UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS DISPOSAL SYSTEMS, INC., and TEXAS DISPOSAL SYSTEMS LANDFILL, INC. Plaintiffs	§	
V.	§	CASE NO. A11CV1070LY
CITY OF AUSTIN, TEXAS Defendant	§	

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION:

COMES NOW Defendant City of Austin and files this, its Notice of Removal, pursuant to 28 U.S.C. §1331, §1343, and §1441. Defendant respectfully shows the Court as follows:

1. Plaintiffs' Original Petition herein was filed November 11, 2011, in the 345th District Court of Travis County, Texas entitled ***Texas Disposal Systems, Inc., and Texas Disposal Systems Landfill, Inc.,*** Cause No. D-1-GN-11-003517.

Among other relief requested under state law, Plaintiffs also claim that Defendant's application of its Anti-Lobbying Ordinance is "an unconstitutional content-based restriction on speech; is not narrowly tailored to serve a compelling governmental interest; would unconstitutionally infringe on Plaintiffs' First Amendment rights to petition the government; and would deprive Plaintiffs of due process." [1]

2. Plaintiffs have made claims that are governed by federal law and arise out of the alleged violation of federal statute(s) by Defendants This case, therefore, poses federal questions subject to removal under 28 U.S.C. §1331, §1343, and §1441.

[1] Plaintiffs' Original Petition, ¶48

3. The City of Austin received service on November 18, 2011. This notice of removal is filed within thirty days of service on Defendant and is, therefore, timely under 28 U.S.C. §1446(b).

4. This action is being removed to the District Court of the United States for the district and division embracing the place where the state court action is pending.

5. There is no named Defendant other than the removing Defendant.

6. Defendant has attached to and files with this notice of removal copies of all process, pleadings, and other documents on file in the records of the state court for this case, along with a copy of the docket sheet.

7. Promptly after filing this notice of removal, Defendant will file a copy of the notice with the Clerk of the 345th Judicial District Court of Travis County, Texas, under Cause No. D-1-GN-11-003517.

8. As evidenced by the certificate below, Defendant has served all parties with copies of this notice.

WHEREFORE PREMISES CONSIDERED, Defendant respectfully request that this case be removed from the 345th Judicial District Court of Travis County, Texas to the United States District Court for the Western District of Texas, Austin Division; and that the United States District Court issue such notices and orders necessary to bring before it all proper parties, and such other orders and notices as may be authorized by law.

RESPECTFULLY SUBMITTED,
KAREN KENNARD, CITY ATTORNEY

CHRISTOPHER COPPOLA
Assistant City Attorney
State Bar No. 24036401

City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
(512)974-2161
(512)974-6490 [FAX]
christopher.coppola@austintexas.gov

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of *Defendant City of Austin's Notice of Removal* on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 14th day of December, 2011.

James Hemphill
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701

COUNSEL FOR PLAINTIFFS

CHRISTOPHER COPPOLA

Filed Date	Category	Description	Additional Info
11/16/2011	PET-PL	ORIGINAL PETITION/APPLICATION	PLAINTIFFS' ORIGINAL PETITION
11/18/2011	SRVPROCESS	EXE SERVICE OF CITATION	CITY OF AUSTIN, TEXAS
12/9/2011	ANS-RESP	ANSWER & ADDITIONAL PLEADING	DEFENDANT CITY OF AUSTIN'S ORIGINAL ANSWER & AFFIRMATIVE DEFENSES ...

CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-11-003517

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

vs.
CITY OF AUSTIN, TEXAS
, Defendant

DELIVERED
11/18/2011
By M-T-SCHULTZ
Austin Process, LLC

TO: CITY OF AUSTIN TEXAS
C/O MAYOR LEE LEFFINGWELL OR THE CITY MANAGER MARC OTT
CITY OF AUSTIN - LAW DEPARTMETN
301 W. SECOND ST. 4TH FLOOR
AUSTIN, TEXAS 78702

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFFS in the above styled and numbered cause, which was filed on NOVEMBER 16, 2011 in the 345TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, November 18, 2011.,

REQUESTED BY:
JAMES ALAN HEMPHILL
401 CONGRESS AVE SUITE 2200
AUSTIN, TX 78701
BUSINESS PHONE: (512) 480-5762 FAX: (512) 536-9907

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: LAURA LANCASTER

-- - -- - -- - -- - -- - -- RETURN -- - -- - -- - -- - -- - --

Came to hand on the _____ day of _____, _____ at _____ o'clock ____M., and executed at _____ within the County of _____ on the _____ day of _____, _____, at _____ o'clock ____M., by delivering to the within named _____, each in person, a true copy of this citation together with the NOTICE OF ENTRY OF NEW E-FILE MANDATE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: $ _____

_____
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By: _____

_____ day of _____, _____.

_____
Printed Name of Server

_____
Notary Public, THE STATE OF TEXAS

_____ County, Texas

D-1-GN-11-003517 SERVICE FEE NOT PAID P01 - 06851

☐ Original ☐ Service Copy

Filed
11 November 16 A8:20
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-11-003517

D-1-GN-11-003517

No. _____

TEXAS DISPOSAL SYSTEMS, INC., and TEXAS DISPOSAL SYSTEMS LANDFILL, INC., Plaintiffs,	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
CITY OF AUSTIN, TEXAS, Defendant.	§	345TH JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Come now Plaintiffs Texas Disposal Systems, Inc. ("TDS") and Texas Disposal Systems Landfill, Inc. ("TDSL") and seek a declaratory judgment against Defendant City of Austin, Texas (the "City") that Plaintiffs did not violate the City's Anti-Lobbying Ordinance, or in the alternative that if Plaintiffs did violate the Ordinance, that the Ordinance is unconstitutional as applied to Plaintiffs, and in support would respectfully show as follows:

DISCOVERY, PARTIES, AND VENUE.

1. Discovery in this matter shall be conducted under Level 2, TEX. R. CIV. P. 190.3.

2. Plaintiffs Texas Disposal Systems, Inc. and Texas Disposal Systems Landfill, Inc. (collectively referred to herein as "Texas Disposal") are Texas corporations with their principal places of business in Travis County, Texas. The primary business of TDS is the hauling of waste and recyclable materials, and the primary business of TDSL is the provision of facilities for the composting, recycling and landfilling of discarded materials and waste, though both companies provide additional related services. Both companies do business in the City of Austin, Travis

County, and Central Texas and rely upon recyclable, discarded and waste materials generated within the City of Austin.

3. Defendant City of Austin is a Texas home-rule municipal corporation. It may be served with service of process pursuant to Section 27.024(b) of the Texas Civil Practice and Remedies Code by serving the Mayor, Lee Leffingwell, or the City Manager, Marc Ott, at 301 W. 2nd St., Austin, Texas.

4. The subject matter of this lawsuit arises out of a city ordinance of Austin, Texas and is brought under the Texas Declaratory Judgment Act. This Court has subject matter jurisdiction over Plaintiffs' claims. The acts complained of herein were performed in Travis County, Texas. Jurisdiction and venue are proper in this Court.

SUMMARY OF FACTS

A. The 2009 recycling contract proposals.

5. TDSL currently has a 30-year long-term contract with the City for the disposal of waste collected by the City from residents of the City. This long-term contract, which was awarded to TDSL after a lengthy and intense competitive bidding process, includes provisions anticipating the potential amendment of the contract to incorporate additional services, specifically including recycling services and the provision and operation of a recycling facility for City-collected materials.

6. Before 2009, the City entered into a short-term single-stream recycling contract with a company known as Greenstar. This short-term contract was not the subject of competitive bidding; rather, City staff recommended the adoption of the contract, which was approved by the City Council. In 2009, City staff proposed a three- to five-year extension of the short-term

Greenstar contract (which, again, would not include any competitive bidding process; accordingly, the proposal did not include any "anti-lobbying" restrictions).

7. Also in 2009 – in the same time period as the City staff's proposal to extend the short-term Greenstar contract – the City staff issued a Request for Proposal seeking proposals regarding the potential provision of long-term single-stream recycling services to the City (the "Recycling RFP"). Responses to the Recycling RFP were due on February 9, 2010. The RFP included a notice that the City's Anti-Lobbying Ordinance would apply to the RFP process.

B. Mr. Gregory's communication.

8. On December 8, 2009 – after the Recycling RFP was issued by the City, but before the due date for responses – Bob Gregory, the chairman, chief executive officer, and primary owner of both TDS and TDSL, sent a communication via email to the members of the City of Austin's Solid Waste Advisory Committee (SWAC) and sent copies to Mr. Robert Goode, Assistant City Manager, and Ms. Tammie Williamson, Acting Director, Solid Waste Serves Department, City of Austin. A true and correct copy of that communication is attached hereto as Exhibit A. The communication dealt with an issue pending before SWAC: the potential three- to five-year extension of the existing short-term recycling contract between the City and Greenstar. Mr. Gregory's communication was prefaced with a note that it was intended only to address the proposals regarding the existing short-term Greenstar contract, and not the pending long-term Recycling RFP.

9. At the time Mr. Gregory sent the communication to SWAC, Texas Disposal had not responded to the Recycling RFP. Further, at that time, Mr. Gregory was not aware that any response, by any person or entity, to the Recycling RFP had been submitted. Texas Disposal

subsequently has learned that no RFP responses had been submitted as of the date of Mr. Gregory's communication. Texas Disposal never responded to the Recycling RFP. Greenstar and others did respond; Texas Disposal learned of the existence of these responses only on or after the response due date of February 9, 2010.

C. The City's Anti-Lobbying Ordinance.

10. The Recycling RFP stated that the City's "Anti-Lobbying and Procurement" Ordinance, Article 6, Chapter 2-7, of the Austin City Code (the "Ordinance"), would apply during the RFP process. A true and correct copy of the Ordinance is attached hereto as Exhibit B. (As mentioned above, the Ordinance did not apply to the proposed three- to five-year extension of the short-term contract with Greenstar, because that proposed extension did not include a competitive bidding process.) The Ordinance purports to ban certain types of speech ("representations," as defined in the Ordinance), by a certain class of persons ("respondents," as defined in the Ordinance), during a certain time period (the "no-contact period," from issuance of an RFP to an award of a contract), with certain narrowly defined exceptions.

11. The Ordinance defines "representation" in Section 2-7-101(5) as follows:

> 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; or
>
> (f) conveys a complaint about a particular solicitation.

12. The Ordinance defines "respondent" as "a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer." Ordinance § 2-7-101(4). The definition includes owners, officers, and employees of respondents, as well as other representatives.

13. The Ordinance's substantive speech restriction is contained in Section 2-7-103, which 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.

14. Thus, under the terms of the Ordinance, during the "no-contact period," persons or entities who are (or become) "respondents" are forbidden to make "representations" to anyone with the City other than the designated contact person. (All persons, including "respondents," remain able to speak at public City Council meetings.)

15. The Ordinance's provisions relevant to the instant situation can be summarized as follows:

- The Ordinance's speech restrictions only apply to a "respondent" – a person responding to a City solicitation, such as the Recycling RFP.
- A "respondent" cannot make certain communications – those defined as "representations" – with any City representative other than the authorized contact person.
- The prohibited communications are only those that relate to a response, and include those that advance the interests of the respondent and those that discredit the response of any other respondent.

16. The Ordinance provides that any person or entity who commits a violation 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." Ordinance § 2-7-109(A).

17. The Ordinance also directs the Financial Services Department and Public Works Department to adopt rules for the administration and enforcement of the Ordinance. The City's Purchasing Office adopted Rule No. R2008-PO-1 (the "Enforcement Rule") to implement enforcement of the Ordinance. A true and correct copy of the Enforcement Rule is attached hereto as Exhibit C. Among other things, the Enforcement Rule sets forth a procedure for the protest of a disqualification. The procedure allows the Purchasing Officer to designate an "independent hearing examiner" (chosen and paid for by the City) to conduct a hearing and make a written recommendation regarding the disqualification. The Purchasing Officer then must decide to accept or reject the hearing examiner's recommendation. The Enforcement Rule states that "The Purchasing Officer's decision on a hearing or a written hearing decision is final." Enforcement Rule § 4(k).

D. The City's purported disqualification of TDS and related entities, TDS's challenge, and the initial hearing and finding of no violation.

18. On January 21, 2010, Roy Rivers – the City's authorized contact person under the Ordinance for the Recycling RFP – informed Mr. Gregory by letter that his December 8, 2009 communication allegedly violated the Ordinance. A true and correct copy of this letter is attached hereto as Exhibit D. Texas Disposal subsequently has learned that the January 21, 2010 letter signed by Mr. Rivers was actually a collaborative effort drafted by members of the City's Purchasing Office, Law Department, and Ethics Officer. The letter stated that the communication "both advances the interests of the respondent TDS, and ... discredits the

response of another respondent (Greenstar)." The letter further stated that due to this alleged violation of the Ordinance, "TDS's response to the above captioned solicitation is disqualified." At the time of the purported disqualification, Texas Disposal had not submitted a response to the Recycling RFP, and Mr. Gregory was unaware as to whether Greenstar had submitted an RFP response.

19. Pursuant to the Ordinance, Texas Disposal timely filed a protest to the purported disqualification on January 27, 2010 and sought a hearing on the issue. The hearing was held on February 5, 2010 before a hearing examiner selected and paid by the City. Texas Disposal appeared at the hearing and submitted a letter brief arguing three main points:

i. The Ordinance did not apply to Texas Disposal because at the time of the communication it was not a "respondent," and had decided to not respond to the Recycling RFP at all;

ii. Even if Texas Disposal were a "respondent," Mr. Gregory's communication was not a "representation" as defined in the Ordinance, and thus the communication did not violate the Ordinance;

iii. If the Ordinance were interpreted to prohibit Mr. Gregory's communication, such interpretation would violate the First Amendment's guarantees of free speech and the right to petition the government, and render the Ordinance vague to the point of violating the constitutional guarantee of due process

20. At the February 5, 2010 hearing, once Texas Disposal informed the City and the Hearing Examiner that it did not intend to respond to the Recycling RFP, both the City and the Officer agreed that the Ordinance was not applicable and that therefore Texas Disposal was not in violation. During the hearing, City Integrity Officer John Steiner said clearly and without qualification: "You can't violate the Ordinance unless you are a respondent." The following dialogue then took place between Mr. Steiner and the Hearing Examiner, Monte Akers:

> **Mr. Akers:** Unless one of you ... one of the parties request that the hearing be continued, it would be my intention to rule that it is moot, that the disqualification is

moot, and ***there has been no violation of the ordinance*** for purposes of debarment. And, the understanding on all parties' part is that there is not going to be a TDS response to the RFP. But, I leave open for either one of you to request that that matter be continued until February 10th if that is the desire, to put belt and suspenders on it.

Mr. Steiner: There is no need to do that on the City's part.

After further discussion, Mr. Akers concluded:

Mr. Akers: In that case then, I consider this matter closed, the disqualification moot. I do not intend to issue an opinion other than what is on the record, on the digital record.

21. (Greenstar was also disqualified by City staff for a response to Mr. Gregory's communication, potentially creating an opportunity for City staff to propose an arrangement whereby the City would become directly involved in processing of recyclable materials. However, the Hearing Officer recommended that Greenstar's protest of its disqualification be upheld, and the disqualification was reversed.)

E. The City Manager and City Purchasing Officer erroneously maintain that Texas Disposal was, in fact, disqualified for violating the Ordinance.

22. Texas Disposal did not submit a response to the Recycling RFP. Rather, Texas Disposal waited until the deadline for RFP responses had passed, and submitted a suggested alternative to the Recycling RFP: an amendment to Texas Disposal's existing long-term contract with the City, to add a variety of recycling services. The existing Texas Disposal contract anticipated the possibility of such an amendment. Texas Disposal clearly stated that its proposal to amend its long-term disposal contract was not in response to the Recycling RFP. The Texas Disposal proposal was intentionally submitted after the Recycling RFP response deadline, and was submitted to the City Council, the Solid Waste Advisory Committee, and the City Manager, whereas Recycling RFP responses were required to be submitted to the City Purchasing Officer. Texas Disposal's proposal did not include all the items required to be included with an RFP

response, such as a reference sheet, non-discrimination certification, anti-lobbying affidavit, non-resident bidder provision, or "no offer" reply form. Texas Disposal did not include a bid bond guarantee, as would be required had its proposal been an RFP response. The Texas Disposal proposal to amend its existing long-term contract was specifically allowed and contemplated under that contract, and was not a response to the City staff's RFP.

23. On February 23, 2010, then-City Attorney David Allan Smith wrote a memorandum to City Manager Marc Ott regarding Texas Disposal's contract amendment proposal (the "Smith Memorandum"). The Smith Memorandum misstates the facts and the law in various ways. One of its most egregious errors is its assertion of the alleged "fact that TDS was previously disqualified from participating in the SSMRF RFP due to a violation of the City's Anti-Lobbying Ordinance." This is most decidedly not a "fact." As shown above, it is absolutely wrong; the only hearing that had occurred by that time was concluded with a finding of no violation.

24. The Smith Memorandum makes a purported "legal conclusion" that "the portion of TDS's proposed amendment that are outlined in the General Scope of Services for the current SSMRF [Recycling] RFP are in fact a response to that RFP," despite the facts that Texas Disposal's proposal was made after the deadline for the RFP responses and stated specifically that it was not an RFP response. The Smith Memorandum does not set forth any legal basis for that conclusion.

25. The Smith Memorandum also asserts that because portions of Texas Disposal's proposed amendment allegedly constituted a response to the Recycling RFP, and because the proposal was made after the deadline for the RFP, then "[t]his alone [the alleged untimely

submission] is sufficient cause to reject those portions, without regard to the prior disqualification of TDS with respect to the SSMRF [Recycling] RFP, due to its violation of the Anti-Lobbying Ordinance." As shown above, the result of the February 5 hearing was a conclusion that there was no violation, so the Smith Memorandum is again incorrect. Further, the Smith Memorandum repeats its erroneous conclusion that a portion of the proposed amendment was an RFP response, when it simply was not; it was a suggested alternative to the entire RFP process.

26. The errors in the Smith Memorandum were compounded by a memorandum dated the following day, February 24, 2010, from City Purchasing Manager Robert Goode to Austin Mayor Lee Leffingwell and all City Council members (the "Goode Memorandum"). The Goode Memorandum repeated the erroneous assertions that Texas Disposal was disqualified for violating the Anti-Lobbying Ordinance, and that Texas Disposal's proposal for a contract amendment was in fact a response to the Recycling RFP.

27. In response to the Smith and Goode memoranda, Texas Disposal submitted a request for correction and clarification to City Attorney Smith on February 26, 2010. Texas Disposal's letter, among other things, asked for a retraction of the allegation that Texas Disposal had been found in violation of the Anti-Lobbying Ordinance; or, if the City has reversed its previous position that Texas Disposal did not violate the Anti-Lobbying Ordinance, the City either reconvene the February 5 hearing to address the remaining merits of Texas Disposal arguments, or state that no further City administrative proceedings were available. Texas Disposal also requested clarification on the Smith Memorandum's assertion that Texas Disposal

contract amendment proposal was actually a response to the Recycling RFP, including explanation of the basis for this purported "legal conclusion."

F. The City resumes the hearing, but with a different Hearings Officer.

28. In response to Texas Disposal's February 26, 2010 letter, the City ultimately held another hearing to address the notice of disqualification, which the City essentially argued was revived when Texas Disposal suggested the amendment to its existing contract as an alternative to the Recycling RFP.

29. The second hearing was held on May 26, 2010. However, the hearing examiner that presided over the first hearing on February 5, 2010 and found no violation (Monte Akers) was not the hearing examiner for the second hearing; instead, the City selected a different hearing examiner (Stephen Webb).

30. At the hearing, the City continued to argue that Texas Disposal was a "respondent" to the Recycling RFP by virtue of its suggestion that its existing contract be amended as an alternative to the RFP. The City argued that Texas Disposal was "attempting to shoulder their way onto the same playing field without playing by the same set of rules," and that Texas Disposal "wants to play the game of all the other vendors under a different set of rules from all the other vendors." Those allegations were absolutely incorrect. Texas Disposal had consciously opted out of the "playing field" of the Recycling RFP process. Had Texas Disposal responded to the RFP, it would have been entitled to certain advantages under Texas law, such as being guaranteed that its RFP response would be considered on equal footing and on the same terms as all other RFP responses. But Texas Disposal intentionally gave up the right to have its proposal receive equal consideration – or indeed *any* consideration – as those vendors that

responded to the RFP. While the City was obligated to consider all RFP responses, it had no obligation at all to consider Texas Disposal's suggested alternative, though it was free to consider the proposal in any event, including in the case that the City chose to reject all the RFP responses. Thus, Texas Disposal simply was not a "respondent" to the Recycling RFP.

G. The second Hearing Examiner erroneously finds a violation, the Purchasing Officer adopts the finding, and the City declines to reverse the violation.

31. On June 2, 2010, the second Hearing Examiner issued a written decision, recommending that the City's Purchasing Officer uphold the disqualification of Texas Disposal. A true and correct copy of the Decision is attached hereto as Exhibit E. (Under the Ordinance and the rules governing challenges to disqualifications under the Ordinance, the Purchasing Officer has the ultimate authority to uphold or overturn a disqualification, and the Hearing Examiner's decision functions only as a recommendation to the Purchasing Officer.) The Hearing Examiner's decision included several errors; for present purposes, the following are the most significant:

- The conclusion that Texas Disposal's proposal to amend its existing contract was "simply a response [to the Recycling RFP] with fatal, technical violations of the rules and format of a complaint [*sic*; presumably "compliant"] SSMRF RFP response." [Decision at 13] As discussed above, Texas Disposal's proposal was specifically *not* in response to the RFP.

- The observation that Texas Disposal "appeared to accede to the City staff determination" of disqualification "judging from the position it took at the February 5, 2010 bid protest hearing" [Decision at 12-13]; this is demonstrably wrong because Texas Disposal presented extensive briefing in connection with that hearing as to why the disqualification was substantively erroneous.

- The conclusion that the City "is not obligated to accept a proposal [such as Texas Disposal's] for consideration for services for which the City has determined that the RFP process is most appropriate" [Decision at 13], while correct, appears to have been based on a misunderstanding that Texas Disposal argued the City *was* obligated to consider its proposal on the same "plane of equality" with the RFP responses; as set forth above, Texas Disposal has never made such an argument.

- The conclusion that Texas Disposal's "December 8, 2009 email communication appears to violate the intended behavioral restrictions imposed upon a responder" under the Ordinance [Decision at 13]; as described herein, the communication was neither a "representation" nor made by a "respondent."

- The Decision did not discuss at any point how Mr. Gregory's email communication was allegedly "related to a response," even though the terms of the Ordinance apply only to such communications. In fact, the Decision appears to have ignored this required element *entirely*.

- The Decision apparently adopts an extraordinarily broad interpretation of the Ordinance that extends far beyond the actual text. For example, the Decision appears to interpret the Ordinance as prohibiting any "general criticism" of any person or entity who *may* respond to an RFP in the future – even if the "general criticism" is of an issue other than an RFP response.

32. On June 4, 2010, the City's Purchasing Officer accepted the Hearing Examiner's recommendation, without comment, and sustained Texas Disposal's disqualification. A true and correct copy of the Purchasing Officer's letter is attached hereto as Exhibit F. Under the Enforcement Rule, this decision was "final" and no further administrative remedies were available. In an effort to resolve this matter short of litigation, Texas Disposal appealed in 2010 and 2011 to the City through the City Attorney's office, which declined to reverse the disqualification. Texas Disposal has exhausted all administrative remedies made available by the City, and have satisfied all conditions precedent to filing suit.

H. The City's Purchasing Officer gives testimony regarding the City's overly broad interpretation of the Anti-Lobbying Ordinance; Texas Disposal chooses not to respond to other RFPs out of fear of disqualification and debarment.

33. After the City's Purchasing Officer, Byron Johnson, made the final determination of disqualification, Mr. Johnson was deposed by a competitor of Texas Disposal's in an unrelated lawsuit, in an apparent attempt to uncover negative information for use in a trial involving that company and Texas Disposal in the fall of 2010. In that deposition, Mr. Johnson confirmed that the City's Purchasing Office interprets the Ordinance in a manner inconsistent with, and broader

than, the Ordinance's actual language. For example, the Ordinance prohibits certain "representations," and defines "representations" in part as "a communication related to a response." In turn, the Ordinance defines "response" as a response to a City solicitation, such as an RFP. However, Mr. Johnson testified under oath that in his interpretation and application of the Ordinance, "response" simply means *any* communication – even if unrelated to any response to a City solicitation. Such an interpretation would be a severe restriction on speech during the pendency of an RFP process, which often continues for many months and even years. Mr. Johnson further testified that he concluded Mr. Gregory's communication advanced the interests of Texas Disposal, even though the communication was limited to criticism of the proposed extension of the existing Greenstar short-term contract and did not include any information or representations about Texas Disposal's capabilities, with regard to either the existing short-term or the proposed long-term recycling contract. Mr. Johnson also testified that Mr. Gregory's communication discredited Greenstar's response to the long-term recycling RFP, even though no Greenstar RFP response even *existed* at the time of the communication and the communication neither mentions nor speculates on what such a response might include.

34. Mr. Johnson's testimony also reinforced the vagueness of the City's interpretation of the Ordinance. He testified that his interpretation of the Ordinance would prohibit *some* criticism of an existing City vendor by a competitor if there was a pending RFP addressing the same general issue as an existing contract, but when asked, "Is it the city's position that criticism of a potential RFP respondent is simply off limits during the RFP process for other respondents?" he replied, "I can't give a general statement like that in all cases that would apply."

35. In light of the wrongful disqualification of Texas Disposal, the City's vague and broad interpretation of the Ordinance, and Mr. Johnson's sworn testimony confirming the Purchasing Office's broad and vague interpretation, Texas Disposal has chosen not to respond to City RFPs due to concern that the City may again improperly disqualify Texas Disposal and attempt to debar Texas Disposal from doing business with the City for a three-year period.

36. For example, after Texas Disposal's wrongful disqualification, the City requested proposals for two contracts: one involving refuse collection and hauling services for Downtown Austin, and another for the collection and composting of food waste. Texas Disposal was a logical candidate to respond to these RFPs, since it delivers these services each day within the Austin marketplace. However, Texas Disposal feared that the City would persist in its unreasonably broad and unduly vague interpretation and application of the Ordinance, resulting in disqualification and debarment of Texas Disposal. For instance, Texas Disposal has an existing long-term residential waste disposal and recycling contract with the City, and was in the process of negotiating a long-term recycling contract. Given the unpredictable nature of the City's interpretation of the Ordinance, Texas Disposal had the reasonable concern that discussions with the City about its existing or proposed contracts would be interpreted as a communication that "advances the interests" of Texas Disposal with regard to the Downtown Austin and food waste collection/composting RFPs. Such an interpretation by staff would lead to a second disqualification of Texas Disposal and – due to the existing (wrongful) disqualification at issue in this lawsuit – debarment for three years from doing business with the City. This could be interpreted by City staff to terminate Texas Disposal's current receipt of

100% of the City collected single stream recyclables for segregation and sale, as well as 100% of the City collected solid waste for landfill disposal.

37. Texas Disposal cannot afford a three-year debarment. It thus chose not to respond to the Downtown Austin and food waste/composting RFPs. If the City interpreted and applied the Ordinance in a manner consistent with its language, then Texas Disposal would not have been disqualified from the Recycling RFP in 2010, would have confidence that discussions of existing or proposed contracts other than the two RFPs mentioned above would not have led to a disqualification, and Texas Disposal would have responded to the Austin RFPs. (Further, the City has recently adopted a policy of requiring a certification that no debarment has occurred before even the amendment or modification of existing short-term and long-term contracts.)

38. In addition to existing and pending contracts, numerous other solid waste, composting and recycling issues are regularly discussed before the City Council and the City's Solid Waste Advisory Commission. Texas Disposal often wishes to be heard on these issues, which do not relate to RFP responses, but the City staff's overly broad interpretation of the Ordinance chills the speech of Texas Disposal, and perhaps others, on important public issues. Indeed, when RFPs having overlapping no-contact periods are issued on solid waste issues, the effect could be to prohibit or chill nearly all speech to City officials or employees on solid waste.

39. The City's interpretation and application of the Ordinance are contrary to one of the purposes that led the City Council to adopt the Ordinance. The Ordinance itself states that "The Council finds that it is in the City's interest ... 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 ...." Ordinance § 2-7-102(A)(1). Far from promoting

competition, the City staff's interpretation of the Ordinance has in fact hindered competition by preventing Texas Disposal, a well-qualified potential contractor, from responding to some City RFPs due to the severe and unwarranted speech restrictions imposed by the City staff's interpretation of the Ordinance.

CAUSES OF ACTION

Count One
Petition for Declaratory Judgment: No Violation of Anti-Lobbying Ordinance.

40. Plaintiffs incorporate by reference all allegations made herein.

41. Texas Disposal seeks a declaration from this Court, pursuant to Section 37.004 of the Texas Civil Practice and Remedies Code, as to its rights, status, or other legal relations under the Anti-Lobbying Ordinance and its disqualification provisions. Specifically, Texas Disposal seeks a declaration from this Court that Mr. Gregory's December 8, 2009 communication did not violate the Anti-Lobbying Ordinance, for the reasons stated herein.

42. In bringing this action, Texas Disposal has retained attorneys, and seeks to recover costs of litigation and reasonable attorneys' fees incurred.

Count Two
Petition for Declaratory Judgment: TDS's Proposal was Not a Response to the Recycling RFP.

43. Plaintiffs incorporate by reference all allegations made herein.

44. Texas Disposal seeks a declaration from this Court, pursuant to Section 37.004 of the Texas Civil Practice and Remedies Code, as to its rights, status, or other legal relations. Specifically, Texas Disposal seeks a declaration from this Court that its proposal to amend the existing contract with the City was not a response to the Recycling RFP.

45. In bringing this action, Texas Disposal has retained attorneys, and seeks to recover costs of litigation and reasonable attorneys' fees incurred.

Count Three
Petition for Declaratory Judgment: The Anti-Lobbying Ordinance, if Applied to the Communication at Issue, is Unconstitutional.

46. Plaintiffs incorporate by reference all allegations made herein.

47. Texas Disposal seeks a declaration from this Court, pursuant to Section 37.004 of the Texas Civil Practice and Remedies Code, as to its rights, status, or other legal relations under the Anti-Lobbying Ordinance. Specifically, Texas Disposal seeks a declaration from this Court that if the Ordinance is applied to consider Mr. Gregory's December 8, 2009 communication as a disqualifying event, the Ordinance is unconstitutional as applied.

48. Such an application of the Ordinance is an unconstitutional content-based restriction on speech; is not narrowly tailored to serve a compelling governmental interest; would unconstitutionally infringe Texas Disposal's First Amendment rights to petition the government; and would deprive Texas Disposal of due process because of the Ordinance's failure to prohibit conduct such as Mr. Gregory's in sufficiently clear terms.

49. In bringing this action, Texas Disposal has retained attorneys, and seeks to recover costs of litigation and reasonable attorneys' fees incurred.

PRAYER

Wherefore, premises considered, Plaintiffs Texas Disposal Systems, Inc. and Texas Disposal Systems Landfill, Inc. seek the relief requested herein, along with all such other relief to which they may show themselves justly entitled.

Respectfully submitted,

/s/ James A. Hemphill
James A. Hemphill
State Bar No. 00787674
(512) 480-5762 direct phone
(512) 536-9907 direct fax
jhemphill@gdhm.com
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Ave., Suite 2200
Austin, Texas 78701
(512) 480-5600 phone

Bob Gregory

From: Bob Gregory
Sent: Tuesday, December 08, 2009 9:04 PM
To: trirecycle@aol.com; rick@rickcofer.com; mfason@gmail.com; fkazi@jonescarter.com; brent@ecology-action.org; jdporter@tpoint.net; bob_schafer@urscorp.com
Cc: robert.goode@ci.austin.tx.us; tammie.williamson@ci.austin.tx.us; darmbrust@abaustin.com; Adam Gregory; Ryan Hobbs
Subject: December 9, 2009 Agenda Item # 4.a.; Austin Solid Waste Advisory Commission Meeting
Attachments: Reasons why the City of Austin should not amend its contract with Greenstar.pdf; Greenstar Pricing VS Market Pricing charts (2).pdf; Greenstar Pricing VS Market Pricing tables (2).pdf

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 SWAC 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 documents 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
512-421-1300 or
512-619-9127

EXHIBIT A

December 8, 2009
Re: December 9, 2009 Agenda Item # 4.a.; Austin Solid Waste Advisory Commission Meeting

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:

- Any of the three proposed Greenstar contract amendments would obligate the City to provide Greenstar 100% of its single stream recyclable materials. Currently, the City of Austin is only obligated to provide Greenstar 2,694 tons (approximately 64%) of its average monthly volume (4,215 tons per month) under the current terms of the contract. If the City were to approve one of these contract amendments, the City would relinquish its right to divert approximately 1,500 tons per month to another processor through the remaining term of the Greenstar contract (September 2010) and the two City six-month contract extension options. The City should at least wait until it receives its responses to its Recycling Services Request for Proposal before closing the door to any other lower cost options. Potential service providers are prohibited from making such a proposal to the City at this time, due to the RFP's Anti-Lobbying provisions.

- Under the terms of the current and proposed amended contract, Greenstar could unilaterally reduce the purchase price of the City's recyclable commodities by the same amount of money it is now offering to reduce processing charges ($3.50, $5.00 or $20.00 per ton), effectively negating any advantage of reduced processing fees. Greenstar does not follow the terms of its contracts with Austin, San Antonio and Dallas, as it relates to establishing the minimum monthly purchase price for recyclable commodities. Moreover, Greenstar can declare that a commodity collected in San Antonio has a different market value even though they may end up in the same recycling facility at the same time. Please see the three separate contracts and the attached information. The Austin contract allows Greenstar considerable freedom to set the market price it pays the City of Austin for its materials. Greenstar is not required by Austin's contract to use high or low side published market prices or values from a particular U.S. region when determining paper prices, or use a published commodity index when setting the prices it pays for recycled plastic or metal containers. Greenstar has the ability under the contract to say what "the market" is with no checks or

balances. It appears this lack of detail and definition has resulted in Austin being underpaid by at least $147,563 for its materials during the first eleven months of the contract. Please see attached explanation and supporting information. Furthermore, this flaw in the contract allows Greenstar the ability to recoup the proposed reduction in processing costs to the City by simply reducing its market prices paid for the City's recyclables by the same amount. Rather than approving one of the Greenstar proposed contract amendments, the City could audit its existing contract to determine proper payment and seek to clarify the terms of the contract to reduce its processing costs, increase the revenue it receives, seek opportunities to divert shipments to another processor under the terms of the current Greenstar contract and specify the definition of market prices.

- Greenstar is not contractually obligated to "recycle" the materials it receives from the City of Austin. Without such a contractual obligation, Greenstar could decide to landfill materials that it determines cannot be processed economically. A City guarantee that all single stream recyclables must be shipped to Greenstar during the term of an amended contract could remove the City's option to divert recyclables to another processor if Greenstar did not recycle significant quantities of Austin's single stream materials.

- During the first year of the contract (October 2008 through September 2009), Greenstar has reported that their transfer trucks have driven 535,357 miles transporting the City's recyclable materials from Austin to Garland and San Antonio. Greenstar charged the City $892,584 to transport the City's recyclables during this eleven month period. The cost benefit and emissions reductions realized from Solid Waste Services reducing recycling pick-up from once per week to once every other week is significantly (if not totally) offset by transporting recyclables from Austin to Greenstar's facilities in Garland and San Antonio. Greenstar baled and stored Austin's recyclables for months during the period that Greenstar finished assembling its MRF in San Antonio. The City could allow this to be done, if necessary, by the first company to build a single stream MRF in Austin, or by the successful respondent to the City's RFP. The City's cost savings in not having to pay to haul recyclables to San Antonio should be approximately $18.00 per ton. The City may see a greater savings than currently offered by Greenstar simply by waiting to receive the RFP responses due February 9, 2010. Also, the City Council may be able to enter into a contract to benefit from these savings before summer of 2010.

Explanation of Contractual Agreements for Commodity Purchase Pricing

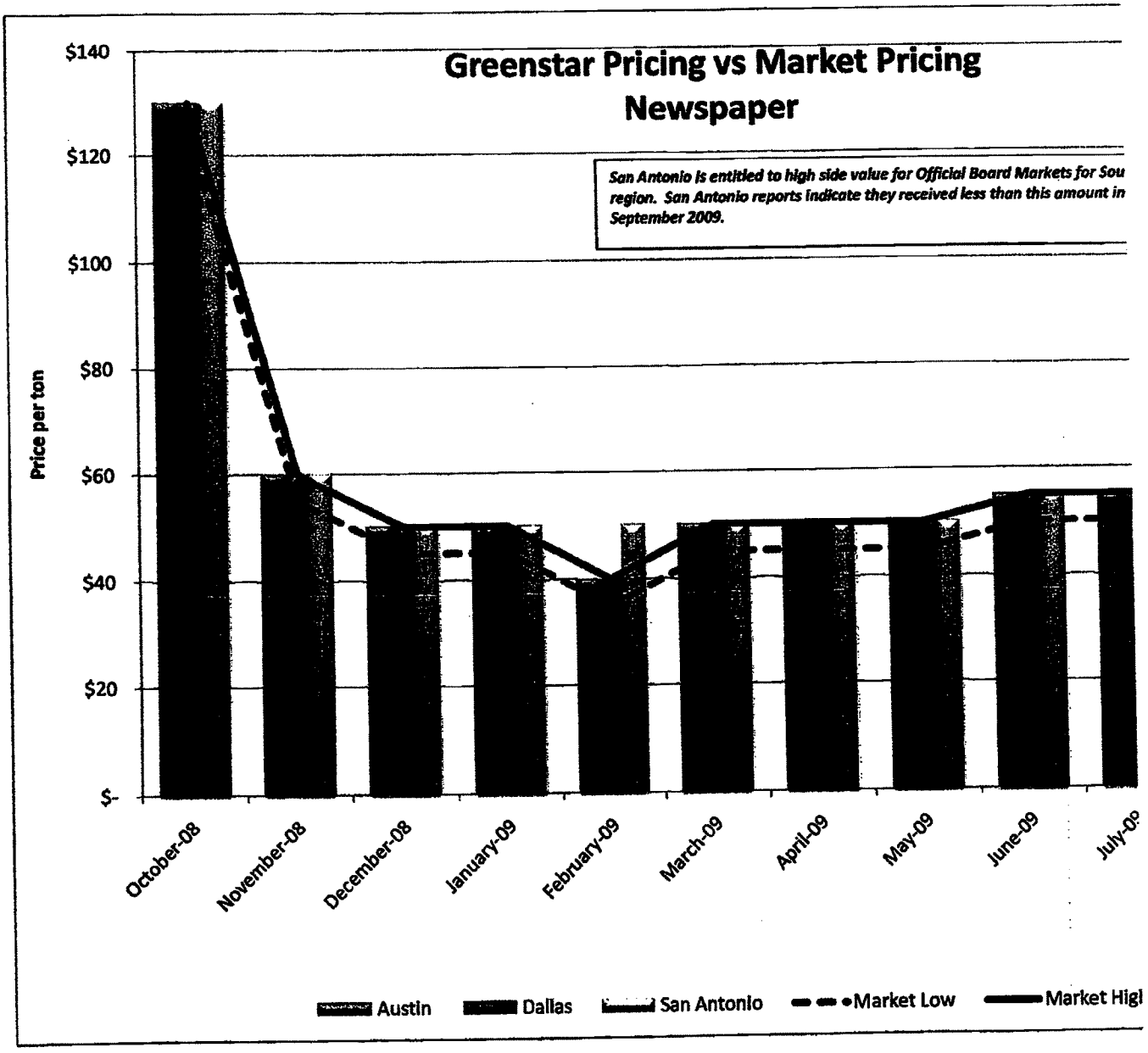
The contracts between Greenstar and Austin, Dallas and San Antonio, each specify how prices for commodities are to be determined. The following outlines the specifics of each pricing agreement:

- The City of Austin is entitled to receive 90% of the Official Board Market price, or OBM, for fiber grades. The contract does not specify a particular region of the nation's pricing, or whether the published high or low end of the price range should be used. Greenstar could choose the lowest price in the most price depressed region of the nation to report such commodity pricing. Austin is entitled to 75% of sale price for all steel, aluminum or plastic recyclable containers. Sale price is reported by Greenstar. It is doubtful that Greenstar would sell these commodities below published market prices. The City of Austin would have to review Greenstar's sales invoices to determine the sale price of recyclable commodities.

- The City of Dallas contract specifies that the high side OBM price in the southwest region should be used for all fiber grades. They are entitled to 100% of the market value for Newsprint and 75% of the market value for OCC (cardboard) and mixed paper. Dallas is entitled to 75% of sale price for aluminum and mixed plastic, and 50% of sale price for tin and #1,2 plastics. Sale price is reported by Greenstar.

- For all fiber grades the City of San Antonio is entitled to 100% of high side OBM value for the southwest region, or actual selling price, whichever is higher. Container prices are determined either by the American Metals Market, or the secondary materials index. In all cases San Antonio is entitled to 100% of index pricing, or actual sale price, whichever is higher.

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.


Greenstar Pricing vs Market Pricing
Newspaper
San Antonio is entitled to high side value for Official Board Markets for Sou region. San Antonio reports indicate they received less than this amount in September 2009.
Price per ton
$140
$120
$100
$80
$60
$40
$20
$-
October-08
November-08
December-08
January-09
February-09
March-09
April-09
May-09
June-09
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Austin
Dallas
San Antonio
Market Low
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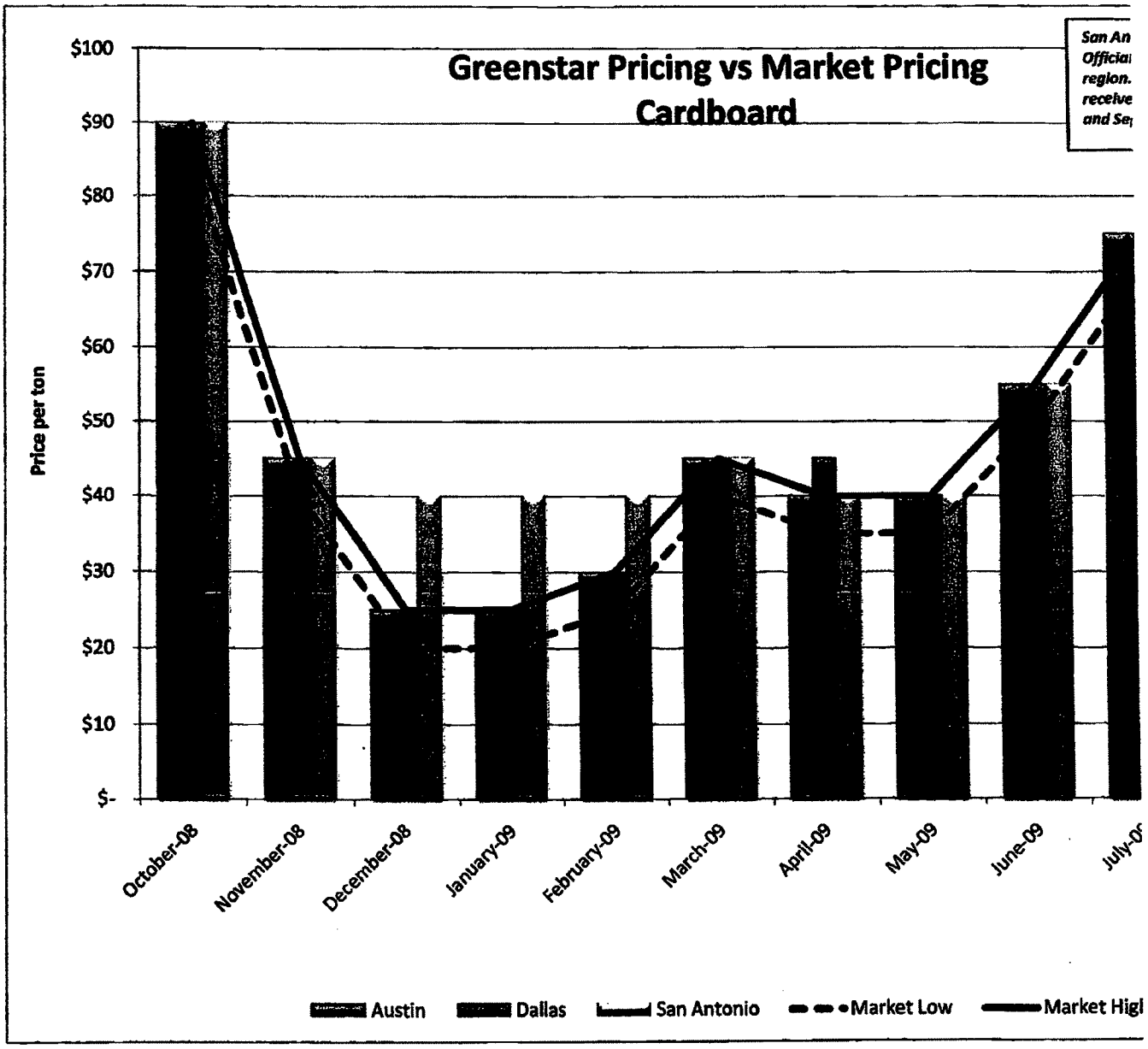
Greenstar Pricing vs Market Pricing
Cardboard
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Official
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and Se
$100
$90
$80
$70
$60
$50
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$30
$20
$10
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Price per ton
October-08
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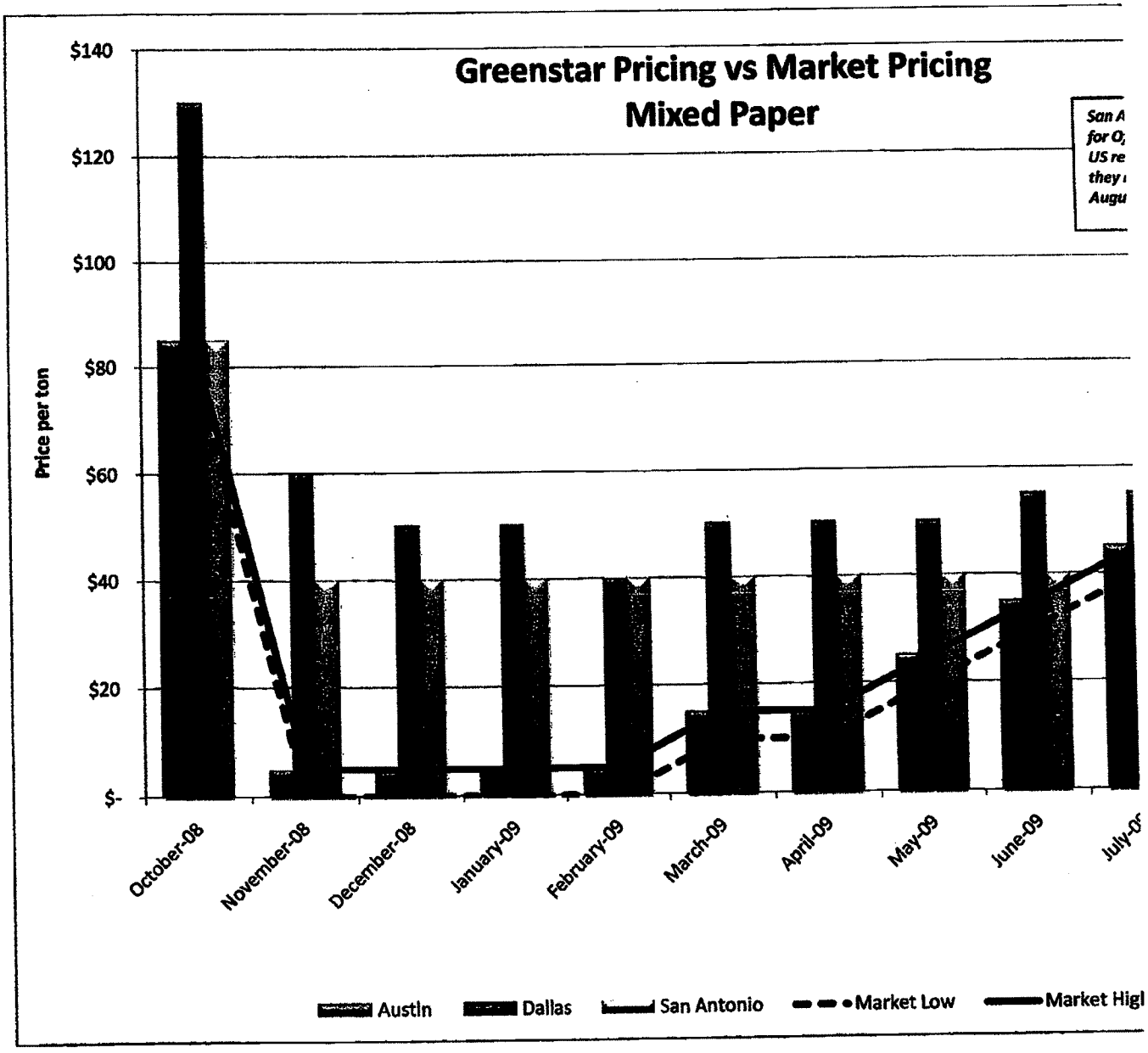
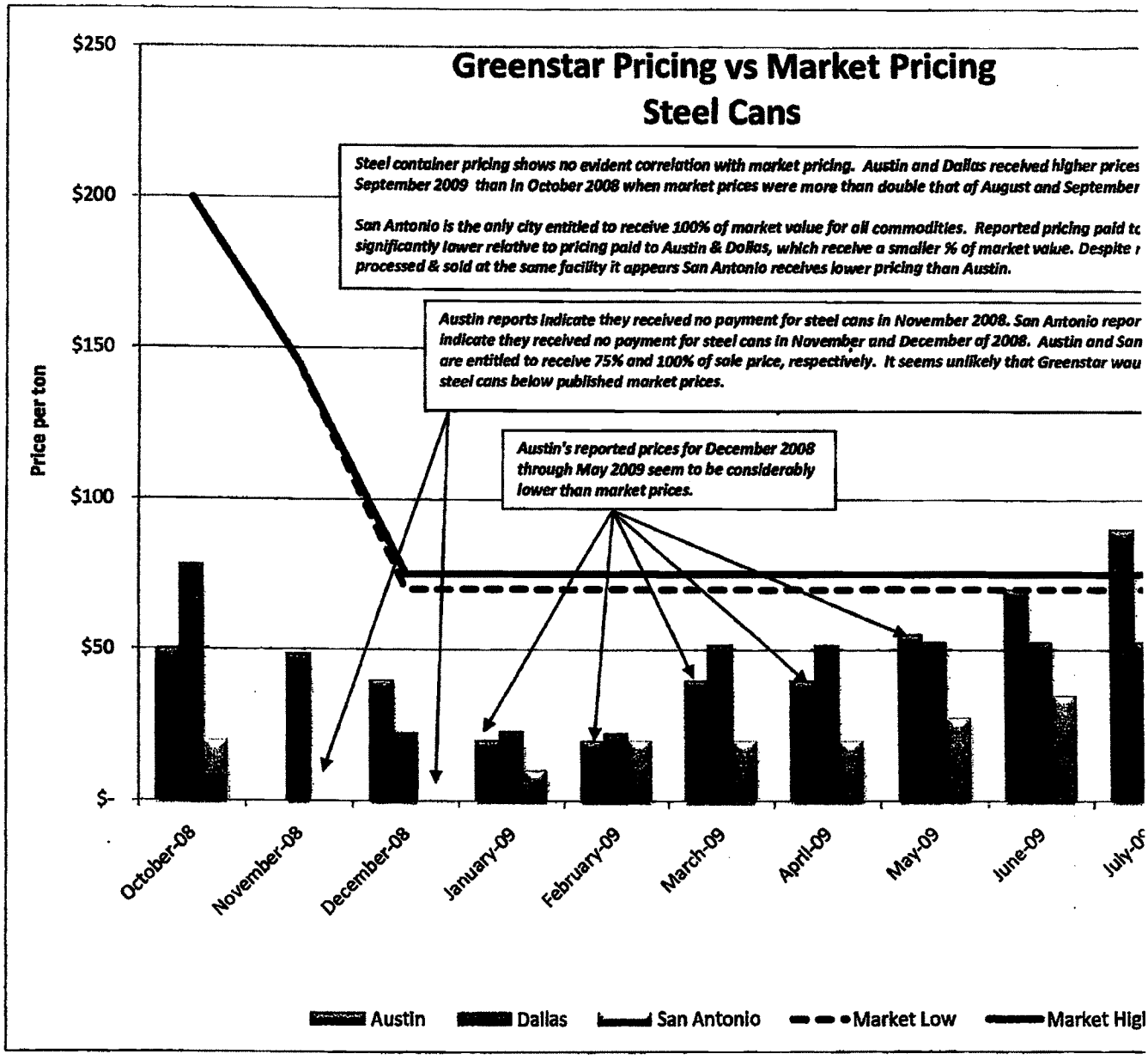
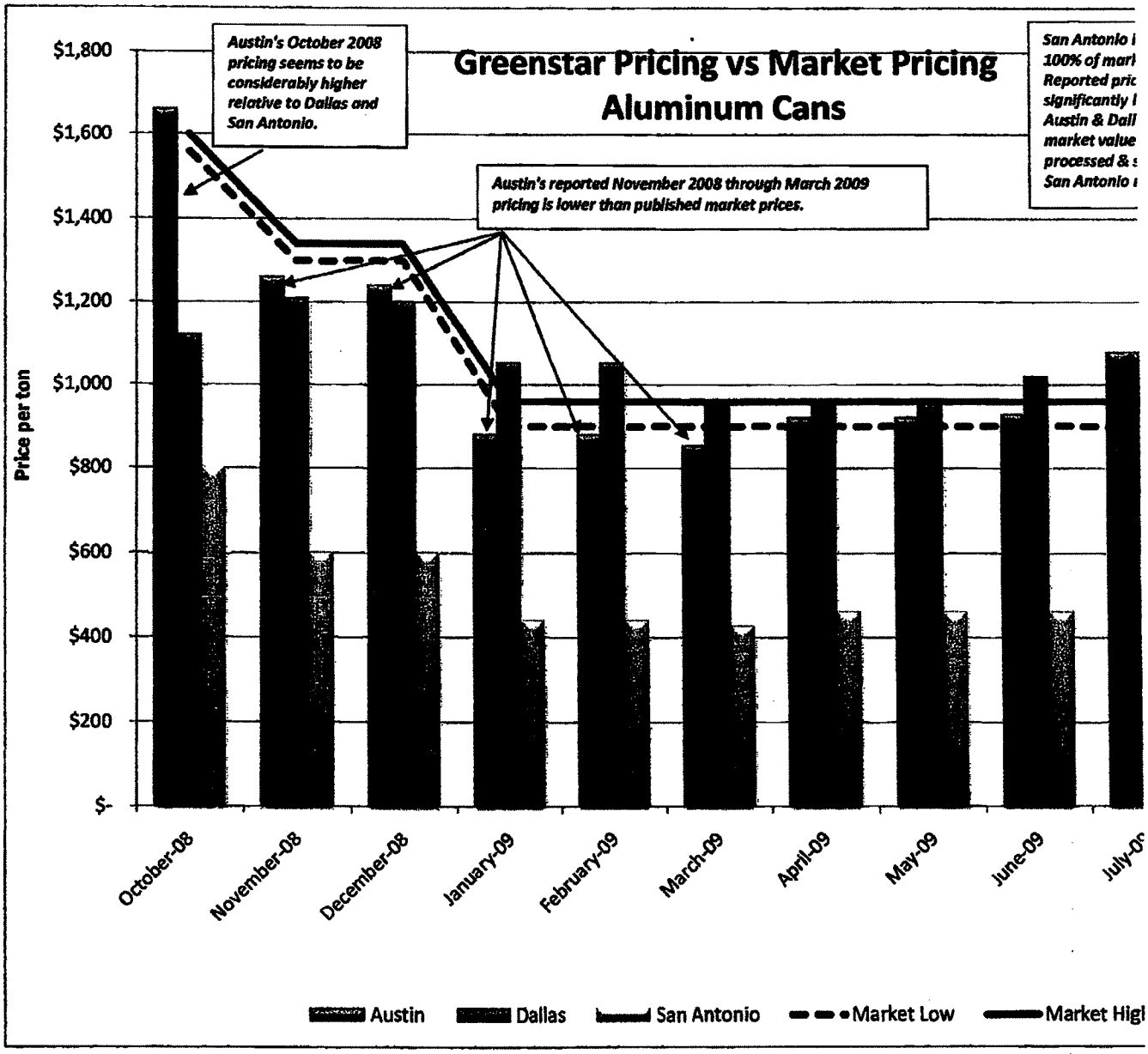

Greenstar Pricing vs Market Pricing
Mixed Paper
$140
$120
$100
$80
$60
$40
$20
$-
Price per ton
October-08
November-08
December-08
January-09
February-09
March-09
April-09
May-09
June-09
Austin
Dallas
San Antonio
Market Low


Greenstar Pricing vs Market Pricing
Steel Cans
Steel container pricing shows no evident correlation with market pricing. Austin and Dallas received higher prices September 2009 than in October 2008 when market prices were more than double that of August and September
San Antonio is the only city entitled to receive 100% of market value for all commodities. Reported pricing paid to significantly lower relative to pricing paid to Austin & Dallas, which receive a smaller % of market value. Despite processed & sold at the same facility it appears San Antonio receives lower pricing than Austin.
Austin reports indicate they received no payment for steel cans in November 2008. San Antonio repor indicate they received no payment for steel cans in November and December of 2008. Austin and San are entitled to receive 75% and 100% of sale price, respectively. It seems unlikely that Greenstar wou steel cans below published market prices.
Austin's reported prices for December 2008 through May 2009 seem to be considerably lower than market prices.
Price per ton
$250
$200
$150
$100
$50
$-
October-08
November-08
December-08
January-09
February-09
March-09
April-09
May-09
June-09
Austin
Dallas
San Antonio
Market Low
Market High


Greenstar Pricing vs Market Pricing
Aluminum Cans
Austin's October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.
Austin's reported November 2008 through March 2009 pricing is lower than published market prices.
San Antonio i
100% of marl
Reported pric
significantly l
Austin & Dall
market value
processed & s
San Antonio
Price per ton
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$1,400
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$1,000
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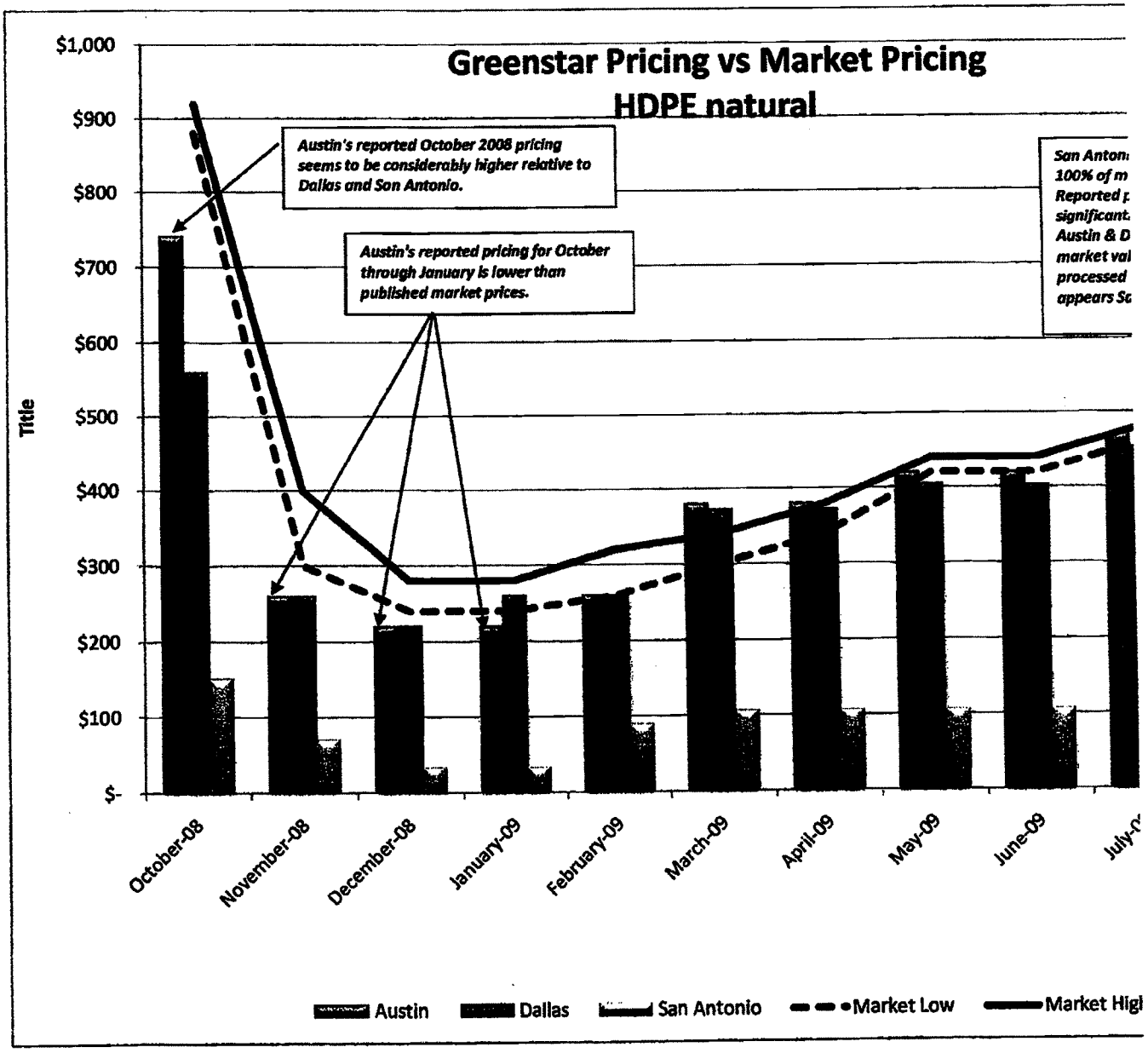
Austin
Dallas
San Antonio
Market Low
Market Hig


Greenstar Pricing vs Market Pricing
HDPE natural
Austin's reported October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.
Austin's reported pricing for October through January is lower than published market prices.
San Anton
100% of m
Reported p
significant
Austin & D
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$700
$600
$500
$400
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$200
$100
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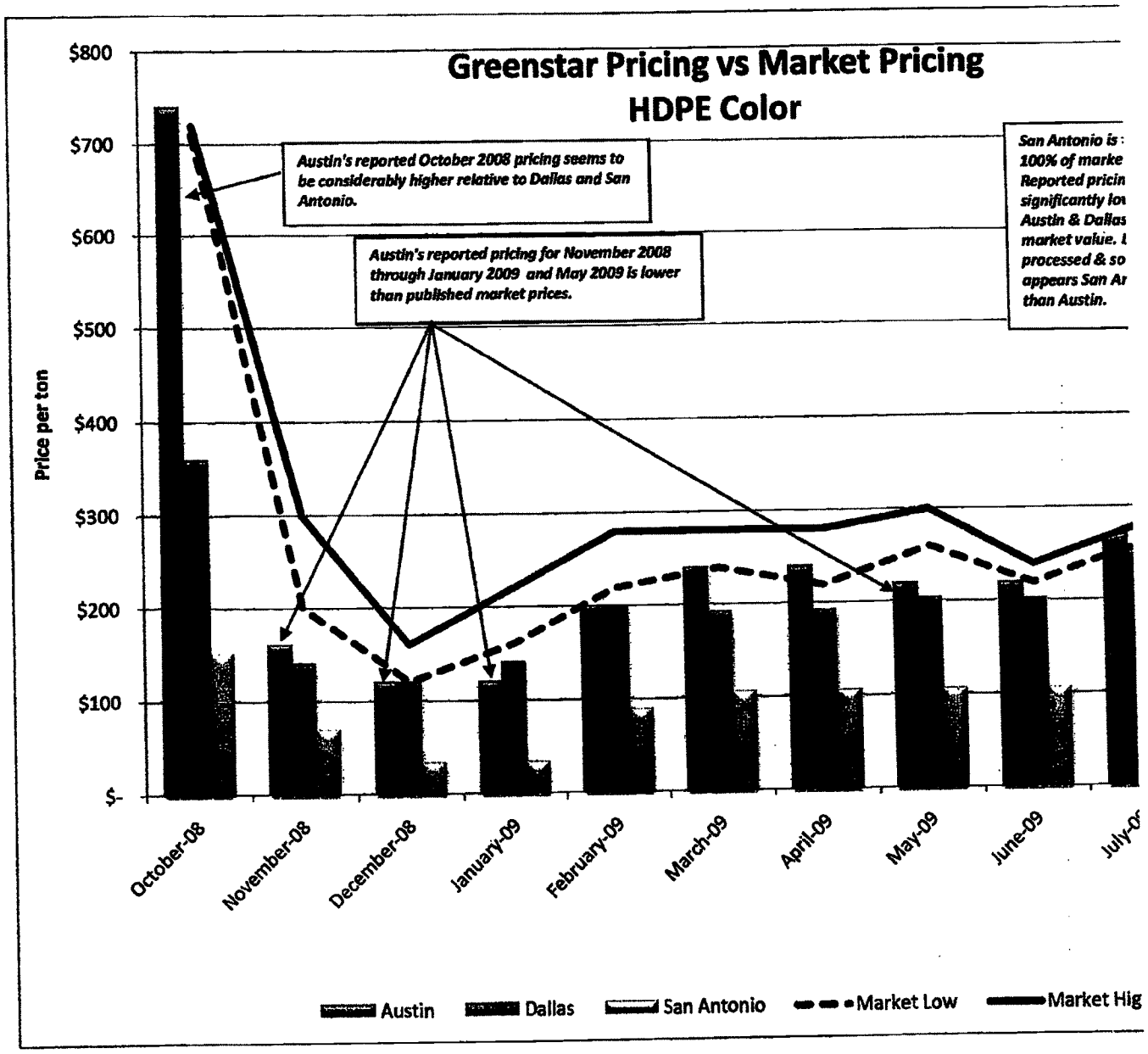
April-09
May-09
June-09
Austin
Dallas
San Antonio
Market Low
Market High


Greenstar Pricing vs Market Pricing
HDPE Color
Price per ton
$800
$700
$600
$500
$400
$300
$200
$100
$-
Austin's reported October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.
Austin's reported pricing for November 2008 through January 2009 and May 2009 is lower than published market prices.
San Antonio is
100% of marke
Reported pricin
significantly lo
Austin & Dallas
market value.
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October-08
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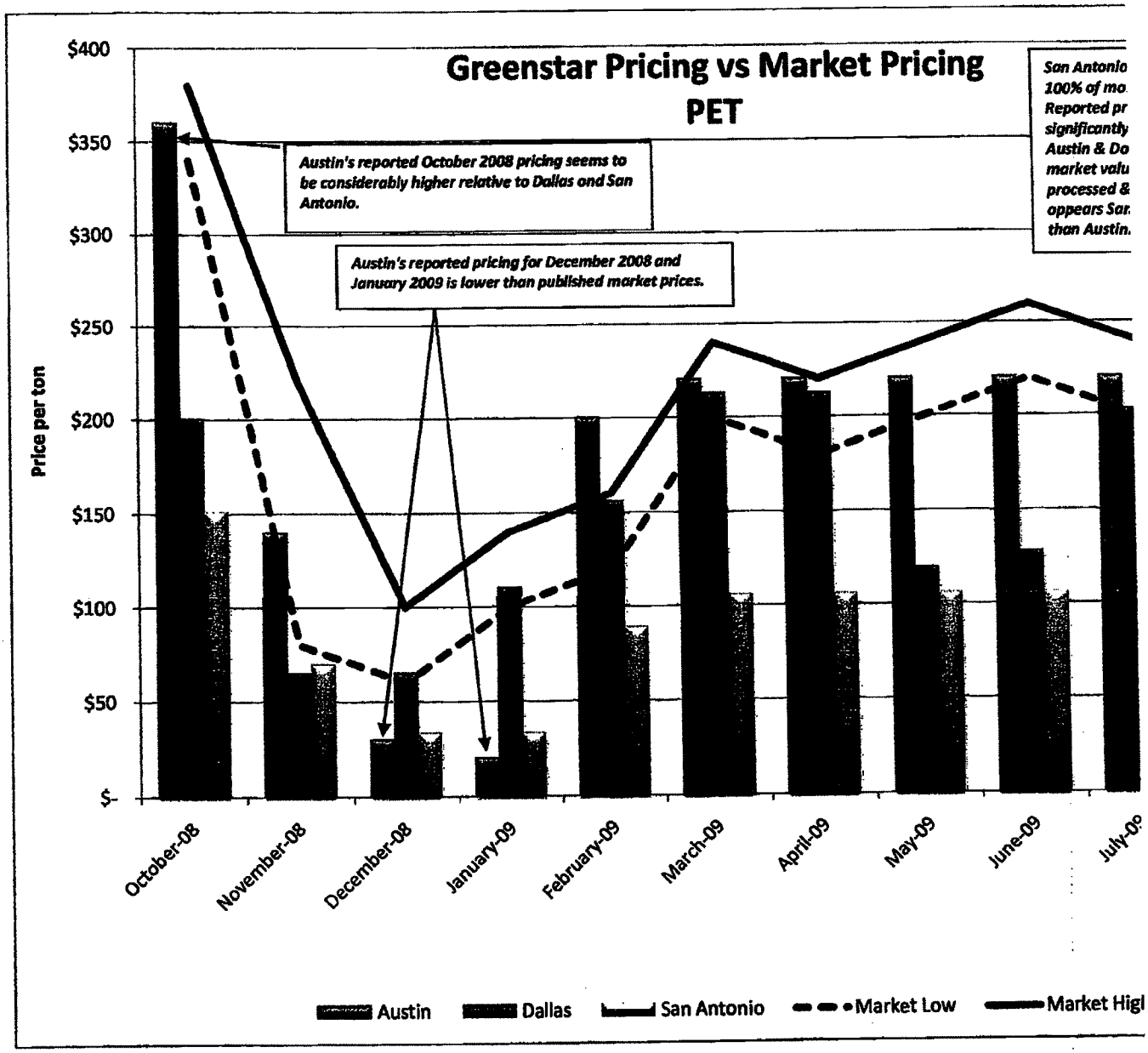
Market Low
Market Hig


Greenstar Pricing vs Market Pricing
PET
Austin's reported October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.
Austin's reported pricing for December 2008 and January 2009 is lower than published market prices.
San Antonio 100% of mo Reported pr significantly Austin & Do market valu processed & appears Sar than Austin.
Price per ton
$400
$350
$300
$250
$200
$150
$100
$50
$-
October-08
November-08
December-08
January-09
February-09
March-09
April-09
May-09
June-09
July-0
Austin
Dallas
San Antonio
Market Low
Market Hig

Gross Value of City of Austin's Recyclables
Greenstar Valuation VS Market Valuation
October 2008 - September 2009

Commodity	Greenstar Value	Market Low Value [1]	Market High Value [2]
Newspaper	$ 1,618,282.35	$ 1,477,674.40	$ 1,618,282.35
Cardboard	$ 241,015.25	$ 217,390.35	$ 255,586.25
Mixed Paper	$ 23,130.60	$ 18,931.85	$ 23,130.60
Steel Cans	$ 53,291.95	$ 82,016.10	$ 86,345.50
Aluminum Cans	$ 544,664.06	$ 535,096.80	$ 561,784.20
HDPE Natural	$ 165,892.90	$ 166,201.40	$ 182,432.80
HDPE Color	$ 147,607.20	$ 143,101.70	$ 167,789.60
PET	$ 275,256.00	$ 253,398.80	$ 321,351.60
Mixed Plastics 3-7	$ -	$ -	$ -
Glass	$ -	$ -	$ -
Total	**$ 3,069,140.31**	**$ 2,893,811.40**	**$ 3,216,702.90**

Notes:

1 Greenstar valued Austin's recyclables $175,329 over market low side.

2 Greenstar valued Austin's recyclables $147,563 under market high side.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: Newspaper

Month	Austin	DallasSan	Antonio	Market Low	Market High
October-08	$ 130.00	$ 130.00	$ 130.00	$ 125.00	$ 130.00
November-08	$ 60.00	$ 60.00	$ 60.00	$ 55.00	$ 60.00
December-08	$ 50.00	$ 50.00	$ 50.00	$ 45.00	$ 50.00
January-09	$ 50.00	$ 50.00	$ 50.00	$ 45.00	$ 50.00
February-09	$ 40.00	$ 40.00	$ 50.00	$ 35.00	$ 40.00
March-09	$ 50.00	$ 50.00	$ 50.00	$ 45.00	$ 50.00
April-09	$ 50.00	$ 50.00	$ 50.00	$ 45.00	$ 50.00
May-09	$ 50.00	$ 50.00	$ 50.00	$ 45.00	$ 50.00
June-09	$ 55.00	$ 55.00	$ 55.00	$ 50.00	$ 55.00
July-09	$ 55.00	$ 55.00	$ 55.00	$ 50.00	$ 55.00
August-09	$ 55.00	$ 55.00	**$ 49.75**	$ 50.00	**$ 55.00**
September-09	$ 70.00	$ 70.00	**$ 64.75**	$ 65.00	**$ 70.00**

Notes:
Market prices obtained from Official Board Markets - "Yellow Sheet" for Southwest U.S. region.

San Antonio entitled to high side value for Official Board Markets Southwest U.S. region.
San Antonio reported they received less than this amount in August & September 2009.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: Newspaper

Month	1) Austin	DallasSan	Antonio	2) Market Low	Market High
October-08	$ 212,576.00	$ 145,753.40	$ 321,701.90	$ 204,400.00	$ 212,576.00
November-08	$ 115,608.00	$ 77,559.20	$ 140,612.40	$ 105,974.00	$ 115,608.00
December-08	$ 134,368.50	$ 65,293.50	$ 140,710.00	$ 120,931.65	$ 134,368.50
January-09	$ 137,921.50	$ 59,593.50	$ 132,030.00	$ 124,129.35	$ 137,921.50
February-09	$ 88,534.80	$ 41,512.00	$ 108,579.00	$ 77,467.95	$ 88,534.80
March-09	$ 125,714.50	$ 51,752.50	$ 129,475.00	$ 113,143.05	$ 125,714.50
April-09	$ 121,533.00	$ 56,112.50	$ 101,653.00	$ 109,379.70	$ 121,533.00
May-09	$ 117,853.50	$ 57,858.50	$ 77,728.00	$ 106,068.15	$ 117,853.50
June-09	$ 137,172.20	$ 64,838.40	$ 117,400.25	$ 124,702.00	$ 137,172.20
July-09	$ 133,551.00	$ 56,790.80	$ 167,155.45	$ 121,410.00	$ 133,551.00
August-09	$ 124,233.45	$ 55,328.35	$ 150,412.16	$ 112,939.50	$ 124,233.45
September-09	$ 169,215.90	$ 75,087.60	$ 186,135.53	$ 157,129.05	$ 169,215.90
	$ 1,618,282.35			**$ 1,477,674.40**	**$ 1,618,282.35**

Notes:

1) Value determined by multiplying monthly tons of newspaper by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of newspaper by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: Cardboard

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 90.00	$ 90.00	$ 90.00	$ 85.00	$ 90.00
November-08	$ 45.00	$ 45.00	$ 45.00	$ 40.00	$ 45.00
December-08	$ 25.00	$ 25.00	$ 40.00	$ 20.00	$ 25.00
January-09	$ 25.00	$ 25.00	$ 40.00	$ 20.00	$ 25.00
February-09	$ 30.00	$ 30.00	$ 40.00	$ 25.00	$ 30.00
March-09	$ 45.00	$ 45.00	$ 45.00	$ 40.00	$ 45.00
April-09	$ 40.00	$ 45.00	$ 40.00	$ 35.00	$ 40.00
May-09	$ 40.00	$ 40.00	$ 40.00	$ 35.00	$ 40.00
June-09	$ 55.00	$ 55.00	$ 55.00	$ 50.00	$ 55.00
July-09	$ 75.00	$ 75.00	$ 75.00	$ 70.00	$ 75.00
August-09	$ 80.00	$ 80.00	**$ 74.75**	$ 75.00	**$ 80.00**
September-09	$ 80.00	$ 80.00	**$ 74.75**	$ 75.00	**$ 80.00**

Notes:
Market prices obtained from Official Board Markets - "Yellow Sheet" for Southwest U.S. region.

San Antonio entitled to high side value for Official Board Markets Southwest U.S. region.
San Antonio reported they received less than this amount in August & September 2009.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: Cardboard

Month	1) Austin	Dallas	San Antonio	2) Market Low	Market High
October-08	$ 24,725.70	$ 29,049.30	$ 51,748.20	$ 23,352.05	$ 24,725.70
November-08	$ 14,571.00	$ 12,559.95	$ 24,474.15	$ 12,952.00	$ 14,571.00
December-08	$ 11,288.25	$ 9,398.75	$ 26,933.60	$ 9,030.60	$ 11,288.25
January-09	$ 11,586.75	$ 8,578.25	$ 25,676.40	$ 9,269.40	$ 11,586.75
February-09	$ 11,156.40	$ 8,963.10	$ 21,307.20	$ 9,297.00	$ 11,156.40
March-09	$ 19,010.25	$ 13,158.45	$ 28,354.95	$ 16,898.00	$ 19,010.25
April-09	$ 16,335.60	$ 14,267.25	$ 23,914.40	$ 14,293.65	$ 16,335.60
May-09	$ 15,841.20	$ 13,076.40	$ 22,940.40	$ 13,861.05	$ 15,841.20
June-09	$ 23,047.20	$ 18,317.20	$ 37,676.10	$ 20,952.00	$ 23,047.20
July-09	$ 30,598.50	$ 21,878.25	$ 61,029.00	$ 28,558.60	$ 30,598.50
August-09	$ 30,361.60	$ 22,736.00	$ 60,614.03	$ 28,464.00	$ 30,361.60
September-09	$ 32,492.80	$ 24,243.20	$ 57,863.23	$ 30,462.00	$ 32,492.80
	$ 241,015.25			**$ 217,390.35**	**$ 241,015.25**

Notes:

1) Value determined by multiplying monthly tons of cardboard by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of cardboard by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: Mixed Paper

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 85.00	$ 130.00	$ 85.00	$ 80.00	$ 85.00
November-08	$ 5.00	$ 60.00	$ 40.00	$ -	$ 5.00
December-08	$ 5.00	$ 50.00	$ 40.00	$ -	$ 5.00
January-09	$ 5.00	$ 50.00	$ 40.00	$ -	$ 5.00
February-09	$ 5.00	$ 40.00	$ 40.00	$ -	$ 5.00
March-09	$ 15.00	$ 50.00	$ 40.00	$ 10.00	$ 15.00
April-09	$ 15.00	$ 50.00	$ 40.00	$ 10.00	$ 15.00
May-09	$ 25.00	$ 50.00	$ 40.00	$ 20.00	$ 25.00
June-09	$ 35.00	$ 55.00	$ 40.00	$ 30.00	$ 35.00
July-09	$ 45.00	$ 55.00	$ 45.00	$ 40.00	$ 45.00
August-09	$ 50.00	$ 55.00	**$ 44.75**	$ 45.00	**$ 50.00**
September-09	$ 60.00	$ 70.00	**$ 54.75**	$ 55.00	**$ 60.00**

Notes:

Market prices obtained from Official Board Markets - "Yellow Sheet" for Southwest U.S. region.

San Antonio entitled to high side value for Official Board Markets Southwest U.S. region.
San Antonio reported they received less than this amount in August & September 2009.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: Mixed Paper

Month	1) Austin	Dallas	San Antonio	Market Low	2) Market High
October-08	$ 4,150.55	$ 36,723.70	$ 8,695.50	$ 3,906.40	$ 4,150.55
November-08	$ 287.50	$ 14,656.80	$ 3,268.00	$ -	$ 287.50
December-08	$ 401.25	$ 16,451.50	$ 4,326.80	$ -	$ 401.25
January-09	$ 411.90	$ 15,015.50	$ 5,086.00	$ -	$ 411.90
February-09	$ 330.45	$ 10,459.60	$ 3,440.40	$ -	$ 330.45
March-09	$ 1,126.20	$ 24,638.00	$ 3,963.20	$ 750.80	$ 1,126.20
April-09	$ 1,088.85	$ 26,714.00	$ 19,074.00	$ 725.90	$ 1,088.85
May-09	$ 1,759.75	$ 27,545.00	$ 35,696.00	$ 1,407.80	$ 1,759.75
June-09	$ 2,606.80	$ 30,868.20	$ 27,369.20	$ 2,234.40	$ 2,606.80
July-09	$ 3,262.95	$ 27,036.90	$ 3,653.10	$ 2,900.40	$ 3,262.95
August-09	$ 3,373.00	$ 26,340.60	$ 3,582.24	$ 3,035.70	$ 3,373.00
September-09	$ 4,331.40	$ 35,746.90	$ 4,153.88	$ 3,970.45	$ 4,331.40
	$ 23,130.60			**$ 18,931.85**	**$ 23,130.60**

Notes:

1) Value determined by multiplying monthly tons of mixed paper by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of mixed paper by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: Steel Cans

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 50.00	$ 78.00	$ 20.00	$ 200.00	$ 200.00
November-08	$ -	$ 48.30	$ -	$ 145.00	$ 145.00
December-08	$ 40.00	$ 22.50	$ -	$ 70.00	$ 75.00
January-09	$ 20.00	$ 23.00	$ 10.00	$ 70.00	$ 75.00
February-09	$ 20.00	$ 22.50	$ 20.00	$ 70.00	$ 75.00
March-09	$ 40.00	$ 51.25	$ 20.00	$ 70.00	$ 75.00
April-09	$ 40.00	$ 51.25	$ 20.00	$ 70.00	$ 75.00
May-09	$ 55.00	$ 52.50	$ 27.50	$ 70.00	$ 75.00
June-09	$ 70.00	$ 52.50	$ 35.00	$ 70.00	$ 75.00
July-09	$ 90.00	$ 52.50	$ 45.00	$ 70.00	$ 75.00
August-09	$ 110.00	$ 119.50	$ 49.75	$ 70.00	$ 75.00
September-09	$ 105.00	$ 119.50	$ 52.55	$ 70.00	$ 75.00

Notes:

Market prices obtained from Waste & Recycling News - "Secondary Materials" for Southcentral U.S. region.

Austin reported they received no payment for steel cans in November 2008. San Antonio reported they received no payments for steel cans in November & December 2008. It seems unlikely that Greenstar would sell steel cans below published market prices.

Austin's reported prices for December 2008 through May 2009 seem to be considerably lower than market prices.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: Steel Cans

Month	1) Austin	Dallas	San Antonio	2) Market Low	Market High
October-08	$ 2,882.50	$ 2,642.64	$ 2,162.00	$ 11,530.00	$ 11,530.00
November-08	$ -	$ 1,414.71	$ -	$ 9,874.50	$ 9,874.50
December-08	$ 3,790.00	$ 887.85	$ -	$ 6,632.50	$ 7,106.25
January-09	$ 1,945.00	$ 828.23	$ 1,164.30	$ 6,807.50	$ 7,293.75
February-09	$ 1,560.40	$ 705.60	$ 1,914.60	$ 5,461.40	$ 5,851.50
March-09	$ 3,546.00	$ 2,237.06	$ 2,238.40	$ 6,205.50	$ 6,648.75
April-09	$ 3,428.00	$ 2,425.66	$ 2,747.20	$ 5,999.00	$ 6,427.50
May-09	$ 4,570.50	$ 2,562.00	$ 4,610.10	$ 5,817.00	$ 6,232.50
June-09	$ 6,155.10	$ 2,610.30	$ 5,836.95	$ 6,155.10	$ 6,594.75
July-09	$ 7,704.90	$ 2,286.38	$ 5,990.85	$ 5,992.70	$ 6,420.75
August-09	$ 8,760.40	$ 5,070.39	$ 6,590.38	$ 5,574.80	$ 5,973.00
September-09	$ 8,949.15	$ 5,406.18	$ 6,622.88	$ 5,966.10	$ 6,392.25
	$ 53,291.95			**$ 82,016.10**	**$ 86,345.50**

Notes:

1) Value determined by multiplying monthly tons of steel cans by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of steel cans by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: Aluminum Cans

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 1,660.00	$ 1,120.00	$ 800.00	$ 1,560.00	$ 1,600.00
November-08	$ 1,260.00	$ 1,208.40	$ 600.00	$ 1,300.00	$ 1,340.00
December-08	$ 1,240.00	$ 1,200.00	$ 600.00	$ 1,300.00	$ 1,340.00
January-09	$ 880.00	$ 1,054.00	$ 440.00	$ 900.00	$ 960.00
February-09	$ 880.00	$ 1,054.00	$ 440.00	$ 900.00	$ 960.00
March-09	$ 855.00	$ 960.00	$ 427.50	$ 900.00	$ 960.00
April-09	$ 920.00	$ 960.00	$ 460.00	$ 900.00	$ 960.00
May-09	$ 920.00	$ 960.00	$ 460.00	$ 900.00	$ 960.00
June-09	$ 928.00	$ 1,020.00	$ 460.00	$ 900.00	$ 960.00
July-09	$ 1,080.00	$ 1,080.00	$ 540.00	$ 900.00	$ 960.00
August-09	$ 1,200.00	$ 1,377.00	$ 594.75	$ 1,160.00	$ 1,200.00
September-09	$ 1,210.00	$ 1,240.00	$ 594.75	$ 1,160.00	$ 1,200.00

Notes:

Market prices obtained from Waste & Recycling News - "Secondary Materials" for Southcentral U.S. region.

Austin's reported October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.

Austin's reported November 2008 through March 2009 pricing is lower than published market prices.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: Aluminum Cans

	1)			2)	
Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 49,318.60	$ 20,619.20	$ 35,744.00	$ 46,347.60	$ 47,536.00
November-08	$ 44,100.00	$ 19,237.73	$ 24,666.00	$ 45,500.00	$ 46,900.00
December-08	$ 60,549.20	$ 25,728.00	$ 30,042.00	$ 63,479.00	$ 65,432.20
January-09	$ 44,096.80	$ 20,626.78	$ 21,102.40	$ 45,099.00	$ 48,105.60
February-09	$ 35,402.40	$ 17,960.16	$ 17,314.00	$ 36,207.00	$ 38,620.80
March-09	$ 39,056.40	$ 17,462.40	$ 19,404.23	$ 41,112.00	$ 43,852.80
April-09	$ 40,627.20	$ 18,931.20	$ 26,919.20	$ 39,744.00	$ 42,393.60
May-09	$ 39,403.60	$ 19,516.80	$ 33,966.40	$ 38,547.00	$ 41,116.80
June-09	$ 42,056.96	$ 21,134.40	$ 33,009.60	$ 40,788.00	$ 43,507.20
July-09	$ 47,649.60	$ 19,591.20	$ 28,809.00	$ 39,708.00	$ 42,355.20
August-09	$ 49,248.00	$ 24,345.36	$ 31,563.38	$ 47,606.40	$ 49,248.00
September-09	$ 53,155.30	$ 23,374.00	$ 30,011.09	$ 50,958.80	$ 52,716.00
	$ 544,664.06			**$ 535,096.80**	**$ 561,784.20**

Notes:

1) Value determined by multiplying monthly tons of aluminum cans by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of aluminum cans by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: HDPE natural

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 740.00	$ 560.00	$ 150.85	$ 880.00	$ 920.00
November-08	$ 260.00	$ 260.00	$ 69.20	$ 300.00	$ 400.00
December-08	$ 220.00	$ 220.00	$ 33.00	$ 240.00	$ 280.00
January-09	$ 220.00	$ 260.00	$ 33.00	$ 240.00	$ 280.00
February-09	$ 260.00	$ 260.00	$ 88.60	$ 260.00	$ 320.00
March-09	$ 380.00	$ 372.50	$ 105.60	$ 300.00	$ 340.00
April-09	$ 380.00	$ 372.50	$ 105.60	$ 340.00	$ 380.00
May-09	$ 420.00	$ 404.90	$ 105.60	$ 420.00	$ 440.00
June-09	$ 420.00	$ 402.50	$ 105.60	$ 420.00	$ 440.00
July-09	$ 470.00	$ 452.50	$ 114.75	$ 460.00	$ 480.00
August-09	$ 470.00	$ 452.50	$ 109.50	$ 460.00	$ 480.00
September-09	$ 480.00	$ 462.50	$ 109.50	$ 460.00	$ 480.00

Notes:

Market prices obtained from Waste & Recycling News - "Secondary Materials" for Southcentral U.S. region.

Austin's reported October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.

Austin's reported November 2008 through January 2009 pricing is lower than published market prices.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: HDPE natural

Month	1) Austin	Dallas	San Antonio	2) Market Low	Market High
October-08	$ 18,611.00	$ 8,965.60	$ 58,644.45	$ 22,132.00	$ 23,138.00
November-08	$ 7,878.00	$ 3,598.40	$ 25,154.20	$ 9,090.00	$ 12,120.00
December-08	$ 9,092.60	$ 4,100.80	$ 14,530.89	$ 9,919.20	$ 11,572.40
January-09	$ 9,334.60	$ 4,422.60	$ 13,773.54	$ 10,183.20	$ 11,880.40
February-09	$ 9,009.00	$ 3,853.20	$ 30,398.66	$ 9,009.00	$ 11,088.00
March-09	$ 14,694.60	$ 7,714.48	$ 42,572.64	$ 11,601.00	$ 13,147.80
April-09	$ 14,208.20	$ 8,362.63	$ 45,408.00	$ 12,712.60	$ 14,208.20
May-09	$ 15,225.00	$ 9,373.44	$ 49,889.66	$ 15,225.00	$ 15,950.00
June-09	$ 16,111.20	$ 9,490.95	$ 53,131.58	$ 16,111.20	$ 16,878.40
July-09	$ 17,554.50	$ 9,348.65	$ 54,724.28	$ 17,135.00	$ 17,928.00
August-09	$ 16,327.80	$ 9,104.30	$ 51,956.66	$ 15,980.40	$ 16,675.20
September-09	$ 17,846.40	$ 9,925.25	$ 49,418.45	$ 17,102.80	$ 17,846.40
	$ 165,892.90			**$ 166,201.40**	**$ 182,432.80**

Notes:

1) Value determined by multiplying monthly tons of HDPE natural by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of HDPE natural by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: HDPE color

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 740.00	$ 360.00	$ 150.85	$ 710.00	$ 720.00
November-08	$ 160.00	$ 140.00	$ 69.20	$ 200.00	$ 300.00
December-08	$ 120.00	$ 120.00	$ 33.00	$ 120.00	$ 160.00
January-09	$ 120.00	$ 140.00	$ 33.00	$ 160.00	$ 220.00
February-09	$ 200.00	$ 200.00	$ 88.60	$ 220.00	$ 280.00
March-09	$ 240.00	$ 192.50	$ 105.60	$ 240.00	$ 280.00
April-09	$ 240.00	$ 192.50	$ 105.60	$ 220.00	$ 280.00
May-09	$ 220.00	$ 204.09	$ 105.60	$ 260.00	$ 300.00
June-09	$ 220.00	$ 202.50	$ 105.60	$ 220.00	$ 240.00
July-09	$ 270.00	$ 252.50	$ 114.75	$ 260.00	$ 280.00
August-09	$ 270.00	$ 252.50	$ 109.50	$ 260.00	$ 280.00
September-09	$ 280.00	$ 262.50	$ 109.50	$ 260.00	$ 280.00

Notes:

Market prices obtained from Waste & Recycling News - "Secondary Materials" for Southcentral U.S. region.

Austin's reported October 2008 pricing seems to be considerably higher relative to Dallas and San Antonio.

Austin's reported November 2008 through January 2009 and May 2009 pricing is lower than published market pricing.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: HDPE color

Month	1) Austin	Dallas	San Antonio	2) Market Low	Market High
October-08	$ 26,270.00	$ 7,491.60	$ 58,644.45	$ 17,856.50	$ 18,108.00
November-08	$ 6,560.00	$ 2,518.60	$ 25,154.20	$ 8,200.00	$ 12,300.00
December-08	$ 7,002.00	$ 2,907.60	$ 14,530.89	$ 7,002.00	$ 9,336.00
January-09	$ 7,186.80	$ 3,096.80	$ 13,773.54	$ 9,582.40	$ 13,175.80
February-09	$ 9,482.00	$ 3,852.00	$ 30,398.66	$ 10,430.20	$ 13,274.80
March-09	$ 13,101.60	$ 5,709.55	$ 42,572.64	$ 13,101.60	$ 15,285.20
April-09	$ 12,664.80	$ 6,190.80	$ 45,408.00	$ 11,609.40	$ 14,775.60
May-09	$ 11,257.40	$ 6,767.62	$ 49,889.66	$ 13,304.20	$ 15,351.00
June-09	$ 11,913.00	$ 6,840.45	$ 53,131.58	$ 11,913.00	$ 12,996.00
July-09	$ 14,234.40	$ 7,471.48	$ 54,724.28	$ 13,707.20	$ 14,761.60
August-09	$ 13,240.80	$ 7,279.58	$ 51,956.66	$ 12,750.40	$ 13,731.20
September-09	$ 14,694.40	$ 8,069.25	$ 49,418.45	$ 13,644.80	$ 14,694.40
	$ 147,607.20			**$ 143,101.70**	**$ 167,789.60**

Notes:

1) Value determined by multiplying monthly tons of HDPE color by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of HDPE color by market low and market high prices per ton.

Greenstar Pricing VS Market Pricing - Price per Ton

Commodity: PET

Month	Austin	Dallas	San Antonio	Market Low	Market High
October-08	$ 360.00	$ 200.00	$ 150.85	$ 340.00	$ 380.00
November-08	$ 140.00	$ 65.00	$ 69.20	$ 80.00	$ 220.00
December-08	$ 30.00	$ 65.00	$ 33.00	$ 60.00	$ 100.00
January-09	$ 20.00	$ 110.00	$ 33.00	$ 100.00	$ 140.00
February-09	$ 200.00	$ 156.00	$ 88.60	$ 120.00	$ 160.00
March-09	$ 220.00	$ 212.50	$ 105.60	$ 200.00	$ 240.00
April-09	$ 220.00	$ 212.50	$ 105.60	$ 180.00	$ 220.00
May-09	$ 220.00	$ 119.09	$ 105.60	$ 200.00	$ 240.00
June-09	$ 220.00	$ 127.50	$ 105.60	$ 220.00	$ 260.00
July-09	$ 220.00	$ 202.50	$ 114.75	$ 200.00	$ 240.00
August-09	$ 220.00	$ 202.50	$ 109.50	$ 200.00	$ 220.00
September-09	$ 220.00	$ 262.50	$ 109.50	$ 180.00	$ 220.00

Notes:

Market prices obtained from Waste & Recycling News - "Secondary Materials" for Southcentral U.S. region.

Austin's reported October 2008 pricing is considerably higher relative to Dallas and San Antonio.

Austin's reported December 2008 and January 2009 pricing is lower than published market. pricing.

Greenstar Valuation VS Market Valuation - Gross Value

Commodity: PET

Month	1) Austin	Dallas	San Antonio	2) Market Low	Market High
October-08	$ 31,428.00	$ 11,364.00	$ 58,644.45	$ 29,682.00	$ 33,174.00
November-08	$ 14,420.00	$ 3,193.45	$ 25,154.20	$ 8,240.00	$ 22,660.00
December-08	$ 4,304.40	$ 4,301.70	$ 14,530.89	$ 8,608.80	$ 14,348.00
January-09	$ 2,945.00	$ 6,644.00	$ 13,773.54	$ 14,728.00	$ 20,619.20
February-09	$ 23,646.00	$ 8,204.04	$ 30,398.66	$ 14,187.60	$ 18,916.80
March-09	$ 29,532.80	$ 14,509.50	$ 42,572.64	$ 26,848.00	$ 32,217.60
April-09	$ 28,549.40	$ 15,731.38	$ 45,408.00	$ 23,358.60	$ 28,549.40
May-09	$ 27,687.00	$ 9,090.14	$ 49,889.66	$ 25,170.00	$ 30,204.00
June-09	$ 29,295.20	$ 9,914.40	$ 53,131.58	$ 29,295.20	$ 34,621.60
July-09	$ 28,520.80	$ 13,792.28	$ 54,724.28	$ 25,928.00	$ 31,113.60
August-09	$ 26,532.00	$ 13,437.90	$ 51,956.66	$ 24,120.00	$ 26,532.00
September-09	$ 28,395.40	$ 18,574.50	$ 49,418.45	$ 23,232.60	$ 28,395.40
	$ 275,256.00			**$ 253,398.80**	**$ 321,351.60**

Notes:

1) Value determined by multiplying monthly tons of PET by Greenstar's gross price per ton.

2) Low and High values determined by multiplying monthly tons of PET by market low and market high prices per ton.

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.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 2-7 is amended to add a new article 6 to read:

ARTICLE 6. ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 DEFINITIONS.

In this article:

(1) AUTHORIZED CONTACT PERSON means the person designated in a City solicitation as the contact for questions and comments regarding the solicitation.

(2) 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.

(3) RESPONSE means a response to a solicitation and includes a bid, a quote, a request for proposal response or a statement of qualifications.

(4) 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, officer, employee, contractor, lobbyist, subsidiary, joint enterprise, partnership, 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 subcontactor 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.

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

EXHIBIT B

(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; or

(f) conveys a complaint about a particular solicitation.

(6) SOLICITATION includes an invitation for bids, a request for proposals, a request for quotations, and a request for qualifications.

§2-7-102 FINDINGS; PURPOSE.

(A) 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.

(B) 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.

§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) 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.

(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 member of the City Council, member of a City board, or any other official, employee, or agent of the City 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 sixtieth day after the date the solicitation is withdrawn or all responses are rejected if the solicitation has not been reissued during the sixty day period.

(E) This section does not apply to a representation:

(1) made at a meeting convened by the authorized contact person to evaluate responses;

(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 2-9 (Minority-Owned and Female Owned Business Enterprise Procurement Program);

(5) made to the City Risk Management coordinator about insurance requirements for a solicitation; and

(6) made in public at a meeting held under the Texas Open Meetings Act.

§2-7-104 PERMITTED REPRESENTATIONS.

(A) If a respondent seeks to make a representation to a City official, employee, or agent during the no-contact period, 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 a respondent seeks to make a complaint about a particular solicitation to a member of the City Council or a member of a City board, the respondent should include the complaint in his written representation to the authorized contact person. The authorized contact person shall

distribute the complaint 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.

(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 of the Public Works Department or Purchasing Officer as appropriate.

§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 official, employee or agent of the City, 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) When a solicitation is issued that requires Council action, the authorized contact person for that solicitation shall notify in writing each City Council member 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.

§2-7-106 DISCLOSURE OF PROHIBITED REPRESENTATION.

(A) If a City official or employee receives a representation during the no-contact period for a solicitation, the City official or employee shall notify in writing the authorized contact person for that solicitation as soon as practicable. Notification to the authorized contact person must be made using a form prescribed by the City and include any supporting documentation.

(B) During the no-contact period, a City employee, except for the authorized contact person, shall not solicit a representation from a respondent.

§2-7-107 ENFORCEMENT.

(A) If the authorized contact person for a solicitation finds that a respondent has made a prohibited representation during the no-contact period, the authorized contact person shall document his findings in a report and disqualify the respondent.

(B) The Financial Services Department and Public Works Department 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.

§ 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.

§2-7-109 DEBARMENT.

(A) If a respondent violates this article more than once in a three year 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 shall adopt rules to administer and enforce this section. The rules must include a hearing process with written notice to the respondent.

§2-7-110 NO CRIMINAL PENALTY.

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

PART 2. This ordinance takes effect on December 17, 2007.

PASSED AND APPROVED

§
§
December 6, 2007 §

Will Wynn
Mayor

APPROVED:

David Allan Smith
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

City of Austin

RULE NO.: R2008-PO-1

NOTICE OF RULE ADOPTION

ADOPTION DATE: 4/10/2008

By: Byron E. Johnson, CPM, Purchasing Officer
Purchasing Office

The Purchasing Officer of the Purchasing Office has adopted the following rule. Notice of the proposed rule was posted on 2/15/2008. Public comment on the proposed rule was solicited in the 2/15/2008 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code, as explained below.

AUSTIN CITY CLERK
POSTING: DATE/TIME
2008 APR 10 PM 2 24

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on 4/10/2008.

BRIEF EXPLANATION OF ADOPTED RULE

The proposed rule adopts procedures required to administer and enforce City Code Chapter 2-7, Article 6 Anti-lobbying and Procurement. The proposed rule sets forth the Purchasing Office's procedures to provide notice of disqualification or possible debarment and provide respondents with an opportunity to protest the disqualification or possible debarment at a hearing.

TEXT OF ADOPTED RULE

The adopted rule contains no changes from the proposed rule. A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Purchasing Office located at 124 W. 8th Street, 3rd Floor, Austin, Texas 78701

Office of the City Clerk, City Hall, located at 124 West 8th Street, Austin, Texas.

SUMMARY OF COMMENTS

The Purchasing Office did not receive comments regarding the rule adopted in this notice.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code.

EXHIBIT C

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED AT THE END OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the City Clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption (R2008-PO-1), the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED

Byron E. Johnson, CPM Purchasing Officer
Purchasing Office

Date: 04/10/08

David Allen Smith
City Attorney

Date: 04/10/08

This NOTICE OF ADOPTION was posted on a central bulletin board at City Hall on the following date and time:

Date: 2:24 pm

Time: 4/10/08

Shirley Gentry
City Clerk

Enforcement of the Anti-Lobbying Ordinance by the Purchasing Office

This rule is adopted under the authority of City Code Chapter 2-7, Article 6 and the Purchasing Officer.

1. DEFINITIONS

Words in this rule have the meanings they have in Article 6 of Chapter 2-7 of the City Code.

2. NOTICE OF A DISQUALIFICATION OR POSSIBLE DEBARMENT

a. If an authorized contact person disqualifies a respondent under Article 6 of Chapter 2-7 of the City Code, the authorized contact person shall provide written notice to the respondent that includes:

   i. a statement that the respondent is disqualified and the identifying number of the solicitation from which the respondent is disqualified;
   ii. a description of the prohibited representation that is the reason for the disqualification;
   iii. a description of the respondent's opportunity to protest; and
   iv. a copy of this rule.

b. Before a respondent is debarred under Article 6 of Chapter 2-7 of the City Code, the Purchasing Officer shall provide written notice and an opportunity for a hearing to the respondent. The notice to the respondent shall include:

   i. a statement that the respondent is disqualified and the identifying number of the solicitation from which the respondent is disqualified;
   ii. a description of the facts that are the reason for debarment;
   iii. a description of the respondent's opportunity to protest; and
   iv. a copy of this rule.

3. OPPORTUNITY TO PROTEST

This section applies to notice procedures for a respondent to protest disqualification or possible debarment.

a. The Purchasing Officer has the authority to settle or resolve a protest of a disqualification or possible debarment under Article 6 of Chapter 2-7 of the City Code. The Purchasing Officer's decision is final.

b. If a disqualified respondent fails to comply with this rule, the Purchasing Officer shall dismiss the respondent's protest.

c. A respondent shall file a written notice of the respondent's protest with the Purchasing Officer. The notice must be actually received by the Purchasing Officer no later than the fourth business day after the date that the respondent receives notice of the disqualification or possible debarment. If the respondent does not file a timely notice of the protest, the respondent waives the right to protest the disqualification or debarment.

d. A notice of a respondent's protest must be concise and presented logically and factually. The notice must include:

   i. the respondent's name, address, telephone, and fax number;
   ii. the identifying number of the solicitation number; and
   iii. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

4. HEARING

This section applies to hearing procedures for a respondent to protest disqualification or possible debarment.

a. When the Purchasing Officer receives a timely written protest, the Purchasing Officer shall determine whether the grounds for the protest are sufficient.

b. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing. If practicable the Purchasing Officer should schedule the hearing within five (5) business days.

c. If the Purchasing Officer determines that the grounds of a protest are insufficient, the Purchasing Officer shall notify the respondent of that decision in writing.

d. A protest hearing is informal and is not subject to the Open Meetings Act.

e. The purpose of the hearing is to give a disqualified respondent a chance to present the respondent's case; it is not an adversarial proceeding.

f. The following individuals from the City may attend the hearing:

   i. representatives from the department that requested the solicitation or purchase;
   ii. the Law Department;
   iii. the Purchasing Office; and
   iv. other appropriate City staff as determined by the Purchasing Officer.

g. The respondent may bring to the hearing a representative or anyone else that will present information to support the factual grounds for the respondent's protest.

h. The Purchasing Officer may appoint an independent hearing examiner to conduct the hearing and to provide a written decision on the protest.

i. If the Purchasing Officer appoints an independent hearing examiner to conduct the hearing,

   i. the independent hearing examiner shall provide a written hearing decision to the Purchasing Officer and respondent no later than five business days after the date of the hearing;
   ii. the Purchasing Officer shall determine on the basis of the written hearing decision whether to maintain or deny the decision no later than the 15th business day after the date of the hearing; and

iii. the Purchasing Officer shall send a written notice of his decision to the respondent no later than five business days after the date of the decision.

j. If the Purchasing Officer conducts the hearing, the Purchasing Officer shall:

i. make a decision no later than the 15th business day after the date of the hearing; and
ii. shall send a written notice of the Purchasing Officer's decision to the respondent no later than five business days after the date of the decision.

k. The Purchasing Officer's decision on a hearing or a written hearing decision is final.

l. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:

i. the City urgently requires the goods, supplies, or services to be purchased; or
ii. failure to make an award promptly will unduly delay delivery or performance.

m. In the instances described under item l, the Purchasing Officer shall notify the respondent and make every reasonable effort to resolve the protest before the award.

City of Austin

January 21, 2010

Texas Disposal Systems, Inc.
ATTN: Mr. Bob Gregory
P. O. Box 17126
Austin, TX 78760-7126

Subject: Disqualification of Texas Disposal Systems (TEX4798000) for Prohibited Representation in connection with Solicitation RFP-1500-RDR0005, Recycling Services

Mr. Gregory:

The undersigned is disqualifying Texas Disposal System's (TDS) response to the above named solicitation under the provisions of the City's Anti-lobbying and Procurement Ordinance 20071206-045 (copy attached).

On December 8, 2009, you copied Mr. Robert Goode, Assistant City Manager and Tammie Williamson, Acting Director, Solid Waste Services Department, City of Austin, Texas on an email between yourself and the members of the City's Solid Waste Advisory Committee (SWAC) with attachment (copy attached). In this email, which you specifically prefaced as not having applicability to the above solicitation, you urged the SWAC members to encourage the City Council to reject three Greenstar single stream recycling contract amendments because of the potential for the City to find that it has lower cost options (for the recycling services envisioned by the three Greenstar amendments) when Request for Proposal responses for the above solicitation are received on February 9, 2010.

Your attachment includes a document entitled "Reasons why the City 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" and a document entitled "Explanation of Contractual Agreements for Commodity Purchase Pricing" with charts of Greenstar pricing for recycables. The attachment is critical of Greenstar's pricing for recyclable commodities and casts doubt on Greenstar's ability to honor its contractual obligations on recyclable service agreements.

This email and attachment is a prohibited representation under the Anti-lobbying and Procurement Ordinance. The correspondence is a communication related to a response to a member of a City board and employees of the City that both advances the interests of the respondent TDS, and that discredits the response of another respondent (Greenstar). Your communication was provided to City board members and to City employees other than the Authorized Contact Person during the no-contact period established for the solicitation referenced above.

EXHIBIT D

When the undersigned issued the solicitation on November 16, 2009, and subsequently at the Pre-Proposal Conference held on December 4, 2009 at 10:00 AM at City Council Chambers, the undersigned provided information, both verbally and in writing regarding the Anti-lobbying and Procurement Ordinance's application to the above solicitation. Your email confirms your knowledge of the Ordinance's requirements in your attempt to exclude your email and attachment from those provisions for the solicitation.

Ordinance Section 2-7-103, Restriction on Contacts, establishes the City's expectations. Ordinance Section 2-7-103 (A) states that a respondent shall make representations only to the Authorized Contact Person during the no-contact period. Furthermore, this prohibition also applies to a vendor that makes a representation and then becomes a respondent under Section 2-7-103 (B). In this specific case, respondent TDS's communication was not directed to the undersigned as the Authorized Contact Person for the solicitation but to the SWAC members, and to Mr. Goode and Ms. Tammie Williamson, both employees of the City of Austin.

Ordinance Section 2-1-103 (B) goes on to state that "If, during the no-contact period, a respondent makes a representation to ... a member of a City board, or ... any other employee ... of the City ...other than the Authorized Contact Person for the solicitation, the respondent's response is disqualified from further consideration except as permitted in this article".

Ordinance Section 2-1-103 (E) lists the representations excepted from the Anti-lobbying and Procurement Ordinance. Your December 8 e-mail and attachment is not an excepted representation.

Ordinance Section 2-7-107 (A) Enforcement states that "If the authorized contact person for a solicitation finds that a respondent has made a prohibited representation during the no-contact period, the authorized contact person shall document his findings in a report and disqualify the respondent."

This letter serves as the report of findings and as confirmation that effective January 15, 2010; TDS's response to the above captioned solicitation is disqualified.

On April 10, 2008, the City adopted a rule for protesting the disqualification of a response. A copy of the official rule adoption and the detailed rule has been attached for your use.

You should be aware that the solicitation schedule, including receipt of responses, evaluation, and award will not be affected by any protest, regardless of party or content.

However, should you decide to, you may protest this disqualification by sending the Purchasing Officer a written Intent To Protest within four (4) days of your receipt of this correspondence. Please include as much information about this situation that is reasonably available to TDS at this time. Additional material may be presented at any resulting protest hearing. Your correspondence should be addressed to:

City of Austin Purchasing Office
Attention: Purchasing Officer
P. O. Box 1088
Austin, TX 78767-8845

It is strongly recommended that you either a) sign and email a PDF'd copy of the Intent To Protest letter and supporting materials to my email address below or b) sign and fax this Intent To Protest letter and supporting materials to fax number 512.974.1807 at the same time that the letter is mailed.

Please contact me by phone at (512) 974-2596 or by email at Roy.Rivers@ci.austin.tx.us to discuss this action further.

Sincerely,

Roy D. Rivers
Buyer II
City of Austin Purchasing Office

CC: Greg Canally, Deputy Chief Financial Officer
Byron E. Johnson, CPM, Purchasing Officer
John Steiner, City of Austin Integrity Officer
Tamara Kurtz, Assistant City Attorney

Attachments: Anti-lobbying and Procurement Ordinance
Copy of email with attachments, 12/8/2009, Bob Gregory, TDS
Adopted Anti-lobbying and Procurement Rule
Notice of Rule Adoption

WEBB & WEBB
ATTORNEYS AT LAW
712 SOUTHWEST TOWER, 211 EAST SEVENTH STREET
AUSTIN, TEXAS 78701

STEPHEN P. WEBB
GWENDOLYN HILL WEBB

TELEPHONE: 512/472-9990
FACSIMILE: 512/472-3183

TELECOPIER COVER SHEET

Please deliver the following facsimile pages to:

Mr. Byron Johnson
Purchasing Officer
City of Austin
124 W. 8th Street
3rd Floor
Austin, Texas 78701
Fax: 512-974-6533

Mr. James A. Hemphill
Graves Dougherty Hearon & Moody
P.O. Box 98
Austin, Texas 78767
Fax: 512536-9907

FROM: Stephen P. Webb, Independent Hearing Officer

DATE: June 2, 2010 15 pages including cover page

REMARKS

Attached please find the Decision of the Independent Hearing Officer.

Please Note: The original of this document will be sent via:

[ ] First Class Mail
[X] Certified Mail, Return Receipt Requested
[ ] Overnight Mail/Federal Express
[ ] Courier
[ ] This will be the only form of delivery of this document

EXHIBIT E

PROTEST OF TEXAS DISPOSAL SYSTEMS	§	**BEFORE INDEPENDENT**
RE: SSMRF RFP – RDR0005 – RECYCLING SERVICES	§	**HEARING OFFICER**
BID PROTEST HEARING	§	**STEPHEN P. WEBB**

DECISION OF THE INDEPENDENT HEARING OFFICER

On Wednesday, May 26, 2010, a hearing on the protest of Texas Disposal Systems was held before Independent Hearing Officer Stephen P. Webb. Present at the hearing were Robert Goode, City of Austin; Tamara Kurtz, City of Austin; David Smythe-Macaulay, City of Austin; John Steiner, City of Austin; Roy Rivers, City of Austin; Bob Gedert, City of Austin; Robin Sanders, City of Austin, Law Department; Stephen T. Allen, City of Austin, Purchasing Department; Ben Carrasco, Smith Robertson LLP; Mike Kanin; Steve Shannon, Allied Waste Services; Lee Kuhn, Allied Waste Services; Janet Tulk, Waste Management; Enede Young, Texas Disposal Systems; Ryan Hobbs, Texas Disposal Systems; Adam Gregory, Texas Disposal Systems; Gary Newton, Texas Disposal Systems; Jim Hemphill, Graves, Dougherty for Texas Disposal Systems; and David Armbrust, Armbrust & Brown for Texas Disposal Systems.

Based on the testimony offered at the hearing on May 26, 2010, and the written evidence submitted into the record, I make the following factual findings:

Findings of Fact

1. The City of Austin's Solid Waste Services Department implemented Single-Stream Recycling in October, 2008 and executed a short-term contract with Mid-America Recycling, LLC d/b/a Greenstar ("Greenstar") for the transportation, processing and sale of single stream recycling material (sometimes referred to as, "the Greenstar Contract"). The City's contract with Greenstar expires on September 30, 2010 and there are no extension options available after September, 2011. Because of unanticipated negative market factors associated with a sudden downturn in the national economy, the City engaged Greenstar in contract negotiations to amend

Option 3 of its contract with Greenstar so that the City could continue to provide Single Stream Recycling Services to Austin residents until a local Single Stream Material Recovery Facility ("SSMRF") is constructed locally. The City's contract negotiations with Greenstar were meant to produce a so-called "bridge" solution, pending a more comprehensive long term solution to the problem of cost effective recyclable materials processing and marketing.

2. On November 16, 2009, the City of Austin issued Request for Proposal No. RDR0005 ("SSMRF RFP") pertaining to recycling services. The SSMRF RFP sought responses from qualified and experienced entities to accomplish the following activities related to the handling of recyclable materials: recovery, sorting, processing, sorting, marketing, selling and transporting collected recyclable materials. The SSMRF RFP expressly excluded collection services from the scope of work to be provided under the RFP.

3. Item II of the Supplemental Purchasing Provisions to the SSMRF RFP provides in part:

> II. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING**
>
> A. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applied to RFP's for goods and/or services exceeding $5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the RFP as the contact for questions and comments regarding the RFP.
>
> B. If during the No-Contract Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the RFP, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
>
> ...

SMRF RFP pp.5-6 of 8

4. The SSMRF RFP stated on its front cover as follows: "For Contractual and Technical Issues Contact: Roy Rivers."

5. The City's SSMRF RFP required a responsive Proposer to perform and/or arrange all tasks pertaining to a SSMRF and comply with all applicable federal, state and local laws and regulations pertaining to the applicable scope of work. A Proposer was required to:

- Describe, in detail, its plan to provide processing and marketing services from the date of contract execution to start of permanent processing and marketing operations;

- Perform services in a manner that accommodates the City's recycling collection and Holiday Collection Schedules;

- Submit a Pricing Schedule;

- Provide adequate detail on cost so that the City may review and approve its cost structure;

- Provide an alternate pricing structure or, if such is not acceptable, a floor/escalator pricing structure that is designed to be fixed for the life of the contract and any extensions;

- Include a local transfer station solution if the Proposer proposed a non-local SSMRF for processing as part of a transition plan or long-term solution;

- Provide copies of current marketing agreements and/or contracts for all materials within 30 days of contract execution;

- Provide information about the location, construction and operational details of an SSMRF; and

- Provide information about the Proposer's and Public/Private Partnership Service option.

6. The City's SSMRF RFP originally prescribed a bid opening time and date deadline of January 5, 2010, at 12:30 p.m. On December 2, 2009, the City issued an Addendum to the SSMRF RFP which extended the bid opening deadline to February 9, 2010 at 11:30 a.m.

7. Texas Disposal Systems, Inc. ("TDS") was prepared to respond to the RFP and also prepared to be subject to the City's Anti-Lobbying Ordinance. TDS attended the December 4, 2009 Pre-bid Conference on the SSMRF RFP. Also, TDS issued a press release stating its intention to respond to the City's SSMRF RFP.

8. On December 8, 2009, Bob Gregory, Chairman and CEO of TDS, sent an email to each member of the Austin Solid Waste Advisory Commission ("SWAC") regarding the SWAC Agenda Item No. 4a: Three pending contract amendments regarding the existing contract between Greenstar and the City of Austin. In the email, Mr. Gregory urged members of the SWAC to encourage the Austin City Council to reject all three of the Greenstar single stream contract amendments. The email was copied to Robert Goode, Assistant City Manager and Tammie Williamson, Acting Director of the City's Solid Waste Services Department.

9. Mr. Gregory's email indicated that the intent of the message was not to address the pending SSMRF RFP. He even noted the pending SSMRF RFP was subject to the City's Anti-Lobby provision. However, Mr. Gregory's message argued that the City should not execute the pending Greenstar Contract amendment because: "The City may find that is has lower cost options when *its RFP responses are received on February 4, 2010.*" (Emphasis supplied).

10. The December 8, 2009 TDS email attached an extensive 18 page analysis that evaluated Greenstar's pricing in relation to market pricing for newspaper: cardboard; mixed paper; steel cans; aluminum cans; HDPE (High Density Polyethylene), natural; HDPE, color; and PETE (Polyethylene Terephthalate). The analysis included a comparison of Greenstar's valuation of the same items and a different "market" valuation. The message concluded with a statement that Greenstar does not always adhere to its contractual agreements with regard to determining its purchase price for the referenced commodities.

11. On December 9, 2009, the SWAC voted 5-1-1 to recommend that the City Council approve Greenstar Contract Amendment Option Three and to authorize City Staff to negotiate amendments to the existing Greenstar contract, but to return to Council for approval of execution of the contract with specific conditions.

12. On December 17, 2009, the City Council considered and approved, 7-0, Agenda Item No. 82, the Staff's recommendation that Option Three of the Greenstar Contact be granted.

13. On January 21, 2010, Roy D. Rivers with the City's Purchasing Office, notified TDS that it was disqualified from responding to the City's SSMRF RFP for recycling services. Mr. Rivers stated in his January 21, 2010 letter that Gregory's December 8, 2009 email to members of the SWAC that copied to Mr. Robert Goode and Tammie Williamson constituted a prohibited representation under the City's Anti-Lobbying and Procurement Ordinance. Mr. Rivers judged the December 8, 2009 email as an effort to discredit the response of another SSMRF RFP respondent (Greenstar) and to advance the interests of TDS. Moreover, TDS' communication was directed to members of a City board and to City employees other than the Authorized Contract Person during the no-contact period established for the SSMRF RFP.

14. On January 27, 2010, TDS notified the City of its intent to protest Mr. Rivers' January 21, 2010 decision to disqualify TDS from responding to the SSMRF RFP. TDS characterized Mr. Rivers' decision as being legally indefensible and based on inaccurate facts.

15. On February 5, 2010 the City convened a bid protest hearing before Independent Hearing Officer Monte Akers. Both the City Staff and TDS were represented at the hearing. TDS was represented by counsel who presented TDS' factual and legal challenge to the January 21, 2010 disqualification.

16. At the February 5, 2010 bid protest hearing, TDS, through counsel, asserted that it was not a "respondent" within the definition of that term in § 2-7-101 (4) of Article 6 of the City Code relating to Anti-Lobbying and Procurement. Moreover, TDS went on to state, repeatedly,

that it did not intend to submit a response to the SSMRF RFP by the February 9, 2010 bid deadline, or at any other time.

17. During the February 5, 2010 Bid Protest Hearing, TDS asserted, and the City Staff agreed, that TDS' decision not to respond to the SSMRF RFP rendered the January 21, 2010 disqualification moot and the subject matter of the hearing moot, as well. However, TDS asserted that it intended to continue to speak to the City about issues pertaining to recycling, generally. Finally, the parties agreed that the City's determination that TDS was disqualified as a respondent could not be confirmed until the expiration of the February 9, 2010, 11:30 a.m. bid deadline.

18. Based on the parties' understanding of TDS' intentions, *vis à vis* the SSMRF RFP, the bid protest matter was "closed."

19. On February 9, 2010, at 12:37 p.m., TDS submitted a packet of information that TDS declared was "*In lieu of a formal response to the SSMRF RFP...*" and that TDS styled thusly:

> "Texas Disposal Systems Proposed Amendment to Existing Waste Disposal and Yard Trimmings Processing Contract
> Executed May 12, 2000."

20. TDS' February 9, 2010 proposal was submitted, according to TDS, pursuant to the Sections 32 A and 32 B of its 30 year Waste Disposal and Yard Trimmings Processing Contract with the City dated May 12, 2000. Those provisions provide:

> "Negotiations
>
> A. It is the intent of TDS and City to negotiate upon mutual consent an agreement and to work together in good faith to locate, design, build, operate and jointly access a North Austin Transfer Station for processing and transferring solid waste, yard waste, and recyclables, and/or a recyclables materials processing and recovery

facility, to reduce the overall collection, processing and disposal costs for City solid waste, yard waste, and recyclables, as contemplated in the City's Solicitation and in TDS's Offer. In addition to the above, TDS and City reserve the option to amend this Contract upon mutual consent to (i) allow TDS and/or its affiliated companies to operate a glass pulverizing facility; and (ii) allow TDS to provide composting services.

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

21. At Page 24 of 33 of its February 9, 2010 proposed amendment, TDS acknowledged that its waste disposal contract with the City had not required it to *market* the commodities collected by the City. It asserted its experience marketing the commodities of newsprint, cardboard, mixed paper and "numerous types of scrap metal" for its private costumers, and cited the personal experience of its principals in marketing scrap metals. Moreover, TDS specifically asserted its intention to construct a "Materials Recovery Facility" or "MRF" locally as a short term and long term solution to "the City's single stream recyclables processing needs." TDS' proposed contract amendment included the following cited information: the company's regulatory compliance record; the cost effective benefit to the City (particularly relative to Greenstar's existing contract); its marketing plan; its long term revenue sharing proposal with the City; its existing contracts and agreements; details of its proposed MRF; and its experience and qualifications.

22. The contract negotiations between the City and Greenstar related to an existing contract for short term services similar to those requested in the SSMRF RFP, such as marketing, sales, and the construction and operation of an MRF. TDS' contract with the City was related to processing and disposal of certain materials some of which were the same as those covered by the SSMRF RFP. Therefore, the Greenstar Contract and TDS' contract envisioned significantly different services.

23. TDS' February 9, 2010 proposed contract amendment proposed a change in its services to be offered to the City that were more similar to those being performed by Greenstar under the Greenstar contract, and nearly identical to the services sought in the SSMRF RFP.

24. TDS intended to propose its February 9, 2010 contract amendment as an alternative to the City's SSMRF RFP process. TDS took this route because it had been accused of violating the Anti-Lobbying Ordinance because of its December 8, 2009 email communication.

25. On February 23, 2010, City Attorney David Allan Smith, prepared a Memorandum to City Manager, Marc Ott, which was a legal evaluation of TDS' February 9, 2010 proposed contract amendment. The Memorandum concludes that the proposed amendment was, in fact, a response to the City's SSMRF RFP.

26. On February 24, 2010, Assistant City Manager Robert D. Goode prepared a Memorandum for the Mayor and City Council Members regarding TDS' February 9, 2010 proposed contract amendment. Assistant City Manager Goode notified the Mayor and City Council that the City should not consider TDS' February 9, 2010 proposal; the Council should consider said proposal a non-compliant response to the City's SSMRF RFP; and the City should proceed with the RFP process and the eight (8) compliant responses to the SSMRF RFP.

27. On February 26, 2010, TDS responded to the City Attorney's February 23, 2010 Memorandum to City Manager, challenging the factual and legal bases for the City Attorney's conclusions reached therein.

28. On May 12, 2010 Assistant City Attorney Cary Grace responded to TDS' February 26, 2010 letter to the City Attorney. Mr. Grace re-affirmed the decision of the City to follow its RFP process and indicated that the same process would allow TDS to resume the bid protest hearing that was convened and closed on February 5, 2010, before Hearing Officer Monte Akers.

29. The City disqualified TDS on the dual bases of failing to submit a conforming response to the SSMRF RFP pursuant to its February 9, 2010 submission; and by violating the City's Anti-Lobbying Ordinance because of its December 8, 2009 email communication.

30. On May 18, 2010, TDS formally requested that the City resume the RFP disqualification appeal process for TDS, as soon as practicable.

31. TDS does not concede that it is a "respondent" under any City ordinance, including § 2-7-101(4). TDS' participation in this hearing is subject to its position that it is not a "respondent."

32. TDS does not challenge the authority of the City's Staff to make a substantive determination of what constitutes an RFP response. It challenges the substance of the Staff's determination in this case.

Applicable Laws

1. §15 of Article Vii of the City Code provides in part:

...

> Before the city makes any purchase or contract for supplies, materials, equipment or contractual services, opportunity shall be given for competition unless exempted by state statute.

...

> All contracts or purchases involving more than five thousand dollars ($5,000.00) shall be let to the bid deemed most advantageous to the city after there has been an opportunity for competitive bidding; provided, however, that the Council shall have the right to reject any and all bids.

...

2. The City's Anti-Lobbying and Procurement Ordinance is found at Article 6 of the City Code, and provides in pertinent part:

> § 2-7-101 DEFINITIONS.
>
> In this article:
> (1) AUTHORIZED CONTACT PERSON means the person designated in a City solicitation as the contact for question and comments regarding the solicitation.
>
> * * *
>
> (3) RESPONSE means a response to a solicitation and includes a bid, a quote, a request for proposal response or a statement of qualifications.
>
> (4) 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, officer, employee, contractor, lobbyist, subsidiary, joint enterprise, partnership, or any 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.
>
> (5) 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; or
> (f) conveys a complaint about a particular solicitations.
>
> § 2-7-101 (1),(3),(4),(5)
> (Emphasis added)

§ 2-7-103 RESTRICTIONS ON CONTACTS

(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.*

(Emphasis added)

Analysis and Recommendation

Despite the extended and confusing history of the issues in this case, my analysis and recommendation is based on well-established principles applicable to all purchasing decisions by the City of Austin for goods and services. Does the City have the right to determine whether it will use the RFP process in the procurement of goods and services? Does the city have the right to determine the parameters of an RFP for goods and services once the decision is made to use the RFP process? Does the City have the right to determine whether bid responses are compliant or non-compliant within the applicable rules of its RFP for the procurement of goods and services? Does the City have the right to reject non-compliant bids or proposals to the City in connection with contracts for goods and services when it determines such offers to be non-compliant? The obvious answer to all of these questions is "yes." Therefore, as to this bid protest, the pertinent issue becomes whether the City used its authority appropriately.

The City determined that its current system for the handling of single stream recyclables was in need of change. Because the City had an existing contractor in Greenstar which company was providing single stream recycling, any long term or permanent solution to the perceived problem would have to include, at least on a short term basis, some changes to the Greenstar contract as well as a more competitive, long term solution, apparently mandated by Section 15 of Article VII of the City Code, cited herein. In short, to reach a proactive solution to the City's short term and long term problems with its single stream recycling program, it would issue an

RFP for competitive bids at the same time it pursued contract amendments with its existing vendor. The City's November 16, 2009 SSMRF RFP was issued as a part of the long term process. The pursuit of a contract amendment with Greenstar was no less public, and was certainly *related* to the issues covered by the SSMRF RFP. It is logical to assume that Greenstar would not only seek to continue as the City's single stream recycling vendor, but would have an *advantage* in any SSMRF RFP that valued experience and compliance history.

Therein lies the essence of the dispute between TDS and the City Staff regarding TDS' past actions in connection with both the Greenstar Contract amendments or the SSMRF RFP. When TDS announced its intention to respond to the SSMRF RFP it announced its intent to *compete* with Greenstar for the right to provide a long term solution to the City's single-stream recycling issues. Therefore, any general or extensive criticism of Greenstar, the existing contractor, would have to be evaluated as a possible proscribed communication against Greenstar, an anticipated *responder* to the SSMRF RFP. The Staff reserved the right to consider the totality of the salient facts in assessing TDS' communications regarding Greenstar. TDS' position is that the applicable sections of the ordinance must be "narrowly construed" or put more bluntly, "read to the letter" of the applicable sections.

Ultimately, already the Staff has made that determination regarding TDS' December 8, 2009 email communication regarding the Greenstar contract amendment before the SWAC. City Staff decided on January 21, 2010 that TDS was attempting to disparage its anticipated competition in preparation for its announced response to the SSMRF RFP. The factors set forth in TDS' December 2009 communication support the Staff's conclusion. TDS invokes the anti-lobbying ordinance up front in the communication. TDS restates the obvious and ties a SWAC recommendation to, at least, *delay* of a Greenstar Contract amendment or extension, to the pending SSMRF RFP. TDS argues that, technically, there is no violation of § 2-7-101 (4) because there was no response yet submitted. However, § 2-7-103(B), cited herein, addresses this detail in favor of the Staff's decision. Moreover, TDS' global condemnation of Greenstar's supposed tendency to disregard contact terms would be relevant in evaluating Greenstar, the responder. Because the entire SWAC and key members of the City's executive staff were included in TDS' communication, § 2-7-101 (5)(b) and (c) were violated. In any event, City

Staff has made the determination that TDS made a prohibited representation. Moreover, TDS appeared to accede to the City Staff determination, judging from the position it took at the February 5, 2010 bid protest hearing.

TDS' stated decision not to respond to the SSMRF RFP *would have* mooted the City's January 21, 2010 decision to disqualify it as a responder. However, TDS' analysis of whether it would be a responder was similar to the question of whether it violated the City's anti-lobbying ordinance. TDS' February 9, 2010 proposed contract amendment was, in all relevant respects, a non-compliant response to the SSMRF RFP. TDS' argument that its 2000 contract authorized the same services as the SSMRF RFP is pure sophistry. TDS had no contract to market, sell, or share the profits in processed recyclables. TDS' existing operation compares to Greenstar's operation as a landfill compares to a scrap yard. In fact, TDS *admitted* that the Staff's January 21, 2010 disqualification forced it to submit the February 9, 2010 proposal *in place of* a response to the SSMRF RFP. TDS asserts that this means it is *not* a response, technically. The Staff asserts that this means that TDS' February 9, 2010 proposal is simply a response with fatal, technical violations of the rules and format of a complaint SSMRF RFP response. The Staff's position is the more persuasive.

Summary and Conclusion

TDS submitted a response to the SSMRF RFP that was fatally non-compliant and appropriately judged as such by the Staff. The City is entitled to reject TDS' February 9, 2010 proposal as being non-compliant and is not obligated to accept a proposal for consideration for services for which the City has determined that the RFP process is most appropriate. Moreover, TDS' December 8, 2009 email communication appears to violate the intended behavioral restrictions imposed upon a responder under § 2-7-101 and 2-7-103.

For the reasons stated herein, I recommend that TDS' bid protest be OVERRULED.

Issued in Austin, Texas this 2nd day of June, 2010.

Stephen J. Webb
Independent Hearing Officer

City of Austin

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

June 4, 2010

Delivered Via Email: gnewton@texasdisposal.com
U. S. Postal Service

Texas Disposal Systems, Inc.
Mr. Gary Newton, General Counsel
P.O. Box 17126
Austin, Texas 78760-7126

Re: Protest Hearing, RFP -1500-RDR0005, Recycling Services

Dear Mr. Newton:

I have received and reviewed the protest hearing determination from the Independent Hearing Officer, Stephen P. Webb. The City of Austin accepts and concurs with the recommendation of the Hearing Officer and denies the protest of Texas Disposal Systems. The file on the protest and disqualification is complete and closed.

The City of Austin is moving forward with the award of this solicitation accordingly.

The City appreciates your interest in this solicitation and your continued interest in bidding on City projects.

Sincerely,

Byron E. Johnson

Byron E. Johnson, C.P.M.
Purchasing Officer
Financial and Administrative Services Department
City of Austin, Texas

cc: Robert Goode, Assistant City Manager
Howard Lazarus, Acting Assistant City Manager
Robin Sanders, Law Department

EXHIBIT F

THE LAWYER REFERRAL SERVICE OF CENTRAL TEXAS
A Non-Profit Corporation

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Filed
11 December 9 P3:13
Amalia Rodriguez-Mendoz
District Clerk
Travis District
D-1-GN-11-003517

D-1-GN-11-003517

TEXAS DISPOSAL SYSTEMS, INC., and TEXAS DISPOSAL SYSTEMS LANDFILL, INC. Plaintiff	§ § § §	IN THE DISTRICT COURT OF
V.	§ §	TRAVIS COUNTY, TEXAS
CITY OF AUSTIN, TEXAS Defendant	§ §	345TH JUDICIAL DISTRICT

DEFENDANT CITY OF AUSTIN'S
ORIGINAL ANSWER & AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

Defendant City of Austin, Texas (the "City") files its Original Answer to Plaintiffs' Original Petition herein. In support thereof, the City would respectfully show the Court as follows:

GENERAL DENIAL

Subject to such matters as may be admitted during discovery and upon trial of this cause, and in reliance upon its rights as provided by Rule 92 of the Texas Rules of Civil Procedure, the City denies generally the allegations of Plaintiffs' pleading and requests that Plaintiffs prove their claims and allegations as required by law.

AFFIRMATIVE DEFENSES

Pleading further, the City asserts the following affirmative defenses:

1. The City is a home-rule municipality. Accordingly, the City is entitled to sovereign or governmental immunity from suit and from liability with respect to Plaintiffs' claims against it.

2. The City asserts that Plaintiffs have failed to mitigate any alleged damages by failing to respond to City RFP's as described in paragraphs 33-39 of Plaintiffs' Original Petition.

3. The City asserts the affirmative defense of estoppel. In particular, Plaintiffs have claimed that they were not a "respondent" to the relevant City RFP. However, through their intentional actions, Plaintiffs have behaved as a "respondent."

4. The City asserts the affirmative defense of waiver. In particular, Plaintiffs have claimed that they were not a "respondent" to the relevant City RFP. However, through their intentional actions, Plaintiffs have behaved as a "respondent" and relinquished the right to claim that they were not a "respondent."

PRAYER FOR RELIEF

WHEREFORE, Defendant City of Austin prays that all relief requested by Plaintiffs be denied, and that Defendant recover its costs and reasonable attorneys fees and any additional relief to which it is entitled under law or in equity.

RESPECTFULLY SUBMITTED,

KAREN KENNARD, CITY ATTORNEY

\s\ Christopher Coppola
CHRISTOPHER COPPOLA
Assistant City Attorney
State Bar No. 24036401
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
(512)974-2161
(512)974-6490 [FAX]
christopher.coppola@austintexas.gov

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of *Defendant City of Austin's Original Answer & Affirmative Defenses* on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this 9th day of December, 2011.

James Hemphill
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701

COUNSEL FOR PLAINTIFFS

\s\ Christopher Coppola
CHRISTOPHER COPPOLA

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Travis
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
James A. Hemphill -Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Ave, Suite 2200, Austin, TX 78701
512-480-5762 / 512-536-9907 fax

DEFENDANTS

County of Residence of First Listed Defendant Travis
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

A11CV1070LY

Attorneys (If Known)
Christopher Coppola, Assistant City Attorney, City of Austin
PO Box 1546, Austin, TX 78767-1546
512-974-2161 - 512-974-6490 fax

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☒ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
1st Amendment
Brief description of cause:
Anti-Lobbying Ordinance is a violation of free speech

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☑ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/12/11 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court **A11CV1070L**

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

345th Judicial Court, Travis County

D-1-GN-11-003517

TEXAS DISPOSAL SYSTEMS, INC., and TEXAS DISPOSAL SYSTEMS LANDFILL, INC. Plaintiffs v. CITY OF AUSTIN, TEXAS

2. Was jury demand made in State Court? Yes ☐ No ☒
If yes, by which party and on what date?

Party Name _____ Date _____

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

TEXAS DISPOSAL SYSTEMS, INC., and TEXAS DISPOSAL SYSTEMS LANDFILL, INC.
James Hemphill
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
512-480-5762 / 512-536-9907 [FAX]

City of Austin
CHRISTOPHER COPPOLA
Assistant City Attorney
City of Austin-Law Department
Post Office Box 1546
Austin, Texas 78767-1546
512-974-2161 / 512-974-6490 [FAX]
christopher.coppola@austintexas.gov

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

None

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

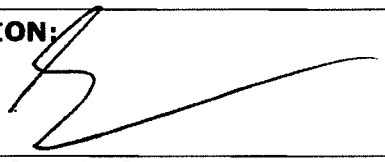
None

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

None

VERIFICATION:



Attorney for Removing Party

12/12/11

Date

City of Austin - Defendant

Party/Parties

City of Austin
Law Department

301 W. 2nd Street, P.O. Box 1546
Austin, Texas 78767-1546
(512)974-2268

Writer's Direct Line
512-974-2418

Writer's Fax Line
512-974-6490

December 14, 2011

U.S. District Clerk's Office
200 West 8th St., Room 130
Austin, Texas 78701

VIA HAND DELIVERY

A11CV1070 LY

Re: Removal Documents
Cause No. D-1-GN-11-003517, *Texas Disposal Systems, Inc., and Texas Disposal Systems Landfill, Inc.*, in the 345th Judicial District Court, Travis County, Texas

Dear Clerk of the Court:

I have enclosed the original and two copies of documents for filing in your Court, in order to remove this matter from Travis County District Court to the U.S. Federal Court.

1. Check number 3383022, in the amount of $350.00, for the filing fees;
2. Civil Cover Sheet;
3. Supplement to JS 44 Civil Cover Sheet; and
4. Notice of Removal w/ attached District Court docket sheet and all documents filed in the District Court file.

Please file mark the file copy and return to the courier for our files. Should you have any questions, please call me at the above noted number.

Thanking you in advance for your time and courtesies.

Sincerely,

Gayla R. Kieke
Paralegal to
Christopher Coppola, Assistant City Attorney

c: James Hemphill (via certified U.S. mail)

Encls.

DUPLICATE

Court Name: TEXAS WESTERN
Division: 1
Receipt Number: 100012271
Cashier ID: tkatzen
Transaction Date: 12/14/2011
Payer Name: CITY OF AUSTIN

CIVIL FILING FEE
For: CITY OF AUSTIN
Amount: $350.00

CHECK
Check/Money Order Num: 3383022
Amt Tendered: $350.00

Total Due: $350.00
Total Tendered: $350.00
Change Amt: $0.00

1:11-CV-1070 LY; TEXAS DISPOSAL SYSTEMS, INC. V. CITY OF AUSTIN