

CAUSE NO. 2022-CI-06061

TEXAS DISPOSAL SYSTEMS
LANDFILL, INC.,

Plaintiff,

VS.

CITY OF SAN ANTONIO, TEXAS,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

288TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEFENDANT’S ORIGINAL ANSWER TO PLAINTIFF’S FIRST AMENDED
PETITION**

Defendant City of San Antonio, Texas (“COSA”), files this Original Answer to Plaintiff’s First Amended Petition (the “Petition”) and, in support thereof, would respectfully shows the Court as follows:

**I.
GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, COSA denies each and every material allegation contained in the Petition, demands strict proof thereof, and to the extent such matters are questions of fact, says Plaintiff should prove such facts by a preponderance of the evidence to a jury if they can do so.

**II.
SPECIFIC DENIAL**

2. Pursuant to Texas Rule of Civil Procedure 54, COSA specifically denies that Plaintiff has satisfied one or more conditions precedent to recovery. Because Plaintiff failed to satisfy one or more conditions precedent to recovery, COSA is excused from performing under the contract. Accordingly, Plaintiff has no cause of action against COSA for which relief can be granted.

III.
AFFIRMATIVE AND OTHER DEFENSES

3. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, COSA asserts, subject to and without waiving the foregoing General and Specific Denials, the following defenses which bar Plaintiff's claims in whole or in part:

4. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by laches.

5. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by estoppel.

6. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by quasi-estoppel.

7. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by ratification.

8. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims, are barred, in whole or in part, by accord and satisfaction.

9. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims, are barred, in whole or in part, by impracticability.

10. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by waiver.

11. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff has failed to mitigate its damages, if any.

12. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by limitations.

13. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by Plaintiff's unclean hands.

14. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by Plaintiff's breach, prior breach, anticipatory revocation, repudiation and/or discharge. Plaintiff breached, anticipatorily or otherwise, the contract and has failed to perform obligations thereunder, and therefore, cannot enforce the remaining terms of the agreements against COSA. Plaintiff committed material breaches of the contract which discharged or excused COSA from performing under the same.

15. Additionally and alternatively, COSA affirmatively asserts, upon information and belief, that Plaintiff's claims are barred, in whole or in part, by the doctrine of governmental immunity, including both immunity from suit and immunity from liability. Plaintiffs have failed to plead a valid waiver and COSA affirmatively pleads and asserts the defense of governmental immunity.

V.
ATTORNEYS' FEES AND COSTS

16. COSA has been required to hire the undersigned attorneys to defend this action. In retaining counsel, COSA has agreed to compensate its attorneys with a reasonable, necessary, usual and customary fee for work performed in connection with this action. To the extent authorized by applicable law or contract, COSA seeks an award of all recoverable attorneys' fees and costs.

VI.
JURY DEMAND

17. COSA respectfully demands a jury for the trial of this matter.

VII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant City of San Antonio respectfully prays that this Court:

- i) Deny all relief requested by Texas Disposals Systems Landfill, Inc., in Plaintiff's Amended Petition or other live pleading; and
- ii) Award COSA reasonable and necessary attorneys' fees and costs incurred in this action;
- iii) Award COSA such other and further relief, general or special, at law or in equity, to which it is justly entitled.

Respectfully submitted

DYKEMA GOSSETT PLLC
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
(210) 554-5500 – Telephone
(210) 226-8395 – Telecopier

By: /s/ Bonnie K. Kirkland
Bonnie K. Kirkland
State Bar No. 24074539
bkirkland@dykema.com
Melanie L. Fry
Texas State Bar No. 24069741
Email: mfry@dykema.com
Ryan D. Landry
State Bar No. 24133526
Email: rlandry@dykema.com
McKenna R. Crisp
State Bar No. 24115255
Email: mcrisp@dykema.com

Attorneys for Defendant City of San Antonio, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record via email, according to the Texas Rules of Civil Procedure on this the 1st day of September, 2023:

James A. Hemphill
Chris Trickey
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2700
Austin, Texas 78701
jhemphill@gdhm.com
ctrickey@gdhm.com

Attorneys for Plaintiff

/s/ Ryan D. Landry

Ryan D. Landry