

## Bob Gregory

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**From:** Bob Gregory  
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'mwhellan@gdhm.com'; Gary Newton; Adam Gregory; Ryan Hobbs  
**Subject:** Organics Processing Under TDS/COA Waste Disposal and Yard Trimmings Processing Contract  
**Attachments:** 05-12-00 Waste Disposal Contract between TDSL and COA.pdf

Dear Mayor and Council Members,

As you may know, earlier today Austin Resource Recovery (ARR) accepted Request For Proposal (RFP) responses for the management and composting of as yet unknown quantities of organic waste (yard trimmings, soiled paper and food waste) to be collected curbside from Austin single family residences. Texas Disposal Systems Landfill, Inc. (TDS) did not submit a response to RFP# SLW0509 due on or before April 12, 2016 at 2:00 p.m. Since the period for responding has closed, TDS is not a Respondent subject to the Anti-Lobby Ordinance restrictions identified under that solicitation. However, TDS is proposing in an unsolicited offer to the City Council to supply these services to the City through its existing thirty year "Waste Disposal & Yard Trimmings Processing Contract", which already allows for these services without a contract amendment.

TDS has chosen not to become a respondent to the staff's solicitation (RFP# SLW0509), as well as several other recent solicitations, due to our concern with the staff's overly broad interpretation and application of the City's Anti-Lobby Ordinance coinciding with current conflict between the staff and TDS potentially needing to be resolved before the City Council. Therefore, TDS needs to maintain the ability to communicate openly with staff and council members without concern for the Anti-Lobby Ordinance restrictions. For example, TDS is still negotiating provisions for the first reset of the "Master Recycling, Processing and Marketing Services Agreement", which might require City Council involvement in the near future.

We certainly want to be able to talk to Council and staff about the City's option, and our willingness to accept these materials at our southeast Travis County facility, utilizing the terms of our existing thirty year "Waste Disposal & Yard Trimmings Processing Contract" entered into by the City and TDS in 2000. I have attached a copy of this contract for your review, with pertinent qualifying provisions highlighted. As you will see, the City has already secured access and rates to our composting facility under this contract, if the staff would only choose to utilize it.

More specifically, TDS would charge the City for these composting services the Contract rate for organic material delivered to the TDS facility, which is equal to the effective rate paid by the City for waste disposal less the TCEQ fee for waste landfilled, currently \$20.42 per ton. TDS would also charge the same rate per ton plus the TCEQ fee, currently totaling \$21.36 per ton, for inappropriate waste and contaminated material that must be removed from the stream of

compostable organic material by TDS and disposed of in the TDS landfill either utilizing TDS or City vehicles. As we have done with all other City waste streams received by TDS, we would work with staff to develop a mutually agreeable management and reporting format to track and verify tons delivered and processed, and contamination removed and disposed of, utilizing the existing scales and ticketing system at the facility used by ARR collection vehicles for nearly two decades.

TDS is the largest and longest running local waste product composting operator, providing composting services to thousands of customers in the central Texas region, and annually processing and marketing approximately 200,000 tons of organic materials. The TDS Travis County facility was the state's first to receive a permit for an integrated composting, recycling and landfill operation. That facility, and particularly the composting operation, has been a national showcase for many years, hosting numerous conferences, training sessions, equipment demonstrations, and industry associations leadership events attended by thousands of individuals; winning numerous awards in the process.

TDS is proud to be such a long standing partner with the City of Austin, and is eager to honor our existing agreement with the City to provide these services, if you so choose; which will further our shared goal of maximizing diversion of waste and other compostable resources from landfill disposal. Please do not hesitate to contact me with any questions you may have. We stand ready to serve the City through this unsolicited offer to utilize the existing thirty year "Waste Disposal & Yard Trimmings Processing Contract", which allows the provision of these needed services within a fully authorized facility.

Sincerely,  
Bob Gregory  
President & CEO  
Texas Disposal Systems Landfill, Inc.  
(m) 512-619-9127

## WASTE DISPOSAL AND YARD TRIMMINGS PROCESSING CONTRACT

THIS CONTRACT, is made and entered into this 12 day of May, 2000, by and between Texas Disposal Systems Landfill, Inc., a Texas corporation ("TDS") and the City of Austin, Texas ("City"). This Contract supersedes and replaces a Waste Disposal Contract between the parties dated February 28, 1999 ("Existing Contract"). Except for obligations which have accrued but have not yet been performed, the terms and provisions of the Existing Contract shall be deemed to have merged into this Contract on the effective date and the language of this Contract shall control in the event of a conflict. The term "effective date" shall refer to the date this Contract has been executed by both parties as first shown above.

### 1. Definitions.

- A. **Acceptable Waste** means all material collected for disposal by or at the direction of City from within the city limits of Austin, Texas, from time to time, that is permitted to be disposed of by TNRCC at TDS's Type I landfill, except material collected through dumpster or roll-off service.
- B. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
- C. **Contract** means the binding legal agreement between City and TDS. The Contract includes (copies attached): the Solicitation (excluding the "Standard Terms and Conditions" and the "Supplemental Purchase Terms and Conditions" except as specifically incorporated herein), the Offer submitted in response to the Solicitation, the Contract award, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving preference in the following order:
  - i. this Waste Disposal Contract;
  - ii. the Offer, exhibits, and attachments - within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work;
  - iii. the Solicitation.
- D. **CPI** means:
  - i. the Consumer Price Index for All Urban Consumers (CPI-U) all items, published by the United States Department of Labor, Bureau of Labor Statistics for the region including the City of Austin, or

- ii. in the event that there is no published regional calculation including Austin, the regional calculations for the Dallas-Fort Worth and Houston-Galveston-Brazoria areas will be averaged together and used for CPI, or
  - iii. in the event the U. S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, another equally authoritative measure of change in the purchasing power of the U. S. dollar will be selected by the parties.
- E. **Effective Date** means the date shown on the first page of this Contract.
- F. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of government of the United States, or the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability.
- G. **Offer** means the Options 1, 2, 3, 4, and 5 of the signed response entitled Response to November 12, 1996 Request for Proposals for Solid Waste Disposal and Recyclable Processing, dated January 24, 1997, submitted to City in response to the Solicitation, copies of which are attached to this Contract.
- H. **Solicitation** means the Request for Proposal, dated November 12, 1996, as supplemented by Addendum #1 (dated November 26, 1996), Addendum #2 (dated December 9, 1996), and Addendum #3 (dated January 17, 1997), copies of which are attached to this Contract.
- I. **Special Waste** is as defined in Exhibit C.
- J. **Subcontractor** means a person, firm or entity providing deliverables or services to TDS to be used in the performance of TDS's obligations under the Contract.
- K. **TNRCC** means the Texas Natural Resource Conservation Commission or its successor having authority over solid waste disposal in the State of Texas.
- L. **Unacceptable Waste** means Class I industrial waste and any material collected by or at the direction of City from within the city limits of Austin, Texas, from time to time, that is not Acceptable Waste or Special Waste.
- M. **TDS** means the person, firm or entity selling services to City under this Contract.

2. Scope of Work.

- A. TDS shall provide disposal services at a landfill approved by the TNRCC for disposal of municipal solid waste (a "TNRCC Landfill"), for any and all Acceptable Waste and Special Waste delivered by City and/or City's agent or subcontractor(s), to the Texas Disposal Systems Landfill, Inc. co-located Type I Municipal Solid Waste Landfill, Recycling and Composting Facility (7500 FM 1327, Austin, Texas). City shall provide TDS notice of the anticipated volume expected to be disposed at the TDS landfill on an annual basis with estimated monthly allocations. If City decides to redirect its garbage collection routes in a manner that will increase or decrease the estimated volume of waste being hauled to TDS by more than 1,000 tons per month, City will notify TDS of the change no less than 120 days before implementing the change. The notice is intended to allow TDS to plan for the landfill capacity, employee support and equipment needs and will provide TDS an indication of the adjusted base rate annual volume discount price to charge City. TDS may elect to waive this requirement of notice at any time, upon a written request by City. If the estimated increase exceeds 1,000 tons per month and the City fails to give such notice, TDS, at its option, may elect not to accept the increased amount until such notice is given. Subject to any and all permits and approvals pertinent to this Contract, TDS shall provide a disposal site (whether at the TDS landfill or at another disposal site owned or operated by TDS, the "Disposal Site") to which City may deliver Acceptable Waste and Special Waste. City is not required to deliver waste to TDS at any disposal site other than the TDS landfill. TDS may transfer waste from the TDS landfill to any other Disposal Site.

TDS shall perform the required services in accordance with the standards of the industry. TDS shall use reasonable efforts to supervise and direct the work competently and efficiently. TDS shall keep City reasonably informed of the progress and quality of the work. Incineration will not be used for waste disposal under this Contract.

- B. TDS shall furnish and assume full responsibility for all services, facilities and incidentals necessary for the proper execution and completion of the work. TDS shall obtain and pay for all construction permits and licenses including the occupancy permit relating to the performance of the work. This Section does not apply to improvements to be constructed in accordance with Section 2G of this Contract. TDS shall obtain all permits and licenses and shall operate the disposal site in compliance with all laws, ordinances, specifications, rules and regulations, for solid waste disposal as established by the TNRCC and the U.S. Environmental Protection Agency in effect during the term of this contract.

C. TDS confirms the availability to meet the City's capacity requirements.

Every five years, TDS shall provide to the City's reasonable satisfaction confirmation that the Disposal Site retains adequate remaining airspace capacity to accommodate volumes of waste expected to be landfilled there during the remaining balance of the Contract term ("Expected Volume"). Expected Volume will be established by extrapolating the baseline experience of City deliveries of waste over the Contract period prior to the time of such review and not subject to a previous review, over the period remaining to the Contract, and Capacity shall be calculated with the assumption that all prospective non-City waste will be diverted, if necessary.

Should City determine that TDS does not have adequate remaining Capacity, City may terminate this Contract for Cause pursuant to Section 13 as to any periods for which TDS does not have remaining Capacity. TDS may avoid such termination at any time prior to one year before such termination by establishing that TDS has Capacity.

D. Right to Refuse Unacceptable Waste.

TDS may revoke its acceptance of any waste discovered to be Unacceptable Waste. Revocation must occur within 24 hours after delivery by City. In revoking its acceptance of any waste, TDS shall notify City of the reason why the waste is Unacceptable Waste. City shall remove waste delivered that is subsequently determined or suspected by TDS to be Unacceptable Waste. If such waste is not removed from TDS's possession by City within a reasonable time, not to exceed the lesser of the period allowed by the regulatory agency or regulation, or seven days from the receipt of notice that such waste has been subsequently determined or suspected of being Unacceptable Waste, TDS will arrange for lawful disposal of such waste. To the extent allowed by law, City will indemnify TDS for any costs or damages resulting from delivery of Unacceptable Waste to the Disposal Site and will pay TDS its reasonable expenses and charges for handling, loading, preparing, transporting, storing, caring and disposal for any such Unacceptable Waste disposed of by TDS.

E. Title to Waste.

TDS is vested with title to all waste accepted by TDS at its facility. Any revenue or other value received by TDS as a result of reclamation, recycling, composting or resource recovery shall be solely for the account of TDS.

F. Non-Profit Agency Disposal.

TDS will provide waste disposal to any non-profit organization in the business of accepting used or surplus personal property without regard to the condition of the property exempt under Section 12-3-152 of the Code of the City of Austin, as amended, at the Adjusted Base Rate charged at the time of disposal.

G. Land for Parking City Trucks.

It is the intent of TDS and City that TDS lease, for the term of this Contract, approximately 4.4 acres of land located on TDS property on Old Lockhart Road to City for parking of City trucks and construction of facilities for offices and truck maintenance. City's right to "lease" does not include City's right to sublease the land, or any part thereof. The terms and conditions of any such lease shall be included in a separate lease agreement which may provide for a substitute or alternate area of land to be leased upon agreement of parties. City will be responsible for all costs of improvements, including but not limited to, permitting, site preparation, paving, buildings, office space, and utilities required to establish operations upon this land. The City's option to initiate a lease under this Section shall expire five (5) years from the Effective Date.

3. Minimum Volume/Capacity Reservation.

- A. Beginning with the Effective Date of this Contract, City will deliver to the TDS landfill, on an annual basis, a minimum volume of acceptable waste equal to 66% of all of the acceptable waste collected by or at the direction of City, by, for or on behalf of City and which is intended for disposal or delivered to a municipal solid waste landfill ("Minimum Volume"). City shall be obligated to pay TDS based upon that volume of acceptable waste on an annual basis whether delivered or not. Yard waste delivered by City or at the direction of City to the TDS Landfill on-site grinding and compost facility shall not be credited toward the Minimum Volume. For purposes of this Contract, yard waste shall include segregated brush, grass clippings, tree limbs, shrubs or similar material suitable for grinding and composting. Although not credited toward the Minimum Volume, the amount of yard waste delivered by City or at the direction of City to the TDS Landfill on-site grinding and compost facility shall be counted toward the total volume used in calculating disposal rates as set forth on Exhibit A. City's rate for dumping uncontaminated yardwaste and brush at the TDS Landfill on-site grinding and compost facility shall be the applicable Base Rate per ton on Exhibit A less the TNRCC disposal fees included within the Base Rates on Exhibit A. The Minimum Volume shall be calculated annually by City over the term of the Contract for annual periods beginning October 1<sup>st</sup> and ending September 30<sup>th</sup>. The Minimum Volume shall be calculated on a prorata basis for any reporting period less than 12 months falling between October 1<sup>st</sup> and September 30<sup>th</sup> (i.e. the initial and final year of the Contract). The Minimum Volume, the supporting

calculations and the applicable Minimum Volume payment shall be reported and made by City to TDS within 60 days following either (i) October 1<sup>st</sup> of each year in which the Contract is effective, or (ii) the termination of the Contract. City shall provide TDS the information TDS reasonably believes is necessary to substantiate the Minimum Volume calculation.

- B. TDS shall guarantee capacity to City to accept up to 66% of City's annual volume of acceptable waste during the term of this Contract ("Reserved Capacity"). The Term Reserved Capacity shall include the increases or decreases as provided for in this Contract.
- C. At anytime on or before the tenth anniversary date of this Contract, City at its option and on a one-time only basis, unless mutually agreed upon otherwise, upon 60 days written notice to TDS, may increase the Minimum Volume from 66% to an amount up to 89%. City shall then be obligated to deliver at least that volume of Acceptable Waste on an annual basis for the remainder of the term of this Contract and pay TDS on that minimum volume of acceptable waste whether delivered or not. Thereafter, the Reserved Capacity shall equal the Minimum Volume during the remaining term of this Contract. Notwithstanding the foregoing, if City elects to raise the Minimum Volume to an amount equal to or greater than 90%, during the first ten years of this agreement, the Reserved Capacity shall increase to cover 100% of City's annual volume of Acceptable Waste for the remainder of this Contract.
- D. At anytime during the term of this Contract, if City fails to either deliver the Minimum Volume to TDS or pay TDS for the Minimum Volume for any consecutive 12 month period, TDS, at its option and upon 60 days written notice to City, may elect one of the following remedies:
  - i. TDS may terminate this Contract in which neither party shall have any further rights or obligations, or
  - ii. TDS may continue with the Contract but reduce the Minimum Volume to an amount equal to the City volume hauled to TDS during a preceding twelve-calendar month period in which event the Reserved Capacity shall be reduced to equal the Minimum Volume for the remainder of the term of the Contract, or
  - iii. TDS may pursue any other remedy available to TDS at law or in equity, including but not limited to an action to recover an amount of damages equal to the Minimum Volume.

- E. Minimum Volume shall be calculated by excluding an amount from the base equal to (i) the volume of waste collected pursuant to third party contracts in place at the time an area is annexed by City for the original term of such contract, plus (ii) the volume of nondumpster (less than 100 gallon capacity commercial containers), generated waste collected under the authority or at the direction of City from within the central business district of the City of Austin.

4. Grinding and/or Processing of Yard Trimmings and Clean Wood Material.

TDS shall provide grinding and/or processing of yard trimmings and clean wood material for City at City's Hornsby Bend wastewater treatment facility ("Hornsby Bend") upon the following terms and conditions.

City has a need for grinding and/or processing of yard trimmings and clean wood material generated from various City Departments including: yard trimmings from curbside collection by City, including bulky brush; woodchips and brush; and other clean wood materials from other City operations. Woodchips generated from yard trimmings and other clean wood material delivered to the Hornsby Bend Waste Water Treatment Plant will be provided to City's Water and Wastewater Utility (W/WW) at no charge from TDS for use as bulking agents in City's "Dillo Dirt" biosolids composting operation. TDS will provide these services at a mutually agreed upon start date that will be no later than October 1, 2000.

A. Description of Services.

TDS shall conduct grinding and/or processing services at Hornsby Bend in a five (5) acre concrete drying basin designated for this purpose. Should the designated drying basin for grinding not be available or accessible for any reason, the City shall provide a similar working space having the same minimum area with a hard surface for grinding and vehicle ingress/egress so the services described in this section may be performed during the term of this section of the agreement. TDS will have access at all times for the delivery of yard trimmings and clean wood material to Hornsby Bend along with City's loads for grinding and/or processing in a drying basin. TDS and City of Austin Water and Wastewater Department will work together to establish reasonable working hours and operational details for processing materials. City will provide TDS adequate space for portable office facilities, including electrical connections and vehicular access. TDS will be responsible for paying the electric bill.

Woodchips will be the property of City at such time TDS has ground and stockpiled the materials in the drying basin operated by TDS. As necessary, to provide space for surplus processed material, City shall provide space in the adjacent drying basin for TDS to expand the stockpile. Woodchips generated from TDS, Texas Disposal Systems, Inc., Texas Landfill Management, L.L.C. and

third party loads delivered to Hornsby Bend will be provided to W/WW at no charge by TDS. It is estimated that W/WW has a need for up to 75,000 cubic yards (cy) of woodchips annually. City will allow landscapers, and other generators of yard trimmings and other clean wood material to deliver loads of these materials to the TDS operated Hornsby Bend site at competitive TDS tipping fees. TDS will pay City a royalty according to Paragraph C in this Section on a portion of the materials brought in by third party generators.

TDS will provide all of the necessary equipment and staff to provide W/WW with bulking agents ground from yard trimmings and clean wood material coming into Hornsby Bend. Materials delivered to Hornsby Bend will normally be processed within ten days of receipt. If equipment breakdown or weather conditions prevent timely processing, TDS shall notify City of the delay and cause and shall process all materials within no more than 20 days of receipt. TDS will not be held accountable to this standard during periods where incoming volumes exceed 50% of the average incoming weekly volume as determined over the previous 12 month period, and TDS will be given an appropriate period of time to process the back log of stored materials. If any delay in processing materials or the manner in which operations are conducted results in conditions which violate local, state, or federal laws and regulations, City will immediately notify TDS. TDS will provide City a compliance plan designed to cure those conditions to the satisfaction of the local, state, or federal agency having jurisdiction. If the condition is the fault of TDS's action or inaction, TDS will bear all cost of correcting the condition, as well as any fines which may be levied as a result of TDS's fault. In that event, City may terminate Section 4 of this Contract by following procedures described in Section 11, Right to Assurance; Section 12, Default, and Section 13, Termination for Cause. None of the payments described in Section 4.D would be applicable in the event of default by TDS. These performance requirements shall be adjusted as appropriate when City requires TDS provide off-site grinding services. TDS must notify the City in advance of mobilizing for off-site grinding services, if it believes that mobilization may result in the inability to meet performance requirements at Hornsby Bend.

TDS will use four inch screens in tub grinders utilized in producing the bulking agents or other technology designed to produce approximately the same result. Unless otherwise compensated by City, TDS will not be responsible for the cost to separate, load, transport, or dispose of contaminants from incoming materials collected by or at the direction of City. TDS will separate and load contaminated materials from loads collected by or at the direction of City into an appropriate container specifically designated for the City's materials. City will be responsible for arranging for container rental, transportation and disposal. Potential contaminants include, but are not limited to: treated or painted lumber, plastic, glass, metal, rocks, trash, or an excessive volume of large diameter stumps (greater than 18 inches diameter) that could potentially damage grinding equipment or inhibit the timely processing of acceptable incoming materials.

TDS will be responsible for removing and disposing of contaminants from materials received from TDS, Texas Disposal Systems, Inc., Texas Landfill Management, L.L.C. trucks and third parties. Unprocessed loads of materials delivered by or at the direction of City will be stockpiled separately from unprocessed loads of materials delivered by TDS, Texas Disposal Systems, Inc., Texas Landfill Management, L.L.C. and third parties. Unless otherwise allowed by City, TDS will maintain stockpiles of processed materials from loads collected by or at the direction of City separate from processed materials from loads delivered by TDS, Texas Disposal Systems, Inc., Texas Landfill Management, L.L.C. and third parties. TDS agrees to haul off-site all processed materials from TDS, Texas Disposal Systems, Inc., Texas Landfill Management, L.L.C. and third parties that W/WW cannot use. Stockpiles of processed materials from City loads will routinely be pushed onto a City designated storage area adjacent to the TDS designated working area. City shall be responsible for the proper handling of all processed materials stockpiled outside the TDS designated five acre drying basin. TDS will have the right to sell compost and mulch products to the general public at the Hornsby Bend facility, and City shall provide adequate access by the public for such sales and delivery.

Should additional woodchips be needed by W/WW, TDS will be responsible for the transportation of the processed yard trimmings and other clean wood material/woodchips (subject to availability) to Hornsby Bend at an additional charge established by TDS. To help increase the efficiency of City's collection routes, City may divert collection vehicles with yard trimmings and clean wood material to TDS's Texas Organic Products (TOP) Composting Facility, located adjacent to the TDS landfill. Yard trimmings and clean wood material hauled to the TOP Composting Facility will be billed at the same rate set forth in Exhibit A as solid waste, less the TNRCC disposal fee applicable at the time, and will not be counted as part of the volume processed at Hornsby Bend. City uncontaminated organic materials received at the TOP site will be incorporated into the composting process and beneficially used as landscaping end-products (compost, mulch, and topsoil blends).

B. Cost of Services.

Grinding and/or processing services for any volume up to 100,000 cy of yard trimmings and clean wood material collected by or at the direction of City at Hornsby Bend will be provided at a base rate \$249,161 per year, prorated and paid monthly during the course of the current year. Additional amounts due under this Section shall be due within 30 days of the date of invoice. (Solid Waste Services estimates the 1999 volume of yard trimmings and clean wood material collected by City crews to be 67,041 cy.) Volumes of incoming materials (measured in cubic yards) shall be determined by the greater of

- i. the volume of the load (as measured by TDS staff), or

- ii. the measured load volume capacity of the vehicle delivering the load.

TDS will accept up to 100,000 cy per City fiscal year from City at the above \$249,161 price. Any volume in excess of 100,000 cy of yard trimmings and clean wood material routinely generated in a City fiscal year by City and from such events will be processed at a base rate of \$2.00 per cy at Hornsby Bend. TDS shall provide an annual report summarizing the volume of City delivered materials processed at both sites. Only volumes of City materials hauled directly to the TDS/TOP Composting Facility will be credited toward the total volume of solid waste used to calculate landfill disposal rates with TDS under Exhibit A. Volumes of these materials delivered to the TOP Composting Facility will not be counted toward satisfying the Minimum Volume required under Section 3 of this Contract.

In order to accommodate City's need for processing large volumes of materials generated by storm events, off-site grinding and/or processing of stockpiles of yard trimmings and clean wood material will be performed by TDS for City, at City's request, within the rate structure described above, with an additional mobilization/demobilization base cost of \$1,500 per site within the city limits of Austin, Texas. The purpose of this charge is to reimburse TDS for additional expenses related to moving its equipment from Hornsby Bend temporarily, transportation permits, mobile fueling expenses, additional personnel, etc. associated with operating in a remote location. The resulting woodchips shall be stockpiled at the remote processing site, and, as necessary, there will be an additional charge to transport the processed material back to Hornsby Bend. The cost of transporting woodchips will depend on the site location and accessibility and shall be negotiated in advance on a case-by-case basis. City is not obligated to use TDS exclusively for such services described in this paragraph involving processing large volumes of materials generated by storm events, off-site grinding and/or processing of stockpiles of yard trimmings and clean wood material, and may seek competitive bids at its discretion. In the event of competitive bidding, TDS may bid to provide the services and is not bound by this pricing agreement for its bid.

Additional woodchips will be made available to City as they are routinely generated at the TOP Composting Facility. These materials will be delivered to the Hornsby Bend WWTF, as available, at a base price of \$6.00 per cy. Woodchips will be delivered in approximately 100 cy increments at this price, and TDS will assure the availability of a minimum of 15,000 cy of material per year. Additional volumes will be available depending upon the volume of yard trimmings and clean wood material received at the TOP Composting Facility and the volume of such materials used in the TDS/TOP Composting Facility day to day operations. These service charges will be billed to the appropriate City department; whether W/WW or Solid Waste Services.

A summary of the costs described above and examples of unit costs for various incoming volumes are provided in Exhibit D incorporated herein.

All prices, costs, or rates quoted under this Section shall be adjusted each year for CPI and other adjustments in the rates described under Section 6C(iv) and (v).

C. Royalty Payments.

TDS will pay City a royalty of seven percent of the gate rate assessed on third party generators (haulers other than City, City's designated hauler, TDS and TDS affiliated companies, Texas Disposal Systems, Inc., and Texas Landfill Management, L.L.C.) that deliver yard trimmings or clean wood material to Hornsby Bend. The royalty is payable annually on each cy in excess of 12,000 cy received from third parties during City's fiscal year. TDS will make the applicable royalty payment to City annually and submit an annual report to summarize the royalty calculation by February 1 of each year.

D. Termination of Hornsby Bend Grinding and/or Processing Service by City or TDS.

This Section 4 shall have an initial term of seven years. Either party may terminate its obligations under Section 4 at the end of the initial term, provided that written notice is delivered to the other party on or before five years from the Effective Date. If not terminated in such a manner, the provisions of this Section 4 shall continue for the full term of this Contract.

In addition to the foregoing, TDS or City, at its option, may terminate its obligations under this Section 4 only (Grinding and/or Processing of Yard Trimmings and Clean Wood Material) upon 180 days written notice to the other upon the occurrence of an extended event of force majeure as defined in Section 1 of this Contract. In addition, City, at its option, may terminate the Contract under this Section only upon 365 days written notice to TDS in the event City elects to use the site of the Hornsby Bend facility for a purpose which would not allow a yard trimming and clean wood material grinding and/or processing operation or in the event the entire Hornsby Bend facility is relocated by City to an entirely different location. At the time of such termination, City shall have an option to reimburse TDS in cash for its unamortized costs of equipment used to process City's yard trimmings and clean wood material or purchase such equipment at fair market value as determined by an independent appraiser. In addition, City shall pay a termination fee equal to 24 times the average monthly gross revenues received by TDS at Hornsby Bend to grind and process yard trimmings from parties other than the City.

5. Effective Date and Term.

The term of this Contract shall commence on the Effective Date and expire at 12:01 a.m., June 1, 2030 unless sooner terminated by either party pursuant to the terms herein.

6. Invoices, Reporting, and Payment.

A. Invoices.

City may, for record-keeping purposes, establish multiple accounts with TDS. TDS shall segregate reporting and invoicing to City by account.

TDS will invoice City monthly, on or about the 10<sup>th</sup> day of each month, for all waste delivered to the Disposal Site and other services during the preceding month attributable to each City account. TDS will invoice City annually for any applicable Minimum Volume payment due. City will provide TDS with a billing contact name and billing address for each City account.

City's agents or subcontractors shall only be permitted to use the TDS landfill under the terms of this Contract for the disposal of Acceptable Waste collected on behalf of City and pursuant to a contract with City. City's agents or subcontractors shall not be allowed to use the TDS landfill under the terms of this Contract for the disposal of solid waste from their own individual residential, commercial or industrial accounts. City and TDS shall work together to insure that City's agents or subcontractors do not gain the benefit of hauling waste from their own accounts to the TDS landfill and benefit from City's adjusted base rate, or deliver their own waste to TDS and charge the cost of that waste disposal to City's landfill disposal charge account at TDS. Protective language, including indemnity and insurance requirements, shall be included within contracts negotiated after the Effective Date between City and its agents or subcontractors who are contracted to haul Acceptable Waste to TDS on behalf of City.

All invoices received by City will be paid within 30 days of City's receipt of the invoice. If payment is not timely made, interest shall accrue on the unpaid balance from the date of the invoice at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which City may withhold payment hereunder, interest shall not accrue until ten days after the grounds for withholding payment have been resolved. City shall notify TDS within ten days of its receipt of an invoice if it elects to withhold payment and shall state the reason for the same.

Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. City will furnish a tax exemption certificate upon request. Federal, State or Local fees or taxes directly related to the disposal of City waste

and allowed under Section 6.C.v. of this Contract shall be included in the invoice amount.

B. Reporting Requirements.

- i. City will pay TDS for the actual weight of waste disposed of by City.
  - a. The weight of waste shall be determined through the use of a truck scale, approved and certified by the State of Texas. Such certification shall be maintained throughout the term of this Contract.
  - b. A sequentially numbered weight ticket that includes the printed weight of each truck shall be signed by the driver and a copy given to the driver at the time the vehicle is weighed. The original copy must be retained by TDS for three years to document all charges assessed to City. TDS will notify City before destroying any documentation and, if requested, provide such documentation to City. Upon request by City, TDS shall either provide a copy of the original weight ticket to City or allow City to examine the original weight ticket within seven calendar days of receipt of the request, at no additional cost to City. City reserves the right to withhold payment for any invoice that includes billing for a weight ticket that TDS is unable to provide as requested by City. This system may be replaced with another mutual agreeable system.
- ii. City or its agent will provide TDS with a list of all vehicles by make, license plate number, vehicle identification number, volumetric capacity, and City department name, that are authorized to deliver waste to the Disposal Site.
- iii. On the same day TDS provides monthly invoices to City, TDS shall also provide a summary statement to the Contract Administrator displaying the total quantity of Acceptable and Special Waste invoiced to City by City account and type of waste delivered during the previous month.

C. Payment.

- i. City shall pay TDS for Acceptable Waste disposal, a disposal rate ("Base Rate") as shown on Exhibit A incorporated herein or the Minimum Volume payment under Section 3 of this Contract, whichever is applicable. In preparation of the invoice, net tons of payload for any vehicle will be determined by subtracting the empty weight of the vehicle from the full weight of the vehicle or the predetermined and stored tare weight of the vehicle from the gross weight of the vehicle. The applicable rate City shall be charged by TDS shall be determined based on the

aggregate weight accumulated each year (October 1st through September 30th) under all City accounts covered under this contract.

ii. Special Waste.

City shall pay TDS for disposal of Special Waste, calculated in accordance with the procedure set out in Exhibit C, by this reference incorporated herein.

iii. Dead Animals.

TDS will dispose of any load consisting of more than ten percent dead animals at the then-applicable Base Rate for acceptable waste provided that TDS is given at least thirty minutes prior notice of the arrival of such load. Absent such notice, any such load will be charged as Special Waste.

iv. Base Rate Adjustment.

After 1998, on each June 1 during the term hereof, the Base Rate shall be increased or decreased by the same percentage as the percentage increase or decrease, if any, between the CPI as published for April of the then current calendar year and the CPI as published for the month of April in the year before. Notwithstanding the above, the total annual increase or decrease in the Base Rate during the first five years shall not be greater than five percent, and the total annual increase or decrease in the Base Rate for the remainder of the life of the Contract shall not be limited. As soon as practicable after the Base Rate adjustment date each year, TDS shall notify City of any CPI-based adjustment to the Base Rate and upon request provide the supporting data that is the basis for such adjustment.

v. Additional Adjustments.

In addition to the adjustments in the Base Rate specified in Paragraph C-iv, the Base Rate will be adjusted based upon the following events:

a. Changes in Government Regulations Requiring Expenditures.

The Base Rate will be adjusted as necessary as such costs are incurred by City's proportionate share of any change in expenditures (whether capital or operational, and determined by dividing City volume by all volume received at the Disposal Site, calculated as of June 1 of each succeeding year) required solely by Federal, State or local law, regulation, rule, ordinance, order, permit or permit condition that becomes effective after the Effective Date of this Contract, that affects Landfill operations, and

that was not imposed as a penalty or sanction because of the action or inaction of TDS to comply with a legal requirement. The adjustment may be amortized over the useful life of the improvement. The interest rate for any amortization shall be calculated at the rate of the lowest published New York prime rate for the date the adjustment is requested as published in the Wall Street Journal. The party seeking the adjustment will furnish the other party calculations and supporting documentation reasonably sufficient to substantiate the basis for any such adjustments.

b. Fees, Taxes, and Assessments, Etc.

The Base Rate will be adjusted by City's adjusted proportionate share of any change in fees, taxes, charges, or assessments imposed by Federal, State, or local law, regulation, rule, ordinance or order, permit or permit conditions that affects landfills, that become effective after the Effective Date. City's proportionate share of the tax change will be calculated as provided in subsection a above. That share will then be adjusted by subtracting the portion of the most recent CPI based adjustment that is part of the published index related to increases in fees, taxes, and assessments. Under no circumstances will this paragraph be interpreted to allow adjustments because of changes in TDS's income taxes or franchise taxes.

c. Cumulative Compensation.

Every adjustment to TDS compensation shall be cumulative and in addition to every other adjustment conferred herein.

vi. Arbitration.

Where in respect of items listed under this Paragraph C, TDS and City are unable to agree on the amount of reasonable additional compensation within 60 days of TDS's notification to City of a request therefor, then either party may submit the matter for arbitration in accordance with the procedures provided for in Section 28 of this Contract.

vii. City may withhold or set off the entire payment or part of any payment otherwise due TDS to such extent as may be necessary on account of:

- a. damage to the property of City or City's agents, employees or contractors not covered by insurance required to be provided by TDS unless the risk of damage is assumed in writing, in advance by the City;

- b. failure of TDS to submit invoices with all reasonably required attachments and supporting documentation.
  - viii. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of § 5-1-2 of the Austin City Code of 1992, as amended, concerning the right of the City to offset indebtedness owed the City.
  - ix. TDS acknowledges that City is a municipal governmental entity, whose powers as a home rule city are governed by 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 TDS agree that the City's Solid Waste Enterprise Fund provides an annual source of revenue to the City which is more than adequate to meet the obligations of the City and TDS under this Contract. However, if at any time during the term of this Contract City loses access to such funds to cover the cost of solid waste collection and disposal, City shall promptly provide TDS written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts anticipated to be due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit City to pay its obligations under the Contract. The absence of Appropriated or other lawfully available funds shall render the Contract voidable by TDS upon notice to City to the extent and only to the extent that such funding is not Appropriated or available to the City. The absence of Appropriated or other lawfully available funds to pay all of the City's obligations under this Contract will allow TDS to terminate this Contract by providing written notice to City at anytime thereafter. If TDS fails to terminate or limit the Contract, it shall continue in effect, and the Minimum Volume and Reserved Capacity set forth in Section 3 shall be reduced proportionately to coincide with the reduced funding level.
- D. Subject to Force Majeure, the Disposal Site shall be made available for the receipt of Acceptable Waste twenty-four hours a day Monday through Friday and until the earlier of sunset or 7:00 p.m. on Saturday except holidays observed by City refuse collection operations. Regular operating hours for the receipt of City waste shall be from 7:00 a.m. to the earlier of sunset or 7:00 p.m. Monday through Saturday, but excluding holidays observed by the City refuse collection operations. Should City request additional hours (with reasonable advance notice), TDS will operate the Disposal Site to receive Acceptable Waste (Monday evenings through Saturday mornings) at a rate of \$36.00 (adjusted in accordance with the general CPI formula) per hour for each hour requested for added cost of gatehouse operations. No waste shall be accepted on Sundays, unless authorized

by TNRCC and approved by TDS. City shall provide TDS a schedule of holidays in advance of each calendar year.

7. Force Majeure.

If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having difficulty.

8. Final Closeout.

The making and acceptance of final payment will constitute:

- A. a waiver of all claims by City against TDS, except claims (i) that have been previously asserted in writing and not yet settled, (ii) arising from defective work appearing after final inspection, (iii) arising from failure of TDS to comply with the Contract or the terms of any warranty specified herein, (iv) arising from TDS's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (v) arising under City's right to audit; and
- B. a waiver of all claims by TDS against City other than those previously asserted in writing and not yet settled.

9. Right To Audit.

At any time during normal business hours, the representatives of the Office of the City Auditor or other authorized representatives of City shall have reasonable access to, and the right to audit, examine, or reproduce, any and all records of TDS directly related to the performance under this Contract. These records shall be limited to invoices, weight tickets, landfill capacity calculations, regulatory cost analyses and permits. These records shall not include financial statements, tax returns, payroll records or any other information of a proprietary nature. TDS shall retain all such records at a location within the City of Austin or its ETJ or accessible electronically from City offices, for three years. TDS agrees to refund to City any overpayments (not offset by other costs allowed

under this Contract) disclosed by any such audit. TDS will notify City before destroying any documentation and, if requested, provide such documentation to City.

10. Subcontractors.

TDS shall be responsible to City for all acts and omissions of the Subcontractors just as TDS is responsible for TDS's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between City and any such Subcontractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

11. Right to Assurance.

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party specifically referencing this paragraph for written assurance of the intent to perform. In the event that no assurance is given within ten (10) days after demand is made, the demanding party may treat this failure as an event of default under the Contract.

12. Default.

TDS shall be in default under the Contract only if after written notice and opportunity to cure under Section 13.A. of the Contract, TDS:

- A. fails to fully, timely, and faithfully perform any of its material obligations under the Contract, or
- B. becomes insolvent or seeks relief under the bankruptcy laws of the United States.

City shall be in default if City fails to fully, timely, and faithfully perform any of its material obligations under the Contract.

13. Termination For Cause.

In the event of a default by TDS, City shall have the following rights:

- A. the right to terminate the Contract for cause, by written notice effective ten (10) days after the date of such notice, unless TDS, within such ten (10) day period,
  - i. cures such default,
  - iii. provides evidence sufficient to prove to City's reasonable satisfaction that such default does not, in fact, exist, or

- iii. provides evidence sufficient to prove to City's reasonable satisfaction that curing such default will take more than ten, but not more than 30 days and such default is cured within 30 days;
- B. the right to remove TDS from City's vendor list for three years and any Offer submitted by TDS may be disqualified for up to three years.
- C. In the event TDS is unable to meet its Reserved Capacity guarantee, City's right to seek recovery of actual damages, costs, losses and expenses related to the disposal of Acceptable Waste shall only be allowed if City has met its Minimum Volume requirements, as provided in Section 3, and is not otherwise in default. TDS's liability for City's actual damages, costs, losses and expenses related to the disposal of Acceptable Waste shall be limited to the same percentage as the percentage of City's total volume of landfilled waste that was delivered to TDS since the Effective Date, unless the Minimum Volume has been adjusted to an amount equal to or greater than 90% during the first ten years of the term of this agreement. Such limitation of TDS's liability shall not apply so long as the Minimum Volume remains at or above 90%.

All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

In the event of a default by City, TDS shall have the right to terminate the Contract for cause, by written notice effective 15 days after the date of such notice, unless City, within such 15 day period, cures such default, or provides evidence sufficient to prove to TDS's reasonable satisfaction that such default does not, in fact, exist.

14. Termination after Arbitration.

- A. Either party may terminate this Contract in accordance with subsection B. if:
  - i. the parties are unable to agree on additional rate adjustments under Section 6.C.v.a of this Contract, and
  - ii. the parties participate in arbitration under Section 28 of this Contract to address the rate adjustment issue; and
  - iii. the rate adjustment recommended by the arbitrator exceeds five percent of the current base rate or is less than half of the requested increase in the base rate, if the requested increase is found to have been a reasonable request by a second arbitrator; and
  - iv. one party does not accept the arbitrator's recommendation.

- B. When termination is authorized under this Section, the aggrieved party may terminate by written notice effective nine months after the date of such notice, unless within such nine month period the parties reach a mutual agreement regarding the rate adjustment.
- C. After the date of the notice of termination authorized under this Section, and until the parties either agree to a rate adjustment or this Contract terminates, the services provided shall remain as specified in this Contract and the rate charged shall be the rate that would have been charged without the adjustment request. This subsection will not prevent retroactive application of a rate adjustment agreed to under this Contract.

15. Indemnity.

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, arbitration or other alternate dispute resolution mechanism, including attorney and other professional fees for:
  - a. damage to or loss of the property of any person (including, but not limited to City, TDS, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); or
  - b. death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of City, TDS, TDS's subcontractors, and third parties); or
  - c. any environmental claim including, without limitation, claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or claims under any other state, federal, or local law whether or not based on fault, strict liability, or other basis, and arising out of the performance of this Contract.
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. TDS SHALL DEFEND (AT THE OPTION OF CITY), INDEMNIFY, AND HOLD CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND

ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF TDS, OR TDS'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF TDS'S OBLIGATIONS UNDER THE CONTRACT, NO MATTER HOW, OR TO WHOM, SUCH LOSS MAY OCCUR. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF CITY OR TDS (INCLUDING, BUT NOT LIMITED TO THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

16. Claims.

If any claim, demand, suit, or other action is asserted against TDS which arises under or concerns the Contract, or which is reasonably likely to have a material adverse affect on TDS's ability to perform its obligations, TDS shall give written notice to City within ten days after receipt of notice by TDS. Such notice to City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to Norwood Tower, 114 West 7th Street, 5th floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

17. Notices.

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested or upon actual delivery or upon delivery via facsimile with written confirmation. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to TDS shall be sent to the address specified in TDS's Offer, or at such other address as a party may notify the other in writing with a copy to David Armbrust, 100 Congress Avenue, Suite 1300, Austin, Texas 78701. Notices to City shall be addressed to the City of Austin at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

18. Rights To Bid, Proposal And Contractual Material.

All material submitted by TDS to City shall become property of City upon receipt. Any portions of such material claimed by TDS to be proprietary must be clearly marked as confidential. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Gov't Code.

19. Confidentiality.

In the event that TDS requires access to certain of the City's or its licensors' confidential information in order to provide services to the City, TDS acknowledges and agrees that the confidential information is the valuable property of City or its licensors and any unauthorized use, disclosure, dissemination, or other release of the confidential information will substantially injure City or its licensors. TDS (including its employees, subcontractors, agents, or representatives) agrees that it will maintain all material marked confidential information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the confidential information without the prior written consent of City or in a manner not expressly permitted under this Contract, unless the confidential information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction; provided TDS promptly notifies City before disclosing such information so as to permit City reasonable time to seek an appropriate protective order. TDS agrees to use protective measures no less stringent than TDS uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the confidential information. City shall protect, to the extent legally permissible, the confidential information it may receive from TDS in the same fashion.

20. No Contingent Fees.

TDS warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by TDS for the purpose of securing business. For breach or violation of this warranty, City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to TDS, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

21. Gratuities.

City may, by written notice to TDS, cancel this Contract without liability if it is determined by City that gratuities were offered or given by TDS or any agent or representative of TDS to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by City pursuant to this provision, City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by TDS in providing such gratuities.

22. Prohibition Against Personal Interest In Contracts.

No officer or employee of City who is involved in the development, evaluation, or decision-making process of the performance of this solicitation shall have a financial interest, direct or indirect, in this Contract. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of TDS, shall render the Contract voidable by City.

23. Independent Contractor.

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. TDS's services shall be those of an independent contractor. TDS agrees and understands that the Contract does not grant any rights or privileges established for employees of City.

24. Assignment-Delegation.

The Contract shall be binding upon and enure to the benefit of City and TDS and their respective successors and assigns; provided, however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by TDS or the City without the prior written consent of the other party, which consent will not be unreasonably withheld. Any attempted assignment or delegation shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract. TDS shall assign the Contract to any successor entity to Permit No. 2123 upon approval of the transfer by TNRCC; provided that 30 days written notice must be given to the City prior to seeking TNRCC approval of the Permit transfer. Without limitation of the foregoing, all rights and obligations of TDS hereunder shall be assigned to and assumed by any successor (by merger, assignment, or otherwise) of TDS.

25. Waiver.

No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either TDS or City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

26. Modifications.

The Contract can be modified or amended only by a written agreement signed by both parties. No pre-printed or similar terms on any TDS invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

27. Interpretation.

The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

28. Dispute Resolution.

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to non-binding arbitration as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to non-binding arbitration as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, an arbitrator trained in arbitration to assist with resolution of the dispute. Should they choose this option, City and TDS agree to act in good faith in the selection of the arbitrator and to give consideration to qualified individuals nominated to act as arbitrator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on an arbitrator within 30 calendar

days of initiation of the arbitration process, the arbitrator shall be selected by the Travis County Dispute Resolution Center (DRC) or a similar agency. The parties agree to schedule and participate in an arbitration hearing in good faith within 30 calendar days from the initiation of the arbitration process. City and TDS will share the costs of arbitration equally.

29. Insurance.

Insurance shall be provided as specified in Exhibit B incorporated herein. A certificate of insurance shall be provided to City no later than five days after execution of the Contract.

30. Jurisdiction and Venue.

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of City to seek and secure injunctive relief from any competent authority as contemplated herein.

31. Invalidity.

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

32. Negotiations.

- A. It is the intent of TDS and City to negotiate upon mutual consent an agreement and to work together in good faith to locate, design, build, operate and jointly access a North Austin Transfer Station for processing and transferring solid waste, yard waste and recyclables, and/or a recyclables materials processing and recovery facility, to reduce the overall collection, processing and disposal costs for City solid waste, yard waste and recyclables, as contemplated in the City's Solicitation and in TDS's Offer. In addition to the above, TDS and City reserve the option to amend this Contract upon mutual consent to (i) allow TDS and/or its

affiliated companies to operate a glass pulverizing facility; and (ii) allow TDS to provide composting services.

- B. TDS and/or its affiliated companies, Texas Disposal Systems, Inc. and Texas Landfill Management, L.L.C., shall also have the option to ship the same recyclable materials collected by the companies to a City owned materials recovery facility that are regularly processed by that facility. In such event, TDS and its affiliated companies shall reimburse City for its actual direct cost to process their recyclables plus a seven percent (7%) processing fee. City shall pay to TDS and its affiliated companies the net value received (revenue received less any shipping charge) from the sale of materials delivered to City.

IN WITNESS WHEREOF, City and TDS have executed this Contract in multiple originals as of the date first written above.

TEXAS DISPOSAL SYSTEMS  
LANDFILL, INC.

Signature:

*Bob Gregory*

Name:

*Bob Gregory*

Title:

*CEO/Chairman*

Date:

*May 12, 2000*

CITY OF AUSTIN:

Signature:

*Eddie Clark*

Name:

*EDDIE CLARK*

Title:

*DEPUTY PURCHASING OFFICER*

Date:

*May 12, 2000*

## EXHIBIT A

### City Base Rates to use the TDS Landfill and On-Site Yardwaste and Brush Grinding and Composting Facility

Annual Volume (Commitment and Delivery)	Base Rate Per Ton which includes \$1.25 per ton TNRCC state disposal fee			
	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
<u>Less than 33,000 tons per year</u> (1999 - Fifteen dollars and seventy five cents) (2000 - Sixteen dollars and eight cents) (2001 - Sixteen dollars and forty one cents) (2002 - Sixteen dollars and seventy five cents)	\$15.75	\$16.08	\$16.41	\$16.75
<u>33,000 to 66,000 tons per year</u> (1999 - Fifteen dollars and twenty five cents) (2000 - Fifteen dollars and fifty eight cents) (2001 - Fifteen dollars and ninety one cents) (2002 - Sixteen dollars and twenty five cents)	\$15.25	\$15.58	\$15.91	\$16.25
<u>66,001 to 100,000 tons per year</u> (1999 - Fifteen dollars and no cents) (2000 - Fifteen dollars and thirty three cents) (2001 - Fifteen dollars and sixty six cents) (2002 - Sixteen dollars and no cents)	\$15.00	\$15.33	\$15.66	\$16.00
<u>More than 100,000 tons per year</u> (1999 - Fourteen dollars and no cents) (2000 - Fourteen dollars and thirty three cents) (2001 - Fourteen dollars and sixty six cents) (2002 - Fifteen dollars and no cents)	\$14.00	\$14.33	\$14.66	\$15.00

- "Once the minimum volume in each rate category is exceeded, that adjusted base rate shall apply to all volumes delivered during a calendar year below that category, i.e., if the City hauls more than 100,000 tons to the TDSL landfill during calendar year 1999, the entire volume of more than 100,000 tons would receive the base rate in 1999 of \$14.00 per ton."
- The TDS charge to City for dumping uncontaminated yard waste and brush at the TDS on-site grinding and composting facility shall be the applicable adjusted Base Rate per ton less the TNRCC disposal fees included within the Base Rate.

**EXHIBIT B****INSURANCE****A. General Requirements.**

- (1). The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract and during any warranty period.
- (2). The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage
- (3). The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- (4). The Contractor's insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- (5). All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Contract number and indicate:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

- (6). The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- (7). If insurance policies are not written for amounts specified below, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- (8). The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- (9). The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law,

court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

- (10). The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- (11). The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract
- (12). The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- (13). The Contractor shall provide the City thirty (30) days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- (14). If the City's owned property is being transported or stored off-site by Contractor, then the appropriate policy will be endorsed for transit and storage in an amount sufficient to protect the City's property.

B. Specific Requirements.

- (1). Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.). The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
  - (a) Waiver of Subrogation in favor of the City.
  - (b) Thirty (30) days Notice of Cancellation in favor of the City.
  - (c) Minimum policy limits for Employer's Liability Insurance coverage shall be \$100,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  
- (2). Commercial General Liability Insurance. The policy shall include:
  - (a). Blanket contractual liability coverage for liability assumed under this Contract and all Contracts related to the project.
  - (b). Completed Operations/Products Liability for the duration of the warranty period.
  - (c). Thirty (30) days Notice of Cancellation, in favor of the City.
  - (d). Waiver of Transfer of Recovery Against Others in favor of the City.
  - (e). A minimum combined bodily injury and property damage limit of \$600,000 per occurrence.

- (3). Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles. The policy shall include:
- (a). Waiver of Subrogation Endorsement in favor of the City.
  - (b). Thirty (30) calendar days Notice of Cancellation in favor of the City.
  - (c). A minimum combined single limit of \$600,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident.

## EXHIBIT C

### **Definition of Special Waste and Rates for Disposal**

- I. "Special Waste" means any waste from a non-residential source, meeting any of the following descriptions:
- a. a containerized waste (e.g., a drum barrel, portable tank, box, pail, etc.).
  - b. a waste transported in a bulk tanker.
  - c. a liquid waste.
  - d. a sludge waste.
  - e. a waste from an industrial process.
  - f. a waste from a pollution control process.
  - g. residue and debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in a.-f. or h.
  - h. contaminated soil, water, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation or disposal of wastes listed in a.-g.
  - i. chemical waste from a laboratory. (This is limited to discarded containers of laboratory chemicals, lab equipment, lab clothing, debris from lab stills or cleanup and floor sweepings).
  - j. articles, equipment and clothing containing or contaminated with poly-chlorinated biphenyls (PCB's). (Examples are: PCB capacitors or transformers, gloves or aprons from draining operations, empty drums that formerly held PCB's etc. Note: PCB solids, semi-solids or liquids delivered in bulk or drums are not "miscellaneous special waste," but are "special waste.")
  - k. "Empty" containers of waste commercial products or chemicals. (This applies to a portable container which has been emptied, but which may hold residuals of the product or chemical. Examples of containers are: portable tanks, drums, barrels, cans, bags, liners, etc. A container shall be determined "empty" according to the criteria specified as 40 C.F.R. 261.7).
  - l. Asbestos containing waste from building demolition or cleaning. (This applies to asbestos-bearing waste insulation materials, such as wall board, wall spray coverings, pipe insulation, etc. Note: "special waste," but not a "miscellaneous special waste").

- m. Commercial products or chemicals: off-specification, outdated, contaminated or banned. (This also includes products voluntarily removed from the market place by a manufacturer or distributor, in response to allegations of adverse health effects associated with product use).
- n. Residue and debris from cleanup of spills or releases of a single chemical substances or commercial product or a single waste which would otherwise qualify as a miscellaneous special waste. (Note: residue and debris from spills or releases not meeting this definition are "special waste" not "miscellaneous special waste").
- o. Waste from a medical practitioner, hospital, nursing home, medical testing laboratory, mortuary, taxidermist, veterinarian, veterinary hospital or animal testing laboratory. (This includes any waste produced at these facilities, except residue from incinerators, septic tank pumpings or wastewater treatment sludges which are all "special wastes," but not "miscellaneous special wastes." Note: discarded chemicals from the above facilities should be treated as "chemical waste from a laboratory," as provided in subsection 2.a. above).
- p. Animal waste and parts from slaughterhouses or rendering plants. (This excludes wastes from fur or leather products manufacturers, which are "special wastes").
- q. Waste produced by the mechanical processing of fruit, vegetables or grain. (This includes such wastes as finds, hulls, husks, pods, shells and chaff. Food processing wastes which are aqueous or sludges, or which have been contaminated with dyes, additives or preservatives are "special waste," but not "miscellaneous special waste").
- r. Pumpings from septic tanks used exclusively by dwelling units. (Single family homes, duplexes, apartment buildings, hotels or motels).

s. Sludge from a publicly owned sewage treatment plant serving primarily domestic users. (i.e., with no substantial industrial or chemical (influent).

t. Grease trap wastes from residences, restaurants, or cafeterias not located at industrial facilities.

u. Washwater wastes from commercial car washes. (Note: this does not include facilities used for washing the exterior of bulk chemical or waste tank trucks or for washing out the interior of any truck).

Washwater wastes from commercial laundries or laundromats. (Note: this does not include waste from a dry cleaning facility or waste from a commercial laundry used by an industry to wash chemical-contaminated clothing from its workers; such wastes are "special wastes").

w. Chemical-containing equipment removed from service. (Examples: cathode ray tubes, batteries, fluorescent light tubes, etc.).

x. Waste produced from the demolition or dismantling of industrial process equipment or facilities contaminated with chemicals from the process. (Note: chemicals or wastes removed or drained from such equipment or facility are "special wastes").

y. Closed cartridge filters from dry-cleaning establishments. (Such filters being used to filter used dry-cleaning fluids or solids).

## II. Procedure for Pricing Special Waste.

i. City submits a profile, using TDS form, fully and completely describing materials proposed to be shipped, and including a representative sample of the special waste.

ii. TDS performs or arranges for performance of analysis of the special waste at City's expense. Based on the results of the analysis, TDS will determine and notify City of acceptability, any relevant treatment required, and the price for disposal of the special waste.

iii. City will advise TDS of City's wishes to proceed or not to proceed with disposal of the special waste at the Disposal Site.

## EXHIBIT D

### Summary of Costs to Grind and/or Process Yard Trimmings and Clean Wood Material and Transport Woodchips at the City of Austin Hornsbv Bend Water and Wastewater Treatment Facility

Base Cost for Up to 100,000 cy per year:	\$249,161 per year
Base Unit Cost for Volumes over 100,000 cy per year:	\$ 2 per cy
Base Mobilization/Demobilization Costs for Off-Site Grinding:	\$ 1,500 per site
Base Unit Cost for Woodchips Delivered to Hornsby Bend WWTF: (delivered from the TOP Composting Facility only, and in approximately 100 cy increments at this base price)	\$ 6 per cy

### Examples of Unit Costs to City for Various Incoming Volumes of Yard Trimmings and Clean Wood Material

	Volume (cy)	Total Cost (\$)	Unit Cost (\$/cy)
Staff Estimated Initial Volume Per Year:	67,041	\$249,161	\$3.72
Staff Estimated Initial Volume + 20% Additional:	80,449	\$249,161	\$3.10
Maximum Volume @ Base \$249.161/year:	100,000	\$249,161	\$2.49
Staff Estimated Initial Volume + 100%Additional*:	134,082	\$317,325	\$2.37

\* Sample Calculations for 100% Volume Over Staff Estimated Initial Volume:

$$\text{Volume (cy): } 67,041 \text{ cy} \times 2 = 134,082 \text{ cy}$$

$$\begin{aligned} \text{Total Annual Cost: } & \$249,161 + (134,082 - 100,000) \text{ cy} \times \$2.00/\text{cy} = \\ & \$249,161 + \$68,164 = \$317,325 \end{aligned}$$

$$\text{Unit Cost (\$/cy): } \$317,325 / 134,082 \text{ cy} = \$2.37/\text{cy}$$