



TEXAS DISPOSAL SYSTEMS

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

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

October 3, 2016

Ms. Danielle Lord
City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767-8845
Email: Danielle.Lord@austintexas.gov

Mr. Joshua Pace
City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767-8845
Email: Joshua.Pace@austintexas.gov

Re: Prohibited representations during no contact period
City of Austin RFP CDL-2003 and RFP JXP-0501
Austin Water / Hornsby Bend Biosolids Management

Dear Ms. Lord and Mr. Pace:

Ms. Lord, thank you for taking my call last week to confirm your receipt of the Anti-Lobbying Ordinance (ALO) complaint I filed on behalf of Texas Disposal Systems, Inc. (TDS) on 9/27/2016. Since that conversation, I have learned of additional violations of the no contact provisions by a Synagro representative and Mr. Allen Click. I write now to formally withdraw the previous complaint and submit the following complaint in its place. **I similarly request that each of you please formally acknowledge receipt of this new complaint.**

This ALO complaint pertains to both RFP CDL-2003 (for biosolids management) and RFP JXP-0501 (for the sale of unscreened Dillo Dirt compost which could also be used for the sale of uncured and unscreened Class A biosolids); and the resulting proposed City contracts with Maryland-based Synagro and Mr. Allen Click. As both of you know, these two proposed contracts fully outsource management of Austin's biosolids (the end product of the City's wastewater stream), including the administration – and possible termination – of Austin's nationally recognized Dillo Dirt program.

ALO violations occurred on 9/20/2016 starting at 2:00 p.m. at the Austin offices at Hornsby Bend, and again on 9/27/2016 starting at 9:00 a.m. at Austin City Hall, at meetings of the Hornsby Bend Work Group (HBWG).

As a reminder, the HBWG was created on 9/14/2016 by a joint vote of the Zero Waste Advisory Commission and Water and Wastewater Commission, and was specifically directed to convene to study biosolids policy issues related to both RFP CDL-2003 and RFP JXP-0501. HBWG members were also appointed on 9/14/2016, representing members of both Commissions. A transcript of the 9/14/2016 meeting is attached for your reference (Exhibit A).

Ms. Danielle Lord
Mr. Joshua Pace
City of Austin Purchasing Office
October 3, 2016
Page two

Both the 9/20/2016 and 9/27/2016 HBWG meetings were private meetings. Per the Bylaws of both the Zero Waste Advisory Commission and Water and Wastewater Commission (Exhibits B & C), work group meetings are not public meetings required to adhere to the Texas Open Meetings Act, and City staff has acknowledged that no public notice of the "informal" HBWG meetings was given (Exhibit D).

At the 9/20/2016 meeting, Synagro representatives were in attendance and directly addressed HBWG members three times. In each case, Synagro's remarks (Exhibit E) constituted representations that provided information about its response and advanced its interests as a respondent. These types of representations are prohibited during the ALO "no-contact period", which began on 4/4/2016 for RFP CDL-2003 and on 3/28/2016 for RFP JXP-0501 and continues today for both.

At the 9/27/2016 meeting, both Synagro representative Mr. Andrew Bosinger and Mr. Allen Click were in attendance, and both directly addressed HBWG members. A transcript of the 9/27/2016 meeting is attached for your reference (Exhibit F). During this meeting, both Mr. Bosinger and Mr. Click made representations that are prohibited during the ALO "no-contact period".

While you, Ms. Lord, the City's authorized contact person for RFP CDL-2003, were in attendance at both meetings and Mr. Pace, the City's authorized contact for RFP JXP-0501, was in attendance for the 9-20-2016 meeting, both of you know you neither convened nor conducted the meetings. Again, the meetings were held at the specific direction of the Zero Waste Advisory Commission and Water and Wastewater Commission, and were convened and conducted by HBWG Chairperson, Susan Turrieta, member of the Water and Wastewater Commission (Exhibit G).

As you, Ms. Lord, also know during the 9/20/2016 meeting, you represented to TDS staff that your presence at the meeting allowed Synagro to provide information and representations conveyed about their RFP response and how they will conduct their operations to HBWG members (and numerous other present City officials) without violating the ALO. We now question whether you believe that your presence at the 9/27/2016 HBWG meeting likewise allowed both Synagro and Allen Click to provide such information about their RFP responses and intentions to City officials without violating the ALO.

However, there is no reading of the ALO (Exhibit H) indicating that the simple presence of the City's authorized contact person at a private meeting convened and conducted by other City officials allows RFP respondents to make representations otherwise prohibited during the ALO "no-contact period". Further, we do not believe Mr. Pace, the contract and RFP authorized contact person for RFP JXP-D0501 was present at the 9/27/2016 meeting when Mr. Click made his prohibited representations.

Indeed, this idea violates not only the letter but certainly also the initial intent of the ALO, which was to promote transparency and provide a "level playing field" for RFP respondents. **In fact, City staff's demonstrated misapplication of the ALO (Exhibit I) has, over and over again,**

Ms. Danielle Lord
Mr. Joshua Pace
City of Austin Purchasing Office
October 3, 2016
Page three

resulted in less transparency, less democratic process, and less information made available to City policymakers and the public about proposed City purchasing contracts.

Prior to the 9/20/2016 meeting, Synagro had itself filed a complaint (Exhibit J), regarding the ALO, requesting that the City Council vote to exempt RFP CDL-2003 from compliance. TDS, while still deeply concerned about both RFPs and proposed contracts, nevertheless supported Synagro's request (which we understand has now been withdrawn) even though we had already twice observed Synagro and City staff in likely ALO violations.

As Bob Gregory of TDS noted in an email to you, Ms. Lord, on 9/13/2016 (Exhibit K), TDS staff observed Synagro representatives speaking privately with City staff outside of public meetings on both 8/10/2016 and 8/11/2016. A TDS representative requested a copy of a City video to document this communication, but City staff maintains that the video is exempt from open records requirements. In one of these cases, Purchasing Officer James Scarboro was observed personally directing Synagro and Austin Water staff to separate. Mr. Gregory inquired of the Purchasing Office as to whether either incident was under investigation by City staff, but has not yet received a response.

In fact, not only have all inquiries made by Mr. Gregory and TDS gone unresponded to by the Purchasing Office, you, Ms. Lord, personally represented to Mr. Gregory after the 9/27/2016 HBWG meeting, and after Mr. Click had been involved with a discussion with City staff following the meeting, that Mr. Gregory was not allowed to make any direct inquiry of Mr. Allen Click during the ALO "no-contact period", when Mr. Gregory asked Mr. Click whether he was a listed partner or subcontractor in the still redacted portions of the Synagro RFP response and proposed contract. As TDS is not a respondent to either RFP, this interpretation of the ALO likewise defies any possible reading. **It also offers further evidence of City staff's view of the ALO as an instrument of control rather than transparency. To suggest that a private citizen cannot ask a direct question of a proposed City contractor is a disturbing new milestone in the staff's misapplication of the ALO.**

Regardless, this formal complaint does now require both of you, as the City's authorized contact persons for RFP CDL-2003 and RFP JXP-0501, to document the prohibited representations made at the 9/20/2016 and 9/27/2016 HBWG meetings and to notify either the Director or Purchasing Officer, who will in turn determine what ALO violations have occurred.

To be very clear, TDS takes no joy in filing this complaint. We supported Synagro's request to exempt RFPs, bids and contracts related to the City's biosolids from compliance with the ALO because we firmly believe that **the ALO has morphed from its initial intent to become fundamentally undemocratic, serving to limit the information and options available to City policymakers and the public. Exempting these related RFP's, bids and contracts are even more important given the significant deviation from the City policy staff is now proposing to put into place through an RFP process.**

Ms. Danielle Lord
Mr. Joshua Pace
City of Austin Purchasing Office
October 3, 2016
Page four

Please note that City staff has placed these items on the City Council agenda for consideration on 10/6/2016 as Items 26 and 27 (Exhibit L), and that a HBWG meeting is scheduled for tomorrow, making documentation and review of this complaint time sensitive. To help, I've attached a list of City Officials, Click and Synagro representatives observed to be present at both the 9/20/2016 and 9/27/2016 HBWG meetings, as well as others present (Exhibit M). If I can provide further information, please do not hesitate to contact me.

Sincerely,



Gary Newton
General Counsel
512-421-1305

CC: Mr. James Scarboro, Purchasing Officer, by email

Exhibits: A – M

**9-14-16 JOINT MEETING, ZERO WASTE ADVISORY COMMISSION and
WATER AND WASTEWATER COMMISSION**

Item 1: Citizen Communication

Item 2: Staff Briefings, Austin Water Utility biosolids management

Item 3a: Discussion and Possible action: Recommendation and potential policy recommendations on biosolids management by Water and Wastewater Commission.

Item 3b: Discussion and Possible action: Recommendation on zero waste policy considerations to be included in biosolids management planning by Zero Waste Advisory Commission. Backup documents from item 3d. August 10, 2016 ZWAC meeting:

http://austintexas.gov/cityclerk/boards_commissions/meetings/97_1.htm

William Moriarty: Okay, we are having a little computer problem but we can get our joint meeting of the Water and Wastewater Commission and the Zero Waste Advisory Commission called to order with Chair Acuna. I will call the Water and Wastewater Commission to order and then he will call the Zero Waste Advisory Commission to order and then we will proceed with a joint meeting. So I'm calling our part of the meeting, September 14th, 2016, here at the Waller Creek Center. Gerry.

Gerry Acuna: I'm calling the Zero Waste Advisory Commission meeting on September the 14th, to order. Thank you.

William Moriarty: And the first item is Citizens Communication. We have several speakers signed up, and know that you are limited to three minutes, I'll call your name starting with Paul Gregory. Mr. Gregory.

Paul Gregory: I would like to let Bob Gregory go first (unclear)

William Moriarty: Mr. Gregory, are you signed up? Oh he's giving you time so please proceed.

Bob Gregory: Let me ask, is it a three-minute limit regardless, you can't have more than three?

William Moriarty: That's right.

Bob Gregory: Okay. Would you pass out... I will introduce you to my concept, that I have a presentation. I want to give you a package of information, please, that includes questions that should be addressed; the policy issues of this. Let me back up. I'm Bob Gregory with Texas Disposal Systems, forgive my rush. We believe this is a policy issue that's before you today. There are questions related to the policy issues, questions for staff, an email that I sent you last month, actually, yes, in August, a definition of compost that hopefully will be helpful for your discussion today, four meeting transcripts, one being your July 13 Water and Wastewater Commission meeting transcript. And I include all of those in there because it's a migrating story from staff and Synagro on the contract related to Synagro. What started out is a, very clearly to me, a bid for the land application of biosolids, has gone to a composting contract, and I hope you'll take time to look at those four changes in the, four transcripts, excuse me, with the changes in them and you'll particularly, hope to call your attention particularly to the City Council meeting that discussed the policy issues that brought about this joint meeting of these two Commissions. And in that transcript there was discussion concerning whether the RFPs before you today meet the policy of the City, and so the question comes and I think the main issue for your discussion, if I may be so bold to say, is to consider whether the RFPs before you do meet current policy, or whether they need to be pulled down so that policy can be made, or to fit this RFP, or whether we're going to pull them down and repost them for a new RFP that does meet policy, because it's my contention that they do not meet current policy, and you can see that in the policy questions on the front of your package. So in summary I encourage you to not take action on either one of these contracts, to focus on the policy issues related to the two contracts and the two RFPs, and determine what has been addressed and whether they are consistent with current policy. Is that my time?

William Moriarty: She'll let you know. If that's all you've got to say we have an obviously robust meeting here, so...

Bob Gregory: I'll leave it at that. Thank you very much.

William Moriarty: Mr. Gregory, thank you, and I presume all your other colleagues feel they've been...

Ryan Hobbs: I'm Ryan Hobbs, I was signed up to donate time to Mr. Gregory.

William Moriarty: But he's saying he's finished so I'm going to assume all these donations are done, if that's okay. All right, and I have a representative from Synagro, Pam Roarie.

Pam Racey: Hi, I'm Pam Racey with Synagro.

William Moriarty: Sorry I didn't read your name right.

Pam Racey: No worries. I'm really just here to answer any questions you might have about the company or about our proposal. We are the nation's largest biosolids compost company; we compost over half a million tons of biosolids a year. We're very excited about the process that happened here in Austin, an open and fair procurement and we put forth a high quality proposal to make high quality compost and distribute it in the Austin area and save the ratepayers over a million dollars a year. Any questions you have for me or my colleague, Andrew Bosinger, we'll be here throughout the meeting to answer if need be.

William Moriarty: Thank you Ma'am. Cindy Rellin of Compost Art. Ms. Rellin, three minutes.

Cindy Rellin: Thank you. I'm Cindy Rellin and I have been working with children teaching them compost art. I've work with hundreds of school children and what we're doing is taking our kitchen scraps, putting them out on a cutting board and making art out of it before it gets walked to the compost bin. This is encouraging people to compost. The art itself is photographed and it's just really awesome. My proposal is more toward the Zero Waste Advisory. We are having a first ever compost art contest in Hyde Park. I have the dates and the location that I will send you all. Saturday October 22, from 1:00 – 4:00 and I invite celebrity judges, especially those involved in composting, and we're going to have presentations, teach children, and when children and adults make art out of compost, out of that scrap of carrot or out of that potato peel, and you change its form and you turn it into a piece of art, it changes the value. It follows all the lines of art; texture, value, color, all of it. And I hope that it encourages, programs like this can expand and encourage people to be wise about their environment. Thank you.

William Moriarty: Thank you Ms. Rellin. Andrew Dobbs, Texas Campaign for the Environment.

Andrew Dobbs: Am I to understand that this is the only time that the public gets to speak, we don't get to speak when the actual items are presented?

William Moriarty: That's correct, Sir.

Andrew Dobbs: I would like to go ahead and speak right now. My name is Andrew Dobbs, Program Director with Texas Campaign for the Environment. We are here today to have input. I emailed each of you. If you didn't get it please let me know, I'm happy to email you with our position, but I'm going to cover it as much as I can in three minutes here. The good news is that we're making progress on this issue and I think that we went from a place where there was a black box and a lot of decisions about policy had been made before it was presented to the public, and now we've increased public involvement and we've gotten a little bit of a look inside the box, so it's kind of a gray box now. And what we see, we like. We are glad, it's clear that the Department needs a partner in this project and Synagro is saying some things that we really like. They're saying they want to get to a hundred percent compost, and they want to help out our construction and demolition ordinance. All these things are good things. We're happy to see that. We also think that they should, we hope that the Department will choose to allow it, if they do provide a product that meets the same standards that Dillo Dirt has met to date that they will get to use that name so that we can continue that program and continue leveraging that brand. That said, there are things that we need to change before we can support this contract. Number one, redactions there. There are some of them that are really concerning, namely the exceptions to the RFP that are redacted. That could be minor, or it could open the door wide open. We need to see those before we can approve the contract. It will be public after the contract's approved anyways, let's let the public see it ahead of time. Number two is that we need to define compost and define Dillo Dirt in there, very specifically so that this Class A compost idea that was floated weeks ago is not, it doesn't muddle the issue or compete products that shouldn't be compete with one another. There needs to be concrete plans for, like we need to answer the question, What about regulation? They're talking about major site plan changes at Hornsby Bend, as we understand it, or at least some site

changes. Is this going to require a permit modification? There's needs to be contract issues for screening, for curing, for odor control, and for termination. Without these, you know, there's a wide open net that, you know I'm sure that they'll do great, and I'm sure that I'm sure that the folks that are working there now will do great, but you want to protect yourself just in case things change. There are goals. We need goals and timelines and reports for getting to 100% compost. Saying that you want to do it is great. We've all been, I've lived my life at times when I said I wanted to accomplish things, and didn't set goals, didn't set timelines, didn't set measurements, and I didn't accomplish those things. It's goals and timelines that hold us accountable and they need to report to these Commissions and to the City Council. There needs to be, with the emergency offsite land application, we need to have reports every time that happens and plans for getting it back to normal operation. That can't be a wide open door for anybody. With the charitable donations of compost, that's a great idea. In the past they have donated to people who intended to grow food in it; they need to be informed that there's biosolids in there. Very last thing, Council needs to approve any contract extensions. If we can get these changes, which are numerous and significant but I believe that they are possible, then we can all have a Kum-ba-yah moment and get this thing through. I'm happy to answer any questions.

William Moriarty: Thank you Mr. Dobbs, appreciate your time. That's all the speakers we've had signed up so we'll conclude Citizens Communication, and move to the second item on our agenda, Staff Briefing. The Austin Water Utility will make a presentation on the biosolids management program. And ladies and gentlemen on the table if you'd be so kind as to introduce yourselves and begin.

Judy Musgrove: I'm Judy Musgrove, I'm Division Manager of Process Engineering at the Austin Water Utility. I'm going to be presenting and, louder? All right, can y'all see, cuz this was really light.

William Moriarty: We've got handouts too.

Judy Musgrove: Well, this is a, I'm going to go over the Hornsby Bend, we've got some history and how we got to where we are today. I'm going to go pretty fast cuz there's a lot of slides. I tried cutting them back and I just couldn't; it was like cutting off the arm of my child, so anyway. So I'm just going to get through here really fast. Okay and that didn't work. Okay. So, Hornsby Bend started out, we had our sludge coming in from the two wastewater treatments plants, Walnut and SAR, and it went either to land application or stored onsite. So we decided to try composting; it was a new, innovative type idea. We trademarked the name Dillo Dirt and started it in 1989. Back then we used Austin Energy's cuttings for the bulking material, but it wasn't enough for our composting program, what they were giving us. So then the mid 1990's incoming solids were too much for our compost operation to keep up. We started land applying some Class B biosolids. First on just the City owned land, then we started contracting out. Meanwhile, Austin Resource Recovery had some decisions to make. The landfill near the airport - ABIA was coming - and the landfill near the airport had to be shut down. So they had their yard waste going there and they needed a place to take it. So we started a partnership; they diverted their yard trimmings to us and helped us build our first compost pad, or expand the compost pad, and everybody was happy. They got something out of it and so did we. Jumped way into the future; the contract that we have right now expires November 17th. In preparation for that date we met with Austin Resource Recovery several times trying to figure out if we could march forward together and we just, during all those talks we figured it was just not quite the right time. They provide us bulking agent from the curbside pickup which is a huge effort for the Dillo Dirt program, but the yard waste mixed with food can't come to Hornsby because of the close proximity to the Austin Bergstrom airport and FAA regulations, it attracts scavenger birds which aren't good for the airplanes going by. So we discussed options to partnering and like covering the trucks, and covering our facility, and just nothing seemed to make sense so we decided that a joint contract for food waste and biosolids wasn't the right time for that. Just to give you an idea of how it works at Hornsby, we have sludge coming in from the wastewater treatment plants and the biosolids, we start calling it biosolids when it's been treated by the digesters so with sludge coming in and then when it's treated it becomes biosolids. Okay, so the wastewater plants discharge the sludge to Hornsby Bend, we add a polymer to it, so it thickens it, the gravity built thickeners, and then the thickened sludge goes through the digesters, gas is produced and then cleaned and converted into energy. The polymer's added, another polymer is added, or the same polymer again is added and the biosolids are dewatered at the belt filter press, at this point it's 18% – 20% solids; we call it cake at that point. Chocolate cake, it's not the same thing. Anyway, Class B biosolids at this point go two different directions under our current contract; it can either go to land application or it can go to be made into compost. It is composted, then the Class B is pulled out of the basin, mixed with the woody waste and

windrows are formed. The process from sludge to Class B is defined by the EPA and TCEQ and the Class B to Class A is a stronger measurement of fecal coliform numbers. Compost that we produce is stabilized. It's a, it's Class A Compost and all compost is Class A because it has to meet that same pathogen reduction. This is our little depiction, that used to be green I don't know why it looks yellow, but the bottom is landfill, which we don't want to do, then Class B biosolids is the next in the hierarchy, and then Class A biosolids is next, and then compost is the top and that's what we are trying to achieve with this new contract, is doing all compost. I was curious about what other cities in Texas were doing and other cities in the country so I did just a quick look, San Antonio does 60% landfill, 40% compost, they're trying to head most toward compost. Dallas does landfill 100%. Fort Worth does 100% land application, they use Class A, they treat it to Class A standards. Denton does 100% compost. Houston does heat drying and then some land application. Boulder, Colorado - land apply. Denver, Eugene, Oregon - these guys all land apply. San Francisco does some reuse which I don't understand what reuse is. I'm guessing is topping on the, well they didn't say what it was, they just say they do reuse, and it's not compost, it's not land application, it's just reuse, so we're not sure what that is. New York, New York - combination of heat drying, land applying, and compost. They didn't give any percentages, they just said it's a combination. So they all have a website that touts how great their land application process is, how it helps the farmers. So in preparing for this new contract, we met with Austin Resource Recovery like I said and we found out about how their food waste program wasn't really going to help us too much with the bulking agent, that was gonna be dropping off and meanwhile we're having a lot of problems with selling Dillo Dirt. We tried all kinds of things to boost sales. We got the Seal of Testing Assurance from the US Composting Council so it can be used on TXDOT projects. That was an expensive endeavor, but, then we have to have it tested monthly, but that didn't help. We lowered the price, that didn't help. We set up to do purchases with credit card, a lot of the complaints were that people had to go down to our office and buy Dillo Dirt credits and then go out to the plant and pick them up so this way they could just pull up use their credit card, get on the phone and buy it right on the spot. We produced a brochure, sent it out, and gave to the vendors. We went by and visited with the vendors and left it for the people to pick up to let them know about Dillo Dirt. We extended our loading hours, went earlier in the morning, later in the afternoon cuz we had heard that that was a complaint that they couldn't get there during the middle of the day. We built a ramp, so the smaller trucks could load. But our sales continued to go down this is from 1990- present. There is one blip in there in 2010 we had a big sale for highway project, but as you can see the sales just weren't just doing well. So we decided to go out for proposals. We drafted a scope of work to the likely vendors and then we met with those vendors for comments, concerns and ideas on our scope. Most of them wanted use of the whole pad; they said they could do the Dillo Dirt for us. Side by side composting and selling doesn't make sense, though we didn't want to run our Dillo Dirt program next to their composting program. So we took all of their ideas and comments and we crafted a scope of work to send out, the RFP that y'all have a copy of, I guess. So what we came up with for our goals for our new contract was that we didn't want to stock pile, we wanted 100% of our biosolids to be used each year. We didn't want to leave anything onsite because of the fire that was, happened before, that this would prevent that. We wanted to save money, we wanted to structure our bid or RFP to enable the vendors to propose any cost effective solutions that they could, and we figured composting was gonna be the cheapest cuz that's what it was for San Antonio, and that's what it was for us with our current contract. We didn't want any regulatory concerns we wanted to make sure somebody had a proven track record working with biosolids and not have to worry about them not meeting the regulatory commitment. Though we said all biosolids had to be beneficially reused, we wanted all the composting areas to be utilized, except for the basin; ARR was using to grind woody waste. We said, that the bulking material ARR produced could be used but no guarantees of the amount. We didn't want any more than 50,000 cubic yards of biosolids stored onsite at any time. All beneficial reuse methods would be considered, we were scoring these so the more beneficially, you know, it was, the better it would score. We wanted dust and fire control plans, and there was an odor control plan requirement in there too. We received five proposals, one was non-responsive so we evaluated the four and Synagro scored the highest of all the proposals. They met the no stockpile options, they saved us money and they have experience. So we went to Council, well first we came to Water and Wastewater Commission and then went to Council and they directed us to work with the two commissions and identify policy considerations. And then simultaneously negotiate a framework for a contract and bring the negotiated contracts back to Council on October 6th. So we had to identify the policy issues. Through the help of the organics subcommittee, they were the highest and best use hierarchy with the goal of prioritizing Class A biosolids. Ensuring the City maintains final

disposition of biosolids with a Class B or lower classification, and preserve the Dillo Dirt trademark name. So I'm just gonna get through. Though the current contract points, their land application onsite and offsite will only occur if there's danger of fire present, or if we're close to permit violation. Only City of Austin can dictate when land application is used. The contractor has to do all the (unclear) except if we dictate the land application. And before we get to that point, we're gonna do an inventory controls every month, and so we'll see it starting to build and we'll start asking for plans to get it taken care of. Dillo Dirt will have a public-private partnership with Synagro to produce and sell the compost using the Dillo Dirt trademark, the quality standards are gonna be the same as what they are now. They have to have a Seal of Testing Assurance by the US Composting Council. That has a very rigorous testing that's done monthly. And so we would like approval from Council to negotiate to execute this contract that we're proposing which is for five years and five, one year extensions. And both Austin Resource Recovery and Austin Water recommend it with the same policy decisions that we just went over. Any questions?

William Moriarty: What we'd like to propose, because normally at this point, if it was just the Water and Wastewater Commission, and I'm sure the Zero Waste would be similar, we would spend a good bit of time asking questions, but Chair Acuna and I have discussed a process that we would like to recommend so that we could dig into this a little deeper. And I think, obviously, when this was brought to the Water and Wastewater Commission, I voted for the contract because I was satisfied it was in the best interest of the City of Austin. But there's some suggestions that, there's some wider City advantages that may be available, and what we would like to propose is that we create a working group composed of four members of the Zero Waste Advisory Council and four members of the Water and Wastewater Commission to spend the next six weeks studying this matter and bringing back a recommendation to our respective groups. So I have, I am going to appoint Commission member Susan Turrieta as the Chair.

Gerry Acuna: And I would like to nominate or select Amanda Masino as our Vice Chair.

William Moriarty: And Commissioner Blanding has agreed to serve and I need two others that would volunteer, and many of you are on other things and have commitments so, I'm trying to keep myself off of this, but do I have two others that would be interested? Nhat Ho, thank you, Sir. Need one more, or you're going to send me to work.

Gerry Acuna: All right, so Amanda, Kaiba. Shana?

Shana Joyce: I do not have time, I'm so sorry. Overcommitted.

Woman: I recommend these guys.

Gerry Acuna: That'll teach them not to be here. Actually we have Vice Chair Masino, then we'll have Kaiba White, would also be on this committee. And let's see, I think Stacy did express an interest in doing a little research.

Heather-Nicole Hoffman: I can be on it but I can't guarantee I'll make all the meetings.

Gerry Acuna: There you go, we have four people.

Judy Musgrove: Can I just say something quickly, make sure y'all are doing this with full disclosure. The contract, the proposals we have expire November 15th, so if I'm looking at six weeks out that takes us to the end of October.

Gerry Acuna: So, can I address that?

Judy Musgrove: Yes.

Gerry Acuna: Actually this is a, the purpose of this joint committee is to truly bring into focus some of the dynamic changes that have occurred in our policy decisions. When the original Synagro contract was let, I think what, eight years ago, is that correct? Eight years ago we didn't have a Zero Waste Advisory Commission, we didn't have a zero waste goal, I think we were still hanging out over at 812. We since have modified and changed our philosophies, much like the Water and Wastewater Commission has. What I'd like to do is make sure that we are working together as a group. Our philosophy has changed, our focus has also changed. I want to make sure that when we put an RFP together that, yes indeed both of our new policy changes and directives are considered here. Now having said that, six weeks, if I'm not mistaken

please correct me here, I think in six weeks we have a holdover period that would take us through March 16th, is that correct?

Judy Musgrove: Yes, but it's the proposals, it's not the contract...

Gerry Acuna: That's correct, the contract. So what we're hoping to do here is pretty much expedite this. The goal that Bill and I had discussed is to have something brought back to City Council that can be addressed, and answer the questions that some of the Council members have. The questions are answered, at that point Council would direct staff, Water and Wastewater staff, to present a new Request For Proposals, and at that point the actual contract would go out, or the RFP would go out, and hopefully within this timeframe we can bring back hopefully some additional responses.

Daryl Slusher: Chair Acuna, Daryl Slusher, Assistant Director, Austin Water, so let me make sure I understand; you're saying that the intent of this work group, well Chairman Moriarty laid out the intent I think, but you're saying the intent is also to let these, this RFP expire, and not do it, so the intent would be to kill that RFP.

Gerry Acuna: That could be an inadvertent result. But the intent is to make sure that we're absolutely getting the best possible, most efficient result for the ratepayers.

William Moriarty: I guess what he's asking is if they could hold the contract and have these meetings, and if as a result of the meetings the contract proves to be a good thing. It may not.

Gerry Acuna: Exactly.

William Moriarty: I don't think we're saying kill the contract tonight.

Daryl Slusher: I thought I heard you say, let it expire.

Gerry Acuna: Well I did refer to that, that is a possibility. Now when I mention wanting to get the most beneficial return on the ratepayers' investment here, that may end up happening. My concerns again, Assistant Director Slusher, is that we absolutely make sure that we have taken the concerns that both of our departments have expressed here. Our Zero Waste goal is at this stage not conducive to land applications, and I'm sure there are some of the things that are in here, I mean, the zero waste goal is one thing, Water and Wastewater's goal, Dillo Dirt is an absolutely fantastic, wonderful, iconic trademark. Now to see some of this not possibly go away, I should say possibly go away, is disturbing to me. And to more importantly see that we're looking at an RFP that suggests taking our current inventory and sending that away for \$64,000, that disturbs me also. The ratepayer...

Woman: That's a separate RFP.

Gerry Acuna: That is correct, but that's part of the whole process here. And as far as I'm concerned that is a ratepayer investment that we should maximize somehow, some way.

William Moriarty: So I'd like to craft a motion to set up this working group, and let me try to say something and you amend it. I move that we create a joint working group of the Water and Wastewater Commission and the Zero Waste Advisory Commission to study the matter of biosolids management at the Austin Water Utility in context with other City programs and the working group meet over the next six weeks and come back to our two commissions with recommendations for moving forward.

Gerry Acuna: And I wholeheartedly agree with that.

William Moriarty: You want to second?

Gerry Acuna: I second that motion.

Nhat Ho: Questions.

William Moriarty: Mr. Ho.

Nhat Ho: Can we have a discussion over that motion?

William Moriarty: Yes, we can.

Gerry Acuna: Absolutely.

Nhat Ho: I mean when I volunteered, I did not have the intention to jeopardize the RFP, so if that is the case I may have to withdraw that volunteer. I think staff spent a lot of time and you know, we as the Commission has approved the contract, so is there any reason why the six weeks cannot be two, given the time sensitivity?

William Moriarty: I don't know, I think the working group, once they start working, they may discover they can move through quicker, it may take longer, I mean, we're suggesting six weeks, it seems like a reasonable period of time; there's a lot of information to absorb but I think if it could be accomplished quicker, nobody would be against that.

Gerry Acuna: That was an arbitrary number that Bill and I just...

Nhat Ho: If it's arbitrary I feel like the decision needs to come in sooner where we decide if the RFP live or die; I don't think that should be left up to... for guessing. So I think the decision should be made where the motion comes first whether to keep the... because we have on our agenda to approve the contract tonight and if that contract getting voted down, that's I feel like the decision needs to be made now before the working group...

William Moriarty: I don't think we have to vote it down, we just don't have to vote on it. We're just kind of...

Gerry Acuna: Table it.

William Moriarty: ... tabling it for six weeks until we gather more information, to address what appear to be some legitimate concerns from the community that maybe some other things ought to be considered. That's all that's going on here.

Nhat Ho: Right, but when you...

William Moriarty: I think the contracts can be preserved for six weeks; I don't know that, I'm not an expert at them, but maybe there is a way they can be extended and put in the deep freeze for a few weeks.

Nhat Ho: So can staff answer that definitively 'cause, I mean, that effects my decision...

Judy Musgrove: The proposal expires; we'd have to ask the contractor or the vendor if they would extend, and I don't know if they would. The problem is they've laid this whole thing out now for the public to see, all their pricing is out there. It just seems like it's doing a disservice to them to then let it expire and then rebid.

Gerry Acuna: Right, I think Commissioner...

Daryl Slusher: I've got Danielle Lord, Purchasing, here too.

Danielle Lord: Good evening, my name is Danielle Lord, I'm with the Purchasing office, and in regards to the question of if the proposals can be extended, that would be something that we would have to talk to the proposer about; they can be on our part. However there is a question if Synagro would, or Allen Click, I think we're talking about both contracts here, or both proposals here, if they would be in agreement to extend those. And as Judy was saying the contracts are now available and viewable online so those are now part of the public record.

Heather-Nicole Hoffman: Starting with, I'm sorry that not everyone here was at the Organics Committee meeting because we went through a lot of the concerns at that committee meeting, and I know Amanda and I both felt that they addressed many of the issues that we're seeing here, now maybe not all of them, but you should have been at that committee meeting. And I'm sorry that the staff is going through this over and over again. Each time we do we get more information, which is great, and I'm glad to see that. A friendly amendment, we go down to four weeks max, so that we can continue under the current timeline of the RFPs.

Gerry Acuna: Let's shoot for a goal of, literally, by our next meetings, our respective meetings.

William Moriarty: Okay.

Gerry Acuna: Perhaps having a report from, four weeks.

William Moriarty: So the proposal is by our next meeting we have the feedback from the working group.

Gerry Acuna: Correct.

Heather-Nicole Hoffman – Friendly amendment is accepted?

William Moriarty: So the contracts, perhaps we wouldn't need to do anything with them, they could sit there and be available to use if that's the path forward.

Daryl Slusher: Would you repeat that, I'm sorry, I was talking to Ms. Burazer.

William Moriarty: We just shortened it up from six to four weeks, and we're saying that that still keeps the contracts alive.

Daryl Slusher: Yes, I think, Ms. Burazer, you want to address that.

Jane Burazer: Yes, one point I'd like to bring up is on the Click contract, or the unscreened compost that we have onsite. It's still... our inventory is growing and we need to get it moved and so that is a big concern. And though there are some issues about that, you know, we could be pushed into our options being very limited in how we handle that, and right now our other option would be the current contract.

William Moriarty: Would it keep a month?

Jane Burazer: Well, I believe that bid is good until about the same time in November, so we should be okay if this can go through by November.

William Moriarty: All right, so we're going to try to do this working group for a month, we've got members from both, we have a motion, a second, but we're taking questions, but again know that the working group's going to take a lot of the technical questions, so, but if there are no questions from Water and Wastewater...

Shana Joyce: I have a timeline question. So staff said that you're going to bring this contract back up on October 6th, right?

Jane Burazer: We were asked to...

Shana Joyce: You were planning it. Could you move it to the next week, because then I think both of our commissions would have met and would have been able to make a decision so then it could be brought up...

Jessica King : That was a Council directive to bring it by October 6th, but I believe that in practice, staff has been able to move that.

Jane Burazer: Jane Burazer, Assistant Director of Treatment, I believe we can ask for a postponement of it to the October 20th Council meeting, which would be following the next commission meeting, here.

Jessica King Which is scheduled for the 12th. The next ZWAC and, since both of you meet, that is October 12th, yes.

Shana Joyce: So I was just wondering that, then we can do the four weeks and decide, and then move forward, so I just wanted to bring that up.

Jessica King: And just for posting purposes at some point if we could get some clarification, I'm sorry, Jessica King, Austin Resource Recovery, if we could have some clarification on what the objective is with regards to what will come out, the work product that will come out of the joint working group.

William Moriarty: Do we need that right now?

Jessica King: It will be helpful for posting purposes because you will have, you'll need to post the language and what you'll be trying to accomplish.

William Moriarty: We have to have that like, this second?

Jessica King: Not the actual language but if you will give us some direction as to what that will be so that we can craft that language in preparation because if we're planning to do, if y'all want to do meetings over a period of four weeks to get to a consensus or an agreement by the 12th, we're gonna be working some quick timeframes depending upon if we're talking eight...

William Moriarty: Could we have a couple of days to get the objectives pulled together? I mean...

Gerry Acuna: You know, I can pull a couple real quick, I mean, it's again, the goal here is to become consistent with our current policies, make sure the RFP's reflect those current policies that we've adopted

as a community. That's goal number one, and a priority goal. Number two, make sure the ratepayers, again, are receiving the most efficient, cost effective service available. At the end of the day we pay for this. Those are the two main items that I currently stress, and here as a Commission, a ZWAC Commission, our zero waste goal is extremely important. We're in the process of implementing our organic collection, if all goes well. Should that happen, I'd love to have an answer real quick. Where are these bulking agents going to come from that can support two major programs. Dillo Dirt requires bulking agents. Organic processing requires bulking agent, whether we do it in-house or somebody else is doing it, where is this material going to come from? These are questions that need to be addressed today, and not wait until after we've got a contract here trying to figure it out. So those are my concerns.

William Moriarty: And I was going to add, probably general recommendations to improve both contracts. We'd had some testimony from the public that there's certain things in the contracts that they didn't think were completely good, so maybe we address those at the various discussions. But that's why we'll have the working group. They will dig into this, answer all the questions and come back with a recommendation. So, more questions? Mr. Ho.

Nhat Ho: I guess if I sign up for it, I better know what I signed up for. So to echo that, will we be provided the redacted information, and if so, will the members of the committee be under no contact period? 'Cause I know, I felt like the reason for this being kicked back has a lot more to do with procedure than the actual content and I don't want to be put in the position where this working group, it's going to be less public process, or not, it should not be. I just want to make sure I'm clear.

Gerry Acuna: Can I address Commissioner Ho's concerns here? And they are my concerns also. You know this is very important future item. And having said that, I mean, transparency and accountability we speak about all the time in government. Is there any way that the actual Anti-Lobby Ordinance can be relaxed to some degree so that we do have an open, transparent conversation about this? And I'm asking Purchasing.

Danielle Lord: Danielle Lord again. Actually there has been a request for that and a complaint from that from Synagro to have the Anti-Lobbying, but there are two issues here. There's the anti-lobbying and I believe that's what I'm hearing from you, and I'm hearing that there is an issue with maybe redacted information. That's actually under confidentiality and proprietary information, and the information that was redacted was on the request of Synagro, and it was information that they did not feel comfortable releasing on their partners, as well as various information on business decisions, that sort of thing. And I can't really speak to it so I think that Synagro would need to talk to that, but I can say that the majority of the information, including all the exceptions that were taken, which is only one that I could see that was taken, and through the contract negotiations there has only been one, are public and are viewable online.

William Moriarty: So I guess to the greatest extent possible we will open these things but there may be some points that we just can't get all the way there, so...

Nhat Ho: I don't think I was requesting those information, I just want to make sure that if we are making the decision as the committee based on the information that is available to us. I don't care one way or the other what those are, I just want to make sure that those are clear. Because that means that whatever information, I've seen the information, and I guess if I (unclear) I may have some different thoughts, I just want to make sure that I'm not expecting to look at brand new information in four weeks, and what not. Just want to be clear.

William Moriarty: I would suggest that early in the meeting process, maybe get the City legal department to give a quick briefing on what is kosher, not kosher, with respect to Anti-Lobbying, secrecy, confidentiality, etcetera, make sure we don't trip up on that.

Gerry Acuna: The process that I am envisioning here, and please correct me, Commissioners. I envision something that is quickly done. Something that we can perhaps bring in some of the experts, I mean, Synagro obviously, you have an expertise in this, but you probably wouldn't feel comfortable sharing some of the questions or answers, and it may not be appropriate for us to ask you questions, but if there is other professionals in this community, which I believe there are quite a few, that we can bring to these committee meetings to answer some of these questions, I think that in itself would help make decisions and answer some of the questions.

William Moriarty: One other objective of the group is that we want to determine the future viability of Dillo Dirt. Let's put that down.

Gerry Acuna: Correct.

William Moriarty: All right. Let's quickly go around to get questions 'cause I'd like to get this voted on one way or the other, 'cause again, when we have the working group, if you're not on the working group you can attend the meeting and participate a little bit, so, we have a motion, we have a second; we don't want to not address questions, but if everybody's said their piece, knowing we're going to have these working group meetings, we're going to have opportunity to ask lots of questions. Should we call a vote?

Gerry Acuna: Call it.

William Moriarty: All those in favor of the working group proposal that was made and seconded, please indicate by raising your hand. And going around here, I think I show unanimous approval. So with that matter we're not going to vote on the other, so at this point I'm going to move that we complete our meeting here at 6:55 p.m. Thank you Chair Acuna, and thank you Zero Waste Advisory Commission.

Jessica King: Commissioners, I'm sorry, could you repeat who the working group members are again, just for the record?

William Moriarty: Susan Turrieta, Melissa Blanding, Nhat Ho, and for the moment put my name on as the fourth one, but I may, there's some other people that aren't here that may want to be on it. You want to do it? Chien Lee.

Gerry Acuna: These three right here, and Stacy.

Jessica King: I'm sorry Commissioners, there are only three for ZWAC.

Heather-Nicole Hoffman: Stacy. We volunteered her.

- 1 (A) The board can determine the size of a working group but the number of board members serving on
2 the working group must be less than a quorum of the board.
3
4 (B) A working group may designate a chair, with the member's consent, but is not required to do so.
5
6 (C) Quorum requirements do not apply to working groups.
7
8 (D) Staff support will not be provided for working groups.
9
10 (E) Working groups are not required to post their meetings in accordance with the Texas Government
11 Code Chapter 551 (Texas Open Meetings Act).
12
13

14 **ARTICLE 9. PARLIAMENTARY AUTHORITY.**

15
16 The rules contained in the current edition of Robert's Rules of Order shall govern the board in all
17 cases to which they are applicable, except when inconsistent with these bylaws or with special rules of
18 procedure which the board or city council may adopt.
19

20 **ARTICLE 10. AMENDMENT OF BYLAWS.**

21
22 A bylaw amendment is not effective unless approved by the Council Audit and Finance Committee.
23
24

25 The bylaws were approved by the Austin City Council at their meeting held on March 3, 2016
26

27 
28 _____
29 Michael Sullivan, Department Executive Assistant

EXHIBIT C

Last Page of W&WWC By-laws

- (F) Each committee shall make an annual report to the commission at the January Commission meeting.
- (G) Committee meetings must be posted in accordance with Texas Government Code Chapter 551 (Texas Open Meetings Act).
- (H) At each committee meeting, a committee member shall sign in on a sheet provided and shall indicate that the member has no conflict of interest with any item on the committee meeting agenda, or identify each agenda item on which the member has a conflict of interest.

WORKING GROUPS

- (A) The board can determine the size of a working group but the number of commission members serving on the working group must be less than a quorum of the board.
- (B) A working group may designate a chair, with the member's consent, but is not required to do so.
- (C) Quorum requirements do not apply to working groups.
- (D) Staff support will not be provided for working groups.
- (E) Working groups are not required to post their meetings in accordance with the Texas Government Code Chapter 551 (Texas Open Meetings Act).

ARTICLE 9. PARLIAMENTARY AUTHORITY.

The rules contained in the current edition of Robert's Rules of Order shall govern the Commission in all cases to which they are applicable, except when inconsistent with these bylaws or with special rules of order which the Commission or City Council may adopt.

ARTICLE 10. AMENDMENT OF BYLAWS.

A bylaw amendment is not effective unless approved by the City Council Audit and Finance Committee.

The bylaws were approved by the Austin City Council at their meeting held on February 11, 2016.

Felicia Cancino 3/10/16
Felicia Cancino Date

Commission Staff Liaison

Ryan Hobbs

From: King, Jessica <Jessica.King@austintexas.gov>
Sent: Monday, September 19, 2016 2:46 PM
To: Ryan Hobbs
Cc: Fisher, Ashley; Raine, Woody
Subject: RE: biosolids workgroup

Ryan,

The Commissioners intend for the Sept 20 planning meeting to be open to the public to attend and observe, but not comment. Future meetings will include the opportunity for input from stakeholders. I believe the commissioners intend to discuss how stakeholder input will be incorporated for future meetings.

-jessica

From: Ryan Hobbs [mailto:rhobbs@texasdisposal.com]
Sent: Monday, September 19, 2016 2:24 PM
To: King, Jessica
Cc: Fisher, Ashley; Raine, Woody
Subject: RE: biosolids workgroup

Hi Jessica,

Thanks for the reply. I understood from your discussion with Bobby after last Wednesday's joint commission meeting that the forthcoming workgroup meetings would be open for TDS and the public to attend. Based on your email below, it sounds like that is no longer the case and that workgroup meetings are invitation only. Please let me know whether TDS is allowed to attend tomorrow's workgroup meeting and any subsequent workgroup meeting thereafter (unless invited).

Thanks,
Ryan

From: King, Jessica [mailto:Jessica.King@austintexas.gov]
Sent: Monday, September 19, 2016 1:48 PM
To: Ryan Hobbs <rhobbs@texasdisposal.com>
Cc: Fisher, Ashley <Ashley.Fisher@austintexas.gov>; Raine, Woody <Woody.Raine@austintexas.gov>
Subject: RE: biosolids workgroup

Hi Ryan,

Commission working groups are informal meetings and are not required to follow the same posting guidelines as official commission meetings. The Joint W/WW and ZWAC working group is scheduled to meet on Tuesday, September 20 at 2pm at Hornsby Bend.

The Commissioners do not intend to take public comment/communication. Instead they will focus on planning for their future meetings and hear a debrief from the ZWAC Organics Committee members.

If you are interested in having input with this workgroup please indicate who you will be representing and area you're wishing to discuss. The Commissioners will be scheduling workgroup sessions and will invite you to participate.

p.s. We've had some staffing movement. Ashley Fisher is now serving as the liaison for the ZWAC Organics Committee. Woody is now focusing his time on the ZWAC C&D Committee. I've cc'ed Ashley so that you have her contact info.

Jessica Kingpetcharat-Bittner
Strategic Initiatives Division Manager
Austin Resource Recovery | City of Austin
Office: 512.974.7678
Fax: 512.974.1999
Email: jessica.king@austintexas.gov
austinrecycles.com

From: Ryan Hobbs [<mailto:rhobbs@texasdisposal.com>]
Sent: Monday, September 19, 2016 9:52 AM
To: King, Jessica; Raine, Woody
Subject: biosolids workgroup

Jessica and Woody,

Good morning. Please let me know what the proposed meeting schedule is for the ZWAC and W/WWC biosolids working group. Please also let me know where the meeting agendas and associated agenda back up information will be posted on the City's website. Thanks in advance.

Ryan

EXHIBIT E

Synagro representative Mr. Andrew Bosinger addressed Commissioners at the 9/20/2016 Hornsby Bend Work Group meeting at least three times and made the following comments about Synagro's RFP response:

- **Assured the Commissioners that Synagro had adequate plans to secure the necessary amount of bulking agent**

This comment was made in response to the lengthy discussion between Commissioners and City staff about the source and availability of bulking agent, since Austin Resource Recovery's yard trimmings would be redirected away from Hornsby Bend to facilities authorized to accept mixed food waste and yard trimmings, and since unreleased redacted portions of the Synagro contract deal with unidentified partners of Synagro, an undisclosed location for processing unknown waste streams and uncertainty concerning flow control by the City to require bulking agent waste to be shipped to Synagro.

- **Offered to pay the City for bulking agent**

The Austin Water RFP contemplates a multi-year period where Austin Resource Recovery's yard trimmings will be redirected away from Hornsby Bend at 6,000 ton increments while the department rolls out citywide collection of mixed food waste and yard trimmings over the course of 3-5 years, and ARR director, Bob Gedert, has presented a memo explaining how flow control of organic waste streams can be captured for this program under federal law.

- **Explained that Synagro's 'subcontractors' did not want to be identified because of 'fear of being harassed in the marketplace'**

Synagro has heavily redacted various portions of its RFP response, some of which include details about bulking agent and who their intended partners and subcontractors are. Mr. Bosinger's comment implies that the unidentified entities associated with this contract are going to be harassed by TDS and that is why it has changed its position on providing the full contract for a full review by the Commissions and to other interested parties. These partners are reportedly going to have an offsite waste processing facility to support this contract in ways yet to be described.

- **Stated every product 'will meet STA'**

There have been numerous concerns about the process Synagro has proposed and whether the products they produce will meet the United States Composting Council's definition of compost. STA stands for Seal of Testing Assurance. Biosolids can be processed to meet Class A biosolids standards and meet STA standards, but still not be stable and odor free to the point of meeting the description of a biosolids compost. Synagro sought to describe the meeting of STA standards with the creation of a finished compost.

- **Stated everything 'will be cured and screened, some more than others.'**

This comment contradicts multiple sections of Synagro's RFP response and previous public statements and lacks the specifics to insure the creation of a finished biosolids compost and reasonably maintain odor control within a two mile radius of the Hornsby facility.

- **Stated Synagro's 'objective is cooperation' and to 'work with the RFP'**

Yet, Synagro refuses to release important sections of its RFP response incorporated into the contract its representative assured Council would be released.

- **Stated Synagro has been 'open' and there is nothing 'secretive' about what they will do.**

Yet, Synagro refuses to release important sections of its RFP response incorporated into the contract its representative assured Council would be released.

- **Claimed that Synagro cannot 'enter into subcontracts' because Synagro does not yet have a contract with the City**

Yet, Synagro refuses to release subcontractor/partners identified within the redacted portions of its proposed RFP response and contract.

- **Stated Synagro 'will make a good quality compost'**

Yet, only wants to meet STA standards, which can be met without making a product which meets the description of a finished biosolids compost per the USCC.

- **Offered to answer any of the Commissioners Joint Work Group questions**

**9-27-16 ZWAC and Water & Wastewater Commissions Joint Working Group
Hornsby Bend Biosolids Management**

Susan Turrieta: ... I think we had a good meeting to get the Wastewater Commission Work Group up to speed on what's happened and to allow their (unclear) to address their concerns. And so today, what I'd like to do is drill down more specifically on how we're addressing all these concerns and hopefully draft our recommendations, whatever they may be to our Commissions and Council. It's my understanding that our recommendations will go both to the Zero Waste Committee and the Water and Wastewater Commission, and then they'll each decide how to move forward. So, the items I have here, the first one that I think we need to discuss is the redacted contract information, because that item, we simply as a work group need to come up with our recommendation on that. I have not looked at the contract and I have not looked to see what was redacted. I do know that under a competitive bid in the construction world, if we ask for prices they are typically submitted in a sealed envelope and put in a safe deposit box until the contract is awarded, and I'd like to at least have that much respect for this particular, and any bidder in this particular, these two RFPs. So at this point I'm not sure if the Work Group has an opinion on that or if anybody here that's present has any opinion on that.

Robin Schneider: My name is Robin Schneider and I'm the Executive Director of Texas Campaign for the Environment and yesterday, at the last meeting, Andrew Dobbs who reports to me, was here and talked about the redactions, and he admits he misspoke to say that the redactions should be submitted at least before the City Council. We would like to see, aside from the actual bids themselves, I totally agree with you, but redactions are released before this Joint Work group completes its work, or at least before the Commissions have to make their recommendations, because there's a lot of things, especially with regard to how the site is going to be operated, the site operating plans, site odor control, that sort of thing, that we would like the Commissioners to see so that they can decide if there are sufficient safeguards. As an organization we work at the state and local level and we believe that the procedures that the state environmental agency uses aren't strong enough to protect public health and safety and environmental health and safety, so we would like the Commissioners to be able to look at that, and we have some other suggestions about how to go about particular things like odor and other kinds of complaints, but on the redactions, we would like for those to be released sooner, than right before the City Council meets, but bidding in terms of numbers, sealed, that's fine.

Andrew Bosinger: Andrew Bosinger with Synagro, just to let you know, everything in the contract and in the proposal with regard to site operation, odor control, safety plans, everything like that, is completely unredacted. Everything that we submitted is a matter of public record, completely released, so that any questions or concerns along those regards can be addressed. We completely share with you that this Commission and others made it obvious that those were questions they wanted answered and we provided those, so we agree with you on that. The only thing that has at this point remained redacted is the names of potential subcontractors. But we have said that we're comfortable with the City having the review and approval right of the qualifications and appropriateness of those subcontractors before going forward so that any additional safeguards and reviews that might be necessary to verify that everything we're doing is consistent with the public's best interest. We're comfortable with that.

Robin Schneider: So can you tell us who they are?

Andrew Bosinger: That's why they're redacted. No, we don't feel like disclosure of that should be required at this point; that's something they have asked us to do, before any of these Commission meetings and other things got started, that was something that was submitted, a request that they made, and we're honoring that.

Stacy Guidry: Can I ask, what are your standards of selection for subcontractors?

Andrew Bosinger: Our standards are high, I mean, we have the only privately operated, platinum certified compost facility in the United States for biosolids, so we've got very well established, and met the highest industry standards for criteria. In addition we have safety requirements that go above and beyond any industry standard; best in class safety practices. So, those are the kinds of things that we're looking for before we partner with anybody.

Danielle Lord: Danielle Lord with the Purchasing office. I would just like to make one clarification as far as the cost proposal section that you brought up earlier, the cost section is completely open. The only piece that is not are some alternative cost solutions that were redacted and will not impact the negotiating contract at all.

Andrew Bosinger: I did send last night, that you may not have seen, Danielle, an additional, a revised version which even provides those for public consumption, if you want to see what the prices are, go ahead.

Danielle Lord: Ok. Those redactions have not been corrected out of the current contract that you have. So we will take those into consideration.

Stacy Guidry: I did not see that.

Andrew Bosinger: I just sent it last night.

Stacy Guidry: To our BC, our Boards and Commissions emails?

Andrew Bosinger: No, I can only send directly to ... (unclear)

Stacy Guidry: So was that sent out?

Danielle Lord: Not yet, because we just go it so...

Stacy Guidry: But it will be?

Danielle Lord: We will, yes, we will.

Adam Gregory: Adam Gregory with Texas Disposal Systems regarding the redactions. It was committed by representatives of Synagro to allow full review of the contract. That's not possible with the significant redactions. I find it also hard to believe that the only thing redacted in the ten or so portions of the contract and potentially hundreds of lines it appears, that the only thing is the name of the subcontractors. The truth is we don't know what is behind those black sections and I find it interesting also that in their proposal, Synagro certified that there wouldn't be any subcontractors. They had no intention to use subcontractors. It's signed, that you have to certify that in your proposal. They did that but now they're talking about secret subcontractors that nobody can know about. We don't know the nature of the relationships, the nature of the facilities those potential subcontractors would operate, how the City would be forced or not forced to be involved with those subcontractors. That's the type of thing that is supposed to be made available in a proposal, and given that it was certified that there were no, there was no intention to use subcontractors, I find it odd that we're looking at significantly redacted portions that Synagro states is only the names of their subcontractors.

Danielle Lord: I'd like to clarify that. There were no goals established on this contract so subcontracting was not required of the contractors. However, if a proposer requests that or says in the future that they may have subcontractors, they are required to go back through our Small Business and Minority department to do a change request to add those subcontractors and the rules for subcontracting then apply where they have to utilize the availability list. So what the proposal states is that they may if they are awarded the contract try to engage some subcontractors, and at that time that is correct, Sir, they would have to go back through SMBR and certify any subcontractors through our own availability list that we have through certified firms.

Kaiba White: ...can you just confirm for us what's been redacted as has been stated, is just the subcontractors or...

Danielle Lord: There's very few redactions in the contract, part of it is protection of subcontractors. Other pieces of that proposal are, like I said, alternate cost solutions – which we asked for, by the way. So any other opportunities to have any kind of cost efficiencies in this contract, and so we had a tab for that. And evidently, last night those were also released so, I don't know what the last release was last night so I'm not comfortable with saying that everything will be open, but I do know that those were the sections that were redacted before.

Kaiba White: Okay, so nothing regarding operations or...

Danielle Lord: Nothing that will impact the actual operations of the contract. The odor plan is in the proposal as well as any kind of dust prevention as far as communication and complaints.

Kaiba White: Thank you.

Susan Turrieta: I don't necessarily agree that all the information should be released, and I mentioned that previously when I opened up this discussion. It's a competitive bid and I don't think it's right to insist that all of their information be released. From what I'm hearing around this table in my opinion in the Work Group here is that they've gone above and beyond in releasing this information and, quite frankly, in any contract with a prime contractor they are responsible for their means and methods and they will suffer and they will not make a profit if (unclear) and they do it for a living. All contractors no matter what they do is they pick the best team to make the best fit. So my recommendation is that we move forward with what's been released and not request any more information be redacted at this time. So that's my comment and I'm...

Amanda Masino: I like that you have not read the contract and that's deliberate. I really wanted to be able to talk about the policy and put language together for our recommendation for the policy without being influenced by the contract one way or the other. I see that's being two-step, we're going to come up with a policy and see how this... (unclear) so I'm glad to hear that the redactions have been reduced and there's now more information available. That seems to be what we need to make a good recommendation when the time comes to match the contract to the policy. So I'm comfortable at this point accepting what we've learned about this newest version. I think that as a group though, we can, this is coming second, third-hand so I think as a group we can always reserve the right to look back, if we see a redacted area that perhaps we have a question about then we have the stakeholders in the room who can answer questions about that. So I'm definitely comfortable moving on with the understanding that we can come back once we actually look at the...

Bobby Gregory: May I speak? I'm Bob Gregory with Texas Disposal Systems and I'd like to just point out in response to the chairman's, chairperson's, statement that staff has gone above and beyond the call of duty. It is typical for large contracts such as this to receive full light-of-day discussion, and presentation and availability to the public with sufficient time before ZWAC, solid waste contracts at least, ZWAC consideration and action and Council action because of the important nature of the long-term contract, and this is a 20-million-dollar minimum as a high as a 30-something-million-dollar if it goes to direct land application, at least five-year contract. So it is very typical that these contracts have full disclosure. Not, what is happening now is not typical. What is typical is that they are presented and I would just point out as I did at the last meeting that the transcripts which we provided you guys at the joint meeting when this joint work group was formed clearly show an understanding by staff that it is the intent of Synagro to process waste very inconsistent with Dillo Dirt and very inconsistent with City policy over the last 30 years. So we urge you to see the entire contract and let the public see the entire contract, and to see it with enough time in advance so that we could make comments on it. If you choose not to read it that's your business but some of us will read it and we'll give comments and the words can defend themselves. The statements on the, in the, transcripts clearly depict a method of composting that will not produce compost. Yet they call their product compost. We believe that what is described will be major odor problems. Yet they say there won't be a problem. I, we've not seen the redacted portions of the contract that would let that be. For that matter, there's been numerous statements that revisions will be made to the contract. I propose that you allow the public to see not only the redacted portions of what was submitted originally but the final proposed contract that has those revisions in it. Because the devil's in the detail of those revisions. Thank you very much.

Minute 10:05

Danielle Lord: The revisions that have been negotiated up to this point are on the front page of the contract, highlighted with the sections and page numbers that correspond with those. Under clarifications and highlights.

Bob Gregory: I'm sorry, I was just referring to, even the chairperson stated part of the meeting discussion today is revisions to the contract. It would be placed, moving forward, so I'm just asking that those things be made available, the revisions to those contracts be made available for public review before this Work Group finalizes its work and recommendation, and before ZWAC and Water and Wastewater Commission consider their recommendations to Council.

Danielle Lord: Yes, all changes, revisions, anything that happens within the contract will be clarified on the front page of the contract, so, that request is, we can definitely do that.

Susan Turrieta: So I propose to move forward is that we ask for no further information from the contract at this time, and if you would like to review it you can, after that review (unclear). And it looks like TDS is satisfied with the revisions being ... (unclear). To take it a step further about the contract, this group is tasked to make a recommendation, and that is what I'm hoping we will be able to do. Once that recommendation is made, I believe it's between the City staff and the contractor to execute and make revisions to the contract because we're not lawyers and that's not what we do for a living. Even during that process (unclear), but this committee is not put together to draft a contract. This committee is put together to make recommendations, and once those recommendations are made, the Council can approve all of it, or part of it, it's up to them and the Commission, and then the contract should be modified. And it's really more between Purchasing, the project managers, and the contractor.

Next item I wanted to touch on is Flow Control and I did a little research in some of my groups that do a lot of legislative work and they're not familiar with the federal requirements, and so if it is a true concern, which has been submitted in writing that it is, I would request that the City of Austin's legal department review the legislation and make sure the City's in compliance. I don't know what this group can do without really understanding the legislation and the law, but it's a concern from some stakeholders and we should address it, and I think that would probably be the most efficient way to address it. Now you're from Purchasing and I don't think we have, you're not a legal person like that, but we do have a legal department that can look at this and make sure the City's in compliance with flow control.

Robin Schneider: I'm not an attorney either, but Flow Control is not a matter of being in compliance with any federal laws. It's been talked about in the courts, it's not a federal requirement that we have to be in compliance, it's an option that local governments have to control all the discards generated within city limits, and direct them to a city facility if they so choose. This is not something, a course that Austin has taken with regards to all the discards generated in the city. Dallas tried to do it a few years ago and they were knocked down in federal court because they tried to do it for financial reasons only and that's not legitimate. What we have in our system which Texas Campaign for the Environment supports, is that the City deals with its own city generated waste and the waste it collects at single family homes. We went through a long process with the Hauler Ordinance and the people who've been through ZWAC for years will know what a torturous thing that was, and we got originally interested in this because we knew that the yard trimmings that have been taken by Austin Resource Recovery to Hornsby Bend to be part of the creation of Dillo Dirt, were going to be diverted once food waste was included because that cannot go to Hornsby Bend. So, we were concerned about, well how was Dillo Dirt going to continue to be created if you're going to divert a lot of the City collected yard trimmings from single family homes? And so we became concerned about the continuation of Dillo Dirt, not knowing that Austin Water and Wastewater was really making very little Dillo Dirt; not understanding how, what a nosedive that program had taken under the City management after the retirement of a key staffer. But our concern in terms of flow control, is that we are not saying that the City should use this as an opportunity; and I don't even know if that's really the plan to try and direct other organic carbon sources to this project. I think that Synagro, and they've been talking about getting it from construction and demolition waste and others, so we don't want this to be seen as an opportunity for flow control. I don't think Synagro necessarily is looking at that, but we want to make sure that the City policy is not, kind of, made in

a way where it's not openly discussed, and so we want to just be on record that that's not the aim of this contract to direct privately generated discards to Synagro.

Jessica King: And Commissioners, actually, the ARR Director was responding to the backup. So the backup had the mention of flow control...

Susan Turrieta: But I didn't know all that, so I was confused.

Jessica King: Sure.

Susan Turrieta: So now it all makes a lot more sense.

Jessica King: And part of the reason he brought it up was because there was actually a question posed by another Commissioner and our Zero Waste Advisory Commission, who had asked about C&D material and whether or not the permitting process there could be some direct movement of C&D material to Hornsby, or to, I don't know if he had any specific direction, but there was some conversation where he asked what were those opportunities, could that be done, and the answer was basically, no.

Susan Turrieta: Well, and in respect to that I think we could work that into our, because there's two, there's recommendations on contract and then there's also recommendations that they've asked us to put together on policy, so we could put that under policy, and have recommendations for that. What I would like to do at this point is either shift to the management of biosolids, or the sale and removal of compost material, and go over all of the concerns and start developing our recommendations. Is there a preference on which one we start with?

Amanda Masino: I'd rather do the biosolids first.

Susan Turrieta: The management?

Amanda Masino: Yes, and start getting our language together (unclear)... starting with that recommendation that came out of the Organics committee...

Susan Turrieta: I didn't print this out, but since you're all from the Organics committee you all are familiar with the recommendations that you put together, for us earlier, and I'd like to start...

Jessica King: I have an extra copy.

Susan Turrieta: Does somebody want one?

Jessica King: Since (unclear), I can email one.

Susan Turrieta: Take this as a working document, and, I also went through all the emails and things that came across with questions from the different stakeholders and I tried to list, and highlight items that people had concerns about, and basically take this recommendation and address those concerns a little clearer and come up with a recommendation. So I don't know the best way to do this, maybe read what we've got so far.

Biosolids management planning should consider the following policies:

The first policy is: Honor the highest and best use hierarchy with the goal of prioritizing Class A biosolids or higher as feasible, as reflected in diagram below, except in emergency situations.

The next bullet is: Ensure that the City maintains final discussion for the disposition of biosolids with a Class B or lower classification. And the third...

Stacy Guidry: It's final decision, not discussion, in what I have.

Susan Turrieta: Oh, decision, great, sorry.

Stacy Guidry: I just want to clarify that for the record,

Susan Turrieta: And the final one is: Preserve the Dillo Dirt trademark, name, and compost quality regardless of who produces the product.

And in our discussions with the current, (unclear) it was my understanding, correct me if I am wrong, we are taking everything to Class A?

Andrew Bosinger: Yes, absolutely.

Susan Turrieta: So, I guess I can (unclear) and go back to it, so with these points here, one item that was brought up is that the USCC STA standards are met and so we could add a bullet that references that.

Kaiba White: Well, I would suggest that maybe bullet point one could be modified to prioritize compost that meets USCC STA standards and has been screened to, what is it, 3/8 of an inch.

Susan Turrieta: Another concern that was brought up, is I believe is addressed in here, is the hierarchy. Right now we're recommending that, if you see in the diagram it's the Class A biosolids. The Class B land application would be within the permit, current permit, only done at Hornsby and it would only be done with the City's input, during situations, emergency situations, when we have too much biosolids. Is that...?

Ken Lockard: Did I understand you correctly to say, only at Hornsby?

Susan Turrieta: Well I think, isn't that where Class B...?

Ken Lockard: Because we have limitations on how much we can apply at Hornsby, regulatory limitations.

Susan Turrieta: So anybody who has a permit for Class B...

Susan Turrieta: Okay, that's fine.

Lisa Boatman: Well, the contractor is TCEQ permitted.

Ken Lockard: Right, whoever the contractor is has to hold, their property has to have the permits.

Susan Turrieta: And so the second bullet, just to repeat myself, I guess, "ensure the City maintains final decisions for disposition of biosolids, Class B," so none of that would ever happen unless the City decided to do it, and I think under policy directive, I put here, that staff would advise Council if emergency situations arose.

Judy Musgrove: At what point? (unclear) ... approaching it, or after it's been...?

Kaiba White: Can I make a suggestion? I think that this could be strengthened by just having it say Council approval as opposed to the City, is kind of vague.

Judy Musgrove: I don't like that. We need to direct the solids going, Class B, offsite, it's an emergency situation, we may have a fire, danger, imminent, I don't want to take the time to go to Commission and Council. I mean, I think we...

Kaiba White: I'm not talking about Commissions, necessarily. I understand it would be a timely, you know, situation. I can't imagine that Council wouldn't take appropriate timely action if it really was an emergency situation, and to some extent, I think it's going to be on the contractor to make sure that we don't get to an emergency situation without some warning. Which, you know, in this case would only require maybe a week's notice to get something to Council if it's truly an emergency.

Jessica King: That's actually, that's not correct. You need about a week, about two weeks because of posting requirements.

Kaiba White: Okay, two weeks.

Jessica King: So, if I can give, (unclear), perhaps giving some clarification as to what an emergency constitutes. Imminent fire, imminent threats, things, terminology that will give guidance because if you're having Council approve every

process, that will actually step beyond their responsibility in terms of managing the process. So the City Council can certainly, if they start to identify in advance what an emergency is, then that can give the guidance to staff as to what they can move forward with, without having to go to Council; take the steps we need to, stay within the requirements, and address the emergency situation.

James Bennett: I guess, if I could, working in, James Bennet, Water Utility, working in many areas of government, a lot of times when you get into circumstances where you have certain situations that can come up, i.e., fire bans, things like that, typically the administrative authorities (unclear) the managing agency that requires a short term ratification by the elected government, say 10 days to 2 weeks to get it to the Council, say AEU had to make the directive to Texas Commission for the Environment recommended a 48 hour memorandum from our Director to the Council letting you know that, and then requiring Council make the ratification (unclear) ... time period...

Susan Turrieta?: Let me make sure I understand you correctly, so you're holding the permit, you gotta make decisions quick to make sure you mitigate emergency situations, and then TCEQ... do you notify TCEQ, is there, you're still keeping your permit?

James Bennett: What I am saying is that, if in an emergency, or (unclear) direct land application, (unclear) Council, and I think preparing a memorandum to Council within 48 hours is reasonable, as part of (unclear). And realistically, tagging that it to a... putting it where it requires ratification by City Council, much like your Fire Commissioners can put a burn ban in Travis County but yet it requires the full act of the Commissioners to make it (unclear) the standing beyond the interim... just something like that still gives AWU the leeway it needs to operate the facility under the circumstances, but it does still require a Council vote.

Jane Burazer: A lot of times (unclear) recommending (unclear) we do this for emergency purchases that are greater than \$58,000, we do the emergency, well in the purchase we do affidavit, then we do a memo to Council saying we had to declare the emergency, and then it comes back to them for ratification; usually that is, once it's complete we have all the dollar amounts in there...

Danielle Lord: And usually the ratification, that's correct process for Purchasing. The ratification, the purchase has already happened, this is within a contract, so I don't know that it's a formal ratification, it would be like you said, maybe a memo that stated what the circumstances were and what has led to this action basically.

Jane Burazer: An explanation of why the emergency...

Robin Schneider: He referred to my organization, I think, mistakenly as Texas Commission on the Environment, we're Texas Campaign for the Environment, and some people mix us up with the TCEQ and we are not that at all.

James Bennett: Oh I'm sorry. I misspoke. I'm sorry.

Robin Schneider: Polar opposites. But I was wondering, Jessica, is it possible for you to forward that memo that people are looking at to other folks that are...

Jessica King: Yeah, it was backup. Posted for back up for the ZWAC meeting and the _____ commission meeting, so it was the Organics Committee's recommendation to the Zero Waste Advisory Commission, and then it was discussed (unclear).

Robin Schneider: I have one concern which is our Texas Campaign for the Environment's position is that the City get away from land application whether it's Class A, which does not require a permit from the TCEQ, or Class B which does require permission from TCEQ. Synagro has said to us that they support that, and we hope that we have safeguards that make that true. Because when we initially started at the initial hearing before Austin Water and Wastewater, it was very confusing between staff members and Synagro what the goal of this contract was. It was not a City Council directive, we've said this over and over again but the way this was generated was really an example of bad, bad policy making and we go through this process and we appreciate you taking the time to kind of walk it back to clarify that.

Susan Turrieta: Yes, I agree with you. So looking at the second bullet...

Kaiba White: I actually have a question on that, you said you want to get away from land application. I assume what you mean is get away from land application of a product that doesn't meet the standards we're discussing, right?

Robin Schneider: Exactly.

Kaiba White: So if there was excess compost that meets these STA standards and has been screened, I'm assuming you have no objection to land applying...

Robin Schneider: Absolutely. We want as much land application of true compost as possible for all kinds of reasons. Water conservation, carbon sinks, there's many, many benefits to that. We want to see as much of that as possible.

Kaiba White: Yeah, I share that. I can say that after getting a brief tour after our last meeting, I do have concerns about that unscreened product getting land applied. There's a lot of plastic in that, so I think that is...

Andrew Bosinger: I agree. The contract is clear about the requirement that everything be screened before it's applied. We share that so...

Robin Schneider: As concerning as we spoke about this is before is how, what we believe to be screened onsite, because how can the City guarantee that if you sell it to somebody else unscreened that they're going to screen it. They don't, the City doesn't have a contract with another party like that. I don't know if there's a way to enforce that.

Andrew Bosinger: I think that's a good point, there's a couple different ways I think that happens. One, it happens in subcontracts, we would require it and ask that it be done that way. And two, I think the market requires that, I don't know how you would sell an unscreened... you've seen unscreened product, it has plastics in it, it has large pieces of wood. Even if it were going for direct application on pasture ground or on row crops for example, no rancher's going to want that on their land. They don't want that either. So I mean I think that to have the kind of operational flexibility and market flexibility that this contract dictates, I don't think it's necessary to say, to specify where it gets screened - where this happens, where that happens. I think that's a little overreach from a contract standpoint into what the contractor has to do operate efficiently, but I think it's perfectly reasonable to say compost, all compost, whether it's sold as, and we had this dialogue as well, whether it's sold as Dillo Dirt, or All Gro, or any other compost must meet certain definitive standards, that's perfectly fair and we agree with that.

Kaiba White: If you were transporting it unscreened would that be in a covered, would that be covered?

Andrew Bosinger: Typically, yeah. I mean you have to or materials would blow out of the trucks down the road. So you know, yes, whether that's a requirement in the contract, I don't know. It's good operating practice.

Susan Turrieta: What I would like to propose is we add another bullet that discusses that in the event of disposition of biosolids with a Class B or lower classification that City staff prepare a memorandum, kind of like the process you were talking about with via purchase orders that Council for their ratification. Does that sound reasonable?

Jane Burazer: If we have to, if we resort to the emergency need for the Class B or Class A biosolid land app that we notify Council through the memo...(unclear). Yes, that's fairly reasonable.

Jessica King: In already the first bullet, that's why emergency situations are referenced...(unclear)

Amanda Masino?: I think we're looking at a combination of that. Emergency situations, we wanted to add that language about being specific there, fire, imminent threats to health and safety...

Susan Turrieta: ...and that will be more of a policy.

Amanda Masino: But then, so we have three separate points that are going into these. We have definition of the standard for compost being incorporated into the hierarchy, right, prioritizing compost that meets the standards, (unclear) is screened. And then we have the exception for emergency situations, and then we have City of Austin Water

informing, creating this 48-hour memo for action from Council when there is need for disposition of the Class B or lower. So I'm thinking that we should separate... I think we should have the highest and best use statement, except as described below, and then have a bullet about defining the emergency situations, and then have a bullet about describing what Austin Water staff will do for the disposition of land application. That way it's all really...

Susan Turrieta: I think we can do that and refer to that later.

Amanda Masino: I think we're taking notes so we can generate...

Judy Musgrove: Do you need to define what an emergency is, or can you let Council decide that when they get the memo say, "Oh that wasn't an emergency." What are they doing?

Kaiba White: Then it's too late cause it's already happened.

Ken Lockard: Right, I don't want a possibility of Council with an emergency and they say no. And then I'm stuck...

Jane Burazer: You're sending a memo to Council, is what she's saying.

Ken Lockard: After the fact. Okay. I heard two different things.

Amanda Masino: What imminent threats to health and safety, cover a pretty broad range of ...

Ken Lockard: Regulatory issues...

Robin Schneider: I urge you folks to really tighten this language. We have had situations where Staff got around City Council directives but this was around concrete dumping along the Colorado River, and there were prohibitions, restrictions put on using this company Rainbow Concrete. They were just dumping their stuff and created a little artificial bank into the river, and so what the Staff was doing, they continued to award contracts but they did it just under the monetary threshold. So unfortunately I've seen staff get around City Council directives when, you know at times, and so I urge you to be as tight as possible in your recommendations. I can't remember what but it was a variety of City departments that wanted to continue to use this contractor to meet their minority business requirements. It was really horrific.

Lisa Boatman: We can't apply Class B sludge under the radar, I assure you.

Susan Turrieta: Okay, looks like on my list we've addressed screening...

Paul Gregory: Could I make one quick comment about screening, I'll keep it very succinct. Paul Gregory with Texas Disposal Systems. And I'm speaking from a standpoint of I've run three compost facilities in central Texas that manage biosolids. I just want to say that all screening is not created equal. You screen to size products, and you screen to remove contaminants from the product, from the unscreened compost stream. So, Hornsby Bend currently screens to 3/8 inch minus and they have an air knife separator on their screen in order to remove and liberate the plastics from the biosolids. Also they have a very long curing time that allows their product to dry, because wet material will make that plastic stick to the material. So when, I'm just trying to draw distinctions, when you say in the contract "everything will be screened" but even in the response they say they will sell unscreened material. The screening size is important and the apparatus on the screen that removes the contamination is important. So you could say everything be screened and they screen it with a four-inch screen and all those plastics will go through there. Even the Hornsby Bend screen, which is an excellent piece of equipment, when their air knife is down, plastics will still move into the, fine plastics (3/8 inch minus), will move into the finished product. So I would just urge you or advise you to specify screen size and potentially, that it, why not maintain the same standard of an air knife or an air separator of some sort beyond the screen to remove plastics so that isn't being transferred to other customers.

Kaiba White: I think that's a great suggestion.

Susan Turrieta: Well we do have the 3/8 on here.

Andrew Bosinger: The plastics removal is already in the contract.

Kaiba White: Right, well then it shouldn't be

Andrew Bosinger: No issue.

Kaiba White: ...an issue, right, so I would say as far as policy issue recommendation. For me the plastics is the main issue of this committee.

Susan Turrieta: So is plastics removal, sufficient...

Andrew Bosinger: If I may, I'll read to you what it says here. "Plastics removal shall be at least as effective as that currently practiced by the City. " So, in the production of Dillo Dirt.

Amanda Masino: So for our policy recommendation, though, how can we put it together? The air separator doesn't work when it's wet, is that what you were saying? And the compost is too...

Paul Gregory: I'm just saying it does not work as well. It's still drawing air and pulling material but as you know, wet material and film plastics will stick to it, so it can still pass through the fines and the overs. The great thing about the Dillo Dirt program is it's cured so long. Their piles have sat for over a year and it's almost dry. You can see dust moving off the screen when it's drying. If they screen in a very short method, like this RFP has kind of dictated, with paying the contractor once material is removed, then that incentivizes the contractor to very quickly screen and move material offsite.

Andrew Bosinger: Excuse me, that's not how the contract works.

Stacy Guidry: I wanted to get your clarification, what is your drying process? From what I remember the last ZWAC meeting, we're looking at six weeks, I think? Can you refresh my memory?

Andrew Bosinger: Six months, various curing times but no less than required to meet the USCC STA standards, and as far as an incentive to get it offsite, that doesn't exist. Unless that was clarification that was made in the contract that we'd be paid when material comes off the belt press. So there was no incentive because that was an expressed concern of this group that material would be moved off sites quickly. Incentive, that doesn't exist in the contract any longer so that's the standard that we'll meet is the USCC STA standard and all curing will be sufficient to meet that certification.

Paul Gregory: Can I talk about STA certification really quickly. I'm unaware of any STA certification requirement for curing time. The STA certification approves the metals, the wastewater treatment plant tests for it as well, and they approve the amount of colonies of fecal coliform and E. coli and they do a seed emergence and seed vigor test and then they'll give you your NPK, or nitrogen-phosphorus-potassium, of the material that you generate. So they do not specify... you can send in unscreened material and they will certify and pass it in the STA program only if you meet the metal standards, which they were going to meet because the quality of the Class B that wastewater generates, and fecal coliform and E. coli, which means you've met a pathogen reduction process in 15 days, at 50 degrees, and 5 turns. The problem with that is they can certify a very bad compost or a poor compost and you can be part of that program that meets the metals and meets the virus requirement, but does not meet a screen size, does not meet a quality of compost that... I spoke with Al Rattie, the Head of the STA program, and he said that's up to the economic viability of the product they sell. So if someone makes a bad product they rely on, they'll go out of business not being able to sell it. But this going down the value chain from a publicly accepted product like Dillo Dirt to just being spread on farmland, that's a concern that I have of the, as a concerned citizen, of the odors onsite and the plastics removal. If that's being addressed in the screening and screen size then that's great. The only issue of saying that the STA program will make everything, all the products onsite will be STA approved. You can be approved by the STA by metals and by viruses alone. It doesn't certify that you're making a high quality compost, it doesn't certify screen size, and it doesn't certify NPK. You can fail for seed vigor or seed emergence. You could kill a plant and still be part of the STA program.

Susan Turrieta: We see the information here. To meet the standards it has to reach temperature for a duration, right?

Paul Gregory: Right, that's the PFRP standard. That's the 503 rules...

Robin Schneider: My concern is, Andrew, do you get to, if you get the contract, do you get to pick the sample size and is there you know, we've dealt with all kinds of actors around the state of Texas, and if it's totally up to the person, the company, to submit the sample size, it's a little bit out of a huge volume of material, is there any, we would suggest if that's how it is, that there be the ability of the City to pick its own sample size and send that in for testing.

Andrew Bosinger: No issue with that at all. That's a common practice.

Lisa Boatman: Hold on.

Andrew Bosinger: It could take a split sample, I mean, that's what you're saying right, take your own... Sample it anywhere you want, any time you want as far as I'm concerned.

Lisa Boatman: Yeah, and we do that currently. We will take a random sample of their material. And there are standards for the sample size and how we sample the pile right now. For example for the pathogen requirements we have to calculate that based on a geometric mean which requires seven samples to be taken out of the pile and mixed together, that goes in for analysis.

Robin Schneider: Is that in the contract now or that's just your procedure?

Ken Lockard: That's a standard operating procedure under EPA rules and regulations.

Lisa Boatman: It's a requirement for the regulations and the, I think it's SW-846, which is what specifies the lab method that you can use for that particular test.

Robin Schneider: Right but your contractor is doing this...

Lisa Boatman: He has to test in the same standard because he is also reporting to TCEQ on his lab results and also have to provide the test method which is approved by TCEQ, you have to use one of those test methods.

Robin Schneider: Right, I just want to make sure that if we have a contractor that the City can do its own spot checks...

Ken Lockard: Yes, yes. Right.

Danielle Lord: And I'd like to clarify also, from the standpoint of the contract, nowhere in the contract does it say that Austin Water doesn't have a right to do random inspections and sampling. We absolutely do, that's a part of our standard language. As well as, I'd just like to clarify that the contractor is not just working on their own here. You have a staff that's out there that provide oversight and direction to the contractor as well. It's not a silo process, it's a collaborative process.

Ken Lockard: We're actually in the process right now of hiring somebody to oversee, to help oversee this particular contract here, that will be stationed at Hornsby Bend.

Adam Synagro: I think it's fair also to point out that no contract can be written so tightly that every possible scenario you might dream up couldn't be enacted. If you have a bad actor, you have a bad actor. I mean, but Synagro's worked for the City for eight years and a very successful biosolids program, 100% contract compliance, 100% environmental and safety compliance. We've done a very good job for the City and that's what we've put forward is a solid proposal to continue the professional service.

Danielle Lord: And as I stated in the last meeting, part of our boiler point language, as well, is that if our performance standards are not being met that we still as a City can terminate. We still have a clause "terminate with or without cause." We still have that right to be able to stop service and stop work right away.

Amanda Masino: This is useful to hear about, if you have specific questions about the contract but I do feel that we're drifting a little bit from the recommendations so I think our intention is really not to look at them, to try to come up with

recommendations that apply over a longer term and are our best practices. And then we can address how and if the contract is fitting within this. So it seemed like we were considering whether to include a standard for plastics in some way in this definition of compost and then we have these other items about whether we want to address labeling of the product, Dillo Dirt, source of bulking agent, in this recommendation coming out of this working group, in this policy recommendation. Maybe we should (unclear).

Susan Turrieta: Just so you know we added some verbiage about the screening up to 3/8. What else would make, I mean we said “equal to or better” but I don’t know if that’s...

Kaiba White: I drafted some language. “Required production of compost that meets USCC STA standards and has been screened when dried to 3/8 of an inch utilizing an air separator to remove plastics except when emergency conditions exist as described below.”

Susan Turrieta: Could you say that one more time, sorry?

Kaiba White: “Required production of compost that meets USCC STA standards and has been screened when dried to 3/8 of an inch utilizing an air separator to remove plastics except when emergency conditions exist as described below. “

Lisa Boatman: I have a question. Are these policies also going to apply to any compost that’s produced with City waste? So will these screening requirements and reporting requirements also apply to the food waste composting?

Susan Turrieta: I’m going to say no because we were not tasked to address that. Now, someone can take it and try to apply it but we were specifically tasked to address these two particular contracts, so we’re not even considering Hornsby Bend at this moment. I mean, I’m sorry, the food compost, at this moment.

Kaiba White: I’ll just say as a member of ZWAC I think probably if we can come up with a good policy here that...

Lisa Boatman: Well it just, I mean, well in terms of... (unclear) I’m just asking the questions.

Jessica King: What we can do is clarify in the recommendation that this policy recommendation is construed to be focused on biosolids management, which is what was tasked, so, and we can keep it exclusively to that. I would, so, I only think in terms of kind of, we always think of new technology, and so it says, so the recommendation is air separator, as a policy statement, is this is supposed to stand the test of technology and time.

Susan Turrieta: How else can we say that?

Kaiba White: So maybe utilizing equipment to remove plastics?

Ken Lockard: You just call it a generic plastic separator. That’s kind of how we classified ours. There’s multiple ways to do that. The one we have is this –

Kaiba White: Yeah, utilizing a separator for plastics...

Susan Turrieta: The rest of the verbiage I like.

Judy Musgrove: Is this just policy for all biosolids forever and ever or just this contract?

Susan Turrieta: This is just this contract.

Amanda Masino: I think we’re making general recommendations, policy recommendation for biosolids. That first and then...

Susan Turrieta: ...so the concern is that the compost of, for the food waste and zero waste...

Judy Musgrove: Well I just, I, the policy is so specific I’m just worried about future, I mean it seems like this would be, Andrew seems fine with this, it just seems like for the next... (unclear) I don’t know if this fits or not. I just...

Ken Lockard: Composting might not fit into a future contract; there might be a newer technology that might evolve between now and then, that I guess could just be addressed at that time. Right?

Jessica King: Well and I think that it gives you, the way that it's been written honoring highest and best use hierarchy with a goal of prioritizing plastic, I think that gives you some flexibility unless I'm misunderstanding.

Kaiba White: I did change that. I did not include that.

Ken Lockard: Today in the industry composting is probably the most cost effective way of handling biosolids. There are other technologies, sludge drying and different things, that costs are coming down and possibly at the end of five years or ten years of a contract it might be more viable at that time than compost, you know but address it at the time, I guess.

Robin Schneider: There should be a policy discussion about that by the City, it shouldn't just be based on what's cost effective in the eyes of you know, the you know, the Austin Water and Wastewater staff. That's what we're talking about though, about policy, that we want to go forward and consider the cost but that is not the exclusive factor as we consider what our policy should be as a City in handling this large waste stream.

Jessica King: Our master plan, the department's master plan, does speak to what some people call black box technology in stating that as the technology improves to a level that we are comfortable with or that we want to explore, then we will do an analysis at the time. Because it's too hard to predict. So as long as that option remains open, then you can revisit the policy.

Ken Lockard: I just don't want us to lock ourselves into something that might not very feasible in the future.

Jane Burazer: (unclear) ... include piloting new technology.

Kaiba White: I think what we're trying to do is, just that there will be a public discussion before such a change would be made, I think that's right.

Stacy Guidry: We don't want to be back in this mess.

Jessica King: That is an option. Jane said perhaps we can pilot before that could be a policy recommendation. New technology regarding biosolids management should be piloted and evaluated prior to implementation or consideration of...

Robin Schneider: With public input before pilots are done.

Paul Gregory: One more policy consideration that I think should be varied, is one of the larger issues is the bulking agent and the ratio of bulking agent to biosolids. It's been an issue throughout this whole process, and what's reported in the proposal is a 1.5 to 1 ratio, 1.5 bulking agent to 1 part, 1 yard of sludge, bulk sludge ratio. The issue that I have with that is Synagro's windrow reports, that we got through open records request, show that they're doing a 1.5 to 1 ratio. I've been running tests at our two biosolids composting facilities the past two weeks and I've yet to get those windrows up to temperature and we have maggots on the windrows and dead mice and rats burrowing into the windrow and dying. And I'm happy to show pictures and windrow reports showing that 1.5 to 1 ratio is not sufficient to mitigate odors onsite or to reach a PFRP requirement. I would suggest that you go to a biosolids facility that runs that type of ratio and makes this sort of agricultural grade compost so that you can see, see it for yourself. Mr. Gregory went to a facility in California outside of L.A. that does – on Saturday – that does this style composting and there were major odor concerns with the site. It's in the middle of the country and there were odors miles away. And this, we're talking about doing this at Hornsby Bend and I would encourage that someone in this, on this Commission, visit a site that produces this type of compost at 100,000 tons per year, at this large scale and observe for yourself what the odor issues are and what bulking agent is required to successfully and to operate the facility so as to not be an impact to the receptors around there. Again I've got two windrows that I'm going to share with you guys, or the whole public that that ratio will not meet temperature and has vector problems, and major odor problems. So I'm also going to send it off to STA once it's done

after the 15 days we'll get the test back and I'm happy to share that with you guys. But I mean if you're considering me a competitor then please go see a Synagro facility or please go see another facility in California that does this agricultural grade composting because I'm having major problems emulating what Synagro reports to do on their windrow reports at Hornsby Bend now.

Susan Turrieta: I don't want this to turn into debate between TDS and Synagro.

Paul Gregory: I don't want it to either. I'm just saying it's a policy issue on bulking agent.

Susan Turrieta: You need to reply, I want to put it to bed because that's not why we're here.

Andrew Bosinger: Thank you. We have been composting the City of Austin biosolids at Hornsby Bend for three years. Got a well-established understanding of what it takes to do it. We are the largest composter of biosolids in the United States; we produce more quality compost than anyone else in the market and sell it, without exception. There have been zero odor complaints as you heard from staff at Hornsby Bend with what we're doing now. It's a proven process, it works. If somebody else can't make it work, I'm sorry they don't like the results they're getting, but we've shown what can be done. Both here and at other places. I guess I'd offer that as Exhibit A, if you will.

Kaiba White: I appreciate that. My question I guess would just be if it turns out that there are odor problems and the ratio is not working, are you going to be able to procure enough bulking agent to raise that ratio up to a point where...

Andrew Bosinger: Absolutely. That's our responsibility. That's our absolute responsibility. The City can terminate our contract if we don't perform, that's pretty clear.

Kaiba White: And the odor standards are set in the contract? Or no?

Andrew Bosinger: What's the odor standard in the contract? I guess it's, you know...

Lisa Boatman: Yeah, Lisa Boatman, Process Engineer. There is no odor standard in the contract. The way odor is really monitored is through complaints. There are many odor producing facilities at Hornsby Bend, and adjacent to Hornsby Bend. The primary offenders in the plant are in the main process area, they are not on the compost pad. I'm not saying that you know a poor composting procedure or process could produce, could certainly produce odors, but again the facility has to be managed in such a way that we mitigate the odor problems and that is really the responsibility of the contractor. If we receive an odor complaint, we act immediately and we investigate to determine what is the source of the odor complaint, and then try to resolve the issue.

Kaiba White: So when you took me around there the other day, were there places that we didn't go that would have had more of an odor?

Lisa Boatman: Yeah, you didn't go into the main process area where we, you know, the thickener building, where...

Kaiba White: So you're saying if I went inside that building it would be pretty smelly?

Lisa Boatman: Yes.

Kaiba White: But in terms of, everything was in pretty close in proximity to where we were driving around or...

Lisa Boatman: Right. You were in the compost area so once the sludge has been processed that we can handle it with dump trucks and front-end loaders, that type of stuff. The other process where the sludge comes in at 1.5% solids and we do a thickening process and it goes through the anaerobic digesters. The biggest, the most odor producing area in the plant, or the primary odor producing area in the plant is in our thickener building.

Kaiba White: Okay. But that wasn't far away from where we were, right?

Lisa Boatman: Half a mile.

Ken Lockard: Half a mile maybe. Yeah.

Kaiba White: I'm just trying to, my concern would be for other people who live or work in the area that they not... if it smells inside of a building I guess that's kind of on the contractor in my view and their poor employees. But my concern would be for the public.

Lisa Boatman: It's on us. Actually all of it is on us.

Kaiba White: Okay.

Lisa Boatman: We hold the permit. If a citizen complains to TCEQ, TCEQ is going to come to our regulatory wastewater manager, who will then come to me and Ken, and we'll have to figure out what the problem is. If it's a plant problem, we'll isolate that. If it's a problem with the contractor's composting operation, we will have to address that.

Amanda Masino: So in this document, you know, what more do we put into our policy recommendation at this point?

Kaiba White: Well we talked about defining "emergency conditions."

Amanda Masino: Right. Right now we have the fire, or imminent threat to health and safety. We can define imminent with a certain timeframe if that's helpful. I think that imminent sounds dire and that we can....

Ken Lockard: Wasn't there a regulatory issue in there also?

Amanda Masino: Well then we had the-

Ken Lockard: 'Cause we can only keep biosolids on the site for so long. Regulatory.

Kaiba White: I guess I'm not sure why that would not be a situation that could not be foreseen in advance.

Amanda Masino: Okay so...

Kaiba White: If the stockpile is building up you'd know that oh no, we're clearly not going...

Susan Turrieta: I don't know, if we have a flood event, would that cause you not to...

Ken Lockard: A what? A flood event?

Susan Turrieta: The commissioner was just asking, how could you not know that it's going to be an emergency in advance and so I'm...

Ken Lockard: You usually can, well you can usually see things coming.

Lisa Boatman: Yeah.

Ken Lockard: I mean regulatory issues, and we're bumping up the time constraint, you can see that coming. We can see stockpiles building if the contractor wasn't moving the product off fast enough and we felt like we had to land apply, for whatever reason. Most situations we can kind of see coming. It won't be come to work Monday and everything's okay, come to work Tuesday and there's an emergency, we need to go to Council. It won't be something like that.

Susan Turrieta: So is there any concern they do have to notify Council, and Council has to ratify ...

Amanda Masino: I think that's for when we're...

Kaiba White: ...the next bullet down right, down

Amanda Masino: ... that's for disposition of biosolids with Class B or lower.

Kaiba White: Wait, not lower than Class B. Class B is the lowest.

Ken Lockard: That's it, yeah, Class B is the minimum that we produce.

Amanda Masino: Yeah it's in the previous so that's... (unclear)

Kaiba White: So I wrote some language on these two bullets for consideration. "Emergency conditions are defined as severe fire risk or other imminent threats to health and safety. Such conditions may necessitate land application of unscreened compost, Class A biosolids, or Class B biosolids on a temporary basis. Emergency application of these lower quality products shall extend only as long as necessary to alleviate emergency conditions." And then, I need some help on this third bullet, I had "Staff shall inform City Council via memo within 48 hours of discovery of emergency conditions" and then something about ratification.

Amanda Masino: Tagging it, yeah, 48-hour memorandum tagging it to ratification, is the phrasing you use about the 48 hour notification...

Kaiba White: Yeah a memo and maybe "requesting ratification."

Susan Turrieta: I think that's good.

Amanda Masino: I think that on your emergency one there's something about 'temporary' that's a little maybe...

Kaiba White: "On a temporary basis."

Amanda Masino: We don't want the application – it's not being applied temporarily. (unclear) apply it then take it come back up. So yeah maybe that...

Stacy Guidry: The action is temporary.

Amanda Masino: The period of application...

Kaiba White: "Land may necessitate land application." Application is the act of putting it on the land so you would only be doing that temporarily.

Susan Turrieta: I think it's kind of covered in honoring the highest and best use hierarchy in the diagram ...

Kaiba White: Sorry, say that again?

Susan Turrieta: I think that instead of temporary we're honoring the highest and best use hierarchy in that...

Amanda Masino: She's on the "emergency applications."

Susan Turrieta: Yeah, but I think the "temporary" is addressed because we're supposed to honor the highest and best use and we're only going to do that when we absolutely have to.

Kaiba White: You're suggesting that we don't have any sort of denotation that just 'cause there was an emergency that this application shouldn't be...

Amanda Masino: You can swipe out (unclear), I thought it would be really clear when you say "only as long as necessary." Is that...

Kaiba White: So I had "such conditions may necessitate land application of unscreened compost, Class A biosolids, or Class B biosolids on a temporary basis."

Amanda Masino: And is that "only as long as necessary."

Kaiba White: And then, "emergency application of these lower quality products shall extend only as long as necessary to alleviate emergency conditions."

Jessica King: Commissioners...(unclear) ARR is concerned potentially... Kaiba, did you only speak to fire as being an emergency situation?

Kaiba White: No. "Severe fire risk or other imminent threats to health and safety."

Susan Turrieta: Should have "permit."

Ken Lockard: Health and safety and permit.

Amanda Masino: And what else, a permit violation, is that what you said?

Ken Lockard: That would be the regulatory. That would be the regulatory aspect.

Amanda Masino: That's going to, I think that's going to be separate.

Kaiba White: I object to including the regulatory issues. I think those can be foreseen and should be taken to Council ahead of time and not after the fact.

Jessica King: So just to speak... (unclear) I don't know if, I'm not quite sure whether or not the recommendation that you're making includes situations where storm events, not necessarily flood, because flood will oftentimes necessitate going to the landfill because the materials are so badly damaged, but storm situations where there is a lot of brush material, is put by the side and City staff have to go in and collect that could cause a regulatory situation for them because then we're hauling material to Hornsby Bend and could create a, so I don't know if that's covered...

Kaiba White: Sorry, I...

Jessica King: Okay so imagine a major storm event where you've got trees down, it's not a flooding situation but lots of trees down, and it's scattered throughout the city. The City of Austin staff generally will go out and we will handle large brush collection, so homeowners may have contractors that come and pull things out, staff might have to do that. It is clean brush, it is oftentimes clean material that can then be hauled over to Hornsby Bend and processed over at Hornsby Bend. That is not something you can expect but it will create a regulatory situation where you might have more material than they may be able to process or handle at that time. So I'm not saying that the-

Kaiba White: So you're saying that the brush may need to be taken elsewhere.

Jessica King: Yes. Yes, but I don't know what that impact necessarily is, I'm literally just telling you of a situation that could occur, especially with the storm activity that we've got going on these days where you can see a high volume of brush material.

Kaiba White: Even though now we'll maybe have what, like two facilities for food waste and, plus Hornsby Bend, that still could be a situation?

Jessica King: I don't know.

Kaiba White: It sounds like maybe a separate bullet point from...

Ken Lockard: I guess a little clarification like the, what Jessica brought up, if there's a major storm, all that material's brought to Hornsby, that won't necessarily be a regulatory concern for us, but it might become, depending on the amount of material it might become a fire issue. You know it might be looked at from a different perspective or a different point and we've worked with ARR in the past on how to deal with excessive amounts of brush being taken to Hornsby. I mean I'm not sure how that would work. You know if we're needing all the material for a contractor but that would be a little bit different situation. And right now I'm not sure what the resolution would be for something like that because under a storm situation or a flooding situation that would have impact on more than likely our composting operation as it has in the past, meaning that process would just slow down. So we would be storing materials, which would be used at a later date, when the storm situation...

Robin Schneider: Does that result in the land application of biosolids?

Ken Lockard: Well it potentially could depending on what the situation was but it's kind of a two-edged sword because you can't land apply biosolids if the fields are wet or if there's standing water, so that's when the stockpiling storage issue comes into play. Meaning you'll be stockpiling material until it dries out enough to either compost, and depending on how much you've had to stockpile, more land application. Just depends on how much you had to stockpile and how long you had to go.

Kaiba White: And the reason you'd have to stockpile it would be because there could be a fire.

Ken Lockard: The reason for stockpiling might be in a storm type situation where composting slows down dramatically...

Kaiba White: Sure.

Ken Lockard: ...the making of compost...

Kaiba White: I misspoke.

Ken Lockard: ...slows down dramatically.

Kaiba White: The reason you would have to land apply after such an event would be because you had too much product there onsite and you'd have a fire hazard.

Ken Lockard: Potentially, because land application is quick, we can move material offsite rather quick compared to composting.

Kaiba White: Okay.

Ken Lockard: And you know if we're up against a regulatory issue or a health and safety issue, or a fire issue, that goes into making the decision on where we divert the material if we get into that type of situation.

Susan Turrieta: It's important to point out that you're doing your best to stay out of that situation no matter what.

Ken Lockard: Right, correct, but sometimes the weather does play into the fact and you can't, we can't control the weather and regrettably whenever there's flooding and storm situations there's more flow going to the plant which means there's usually more material coming to Hornsby.

Kaiba White: Seems like that's covered under fire and threats to health and safety. I haven't seen what this separate regulatory issue is. Is there one?

Paul Gregory: I'm unaware of regulation on the mulch, and the mulch, like Ken said, it may pile up but they can use it in other areas or you can deliver to us under our disposal contract. We'll grind it. And compost it.

Judy Musgrove: What do we expect Council to do, to look at this and say, "Yes that was an emergency, you're good to go" or "No that wasn't an emergency, bad you, Austin Water", or I mean what, I'm just trying to figure out the end game here. Do we want them to just, to have approval process like, "Oh yeah you're right, it's an emergency" or "No it's not, you deal with it." I mean it's just, it kind of goes back to our operational decisions. It kind of feels like we're getting into the operations of Hornsby Bend policy, but I mean I get that you don't want Class B going out onto a field. But if Synagro walks and we start piling up we may have them do that. Maybe that goes under the Health and Welfare or whatever. But I'm just worried that you're taking the operations ability away from us and not leaving us that tool to get rid of the biosolids.

Kaiba White: Are you talking about bullet point 3 with the ratification?

Judy Musgrove: I, yeah, (unclear) I just, I don't know, I'm just, I don't know what Council's going to do if they say, "No you shouldn't have done that," well then what to do we do? You know. I'm just, I'm trying to figure it out. So just letting them know... (unclear)

Ken Lockard: Right cause we're going to do everything that's...

Amanda Masino: Well you're making the decision about whether or not it's an emergency which from what I understand is you make the decision now about whether to land apply or not, based on your stockpile and what might be going on. So this would be notifying Council in situations where you have to land apply.

Judy Musgrove: Are we notifying them or are we asking their permission?

Kaiba White: Well the after the fact...

Judy Musgrove: Just so they know this is what's going on.

Amanda Masino: "This happened."

Judy Musgrove: "This is our plan to fix this but just so you know we've got into the situation where we had to land apply and we're now asked to not do that anymore,"

Amanda Masino: And/or, right, and/or "this was a fire so we had to do it and there was no, we didn't really have to, we didn't anticipate that there was a storm or a fire," or we did anticipate it but the stockpiles..., "or you know, whatever that is.

Judy Musgrove: I guess I could see the policy being hierarchy, don't land apply, but if you do then we want to see your plan to get out of it because you're violating our policy. I guess I can kind of see...

Lisa Boatman: The discussion is particularly whether or not to include the language of regulatory as part of the justification for emergency application of Class B, correct?

Amanda Masino: To remain in regulatory compliance.

Lisa Boatman: Right. So that's what we're talking about, right?

Woman: Right. I agree it's...

Lisa Boatman: And staff is saying that we would like that included in there and Kaiba you're saying, that should not be included in there.

Kaiba White: I guess what I'm saying is it seems like all the examples that have been brought up, fall under the points that we've already included which is the fire risk and all other health and safety. So I'm, I'm not sure why we would include another, you know, regulatory item if that covers it.

Susan Turrieta: ... regulatory is if you fail to meet your permit...

Kaiba White: Right and I understand that...

Lisa Boatman: The problem is everyone in this industry who's worked in this business can say that we have all experienced conditions that if you put all of the minds together in the room and all the combined experience that we've never even seen before, so, I mean, we kind of had a perfect storm situation in terms of some process situations that were going on prior to the fire, other, other things that happened with the way that the materials were moving in and out of the plant and if we don't have all the language that can encompass the conditions where your input is going to increase and increase and increase, and your output has been limited, I mean I just don't see the harm in covering all that.

Kaiba White: Okay I'll tell you what I think the harm is. I think that complying with regulatory conditions is a bar that should always be met...

Lisa Boatman: Absolutely.

Kaiba White: ...because frankly regulatory conditions are generally I think weaker than we as the City of Austin set our standards. So if those conditions are not being met I think that's an indication that there's something that needs to be addressed and that it should be foreseen ahead of time. And I in general would not like any business to just have kind of a get-out-of-jail-free card if like, "Well if you don't meet your regulatory obligations then you can just go ahead and do this other thing that is not in compliance with policy." So I'm not saying that you all, like I understand, that's not what you're aiming to do, I just have a, call it a philosophical objection to that approach of providing a back door out of being in compliance.

Susan Turrieta: I think it's important to include regulation because if we don't meet our permit, TCEQ can come down on the City like it did fifteen years ago and we could have a whole entire Clean Water program situation again. So I think it's important to include it because TCEQ is extremely powerful and if we have violation after violation after violation they will come down to the City, they have before, and right now they're coming down on another Texas cities pretty hard. I can't remember the fine we were under, under the Clean Water program, \$20,000 a day or something if we didn't get stuff done in so many years.

James Bennett: That is important and once again, you know, the Utility has to maintain the ability to operate the facility and make these decisions. And taking the ratification to Council, I mean, you know it is to say, "Hey, this is what we're doing and this is why we're doing it." I mean realistically, yes, the Council could say "Stop." We all work for them but if they say "Stop", Clean Water, \$300 million in enforcement action with the Austin Clean Water Program. I mean the Council's the one who has to make that decision. I mean, we need to do as a Utility what we have to do to maintain the facility under the permit. That's what we do. That's why we're here. The reality is I mean, yes, the overall financial implication will result with Council, if they say, "You guys stop," then I mean we don't have a choice but to stop. But there are financial implications on the end. That's the ramification (unclear) in the circumstance we're in, you guys have to make a choice: door A or door B.

Jessica King: Commissioners, just a time check. It is about 10:45 and you are aiming to conclude by around 11:00. This may be one of those things where you write down and come back to discussion on that, in your respective groups, or whenever...

Amanda Masino: You might consider coming back to this regulatory compliance, I mean I, maintaining regulatory compliance is important and I can understand the concern of Kaiba's concern, that these are situations that should be foreseen so it shouldn't come up. That said, I think that having the mechanism of reporting to Council when this occurs is a way for us to keep a check on whether this regulatory compliance is being used in a way not intended and used to kind of off-load materials as opposed to managing them reasonably. I think that, I'm very comfortable including the language to maintain regulatory compliance as long as the 48-hour notification is still there because that is our check and that is our way to ensure that, not just this group but whoever else is at Austin Water in the future, if they are making this land application, they are not doing it, they are not failing to plan in other ways, and then using it as sort of this back door application. They would have to report that to Council and we would all know about it. So that's how I kind of weigh the two together. I don't know if we're ready to make a decision on that or if we should postpone the regulatory compliance being in here though. I think if, Stacy, you're comfortable talking about where you are on it because...

Stacy Guidry: Yeah, I think I side with what you're saying for that check and balance mechanism there and City Council should be notified of what is happening. They need to know, that cycle of communication needs to be upheld. Any of this, we've got a multimillion dollar, multi-year contract going on that needs to be within the language.

Susan Turrieta: I think we can re-vet, I don't think we're that far at all, so I think we can re-vet exactly how we want to (unclear). The other items I have that we might want to clarify, or even discuss, was that the contractor is providing bulking agent, it would just be a simple little bullet, it's just the ? process, (unclear).

Kaiba White: How does that fit into long term policy past this contract?

Susan Turrieta: I'm not really... there's two items, one is policy and one is this contract.

Woman: The policy could be around flow control.

Woman: ...more of a policy not addressing those particular...

Paul Gregory: Or the policy change of current ratios versus what's being proposed in this contract. See Dillo Dirt is 3.5 yards to 1 yard, we produce 3 yards of bulking agent to one yard of sludge. This is a policy change in making a compost with less bulking agent.

Jane Burazer: Isn't that an operations change rather than a policy change?

Paul Gregory: I'm just, for thirty years Dillo Dirt's been made that way, and that's the way we produce our biosolids. I think any change in that ratio is a change to the policy or the... operational change for sure, but it may be a policy to say, "We don't want to have odors at Hornsby Bend so we would like you to make it the same way that's been successful in the past."

Jane Burazer: But they have been successful in generating compost using the methodology they're currently using and we're not experiencing odor issues.

Paul Gregory: That's a tiny portion of the compost that's produced.

(unclear discussion)

Kaiba White:ratios... but it could address what sounds like the main issue which is odor and pests.

Paul Gregory: I just don't want there to be issues for the receptors and vectors for the citizens that live around Hornsby Bend.

Jessica King: So Commissioners, I would raise caution on that. Odor, just like noise, is perception. If you do, I would be a little cautious on how you word that, because that is a perception issue oftentimes. Just with my experience with ABIA and noise control issues with ABIA, and (unclear) "I hear their airplanes all the time." Yeah, cause you see them and you're right next to the airport. So there's, just be mindful of a certain...

Stacy Guidry: There's also the issue of temperature.

Amanda Masino: Right. So should we go through the list of things that we're considering for policy, because I think we've checked some off here but there are some additional to consider proposing next time. So we addressed the standards, we addressed the hierarchy, I think we decided that modifications to the permit we know now that's not an issue so we can take that off. Okay we have not addressed labeling of disclosure of biosolids, so that's still pending. We've addressed screening, we haven't addressed duration of composting, contract extension...

Susan Turrieta: That was a comment about after the five-year contract. That could have that it goes to Council every year for renewal.

Amanda Masino: So that perhaps should not be in our biosolids recommendation. Right, cause that was about the contract?

Susan Turrieta: Yeah.

Amanda Masino: So we can leave that separate. Bulking agent, Dillo Dirt, then we have...

Susan Turrieta: Dillo Dirt has been addressed because it's in there already. Bulking agent just saying that they provide, they're responsible for providing it, it's not necessarily provided by the City.

Amanda Masino: Okay. That one was more of a contract and not a policy...

Susan Turrieta: Yes.

Kaiba White: I thought that was already stated in the contract, right?

Amanda Masino: So as far as policy then we're looking at considering language about: flow control, about piloting new technology, public input, Council approval, we brought that up, and then potentially odor vector control being policy. Is that everything that we might want to discuss?

Kaiba White: Do you have labeling on that list?

Amanda Masino: Yeah labeling is.

Susan Turrieta: Would labeling be a policy?

Amanda Masino: Yeah, that would apply generally, not just this contract.

(unclear)

Susan Turrieta: ...biosolids, and now we just have some of the policy, and then we can talk about the sale and removal of compost at our next meeting. We can draft perhaps potential language for these pending items in the group and discuss it next time.

Amanda Masino: Then we'll do the removal contract.

Susan Turrieta: I have some (unclear) backup information you got from me last night that really addresses that one. That'll give you guys time to read it and come up with questions and stuff for Staff.

Susan Turrieta: All right, we'll move to adjourn, and we'll come up with (unclear) discuss between us for recommendation on the management of biosolids. We'll also discuss policy and draft up what we can for that...

Allen Click: May I ask a question? My name is Allen Click, I'm a farmer, and I came here to answer y'all's questions on the sale and removal. So, I'm available to answer your questions, first, I'd appreciate you having me. Second, I'm curious, are the policy recommendations that you're proposing also pertinent to my contract, or are they policy recommendations related to the other contract to be considered?

Susan Turrieta: We've been discussing the other contract to this point. This group will make a separate recommendation because they're two different items. This group, and how they come up with that is yet to be seen, we've got to vet it out. So, I can't say it's not going to be real different, but there's some very specific pieces of information in here that I think we need to discuss before we decide how we are going to address that. And I'm sorry we didn't get to it today. I really was hoping we would be done with everything, but we're not.

Amanda Masino: Our general biosolids, what we're trying to put together is general biosolids recommendations coming from this group. The only thing that possibly overlaps would be, we're including that language about the screening.

Allen Click: That's extremely important to me 'cause I'm in a different situation. The concept is different than the Gregory's and Synagro because the City pays them millions and millions of dollars to do things, and I pay the City. So my contract is a revenue contract, and I'm purchasing this stuff, so if there's a policy that requires screening that would add to my cost, that was not considered in my bid. So, if, and alternatively, the City has a brand new screener sitting right next to these piles, and I have absolutely no objection if the City wants to screen it.

Susan Turrieta: There are some concerns; if the City screens it I believe they need to sell it as Dillo Dirt, don't they?

Ken Lockard: That's why we didn't screen it.

Susan Turrieta: Yeah, there's some caveats in there that are making this extremely challenging.

Kaiba White: Where is that, 'cause maybe that's something we need to address. Where does that policy exist?

Judy Musgrove: Well, we have a fee structure that lists what fees we charge at the Utility and one of them is Dillo Dirt. We consider Dillo Dirt to be the last step in the process, which is screening, and so then it's Dillo Dirt. How do you say "that pile is Dillo Dirt, and this pile is something else?" cause it all looks the same, it's all been screened, it's all been treated the same, so we have a hard time selling that for 86 cents a cubic yard when we have it listed on the fee schedule for \$10.

Ken Lockard: All the vendors, when they purchase screened material have to pay a price that's governed by Council, and this was a separate product that we made.

Judy Musgrove: It takes a lot of manpower to screen it. It's not an easy, quick process, so that's why.

Kaiba White: So that's a Council-approved fee structure?

Judy Musgrove: Yeah it goes with our budget every year to Council.

Jessica King: All department fee structures are Council approved.

Kaiba White: Thank you.

James Bennett: It's also important to add that that material that's there, that Mr. Click is referring to, is not part of the inventory requirement, or inventory expectation of Synagro. So if that is still sitting there that may cause issues with the other contractor.

Allen Click: And my thought on it is I bid on it as is, and it's satisfactory in its current condition for my uses. So to that extent it's, I mean I could say the City wanted to screen it but I did not bid, I did not, if the City's going to require me to screen it, I cannot comply with the price that I offered to the contract, cuz it's completely different.

Susan Turrieta: No, it's different.

Allen Click: Right, yeah.

Stacy Guidry: And if you don't mind me asking, what is your use for that product?

Allen Click: I'm planning on land applying it on my fields to grow hay and to graze cattle. In my opinion the large pieces of wood don't bother me at all because they're going to eventually biodegrade. And the small pieces, I'm, I'm probably the greenest farmer in this county, okay? I do more no-till, more, less chemicals, I'm extremely conscious about it. But the amount of plastics that we see on our land already, I have a lot of experience seeing blown-in plastic from subdivisions and other things, and I see it break down with the sun and break into small pieces and eventually just becomes part of the soil food web. So I'm not concerned on it for my purposes. I think it's 100% better if you screened it but it's an economic highest and best use. So you have to look at, if you're looking at solely environmental issues that's one thing, but if you're looking at an economic highest and best use that is a completely different story. Thank you.

Susan Turrieta: Are y'all free next week?

Stacy Guidry: It's good for me but there were some concerns, people who were not...

Amanda Masino: Well, one was out of town this week though so he was gone.

[Continued discussion about scheduling the next meeting]

EXHIBIT G

From: Turrieta, Susan - BC

Sent: Thursday, September 15, 2016 12:46 PM

To: Blanding, Melissa - BC; Ho, Nhat - BC; Lee, Chien - BC; Masino, Amanda - BC; Guidry, Stacy - BC; Hoffman, Heather-Nicole - BC; White, Kaiba - BC

Cc: Cancino, Felicia; King, Jessica

Subject: Hornsby Bend Work Group

Commissioners Thank you very much for serving on this working group to revisit the management of Hornsby Bend bio-solids reuse. I have spoken with Amanda our co-chair and we are planning on having our first meeting next Tuesday the 20th at 9:30 am. With parking being a challenge in Austin, I have elected Hornsby Bend as our meeting location. At this "kickoff" meeting I am planning on covering the following items

1. Goals and objectives for workgroup
2. Determine topics and format for subsequent meetings that are necessary to meet goals and objectives
3. Assemble list of stakeholders and outline communication protocol
4. Schedule and location of subsequent meetings
5. Update from Organics committee on their finding at their last meeting

As this is our kickoff meeting please plan on a 2 hour meeting if your schedule allows. Also I have attached some information about policy for working groups, notes from Heather that do an outstanding job of explaining the process at hornsby bend, a memorandum from the Director of Resource Recovery Dept., and information from the last organic committee meeting. I would encourage all of you to research supporting information from previous W & WW and ZWAC meetings that are posted on the City web site. I am also asking each of you to come prepared with your ideas and thoughts for us to efficiently meet the goals of the work group.

Susan Turrieta
Boards and Commissions

ARTICLE 6. - ANTI-LOBBYING AND PROCUREMENT.

EXHIBIT H

§ 2-7-101 - DEFINITIONS.

In this article:

- (1) AGENT means a person authorized by a respondent to act for or in place of respondent, including a person acting at the request of respondent, a person acting with the knowledge and consent of a respondent, or a person acting with any arrangement, coordination, or direction between the person and the respondent.
- (2) AUTHORIZED CONTACT PERSON means the person identified in a City solicitation as the contact regarding the solicitation, or the authorized contact person's designee during the course of the no-contact period.
- (3) CITY EMPLOYEE in this article means a person employed by the City.
- (4) CITY OFFICIAL is defined in Section 2-7-2 (Definitions).
- (5) DIRECTOR means the director of a department to which the purchasing officer has delegated authority for enforcing this Chapter.
- (6) NO-CONTACT PERIOD means the period of time from the date of issuance of the solicitation until a contract is executed. If the City withdraws the solicitation or rejects all responses with the stated intention to reissue the same or similar solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
- (7) RESPONSE means a response to a solicitation.
- (8) RESPONDENT means a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer. The term "respondent" also includes:
 - (a) an owner, board member, officer, employee, contractor, subsidiary, joint enterprise, partnership, agent, lobbyist, or other representative of a respondent;
 - (b) a person or representative of a person that is involved in a joint venture with the respondent, or a subcontractor in connection with the respondent's response; and
 - (c) a respondent who has withdrawn a response or who has had a response rejected or disqualified by the City.
- (9) REPRESENTATION means a communication related to a response to a council member, official, employee, or City representative that is intended to or that is reasonably likely to:
 - (a) provide information about the response;
 - (b) advance the interests of the respondent;
 - (c) discredit the response of any other respondent;
 - (d) encourage the City to withdraw the solicitation;
 - (e) encourage the City to reject all of the responses;

- (f) convey a complaint about a particular solicitation; or
 - (g) directly or indirectly ask, influence, or persuade any City official, City employee, or body to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation.
- (10) SOLICITATION means an opportunity to compete to conduct business with the City that requires City Council approval under City Charter Article VII Section 15 (*Purchase Procedure*).

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-102 - FINDINGS; PURPOSE; APPLICABILITY.

- (A) The Council finds that persons who enter a competitive process for a city contract voluntarily agree to abide by the terms of the competitive process, including the provisions of this Chapter.
- (B) The Council finds that it is in the City's interest:
 - (1) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
 - (2) to further compliance with State law procurement requirements.
- (C) The Council intends that:
 - (1) each response is considered on the same basis as all others; and
 - (2) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.
- (D) A solicitation includes, without limitation, an invitation for bids, a request for proposals, a request for quotations, a request for qualifications, and a notice of funding availability.
- (E) Unless this Article is invoked by Council, this article does not apply to an opportunity to compete for City social service funding; City cultural arts funding; federal, state and City block grant funding; and the sale or rental of real property.
- (F) A representation excludes communication between a City of Austin attorney and a respondent's attorney.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-103 - RESTRICTION ON CONTACTS.

- (A) During a no-contact period, a respondent shall make a representation only through the authorized contact person.
- (B) During the no-contact period, a respondent may not make a representation to a City official or to a City employee other than to the authorized contact person. This prohibition also applies to a vendor that makes a representation and then becomes a respondent.
- (C)

The prohibition of a representation during the no-contact period applies to a representation initiated by a respondent, and to a representation made in response to a communication initiated by a City official or a City employee other than the authorized contact person.

- (D) If the City withdraws a solicitation or rejects all responses with a stated intention to reissue the same or similar solicitation for the same or similar project, the no-contact period shall expire after the ninetieth day after the date the solicitation is withdrawn or all responses are rejected if the solicitation has not been reissued during the ninety day period.
- (E) For a single vendor award, the no-contact period shall expire when the first of the following occurs: contract is executed or solicitation is cancelled.
- (F) For a multiple vendor award, the no-contact period shall expire when the last of the following occurs: all contracts are executed, negotiations have been fully terminated, or the ninetieth day after the solicitation is cancelled.
- (G) The purchasing officer or the director may allow respondents to make representations to city employees or city representatives in addition to the authorized contact person for a solicitation that the purchasing officer or the director finds must be conducted in an expedited manner; an expedited solicitation is one conducted for reasons of health or safety under the shortest schedule possible with no extensions. The purchasing officer's or director's finding and additional city employees or city representatives who may be contacted must be included in the solicitation documents.
- (H) Representations to an independent contractor hired by the City to conduct or assist with a solicitation will be treated as representations to a City employee.
- (I) A current employee, director, officer, or member of a respondent, or a person related within the first degree of consanguinity or affinity to a current employee, director, officer or member of a respondent, is presumed to be an agent of the respondent for purposes of making a representation. This presumption is rebuttable by a preponderance of the evidence as determined by the purchasing officer or director.
- (J) A respondent's representative is a person or entity acting on a respondent's behalf with the respondent's request and consent. For example, a respondent may email their membership list and ask members to contact council members on the respondent's behalf. The members are then acting per respondent's request and with their consent, and the members have become respondent representatives.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-104 - PERMITTED REPRESENTATIONS.

- (A) If City seeks additional information from respondent, the respondent shall submit the representation in writing only to the authorized contact person. The authorized contact person shall distribute the written representation in accordance with the terms of the particular solicitation. This subsection does not permit a respondent to amend or add information to a response after the response deadline.

- (B) If respondent wishes to send a complaint to the City, the respondent shall submit the complaint in writing only to the authorized contact person. The authorized contact person shall distribute a complaint regarding the process to members of the City council or members of the City board, to the director of the department that issued the solicitation, and to all respondents of the particular solicitation. However, the director or purchasing officer shall not permit distribution of any complaint that promotes or disparages the qualifications of a respondent, or that amends or adds information to a response. A determination of what constitutes promoting or disparaging the qualifications of a respondent or constitutes amending or adding information is at the director's or purchasing officer's sole discretion. Bid protests are not subject to this subsection. Documents related to a bid protest may not be forwarded to council under this subsection.
- (C) If a respondent makes a written inquiry regarding a solicitation, the authorized contact person shall provide a written answer to the inquiry and distribute the inquiry and answer to all respondents of the particular solicitation.
- (D) If a respondent is unable to obtain a response from the authorized contact person, the respondent may contact the director or purchasing officer as appropriate.
- (E) A respondent may ask a purely procedural question, for example a question regarding the time or location of an event, or where information may be obtained, of a City employee other than the authorized contact person. This section does not permit a respondent to make suggestions or complaints about the contract process that constitute a representation to a City employee other than the authorized contact person. Notwithstanding this subsection, a respondent may not ask a procedural question of a councilmember, a councilmember's aide, or of a City board member except in a meeting held under the Texas Government Code, Chapter 551 (*Open Meetings Act*).
- (F) This Article allows representations:
- (1) made at a meeting convened by the authorized contact person, including meetings to evaluate responses or negotiate a contract;
 - (2) required by Financial Services Department protest procedures for vendors;
 - (3) made at a Financial Services Department protest hearing;
 - (4) provided to the Small & Minority Business Resources Department in order to obtain compliance with Chapter 2-9A-D (*the Minority-Owned and Women-Owned Business Enterprise Procurement Program*);
 - (5) made to the City Risk Management coordinator about insurance requirements for a solicitation;
 - (6) made in public at a meeting held under Texas Government Code, Chapter 551 (*Open Meetings Act*);
or
 - (7) made from a respondent's attorney to an attorney in the Law Department in compliance with Texas Disciplinary Rules of Professional Conduct.
- (G) Nothing in this article prohibits communication regarding the solicitation between or among City officials or City employees acting in their official capacity.

(H) A contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*) is not a representation.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-105 - NOTICE.

- (A) An employee preparing a solicitation shall include a notice in the solicitation that advises respondents of the requirements of this article, including a notice that if any City official or City employee, other than the authorized contact person, approaches a respondent for response or solicitation information during the no-contact period, the respondent is at jeopardy if he or she makes any representation in response.
- (B) The authorized contact person for that solicitation shall notify council members in writing that the no-contact period for that solicitation is in effect.
- (C) When a solicitation is issued that will be reviewed by a City board, the authorized contact person for that solicitation shall notify in writing each member of the board that the no-contact period for that solicitation is in effect.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-106 - DISCLOSURE OF PROHIBITED REPRESENTATION.

- (A) If a City official or City employee receives a representation during the no-contact period for a solicitation, the official or employee shall notify in writing the authorized contact person for that solicitation as soon as practicable.
- (B) During the no-contact period, a City official or City employee, except for the authorized contact person, shall not solicit a representation from a respondent.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-107 - ENFORCEMENT.

- (A) A respondent that makes a prohibited representation violates this article. If the authorized contact person for a solicitation is informed, or receives information, that a respondent has made a prohibited representation during the no-contact period, the authorized contact person shall document the representation and notify the director or purchasing officer immediately.
- (B) If the director or purchasing officer finds that a respondent has violated this article, the respondent is disqualified.
- (C) If a respondent is disqualified for a solicitation and the solicitation is withdrawn or if all responses are rejected, the respondent is disqualified for a reissue of the same or similar solicitation for the same or similar project. Section 2-7-103(D) does not limit the duration of the disqualification. The director or purchasing officer may determine what constitutes a "same or similar" project for purposes of this subsection.

(D) The Financial Services Department and a department to which the purchasing officer has delegated purchasing authority shall adopt rules to administer and enforce this article. The rules must include the provision of written notice of disqualification to the respondent and a process to protest a disqualification.

(E) This article is not subject to enforcement by the Ethics Review Commission.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-108 - CONTRACT VOIDABLE.

If a contract is awarded to a respondent who has violated this article, the contract is voidable by the City.

Source: Ord. 20071206-045.

§ 2-7-109 - DEBARMENT.

(A) If a respondent has been disqualified under this article more than two times in a sixty month period, the purchasing officer shall debar a respondent from the sale of goods or services to the City for a period not to exceed three years, provided the respondent is given written notice and a hearing in advance of the debarment.

(B) The Financial Services Department and any department to which the purchasing officer has delegated authority for enforcing this article shall adopt rules to administer and enforce this section. The rules must include a hearing process with written notice to the respondent.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-110 - NO CRIMINAL PENALTY.

Section 1-1-99 does not apply to this article.

Source: Ord. 20071206-045.

§ 2-7-111 - DIRECTOR DISCRETION.

A director has the discretion to apply this Article to any other competitive process not covered by this Article.

Source: Ord. 20111110-052.



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

FOR IMMEDIATE RELEASE

Media Contact:
 Christie Deschodt, Marketing Coordinator
 512.421.7651 Office
cdeschodt@texasdisposal.com

**FEDERAL JUDGE RULES TEXAS DISPOSAL SYSTEMS NEVER VIOLATED CITY'S
 ANTI-LOBBYING ORDINANCE, THAT THE CITY IMPROPERLY SUBJECTED TEXAS
 DISPOSAL TO THE ORDINANCE, AND ORDERS THAT THE CITY REMOVE THE
 DISQUALIFICATION IMPOSED PURSUANT TO THE ORDINANCE FROM ALL TEXAS
 DISPOSAL'S RECORDS KEPT BY THE CITY**

Austin, Texas, March 21, 2014 – A federal judge ruled yesterday that the City of Austin acted improperly when it found that Texas Disposal Systems (TDS) violated the City's Anti-Lobbying Ordinance and entered judgment that the violation be removed from TDS' record.

The Honorable Judge Lee Yeakel, of the United States District Court, Western District of Texas, granted TDS' Motion for Summary Judgment on its claim that it did not violate the Anti-Lobbying Ordinance, in the case of TEXAS DISPOSAL SYSTEMS, INC., AND TEXAS DISPOSAL SYSTEMS LANDFILL, INC., V. CITY OF AUSTIN, TEXAS, AND BYRON JOHNSON, IN HIS OFFICIAL CAPACITY.

In his 17 page ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT ruling, Judge Yeakel stated, "the City improperly subjected Texas Disposal to the Ordinance and ... the disqualification assessed against Texas Disposal is unsupported by the plain meaning of the Ordinance's terms." Judge Yeakel further stated, "Texas Disposal is entitled to judgment declaring that it did not violate the Ordinance and is entitled to have the City's disqualification removed from its record." The Court's FINAL JUDGMENT pronounced, "THE COURT DECLARES that neither the December 8, 2009 email sent by Texas Disposal's Bob Gregory to Defendant City of Austin nor Texas Disposal's February 9, 2010 proposal to the City seeking to amend its existing 2000 City contract violate the City's Anti-Lobbying and Procurement Ordinance." And, "Further the court DECLARES that the City improperly assessed the disqualification against Texas Disposal and HEREBY ORDERS that the City remove from all Texas Disposal's records before the City the disqualification imposed pursuant to the Ordinance."

In light of the Court's ruling that TDS did not violate the Anti-Lobbying Ordinance, TDS' constitutional arguments regarding the City's application of the ordinance in violation of the First Amendment were not addressed by the Court. To avoid the potential of a technical objection by the City, TDS also brought a claim against the City's Purchasing Officer, in his official capacity; the Court found that the Purchasing Officer's disqualification of TDS, although improper, was an exercise of his discretion, entitling him to summary judgment.

The lawsuit stems from the City's January 21, 2010 disqualification of TDS, for alleged violations of the City's Anti-Lobbying Ordinance, from the Request for Proposals (RFP) process intended to identify a company to build and operate a Materials Recovery Facility (MRF) to process the City's residential single stream recyclables, and for other services related to solid waste and recycling.

Concurrently with the RFP process, City staff pursued an extension of a separate contract: the then-active single stream recyclables processing contract with Greenstar of North America, which could have negated the justification for the RFP, as proposed. Proposals to extend the Greenstar contract for three to five years were posted for action before the Solid Waste Advisory Committee (SWAC) and the Austin City Council, after the RFP had been issued, which included an Anti-Lobbying Ordinance restriction. Yesterday's ruling makes it clear City staff can no longer stifle public discourse on specific agenda items before City Council just because it was of the same general subject matter of another pending contract with the City.



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

FOR IMMEDIATE RELEASE

Media Contact:
Christie Deschodt, Marketing Coordinator
512.421.7651 Office
cdeschodt@texasdisposal.com

TDS sent an email communication to SWAC members and City staff expressing concern with the staff-proposed Greenstar contract extension. Six weeks later, a Buyer with the City's Purchasing Office notified TDS that the City had determined that TDS' communication to SWAC and staff regarding the separate issue of the Greenstar contract extension constituted a prohibited representation under the Anti-Lobbying Ordinance provision of RFP #RDR0005 for Recycling Services, and disqualified TDS from that solicitation. At the time, firms could be barred from doing business with the City for a period of three years if they were issued more than one disqualification under the City's Anti-Lobbying Ordinance within a three-year period.

TDS has maintained since it sent the subject communication that its email communication was not a violation of the City's Anti-Lobbying Ordinance, and that, even if it was, the City staff disqualified TDS before TDS was even qualified to be disqualified, because neither TDS nor Greenstar had responded to the RFP and the proposed Greenstar contract revision option was not related to the RFP. TDS did not respond to the staff's RFP, but rather, submitted an unsolicited proposal to amend an existing thirty-year waste and recycling contract TDS holds with the City, which allowed the negotiation of a contract amendment to build and operate a MRF for the City. Staff incorrectly considered that unsolicited TDS proposal to be a response to their RFP and refused to allow the City Council to consider it as an alternative option to the RFP responses received.

City staff submitted their own formal response to their own RFP, along with a signed Anti-Lobbying Ordinance compliance certification, which prohibited staff members from communicating with other staff members and City Council members about the staff's RFP response. Staff members favorably scored their own RFP response, which included statements to justify the merits of cutting out service providers such as TDS so the City could effectively dominate the recycling processing market in Austin. The Austin City Council eventually threw out the RFP process and awarded a short-term two-year recyclables processing contract to TDS, after learning that the City's staff had become a competitor for their own long term RFP. Yesterday's ruling confirms the City Council acted appropriately in throwing out the RFP process after it became apparent that City staff had disqualified TDS while the staff itself was competing for the contract.

After exhausting its appeal rights through City staff as prescribed by the ordinance and having City staff reject TDS' contract negotiation request to drop the disqualification from TDS' record, TDS was left with no option other than to file suit in state district court to challenge City staff's interpretation of the ordinance and to seek removal of the City staff's disqualification of TDS. City attorneys then removed the suit to federal district court, where it was resolved today by Summary Judgment following a period of discovery and briefing.

TDS CEO, Bob Gregory, said of the ruling, "While we are pleased with the result, it's unfortunate that TDS was forced to spend so much time and money to overturn the self-serving actions of City staff. To this day, City staff and attorneys have failed to provide a legal basis for their disqualification of TDS. It shouldn't have taken a Federal Judge to make the determination that TDS did not violate the City's Anti-Lobbying Ordinance. TDS has no problem with the original intent of the City's Anti-Lobbying Ordinance; however, we do have a serious problem with the interpretation by the City Manager's office and its manipulation of the ordinance in an attempt to silence critics while City staff pursues a competitive agenda that is not in the best interests of the citizens of Austin."

Gregory also stated, "It was City staff's position at the time that the City would have been immediately barred from doing any further business with TDS for a period of three years, had TDS received another disqualification within three years. Currently, the City hauls 100% of its residential garbage and



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

FOR IMMEDIATE RELEASE

Media Contact:
Christie Deschodt, Marketing Coordinator
512.421.7651 Office
cdeschodt@texasdisposal.com

approximately 40% of its residential recyclables to the TDS landfill and recycling facilities. The City Manager's interpretation of the ordinance would have prevented TDS from speaking on any other topic concerning solid waste, recycling or composting except in the extremely limited extent that comments can be given during posted public meetings while a single proposal was winding its way through a multi-month consideration process.

"While a debarment of a contractor has not yet occurred under the City's Anti-Lobbying Ordinance, I believe the City staff was prepared to eliminate TDS as a service provider in order to eliminate TDS and the Gregory family as a formidable competitor to their agenda. TDS chose not to be silenced while City staff attempted to hoodwink the City Council into entering into an unwise contract extension with Greenstar. City staff almost certainly would have ended the City's reliance upon TDS and its facilities by debarring TDS had TDS not challenged City staff. This is what I believe City staff has wanted in order to help them convince City Council members to allow City staff to build and operate the City's own facilities to manage waste, compostables and recyclables.

"I believe that City staff desire to replace an open competitive commercial waste collection, recycling and composting market within the City's jurisdiction with a public utility monopoly, similar to Austin Energy, to serve as a major profit center for the City, as staff implements its interpretation of the City's Zero Waste Master Plan. The City staff's asserting itself as a competitor for the award of an RFP was not contemplated when the Anti-Lobbying Ordinance was initially approved by City Council. I believe that Anti-Lobbying Ordinance restrictions should not apply to solicitations for which City staff is actively competing for the business and which the City staff seeks to convert to an unregulated monopoly."

TDS is hopeful that the Austin City Council will amend the Anti-Lobbying Ordinance to place the City Council as the final arbiter in the appeal process to overturn a staff disqualification decision, instead of the City Purchasing Officer being the final arbiter before a contractor has to challenge staff's disqualification decision in state or federal district court. TDS also recommends that the City Council not allow Anti-Lobbying Ordinance restrictions to apply to any bid or RFP for which City staff is a competitor, since it is not possible for the City staff to be unbiased and to refrain from speaking to Council members, their aides, or themselves about the City staff's own (and other's) proposal when staff has an interest in eliminating a competitor.

For more information please visit www.texasdisposal.com/cityofaustin, or contact Bob Gregory at bgregory@texasdisposal.com, Gary Newton at gnewton@texasdisposal.com, or Jim Hemphill at jhemphill@gdhm.com or call (512) 421-1300.

30

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2014 MAR 20 PM 2:23

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____ DEPUTY

TEXAS DISPOSAL SYSTEMS, INC. §
AND TEXAS DISPOSAL SYSTEMS §
LANDFILL, INC., §

PLAINTIFFS, §

V. §

CAUSE NO. A-11-CV-1070-LY

CITY OF AUSTIN, TEXAS, AND §

BYRON JOHNSON, IN HIS §

OFFICIAL CAPACITY, §

DEFENDANTS. §

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Before the court in the above-styled cause are the parties' cross-motions for summary judgment, responses, replies, and exhibits.¹ On August 16, 2013, the court held a hearing on the motions at which all parties were represented by counsel. Having considered the motions, responses, replies, the parties' summary-judgment proof, exhibits and stipulations, the case file, and applicable law, the court renders the following order.

Plaintiffs Texas Disposal Systems, Inc. and Texas Disposal Systmens Landfill, Inc. (collectively "Texas Disposal") commenced this action against the City of Austin ("City") in the 345th Judicial District Court of Travis County, Texas. The City removed the proceeding to this court. Texas Disposal filed an amended complaint, which, *inter alia*, added claims against Byron

¹ Plaintiff Texas Disposal Systems, Inc. and Texas Disposal Systems Landfill, Inc.'s Motion for Summary Judgment filed May 10, 2013; Defendants City of Austin and Byron Johnson's response filed May 31, 2013; Texas Disposal's reply filed June 14, 2013 (Clerk's Document Nos. 34, 49, and 52) and the City and Johnson's Motion for Summary Judgment filed May 10, 2013, Texas Disposal's response filed May 31, 2013, the City and Johnson's reply filed June 14, 2013 (Clerk's Document Nos. 35, 48, and 51), and the parties' Corrected Joint Summary Judgment Exhibits and Stipulations filed May 10, 2013 (Clerk's Document No. 32).

Johnson, in his official capacity as Purchasing Officer for the City. The City and Johnson filed answers and, following a conference with the court, all parties moved for summary judgment.

Texas Disposal is in the business of hauling waste and recyclable materials as well as providing facilities for composting, recycling, and landfilling of discarded materials and waste. Texas Disposal operates within the City and throughout central Texas. Texas Disposal complains about the City's actions related to the City's single-stream recycling program. Specifically, Texas Disposal complains of the City's assessment of a disqualification against Texas Disposal for violating anti-lobbying provisions of the City's Code. *See* Austin, Tex. City Code ch. 2-7-101-110 (2007) (Ordinance No. 20071206-045, "An Ordinance Adding a New Article 6 to Chapter 2-7 of the City Code Relating to Anti-Lobbying and Procurement") ("Ordinance"). Texas Disposal seeks a judgment declaring that it did not violate the Ordinance, that the City improperly assessed the disqualification against Texas Disposal, and ordering that the City withdraw the disqualification. Additionally, Texas Disposal alleges that, in the event the court finds and concludes that Texas Disposal violated the Ordinance and the City properly imposed the disqualification, the court declare the Ordinance unconstitutional as applied. Texas Disposal argues that the assessment of the disqualification violated Texas Disposal's free-speech and due-process rights guaranteed by the United States Constitution, because the City's application of the Ordinance is an unconstitutional content-based restriction on speech that is not narrowly tailored to serve a compelling governmental interest, infringes on Texas Disposal's rights to petition the government, and deprives Texas Disposal of due process for lack of notice. *See* 42 U.S.C. § 1983. Finally, Texas Disposal alleges that Johnson's final administrative decision to assess the disqualification against Texas Disposal was an *ultra vires* act unsupported by any legal authority.

Jurisdiction and venue

Any state-court action over which federal courts would have original jurisdiction may be removed from state to federal court. *See* 28 U.S.C. § 1441(a). Federal courts have original jurisdiction over “all civil actions arising under the Constitution, laws or treaties of the United States.” *See id.* at § 1331. Federal courts also have supplemental jurisdiction over “all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” *Id.* at § 1367(a). State and federal claims form part of the same case or controversy when they “derive from a common nucleus of operative fact.” *City of Chicago v. International Coll. of Surgeons*, 522 U.S. 156, 165 (1997).

This court has jurisdiction over this action because Texas Disposal raises federal constitutional claims. Further, Texas Disposal’s state-law claims are so related to the alleged federal claims that all claims derive from the same controversy, and the court will exercise supplemental jurisdiction over Texas Disposal’s state-law claims. *See eg., Davis v. Department of Health & Hosp.*, 195 Fed. Appx. 203, 205 (5th Cir. 2006). Venue is proper in the Austin Division of the Western District of Texas, because a substantial part of the events or omissions related to Texas Disposal’s claims arose within this district. *See* 28 U.S.C. § 1391(a), (b).

Ordinance

The Ordinance bans speech that is a “representation” by a class of persons who are “respondents” to the City’s formal requests for contract proposals during a defined time period. The Ordinance also includes specific exceptions. The following portions of the Ordinance are relevant:

REPRESENTATION means a communication related to a response to a council member, official, employee, or agent of the City which:

- (a) provides information about the response;
- (b) advances the interests of the respondent;
- (c) discredits the response of any other respondent;
- (d) encourages the City to withdraw the solicitation;
- (e) encourages the City to reject all of the responses;
- (f) conveys a complaint about a particular solicitation.

See City Code Section 2-7-101(5).

RESPONDENT means a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer.

Id. at Section 2-7-101(4). The definition expressly includes owners, officers, and employees of respondents, as well as other representatives of a respondent.

The Ordinance's substantive speech restriction provides:

(A) During a no-contact period, a respondent shall make a representation only through the authorized contact person.

(B) If during the no-contact period, a respondent makes a representation to a member of the City Council, a member of a City board, or any other official, employee, or agent of the City, other than to the authorized contact person for the solicitation, the respondent's response is disqualified from further consideration except as permitted in this article. This prohibition also applies to a vendor that makes a representation and then becomes a respondent.

Id. at Section 2-7-103(A) & (B).

Further, the Ordinance includes a "debarment" provision, by which anyone who is disqualified more than once in a three-year period is barred "from the sale of goods or services to the City for a period not to exceed three years provided the respondent is given written notice and a hearing in advance of the debarment." *Id.* at Section 2-7-109(A).

Pursuant to the Ordinance, the City's Financial Services Department and Public Works Department promulgated Rule No. R2008-PO-1, which provides a procedure to protest a disqualification. When a party challenges the assessment of a disqualification, the City Purchasing Officer may designate an independent hearing examiner to conduct a hearing and make a written recommendation regarding the disqualification. The Purchasing Officer then determines whether to accept or reject the recommendation. The Purchasing Officer's decision is a final disposition regarding a disqualification. At all times relevant to this action, Johnson was the City's Purchasing Officer.

Factual background

In 2000, after a competitive bidding process, Texas Disposal and the City entered into a 30-year contract under which Texas Disposal accepts the City's residential solid waste at Texas Disposal's landfill near Creedmoor, Texas. In 2008, the City began a single-stream recycling program, by which the City's residents may deposit all of their recyclables into a single large bin, which is collected from the street curb by City employees. After pickup, crews separate or process the recyclables at a "material recovery facility," which the trade abbreviates as "MRF." The City planned to build its own MRF. As an interim solution, the City entered into a no-bid contract with Greenstar, a company that separated and processed the City's single-stream recyclables at Greenstar's MRFs located in San Antonio and Garland, Texas. The Greenstar contract was to expire September 30, 2010.

In summer 2009, Texas Disposal's Chairman and CEO, Bob Gregory, met with Assistant City Manager Robert Goode. Gregory told Goode that Texas Disposal planned to build an MRF and have it operational by October 1, 2010. Gregory suggested that the City and Texas Disposal amend

their contract to allow Texas Disposal to process the City's single-stream recyclables upon the expiration of the Greenstar contract. Goode responded to Gregory that the City preferred to award an MRF contract through a formal competitive request-for-proposal process and encouraged Texas Disposal to respond to that request when announced by the City.

In fall 2009, the City considered amending and extending the Greenstar interim contract, because the City wanted to clarify some of the existing contract terms, improve pricing and flexibility in the contract, and provide a bridge between the Greenstar contract and the yet to be executed long-term recycling-service contract.

On November 16, 2009, the City issued the request for proposal for the building of an MRF ("Recycling Request"). This triggered the Ordinance's no-contact period, to continue until a contract was executed or the City closed the request. Meanwhile, the City continued negotiating with Greenstar for an extension of the existing interim contract. The Ordinance did not apply to the Greenstar short-term contract, because there had not been a formal request-for-proposal competitive bidding process associated with the Greenstar contract.

On November 30, 2009, Texas Disposal submitted questions to the authorized contact person about the Recycling Request. On December 4, Texas Disposal and Greenstar representatives attended a pre-bid conference held by the City.

Meanwhile, the Greenstar contract-amendment proposal was made a stand-alone agenda item for the City's Solid Waste Advisory Commission's ("Commission") meeting set for December 9, 2009. The Commission is an Austin City Council appointed volunteer-citizen commission that makes recommendations to the city council on solid-waste issues. On December 8, 2009, Gregory

sent an email and attachments to Commission members and other City officials, urging the Commission to recommend that the city council not extend the Greenstar contract:

****Note:** This narrative is intended only to convey my thoughts related to the extension of the Greenstar contract now pending before Austin's Solid Waste Advisory Commission (12/09/09 Agenda Item #4.a.) and not intended to relate to the pending Recycling Services RFP. That RFP process has an Anti-Lobby provision and represents a different issue, which is not the subject of this discussion.**

Dear [Commission] Members,

I urge you to encourage the Austin City Council to reject all three of the Greenstar single stream contract amendments. I believe that it is not in the City's best interests to guarantee Greenstar that they will receive all the City's single stream recyclables for the remainder of the contract term. The City may find that it has lower cost options when its RFP responses are received on February 9, 2010. I also believe that Greenstar has sufficient flexibility in this contract to simply lower its purchase price for the City's commodities enough to negate any benefit the City would receive from the contract amendment. Please see the attached document which describe and support my concerns.

Please let me know if you have any questions concerning my position or the attached documents.

Sincerely,
Bob Gregory
[phone numbers]²

The last section, entitled "Explanation of Contractual Agreements for Commodity Purchase Pricing," closes with the following:

² For convenience, the court refers to the December 8 email with attachments as "the Gregory email." The attachments to the Gregory email included a document titled, "Reasons why the City of Austin should not amend its contract with Greenstar to commit 100% of its single stream recyclables for an extended term, in return for a small reduction in Greenstar's processing charge" with supporting charts and graphs. These attachments are not relevant to the disposition of the summary-judgment motions.

Considering the above contractual requirements and the following data, it appears that Greenstar does not always adhere to its contractual agreements with regard to determining its purchase price for commodities. Furthermore, given Greenstar's apparent flexibility in determining what it pays Austin for recyclable commodities, any savings to the City of Austin on processing costs offered as part of an amended contract could easily be recouped or offset by Greenstar through manipulation of commodity pricing.

At the time of the email, Texas Disposal had not submitted a response to the Recycling Request. On December 9 the Commission voted to extend the Greenstar interim contract.

On December 15, an attorney for Greenstar wrote to Roy Rivers, the City's contact person for the Recycling Request, claiming that Texas Disposal, by sending the Gregory email had violated the Ordinance. On January 21, 2010, Rivers assessed anti-lobbying disqualifications against Texas Disposal and Greenstar.³

Protest hearings were held on February 5. The hearing officer found that when the Gregory email was sent, Texas Disposal had not responded to the Recycling Request and, therefore, the email was not in violation of the Ordinance. The hearing officer noted that the Recycling Request remained open until February 9, and inquired whether the parties desired to continue the matter until February 10. Texas Disposal represented that it would not be responding to the Recycling Request. The City then urged there was no need to suspend the hearing, and the hearing officer ruled the "matter closed, [and] the disqualification moot. I do not intend to issue an opinion other than what is on the record, on the digital record."⁴

³ The letter stated that the Gregory email "both advances the interest of the [Texas Disposal] and . . . discredits the response of [Greenstar]."

⁴ Regarding Greenstar's disqualification, the hearing officer recommended that Greenstar's protest of its disqualification be upheld, and it was; Greenstar's disqualification was reversed.

On February 9, about an hour past the deadline for responding to the Recycling Request, Texas Disposal distributed an unsolicited proposal to amend Texas Disposal's existing contract to add single-stream recycling services "in lieu of a formal response to the [Recycling Request.]" The City compared Texas Disposal's February 9 proposal to the Recycling Request and determined that, although the proposal did not contain all the elements required for a formal response to the Recycling Request, the proposal sought a contract for the same scope of services as those described in the Recycling Request. The City Attorney determined that Texas Disposal's February 9 proposal was in effect a response to the Recycling Request.

On February 23, the City Attorney informed the City Manager that the disqualification issued to Texas Disposal should remain in place in light of Texas Disposal's February 9 proposal. Texas Disposal sought clarification of the City's position, positing that the hearing examiner had ruled that there was no disqualification. On May 12, 2010, the City notified Texas Disposal that it had been disqualified for alleged violations of the Ordinance. A second protest hearing was held on May 26, and on June 2, the hearing officer recommended that Texas Disposal's disqualification be upheld. Johnson accepted the recommendation and upheld the disqualification on June 4, 2010. Texas Disposal sought reconsideration, but was informed by the City Attorney that no further review of Johnson's decision was available.

The Austin City Council rejected all formally submitted proposals to the Recycling Request. At a meeting on June 24, 2010, the council voted to instruct the City staff to negotiate long-term recycling services with Balcones, another company interested in providing recycling services for the City, and Texas Disposal, and for the staff to negotiate with Texas Disposal and Greenstar regarding a short-term recycling contract. Because the council had rejected all proposals submitted through

the formal Recycling Request, Texas Disposal was now eligible to be chosen by the City for services that *had been* within the scope of the Recycling Request. During the new round of negotiations, Texas Disposal presented a proposal that included the City's removal of Texas Disposal's disqualification for violating the Ordinance. The City rejected that proposal and Texas Disposal filed this action.

Arguments

By its summary-judgment motion, Texas Disposal contends that as a matter of law the City interpreted and applied the Ordinance incorrectly, that Texas Disposal did not violate the Ordinance, that the City erred in disqualifying Texas Disposal, and that the disqualification should be removed from Texas Disposal's record. Specifically, Texas Disposal contends that neither the Gregory email nor its February 9 proposal was a response to the Recycling Request, and that Johnson's assessment of the disqualification was an *ultra vires* act unsupported by any legal authority. Alternatively, Texas Disposal argues that the Ordinance, as applied, unconstitutionally infringes on Texas Disposal's free-speech rights, in violation of the First Amendment. *See* 28 U.S.C. § 1983.

The City and Johnson move for summary judgment, contending that Texas Disposal lacks standing to assert its claims because lacking is the existence of any imminent harm or any chilling effect on Texas Disposal's free-speech rights. If Texas Disposal has standing, the City and Johnson contend that they are entitled to summary judgment because the assessment of the disqualification was proper under the Ordinance and there was no violation of Texas Disposal's First Amendment rights. Finally, the City and Johnson argue that Texas Disposal cannot show that Johnson acted outside his legal authority or that he failed to perform a ministerial act, and therefore, the *ultra vires* claim should be denied.

Summary-judgment review

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986); *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). If the moving party carries its burden of showing that there is no genuine dispute as to any material fact, the burden shifts to the nonmovant to introduce specific facts or produce evidence that shows the existence of a genuine dispute regarding a material fact that prevents the grant of summary judgment in the movant’s favor. FED. R. CIV. P. 56(e); *see also Celotex*, 477 U.S. at 322–23. A dispute regarding a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

On cross motions for summary judgment, the court reviews each party’s motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party, determining for each side, whether judgment may be rendered in accordance with the Rule 56 standard. *Amerisure Ins. Co. v. Navigators Ins. Co.*, 611 F.3d 299, 304 (5th Cir. 2010) (internal citation and quotation omitted); *Shaw Constr. v. ICF Kaiser Engrs., Inc.*, 395 F.3d 533 fn. 8 & 9 (5th Cir. 2004).

Texas Disposal’s standing

The City argues that Texas Disposal lacks standing to bring this action because Texas Disposal has yet to sustain any harm under the Ordinance. The City argues that any harm that might befall Texas Disposal has yet to occur and would only occur if and when the City barred Texas

Disposal from seeking to do business with the City. It is, therefore, only Texas Disposal's future actions that could result in additional disqualifications within a three-year period that would then result in Texas Disposal being disallowed from seeking to do business with the City through the formal request-for-proposal process.⁵

Texas Disposal responds that it has sustained harm under the Ordinance, because the City took an adverse action against Texas Disposal—wrongly assessed the disqualification—based on the City's improper interpretation of the Ordinance. Thus contends Texas Disposal, it has suffered harm because the disqualification counts as a mark against it for purposes of seeking to do business with the City in the future.

Justiciability determinations, such as standing or ripeness are threshold questions that courts address before reaching the merits of claims. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975). The essence of standing is “whether a litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Id.* Although the question of standing is one of degree and not a precise test, for a plaintiff to have standing to bring an action, the plaintiff must show (1) that the plaintiff sustained an injury in fact that is concrete and particularized, and is actual or imminent, not hypothetical; (2) that there is a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). A plaintiff can meet the standing requirements when suit is brought as a declaratory-judgment action by establishing “actual present harm or a

⁵ Pursuant to the Ordinance, an entity may not seek to do business with the City through the formal request-for-proposal process if the following occurs: (1) a disqualification is assessed more than two times in a sixty month period and (2) a there must have been provided a hearing process that includes a written notice to the respondent. City Code § 2-7-109(A).

significant possibility of future harm.” *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 542 (5th Cir. 2008).

Texas Disposal alleges that the City took adverse action against it by wrongfully assessing the disqualification against Texas Disposal, which remains in place. It is this disqualification—for which Texas Disposal has exhausted its City-provided administrative remedies—that is the subject of this action. Here there exists a present controversy: whether Texas Disposal violated the Ordinance, and if so, whether application of the Ordinance to Texas Disposal’s speech violates the Constitution. The court finds and concludes that Texas Disposal has sustained actual present harm and that currently there exists a ripe dispute among the parties. Texas Disposal has standing to bring its claims.

Interpretation of Ordinance

Texas Disposal’s claim that the City improperly determined that Texas Disposal violated the Ordinance and assessed the disqualification is a pendent, nonfederal state-law claim over which this court exercises supplemental jurisdiction. *See* 28 U.S.C. § 1367(a). As to these claims the court relies on and applies Texas law. *See Erie R.R. v. Thompkins*, 304 U.S. 64, 78 (1938); *Transcontinental Gas Pipe Line Corp. v. Transportation Ins. Co.*, 953 F.2d 985, 988 (5th Cir. 1992).

Municipal ordinances are interpreted in the same manner as statutes. *Board of Adjustment of San Antonio v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002). Courts construe ordinances, like statutes, as a matter of law. *City of San Antonio v. Headwaters Coalition, Inc.*, 381 S.W.3d 543, 551 (Tex. App.—San Antonio 2012, pet. denied) (citing *Arredondo v. City of Dallas*, 79 S.W.3d 657, 667 (Tex. App.—Dallas 2002, pet. denied)). In construing the Ordinance, the court considers the plain meaning of the words used in the Ordinance and endeavors to give each part of the Ordinance meaning. *Id.*

(citing *Wende*, 92 S.W.3d at 430; *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983)). If the language of the ordinance is unambiguous, a court interprets the ordinance using that plain language, unless such an interpretation leads to absurd results. *Id.* (citing *Texas Dep't of Protective & Reg. Servs. v. Mega Child Care, Inc.*, 144 S.W.3d 170, 177 (Tex. 2004)).

The Ordinance is unambiguous. Under the Ordinance, during the no-contact period, the only regulated speech are representations *made by* a “respondent.” To be a prohibited representation, a communication must be “related to a response.” Further, a “response” is defined as “a response to a solicitation,” including “a request for proposal response.” Thus, by its terms, the Ordinance applies *only* to the speech of those responding to City solicitations. The Ordinance may apply to speech made during a no-contact period before a business becomes a respondent, but only if the business actually does become a respondent to a City solicitation. Thus, a respondent is severely restricted in its ability to communicate with a City official, employee, or agent about a solicitation, while the solicitation is pending.

Texas Disposal was not originally a respondent to the City’s solicitation for the Recycling Request. Gregory’s email addresses the pre-existing Greenstar agreement, and explicitly does not respond to the City’s Recycling Request. Texas Disposal specifically and intentionally never joined the respondents to the City’s Recycling Request. Also, it is undisputed that although Texas Disposal’s February 9 proposal may address issues similar to those in the Recycling Request, it is not a response to that request, as the period for responding had closed.

By interpreting the Ordinance’s plain language, the court concludes that as a matter of law neither the Gregory email nor the February 9 proposal violates the Ordinance, because neither is a prohibited “representation” and because Texas Disposal was not a respondent to the City’s Recycling

Request. The court also concludes that with regard to the Recycling Request, the City improperly subjected Texas Disposal to the Ordinance and that the disqualification assessed against Texas Disposal is unsupported by the plain meaning of the Ordinance's terms.

The court finally concludes that Texas Disposal is entitled to judgment declaring that it did not violate the Ordinance and is entitled to have the City's disqualification removed from its record.

Ultra vires claim against Johnson

Texas Disposal alleges that "[t]he final City administrative decision by Mr. Johnson to disqualify [Texas Disposal]—which necessarily included a finding that [Texas Disposal] had responded to the Recycling [Request]—was *ultra vires* and unsupported by legal authority because [Texas Disposal] was not a 'respondent' under the plain language of the [] Ordinance."

An *ultra vires* claim against a governmental employee in his official capacity is a claim seeking a court to require a governmental official to comply with statutory or constitutional provisions. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

Johnson argues that his decision to assess the disqualification against Texas Disposal required him to exercise his discretion and judgment as a City employee and was reasonably based on a review of all of the information available to him, including the advice of the City's legal department. Johnson argues that lacking is any proof that his assessment of the disqualification against Texas Disposal was outside his legal authority as the City's purchasing officer. Johnson argues summary judgment should be granted in his favor with regard to Texas Disposal's *ultra vires* claim alleged against him.

In response, Texas Disposal contends, "Some Texas authority suggests that a party alleging misapplication of the law by a governmental entity must sue the public official charged with

applying the law.”⁶ Texas Disposal represents that it “does not bring any claims against Johnson that are not also brought against the City. The claims against both Defendants are the same: declaratory judgment claims that Texas Disposal did not violate the Ordinance.”

The court finds lacking any summary-judgment proof that Johnson’s decision whether or not to assess a disqualification is anything other than a decision and action that was within Johnson’s city-employment duties. To the extent Texas Disposal has raised a separate *ultra vires* claim against Johnson, summary judgment is granted in favor of the City.

Remaining constitutional claims

As the court has resolved the parties’ disputes by interpreting and applying the Ordinance’s plain language, the court need not and will not address Texas Disposal’s constitutional claims. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 457 (1985) (courts are “never to anticipate a question of constitutional law in advance of the necessity of deciding it” and ought not to pass on questions of constitutionality unless such adjudication is unavoidable). The court dismisses without prejudice Texas Disposal’s remaining constitutional claims.

Conclusion

Texas Disposal has standing to proceed with the claims alleged in this action. Further, Texas Disposal’s motion for summary judgment will be granted in part and to the extent that Texas Disposal is entitled to summary judgment on its request for declaratory relief that pursuant to the Ordinance, the City improperly disqualified Texas Disposal and Texas Disposal is entitled to

⁶ Texas Disposal cites *Heinrich* as authority for its *ultra vires* claim against Johnson. 284 S.W.3d 366, 372 (Tex. 2009).

removal of the disqualification. With regard to Texas Disposal's constitutional claims, as the court does not address those claims, the court will dismiss the constitutional claims without prejudice.

The City and Johnson's motion for summary judgment will be granted in part and to the extent that Johnson did not act *ultra vires*. Texas Disposal will take nothing on its claim alleged against Johnson.

IT IS THEREFORE ORDERED that Texas Disposal's Motion for Summary Judgment filed May 10, 2013 (Clerk's Document No. 34) is **GRANTED IN PART** and to the extent that the court grants Texas Disposal judgment declaring that the Gregory email and Texas Disposal's February 9 proposal to amend its 2000 City contract do not violate the Ordinance.

IT IS FURTHER ORDERED that all of Texas Disposal's constitutional challenges to the Ordinance are **DISMISSED WITHOUT PREJUDICE**. In all other respects Texas Disposal's motion for summary judgment is **DENIED**.

IT IS FURTHER ORDERED that the City and Johnson's Motion for Summary Judgment filed May 10, 2013 (Clerk's Document No. 35) is **GRANTED IN PART** and to the extent that Texas Disposal shall take nothing by its *ultra vires* claim. In all other respects the motion is **DENIED**.

SIGNED this 20th day of March, 2014.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2014 MAR 20 PM 2: 23

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

TEXAS DISPOSAL SYSTEMS, INC. §
AND TEXAS DISPOSAL SYSTEMS §
LANDFILL, INC., §

PLAINTIFFS, §

V. §

CAUSE NO. A-11-CV-1070-LY

CITY OF AUSTIN, TEXAS, AND §
BYRON JOHNSON, IN HIS §
OFFICIAL CAPACITY, §

DEFENDANTS. §

FINAL JUDGMENT

Before the court is the above styled and numbered cause. On this date by separate order the court addressed the parties' cross-motions for summary judgment. The court found and concluded that Plaintiffs Texas Disposal Systems, Inc. and Texas Disposal Systems Landfill, Inc. (collectively "Texas Disposal") are entitled to declaratory-judgment relief. The court dismissed without prejudice all of Texas Disposal's constitutional claims. Finally, the court found and concluded that Defendant City of Austin was entitled to summary judgment on Texas Disposal's *ultra vires* claim alleged against Defendant Byron Johnson. As there are no disputes remaining among the parties for resolution, the court renders this final judgment pursuant to Federal Rule of Civil Procedure 58.

THE COURT DECLARES that neither the December 8, 2009 email sent by Texas Disposal's Bob Gregory to Defendant City of Austin nor Texas Disposal's February 9, 2010 proposal to the City seeking to amend its existing 2000 City contract violate the City's Anti-Lobbying and Procurement Ordinance. *See* Austin, Tex. City Code ch. 2-7-101-110 (2007) (Ordinance No. 20071206-045, "An Ordinance Adding a New Article 6 to Chapter 2-7 of the City Code Relating to Anti-Lobbying and Procurement") ("Ordinance").

Further the court **DECLARES** that the City improperly assessed the disqualification against Texas Disposal and **HEREBY ORDERS** that the City remove from all Texas Disposal's records before the City the disqualification imposed pursuant to the Ordinance.

IT IS FURTHER ORDERED that Texas Disposal **TAKE NOTHING** on the *ultra vires* claim alleged against Defendant Byron Johnson in his official capacity.

Any claim for attorney's fees incurred in this action will be determined post judgment and pursuant to Rule CV-7(j), of the Local Rules of the United States District Court for the Western District of Texas.

IT IS FURTHER ORDERED that Texas Disposal recover its costs of court.

IT IS FURTHER ORDERED that any other relief requested by any party hereto not specifically granted herein is **DENIED**.

IT IS FINALLY ORDERED that this action is hereby **CLOSED**.

SIGNED this 20th day of March, 2014.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE



MEMORANDUM

TO: Mayor and Council

FROM: Shawn Willett, Deputy Purchasing Officer *SW*

DATE: September 8, 2016

SUBJECT: Anti-Lobbying Complaint Received

The Purchasing Office has received the following complaint in regards to Request For Proposals CDL2003, for the beneficial reuse of biosolids. This item is currently scheduled for Council's consideration on October 6, 2016. As a respondent to the solicitation, Synagro is bound by the Anti-Lobbying Ordinance and is requesting that Council lift the requirement. In accordance with section 2-7-204(B), Purchasing is forwarding the complaint to the Mayor and Council:

§2-7-104 Permitted Representations

(B) If respondent wishes to send a complaint to the City, the respondent shall submit the complaint in writing only to the authorized contact person. The authorized contact person shall distribute a complaint regarding the process to members of the city council or members of the City board, to the director of the department that issued the solicitation, and to all respondents of the particular solicitation. However, the director or purchasing officer shall not permit distribution of any complaint that promotes or disparages the qualifications of a respondent, or that amends or adds information to a response. A determination of what constitutes promoting or disparaging the qualifications of a respondent or constitutes amending or adding information is at the director's or purchasing officer's sole discretion. Bid protests are not subject to this subsection. Documents related to a bid protest may not be forwarded to council under this subsection.

The full text of the Anti-Lobbying regulations can be found at Title 2, Chapter 2-7 of the City Code: https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT2AD_CH2-7ETFIDI

cc: Greg Canally, Deputy Chief Financial Officer
James Scarboro, Purchasing Officer

Willett, Shawn

From: Lord, Danielle
Sent: Wednesday, September 07, 2016 4:03 PM
To: Willett, Shawn
Subject: Fw: Beneficial Reuse of Biosolids Contract

Importance: High

Please see the following compliant from Synagro.

From: Andrew Bosinger <ABosinger@SYNAGRO.com>
Sent: Wednesday, September 7, 2016 3:42:24 PM
To: Lord, Danielle
Subject: Beneficial Reuse of Biosolids Contract

Danielle,

Since the submittal of proposals in response to the City's RFP for "Beneficial Reuse of Biosolids", it has become clear that there is a lot of interest and a number of questions from City Council, some commission members, and others. Additionally, Texas Disposal Systems (TDS) has publicly made it clear that they are pursuing this work, not through the RFP, but via a side proposal they have made that the City forego the RFP process and agree to a single source change order to add the new services called for in the RFP to their existing recycling contract. Statements confirming this approach were made by TDS at both the August 10th meeting of the Zero Waste Advisory Commission and at the August 11th City Council meeting and in emails from Bob Gregory to Council Members and City Staff. We have a complaint in that we see their actions as a clear attempt to circumvent both the City's public procurement processes and the anti-lobbying regulations that apply to City contracts. As such, they have put all of the companies that submitted proposals according to the City's processes at a grave disadvantage by only telling one side of the story and not airing the true facts.

In the past, where the Council believed there existed a unique situation where the details of a procurement needed to be openly discussed and fully vetted among themselves and all stakeholders before Council could take action, they have opted to waive the anti-lobbying requirements. We think TDS' actions have created such a situation warranting lifting of the anti-lobbying regulations for this procurement so that the discussion can take place with all stakeholders (including Council Members and Commissioners) involved. Additionally, since TDS and Texas Campaign for the Environment have also requested that we publicize all details of our proposal (also in contradiction to the City's standard procurement procedures) we believe that in fairness we should have the opportunity to address aspects of the proposal directly to Council Members and Commissioners. Accordingly, we hereby request that the lobbying restrictions be waived for this procurement going forward.

Please let me know if any other documentation is needed to formally make this request. We understand that this request will require council approval. Should scheduling and discussion of that approval not be possible at or before the September 22nd City Council meeting we will withdraw this request. We do not wish to delay City Council action on the proposed contract from the currently scheduled October 6th meeting. Thank you,

Andrew Bosinger



Your Partner for a cleaner, **greener** world

Andrew Bosinger

VP, Strategic Accounts & Partnerships

6326 Wilson Road Ann Arbor, MI 48108

O: 1-443-489-9087 | M: 1-410-271-1020

ABosinger@SYNAGRO.com | www.synagro.com

[Facebook](#) | [Twitter](#) | [Linkedin](#)

EXHIBIT K

From: Bob Gregory
Sent: Tuesday, September 13, 2016 5:21 PM
To: Danielle.lord@austintexas.gov; steve.adler@austintexas.gov; kathie.tovo@austintexas.gov; ora.houston@austintexas.gov; delia.garza@austintexas.gov; sabino.renteria@austintexas.gov; greg.casar@austintexas.gov; ann.kitchen@austintexas.gov; don.zimmerman@austintexas.gov; leslie.pool@austintexas.gov; ellen.troxclair@austintexas.gov; sheri.gallo@austintexas.gov; brandi.burton@austintexas.gov; amy.smith@austintexas.gov; shannon.halley@austintexas.gov; beverly.wilson@austintexas.gov; david.chincanchan@austintexas.gov; ken.craig@austintexas.gov; joe.petronis@austintexas.gov; michael.searle@austintexas.gov; tina.cannon@austintexas.gov; cj.hutchins@austintexas.gov; katherine.nicely@austintexas.gov; neesha.dave@austintexas.gov; donna.tiemann@austintexas.gov; john.lawler@austintexas.gov; Lesley.varghese@austintexas.gov; Taylor.Smith@austintexas.gov; Louisa.Brinsmade@austintexas.gov; Jackie.Goodman@austintexas.gov; Ashley.Richardson@austintexas.gov; Shelby.Alexander@austintexas.gov; Joi.Harden@austintexas.gov; bc-gerard.acuna@austintexas.gov; Bc-cathy.gattuso@austintexas.gov; bc-joshua.blaine@austintexas.gov; bc-kendra.bones@austintexas.gov; bc-stacy.guidry@austintexas.gov; bc-heather-nicole.hoffman@austintexas.gov; bc-jeff.jiampietro@austintexas.gov; bc-shana.joyce@austintexas.gov; bc-amanda.masino@austintexas.gov; bc-ricardo.rojo@austintexas.gov; bc-kaiba.white@austintexas.gov; bc-William.Moriarty@austintexas.gov; bc-Chien.Lee@austintexas.gov; bc-melissa.Blanding@austintexas.gov; bc-Christianne.Castleberry@austintexas.gov; bc-Mickey.Fishbeck@austintexas.gov; bc-Nhat.Ho@austintexas.gov; bc-Annie.Kellough@austintexas.gov; bc-Travis.Michel@austintexas.gov; bc-Brian.Parker@austintexas.gov; bc-Jesse.Penn@austintexas.gov; bc-Susan.Turrieta@austintexas.gov; marc.ott@austintexas.gov; robert.goode@austintexas.gov; bob.gedert@austintexas.gov; greg.mesaros@austintexas.gov; Daryl.Slusher@austintexas.gov; jane.burazer@austintexas.gov; James.scarboro@austintexas.gov; mwhellan@gdhm.com; Gary Newton; Adam Gregory; Ryan Hobbs
Cc:
Subject: TDS Response to Synagro Anti-Lobby Complaint
Attachments: Synagro Anti-Lobbying Complaint.pdf; 8-11-16 Austin City Council Meeting Items 25 & 26--.pdf

Ms. Lord,

Yesterday, we were made aware of the September 8, 2016 Memo to Mayor and Council from the Deputy Purchasing Officer, Shawn Willett, regarding the Anti-Lobby complaint filed by Synagro on Wednesday, September 7 (attached) related to the Austin Water RFP for biosolids management.

While we disagree with a number of Synagro's statements in their complaint, and wonder why Synagro has not refuted any allegedly inaccurate statements during any of the four public meetings Synagro has participated in over the past 45 days, we agree that the Anti-Lobby Ordinance restriction provision should not apply to RFPs such as this one (RFP CDL2003), nor should they apply to the related RFP for the sale of unscreened Dillo Dirt compost material (RFP JXP0501). Indeed, the application of the Anti-Lobby Ordinance restrictions and the manner in which staff interprets those restrictions is the reason TDS did not respond to either of these RFPs, during the time that the Non-Residential Collection Services for Refuse, Recycling, Brush, Compostable Materials, Special Events, Class 2 Special Non-Hazardous

Waste, and Emergency Collection Assistance contract (aka Citywide Dumpster Collection Services) is pending. Furthermore, the concerns raised by the Mayor and Council Members during the August 11, 2016 Council discussion of delaying agenda Items 25 and 26 clearly show the level of concern that longstanding policy issues may have been ignored or overlooked when these two RFPs were issued, and that there should be an open and thorough discussion of the issues before any final consideration of those RFP responses by Council. See 8/11/2016 meeting transcript of Items 25 and 26 attached.

However, the numerous unaddressed issues with these solicitations cannot be sufficiently resolved by simply lifting the Anti-Lobby provision, while continuing with the existing solicitations. For this reason, we believe both RFPs should be terminated and reissued without the Anti-Lobby Ordinance restrictions, and with the possibility to continue the production of Dillo Dirt with the possibility of the contractor being responsible for fire control and the marketing and sale of all compost production. This would, in fact, be beneficial to Synagro, as it would allow them to continue to compete for the Beneficial Reuse of Biosolids contract without first resolving their own potential disqualification for violations of the Anti-Lobby Ordinance.

Both Purchasing and Austin Water Utility staff are aware that Synagro representatives and their lobbyist met with Austin Water Utility, and Austin Resource Recovery staff members and held discussions outside of public meetings on August 10, and August 11, 2016, in potential violation of the Anti-Lobby Ordinance. We are certain that Purchasing Officer Scarboro is aware of at least one of these meetings, as Mr. Scarboro was seen asking Synagro representatives to separate from Austin Water Utility staff members. We are curious if there has been any investigation as to whether any content of those discussions amounted to a prohibited representation under the Anti-Lobby Ordinance. We assume that such an investigation is already underway, since we have verbally expressed our belief to City staff that a violation of the Anti-Lobby Ordinance may have occurred based upon our own observations.

Synagro believes TDS did not respond to the RFP in order to gain a competitive advantage over Synagro. That belief is in error. TDS has been forced to forego responding to several proposals by the City this year due to the City staff's unreasonable application of the no contact provisions of the Anti-Lobby Ordinance. City staff has previously informed TDS that if TDS representatives respond to any proposal related to waste or recycling issues then it can only communicate with the designated contact person in the Purchasing Office on all waste or recycling issues. This approach puts TDS in an untenable position of effectively being unable to communicate with key decision makers while the City is addressing multiple waste and recycling issues affecting TDS' business and City policy. TDS believes the City staff's interpretation is incorrect and overbroad in an attempt to limit the flow of information to City Council and Commission members. This is not the first time City staff has erred in its interpretation of the Anti-Lobby Ordinance. TDS has successfully prevailed in federal court over City staff for issuing a disqualification to TDS when TDS was not a respondent to a RFP. As you can see, Synagro's belief that TDS is trying to gain an unfair advantage is misinformed. TDS will continue to address serious issues of concern with the current staff process of ending the Dillo Dirt program, the concerns related to the two proposed RFPs, and the uncertainty of the restrictions and allowance in the two related contracts; TDS will also continue to inform policy makers and their advisors of significant staff revisions to longstanding policy.

We request that both RFP CDL2003 and RFP JXP0501 be (i) terminated, (ii) modified based on public input to allow the continuation of the Dillo Dirt program and to not allow the land application of uncured, unstabilized and unscreened Class A biosolids sludge described and identified to be a stabilized biosolids compost, and (iii) reissued consistent with the determined City policy related to the management of biosolids, composting and Zero Waste without the Anti-Lobby Ordinance restriction. Or, in the alternative, that the City Council waive the requirement that the Anti-Lobby Ordinance restrictive provisions apply to these two RFPs and allow City staff to also negotiate with TDS to amend the 30 year Waste Disposal and Yard Trimmings Processing Contract to incorporate the TDS management of the Dillo Dirt compost program consistent with City policy.

We urge you to consider providing a response to both the Synagro and TDS requests before the joint ZWAC and W&WWC meeting tomorrow evening for the discussion and possible action on the City's policy concerning biosolids management and on Zero Waste policy consideration to be included in biosolids management planning by ZWAC, as well as before the separate W&WWC meeting to follow the adjournment of the joint meeting of the two Commissions, at which time the W&WWC alone will consider the two RFPs and the draft contracts with numerous redactions of

important sections of the draft Synagro contract. We believe this is inappropriate, given that a representative of Synagro spoke before Council on August 11th, and stated, "Mayor and Members of the City Council, thank you very much. My name's Jerry Harris, I'm a partner with Husch Blackwell here in Austin and we represent Synagro. First of all we have no problem with the postponement, number one. Number two is, we do not have any problem with sharing the contract at the time that the contract is negotiated and we do not object to it being subjected to full review and questioning by whoever the Council wants it reviewed by." We believe it is inappropriate for staff to redact language from the draft Synagro contract being considered by the W&WWC for a recommendation to Council, in light of Synagro's release of their draft contract (including their incorporated RFP response) for a full review and questioning by the two citizen Advisory Commissions concerning biosolids, the necessary bulking agent needed to compost the biosolids, the numerous policy implications concerning the management of biosolids and Zero Waste initiatives, etc. See the 8/11/2016 transcript of the postponement of both contracts before Council and the requested policy discussions by at least two Commissions contemplated.

There is ample time available to conduct hearings on a major change in City policy required before final Council consideration, to complete a new RFP process, to negotiate contracts for the public and appropriate Commissions to review and consider in any recommendation, and to ensure that Council can receive and evaluate all the information they need to make the most informed decision before the March 15, 2017 current Synagro contract maximum extension date.

Respectfully,

Bob Gregory
President
Texas Disposal Systems, Inc.



MEMORANDUM

TO: Mayor and Council

FROM: Shawn Willett, Deputy Purchasing Officer *SW*

DATE: September 8, 2016

SUBJECT: Anti-Lobbying Complaint Received

The Purchasing Office has received the following complaint in regards to Request For Proposals CDL2003, for the beneficial reuse of biosolids. This item is currently scheduled for Council's consideration on October 6, 2016. As a respondent to the solicitation, Synagro is bound by the Anti-Lobbying Ordinance and is requesting that Council lift the requirement. In accordance with section 2-7-204(B), Purchasing is forwarding the complaint to the Mayor and Council:

§2-7-104 Permitted Representations

(B) If respondent wishes to send a complaint to the City, the respondent shall submit the complaint in writing only to the authorized contact person. The authorized contact person shall distribute a complaint regarding the process to members of the city council or members of the City board, to the director of the department that issued the solicitation, and to all respondents of the particular solicitation. However, the director or purchasing officer shall not permit distribution of any complaint that promotes or disparages the qualifications of a respondent, or that amends or adds information to a response. A determination of what constitutes promoting or disparaging the qualifications of a respondent or constitutes amending or adding information is at the director's or purchasing officer's sole discretion. Bid protests are not subject to this subsection. Documents related to a bid protest may not be forwarded to council under this subsection.

The full text of the Anti-Lobbying regulations can be found at Title 2, Chapter 2-7 of the City Code: https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT2AD_CH2-7ETFIDI

cc: Greg Canally, Deputy Chief Financial Officer
James Scarboro, Purchasing Officer

Willett, Shawn

From: Lord, Danielle
Sent: Wednesday, September 07, 2016 4:03 PM
To: Willett, Shawn
Subject: Fw: Beneficial Reuse of Biosolids Contract

Importance: High

Please see the following compliant from Synagro.

From: Andrew Bosinger <ABosinger@SYNAGRO.com>
Sent: Wednesday, September 7, 2016 3:42:24 PM
To: Lord, Danielle
Subject: Beneficial Reuse of Biosolids Contract

Danielle,

Since the submittal of proposals in response to the City's RFP for "Beneficial Reuse of Biosolids", it has become clear that there is a lot of interest and a number of questions from City Council, some commission members, and others. Additionally, Texas Disposal Systems (TDS) has publicly made it clear that they are pursuing this work, not through the RFP, but via a side proposal they have made that the City forego the RFP process and agree to a single source change order to add the new services called for in the RFP to their existing recycling contract. Statements confirming this approach were made by TDS at both the August 10th meeting of the Zero Waste Advisory Commission and at the August 11th City Council meeting and in emails from Bob Gregory to Council Members and City Staff. We have a complaint in that we see their actions as a clear attempt to circumvent both the City's public procurement processes and the anti-lobbying regulations that apply to City contracts. As such, they have put all of the companies that submitted proposals according to the City's processes at a grave disadvantage by only telling one side of the story and not airing the true facts.

In the past, where the Council believed there existed a unique situation where the details of a procurement needed to be openly discussed and fully vetted among themselves and all stakeholders before Council could take action, they have opted to waive the anti-lobbying requirements. We think TDS' actions have created such a situation warranting lifting of the anti-lobbying regulations for this procurement so that the discussion can take place with all stakeholders (including Council Members and Commissioners) involved. Additionally, since TDS and Texas Campaign for the Environment have also requested that we publicize all details of our proposal (also in contradiction to the City's standard procurement procedures) we believe that in fairness we should have the opportunity to address aspects of the proposal directly to Council Members and Commissioners. Accordingly, we hereby request that the lobbying restrictions be waived for this procurement going forward.

Please let me know if any other documentation is needed to formally make this request. We understand that this request will require council approval. Should scheduling and discussion of that approval not be possible at or before the September 22nd City Council meeting we will withdraw this request. We do not wish to delay City Council action on the proposed contract from the currently scheduled October 6th meeting. Thank you,

Andrew Bosinger



Your Partner for a cleaner, **greener** world

Andrew Bosinger

VP, Strategic Accounts & Partnerships

6326 Wilson Road Ann Arbor, MI 48108

O: 1-443-489-9087 | M: 1-410-271-1020

ABosinger@SYNAGRO.com | www.synagro.com

[Facebook](#) | [Twitter](#) | [Linkedin](#)

August 11, 2016

Austin City Council Meeting

Items 25 & 26

25. Authorize negotiation and execution of a 60-month contract with SYNAGRO OF TEXAS-CDR, INC., or one of the other qualified offerors to Request For Proposals CDL2003, for the management of biosolids reuse in an amount not to exceed \$9,424,778, with five 12-month extension options in an amount not to exceed \$2,185,180 per extension option, for a total contract amount not to exceed \$20,350,678.

(Notes: This solicitation was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program. For the services required for this solicitation, there were insufficient subcontracting opportunities and an insufficient number of certified M/WBEs; therefore, no subcontracting goals were established.)

26. Authorize negotiation and execution of a 12-month revenue contract with ALLEN CLICK, or one of the other qualified offerors to Request For Proposals JXP0501, for the sale and removal of compost material for an estimated revenue amount of \$64,500, with five 12-month extension options with an estimated revenue of \$64,500 per extension option, for a total estimated revenue amount of \$387,000.

(Notes: This revenue generating contract is exempt from the City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program; therefore, no subcontracting goals were established.)

Steve Adler: That gets us then to Item Number 25 and 26. I think there are some people who wanted to discuss that. There's a motion to postpone this until October 6th, I think is the intent on this. Ms. Pool makes that the motion. Is there a second to that motion, so that we can discuss it? Ms. Garza seconds that motion. Let's have a discussion about whether or not this matter should be postponed or not. We have some people that have been identified to speak. Let's hear from staff first, and then we'll call speakers. Can you tell us what the implications would be of postponing this to the 6th of October?

Greg Meszaros: Greg Meszaros, Austin Water. From the Utility's prospective, October 6th postponement would work for us. We have operating contracts in place that will be extended through March. So as long as we keep working on this kind of productively, I think October 6th postponement is workable from the staff prospective.

Steve Adler: Ok, thank you very much. Any other questions from staff about the postponement? Yes, Mayor Pro-Tem.

Kathie Tovo: I'm sorry, I don't have a question for staff, I just wanted to say something.

Steve Adler: Okay, let's hold on for a second, any other questions from staff on the postponement? We have some speakers to speak publically. Do we want to call them first? Okay.

Leslie Pool: And I just wanted to make a point of clarification. We are looking at postponing both items 25 and 26.

Steve Adler: Yes, 25 and 26, the question is postponing those 'til October 6th. Thank you Sir.

Don Zimmerman: Mr. Mayor, a point of order, quickly. I do want to debate postponement, but I'd also like a chance to move that we refer this to the Public Utility Committee for discussion before it comes back to Council. So at some point I'd like to make that motion.

Steve Adler: Okay. We have some people in the public to speak to this item. Bob Gregory, is he here? Do you want to speak to the postponement? Okay, Mr. Whellan, do you want to speak?

Michael Whellan: Michael Whellan, on behalf of TDS, and I'm only going to speak to the postponement, not to the substance. First of all, thank you for postponing this, and thanks to Mr. Meszaros for pointing out that we have until March, March of 2017. So we can take a deep breath to examine our overall zero waste policy, and especially what we're doing about composting. When you postpone it though, I would ask that you please add that staff is authorized to negotiate only the contract, so that we don't find ourselves back here in October asking

a lot of questions about something that we don't know anything about because it's back into a box and we have no idea what the triggers are, for how much bulking agent will get allocated for different types of composting, etcetera, etcetera. There's a lot of questions that we've circulated. We will not have the answers to those by October 6th, unless you authorize staff to negotiate the contract. And then, just like you do with TDS contracts, and other peoples' contracts, have the contract viewed in the public, at ZWAC, at the Water and Wastewater Commission. So, the second thing I would ask, and this is in the ZWAC Resolution from last night, in addition to authorizing the negotiation of the contract only, that you send it back to ZWAC, and the Water and Wastewater Commission, with the contracts in front of them, so that they can have that full analysis. Finally, I think that's all I need to say on this, thank you very much. So, two things, negotiate only, send it back to ZWAC and Water and Wastewater Commission. And let's be sure that if we're going to change a policy like we're about to do, we have a full discussion about it. Thanks.

Steve Adler: Mr. Zimmerman, do you have a question for Mr. Whellan?

Don Zimmerman: Mr. Whellan, before you go, I want to point out there are some very interesting technical issues having to do, you know, with this program. They're interesting to me. The idea of the bulking agents, and where stuff's gonna come from, how much it could potentially cost, what are the markets, what are the applications. So, there's a sufficient amount of complexity, and I think it's a very good issue for Council to consider, and the Public Utility Committee.

Michael Whellan: I'd like to point out our biosolids are growing like our city's growth. No big surprise.

Steve Adler: Okay. Council Member Pool.

Council Member Pool: I just wanted to see if I could amend my motion to be, on the postponement, to include some of the elements that Mr. Whellan has offered, which is when it does come back to us, and this would be, I know when it comes back to us, then we can take formal action, but that I would support the request for negotiate only, to hold off on the execution piece, and also, I agree with sending it to the Zero Waste Advisory Commission. They are digging into the details on this, it is more complex than what we may see at first light, and we want to take a longer view, a more holistic view of how we view our organics materials, so I think, and then I have a couple of comments, so I just wanted to make that amendment to my motion.

Steve Adler: Okay. I'm trying to figure how to articulate the amendment that you made, and I have a question that's related to that, if you would indulge me just one second, that might get us to that place, and it's a question both for Michael Whellan as well as for staff. And I'm trying to figure out what the right order here is. There are policy questions that are being asked and I don't know how you negotiate the contract until the policy questions have been discussed or answered. So, I mean, if the policy determinations, or the policy questions dictate what the terms of the contract should be, then I'm not sure it's the best use of time to go ahead and negotiate the contract and then to have it come back for the policy questions. If what we're trying to do is kick off a process that addresses the policy questions that are implicated by what is being contracted for, it seems to me that we might want to have that happen quickly and directed by staff to include the policy issues that are raised by the contract. But I might be speaking way out in...

Michael Whellan: I think the staff has a policy concept that would be their proposal reflected in a contract. So the advantage of having the contract negotiated for debate is we then would have, just like we do with zoning cases, have at least a straw man to talk about and look at as the staff's policy. Or, to your point, if you want to do the policy separate, I would then postpone this into December, so that we get back here with a full policy discussion in October then come back and have the contract in December, because you won't have time to do them sequentially the way you're talking about, I don't think, between now and October if you want to also send it to ZWAC and Water and Wastewater, for a full debate.

Steve Adler: Greg, can you talk about, how do we resolve the policy issues that seem to be inherent in the contract.

Greg Meszaros: Just a few thoughts. One, I think just procedurally, if you postpone this, you'd have to authorize us to negotiate, you have to approve something for us to negotiate, a contract, I don't know how you could postpone and we could still negotiate. You'd probably have to talk that through Purchasing. The other, I just want to lay down a couple of other framework of issues here. One, when I said we have 'til March, that's with our existing contract in a hold-over provision. The proposals we took for this expire November 15th. So, we have 'til November 15th to work through this process or we'll have to do another procurement. You know, I just want to be clear that biosolids come to our processing facility every single day and, you know, we can't go extended periods of time without some kind of strategies to continue to manage our biosolid inventories, so I don't want to indicate that we can go all the way up to March and then everything's fine because we'll have transition periods, and maybe a re-procurement process so we have to be mindful of that. The other thing, I may need James Scarboro's assistance here, but these proposals have some confidentiality qualities to them, so even a negotiated contract cannot be shared in the public domain without the proposer giving the City the authorization to share those details. The proposed firm, Synagro, has provided some authorization, but a full contract process would require additional authorization. I really, I'm not an expert on that, but I would ask the Purchasing manager to come up and speak to that, too.

Steve Adler: Okay, what I, and again, in answering your question, what I'm trying to figure out is, it seems to me that we have to tee up the policy issues as quickly as we can because they would give direction and if you have a contract, part of the problem with this teeing up the policy issue, as I understand, is that there was a parallel contract negotiation going on, so there was limited to the discussion we could have relative to the policy issues because of the contract negotiation, and it seems to me that we can't have that, I mean we have to be able to have a full conversation about the policy, and I don't, again I am in search now for what is the best way. What I don't want to do is have staff spend another six weeks negotiating a contract only to have the same, basic policy issues and some limitation on our ability to discuss the policy issues, 'cause we'll be back here moving to postpone it again while we have the policy conversation.

Michael Whellan: Then I do, I do think since we have 'til March, I know we need some transition time, I hear what the Director's saying, I like the idea of going then, until at least December, on the contract.

Steve Adler: We heard you so let me have some of the other people...

Robin Harris: Mayor, Robin Harris with the Law Department. Just one clarification that may help. Council doesn't have to authorize negotiation of the contracts, staff can continue to do that, the only requirement is for authorizing the execution portion of the contract, so they're able to from now until whenever it comes back, just have that conversation with the vendor. As far as the confidentiality issues that were raised, there are some portions that may not be able to be discussed publicly, but they can certainly be viewed by any City official, whether it's a commission member or a Council member, just to look at portions of the contract that may have been drafted and put together, that's going to be dependent somewhat on the vendor.

Steve Adler: And, again, help me. I don't know, and it might be Robert, a question more for you than for the people here. I'm trying to figure out how to get the policy question done. I'm a little concerned about asking for the contract to be negotiated and the contract made public, because then we have one contract bidder who's determination as to what they can do, or what their prices are, then it becomes available publically for everybody. I'd rather come up with what the parameters are of the contract; decide whether this contract met those. If we need to re-issue the RFP, if the policy turns out to be different, then everybody would then be competing then equally, under the parameters of a new policy to be able to compete. I just don't know, I don't know how to tee it up. So I'm looking for suggestions on the process. And, I'll give you a chance to speak to that because I just don't know...

Don Zimmerman: Mr. Mayor, I have some professional experience writing Requests for Proposals that have to do with engineering processes, and what's crucial here is, if you are very careful and accurate on how you write the Request for Proposal, the Request for Proposal, if it's properly done, could reflect the policy.

Steve Adler: But don't we have to determine the policy first?

Don Zimmerman: You do, and the Request for Proposal could have that policy embedded, if it's properly done.

Steve Adler: But isn't the question before us now that there's some questions about what the policy should be?

Don Zimmerman: Yes. There are some questions and what bothers me is they're saying, well, we have this contract that we can't share. In other words, we can't show you what the policy is because it's embedded in the contract, and the contract is proprietary. So it's completely messed up. If we were to start correctly with an RFP that captures the policy correctly then the bids would accurately reflect the policy.

Steve Adler: Mr. Meszaros, is there a policy question here? Are there policy questions implicated here that are appropriate for Council to consider?

Greg Meszaros: Mayor, it's difficult to answer; it depends on your perspective. We, this proposal, I guess the policy question is whether or not composting is superior to other methods of disposal of biosolids. We have been taking steps to emphasize more composting over other methods of biosolids. There are some questions that's been raised about the type of composting. We're prepared to discuss those today. We have answers to those kind of questions. I don't know entirely what the policy questions are that we would need to determine before we negotiate a contract.

Don Zimmerman: I can answer that question. Composting has a, there's a technical aspect to the word composting. Exactly what kind of composting are we talking about? And how many days, weeks, or months does it take to produce the compost? Will there be solids introduced in the compost? What kind of solids? What's appropriate to use as aggregate materials? There are a lot of complex details that could be put in an RFP.

Greg Meszaros: Well we have we have answers to those, to those questions today.

Don Zimmerman: But the policy question that we can define as a Council, a policy that says, you know, you can't use the word composting unless you specify what composting it is specifically, so that all the companies that would bid on that would know exactly what type of composting we're talking about. Those kind of details are not in, we don't have that kind of detailed description in the RFP, which amounts to policy, and so then the companies can write whatever they want and then Purchasing says, well you can't look at the contracts because they're proprietary.

Steve Adler: I understood that one of the impacts of the decision being made today was about what was the future of Dillo Dirt. Is that true?

Greg Meszaros: Yes, in the sense that if City staff has made Dillo Dirt under the proposals we have we would we would not be the responsible party for making Dillo Dirt. That Dillo Dirt like products would still be available but it wouldn't be made directly by Austin Water staff. That would be one of the considerations.

Steve Adler: My sense is, this is not ready for us to decide today. But I'm still unclear as to what happens next; it looks like there's two choices. One choice is to ask staff to continue negotiating to move further on a contract. Another one is to try to tee up the issue for whatever it is that that issue involves. Are those the two choices? Mayor Pro Tem?

Greg Meszaros: Mayor, one suggestion we had thought, I mean, just throwing out an idea to you, you know, is that is to have like a, 'cause this covers Water Wastewater Commission issues 'cause a lot of this is still wrapped around you know running the water utility because biosolids processing is critical to wastewater treatment, as

well as zero waste, you know one option is we could have a meeting or two like a joint committee of those two and we could kind of sort out some of the considerations, and then work after we have some feedback on that, on shaping a contract or determining if we have to go out for resolicitation. That would be one way to get some input on this.

Steve Adler: Mayor Pro Tem.

Kathie Tovo: Yeah, I think that's the right path. You know I completely agree that this really needs to be discussed further and I think those are the right two bodies to have that discussion. I am concerned about pushing the timeline out so that we may get in a position of not having a contract, and then having you know, running the risk of the fires and things that have happened in the past, so I would suggest that a joint meeting or two be scheduled pretty quickly and then it come back to us, and as I understood the discussion, those two options weren't mutually exclusive, that the policy discussion could happen among the commissions or Council, but could also, but the staff could also continue to negotiate. I want to be sure that we're wrapping up that policy conversation in time for a new solicitation to be on the street, if that's what's required.

Greg Meszaros: So let me, so I think what we could do is get input from these commissions on some of these considerations, you know, what is composting? Does that make the definition of composting Dillo Dirt? Cost structures, you know, those kind of issues and then once we see that framework we could make a determination that, yes, the procurement that we have, we can shape a contract to fit those parameters and bring that back forward, or if it comes out that, no, that wouldn't work and we have to resolicit, we could work through that kind of a strategy too. So I think we could bear down on that over the next month or six weeks, and you know I just ask that we stay focused on that.

Steve Adler: I think that would be important too. So now getting back to then Council Member Pool's motion, so your motion is to postpone this item, and to request that staff take it to those two commissions for discussion, and then come back to us when it's ready. I mean should we put a time limit on it?

Leslie Pool: I was going to suggest October 6.

Steve Adler: Okay.

Leslie pool: And I do know that there are some members of the public and some other interest groups that would like to also speak, so it is good for us to clarify what the action is that we're trying to take.

Steve Adler: So would October 6th give sufficient time, Mr. Meszaros, to have that conversation?

Greg Meszaros: Certainly from a staff perspective, we will apply appropriate resources to that, and work to facilitate the meetings of the two commissions to make that happen.

Steve Adler: Okay, that way you could identify those issues, you could see if the contract was in alignment with that, you could still continue negotiating the contract if you felt that was appropriate, but just to get us in a little bit of a place where the Council feels like they have a better handle on all the issues. And Mr. Zimmerman if there was a Council committee that wanted to take this up in that intervening period of time that would also provide the opportunity for a Council committee to look at it as well if they wanted to.

Don Zimmerman: I could ask the Public Utility Commission I believe, Council Member Troxclair serves with me on that so if she asks to put it on it would be on the agenda.

Steve Adler: I'll let the committee go ahead and look at their agenda.

Don Zimmerman: I just have one final technical question here...

Steve Adler: Wait, wait, I want to give somebody else a chance who hasn't had a chance to talk yet.

Don Zimmerman: Sorry, go ahead.

Steve Adler: Did you raise your hand Ms. Pool?

Leslie Pool: I just wanted to clarify the City Clerk was asking the two commissions that we were talking about were the Zero Waste Advisory Commission and was it Water Wastewater Commission?

Greg Meszaros: Yes.

Leslie Pool: Okay, thank you.

Steve Adler: And if, as your looking at it, there are other appropriate bodies that you want to have weigh in, don't feel like you're limited by that.

Greg Meszaros: Thank you Mayor.

Steve Adler: All right, now we have some people in the public that we also want to give an opportunity to be able to speak to this item and I want to give them that chance to do that. Mr. Zimmerman.

Don Zimmerman: I just wanted one technical question. RFP is referred to several times in the memorandum. Director Meszaros, August 8th, 2016 referendum, it mentions RFP numerous times. What is the RFP number on that?

Greg Meszaros: Oh boy, I think we probably have it. Do we have it Jane?

Don Zimmerman: I would think Mr. Scarboro would have that RFP number. I just want to give it to my staff so we can look up.

Greg Meszaros: Okay it's RFP CDL2003.

Don Zimmerman: Thank you very much.

Steve Adler: Okay, Michael Whellan did not use up all his time, Mr. Gregory is there something that you wanted to add at this point? No, sorry, got it, thank you. Next speaker we have is Paul Gregory, okay. Michael Whellan has already spoken, Andrew Bosinger.

Andrew Bosinger: Yes Mr. Mayor I'll donate my time to Jerry Harris, counsel for Synagro.

Steve Alder: Hello Jerry.

Jerry Harris: Mayor, Members of the Council, thank you very much. My name's Jerry Harris, I'm a partner with Husch Blackwell here in Austin and we represent Synagro. First of all we have no problem with the postponement, number one. Number two is, we do not have any problem with sharing the contract at the time that the contract is negotiated and we do not object to it being subjected to full review and questioning by whoever the Council wants it to be reviewed by. I would like to say this, the RFP had some very strong policy matters to set forth. Number one was, the City has a lot of biosolids that they cannot handle and get rid of, and therefore one of the policy decisions was let's handle that so they don't have the fire they had a few years back in the biosolids because there were too many stored there for too long that couldn't be processed and it cost the City four or five million dollars to remedy that fire situation. Number two, the policy decision in the RFP was reduce the land application of Class B biosolids, and that's what this proposal does, and it basically gets rid of the Class B solids and makes everything come out to a Class A biosolid; different levels of compost if you will. So I hope that those policy decisions keep being brought forth in the procedure that's about to proceed and everybody trying to decide what goals need to be achieved here, and there is an economic side here. Our proposal saves the City a million dollars a year that would otherwise be in this situation. So we're fine with policy decisions, we think policy

decisions are important. Synagro is a service company. They're the largest biosolid processors, treaters, and marketers in the United States including Hawaii. Synagro only does biosolids, no landfills, nothing else, they have 16 locations in the United States so we're here to serve what the Austin needs and so we're very open to everything that's been discussed here today. And Andrew Bosinger, the Vice President's here, and I'm here, to answer any questions that you might have at this time, but we're in agreement.

Steve Adler: Thank you, please engage and make sure we get all the policy issues considered in this group. Andrew, Andrew Dobbs, speaking on the question of this postponement and this process.

Andrew Dobbs: Yes sir, thank you Mayor and Council. Andrew Dobbs, Texas Campaign for the Environment. I want to thank y'all for your consideration of this today and we do support the postponement to October 6th, although I won't be here, I'll be on vacation. There are, I think that the most important thing is that there is a lesson to be learned here which is let's not do it this way. This is the body that decides policy for the City and it doesn't really work when a contract comes up with a lot of the policy already baked in, and if it's a policy that everybody's okay with, if it's a contract that everybody's okay with then I guess that's fine, but in the instance that there's concerns from the public interest then we get into this kind of mess, the very sort of mess that we're trying to figure out right now. This is something that should've brought up to Council committees and City commissions months ago, and that's where the decision should have been made, because last night at the Zero Waste Advisory Commission we heard from the Austin Water staff that this is functionally the end of the Dillo Dirt program. That's an iconic popular program, that's award winning, that a lot of your constituents care a lot about and if we're gonna decide to change or end that, that's a decision that should be made in the public, by the public, by our public elected officials. And so that's an important thing for us to note, not just for this case but all future cases. I do have some ideas about ways that we can determine, I think the recommendations that we have made up to this point are still valid for being able to determine some of these policy questions before we come back. The first is to convene a strategic review between all City departments that are generating organic waste, along with other stake holders in the public to take a look at where are these things coming from and going to. We've drafted a resolution, we forwarded it to Council Member Pool's office. We'd love to see that passed so that we could convene that. That's something that the City Manager could do, then could call it together in a matter of days. We do believe that there should be City committee or Council committee hearings on the future of Dillo Dirt and on the policy questions. Council Member Zimmerman suggested the Public Utility Commission. We would propose that it actually be a joint committee of both the Public Utility and the Environment, Open Space, and whatever the other, Sustainability Committee. I think there's an overlap of those committee memberships, there's no reason why we couldn't meet all together and have all those questions brought up. And then we do believe there should be a City policy against the land application of all sewage sludges, both Class A and Class B. And we're glad to hear that the City department and Synagro is ready to end the land application of Class B sludge, but that should be extended to all of this because it's bad for the environment and for human health. These I believe are ways of addressing the policy questions so that we can then hopefully have a contract that we can come back with and that serves everybody's interests. I'm happy to answer any questions.

Steve Adler: Great, thank you very much.

Andrew Dobbs: Thank you.

Steve Adler: The, Brad Parsons. Is Brad here? All right those are all the speakers we have, we're back up to the dais. The motion is to postpone this until the 8th of October ask, 6th of October asking staff to engage in that policy conversation, certainly can continue with the contract negotiations. It's been moved and, was there a second to the motion? Mrs. Troxclair seconds that in case there wasn't one before. Any further discussion? Those in favor please raise your hand. Those opposed. Unanimous on the dais with Mayor Pro Tem Tovo off. Okay, that takes care of then Item number 25 and 26.

EXHIBIT L**10-6-2016 AUSTIN CITY COUNCIL MEETING**

Anderson Health and Wellness Center in an amount not to exceed \$50,000, for a 12-month term beginning on October 1, 2016.

20. Authorize negotiation and execution of an agreement with AUSTIN INDEPENDENT SCHOOL DISTRICT for case management services and community outreach in an amount not to exceed \$108,120 for an initial 12-month term, with five 12-month renewal options in an amount not to exceed \$108,120 for a total contract amount not to exceed \$648,720.
21. Approve the negotiation and execution of Amendment No. 10 with WRIGHT HOUSE WELLNESS CENTER, a provider of HIV services under the Ryan White Part A HIV Emergency Relief Program, in an amount not to exceed \$47,812 for a revised current 12-month term amount not to exceed \$273,508, for a total contract amount not to exceed \$1,100,631.

Human Resources

22. Approve a resolution confirming the re-appointment of Andrew Harris to the Firefighters', Police Officers' and Emergency Medical Services Personnel's Civil Service Commission for a term expiring December 5, 2019.

Law

23. Authorize payment of a judgment in Canarios Inc. v. City of Austin, Cause No. D-1-GN-13-003779 in the 250th District Court for Travis County, Texas in an amount not to exceed \$126,400.
24. Approve second and third reading of an ordinance amending Ordinance No. 960613-J and authorizing execution of the first amendment to a settlement agreement relating to the development of property located at 6409 City Park Road (Champion Tract).
(Related to Item 53)

Planning and Zoning

25. Approve an ordinance adopting the Twelfth Amendment to the Agreement Concerning Creation and Operation of Northtown Municipal Utility District to accommodate a driveway cut on Howard Lane specific to property located at 2800 S. Heatherwilde Boulevard.

Purchasing Office

26. Authorize negotiation and execution of a 60-month contract with SYNAGRO OF TEXAS-CDR, INC., or one of the other qualified offerors to Request For Proposals CDL2003, for the management of biosolids reuse in an amount not to exceed \$9,424,778, with five 12-month extension options in an amount not to exceed \$2,185,180 per extension option, for a total contract amount not to exceed \$20,350,678.
(Notes: This solicitation was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program. For the services required

for this solicitation, there were insufficient subcontracting opportunities and an insufficient number of certified M/WBEs; therefore, no subcontracting goals were established.)

27. Authorize negotiation and execution of a 12-month revenue contract with ALLEN CLICK, or one of the other qualified offerors to Request For Proposals JXP0501, for the sale and removal of compost material for an estimated revenue amount of \$64,500, with five 12-month extension options with an estimated revenue of \$64,500 per extension option, for a total estimated revenue amount of \$387,000.

(Notes: This revenue generating contract is exempt from the City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program; therefore, no subcontracting goals were established.)

28. Authorize award and execution of a 36-month contract with 360TXC LLC (WBE), to provide glass repair and replacement, in an amount not to exceed \$1,006,683, with three 12-month extension options in an amount not to exceed \$335,561 per extension option, for a total contract amount not to exceed \$2,013,366.

(Notes: This solicitation was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program and subcontractor goals were applied to the solicitation. The subcontracting goals were exceeded and the resulting contract will include 2.11% MBE and 97.89% WBE participation.)

29. Authorize negotiation and execution of a 16-month contract through the TEXAS MULTIPLE AWARD SCHEDULE cooperative purchasing program with THE SHERWIN WILLIAMS COMPANY, to provide paint and paint supplies, in an amount not to exceed \$380,000, with two 12-month extension options in an amount not to exceed \$285,000 per extension option, for a total contract amount not to exceed \$950,000.

(Notes: This solicitation was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9D Minority Owned and Women Owned Business Enterprise Procurement Program. For the goods and services required for this solicitation, there were insufficient subcontracting opportunities; therefore, no subcontracting goals were established.)

30. Authorize negotiation and execution of an 84-month contract with TEXAS ELECTRIC COOPERATIVES, to provide electric meters for Austin Energy's residential meter replacement project, in an amount not to exceed \$29,100,000.

(Notes: This contract is exempt from the City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program; therefore, no subcontracting goals were established.)

31. Authorize award and execution of a 12-month contract with INTEGRATED ENVIRONMENT, to provide maintenance and repair of stormwater ponds, in an amount not to exceed \$102,620, with four 12-month extension options in an amount not to exceed \$102,620 per extension option, for a total contract amount not to exceed \$513,100.

EXHIBIT M

City Officials, Synagro and Allen Click representatives, and others observed to be present at the 9/20/2016 and 9/27/2016 Hornsby Bend Work Group meetings:

September 20, 2016

Water and Wastewater Work Group

Commissioners:

- Susan Turrieta
- Melissa Blanding
- Nhat Ho
- Chien Lee

Zero Waste Advisory Work Group

Commissioners:

- Kaiba White
- Heather-Nicole Hoffman

Other City Officials:

- Gerry Acuna
- Danielle Lord
- Joshua Pace
- Brandi Clarke-Burton
- Jane Burazer
- Judy Musgrove
- Lisa Boatman
- Ken Lockard
- Jessica King
- Ashley Fisher
- Daryl Slusher
- James Bennett

Synagro Representatives:

- Andrew Bosinger
- Nikelle Meade

Others in Attendance:

- Andrew Dobbs, TCE
- Bob Gregory, TDS
- Ryan Hobbs, TDS
- Adam Gregory, TDS
- Paul Gregory, TDS

September 27, 2016

Water and Wastewater Work Group

Commissioner:

- Susan Turrieta

Zero Waste Advisory Work Group

Commissioners:

- Amanda Masino
- Stacy Guidry
- Kaiba White

Other City Officials:

- Gerry Acuna
- Danielle Lord
- Paula McClure
- Jane Burazer
- Judy Musgrove
- Lisa Boatman
- Ken Lockard
- Jessica King
- Daryl Slusher
- James Bennett
- Brandi Clarke-Burton – arrived at 10:55

Synagro Representative:

- Andrew Bosinger

Allen Click Representative:

- Allen Click

Others in Attendance:

- Robin Schneider, TCE
- Bob Gregory, TDS
- Ryan Hobbs, TDS
- Adam Gregory, TDS
- Paul Gregory, TDS