TEXAS DISPOSAL SYSTEMS

P.O. Box 17126, Austin, TX 78760
512.421.1300 Office
800.375.8375 Toll Free
512.243.4123 Fax
www.texasdisposal.com

December 11, 2015

Delivery via Email:
tracy.franklin@austintexas.gov and
Certified Mail/Return Receipt No. 7015 1520 0003 4131 0032

City of Austin
Financial Services Department
Attention: Tracy Franklin
PO Box 1088
Austin, TX 78767

Re: TDS' Response to the City's Request for Right of Assurance, Contract No. NA140000089 for Side-Load Trash Collection and Single Stream Recycling

Dear Mr. Franklin:

I received your letter by certified mail (Attachment 1) on December 10th requesting Texas Disposal Systems, Inc.'s ("TDS") assurance of performance on the above identified Contract. Your certified mail requested this response within three (3) business days of the date of your letter which is today, the day after I actually received it. This letter is submitted by your deadline, however, this arbitrary deadline is not reasonable to prepare a sufficient response so I reserve the right to supplement should additional information become available and necessary. This letter serves as the response to your request for written assurance that TDS is capable of fully performing under the Contract by providing proper invoices and also serves as TDS' own good faith demand on the City of Austin ("City") for written assurance the City will comply with the above referenced Contract.

TDS' position is it has provided proper invoices for the services required by the City staff and performed by TDS. City staff directed TDS to transport and dispose or process all waste and recyclables placed in the City specified side-load containers, which has included bulk liquids comingled in the waste. Handling the bulk liquids pursuant to City staff instructions required additional management cost and waste processing which increased the TDS costs over the amount quoted for ordinary commercial municipal solid waste and recyclables. TDS informed City staff in advance of these increased costs.

TDS first contacted the City about the bulk liquids in the side-load containers in November of 2014. These discussions included steps City staff could take to remedy the bulk liquids problem as documented by the attached email (Attachment 2). The action items were not implemented by City staff. As the bulk liquid volume increased due to lack of action taken by City staff, TDS decided in July 2015 to address the potential safety issues associated with excessive bulk liquids to protect public health and safety, to protect the City and TDS from liability, and to allow the waste loads to enter the landfill without being characterized as bulk liquid loads needing solidification prior to landfill disposal. If the excess bulk liquids were to overflow the leak proof waste compartment there could be a violation of federal, state, and local law as well as a violation of the Contract Section 0300, paragraph 11. That Contract provision requires TDS to comply with all health, safety, and environmental regulations. To continue to operate as directed by City staff and ignore the potential problems of overflowing liquids could have exposed TDS and the City to legal consequences. This liability exposure is created by overflowing liquids from the side-load truck spilling onto the roadway creating a slick surface, which could cause automobile accidents and stain roadways and alleys with grease and oil in the liquid waste. City staff appear unconcerned about the safety and regulatory issues created by their failure to act.

The Contract referenced above calls for TDS to collect trash and single-stream recyclables in the Central Business District ("CBD") by use of side-load containers (see Scope of Services, Section 0500, paragraph 3.0). The City's customers are also disposing of bulk liquids in the side-load containers. These bulk liquids contain grease, oil, and floating particles of food and other waste. The trucks TDS use to service these containers are brand new side-load trucks and truck bodies made by Kann Manufacturing Corporation ("Kann") that satisfy the Contract's Scope of Services requirement. These trucks were purchased specifically for this contract, and were originally equipped with clean out boxes that provide fifteen inches (15") of liquid containment in the waste compartment. This is an industry design standard for side-load trucks transporting municipal solid waste. In an attempt to keep excess liquids from overflowing the standard design capacity, TDS, in consultation with Kann, has modified one of the truck's clean out box to contain about thirty inches (30") of liquid in the waste compartment of the truck and added storage tanks to all the trucks to retain additional liquid volume, but the problem of excess bulk liquid beyond that capacity still persists. This is why TDS has taken the steps to help insure that TDS and the City do not violate the law and are protected from the liability of overflowing such liquid waste onto road surfaces, potentially causing hazardous driving conditions along and through the route and in between the CBD and the TDS facility in southeast Travis County.

You quote the language in the Contract that requires all trucks to be leak proof. The brand new trucks are in fact leak proof, just as designed, if the City's customers were only placing into the TDS containers the proper municipal solid waste. No side-load truck is made that can prevent the overflow of excessive quantities of bulk liquids from the leak proof waste compartment. These new trucks are compliant with the Contract requirement because they are leak proof in accordance with industry design standards.

If the City had accurately represented the true nature of the CBD waste characteristics, TDS could have planned accordingly to include the cost to either pump out the excessive liquids to eliminate overflow, as we are now doing, or to allow for the solidification of liquids dumped into the trucks

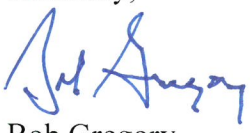
to eliminate the sloshing and overflow along the route. Unfortunately, City staff was the only party to this Contract with prior access to information regarding the CBD waste characteristics. City staff also prohibits drain holes in dumpster containers in the CBD. City staff did not inform TDS of the true nature of the CBD waste, nor did it suggest in Section 0500, paragraph 4.2 that TDS might need special pumping or liquid waste solidification equipment to manage the excess liquids. TDS had serviced the CBD a number of years ago without encountering those excess liquids, so it had no reason to know about the changed circumstances which the City should have disclosed.

TDS has attempted to address this situation by meeting with City staff. Meetings were held November 14, 2014, July 27, 2015, August 25, 2015, and September 11, 2015, without resolution. After that, a scheduled meeting for October 8, 2015, was cancelled by City staff. In fact, City staff has refused to discuss any other options to resolve this dispute. At the September meeting, the City staff only increased the City's costs by cutting off TDS' access to the City's wastewater treatment plant for disposal of the excess liquid waste pumped into tank trucks. Cutting off TDS' access goes against the City's own self-interest to reduce its costs. City staff gave no justification for stopping TDS from disposing of the excess liquid waste generated by the City's CBD customers at the City's own facility. This action is particularly perplexing since the City's wastewater plant accepts leachate from the closed Travis County landfill for processing. City staff has ignored all other suggestions from TDS that would help the City resolve this problem. These suggestions include the possibility of eliminating dedicated routes, identifying City customers disposing of bulk liquids into TDS side-load dumpsters, establishing an outreach program to educate City customers on how to properly manage grease, oils and other liquid wastes, enlisting Watershed Protection assistance, and allowing excess liquids to be discharged from the side-load trucks directly to City wastewater sewers in the downtown area. The City's refusal to take any action has only exacerbated the problem.

In the meantime, TDS wishes to avail itself of the same contractual right to demand assurance from the City of Austin. Therefore, TDS demands written assurance the City will perform on the contract by insuring only waste that is appropriate for side-loading containers will be disposed by the City's CBD customers per the Scope of Services, Section 0500, paragraph 3.0. TDS also demands written assurance the City will pay all outstanding invoices submitted by TDS to haul waste containing excessive bulk liquids as directed by City staff including all additional charges for vehicle modifications, pump-out and disposal of excess bulk liquids. Please reply with said written assurance within three (3) business days of your receipt of this notice pursuant to Section 0300, paragraph 34 of the contract.

In summary, TDS has met its obligations and more under the above referenced Contract. TDS will continue to provide the City with exceptional service. TDS will not remove from invoices the increased costs caused by City staff's actions and inactions. The City has wrongfully withheld all payments on invoices for September, October and November. TDS expects the City to pay the full invoice amount including the additional costs for the extra services TDS performed at the direction of the City staff. TDS expects a response from the City to the written demand for right to assurance within three (3) business days of the City's receipt of this letter pursuant to Section 0300, paragraph 34 regarding notices. Please feel free contact me with any questions.

Sincerely,



Bob Gregory
President and CEO

cc: Suzanne Zarling, Texas Disposal Systems, Inc.
Rick Fraumann, Texas Disposal Systems, Inc.
Adam Gregory, Texas Disposal Systems, Inc.
Ryan Hobbs, Texas Disposal Systems, Inc.
Teri Jeffries, Austin Resource Recovery
Tom Fulmer, Austin Resource Recovery
Elizabeth Corey, Austin Resource Recovery
David McCluggage, Austin Resource Recovery
Jonathan Dalchau, Financial Services Department

Attachment 1 – Letter dated December 8, 2015
Attachment 2 – Email dated November 19, 2014

Attachment 1

City of Austin

Purchasing Office, Financial Services Department
P.O. Box 1088, Austin, TX 78767

RECEIVED
DEC 10 2015
BY:

December 8, 2015

DELIVERED VIA EMAIL:
BGREGORY@TEXASDISPOSAL.COM and
CERTIFIED MAIL NO. 7013 2250 0002 1953 8509
RETURN RECEIPT REQUESTED

Texas Disposal Systems, Inc.
Attn: Bob Gregory
PO Box 17126
Austin, Texas 78760

Subject: Right to Assurance, Contract No. NA140000089 (Contract) for Trash Recycling and Hauling Services within the Downtown Central Business District of Austin, TX

References: Texas Disposal Systems Invoice Numbers 3533966 dated September 30, 2015 and 3557455 dated October 31, 2015; City of Austin emails dated October 19, October 21, and November 13, 2015.

Dear Mr. Gregory:

On May 5, 2014, the City of Austin (City) approved the award and execution of the subject Contract with Texas Disposal Systems (TDS). It has been brought to the attention of the City Purchasing Office that the following performance issue has occurred under this Contract:

> TDS submitted charges for pumpout services, additional landfill loads, and truck modifications in Invoice Number 3533966 dated September 30, 2015. In emails dated October 19 and October 21, 2015, the City stated it would be unable to pay the invoice due to the unauthorized charges outside of the Contract scope and requested an amended invoice. TDS submitted charges for additional pumpout services and additional landfill loads in Invoice Number 3557455 dated October 31, 2015. In an email dated November 13, 2015, the City again stated it would be unable to pay the invoice due to the unauthorized charges outside the Contract scope and requested an amended invoice.

Section 0500 Paragraph 3.1.7 of the Contract states, "All trucks used by the Contractor shall be leak proof. The Contractor shall immediately remove any fluid that leaks from the Contractor's trucks and the Contractor shall have trucks repaired before placing them back into service in the Contract Area. In the event the Contractor does not clean up any leakage or spills within two (2) hours, the City may act to do so and charge the Contractor for all costs incurred." Since leaks and spills are the Contractor's responsibility, any charges for services to prevent such spills and leaks are also the Contractor's responsibility.

As the Contract permits under Section 0300, Paragraph 24 Right to Assurance, the City requests that you provide this office with a written assurance that TDS is capable of fully performing under the Contract by providing proper invoices containing no charges outside the terms of the Contract. Your written assurance must include corrected September and October waste disposal invoices with no pumpout charges. Failure

to provide the requested information and documentation or any additional performance issues by TDS may result in termination of the Contract under the provisions of Section 0300, Paragraph 27 Termination for Cause. Please submit your written assurance and corrected invoices to the below address or via email not later than three (3) business days after the date of this notice:

City of Austin
Financial Services Department
Purchasing Office
Attention: Tracy Franklin
P.O. Box 1088
Austin, TX 78767
tracy.franklin@austintexas.gov

The City reserves all rights and remedies provided by law or under the Contract. If you have questions, please contact me at (512) 974-2034 or tracy.franklin@austintexas.gov.

Sincerely,

Tracy Franklin
Corporate Contract Administrator
Financial Services Department

cc: Suzanne Zarling, Texas Disposal Systems, Inc.
Rick Fraumann, Texas Disposal Systems, Inc.
Teri Jeffries, Austin Resource Recovery
Tom Fulmer, Austin Resource Recovery
Elizabeth Corey, Austin Resource Recovery
David McCluggage, Austin Resource Recovery
Jonathan Dalchau, Financial Services Department

Attachment 2

From: Suzanne Zarling
Sent: Wednesday, November 19, 2014 5:50 PM
To: Reed-Castro, Kayla (Kayla.Reed-Castro@austintexas.gov) <Kayla.Reed-Castro@austintexas.gov>; Eric Krauss <ekrauss@texasdisposal.com>
Subject: Meeting11142014

Kayla,

Thanks for giving us an opportunity to review the notes from last Friday's meeting. We have proposed some revisions, which are contained in the attached document. Please let us know if you are ok with the changes. We look forward to working with you and your team to address some of these issues. Suzanne

Suzanne Zarling
Texas Disposal Systems
www.texasdisposal.com
Office: 1 (512) 421-7600

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Texas Disposal Systems (TDS). Finally, the recipient should check this email and any attachments for the presence of viruses. TDS accepts no liability for any damage caused by any virus transmitted by this email.

Meeting Notes from November 14, 2014 meeting at TDS with TDS and ARR staff.

Issue – TDS requested a meeting with Austin Resource Recovery staff to discuss concerns about excessive liquid in trash and recycle dumpsters within the Central Business District contract area.

Area of greatest concern:

Blocks along 6th Street: N02, N03, N04, N05, N06, S02, S03, S04, and S05

TDS Staff identified sources of excess liquid:

Mop buckets full of dirty water being dumped into trash and recycle dumpsters.

Full bags of ice being dumped into trash and recycle dumpsters.

Beverage containers still full of liquid, inside trash bags.

Vendor Concern:

Texas Disposal Systems has operational concerns relating to dumping, transport and disposal of significant volumes of liquids in dedicated loads collected from the contract area.

Consequence:

If liquids do not decrease TDS staff will have to evaluate operational alternatives, potentially adding direct costs to the servicing of containers within the contract area.

Diversion rate for the district is skewed due to the weight generated by the liquids.

Increased need and cost associated with cleaning, disinfecting and sanitizing containers.

Increased likelihood of spills and need for costly spill cleanup.

ARR Contract Administrator Actions:

Contact Ryan Hebrink with Water Shed Protection regarding options and outreach assistance for the mop bucket water and full bags of ice disposal options.

Contact ARR Business Outreach for education on the proper disposal of full beverage containers, buckets of mop water, and full bags of ice.

Service Enhancement – Team up with ARR Street Sweeping Staff

Area:

All areas that receive both services in the Downtown Area

Request:

ARR Street Sweepers service the alleys after the dumpsters are emptied, versus before the dumpsters are serviced.

ARR Contract Administrator Actions:

Contact the Division Manager and Assistant Division Manager for input on suggestion made by TDS.

Attendees:

Suzanne Zarling – TDS Director of Operations

Eric Krauss – TDS Operations Commercial and Roll Off Systems Manager

Kayla Reed-Castro – COA/ARR Contract Administrator