.00 NOTICES

16.00 AMENDMENTS

17.00 COUNTERPARTS

18.00 SEVERABILITY

19.00 PROGRAM MANAGEMENT

20.00 ENTIRE AGREEMENT

1.01 City - City of San Antonio, Texas

1.02 Contract Documents - The Request for Proposals, Instructions to Proponents, Contractor's Proposal, General Specifications, the Contract, Performance Bond and any addenda or changes to the foregoing documents agreed to by the City and the Contractor.

1.03 Contractor - The person, corporation or partnership performing disposal services and Landfill Operation under contract with the City.

1.04 Department - The Department of Public Works

1.05 Director - The Director of Public Works or his designee.

1.06 Disposal - The deposition of municipal solid waste at a permitted Type I facility operated in accordance with existing Federal, State, and local regulations.

1.07 Disposal Site - A Solid Waste depository, physically located in the City or in close proximity thereto, including but not limited to the Landfill or other sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licences, permits or approvals to receive for processing or final disposal of municipal solid waste and special waste.

1.08 Hazardous Waste-shall mean any liquid or solid waste identified or listed as a hazardous waste by the administrator of the U.S. Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976.

1.09 Landfill- The real property owned or leased by the contractor described in Annex "A" attached to the Contract, which property is to be operated by, the contractor as a sanitary landfill.

1.10 Municipal Solid Waste - Shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleaning, dead animals, brush, yard waste tires, large applicancies and furniture, construction material, earth, sludge, and all other solid waste, other than industrial solid waste.

1.11 Residential Solid Waste-All solid waste generated by a generator at a Residential Unit within the corporate limits of the City occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four or less contiguous or separate single-family dwelling units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit.

COMBINATION. The physical or chemical characteristics or biological properties require special handling and disposal to protect the human health or the environment. Special wastes include, but are not limited to:

- (a) Household hazardous waste;
- (b) Infectious and hospital related wastes;
- (c) Municipal water and wastewater treatment plant sludges;
- (d) Grease and grit trap waste;
- (e) Slaughterhouse wastes;
- (f) Dead animals;
- (g) Drugs, contaminated foods, or drink products, other than those contained in normal household waste;
- (h) Pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;
- (i) Asbestos or materials containing asbestos;
- (j) Contaminated soil; and
- (k) Tires

All special wastes may need pre-treatment before they are disposed of.

1.13 Vehicle - Shall mean any device used to transport solid wastes and include, but are not limited to cars, pickups, vans, dump trucks, trailers, roll-off containers, tractor trailers, rear and side loading packer trucks, brush trucks, and sludge haulers.

2.00 SCOPE OF WORK

The work under the contract shall consist of the items contained in the Proposal, including all the supervision, materials, equipment, labor and all other items necessary to complete said work in accordance with the contract documents.

3.00 OPERATION OF TYPE I LANDFILL

3.01 Materials to be Accepted for Disposal - The contractor shall accept for disposal municipal solid waste and special waste (Type I, Type IV, and Class II) brought to the Landfill. The waste will be disposed of according to generally accepted standards for the operation of a Type I landfill. The Contractor shall have the exclusive right to operate said Landfill and shall have complete control over same, subject, however, to the continuous supervision of State agencies having jurisdiction thereover.

3.02 Health and Safety - The contractor shall continuously take such reasonable measures as may be necessary and proper to control and eliminate fire, smoke, odor, rodents, flies and all other public health menaces and pests on and around the Landfill and for the safety of City personnel while on contractor's facility. The contractor shall be solely responsible for obtaining all necessary licenses, permits and approvals of governmental authorities and for any expenditures (cover material, leachate treatment, etc.) which are necessary or required to be made on the Type I Landfill (or any alternate Disposal Site which becomes the Landfill) pursuant to the requirements of any local, Federal or State law.

the health and safety of the public. Such inspection, at any time or times which may be reasonable for such inspection, preferably during the hours set out in Section 3.04, however, such inspections shall be made only by authorized personnel of the City or of the agencies thereof named herein. Such inspection shall not interfere with the orderly operation of the Landfill.

3.04 Hours of Operation - The contractor shall keep the Landfill open to accept municipal solid waste for disposal from Monday through Saturday of each week at least between the hours of 6:00 a.m. through 6 p.m. Exceptions to Landfill hours shall be affected only upon the mutual agreement of the City and contractor, or when contractor reasonably determines that an exception is necessary for emergencies or in order to complete collection on existing collection routes due to unusual circumstances or holidays.

3.05 Holidays - The holiday schedule, for the purpose of the contract, shall coincide with the City's approved holiday schedule, unless other arrangements are mutually agreed upon.

3.06 Scale - The contractor agrees to install, construct, certify and maintain in good working order, a scale to be used in weighing Refuse transported to the Landfill. Basis for disposal fee shall be the scale readings in increments of 100 pounds. Operation of this scale must be maintained during all landfill operation hours. In the event that the scale is not working, basis for calculating vehicle weight shall be made by multiplying the base rate per ton times the average of the last three (3) times that vehicle's loaded weight loaded weight was measured by a certified scale. City vehicles will be given disposal services on an equal basis with contractor's vehicles.

3.07 Office - The contractor shall maintain an office or such other facilities within the City through which he can be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 6:00 a.m. to 6:00 p.m. on regular operation days. An emergency contact person and telephone number must be maintained throughout contract period.

3.08 Recycling Area - Contractor must provide a ten (10) acre area at the disposal site for the city to transfer recyclable materials collected through the City's Curbside Recycling Program and to representatives of the recycling markets, at no cost. This site must provide a safe, and accessible, work environment.

3.09 Discontinued/Interruption of Operations - Should the contractor be required to discontinue or, interrupt operations at the contracted disposal facility, costs incurred by the City will be passed on to the contractor or City may terminate the contract.

3.10 Change in Operation Plan - Changes in operational plan requires mutual agreement by both the City and the contractor.

The contractor shall conduct operations under this contract in compliance with all applicable laws; provided, however, that the General Specifications shall govern the obligations of the contractor where there exists conflicting ordinances of the City on the subject.

5.00 Effective Date and Term

This contract shall be effective upon the execution of the contract and performance of such contract shall become effective ten (10) days after City Council approval. This contract shall be in effect for a period of five (5) years from the effective date. At the mutual consent of the City and contractor, the contract may be optionally extended for five consecutive one (1) year periods.

6.00 Nondiscrimination

The contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

7.00 Indemnification

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 and such indemnity shall apply where any such claims, losses, damages, causes of action, suits or liability arise in part from the negligence of CITY or its agents, employees, officers, directors or representatives and CONTRACTOR further agrees to pay all expenses in defending against any such claims made against CITY including but not limited to investigation costs, attorney's fees and court costs, except to the extent that the injury death or damage is caused by the sole active negligence of CITY, its agencies, employees, officers, directors and representatives. It is the express intention of CITY and CONTRACTOR that the indemnity provided for in this paragraph is indemnity by CONTRACTOR to indemnify and protect CITY from the consequences of CITY's negligence, alleged negligence, including where same is the concurring cause of injury, death or damage; excluding only where the cause of the injury, death or damage was the sole active negligence of CITY, or its agents, employees, officers, directors or representatives provided that such indemnity shall not exceed the limits of insurance coverage required by this Agreement. 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

own expense, to the extent of any of its obligation under this paragraph.

8.00 Licenses and Taxes

The contractor shall obtain all franchises, licenses, and permits and promptly pay all taxes required by the City and by the State and at its sole cost and expense.

9.00 Insurance

The contractor shall at all times during the contract maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provisions of Section 7.00. All insurance shall be by insurers and for policy limits acceptable to the City and before commencement of work hereunder the contractor agrees to furnish the City certificates of insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force. The certificate shall contain the following express obligations:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

For the purpose of the contract, the contractor shall carry the following types of insurance in at least the limits specified below:

| Coverages | Limits of Liability |
|----------------------------|----------------------------|
| Workmen's Compensation | Statutory |
| Employer's Liability | \$500,000 |
| Bodily Injury Liability | \$500,000 ea. occurrence |
| Except Automobile | \$1,000,000 aggregate |
| Property Damage Liability | \$500,000 ea. occurrence |
| Except Automobile | \$1,000,000 aggregate |
| Automobile Bodily Injury | \$500,000 each person |
| Liability | \$1,000,000 ea. occurrence |
| Automobile Property Damage | \$500,000 ea. occurrence |
| Liability | |
| Excess Umbrella Liability | \$5,000,000 ea. occurrence |

As an alternative to the above, contractor may insure the above public liability and property coverages under a plan of self insurance. The coverages may be provided by the contractor's parent corporation.

10.00 Bond

10.01 Performance Bond

(a) The contractor will be required to furnish a corporate surety bond as security for the performance of this contract. Said surety bond must be in the amount of \$1 million.

certificates shall accompany the bond.

(c) The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Texas.

10.02 Power & Attorney - Attorneys in fact who sign performance bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

10.03 Sole Remedy - The City's sole remedy for breach of contract under this contract or failure to perform shall be to make demand under the terms of the Performance Bond.

11.00 Records, Reports, and Audit Rights

11.01 Contractor shall maintain books and financial records in accordance with generally accepted accounting principles. Such book and financial records, together with any other documentation necessary for verification of contractor's compliance with the terms of this Proposal, shall be made available to the City, upon the Director's request. The City shall have the authority to await, examine, and make excerpts or transcripts from said books and records.

11.02 Contractor shall maintain records in a manner acceptable to the City, of tonnage disposed. This report shall be generated on a monthly basis and shall accompany the bill to the City, or as requested by the City.

11.03 City shall have the right to have an on-site monitor at the scale operation daily monitoring each vehicle tonnage.

12.00 Basis and Method of Payment

12.01 Disposal Rates - For disposal services required to be performed, charges shall not exceed the rates as fixed by the contract documents.

12.02 Contractor Billings to City - The contractor shall bill the City for service rendered within ten (10) working days following the end of the month, and the City shall pay the contractor on or before the 30th working day following the date of receiving the billing. Such billing and payment shall be based on the rates set forth in the contract documents. Billing and/or concerns should be forwarded to the Solid Waste Office, 1940 Grandstand, San Antonio, Texas 78238.

13.00 Transferability of Contract

13.01 Written City Consent of Contractor Assignment. No assignment of the contract or any right accruing under this contract shall be made in whole or in part by the contractor without prior express written consent of the City, which consent shall not be unreasonably withheld; in the event of any assignment, the assignee shall assume the liability of the contractor and shall meet all of the requirements met at the time of awarding the original contract.

WRITING USE CASES
proposed assignment. Contractor shall provide the CITY with a copy of the proposed assignment.

13.03 City's Review of Assignment. The CITY shall review the proposed assignment and shall within thirty (30) days of initial receipt, respond to CONTRACTOR in writing announcing the CITY's approval, proposed modifications, or disapproval of the proposed assignment.

13.04 City Approval/Disapproval of Assignment. The CITY expressly reserves the right to disapprove any proposed assignment for reasonable cause and agrees to provide CONTRACTOR with a written explanation outlining why a proposed assignment is viewed by CITY to be adverse to the CITY's interests. City shall make a good faith effort to meet this 30 day notice requirement; however, City's failure to meet such timeframe should not allow assignment to go forward without City approval.

13.05 Nullification of Assignment. Any assignment by CONTRACTOR executed in violation of this submittal, review, and approval procedure is acknowledged by CONTRACTOR to be void as to its effects upon the CITY, and CONTRACTOR will continue to be bound by the terms and conditions of this Agreement.

13.06 Subcontractors. Use of SUB-CONTRACTORS by the CONTRACTOR or subsidiaries or affiliate firms of the CONTRACTOR for technical or professional services shall not be considered an assignment of a portion of this Agreement. However, the CITY reserves the right to approve in writing the use of specific subcontractors.

13.07 City and contractor rights. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

14.00 COURT OF JURISDICTION

If the CITY and CONTRACTOR cannot agree on the use of arbitration to resolve any outstanding claims, counter claims, disputes, and other matters in question arising out of or relating to this Agreement, then resolution of same shall be decided by a court of competent jurisdiction in the State of Texas.

All notices herein required or permitted to be given in writing, and shall be deemed sufficiently given and served upon the other party if sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

City mailing address:

City Of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Attn: Public Works Director

Contractor's mailing address:

Item To be provided by contractor once contract is awarded.

16.00 AMENDMENTS

No amendments to this contract may be made except by a written agreement signed by both Parties.

17.00 COUNTERPARTS

This contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one of the same instrument.

18.00 SEVERABILITY

If any provision of this contract is unenforceable, the remaining provisions shall not be affected but shall remain in full force and effect.

19.00 PROGRAM MANAGEMENT

19.01 The Director of Public Works will appoint an individual to be the City's Program Monitor for this Contract. This individual will monitor on a daily basis the operations of the Contractor, and function as a liaison between the Contractor and the City.

specify the other personnel who would be assigned to the role of each staff member and the person who will assume the duties in his/her absence, including emergency telephone and pager numbers.

20.00 ENTIRE AGREEMENT

The Contract Agreement and all attachments thereto will contain the entire Agreement between the Parties, and will supersede all previous written or oral negotiations, commitments, proposals and writings.

SUMMARY OF COST PROPOSALS

COMPANY Texas Disposal Systems
 TONNAGE 100,000 annually

OPTION# TIC
 DATE 9/9/93

| <u>YEAR</u> | <u>TONNAGE</u> | <u>RATE*</u> | <u>TOTAL</u> | <u>CUMULATIVE</u> |
|-----------------------|----------------|-------------------------|--------------------|-------------------|
| 1 | 100,000 | \$12.65 | \$1,265,000 | \$1,265,000 |
| 2 | 100,000 | \$12.65 | \$1,265,000 | \$2,530,000 |
| 3 | 100,000 | \$14.15 | \$1,415,000 | \$3,945,000 |
| 4 | 100,000 | \$14.15 | \$1,415,000 | \$5,360,000 |
| 5 | 100,000 | \$14.65 | \$1,465,000 | \$6,825,000 |
| TOTAL: | <u>500,000</u> | Avg.: <u>\$13.65</u> | <u>\$6,825,000</u> | |
| PRESENT VALUE: | | | <u>\$5,566,226</u> | |

ASSUMPTIONS: a) 100,000 is not "take or pay". b) Transportation is by City at \$2.00/ton. c) All waste is processed through Starcrest transfer station.

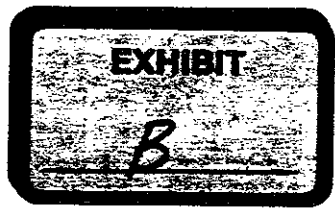
*Rate is to be adjusted as follows:

Rate per ton shown \$12.65 first 2 years

Subtract \$2.00 per ton (City will provide transportation to disposal site) -2.00

To be paid to TDS \$10.65

Includes \$1.25 State fee (base rate is \$9.40 per ton).



SUMMARY OF COST PROPOSALS

COMPANY BROWNING-FERRIS INDUSTRIES
 TONNAGE 100,000 annually

OPTION# B3A
 DATE 9/9/93

| <u>YEAR</u> | <u>TONNAGE</u> | <u>RATE*</u> | <u>TOTAL</u> | <u>CUMULATIVE</u> |
|---------------|----------------|-------------------------|--------------------|-------------------|
| 1 | 100,000 | \$11.25 | \$1,125,000 | \$1,125,000 |
| 2 | 100,000 | \$13.25 | \$1,325,000 | \$2,450,000 |
| 3 | 100,000 | \$14.25 | \$1,425,000 | \$3,875,000 |
| 4 | 100,000 | \$14.25 | \$1,425,000 | \$5,300,000 |
| 5 | 100,000 | \$14.25 | \$1,425,000 | \$6,725,000 |
| <u>TOTAL:</u> | <u>500,000</u> | Avg.: <u>\$13.45</u> | <u>\$6,725,000</u> | |
| | | | <u>\$5,475,064</u> | |

ASSUMPTIONS: a) \$9.00/ton tonnage billed first, this amount second. b) No growth in volume. c) Years 3, 4 and 5 include 5% CPI increase. d) BFI will accept 100,000 tons.

*Rate is to be adjusted as follows:

| | | |
|------------------------------|-------------|------------|
| Rate shown per ton | \$11.25 | first year |
| State fee | <u>1.25</u> | |
| Base rate | \$10.00 | per ton |

The quoted rate includes the \$1.25 State fee (base rate is \$10.00 per ton)

STRASBURGER & PRICE, L.L.P.

ATTORNEYS AND COUNSELORS
A LIMITED LIABILITY PROFESSIONAL CORPORATION

8000 ONE AMERICAN CENTER
800 CONGRESS AVENUE
AUSTIN, TEXAS 78701-2888
(512) 499-3000

TELECOPIER (512) 499-3000

DALLAS OFFICE
SUITE 4000
505 MAIN STREET
DALLAS, TEXAS 75202
(214) 242-4000

MIAMI CITY CORRESPONDENT
SERIALS SERVICE & REPRODUCTION, S.A.
SUITE 1000 1000 BAY ST.
MIAMI BEACH, FLORIDA 33139
(305) 531-1000

TELECOPY COVER PAGE

Date: 9-13-93

PLEASE DELIVER THE FOLLOWING TELECOPY TO:

Name: Bob Gregory Verification No: _____

Company: _____ Total Number of Pages: 2
(including cover)

Telecopy No: 243-4123

Sender: David B. Armbrust Telephone No: (512) 499-3001

Client/Matter No: firm Client/Matter Name: _____

Please call Barbara or Karen immediately if the telecopy you receive is incomplete or illegible. Our telephone number is (512) 499-3651.

MESSAGE:

For your review.

To respond to City of San Antonio request for security extending beyond a sale of TDSL.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

This Agreement shall be binding upon Texas Disposal Systems Landfill, Inc. (TDS), its successors and assigns. TDS shall require as a condition to any sale or transfer of a substantial amount of the stock or assets of TDS 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 stock or assets of TDS shall be deemed to have assumed the obligations of this Agreement and shall have the same liability for the performance of its terms as if such purchaser or assignee had executed this Agreement originally. For the purpose of this paragraph, the term "substantial" shall refer to a majority in value.

October 8, 1993

TEXAS DISPOSAL SYSTEMS' PROPOSAL TO THE CITY OF SAN ANTONIO FOR DISPOSAL OF ALL OR ANY PORTION OF THE CITY'S CONSISTENT WASTE FLOW FOR A PERIOD OF FIVE (5) YEARS WITH FIVE (5) ONE (1) YEAR OPTIONS

ALTERNATIVE ONE:

The exact same proposal submitted to the City of San Antonio on April 19, 1993 in response to City Request for Proposal #93-227 and presented to members of City Council

ALTERNATIVE TWO:

At the request of Staff, TDS has studied its proposal and revised its quotes to:

- a. Remove as much uncertainty as possible as to future rate increases resulting from unexpected increased regulatory requirements beyond that now expected in the Texas Plan to meet RCRA Subtitle D, and
- b. Provide the City with the lowest expected disposal costs.

This revised quote means that TDS will guarantee a rate for at least two years and will fully bear the risk of operating cost increases resulting from changes in regulations and the interpretation of regulations.

| All Rates Quoted Per ton | Year 1 ¹ | Year 2 ¹ | Year 3 ² | Year 4 ² | Year 5 ² | Years 6-10 ³ |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-------------------------|
| Base Rate | \$ 9.40 | \$ 9.40 | \$ 9.40 | \$ 9.40 | \$11.40 | \$11.40 |
| State Fee | 1.25 | 1.25 | 1.25 | 1.25 | 1.25 | 1.25 |
| Disposal Cost | \$10.65 | \$10.65 | \$10.65 | \$10.65 | \$12.65 | \$12.65 |
| Transportation Cost to Haul Transfer Trailers From Starcrest Drive Transfer Station to TDS Landfill | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 | 4.00 |
| Disposal Cost Including Cost to Haul Transfer Trailers | <u>\$14.65</u> | <u>\$14.65</u> | <u>\$14.65</u> | <u>\$14.65</u> | <u>\$16.65</u> | <u>\$16.65</u> |
| Highest and Worst Case Price Increase by TDS (Note: City has the Right to Reject any Price Increase) | \$ 0.00 | \$ 0.00 | \$ 1.50 | \$ 1.50 | \$ 0.00 | \$ 0.00 |
| Total Worst Case Cost | <u>\$14.65</u> | <u>\$14.65</u> | <u>\$16.15</u> | <u>\$16.15</u> | <u>\$16.65</u> | <u>\$16.65</u> |

September 13, 1993

TEXAS DISPOSAL SYSTEMS' PROPOSAL TO THE CITY OF SAN ANTONIO FOR DISPOSAL OF ALL OR ANY PORTION OF THE CITY'S CONSISTENT WASTE FLOW FOR A PERIOD OF FIVE (5) YEARS WITH FIVE (5) ONE (1) YEAR OPTIONS

This scenario assumes a \$2.00 per ton freight difference in the City hauling waste to Texas Disposal Systems Landfill as compared to Covel Gardens.

ALTERNATIVE ONE:

The exact same proposal submitted to the City of San Antonio on April 19, 1993 in response to City Request for Proposal #93-227 and presented to members of City Council (See attached sheets)

ALTERNATIVE TWO:

At the request of Staff, TDS has studied its proposal and revised its quotes to:

- a. Remove as much uncertainty as possible as to future rate increases resulting from unexpected increased regulatory requirements beyond that now expected in the Texas Plan to meet RCRA Subtitle D, and
- b. Provide the City with the lowest expected disposal costs.

This revised quote means that TDS will guarantee a rate for at least two years and will fully bear the risk of operating cost increases resulting from changes in regulations and the interpretation of regulations.

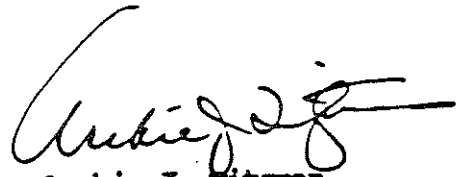
| All Rates Quoted Per ton | Year 1 ¹ | Year 2 ¹ | Year 3 ² | Year 4 ² | Year 5 ² | Years 6-10 ² |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-------------------------|
| Base Rate ² | \$ 9.40 | \$ 9.40 | \$ 9.40 | \$ 9.40 | \$11.40 | \$11.40 |
| State Fee | 1.25 | 1.25 | 1.25 | 1.25 | 1.25 | 1.25 |
| Disposal Cost | \$10.65 | \$10.65 | \$10.65 | \$10.65 | \$12.65 | \$12.65 |
| Difference in the Cost of Hauling Starcrest Transfer Trailers to Texas Disposal Systems vs. Waste Management | 2.00 | 2.00 | 2.00 | 2.00 | 2.00 | 2.00 |
| Disposal Cost Including Cost to Haul Transfer Trailers | <u>\$12.65</u> | <u>\$12.65</u> | <u>\$12.65</u> | <u>\$12.65</u> | <u>\$14.65</u> | <u>\$14.65</u> |

CIT COST

| | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|----------------|
| Highest and Worst Case | \$0.00 | \$0.00 | \$1.50 | \$1.50 | \$0.00 | \$0.00 |
| Price Increase by TDS | | | | | | |
| Note: City has the Right to Reject any Price Increase | | | | | | |
| Total Worst Case Cost | \$12.65 | \$12.65 | \$14.15 | \$14.15 | \$14.65 | \$14.65 |

3. The quoted bid must cover all expenses to be paid by the City. The City will not pay for any items separate and apart from the bid amount. The only exception to this rule is the case where state and federal fees on landfill services are initiated or increased after the date on which the bids are received by the City (April 19, 1993). Such fees may be passed through to the City for payment.
4. Changes in either the state or federal regulations will not result in any increased payment under this contract. All new regulations must be anticipated and the cost of implementing those regulations included in the bid price.
5. The City's transfer station on Starcrest will be operated at all times by the City.
6. The \$1.00 per mile transportation cost will be used by the City to evaluate bids from firms using landfills located outside the City's five mile extra territorial jurisdiction (ETJ).
7. The City is not asking for bids on special waste. Bids will be solicited later for disposal of special events. Bidders should be aware that relatively minor amounts of special waste occur in household waste collected by the City and being disposed of in the landfill.
8. Regarding hours of operations, the City will attempt to provide four (4) hours notice whenever hours of operation must be extended for emergency or unusual condition (Section 3.04).
9. For the Type IV landfill bid, the Proposal Form (pg. 10) should read "The City will guarantee the delivery of 25,000 tons of solid waste at the contractor's disposal facility. It is anticipated that this tonnage may increase to 45,000 tons, but the City does not guarantee this amount."

10. Type IV landfills have to comply with rules and regulations governing Type IV landfills only.
11. In Section 15, page 9, change option VI to read:
"Option IV".



Archie J. Fitzman
Director
Purchasing & General Services

AJT/jdl

Notes:

1. In order for TDS to remove the possibility of an unexpected cost increase pass through in years one and two of the contract, TDS would require the City to implement a contract with TDS and to begin transporting all the transfer stations capacity of waste to TDS by September 13, 1993. TDS would like as much as 20,000 tons volume by October 9, 1993. TDS would also not be allowed an unexpected cost increase pass through in year five and in any year to year extension of the contract beyond year five.
2. A Consumer Price increase (CPI), as identified in City RFP #93-227, would apply in years 3, 4 and 5 as well as in years beyond year 5. Any extension of the contract beyond year 5 would require the mutual consent of the City and TDS.
3. After October 9, 1993, TDS would like a relatively consistent flow of waste per month to allow better cost controls.
4. TDS would like the City to give TDS access to Starcrest Drive Transfer Station to dump loads of commercial solid waste and if the transfer station has the capacity to process and transport additional volume, TDS would reimburse the City's costs for processing, transportation and disposal.

~~ETHICS COMPLIANCE~~
REQUIRED DISCLOSURES

On June 16, 1994, the City Council of the City of San Antonio adopted a new Ethics Ordinance. Among other things, it requires that before certain contracts can be considered by the City Council, certain information must be obtained about the proposed contractor. This form is for the purpose of obtaining that information.

1. Name of Proposed Contractor & Address: TEXAS DISPOSAL SYSTEMS LANDFILL, INC.
7500 FM 1327, BUDA, TEXAS 78610

2. If a for-profit entity, list all individuals who own at least a 10% interest in the proposed contractor. If a non-profit entity, list the individuals on the Governing Board.

- for-profit
 non-profit

BOB GREGORY _____

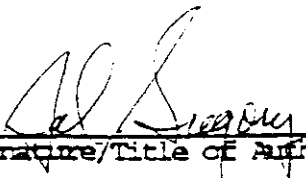
JIM GREGORY _____

3. List all political contributions of more than \$100.00 made during the previous twenty-four months to any City Council member or members or to any political action committee by the entity or any of the individuals listed above.

| | | |
|----------|-----------------------------|-----------|
| 05-25-94 | Thornton Campaign Committee | \$1000.00 |
| 12-17-94 | Bob Ross for City Council | 1000.00 |
| 02-20-95 | Thornton Campaign Committee | 1500.00 |

4. Disclose any contracts, partnerships, or other business associations the proposed contractor or any of the above listed individuals has with an officer or employee of the City. This includes being in partnership or joint venture with such a person, having a contract with such a person, owning at least 10% of the stock in a corporation in which the City officer or employee also owns such an interest, or having an established business relationship as client or customer.

NONE



Signature/Title of Authorized Representative

May 3, 1995

Date

WHY TEXAS DISPOSAL SYSTEMS (TDS) ?

by Jerry Arredondo

1) TAKE THE MSW "OUT OF TOWN"

2) ALTERNATIVE

— TDS offers an alternative to Waste Management and BFI

3) COST

— TDS offers the lowest cost option, since the City must pay for the transportation cost of transferring MSW from the north side of the city under any of the current proposals.

4) COMPETITION

- Assures competitive disposal rates
- Allows participation by independent haulers (Small Business)

5) CAPACITY (in millions of tons)

| | |
|---------|-------------|
| Rosillo | 4.77 |
| Tessman | 4.00 |
| Covell | <u>3.97</u> |

12.74 / 1.7 million tons/yr generated for disposal
= 7.49 years capacity

TDS has 35.00 million ton capacity

- Alleviates time constraints in City's pursuit and implementation of its REEZ
- Conserves other landfill capacity in Bexar County

6) TRANSPORTATION

- Hauling on highways vs. city streets saves:
 - wear and tear on city streets (preserves capital improvements)
 - wear and tear on trucks
 - fuel consumption: highway driving vs. stop & go driving
- Wait Time: dramatically reduced, as TDS has established facilities which can efficiently handle truck traffic

7) FLEXIBILITY

- The TDS proposal allows the City the flexibility to dispose of any volume of MSW at the same rate and provides the City more options.

8) GUARANTEES

- TDS guarantees capacity
- TDS guarantees cost with the implementation of Subtitle D

9) COMMUNITY COMMITMENT

- TDS is a leader in the state of Texas in recycling programs and responsible environmental disposal issues
- TDS trucks are decorated with an anti-drug message

Notes:

1. In order for TDS to remove the possibility of an unexpected cost increase pass through in years one and two of the contract, TDS would require the City to implement a contract with TDS and to begin transporting all the transfer stations capacity of waste to TDS by September 13, 1993. TDS would like as much as 20,000 tons volume by October 9, 1993. TDS would also not be allowed an unexpected cost increase pass through in year five and in any year to year extension of the contract beyond year five.
2. A Consumer Price Increase (CPI), as identified in City RFP #93-227, would apply in years 3, 4 and 5 as well as in years beyond year 5. Any extension of the contract beyond year 5 would require the mutual consent of the City and TDS.
3. After October 9, 1993, TDS would like a relatively consistent flow of waste per month to allow better cost controls.
4. TDS would like the City to give TDS access to Starcrest Drive Transfer Station to dump loads of commercial solid waste and if the transfer station has the capacity to process and transport additional volume, TDS would reimburse the City's costs for processing, transportation and disposal.

EXHIBIT C

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

per City Attorney

95-24

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 22nd day of JUNE, 1995.

ATTEST:



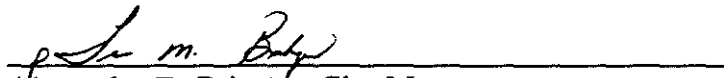
ASST. CITY CLERK

Norma Rodriguez
City Clerk



CITY OF SAN ANTONIO

By:



Alexander E. Briseño, City Manager

Date: 6/21/95

TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

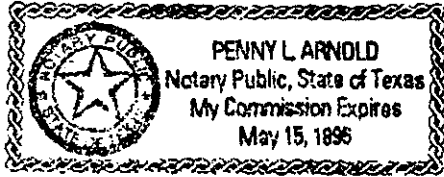
By: 

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

EXHIBIT D

SECOND AMENDMENT TO AGREEMENT

Pursuant to City of San Antonio ("City") Ordinance 78715, dated September 15, 1993, the City and Texas Disposal Systems Landfill, Inc. ("TDSL") entered into an Agreement for municipal waste disposal ("Original Agreement"). On or about May 31, 1995, City and TDSL entered into a First Amendment to Agreement ("Amendment"). (The Original Agreement and Amendment and this Second Amendment are sometimes collectively referred to as "Agreement").

Sections 6G and H of the Agreement contemplated that City and TDSL would enter into negotiations concerning the use and operation of City's Starcrest (Northeast) Transfer Station located at 11601 Starcrest Drive ("Transfer Station"). City and TDSL have concluded their negotiations and now desire to amend the Agreement to incorporate the terms of the agreement they have reached concerning the lease, management, use, and operation of the Transfer Station. This Second Amendment to Agreement is based upon "Option III" as outlined in the City's Request for Proposals for Municipal Solid Waste Disposal Services dated April 19, 1995, the terms of which are incorporated by reference ("1995 RFP").

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

PURPOSE AND SEVERABILITY

The character of the subject matter of this instant Second Amendment clearly differs from that of the Original Agreement and its First Amendment. On the one hand, the two earlier instruments treat the parties' relationship pertaining to solid waste disposal at the TDSL owned landfill in Buda, Texas. On the other hand, this Second Amendment treats the management, use and lease of the City's Starcrest Transfer Station by TDSL for the benefit of the City and TDSL. Operation of the Transfer Station is an essential City service directly impacting public health. Therefore, it is paramount to the public interest in both relationships, that it be understood and agreed between the parties that the subject matter of this Second Amendment is in all ways severable from and independent of the subject matter of the Original Agreement and First Amendment in the event of a default under either the Original Agreement and its First Amendment or this Second Amendment with the exception of certain provisions as set forth in this Second Amendment. The City Council has approved the Second Amendment on condition that the two contractual relationships in question can be severed from one another in the event of a default of one of them. It is therefore intended and understood that a breach or violation in the relationship governed by the Original Agreement and First Amendment (waste disposal at the Buda, Texas, landfill) will not effect a breach of, or otherwise impact, the Second Amendment provisions for use and management of the Starcrest Transfer Station; and similarly, a breach of contract or violation which may prompt termination of the parties' relationship in the Starcrest Transfer Station shall not effect a termination of, or otherwise impact, the Original Agreement and its First Amendment pertaining to waste disposal at the landfill in Buda, Texas. City and TDSL recognize that this Second Amendment is dependent upon many of the base provisions of the Original Agreement and First Amendment. Therefore, notwithstanding anything to the contrary, in the event the Original Agreement and First

Amendment are terminated, the following sections of the Original Agreement and First Amendment shall continue in effect so long as the Second Amendment remains in effect:

- Original Agreement, Section 2 - Binding Effect.
- Original Agreement, Section 4 - Financial Statements.
- First Amendment, Section 6 - Disposal Rates, Paragraphs B, C, D and E (as modified by this Second Amendment).
- Original Agreement and First Amendment, Section 9 - Recycling Area.
- Original Agreement, Section 15 - Notices (except for new section 19C(1)(2) Extraordinary Contractual Remedies Available to City).
- First Amendment, Section 17 - Dispute Resolution. (Pertains only to issues requiring "interpretation" and periodic adjustments to the Base Rate.)

TERM AND TERMINATION

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

"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, respectively.

Pursuant to the Original Agreement and First Amendment, the City's obligations to deliver solid waste to the TDSL landfill in Buda, Texas may be terminated by the City at anytime upon (i) the delivery of written notice to TDSL and (ii) the expiration of five (5) years from the date such notice was delivered in accordance with the terms of the Original Agreement.

This section does not and is not intended to modify termination options provided by the Original Agreement and First Amendment.

The term of this Second Amendment as it relates to the Transfer Station shall commence on January 15, 1998, and shall remain in effect until midnight on January 15, 2023, subject to TDSL's option to extend it. For the sum of one hundred dollars (\$100) and other good and valuable consideration in hand paid, the City has granted to TDSL an option to extend the term of this Second Amendment as it relates to the Transfer Station to midnight September 30, 2025 to coincide with the termination date of the Original Agreement and First Amendment (or such longer term if the parties have so agreed). Such option to extend may be exercised by TDSL at any time between January 15, 2022 and January 15, 2023 upon written notice to the City.

Regarding the Transfer Station, however, the City shall have the right to terminate this Second Amendment "for cause" in the event that TDSL defaults in its obligations under this Second Amendment and such default continues after the City has given TDSL written notice of such default and a reasonable opportunity to cure such default. In the event of such termination pertaining to the Transfer Station, City and TDSL shall continue to perform their respective obligations under the terms set forth in the Original Agreement and First Amendment in regard to delivery and disposal obligations at TDSL's landfill in Buda, Texas.

Notwithstanding any other provision in this Agreement, the City shall not have the right to terminate any of its obligations relating to this Second Amendment or TDSL's rights relating to the Transfer Station during the term of this Agreement (including the guaranteed volume) unless TDSL fails to perform its obligations under this Agreement in a manner which constitutes a material breach of this Agreement. This provision, however, shall not limit the City's termination options under the First Amendment or Original Agreement."

DISPOSAL RATES

Paragraph 6F shall be amended to read as follows:

"F. TDSL agrees to accept up to 500,000 tons per year of City solid waste hauled by any City vehicle or designated haulers (which includes a City contractor) during the term of this Agreement at the rates and adjusted in the manner set forth in this Agreement. All waste accepted by TDSL under the City's account shall be the City's waste or within the responsibility or control of the City. The City guarantees to deliver to TDSL a minimum of 100,000 tons of solid waste per year during the term of this Second Amendment either to the TDSL landfill in Buda or the Transfer Station, or any combination thereof. The 100,000 ton minimum includes the 50,000 ton guaranteed minimum set forth in the First Amendment; provided, however, the 100,000 ton minimum under this Second Amendment shall remain in place if the City elects to terminate the Original Agreement and First Amendment. Any diversion to other landfills of City tonnage obligations, which tonnage would have otherwise been processed through the Transfer Station, due to a breakdown or shutdown of the Transfer Station and which TDSL could have avoided by using reasonable care, or is caused by a weather-related emergency event which causes TDSL to be unable to haul waste from the Transfer Station, will be credited towards the City's minimum 100,000 ton guarantee. Notice of and the reason for such load diversion that is applicable to the 100,000 ton guarantee must be provided to TDSL on a daily basis. TDSL agrees to accept the City's regularly collected Municipal Solid Waste, which includes waste from all City departments, City contractors, and designated City haulers at the City's contracted price. All such materials brought to the Transfer Station (by City crews, designated haulers or City contractors) shall be used to calculate the City's 100,000 tons per year guarantee requirement. Such materials shall include the same type of waste, including small amounts of brush,

white goods and materials from citizen cleanup events, as has been customary for the City, as has been processed by the City through the Transfer Station from 1991 through 1996 and other solid waste appropriate for the Transfer Station. In consultation with the City, TDSL shall set standards as to what are acceptable materials. TDSL shall not unreasonably disallow any type of the City's solid waste from being delivered to and processed through the Transfer Station. The City's need to process additional volumes and types of solid waste materials appropriate for a transfer station shall be reasonably accommodated over time by good faith modifications to the Transfer Station by TDSL. The City shall deliver its waste on a regular basis, but the weekly volume may vary depending upon the City's work schedule, disposal plan and operation and maintenance of the Transfer Station.

TDSL shall provide the City with written reports on a monthly and annual basis which summarize the volumes and billings applicable to the City, and volumes of TDSL and third parties waste subject to royalty payments under this Agreement. City shall have the right to audit the volumes processed through the Transfer Station during normal business hours. Such audit shall be limited to volumes of solid waste and shall not include the financial records of TDSL or TDS. The parties acknowledge the City's interest in Transfer Station activities and its ownership of the real property preclude City ability to control application of the Open Records Act to the information provided to the City pursuant to the foregoing reporting requirement.

In order to be covered by this Agreement, a "City contractor" or "designated City hauler" shall be required to show written evidence of an agreement with the City to haul the City's waste into the Transfer Station. The City contractor or designated City hauler shall not be allowed to use the Transfer Station facility for solid waste collected from its own accounts other than the City of San Antonio, at the same rate as the City or under the account of the City. The City shall impose upon its contractors an obligation to observe this provision. TDSL and the City shall jointly establish the appropriate methodology for compliance with this requirement in the technical operations manual. The City and TDSL warrant they shall enter into no contractual agreements related to Third Parties having access to the Transfer Station in contravention of this provision to deprive TDSL of the rate to which it is entitled or deprive the City of its royalty due."

Paragraph G of Section 6 shall be deleted.

Paragraph I shall be amended to read as follows:

"TDSL shall not accept and shall reject any waste brought by third parties, the City or its designated haulers to the Transfer Station or disposal site that TDSL, in its sole discretion, considers to be unacceptable. TDSL will notify the City of the receipt and nature of such unacceptable waste. TDSL will arrange for the removal of the unacceptable waste and the expense of removal from the Transfer Station and the landfill shall be borne by the entity, firm or agency that delivered the

unacceptable waste to the respective facility. Unacceptable waste is defined as any waste that TDSL is not permitted to accept by state or federal law or regulation. Unacceptable waste delivered by third parties is not the City's responsibility."

TRANSFER STATION

A new section shall be added as follows:

"18. Transfer Station.

A. Effective January 15, 1998, unless extended by TDSL pursuant to paragraph R below, TDSL shall assume management responsibilities with full and exclusive operational control of the Transfer Station in the nature of a long-term management and lease agreement. Although, TDSL's activities are subject to certain City oversight by the City's on-site Program Manager as described below, TDSL shall be deemed to be an "independent contractor" with appropriate power and control to make decisions reasonably necessary to the management and operation of the Transfer Station within the scope of this Agreement. TDSL shall be allowed to receive and process commercial waste through the Transfer Station for itself and the account of others. All waste transferred through the Transfer Station shall be managed in accordance with the City's TNRCC permit, as modified or amended. TDSL shall be responsible for all taxes, fees and assessments levied against its ongoing business operations. TDSL and City acknowledge that the Transfer Station and its ancillary fixtures are owned by the City and therefore tax exempt. In the event that such real property tax exempt status changes, the disposal rates at the Transfer Station shall be increased to reflect any increase in operating costs caused by an increase in property taxes.

B. TDSL shall operate the Transfer Station at a minimum of Monday through Friday of each week from 7:00 a.m. to 5:00 p.m. At its option, TDSL may close the Transfer Station on holidays observed by the City Solid Waste Services residential collection crews. Operating hours during preplanned special events, holidays and scheduled make-up garbage days shall be adjusted to accommodate special needs of City crews at the City's contracted price. In unusual situations, the City will pay the cost of TDSL labor, if service is required by the City during other than TDSL ordinary operating hours. TDSL, at its sole discretion, may operate the Transfer Station on days and at times other than indicated above. TDSL shall secure the facility when the Transfer Station is closed. TDSL hereby reaffirms full premises liability during closed hours and non-operational hours.

C. Priority to City for Service: Pursuant to Ordinance No., 85263, passed December 5, 1996, which provides in part that this Second Amendment is intended to ensure to the City, "First priority for the City's use and access to the Transfer Station facilities, thereby affording the City a first right of service and limiting work or services available to third parties at any time the City may so

choose or need the station's capacity." It is understood that the purpose of the foregoing requirement is to protect the City's right to first priority for daily capacity at the Transfer Station.

- (1) At any time, City shall have the first right to service at the Transfer Station, but especially on Monday, Tuesday, Thursday, and Friday.
- (2) In case of simultaneous demand from the City and its designated haulers, and TDS or other haulers, the City and its designated haulers, and TDS and other haulers will wait in separate lines for the same services. When the City and its designated haulers and TDS and other haulers are waiting for the same services, the City, and its designated haulers, will be allowed to service four vehicles to every one by TDS or other haulers. TDSL shall use reasonable care to ensure that no vehicle of the City or its designated haulers will be required to wait more than 30 minutes. For purposes of this Agreement, TDSL shall be deemed to have used reasonable care even though trucks belonging to the City or its designated haulers have to wait more than 30 minutes, if the wait is due to large numbers (15 or more vehicles) of collection trucks owned by the City or its designated haulers arriving at the Transfer Station within approximately the same time period.
- (3) In the event that a City vehicle is required to wait longer than 30 minutes as a result of (i) TDSL not providing the City first right to service at the Transfer Station or (ii) TDSL being unable to provide normal services to the Transfer Station using reasonable care, the City's on-site Program Manager will determine, at his/her sole discretion, whether City vehicles are to be diverted to another landfill. If City vehicles are diverted due to the failure of TDSL to use reasonable care, TDSL will:
 - a. Pay the City the added cost to transport and dispose of waste at the BFI Tessmann Road Landfill, the WMI Covel Gardens landfill, or other disposal facilities, whichever is the lowest overall cost. (Preferably the charge will be consistent with existing City landfill contracts. However, if there is an increased cost, TDSL will pay the difference.)
 - b. Take immediate steps to put the Transfer Station back in service, and if necessary, TDSL will notify TNRCC of any deficiencies or operational changes.

- c. Credit towards the City's requirement to deliver 100,000 tons annually all tons diverted from the Transfer Station to another disposal facility.

The City shall immediately resume hauling waste through the Transfer Station at such time the problems causing the diversion have been remedied.

D. City and its designated haulers shall have first right of access to any and all capacity at the Transfer Station for full process and disposal services at the contract price. TDS will have second priority. Third parties will have last priority. When capacity is limited, access by third parties will be restricted depending on the capacity limitation. TDSL shall use reasonable efforts to accommodate City collection crews, shall calibrate and certify to the City proof of calibration of the scales on an annual basis and maintain the overall appearance of the site which shall include landscape, all necessary vector control and daily collection of wind blown paper and litter. TDSL shall operate the Transfer Station in compliance with TNRCC Municipal Solid Waste Management Regulations and the Transfer Station Permit Site Operating Plan.

E. City shall designate an on-site Program Manager to oversee the implementation of this Second Amendment. City's on-site Program Manager will monitor the TDSL management of the Transfer Station and the City vehicle access to Transfer Station, divert City vehicles as described above, ensure compliance during normal operations, and will process all complaints and alleged deficiencies, as defined under Section 19.

F. TDSL is responsible for picking up wind blown paper and litter which occurs from vehicles on and around the Transfer Station and from transfer trailers along the haul route. All paper and litter shall be collected on at least a weekly basis, or at anytime in response to a citizen or regulatory complaint, on Starcrest Drive from Jones Maltsberger to Wetmore Road or along the proposed Wurzbach Parkway from Wetmore Road to Jones-Maltsberger Road.

G. TDSL shall provide for disposal of dead animals collected on City streets and alleys and brought to the transfer station by the City or its designated haulers between the hours of 7:00 AM and 6:00 PM, Monday through Friday and 7:00 AM to Noon on Saturday. Temporary storage of dead animals will be provided by the City at other times. TDSL shall cooperate with the City to properly handle the temporary storage of dead animals during non operating hours at the Transfer Station.

H. TDSL shall maintain at its cost insurance coverage for City liability involving TDSL operation of the Transfer Station and the adjacent TDSL facility during the term of this Agreement. Failure to comply shall be deemed a breach of contract. This requirement is to be coordinated prior to signing of the agreement and

coordinated annually thereafter with the City's Risk Management Office. Such liability shall include TDSL and TDS commercial general liability, employee workers compensation, auto liability coverage and excess umbrella liability coverage. Section 7 of the 1995 RFP, concerning Indemnity, shall also apply to this Second Amendment. TDSL and TDS agree to list City as additional insured. Insurance coverages shall be as specified in the 1995 RFP, or as mutually agreed. Such indemnity shall not exceed the limits of insurance coverage required by this Agreement. TDSL shall require third party haulers including the City's designated haulers using the Transfer Station (other than City) to provide similar liability insurance coverage naming the City and TDSL as an additional insured.

I. TDSL shall provide and continue to provide during the term of this Second Amendment, Employee Health Insurance and retirement programs for its employees assigned to the Transfer Station. TDSL shall provide toilets and rest room facilities for both male and female City employees and vending machines for soft drinks and snacks. TDSL has offered employment to all City employees presently working at the Transfer Station, subject to their passing customary drug screening and physical examinations. The offer of employment remained in effect from December 18, 1996 until January 29, 1997 and employment will commence on the date TDSL begins operation of the Transfer Station.

J. TDSL, at its sole cost, shall have the right to develop, use and operate additional facilities at the Transfer Station site and the adjacent City-owned property (as generally contemplated and depicted on Attachment One) which consists of approximately four and one-half (4.5) acres of land, which are also leased to TDSL upon the terms of this Second Amendment. Any permanent improvements constructed by TDSL are subject to the approval of the City's Public Works Director or his successor, which approval will not be unreasonably withheld or delayed. Signage is subject to provisions of the City Code of the City of San Antonio, Chapter 28 and approval from the Director of Public Works. The timing, design and construction of any additional facilities or improvements shall be at the sole discretion of TDSL. Such additional facilities may include facilities used to process recyclables and compostables, facilities for vehicle and equipment maintenance, storage and offices and any other related activities. Once approved, City shall assist TDSL at TDSL's cost in obtaining and facilitating the approval and issuance of all required City permits, if any.

K. It is the intent of TDSL and the City to increase the operating efficiency of the Transfer Station and to incorporate direct dump trailers to allow the more efficient processing of solid waste collected by the City, its designated haulers, TDS and other haulers. In recognition of the permanent improvements planned by TDSL to the Transfer Station and the investment in equipment to use at the Transfer Station to load and transport the waste and at the TDSL landfill to unload the direct dump trailers, TDSL shall only be required to post a performance bond or irrevocable standby letter of credit for the performance of its obligations under this

Agreement as required below in Section 19D. On or before June 30, 2002, the TDSL investment in such equipment and improvements shall exceed \$1,500,000. Modification to the Transfer Station to facilitate open top dumping shall be accomplished within five (5) years as allowed by City and TNRCC, but the timing of other improvements shall be in the sole discretion of TDSL. Approvals for any such other improvements or modifications that are beneficial to the Transfer Station and/or contemplated in Section W below shall not be unreasonably withheld or delayed by the City. As necessary, City will assist TDSL in obtaining all necessary City permits, if any. Equipment and improvements which represent investment by TDSL shall at all times during the effective term of this Second Amendment, be maintained as reasonably required to deliver to the City those solid waste services and operational management services necessary to the City for the City's residential collected waste as contemplated by this Agreement. If TDSL allows equipment or improvements to fall into a state of disrepair below what is reasonably common in the industry for similar facilities and adversely impacts TDSL's ability to deliver such services, the City, at its option, after giving TDSL written notice and at least fifteen (15) days notice to cure such deficiency, may repair or replace the equipment or improvement in question and shall be reimbursed its reasonable costs by TDSL.

L. Subject to the terms of this Agreement, TDSL shall have the exclusive right to lease, manage, use, operate, improve, maintain and expand the Transfer Station, and shall have the right to use all capacity in the Transfer Station, over and above that used by the City, and the City's designated haulers for its own account and for other customers of TDSL. For this right, and for the right to use and improve the approximate 4.5 to 5 acres of land adjacent to the present Transfer Station, as shown in Attachment One, TDSL agrees to pay an annual fee, as specified in Paragraph S. The right to "lease" does not include the right to sub-lease the Transfer Station or any part thereof; however, it is understood that TDSL shall have the same access to the Transfer Station as TDSL without the need to sublease. TDSL and the City agree to cooperate in dealing with any emergency or weather-related emergency event and to temporarily modify operations to assist the City in maintaining the community's health and safety and to comply with TNRCC permit requirements. TDSL shall have the right to mortgage, assign or encumber any trucks, trailers, equipment, other personalty or improvements owned by TDSL and used in connection with the Transfer Station; provided, however, TDSL shall not have the authority to create any lien, charge or encumbrance upon the Transfer Station itself or the real property. Upon request, City shall give any mortgagee or holder of TDSL's indebtedness, simultaneously with service on TDSL, a duplicate of any and all notices of demand or default. No liability for the payment of any sums or the performance of any obligations shall attach to or be imposed on any mortgagee or holder of indebtedness by the City or vice versa. Each party shall, without charge, at anytime from time to time, within fifteen (15) days after request by the other party, deliver a written instrument to the other party confirming that this Agreement is unmodified and in full force and effect and certifying that no defaults

exist, or if a default does exist specifying the nature and the action required to cure such default.

M. TDSL assumes liability for the performance of all applicable federal, state and local permit requirements related to the operation of this facility during the time it operates the facility and to ensure the operation remains in compliance. TDSL shall pay all regulatory fines and penalties directly attributable to the TDSL operation of the Transfer Station or use of City property. The City and TDSL shall apply for and acquire all future permits, permit modifications, and business operational licenses and permits at the cost of TDSL. As necessary, the City will assist in processing and executing required applications, permit modifications, amendments or related documents. The City shall continue to own the permit for operation of the Transfer Station during the term of this Second Amendment.

N. TDSL and its sister company, Texas Disposal Systems, Inc. (TDS), which shall be considered to be the same as TDSL for purposes of considering Transfer Station access, shall have the right to collect solid waste and process such waste through the Transfer Station. TDSL shall also have the right to accept solid waste from other haulers, to the extent that the acceptance of such volume does not interfere with the City's priority and the orderly acceptance of City collection vehicles.

O. TDSL agrees to allow the public and the City to use the Transfer Station for semi-annual one-day Citywide cleanup events each year at no cost. TDSL will install and operate a Citizen's Drop-off site for recyclable materials prior to June 1, 1998, subject to TDSL's ability to obtain all applicable governmental approvals. TDSL shall use reasonable efforts on behalf of the City to obtain such approvals.

P. On behalf of the City and itself, TDSL, at its cost, shall be responsible for obtaining future permits, business operational licenses, any governmental approvals, and permit modifications or amendments which are necessary for any improvements to or operation of the Transfer Station. Such improvements will require approval by the Director of Public Works, which approval shall not be unreasonably withheld or delayed. City shall cooperate with TDSL in obtaining such approvals and processing applications for governmental approvals, permit modifications or amendments which shall include but not be limited to the execution of all required documents, providing evidence of City's concurrence and support for such permit modifications and facilitating the issuance of any required City permits which shall not be unreasonably withheld or delayed by the City. In the event such permit modifications or approvals are not obtained, TDSL may continue to operate the Transfer Station in accordance with existing or otherwise applicable permits.

Q. Neither TDSL nor the City shall close or relocate the Transfer Station without the prior written consent of the other. The City shall not reduce the capacity

of the Transfer Station to receive or process solid waste materials during the term of this Second Amendment. City reserves the right to negotiate adjustment of the minimum 100,000 ton guarantee if state law changes regarding recycling or yard waste mandates and reduces total City waste volume to less than 300,000 tons annually.

R. In sufficient time for TDSL to perform its obligations under this Second Amendment, TDSL shall have ordered or acquired at its expense, a trailer tipper and any necessary trucks and trailers in order to facilitate the transfer of waste processed through the Transfer Station. Subject to applicable purchasing requirements, City and TDSL shall agree outside of this Agreement if and how the City's existing trucks and trailers will remain in place at the Transfer Station at least on a temporary basis. TDSL shall take over the operation of the Transfer Station within thirty (30) calendar days following (i) TDSL acquiring the City's existing trucks and trailers (with sale effective on date of startup), or (ii) TDSL being notified by the City that TDSL has the necessary authorization and can begin construction to retrofit one bay of the Transfer Station to use the new direct dump trailers needed to operate the Transfer Station and transport the City's waste, whichever occurs first.

S. TDSL shall pay a lease fee, for the use of the Transfer Station, the facilities at the Transfer Station and the land adjacent (the approximate 4.5 to 5 acres shown in Attachment One) to the Transfer Station, of \$100,000 annually to be paid in one lump sum on the fifteenth of September of each year, beginning September 15, 1998 and continuing on the same day of each year thereafter for annual periods beginning October 1, 1998. This annual payment may be increased annually beginning October 1, 2002, by the same CPI used for the previous respective year and thereafter to calculate the City's costs charged by TDSL.

T. City shall pay TDSL a disposal rate per ton for all municipal solid waste delivered to TDSL at the Transfer Station pursuant to this Second Amendment ("Disposal Rate at Transfer Station") of \$19.13 for the period of March 1, 1997 to September 30, 1997, and \$20.62 for the period of October 1, 1997 to September 30, 1998, which includes the current \$1.25/ton state fee. The pass through of any fees or change in fees shall be consistent with Section 6C and D of the First Amendment. The Disposal Rate at the Transfer Station shall be paid to TDSL periodically, but in no event more than thirty (30) days after City's receipt of an invoice from TDSL. Beginning on October 1, 1998, and continuing on the same date each year thereafter, the Disposal Rate at the Transfer Station shall be adjusted by the Consumer Price Index as defined in Section 6B of the First Amendment. The contractual cap of 5% shall no longer apply after September 30, 2005. The Disposal Rate at the Transfer Station does not include "special waste" which shall be at the same rate charged by TDSL to other similar customers. Schedule One attached to this Agreement summarizes the method for calculating the Disposal Rate at the Transfer Station, assuming a 5% or greater rate of inflation. A lower inflation rate will require a corresponding adjustment to the calculated rate, using the same methodology. City

shall pay TDSL a different disposal rate per ton for all municipal solid waste delivered directly to TDSL at the TDSL landfill, which delivery does not go through the Transfer Station in accordance with paragraph 6 of this Agreement (See First Amendment). Unless required by a federal or state regulation which impacts all similar Type I landfills in the State of Texas, no other operational costs or compliance requirement shall be allowed to affect the Disposal Rate at Transfer Station or Royalty rate during the term of this Contract.

U. TDSL shall pay a royalty to the City equal to \$0.75 for every ton of waste processed through the Transfer Station on behalf of "haulers" other than the City, the City's contractors and designated haulers and Texas Disposal Systems, Inc. (TDS) or TDSL ("Royalty"). This fee will increase each year by the same CPI percentage the disposal fee increases. The Royalty shall not apply to waste processed through the Transfer Station on behalf of the City, its contractors, its designated haulers, TDS or TDSL. The Royalty, as collected, shall be paid to the City monthly. The Royalty shall not apply to waste accepted at the Transfer Station during the public clean up events referenced in Section O above. TDSL/TDS shall not designate another commercial or residential waste hauler to haul waste into the Transfer Station under the TDSL/TDS account in order to avoid the payment of the Royalty. The City's contractors/designated haulers shall not haul commercial or residential waste into the Transfer Station under the account of the City, which has been collected from customers of City's contractors/designated haulers, in order to avoid the payment of the Royalty and/or the prevailing Disposal Rate at the Transfer Station for such hauler's waste. The methodology for determining any mixed loads compensation shall be developed in accordance with the procedure outlined in paragraph 6F above.

V. If the City permits and opens a new landfill to accept the City's waste, TDSL will haul the City's allocable tonnage of solid waste, over and above the 100,000 ton minimum from the Transfer Station to the new City landfill (not to exceed 400,000 tons per year), at the City's request, subject to a rate to be negotiated and agreed upon (Transfer Rate). The Transfer Rate shall be based upon the following factors:

- (i) Distance from the Transfer Station (to include fuel, vehicle maintenance and depreciation expense). Upon the City's request, a standard mileage rate will be established annually by TDSL.
- (ii) Travel, waiting and processing time (personnel cost). Upon the City's request, a standard hourly rate will be established annually by TDSL.
- (iii) Transfer Station operations (personnel and fixed costs). The Transfer Station operations cost, shall be applied on a prorata basis for all waste hauled on behalf of the City over and above TDSL's costs for operating the Transfer Station to process 100,000 tons per year. For example, if TDSL is

processing 300,000 tons per year and the City requested that TDSL haul 20,000 tons to the City's new landfill, the Transfer Rate would include 10% of TDSL's Transfer Station operational costs (i.e., $300,000 - 100,000 = 200,000 \div 20,000 = 10\%$).

- (iv) A profit margin to TDSL of 15%.
- (v) The total price paid will be the sum of the amounts determined in items (i) through (iv) above.

W. Use and Development of Transfer Station facilities:

- (1) No vehicle parking or equipment storage, operations, or development will occur between the existing development of the Transfer Station facility and Starcrest Drive nor will such activities occur between the existing development of the Transfer Station facility and the Blossom Park residential subdivision, which is generally on the northwest corner of the property, without the prior consent of the City's Director of Public Works. Landscaping, fencing, lawn maintenance, and clean up operations are permitted in this area, and TDSL will be responsible for the installation and maintenance of such facilities in this area.
- (2) TDSL and TDS will have the right to use the balance of the Transfer Station site and adjacent City owned property for sales and operations, vehicle and equipment maintenance, parking, storage and administrative functions. This area of land adjacent to the Transfer Station will include approximately five (5) acres of land between the Transfer Station and the proposed development of the Wurzbach Parkway. See Attachment One. TDSL will not in any way interfere with the development of Wurzbach Parkway and will adjust its facilities if such is absolutely necessary.
- (3) Any plan to add pavement, erect buildings, and add onto facilities beyond those generally described in Attachment One, or to expand parking to accommodate more than fifty (50) vehicles used for waste collection will require that notice be given by TDSL to the neighboring property owners. Notice will consist of hand delivery of flyers to each residence within an area bounded by Jones Maltsberger, Starcrest Drive and Lawrence Creek at least one week prior to any scheduled meeting with neighboring property owners. Comments by the neighbors will be considered by the

Director of Public Works prior to granting approval of plans for construction or expanded operations. The Director's decision is final. At a minimum, TDSL will meet annually with representatives of neighboring property owners to discuss plans, issues, operations, and concerns.

- (4) TDSL shall construct necessary sight screening berms, fences and landscaping around the outside boundary of the area where equipment will be parked and maintained as generally depicted on Attachment One."

X. TDSL and the City shall work together in good faith to develop a technical operations manual for the Transfer Station which shall include performance standards and routine procedures for operation of the Transfer Station on a daily basis. In an attempt to ensure that the Transfer Station is operated in an efficient manner, the City and TDSL shall review the technical manual at least once each year. The technical operations manual shall be updated as the parties may agree.

TERMINATION

Section 12 pertaining to termination shall be deleted for purposes of the subject matter of this Second Amendment; Section 12, however, shall continue to apply to the subject matter of the Original Agreement and that of the First Amendment, in accordance with its provisions, and as modified in the First Amendment.

DISPUTE RESOLUTIONS

New sections shall be added as follows:

"19. Legal and Administrative Remedies.

A. Administrative Resolution of noted deficiencies:

- (1) Citizens may report any complaints or alleged deficiencies to the Director of Public Works ("Director") or the City's on-site Program Manager, who will forward those complaints or alleged deficiencies in writing to TDSL within 48 hours.
 - a. A "complaint" is any problem noted by a citizen concerning the operation of the Transfer Station.
 - b. A "deficiency" in TDSL operations shall be defined as:
 - (i) anything which is a nuisance as defined under Title 30, Chapter 330 of the Texas Administrative Code, applicable to

operations of the Transfer Station, for which TDSL is responsible as the operator of the Transfer Station;

(ii) anything that is not allowed within the City's Transfer Station Site Operating Permit and the applicable Municipal Solid Waste Management Regulations; or

(iii) anything which is in violation of a provision of this Second Amendment.

- (2) TDSL shall have 48 hours from its receipt of the notice to respond to any complaint or alleged deficiencies or develop a plan to correct such deficiencies. Plans must be achievable within a reasonable period of time.

As recited above, the City's on-site Program Manager shall process complaints and alleged deficiencies from citizens or City sources.

- (3) Repeated deficiencies or failure to perform may be referred to a Transfer Station Oversight Panel (TSOP) for review, at the discretion of the Director. The panel includes the Director of Public Works, Assistant Director of Public Works, Community Relations Director and the City Attorney. TDSL will receive written notice and have the right to be present and heard at all meetings of the panel and shall receive copies of minutes, reports and actions taken. TDSL shall be notified in writing of any recommended actions and TDSL shall have thirty (30) days from its receipt of the notice to correct any noted deficiencies unless a longer period is required to cure the deficiency or failure of performance in which event the Director shall establish a reasonable amount of time to cure the deficiency or failure to perform. If a state or federal regulatory agency requires action in a shorter period of time, that requirement shall prevail. The City may shorten the duration of additional cure periods for the same deficiency once TSOP has made a determination and established a cure period for that particular deficiency, unless TDSL is in the process of responding within the original cure period.
- (4) Repeated failures to correct deficiencies which constitute a material default under this Second Amendment may result in a 25% annual reduction in guaranteed volume, when a deficiency continues after year 1; 50% after year 2; 75% after year 3; and 100% after year 4.
- (5) Correction of deficiencies will negate the possible loss of tonnage. Such loss of tonnage will be calculated prorata based upon a twelve (12) month contract year.

- (6) Failure to correct reasonably curable deficiencies continuing for one year or more shall be a basis for termination of this Second Amendment, at the option of the City.
- (7) The Director of Public Works, independent of the TSOP process, reserves the right to advise TDSL in writing of any event which is alleged to be a material breach of this Agreement in which event the City and TDSL may avail themselves of all rights and legal remedies as set forth in the General and Extraordinary Contractual Remedies sections below.

B. General Legal Remedies.

- (1) In addition to the administrative remedies set forth above, City and TDSL shall each have all legal and equitable remedies available to such party under applicable law. In any legal proceeding to enforce this Agreement, the nonprevailing party shall be liable for the other party's attorneys fees and all costs of court. The administrative and contractual remedies set forth in this Agreement are not intended to waive or replace any legal or equitable remedies available to either party. If TDSL fails to perform any of its monetary or nonmonetary obligations under this Second Amendment, City may hold TDSL in default and pursue its available remedies. In addition, each party shall have a right of setoff against the other for any sums due from one party to the other. In the event either party is required to expend money to cure a default of the other, the party in default shall be obligated to pay the nondefaulting party on demand together with interest at the prime rate as established by Citibank N.A., New York plus two percent (2%) per annum, except as limited by applicable law.
- (2) Prior to the initiation of any legal proceeding, the City shall provide TDSL with written notice and a reasonable opportunity to cure any alleged default. The City shall likewise be afforded the same courtesy by TDSL and shall have a cure period of at least thirty (30) days. If the alleged default involves an issue which has imminent potential threat to health or safety, City shall make good faith efforts to notify TDSL and if TDSL fails to timely correct such condition, the City shall take such action as it deems necessary and charge TDSL directly or deduct its reasonable cost from any amounts owing TDSL. TDSL shall have a minimum of thirty (30) days from receipt of the notice to cure all other alleged defaults unless such default cannot reasonably be cured within such thirty (30) day period, in

which event the Director shall establish a reasonable amount of time under the circumstances.

- (3) Venue for any legal action relating to this Second Amendment shall be in Bexar County, Texas.
- (4) Except as provided in paragraph C(1) below, the City shall be required to pursue its judicial remedies in order to dispossess TDSL by a legal or equitable remedy to which the City may show itself justly entitled. TDSL may continue to operate the Transfer Station in accordance with this Second Amendment under duly made orders of a court of competent jurisdiction, as shall the City be similarly entitled to recover possession under such orders. Upon termination of this Second Amendment, or the expiration of the term, or upon the order of a court of competent jurisdiction, TDSL agrees to reasonably cooperate with City in the City's efforts to regain possession of the Transfer Station without a disruption in operations. In such event, TDSL shall physically surrender and deliver possession of the Transfer Station to the City together with permanent improvements and additions except signage, trademarks, trailers, trucks, vehicles, equipment, portable/modular buildings and other personal property. Such personalty TDSL agrees to remove at its expense and without damage to City property.
- (5) Except as provided in paragraph C(1) below, any transfer of possession and operation of the Transfer Station from TDSL to the City shall be through judicial remedy such as forcible entry and detainer, any other legal or equitable remedy approved by a court of competent jurisdiction, or by agreement of the parties. In seeking to regain possession through any legal or equitable means, City shall not be deemed to have waived its rights to pursue any other remedy against TDSL including without limitation an action for any damages incurred by the City. TDSL shall be liable for and shall pay to City all indebtedness accrued to the date of such repossession.
- (6) Neither bankruptcy, insolvency, nor the appointment of a trustee or receiver shall affect this Second Amendment so long as the respective party affected continues to perform its obligations.
- (7) In the event of a default, the defaulting party shall be liable to the nondefaulting party for reasonable attorneys' fees, costs of court and other costs reasonably incurred in enforcing the terms of this Second Amendment. Prior to the initiation of litigation or pursuit of judicial remedy, arising from any disputed issue, not addressed by remedy provided elsewhere in this Second Amendment, the parties agree to

engage in good faith mediation, subject to the guidelines of the First Amendment, Section 17.

- (8) TDSL acknowledges that the City is a municipal governmental entity, whose powers as a home rule city are limited under the Constitution of the State of Texas. The Constitution contains certain requirements to ensure that certain types of municipal contracts have an identified source of funding. To the extent that such Constitutional provisions are applicable, City and TDSL agree that the City's Solid Waste Enterprise Fund plus the lease payments and royalties paid by TDSL to the City pursuant to this Agreement provide an annual source of revenue to the City which is more than adequate to meet the City's obligations under this Second Amendment. However, if at any time during the term of this Second Amendment, the City loses access to such funds through the complete privatization of its solid waste services or a similar event to the extent that the City is left without a flow of funds to cover the cost of solid waste collection and disposal, the City, upon sixty (60) days written notice to TDSL, may terminate its obligation to deliver a minimum of 100,000 tons of waste to the Transfer Station during the time period that such revenues are unavailable to the City to use for the purpose of this Second Amendment. Upon receipt of such notice, TDSL at its option shall have a continuing right to either terminate this Second Amendment or continue to operate and manage the Transfer Station for its own account and on behalf of others (excluding the City and its designated haulers), subject to the obligation of TDSL to pay a lease and royalty to the City as provided in Section 18, S and U of this Second Amendment.

C. Extraordinary Contractual Remedies Available to City.

- (1) In recognition of the fact that the City requires daily access to the Transfer Station because the operation of the Station is an essential City service potentially impacting public health, the City shall have certain extraordinary remedies under the circumstances outlined in this paragraph. These extraordinary remedies are in addition to, and not to the exclusion of, any and all remedies the City may have at law and in equity to enforce the terms of this contract or to protect the public health, safety and welfare. In the event and only in the event TDSL fails to accept or is unable to accept solid waste from the City at the Transfer Station for a period of three or more operational days (as defined in Section 18B), City, not being in default, may following twenty-four (24) hours written notice delivered to an authorized representative of TDSL in person or by facsimile supported by written confirmation of delivery, or by posting prominently on the

corporate premises of TDSL/TDS and the Transfer Station, enter upon and take possession of the Transfer Station, alter locks and other security devices at the Transfer Station, and expel or remove TDSL and any other person who may be occupying said Transfer Station or any part thereof, and, if City so elects, (1) repossess for City's own use or (2) relet the Transfer Station on such terms as are reasonable and as City may deem advisable and receive the rent therefor. The City shall be entitled to take possession immediately upon the expiration of the notice period after the close of the third day of inoperation or shutdown of the Transfer Station upon written notice to TDSL of the City's intent to do so. The requisite notice may be regarded as that of an anticipatory action notice of intent to perform an action to secure and protect the public health, safety or welfare.

- (2) For purposes of paragraph (1) above, notices shall be delivered to: Texas Disposal Systems Landfill Inc./Texas Disposal Systems, Inc. main business offices, located at 7500 FM 1327, Buda, Texas "to the Attention" of the President. Notices sent by mail shall be addressed to P.O. Box 17126, Austin, Texas, 78760, or such other address as TDSL may designate in writing.
- (3) City shall not attempt to regain possession under the conditions set forth in the paragraph above if the failure of or inability of TDSL to accept solid waste from the City or others whom TDSL has contracted with at the Transfer Station for the requisite period is the result of an "unavoidable event." For the purpose of this Second Amendment, an "unavoidable event" shall be deemed to be any event, action, inaction, or activity beyond the direct control of TDSL affecting the flow of waste to or from the Transfer Station which would be reasonably likely to affect the City as the operator in a manner which would similarly yield the City unable to operate the Transfer Station which character of event shall include by way of example but not limitation, catastrophic flood, tornado, or other catastrophic acts of God, prolonged snow or ice storm, terrorist attack, fire or other serious casualty, any adverse condition caused by the City, prolonged failure of power from a power source, riots, catastrophic aerial or vehicular accident, governmental action limiting vehicular access to surrounding roadways. A reasonable time for TDSL to accommodate resumption of operations as a result of the unavoidable event shall be added to the three (3) day period referenced above. It shall not be an "unavoidable event" if TDSL is unable to accept solid waste from the City due to a TDSL equipment failure, or a permit violation leading to closure by a regulatory agency.

Upon contractual or judicial repossession of the Transfer Station by the City pursuant to this section and the general remedies above, the following terms shall apply:

- a. TDSL shall physically surrender and deliver possession to the City of the entire Transfer Station, together with all permanent improvements and additions, except signage, trade marks, vehicles, trucks, trailers, equipment, portable/modular buildings and other personal property. TDSL, in such case, shall reasonably assist in an orderly transfer of the Transfer Station to the City.
- b. Except as provided in paragraph C(1) above, TDSL hereby waives notice of such re-entry or repossession and of City's intent to re-enter or retake possession of the Transfer Station. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies by either party as provided by law, nor shall pursuit of any other such remedy constitute a forfeiture or waiver of any damages occurring to either party by reason of the violation of any of the terms, provisions and covenants of this Second Amendment. The loss or damage which City may suffer by reason of termination of this Second Amendment shall include the reasonable expense of repossession.
- c. Rightful exercise by City of any one or more remedies granted or otherwise available shall not be deemed to be a waiver of any other remedies available to the City or TDSL, whether by oral agreement or any operation of law. Such waiver can only occur by the written agreement of City and TDSL. No such alteration of security devices and no removal or other exercise of dominion by City over the property of TDSL or others at the Transfer Station shall be deemed unauthorized or constitute a conversion of the permanent improvements and real property at the Transfer Station. Upon any such possession by City, City shall allow TDSL immediate access to remove all signage, trademarks, trailers, trucks, vehicles, equipment, portable/modular buildings and other personal property.
- d. TDSL agrees that any re-entry by City may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as City may elect, and City shall not be liable in trespass or otherwise.

- e. In the event that City elects to repossess the Transfer Station without terminating the Second Amendment, TDSL shall be liable for and shall pay to City all indebtedness accrued to the date of such repossession. In no event shall TDSL be entitled to any excess of any rent obtained by City.
- f. In case of repossession by the City pursuant to this section, TDSL shall also be liable for and shall pay to City, in addition to any sum provided to be paid above, all reasonable expenses incurred by City in connection with reletting the whole or any part of the Transfer Station or by City in enforcing City's remedies.
- g. If TDSL shall fail to make any payment or cure any default within the time herein provided, City, without being under any obligation to do so and without waiving such default, may make such payment and/or remedy such other default for the account of TDSL (and enter the Transfer Station for such purpose), and thereupon TDSL shall be obligated to, and hereby agrees to pay City, upon demand, as though such sums are additional rent, all reasonable costs, expenses and disbursements incurred by City in taking such remedial action.
- h. City shall return possession of the Transfer Station to TDSL and reinstate this Agreement, if within thirty (30) days of the City's repossession, TDSL provides written notice and evidence reasonably satisfactory to the City verifying that the event or condition which precluded TDSL from accepting waste for three (3) consecutive operational days has been cured or eliminated. Within three (3) days of the City's receipt of such notice and reasonably satisfactory evidence, City shall return operation of the Transfer Station to TDSL and this Agreement shall remain in effect as if such repossession had never occurred. The parties shall work together in good faith to reimburse one another, as reasonably appropriate, for operational costs and equipment usage during such thirty (30) day period.
- i. Except in the case of Council funding termination of the Solid Waste Enterprise Fund, the City shall not be obligated to mitigate its damages by means of relet, if the City determines it is in the public interest not to relet. City retains this right in the event of termination, regardless of theory

under which termination occurs. City acknowledges TDSL's limitation of liability set forth in paragraph D below.

D. Performance Bond.

- (1) TDSL shall post with the City a performance bond or irrevocable standby letter of credit in a form acceptable to the City which shall be renewed annually, prior to its expiration. The bond or letter of credit shall be posted with the City no later than two weeks from the date of commencement of the Second Amendment. Time is of the essence in this regard.
- (2) The amount of the bond or irrevocable standby letter of credit shall be One Million Dollars (\$1,000,000) during the term of this Agreement.
- (3) Notwithstanding anything to the contrary in this Second Amendment, as allowed by the 1995 RFP, the liability of TDSL for any and all damages, rents, costs and expenses, arising from a default by TDSL under this Second Amendment shall be limited to the amount of the Performance Bond or irrevocable standby letter of credit, as liquidated damages, which shall be the City's sole and exclusive remedy, it being impossible to ascertain the actual damages which might be incurred by the City as of the date of this Second Amendment. Such limitation is afforded TDSL only so long as the bond or letter of credit is duly maintained according to the requirements of this Second Amendment."

FIDUCIARY DUTY

A new section shall be added as follows:

"20. Fiduciary Duty to Each Other.

TDSL shall lease, manage and operate the Transfer Station in compliance with conditions of this Second Amendment to Agreement and all applicable permits owned by the City for and on behalf of the City, and such other permits as may be required for TDSL's operation. TDSL shall observe all applicable state and federal laws, rules and regulations and such applicable local rules and ordinances which have general application throughout the City which have been enacted to address issues of public health, safety or welfare. TDSL shall be responsible for any fines or penalties levied by the state or federal government as a result of TDSL's failure to comply with its permit obligations. Subject to the City's limited rights of termination recited

in Section 1 above, in the absence of a default by TDSL, City shall not alter or terminate its obligations under this agreement through the powers or authority which are unique to it as a governmental entity without compensating TDSL for its financial loss, insofar as permitted by law, unless the loss occurs as a result of a short-term emergency response action by the City of limited duration to preserve the public health, safety, or welfare, in which case TDSL shall not be compensated by the City."

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Except as modified by this Second Amendment, the Agreement shall remain in full force and effect as written and previously amended. This Second Amendment shall be deemed to control the parties' relationship in the City's Starcrest Transfer Station in the event of any conflict between it, the Agreement, or the 1995 RFP, all of which constitute all of the contract documents for the instant Transfer Station agreement.

Executed as of the 17th day of JANUARY, 1998.

18

CITY OF SAN ANTONIO

By: [Signature]
Alexander E. Briseño
City Manager

Date: JANUARY 7, 1998



TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

By: [Signature]
Bob Gregory, President

Date: JANUARY 6, 1998

ATTESTED AND FILED IN THE CITY'S OFFICIAL RECORDS

[Signature]
Norma Rodriguez, City Clerk

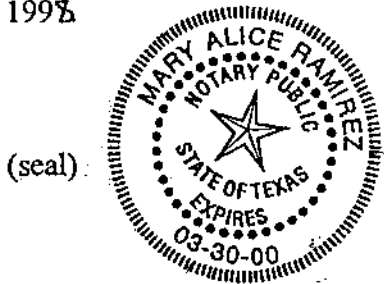
APPROVED AS TO FORM

[Signature]
Frank J. Garza
City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Alexander E. Briseño, City Manager, City of San Antonio, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said City of San Antonio.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 7th day of January
1998

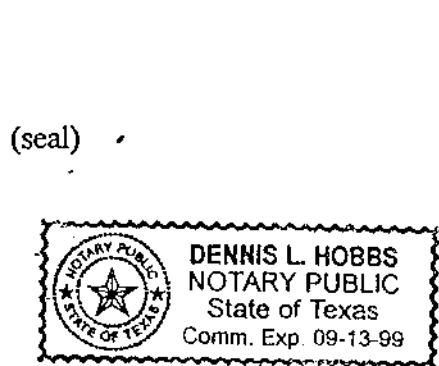


Mary Alice Ramirez
Notary Public
Bexar County, Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

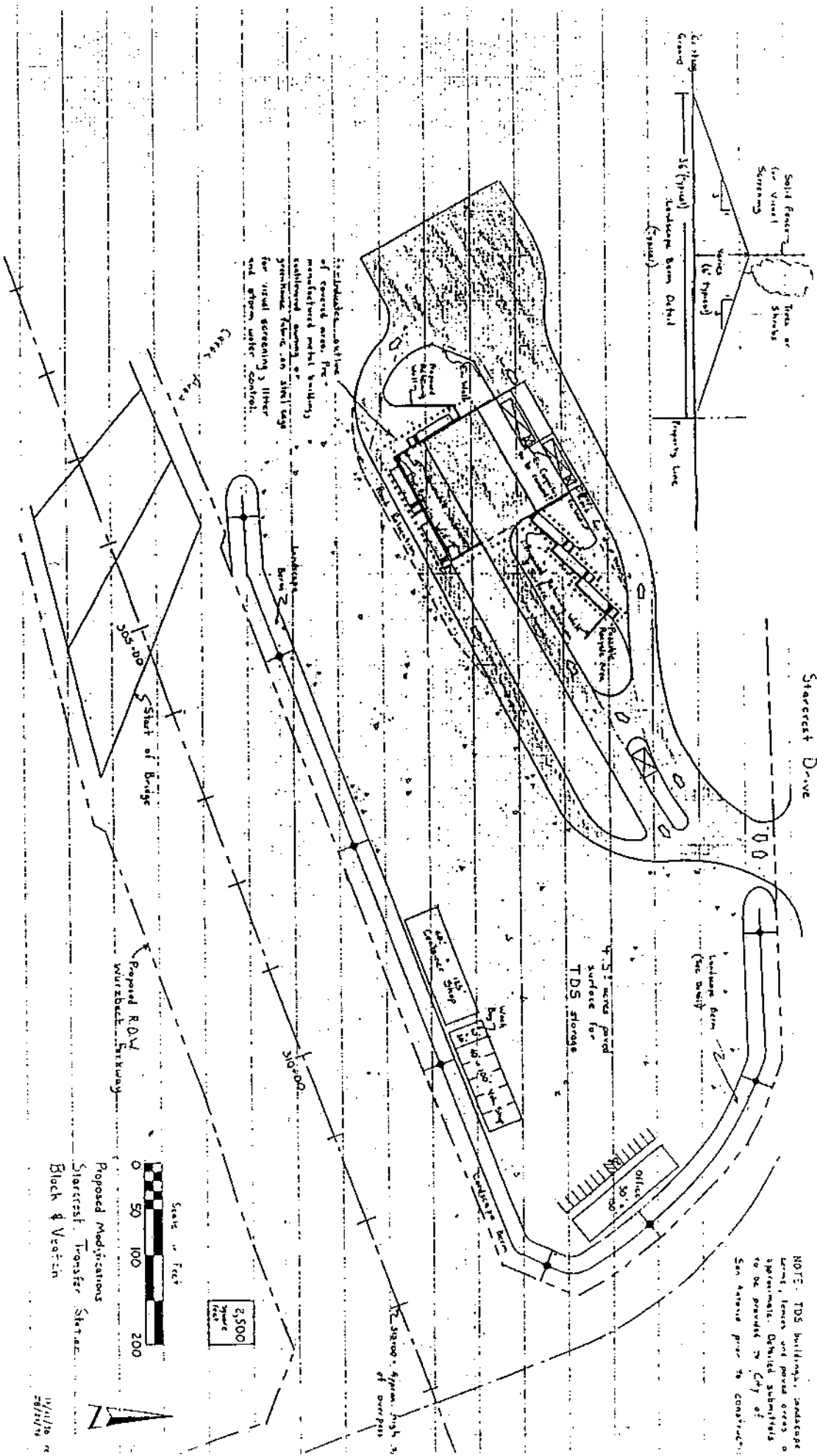
BEFORE ME, the undersigned authority, on this day personally appeared Bob Gregory, President, Texas Disposal Systems Landfill, Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day of JANUARY,
1998

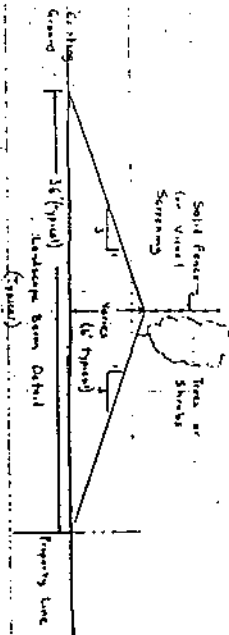


Dennis L. Hobbs
Notary Public
Travis County, Texas

Attachment One Draft Conceptual Plan



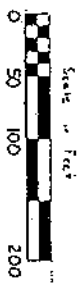
Starcrest Drive



Manufacturing buildings of concrete area, five manufactured metal buildings established around perimeter. Fabric on steel legs for visual screening, litter and storm water control.

Start of Bridge

Proposed R.O.W. Wurzbach Parkway



Proposed Medications Storage
Block 4 Westin

NOTE: TDS buildings, landscape areas, fences and paved areas are approximate. Detailed submissions to be provided to City of San Antonio prior to construction.

SCHEDULE I
TEXAS DISPOSAL SYSTEMS LANDFILL, INC.
CITY OF SAN ANTONIO REQUEST FOR PROPOSAL
FOR MUNICIPAL SOLID WASTE DISPOSAL SERVICES
DISPOSAL COST ANALYSIS

OPTION III
 (CPI adjusted for 10-1-95 to 10-1-96 CPI increase of 3.167%; estimated at 5% thereafter)
 12/03/96
 Start rate - \$17.88 per ton plus State fee

| Year | Beginning | CPI Factor | Cumulative CPI | (Memo) Landfill Disposal rate per ton | Transfer Station Disposal rate per ton | State Fee | Transfer Station Disposal rate per ton with State Fee | Regulated Discount | Disposal rate with State Fee | Tons Per Year | Annual Disposal Cost at the Transfer Station with State Fee |
|------|------------|------------|----------------|---------------------------------------|--|-----------|---|--------------------|------------------------------|---------------|---|
| 1 | 10/01/95 | N/A | 1.000 | \$10.900 | \$17.880 | \$1.25 | \$19.130 | | \$19.130 | 0 | \$1.275,333 |
| 2 | 10/01/96 | 3.167% | 1.032 | \$11.445 | \$18.446 | \$1.25 | \$19.696 | (\$0.57) | \$19.130 | 66,667 | \$2,061,800 |
| 2.3 | 02/01/97 | | 1.083 | \$11.445 | \$18.446 | \$1.25 | \$19.696 | | \$20.618 | 100,000 | \$2,158,600 |
| 3 | 10/01/97 | 5% | 1.137 | \$12.542 | \$19.368 | \$1.25 | \$21.586 | | \$21.586 | 100,000 | \$2,260,300 |
| 4 | 10/01/98 | 5% | 1.194 | \$13.169 | \$20.338 | \$1.25 | \$22.603 | | \$22.603 | 100,000 | \$2,367,100 |
| 5 | 10/01/99 | 5% | 1.254 | \$13.828 | \$21.353 | \$1.25 | \$22.603 | | \$23.671 | 100,000 | \$2,479,200 |
| 6 | 10/01/2000 | 5% | 1.317 | \$14.519 | \$22.421 | \$1.25 | \$23.671 | | \$24.792 | 100,000 | \$2,596,900 |
| 7 | 10/01/2001 | 5% | 1.383 | \$15.245 | \$23.542 | \$1.25 | \$25.969 | | \$25.969 | 100,000 | \$2,720,500 |
| 8 | 10/01/2002 | 5% | 1.452 | \$16.007 | \$24.719 | \$1.25 | \$27.205 | | \$27.205 | 100,000 | \$2,850,300 |
| 9 | 10/01/2003 | 5% | 1.452 | \$16.807 | \$25.955 | \$1.25 | \$27.205 | | \$27.205 | 100,000 | \$2,986,600 |
| 10 | 10/01/2004 | 5% | 1.524 | \$17.648 | \$27.253 | \$1.25 | \$28.503 | | \$28.503 | 100,000 | \$3,129,700 |
| 11 | 10/01/2005 | 5% | 1.600 | \$18.530 | \$28.616 | \$1.25 | \$31.297 | | \$31.297 | 100,000 | \$3,279,900 |
| 12 | 10/01/2006 | 5% | 1.680 | \$19.457 | \$30.047 | \$1.25 | \$32.799 | | \$32.799 | 100,000 | \$3,437,800 |
| 13 | 10/01/2007 | 5% | 1.765 | \$20.430 | \$31.549 | \$1.25 | \$34.376 | | \$34.376 | 100,000 | \$3,603,200 |
| 14 | 10/01/2008 | 5% | 1.853 | \$21.451 | \$33.126 | \$1.25 | \$36.032 | | \$36.032 | 100,000 | \$3,777,100 |
| 15 | 10/01/2009 | 5% | 1.945 | \$22.524 | \$34.782 | \$1.25 | \$37.771 | | \$37.771 | 100,000 | \$3,859,700 |
| 16 | 10/01/2010 | 5% | 2.043 | \$23.650 | \$36.521 | \$1.25 | \$39.597 | | \$39.597 | 100,000 | \$4,151,400 |
| 17 | 10/01/2011 | 5% | 2.145 | \$24.832 | \$38.347 | \$1.25 | \$41.514 | | \$41.514 | 100,000 | \$4,352,700 |
| 18 | 10/01/2012 | 5% | 2.252 | \$26.074 | \$40.264 | \$1.25 | \$43.527 | | \$43.527 | 100,000 | \$4,564,100 |
| 19 | 10/01/2013 | 5% | 2.365 | \$27.378 | \$42.277 | \$1.25 | \$45.641 | | \$45.641 | 100,000 | \$4,786,100 |
| 20 | 10/01/2014 | 5% | 2.483 | \$28.746 | \$44.391 | \$1.25 | \$47.861 | | \$47.861 | 100,000 | \$5,019,200 |
| 21 | 10/01/2015 | 5% | 2.607 | \$30.184 | \$46.611 | \$1.25 | \$50.192 | | \$50.192 | 100,000 | \$5,263,900 |
| 22 | 10/01/2016 | 5% | 2.737 | \$31.693 | \$48.942 | \$1.25 | \$52.639 | | \$52.639 | 100,000 | \$5,520,800 |
| 23 | 10/01/2017 | 5% | 2.874 | \$33.278 | \$51.389 | \$1.25 | \$55.208 | | \$55.208 | 100,000 | \$5,790,600 |
| 24 | 10/01/2018 | 5% | 3.018 | \$34.942 | \$53.958 | \$1.25 | \$57.906 | | \$57.906 | 100,000 | \$6,073,900 |
| 25 | 10/01/2019 | 5% | 3.169 | \$36.689 | \$56.656 | \$1.25 | \$60.739 | | \$60.739 | 100,000 | \$6,371,300 |
| 26 | 10/01/2020 | 5% | 3.327 | \$38.523 | \$59.489 | \$1.25 | \$63.713 | | \$63.713 | 100,000 | \$6,683,600 |
| 27 | 10/01/2021 | 5% | 3.494 | \$40.449 | \$62.463 | \$1.25 | \$66.836 | | \$66.836 | 100,000 | \$7,011,500 |
| 28 | 10/01/2022 | 5% | 3.668 | \$42.472 | \$65.586 | \$1.25 | \$70.115 | | \$70.115 | 100,000 | \$7,355,800 |
| 29 | 10/01/2023 | 5% | 3.852 | \$44.595 | \$68.865 | \$1.25 | \$73.558 | | \$73.558 | 100,000 | \$7,719,100 |
| 30 | 10/01/2024 | 5% | 4.044 | \$46.825 | \$72.308 | \$1.25 | \$77.061 | | \$77.061 | 100,000 | \$8,098,400 |

SCHEDULE 1
TEXAS DISPOSAL SYSTEMS LANDFILL, INC.
CITY OF SAN ANTONIO REQUEST FOR PROPOSAL
FOR MUNICIPAL SOLID WASTE DISPOSAL SERVICES
DISPOSAL COST ANALYSIS

OPTION III
(CPI adjusted for 10-1-95 to 10-1-96 CPI increase of 3.167%; estimated at 5% thereafter)
12/03/96
Start rate: \$17.88 per ton plus State fee

| Year# | Year | CPI | Excl'd | Cumulative CPI | (Ateno) Landfill Disposal rate per ton with CPI | Transfer Station Disposal rate per ton with CPI | State Fee | Transfer Station Disposal rate per ton with State Fee | Regulated Discount | Disposal Rate per ton with State Fee | Tons Per Year | Annual Disposal Cost at the Transfer Station with State Fee |
|-------|------------|--------|--------|----------------|---|---|-----------|---|--------------------|--------------------------------------|---------------|---|
| 1 | 10/01/95 | N/A | | 1.000 | \$10.900 | \$17.880 | \$1.25 | \$19.130 | | \$19.130 | 0 | \$1,275,333 |
| 2 | 10/01/96 | | | 1.032 | \$11.445 | \$18.446 | \$1.25 | \$19.696 | | \$19.696 | 66,667 | \$2,061,800 |
| 2.3 | 02/01/97 | 3.167% | | 1.083 | \$11.445 | \$18.446 | \$1.25 | \$19.696 | (\$0.57) | \$19.130 | 100,000 | \$2,158,600 |
| 3 | 10/01/97 | 5% | | 1.083 | \$12.542 | \$19.368 | \$1.25 | \$20.618 | | \$20.618 | 100,000 | \$2,260,300 |
| 4 | 10/01/98 | 5% | | 1.137 | \$13.169 | \$20.336 | \$1.25 | \$21.586 | | \$21.586 | 100,000 | \$2,367,100 |
| 5 | 10/01/99 | 5% | | 1.194 | \$13.828 | \$21.353 | \$1.25 | \$22.603 | | \$22.603 | 100,000 | \$2,479,200 |
| 6 | 10/01/2000 | 5% | | 1.254 | \$14.519 | \$22.421 | \$1.25 | \$23.671 | | \$23.671 | 100,000 | \$2,596,900 |
| 7 | 10/01/2001 | 5% | | 1.317 | \$15.245 | \$23.542 | \$1.25 | \$24.792 | | \$24.792 | 100,000 | \$2,720,500 |
| 8 | 10/01/2002 | 5% | | 1.383 | \$16.007 | \$24.719 | \$1.25 | \$25.969 | | \$25.969 | 100,000 | \$2,850,300 |
| 9 | 10/01/2003 | 5% | | 1.452 | \$16.807 | \$25.956 | \$1.25 | \$27.205 | | \$27.205 | 100,000 | \$2,986,600 |
| 10 | 10/01/2004 | 5% | | 1.524 | \$17.648 | \$27.253 | \$1.25 | \$28.503 | | \$28.503 | 100,000 | \$3,129,700 |
| 11 | 10/01/2005 | 5% | | 1.600 | \$18.530 | \$28.616 | \$1.25 | \$29.866 | | \$29.866 | 100,000 | \$3,279,900 |
| 12 | 10/01/2006 | 5% | | 1.680 | \$19.457 | \$30.047 | \$1.25 | \$31.297 | | \$31.297 | 100,000 | \$3,437,600 |
| 13 | 10/01/2007 | 5% | | 1.765 | \$20.430 | \$31.548 | \$1.25 | \$32.789 | | \$32.789 | 100,000 | \$3,603,200 |
| 14 | 10/01/2008 | 5% | | 1.853 | \$21.451 | \$33.126 | \$1.25 | \$34.376 | | \$34.376 | 100,000 | \$3,777,100 |
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| 16 | 10/01/2010 | 5% | | 2.043 | \$23.650 | \$36.521 | \$1.25 | \$37.771 | | \$37.771 | 100,000 | \$4,151,400 |
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| 18 | 10/01/2012 | 5% | | 2.252 | \$26.074 | \$40.264 | \$1.25 | \$41.514 | | \$41.514 | 100,000 | \$4,564,100 |
| 19 | 10/01/2013 | 5% | | 2.365 | \$27.378 | \$42.277 | \$1.25 | \$43.527 | | \$43.527 | 100,000 | \$4,786,600 |
| 20 | 10/01/2014 | 5% | | 2.483 | \$28.746 | \$44.391 | \$1.25 | \$45.641 | | \$45.641 | 100,000 | \$5,019,200 |
| 21 | 10/01/2015 | 5% | | 2.607 | \$30.184 | \$46.611 | \$1.25 | \$47.861 | | \$47.861 | 100,000 | \$5,263,800 |
| 22 | 10/01/2016 | 5% | | 2.737 | \$31.693 | \$48.942 | \$1.25 | \$50.192 | | \$50.192 | 100,000 | \$5,520,800 |
| 23 | 10/01/2017 | 5% | | 2.874 | \$33.278 | \$51.389 | \$1.25 | \$52.639 | | \$52.639 | 100,000 | \$5,790,600 |
| 24 | 10/01/2018 | 5% | | 3.018 | \$34.942 | \$53.958 | \$1.25 | \$55.208 | | \$55.208 | 100,000 | \$6,073,900 |
| 25 | 10/01/2019 | 5% | | 3.169 | \$36.689 | \$56.656 | \$1.25 | \$57.906 | | \$57.906 | 100,000 | \$6,371,300 |
| 26 | 10/01/2020 | 5% | | 3.327 | \$38.523 | \$59.489 | \$1.25 | \$60.739 | | \$60.739 | 100,000 | \$6,683,600 |
| 27 | 10/01/2021 | 5% | | 3.494 | \$40.449 | \$62.463 | \$1.25 | \$63.713 | | \$63.713 | 100,000 | \$7,011,500 |
| 28 | 10/01/2022 | 5% | | 3.668 | \$42.472 | \$65.566 | \$1.25 | \$66.836 | | \$66.836 | 100,000 | \$7,355,800 |
| 29 | 10/01/2023 | 5% | | 3.852 | \$44.595 | \$68.865 | \$1.25 | \$70.115 | | \$70.115 | 100,000 | \$7,718,600 |
| 30 | 10/01/2024 | 5% | | 4.044 | \$46.825 | \$72.306 | \$1.25 | \$73.558 | | \$73.558 | 100,000 | \$8,097,600 |

EXHIBIT E

**MEMORANDUM OF AGREEMENT ("MOA") BETWEEN
THE CITY OF SAN ANTONIO ("CITY")**

AND

**TEXAS DISPOSAL SYSTEMS LANDFILL, INC., TEXAS DISPOSAL SYSTEMS,
INC., AND TEXAS LANDFILL MANAGEMENT, L.L.C. (collectively, "TDSL")**

REGARDING

**THE STARCREST TRANSFER STATION
SECOND AMENDMENT TO AGREEMENT**

Agreement:

✓ 1. The City will continue to actively encourage the modification of the Starcrest Transfer Station ("Starcrest") municipal solid waste permit No. 1443 by working with the TNRCC to obtain expeditious approval of the modification request submitted to TNRCC on October 30, 2000.

✓ 2. Contingent upon City staff's conclusion that there are no unacceptable liability concerns, in January of 2001 the City staff will recommend to the City Council that the Starcrest municipal solid waste permit No. 1443 be transferred to TDSL. It is anticipated by both the City and TDSL that the permit will be transferred during January 2001 or shortly thereafter at no cost to TDSL. The City and TDSL will each bear their own administrative, legal, or other cost to transfer the permit.

✓ 3. The City staff will recommend to City Council that the Second Amendment to Agreement (i.e., the Starcrest Transfer Station Agreement entered into pursuant to Ordinance 85263) be amended to require the City to pay the statutory rate of interest as stated in Texas Finance Code § 302.002 on invoices that have not been paid within 30 days after the date of invoice receipt by the City. Statutory interest payments will not be required on individual load ticket charges that are disputed by the City.

The City will pay \$91,023.09, plus statutory interest as calculated under Texas Finance Code §302.002, in satisfaction of minimum tonnage requirements for the period from October 1, 1997 to September 30, 1998. The City and TDSL

*principal paid -
% to be
calculated.*

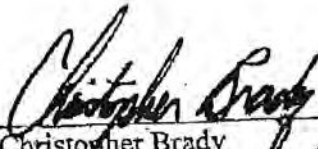
agree that the City will not pay any other statutory interest on any other Starcrest past due invoices dated prior to the date of this MOA for disposal fees.

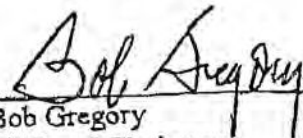
- ✓ 5. No later than Friday, December 15, 2000, the City will provide to TDSL a checklist of requirements for obtaining a Certificate of Occupancy for existing development at the site, and a checklist of requirements for obtaining approval of plats, building permits and Certificate of Occupancy for the future development at the site consistent with the conceptual plan attached to the Second Amendment to Agreement.
- ✓ 6. The City Staff will recommend to City Council (if City Council approval is required) that the lease payments under the Second Amendment to Agreement be changed as follows:
- ✓ a. The City will waive the entire \$100,000 lease payments for the years 1998 and 1999. The City will credit the lease payments already made by TDSL for 1998 and 1999 to TDSL's account in payment of the lease payment requirements for the years beginning October 1st of 2001, 2002, and a portion of 2003.
- ✓ b. The City will waive a portion of the year 2000 lease payment based on the following criteria. Within 120 days from the date of this MOA, TDSL will submit plans for development of the site, consistent with the conceptual plan attached to the Second Amendment to the Agreement, to the Public Works Department for approval. After the plans have been reviewed and found to comply with City development codes, the City will issue a building permit to TDSL. The City will waive, on a pro rata basis, the portion of the yearly lease payment which is incurred from October 1, 2000 to the date of issuance of the building permit by the City. TDSL will pay with its credit as described in Section 6a above, on a pro rata basis, the portion of the lease payment due from the date of issuance of the building permit by the City, until the end of the 2000 lease period, which occurs on September 30, 2001.
- ✓ 7. It is a condition of this MOA that the City and TDSL execute and abide by the terms of the Tolling Agreement mutually agreed to by the City and TDSL on November 22, 2000.
- ✓ 8. The City and TDSL agree that compliance with and execution of the terms of this MOA, which includes the approvals by the City Council as anticipated herein, resolves and settles any and all remaining issues concerning the Starcrest Transfer Station Agreement and its Amendments that may exist as of the date of this MOA.

9. The City and TDSL agree to continue to work in cooperation on issues concerning Starcrest pursuant to the terms of the Second Amendment to Agreement.

This Agreement contains all the terms and conditions agreed upon by the parties. This MOA may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed one and same document. No other understandings, oral or otherwise, regarding the subject matter of the MOA shall be deemed to exist or to bind either of the parties hereto.

DATED this 22nd day of November, 2000.


Christopher Brady
Assistant City Manager
City of San Antonio 298


Bob Gregory
CEO and Chairman
Texas Disposal Systems Landfill,
Inc., Texas Disposal Systems, Inc.,
And Texas Landfill Management,
L.L.C.

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

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

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

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

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

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

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

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

(iii) Section 19 - DISPUTE RESOLUTIONS

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

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


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

Executed this 22 day of March, 2001.

CITY OF SAN ANTONIO

TEXAS DISPOSAL SYSTEMS
LANDFILL, INC.

by 
for City Manager

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


Approved as to form: 
for City Attorney

EXHIBIT F



TEXAS DISPOSAL SYSTEMS, INC. TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

P.O. Box 17126
Austin, TX 78760-7126
512.421.1300
www.texasdisposal.com

Sent by email and by Certified Mail
7015 1520 0003 4131 4665

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,

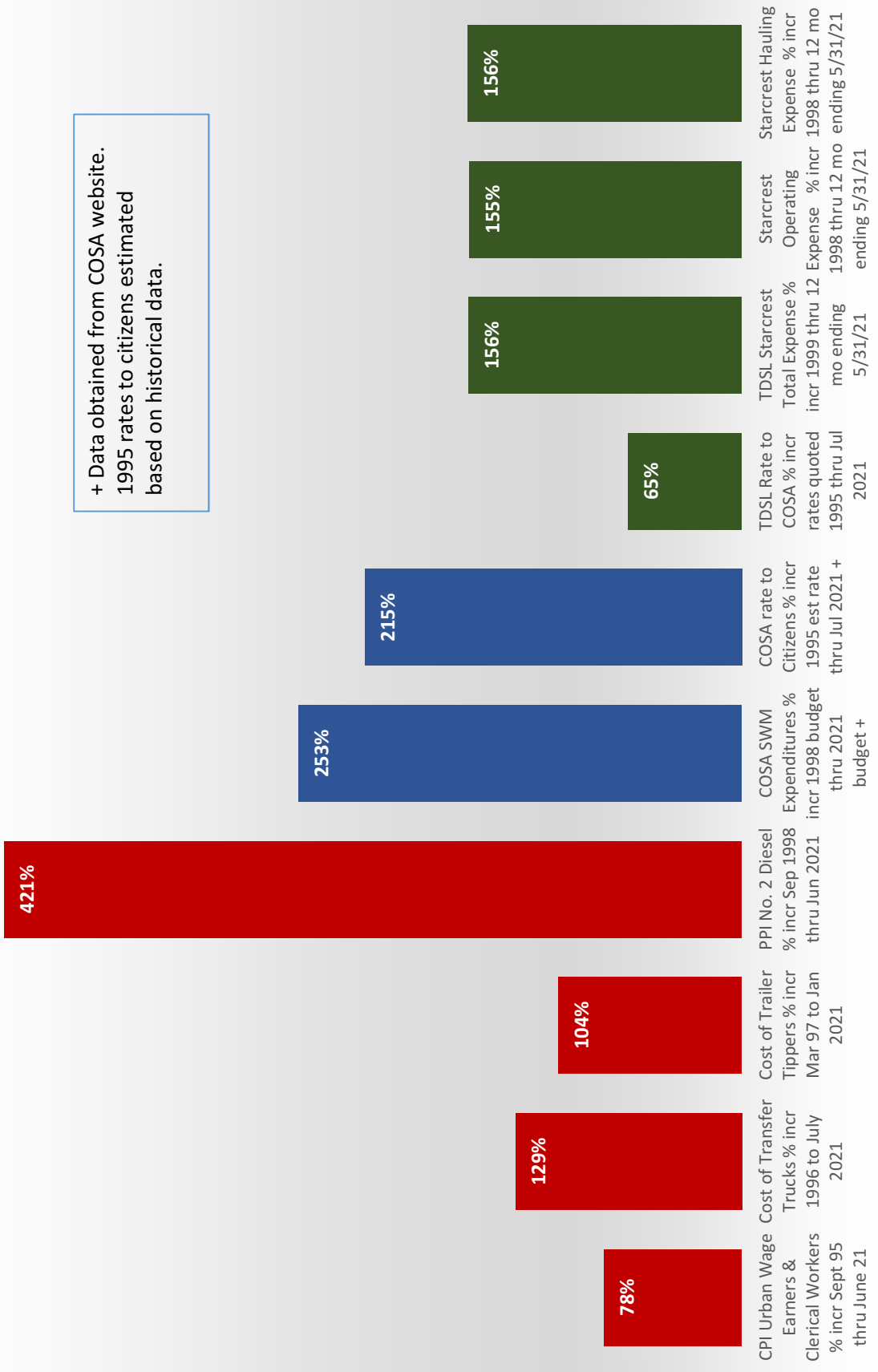


Bob Gregory
President & CEO
Texas Disposal Systems Landfill, Inc.

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

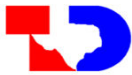
Exhibit 1

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



+ Data obtained from COSA website. 1995 rates to citizens estimated based on historical data.

EXHIBIT G



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 H



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 |

EXHIBIT I



May 17, 2022

Via certified Mail, return receipt requested

Texas Disposal Systems Landfill, Inc./
Texas Disposal Systems, Inc.
Attn: President, Bob Gregory
7500 FM 1327
Buda, Texas 78610

AND

P.O. Box 17126
Austin, Texas 78760

Re: Notice of Default and Demand to Cure

Dear Mr. Gregory:

Pursuant to Section 19(B)(2) of the agreement entered into between Texas Disposal Systems Landfill, Inc (“TDSL”) and the City of San Antonio (“the City”) in 1993, and subsequently amended in 1995 and 1998 (hereinafter referred to as “the Agreement”), the City is providing the required notice that TDSL is currently in default of its contractual obligations under the Agreement.

Violation of Section 18(C)

Section 18(C) of the Agreement (Second Amendment) provides the City a “first right of service” at the Starcrest Transfer Stations. To “protect the City’s right to first priority for daily capacity at the Transfer Station,” the Agreement further provides, in relevant part, that:

(2) ...TDSL shall use reasonable care to ensure that no vehicle of the City or its designated haulers will be required to wait more than 30 minutes. For purposes of this Agreement, TDSL shall be deemed to have used reasonable care even though trucks belonging to the City or its designated haulers have to wait more than 30 minutes, if the wait is due to large numbers (15 or more vehicles) of collection trucks owned by the City or its designated haulers arriving at the Transfer Station within approximately the same time period.

(3) In the event that a City vehicle is required to wait longer than 30 minutes as a result of (i) TDSL not providing the City first right to service at the Transfer Station or (ii) TDSL being unable to provide normal services to the Transfer Station using reasonable care, the City’s on-site Program Manager will determine, at his/her sole discretion whether City vehicles are to be diverted to another landfill. If City vehicles are diverted due to the failure of TDSL to use reasonable care, TDSL will:

- a. Pay the City the added cost to transport and dispose of waste [at a designated alternative site]...

- b. Take immediate steps to put the Transfer Station back in service...
- c. Credit towards the City's requirement to deliver 100,000 tons annually all tons diverted from the Transfer Station to another disposal facility.

Since March 10th, TDSL has not met its obligations under Section (C) to timely service City haulers. To the contrary, TDSL appears to have reduced staff in an intentional effort to slow down servicing of City trucks when they arrive for drop off. It is disconcerting that prior to March 10th, there were rarely problems with delays in servicing of trucks at the Starcrest Transfer Station. However, since that date, there has suddenly been daily delays that have adversely impacted the drivers' ability to finish their daily routes in a timely fashion (thereby impacting the citizens of San Antonio) and frequently requiring the onsite manager to divert trucks to other disposal sites.

When the City inquired into the sudden onset of delays surpassing the 30-minute threshold, employees at the transfer station responded that they were using "reasonable care." However, the only permissible reason for exceeding the 30-minute wait requirement is if "the wait is due to large numbers (15 or more vehicles) of collection trucks owned by the City or its designated haulers arriving at the Transfer Station within approximately the same time period." But for that limited scenario, TDSL's failure to service a City hauler within 30 minutes is by definition not "reasonable care" under the Agreement because otherwise TDSL is expected and required to assist a truck within 30 minutes. Therefore, the consistent delays when the line for trucks is less than 15 in number is due to TDSL's *unreasonable* care and in default of TDSL's contractual obligations. More importantly, TDSL has failed to provide any reason for the sudden onset of delays.

The City has been tracking the diverted tonnage to ensure that it will receive credit towards its tonnage obligations to TDSL under the Agreement and will continue to do so as long as TDSL remains in breach.

Violation of Section 18(G)

Section 18(G) of the Agreement (Second Amendment) provides, in relevant part, that:

TDSL shall provide for disposal of dead animals collected on City streets and alleys and brought to the transfer station by the City or its designated haulers between the hours of 7:00 AM and 6:00 PM, Monday through Friday and 7:00 AM to Noon on Saturday.

Despite this requirement, TDSL has repeatedly refused to allow the City to dispose of dead animals at the Starcrest Transfer Station since March 10th, and at intermittent periods before then. There is absolutely no valid justification for TDSL's refusal. TDSL raised concerns regarding the number of dead animals being dumped; however, such concerns are without basis and the Agreement provides no limitation on amounts disposed. The City collects approximately 25,000 dead animals off of City streets each year and such refusal has been a burden on the City to transport to alternate dump sites.

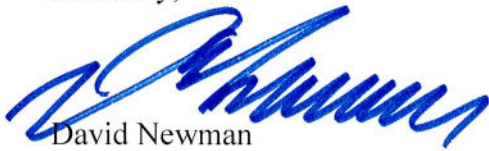
Accordingly, TDSL is in default on its obligations under the Agreement and must start accepting dead animals for disposal at the Starcrest Transfer Station immediately.

Notice to Cure

In accordance with Section 19(B)(2), TDSL has thirty (30) days from this notice to cure the noted deficiencies. In the meantime, the City will continue to mitigate its damages as permitted by the Agreement.

If TDSL cannot or will not cure the deficiencies to be in compliance with the Agreement, the City will be obligated to pursue all allowable remedies pursuant to the Agreement.

Sincerely,



David Newman
Director of Solid Waste Management