



## TEXAS DISPOSAL SYSTEMS

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

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August 11, 2017

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And Via Certified Mail

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Return Receipt Requested

Sandy Wirtanen  
Procurement Specialist III  
City of Austin - Purchasing Office  
124 W. 8<sup>th</sup> Street  
Austin, TX 78701

Re: Contract NA140000089/Central Business District waste and recycling collection

Ms. Wirtanen:

As you know from numerous prior communications over the last few years, downtown commercial establishments serviced under the City's Central Business District (CBD) contract have been disposing of excess liquids, including mop bucket water, bar and table clean up wastewater and kitchen excess bulk liquids such as grease and oil, in Texas Disposal Systems, Inc. (TDS) dumpsters, rather than into their sewer drains and grease and oil collection containers. As we have reported, the resulting excess volume of slick and unhealthy liquids cannot be contained in the trucks designed for the ordinary flow of dry waste with containerized liquids, and have resulted in serious problems which can only be eliminated by City staff working directly with the City's customers. If these independent businesses were our customers, TDS would have already forced them to not violate their contracts with TDS, just as we have managed thousands of commercial accounts for many years. However, these businesses are the City's customers and City staff has chosen to allow this serious problem to grow into a very expensive billing, as if the City staff was intentionally trying to create a basis to end the TDS contract and to create some sort of a crisis which TDS's commitment to safety and environmental compliance will not allow to occur. TDS has gone to great lengths and expense to minimize the dangers posed by these liquids. Yet, despite repeated requests, the City staff has refused to compensate TDS for its added expense to properly manage these liquids, even though, as of July 31, 2017, these expenses – wholly incurred by TDS to safeguard the public from the City's grease and oil-laden liquids and to fully comply with the law – total approximately \$248,000, and despite the fact that we currently estimate that approximately \$2.96 million of the original three-year [\\$6.2 million contract authorization](#) amount approved by City Council in 2014 for the first three years of the contract remains unexpended.

Proactively updating our contract to avoid the possibility of this problem continuing under the CBD collection contract is something on which I would expect the City would begin to fully cooperate in good faith with us. As such, I am writing this urgent letter to plead with City staff, once more, to work with TDS to amend the CBD contract to remedy the fact

that City staff has, continually - for a period spanning approximately 3 long years - refused to act to mitigate or pay any of the cost, for TDS to properly manage the City's liquid waste from the City's CBD, even with the health and safety of Austinites at risk.

I would like to reassert the TDS [August 5, 2017 proposal](#) to again briefly extend the initial extension period for the CBD waste and recycling collection contract for the purpose of continued discussion and negotiation, instead of your choice to have the contract 120-day holdover period in effect per your [August 3 email](#). We believe the use of the holdover period by City staff may indicate the City's intent to terminate the contract at the end of the 120-day holdover period, without a solution to the longstanding dispute described below.

Additionally, TDS is in receipt of the [City's July 21, 2017](#) email asking TDS to agree to the first full 12-month contract extension option, but also rejecting each of TDS' previously proposed common sense [solution-oriented contract amendments](#) without the City staff even bothering to provide explanation or reasonable justification for rejections. As you know, these TDS proposed contract amendments were designed to rectify this situation and reimburse TDS for the additional costs that TDS has borne to manage this unexpected liquid waste burden due to City staff inaction.

Clearly, something must be done to assist TDS and resolve the serious public health and safety risks that have resulted from the ongoing City staff allowance of the City's CBD customers to continue to dump liquids, grease and oil in City-contracted TDS dumpsters. It is only fair and reasonable to require the City to fairly compensate TDS for the unanticipated costs associated with managing those public risks and landfill regulatory compliance requirements over the contract's initial 36-month term and moving forward. As you also know, TDS has been raising these same concerns with City staff since [November 2014](#) and in subsequent [communications](#) without any resolution, and TDS has managed the liquids to eliminate the risks of a road hazard and an illegal liquid waste management circumstance since the problem was detected.

**— The following six paragraphs summarize our concerns: —**

Soon after TDS began servicing the CBD contract in July 2014, it became clear that many of the City's CBD customers were unexpectedly utilizing City-contracted TDS trash and recycling dumpsters to improperly dispose of excess bulk liquids – including dirty mop water, beverage waste, ice, as well as grease and oil – in volumes far exceeding the carrying capacity of the leak-proof dumpsters and the waste compartments of the collection trucks TDS purchased specifically to satisfy the requirements of the contract's scope of services. TDS even further modified the industry standard leak-proof waste compartment on our trucks to hold even more liquid but the volume of liquid waste was too much for the trucks to contain it. TDS had serviced the CBD contract in previous years, but had never experienced any problems with excess liquids being placed in our dumpsters. Nevertheless, this current contract had dramatically different contract service requirement provisions imposed by City staff to, among other things, require the contractor (TDS) to run [dedicated routes](#) to collect only the City's CBD customers' trash in a route of only City customers, and only the City's CBD customers single stream recyclables in a separate dedicated route (reportedly to allow the City staff to closely monitor the exact amount of trash and the exact amount of recyclable materials collected daily from the CBD). Further, City staff apparently made the decision to refuse to take

action in any way to prohibit the placement of such liquids in the TDS dumpsters servicing this CBD contract.

As noted, TDS first informed and met with City staff regarding the excess liquid waste in November 2014. At that time, and again many times in meetings and in strongly worded [communications](#) afterwards, TDS informed City staff that the large volume of bulk liquids commingled with CBD trash and recyclables presented significant operational issues and costs not reasonably contemplated by the City's solicitation or contract.

TDS specifically and repeatedly informed City staff of the following: 1) that the volume of bulk liquid waste in the CBD dumpsters could not be serviced by any industry-standard collection truck if the City continued to require dedicated routes (i.e. if the City would not allow the excessively wet CBD waste to be commingled in collection trucks with drier, more absorbent trash materials collected from non-CBD customers); 2) that the volume of liquid waste coming from CBD dumpsters via dedicated routes could not legally be disposed at the Texas Disposal Systems Landfill, Inc. landfill working face, per TCEQ paint filter test restrictions, without the liquids being solidified at a location separate from the working face; 3) that the liquids would instead have to be managed by pumping excessive liquids from each load of trash and recyclables before the loads are hauled to the TDS MRF and the landfill and be disposed of separately at authorized liquid waste processing facilities; and 4) most urgently, that the prospect of slick grease and oil-laden liquids sloshing out of City-contracted TDS collection trucks directly onto city streets presented serious public safety and environmental risks, as well as huge liability risks for both TDS and the City.

TDS was also specific in informing City staff that given the public health and safety risks, we considered the liquids to be an unacceptable hazardous material under the terms of the contract, requiring a contractual remedy (see Contract NA140000089, [Section 3.1.10](#)); and that in order to fully comply with the law and protect public health and safety, if directed by City staff to continue to haul the excess bulk liquids via dedicated routes, we would have no choice but to continue to incur significant added operational costs beyond those initially quoted for ordinary commercial trash and recyclables collection services, and would directly invoice the City for those added costs in order to remain in compliance. With this information – but without ever addressing any of TDS' concerns or acknowledging the hazardous nature of the material – City staff explicitly directed TDS to continue to service the dumpsters as originally specified by City staff and therefore to continue to haul the excess bulk liquids mixed with the trash and with the recyclables. As noted, City staff also asked TDS to agree to the first 12-month contract extension, continuing to provide these same hauling services, at the same rates, thus continuing to ignore the safety, public health and compliance risks identified by TDS personnel.

Further, despite TDS' repeated requests in 2014 and 2015 for City staff to take meaningful education and enforcement action to prevent the City's CBD customers from improperly utilizing the City-contracted TDS trash and recyclables dumpsters to dispose of bulk liquids, to our knowledge, City staff never took any steps to do so, and indeed appeared unconcerned about the safety and public health risks, and the regulatory compliance violations by allowing the improper management of liquid waste to continue. Then, compounding the cost of addressing the growing problem resulting from their inaction, City staff inexplicably decided in September 2015 to discontinue accepting hauled liquid waste pumped from CBD waste and recyclables loads at City wastewater facilities, requiring TDS to haul the excess CBD liquids to alternative liquid disposal facilities, which charge much [higher disposal prices](#) than Austin's wastewater treatment facilities.

Then, as we specifically and repeatedly informed City staff we would do, TDS began in late 2015 to invoice the City for the added costs of servicing the excess liquid waste. These additional costs have primarily involved the expense of pumping excess liquids from each load of trash and, as necessary, from recyclables before transporting them from the CBD, and hauling excess liquids to available liquid waste treatment and disposal facilities.

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Accordingly, as we have before, TDS again demands immediate and full payment for all previously invoiced added costs. Additionally, by this letter, TDS again notifies City staff that we will continue to invoice the City for ongoing added costs, and pursue full payment of same for the duration of the CBD contract.

To be clear, City staff could have, and should have, resolved these issues long ago. In addition to undertaking meaningful education and enforcement actions to alleviate the problem of CBD customers placing unauthorized free liquids in TDS dumpsters, as long proposed by TDS, City staff could and should also have chosen other solutions, including to eliminate the requirement for collection via dedicated routes, particularly since the current CBD contract is the first time dedicated routes have been required since this CBD contract was [established](#) more than 30 years ago. Although reportedly implemented to provide Austin Resource Recovery staff with weight data to track landfill diversion efforts within the CBD; to our knowledge, ARR has never utilized any of the weight data collected on a daily basis over the past three years.

While taking steps to prevent these excess liquids from going into the dumpsters would have been, and would still be, the best and most cost-effective course of action, City staff could also, at any time, easily amend TDS' contract to compensate us fairly for the added expense of providing necessary services not contemplated by the original scope of work – as has often been done with other City contracts without requiring a new bid or Council action. Instead, City staff has both refused to act to mitigate and refused to pay the cost for TDS to properly manage the City's waste, even with the health and safety of Austinites at risk, and even with the availability of sufficient Council-authorized funding. In 40 years of business, TDS has never had any customer refuse to acknowledge the need to address such serious problems or honor their responsibilities to take actions to mitigate such problems. I honestly believe City staff has consciously worked to create this problem for a yet to be explained reason.

Also, it should be noted, this case offers yet another compelling rationale for decisive City Council action to amend the City's broad and vague Anti-Lobbying Ordinance (ALO). Under the ALO, TDS was restricted from communicating with City staff on these issues from mid-November 2014 to as late as August 2015 during the airport waste services RFP process. We would also have continued to remain restricted by the ALO until Council suspended the ALO restrictions from all solid waste services solicitations several months ago, had we chosen to respond to other City solid waste services solicitations since early 2015. As you may know, TDS ceased responding to City solicitations, in order to be able to communicate with City Council members and other City officials outside of the City's purchasing office about this and other waste services disputes between TDS and staff. TDS must be able to communicate such problems to City policy makers without fear of a disqualification and potential debarment and the loss of our right to continue to service and extend existing contracts. We cannot imagine that Austin's elected officials or their appointed policy advisors, directly accountable to the citizens and in possession of the full facts, could

possibly have chosen to refuse to acknowledge and address such serious risks to public health and safety, and to expect TDSL to violate its landfill operating permit by accepting a waste stream that consistently does not meet the paint filter test, as City staff has done for the past three years associated with this contract.

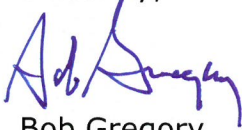
Finally, we must point out a serious non-sequitur with regard to the [City's July 21 letter](#) stating that City staff is currently developing a new solicitation for the CBD contract "taking these issues into consideration." This appears to indicate that City staff privately acknowledges the legitimacy of TDS' ongoing concerns, but only in the context of preparing a solicitation to engage another vendor, and apparently with no intent of providing TDS with fair compensation for our necessary added expenses. We would be deeply alarmed to ultimately see a new contract solicitation resulting from our concerns. It would be indeed ironic if the City staff added insult to TDS' injury and issued an amended contract RFP premised on resolutions to the concerns we have repeatedly raised, if City staff at the same time continues to refuse to treat TDS fairly for the duration of the current contract.

With all this said, TDS remains open to productive counterproposals from the City staff, and we are prepared, as we have repeatedly proposed, to agree to exercise additional brief contract extensions to allow continued discussions and negotiations with the City to resolve these concerns and either provide TDS with fair compensation and/or to amend the contract to reduce TDS' costs to the point of covering our liquids management expenses in the past and going forward.

However, to make it plainly clear, TDS is unwilling to participate in any way in compromising public safety and environmental protection, and we will not be complicit in failing to meet landfill compliance requirements in Austin or anywhere else we do business, regardless of the cost or consequence. Accordingly, we will continue to safely and legally service the CBD contract and we will continue to invoice the City for our costs of dealing with these grease and oil-laden liquids and pursue full payment from the City, regardless of the City's intent in this regard.

Please negotiate with TDS to continue this contract and to provide TDS fair compensation for the services we are striving, proactively, to provide the City in the most affordable, safe, and healthy manner.

Sincerely,



Bob Gregory  
President and CEO  
Texas Disposal Systems, Inc.