

## Bob Gregory

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**Subject:** TDS proposed questions for Waste Management Policy Working Group  
**Attachments:** TDS Questions for Waste Policy Working Group.pdf

Dear City Council Waste Policy Working Group Members,

Please see the attached PDF with my TDS response to each policy question identified in the April 25, 2017 Waste Management Policy Working Group meeting agenda, and our suggested policy questions for your consideration as future agenda items.

If anyone has any questions about our incorporated links or about our recommendations, please let us know.

Respectfully,

Bob Gregory  
512-619-9127 (m)

**Questions for Consideration of the City Council Waste Management Policy Working Group**

We at Texas Disposal Systems (TDS) wish to extend our appreciation to the members of the City Council Waste Management Policy Working Group for taking the time to consider and respond to various policy questions posed by City management and stakeholders regarding solid waste, recycling and organics management. It has become abundantly clear over the course of the past nine years, and much more specifically over the past year, that specific policy directives are needed to ensure that waste services purchasing solicitations are consistent with established City policy and that Council advisory commissions, stakeholders and the Council are given the courtesy of having access to a full disclosure of the City management proposed solicitations, contracts and potential revisions to established City policy before advisory commissions and Council are asked to vote on the execution of related contracts. Hopefully, this Working Group will be able to form and present to Council clear policy positions to consider for guiding City management on how waste services solicitations should be managed from start to finish, and how a transparent public process should significantly decrease speculation on the potential adverse impact on private operators, the competitive marketplace, the cost of services to all Austin residents and businesses, and on the success of the City's Zero Waste program. Ideally, the Working Group and the Council will be able to see an immediate improvement in the working relationships of City management, advisory commissions and stakeholders as this transparent process is implemented for proposed waste services solicitations and contracts, and Council should not have to be called upon to be the arbitrator of whether City management is determining or changing City policy through an RFP process with the facts not becoming known until after the execution of a multi-year contract. Instead, the goal should be to see the efficient, equitable and affordable implementation of reasonable strategies in pursuit of clearly defined and understood waste services goals.

TDS supports the goal of maximizing diversion of waste resources from disposal in a sustainable manner that stimulates economic development, creates jobs, and enables individuals and businesses to realize and fulfill their roles as stewards of resources and the environment. Indeed, TDS was founded on these principles forty years ago, long before the concept of "Zero Waste" became so popular. Unfortunately, over the last nine years, City management's actions have tended to reveal a desire to utilize Zero Waste as a convenient means to expand control over the solid waste, recycling and organics management services industry and its associated revenue. After failing in their initial attempts to seize absolute control over the commercial waste services industry by declaring it a public utility regulated under Article XI of the City Charter, City management has sought more and more subtle means of achieving their goals, culminating in the 2016 deluge of RFP's containing significant policy implications and providing the tools to expand City control of this market segment without explicitly revealing their plans. We are convinced that there is a philosophical divide concerning the effective interpretation or definition of "Zero Waste" between City management and virtually all other stakeholders. We are hopeful that with clear policy directives from Council and new management of the City and the ARR department we can settle these issues and move forward working together to achieve the City's Zero Waste goals. If it is truly the desire of City Management to pursue those goals for the Council's publicly stated purposes, rather than primarily to just build a huge public utility revenue generation model, then it should be a simple matter to agree on the most transparent, efficient and reasonable policy solutions, utilizing the authorized facilities and competitive market to most affordably reach those goals. In order for Council, staff and stakeholders to resolve these outstanding issues, we believe it is necessary for all parties to understand the problems of the past that have made this Waste Management Policy Working Group necessary. For this reason, we will be providing you with a selection of TDS and staff communications, background information and meeting transcripts to provide needed reference and context for the discussions of various policy questions. We have tried to distill past and current controversies into a series of fairly simple policy questions, which we hope will be discussed and responded to by the Working Group. We have attempted to incorporate and respond to staff questions in a manner that is consistent with the [posted agenda](#), however we've also proposed additional questions that we hope will be considered in conjunction with staff's questions, or on future agendas of the Working Group. We believe that if these questions are addressed and policy directives clarified, it will remove the basis for the majority of conflicts that have arisen between staff and stakeholders in the past. We at TDS seek the fair and transparent engagement between the Council, City management and affected stakeholders that for too long has been denied by the City management's interpretation and implementation of the City's Anti-Lobbying Ordinance.

## I. April 25, 2017 Agenda Policy Questions

### 1. Should the City continue to competitively solicit waste management contracts?

**TDS Response: Yes; but it depends on the specific circumstances.**

#### **Basis for Response:**

- TDS supports a competitive process contemplated by the flexibility which exists in State law, allowing Council to use a combination of competitive bids, contract amendments, where contemplated and allowed within specific contracts, and emergency or short notice contracts to fulfill City needs in a manner consistent with established City policy. TDS does not support City management's demonstrated irrational use and application of the City's Anti-Lobby Ordinance (ALO) as a means to silence the voices of commercial waste service providers (stakeholders), while insisting that only respondents to solicitations, and thereby only those who have given up their right to express their concerns to City policy makers by committing themselves to the restrictions in the ALO, are eligible for consideration of a City contract for services. Over the past year, City management has clearly shown and even admitted to their intent to directly compete with private commercial waste service providers. We will be happy to present specific examples of these actions to the Working Group in upcoming meetings, if necessary. Given that [state law exempts this market segment](#) from competitive solicitation requirements, and that [Council has chosen to utilize this exemption](#) numerous times in the past, it seems reasonable that staff should consider all options for the procurement of waste services to accomplish the City's goals. The law allows for a more nimble and efficient procurement process in this market segment, City policy should do so as well; and do so in an open and transparent process consistent with established City policy and with public presentation to the appropriate advisory commissions, allowing stakeholder input throughout the process.

### 2. Should the City waive the Anti-Lobbying Ordinance for future solicitations?

**TDS Response: Yes; solicitations for solid waste, recycling and organics management (collection, processing, and disposal) should be exempted from the requirements of the Anti-Lobbying Ordinance (ALO); or, in the alternative, the ordinance should be revised to only apply to specific subjects regarding individual solicitations and lift the restrictions entirely well before a proposed contract goes before an advisory commission and/or the City Council. Further, the ALO should be revised to allow for an appeal of a disqualification or debarment before the Ethics Review Commission, and a final appeal before the City Council.**

#### **Basis for Response:**

- Solicitations for solid waste, recycling and organics management should be exempted from the requirements of the Anti-Lobbying Ordinance for at least the following reasons:
  - Precedent already exists for the exemption of certain market segments from the requirements of the ALO.
    - [City Code Section 2-7-102 \(E\)](#)
  - City management administers Chapter 2-7 Article 6 (Anti-Lobbying and Procurement) of the City Code, and designates who is and is not in violation of the ALO, and who should be debarred from providing services to the City. This includes whether a contractor, who is also a solicitation respondent, can continue to provide services under existing contracts, if barred by City management.
  - City management regulates the private businesses that provide these types of services ([Hauler Licensing Ordinance](#)) as well as the private businesses that must utilize these services ([Universal Recycling Ordinance](#), [Construction & Demolition Recycling Ordinance](#)).

- City management operates Austin Resource Recovery (ARR), a solid waste collection operation, public utility and enterprise fund that, by staff's own admission, competes with the private haulers and processors over which it has regulatory authority. As a competitor, City staff should not have exclusive rights of communication with Council.
- With the exception of a 36 day period and a 20 day period over the past 7.5 years, City management has [structured the release and execution dates of solicitations](#) with ALO restrictions within this market segment in such a manner as to effectively silence potential respondents such as TDS who wish to provide a broad array of waste services to the City, while staff also pursued drastic policy changes, either by ordinance, procurement solicitations, letters of interest, or contract negotiations, which could have existential impacts on private businesses within this market segment.
- City management's interpretation and application of the ALO has rarely been consistent, has often been inadequate, and has sometimes been so overzealous as to earn judicial rebuke or a Council action to excuse.
  - [Ruling of Federal District Court finding City staff erroneously disqualified TDS in connection with RFP RDR0005](#)
  - [Refusal to enforce ALO against Synagro of Texas-CDR, Inc. and Mr. Allen Click in connection with RFP CDL2003 and RFP JXP0501, respectively](#)
- The solid waste, recycling and organics management industry is uniquely vulnerable to government intervention under state and federal law. Without effective Council oversight of City management's interest to control all commercial waste services in Austin's jurisdiction, there is very little justification for private investment in the facilities and infrastructure needed to meet the City's Zero Waste goals.
- City staff has revealed its desire to compete and exert absolute control over this industry numerous times in the recent past.
  - [Article XI Franchising efforts](#)
  - [Departmental response to MRF RFP \(TDS erroneously disqualified\)](#)
  - [Efforts to remove private haulers appeal rights](#)
  - [Provision of services to special events](#)
- Since TDS has numerous contracts with the City, which require ongoing communication with staff members and ZWAC, and since sometimes there are several overlapping solicitations pending subject to the ALO, TDS could be found in violation of several solicitation ALO restrictions by a single unfair ruling by City management, and City management could declare the City barred from using TDS for the disposal of all the City collected residential waste, for more than 40% of the curbside single stream recyclables collected by the City, for services to ABIA, and for other contracts currently held by TDS to service the City for the next several years.
- In the alternative to a complete exemption of waste services solicitations, ALO requirements should be revised to appropriately apply to only specific communications concerning a particular RFP or IFB response, and to lift those restrictions on each solicitation a minimum of fourteen days prior to a City Commission and/or City Council posting of the full proposed contract and any action item to recommend the negotiation and/or approval of a contract. Further, the ALO should be revised to allow for an appeal of a disqualification or debarment before the Ethics Review Commission, and a final appeal before the City Council.

### 3. Should materials be directed to or away from certain landfills in future solicitations?

**TDS Response: Yes, the City should not contract to send waste generated or controlled by the City to the WM-ACL, given the conditions still unresolved and given that the WM-ACL has been disqualified for consideration of disposal of City generated or controlled waste in the past due to the possibility of environmental liability to owners and users of the site.**

**Basis for Response:**

- Despite publically stated commitments from WMI to “[do the right thing](#)”, and conduct an environmentally responsible cleanup of what has been referred to as “[Austin’s Love Canal](#)”, to our knowledge, no subsurface cleanup or environmental mitigation of the significant amounts of what today would be classified as hazardous waste has been undertaken by WMI. Therefore, we believe the same risk concerns that led the City Council to disqualify the WMI-ACL for consideration for receipt of City generated waste in 1999 still exist today. These risks were clarified in the City commissioned [Carter & Burgess Private Landfill Environmental Assessment](#). The ZWAC also unanimously passed a [resolution in 2010](#) recommending that the City Council not enter into or extend any contractual obligation with WMI. However, City staff has recently attempted twice to [sanitize the WMI-ACL](#) record by favorable procurement recommendations to Council related to the disposal of waste generated by Austin Energy, only to have the ZWAC and the EUC express serious concerns about the City’s waste going to the WMI-ACL.

**4. Should some contracts or services be consolidated?**

**TDS Response: It Depends**

**Basis for Response:**

- Given that the staff’s [stated goals for consolidation](#), such as creating economies of scale to lower prices and attracting additional bidders, apparently had the opposite effect during their recent attempts at consolidation, it still appears that it may not necessarily be an advantageous route to pursue. In fact, allowing for individual departments to contract for their specific needs within this market segment may be more likely to result in services specifically responsive to individual department needs, provide opportunities to smaller local businesses, and lower prices by reducing the necessary overhead costs required in administering such a consolidated contract. In the event that Council should elect to consolidate some contracts or services, it should adopt as policy the practice of submitting proposed Scopes of Work to appropriate Boards and Commissions prior to the issuance of a solicitation, and posting un-redacted negotiated proposed contract documents, with sufficient time for review, prior to requesting a recommendation or approval to execute the contract. Only if these policies are directed by Council will Board and Commission members and stakeholders be able to evaluate the implications and potential benefits of such consolidation.

**5. Should the City set diversion requirements for City waste management contractors?**

**TDS Response: No, unless with flexible and verifiable requirements.**

**Basis for Response:**

- Diversion rates are primarily a function of actions of the waste generator. However, this question arose from ZWAC members desire to see more diversion activity in the context of emergency waste cleanup services. Given the nature of emergency response services and the materials collected in response to an emergency, it would likely be inappropriate to adopt a blanket requirement that all such material be sorted in order to maximize diversion. Such a blanket requirement would likely result in unintended consequences and unnecessary costs, and be difficult to enforce. However, it could be appropriate to create a plan for incentives for contractors to be prepared to maximize diversion of collected materials within the constraints of emergency service provision. Not all emergency situations are created equal and there are greater opportunities for diversion in some situations than in others. City policy should be flexible with regards to emergency services while encouraging maximum appropriate waste diversion, with due consideration of circumstances and costs, and that State law allows the City to take whatever steps are necessary to meet its

emergency service needs and verifiable waste diversion goals without going through a cumbersome and time consuming procurement process.

**6. Is there a preferred way to manage used utility poles?**

**TDS Response: Yes; reuse where appropriate, and safe disposal of the rest due to the unsuitability of use as mulch or compost.**

**Basis for Response:**

- Maximum reasonable diversion of used utility poles should be a fairly uncontroversial goal. The usable portions of these poles are incredibly durable and versatile materials by their nature and design. However, as with any material or product, pole damage, decommissioning and recovery can render a certain portion of residual material not suitable for landfill diversion, and none should be used for mulch or composting. In the case of used utility poles, broken ends must be removed and some smaller pieces may be unusable. The remaining usable materials can then be sorted by size and placed into inventory for future use by the City or by their contractor. Once placed in inventory, these materials are no longer a waste product, but a valuable commodity to be used at the discretion of the owner of the material. Reuse of utility poles should be the preferred option for managing this sizable waste stream generated by the City. In fact, Austin Energy used to offer their decommissioned utility poles to the public and interested contractors to use for various applications, such as: fencing posts, fencing, pole barns, beam replacement, sign poles and retaining walls. TDS has diverted over 10,000 pieces of Austin Energy utility poles from landfill disposal for beneficial reuse on its site southeast of the City. TDS requests that Council not require that usable pieces and whole utility poles be landfilled.

**7. Is there a preferred policy for biosolids management?**

**TDS Response: Yes. 100% of the City's biosolids should be fully composted, stabilized and used by the City or marketed as Dillo Dirt.**

**Basis for Response:**

- In 2009, [AWU spent approximately \\$7 million on expansions and upgrades to the Hornsby Bend](#) composting facility for the express purpose of increasing the production of Dillo Dirt and reducing the City's reliance on Class B land application. It is unfortunate that City management has apparently ceased the production of Dillo Dirt. However, just because AWU was unable to process and market 100% of the City's biosolids as Dillo Dirt, that does not mean that it cannot be done, and that should not cause the City to accept the highly questionable process of direct land applying Class A biosolids sludge not fully stabilized and composted, as recently proposed. Despite statements to the contrary, the three to four week process proposed by staff's recommended contractor will not produce a finished compost as defined by the [US Compost Council](#) or [TCEQ regulations](#); rather, it is designed merely to meet the regulatory requirement of pathogen reduction to reclassify Class B biosolids as Class A biosolids through the composting method of the Process for Further Reduction of Pathogens (PFRP). Achieving PFRP alone, even by the composting method, produces nothing more than a partially composted Class A biosolids sludge. It takes many more steps and much more time to produce a fully stabilized compost product such as Dillo Dirt, which does not resemble a biosolids sludge and can be beneficially used in numerous applications, and without the restrictions applying to sludge. Calling Class A biosolids a stabilized finished compost, just because it has met PFRP requirements, is a disingenuous effort to circumvent the TCEQ Chapter 332 regulations regarding land application of unstable biosolids. It would be detrimental to the environment and the local composting industry if the City were to endorse Synagro's efforts to redefine compost for their own benefit. The processing of this Class A material at the City's Hornsby Bend facility and at the still undesigned offsite facilities will almost certainly create odor

problems and land use compatibility problems not yet contemplated and adequately addressed in the 2016 solicitation and the proposed contract. The City should issue a solicitation, and/or negotiate directly with local companies experienced in biosolids composting, for the provision of services which will result in 100% of the City's biosolids being processed to the fully mature and stabilized standards of Dillo Dirt compost. In order to facilitate this process, City management should adopt definitions for the terms "Class B Biosolids", "Class A Biosolids", "Biosolids Compost", "Dillo Dirt Compost" and "Compost". We have conveyed these concerns to you in the context of the City management procurement solicitation and the proposed Synagro contract approval process. We urge your consideration of those same concerns now, and refer you to [www.texasdisposal.com/hornsby-bend](http://www.texasdisposal.com/hornsby-bend).

**8. Should Austin Resource Recovery provide special events services?**

**TDS Response: No. ARR has gone far beyond the directives of Council regarding the provision of services to special events contemplated by City Council Resolution No. 20091022-040, and has done so in violation of City Code 15-6-11 through 15-6-13, which reserves such services to licensed private haulers.**

**Basis for Response:**

- To our knowledge the only directive from Council to staff regarding provision of services to special events is contained within [Resolution No. 20091022-040](#), which states that "The City Council directs the City Manager to implement recycling at City sponsored events on City public rights of way and City facilities for which the City waives rental fees." It is our belief that [City Code](#) reserves these services to licensed private haulers. There is currently no reasonable basis for City management to 1) compete directly with private special event service providers, 2) provide services directly to businesses and non-profit entities putting on special events within the City's jurisdiction, 3) use the City's special events permitting approval process as the City's point of sale pathway to secure the accounts, 4) provide these services for free or at a rate below the City's cost of service; and/or 5) provide these services through a contracted service provider acting on the City's behalf in a manner for staff to make it appear that City management is not providing and billing for these services as City customer accounts. According to [public records](#), and the [Scope of Work](#) for the recently rejected Citywide Dumpster Contract, City staff has gone far beyond the directive contained in the above referenced resolution. Apparently the staff has provided not only recycling, but also portable restrooms and solid waste and organics collection and processing services to numerous events, beyond those sponsored by the City Council, over the last several years. It also appears that staff has provided the majority of these services at no charge to the event organizers. Staff has admitted that this service provision is in competition with licensed private haulers. Private waste services contractors cannot compete with free service or below cost of service rates offered by the City; nor should we have to.

**Policy Questions to Consider for Future Working Group Agendas**

**1. Should the City Council direct staff to present the Scope of Work for planned solid waste, recycling and organics management solicitations to the appropriate Boards and Commissions for their review and input prior to issuance?**

**TDS Response: Yes.**

**Basis for Response:**

- In the interest of transparency, the interim Director of ARR has recently committed to present the Scope of Work for planned solicitations to the ZWAC so that the commission members can review and provide input prior to solicitations being issued. At the April ZWAC meeting we were pleased to see the first example of this take place with a planned solicitation for e-waste management. We believe such a policy will go a long way



toward preventing potential conflicts over solicitations while they are active. It will also provide Board and Commission members the means to fulfil their role more effectively, by giving them insight into staff's goals at a point when it is still possible to influence the process. While the interim Director's commitment is a positive step, we believe the Council should direct staff to make this a uniform policy for all solid waste, recycling and organics management solicitations being processed through different Boards and Commissions.

**2. Should negotiated contracts be posted for Council and public review prior to staff requests for approval of execution of a contract, and with sufficient time for such review and comments?**

**TDS Response: Yes**

**Basis for Response:**

- Staff's current preferred practice of requesting Council authorization to both negotiate and execute contracts simultaneously prior to the complete proposed contract being made available with adequate time for public review is problematic, and has resulted in a complete lack of transparency. City Council has clarified to staff that City management does not need Council approval to negotiate, so requesting approval for negotiation and execution simultaneously has simply become a means to avoid revealing the actual details of contracts until after a contract has been executed. Staff has relied on [dubious interpretations of State law](#) to assert that contracts must remain confidential until they are executed; however, both a reasonable interpretation of [Texas Local Government Code Section 252.049\(b\)](#) and past practices of the City and many [other municipalities](#) indicate that this is not the case. There have been several instances of contracts being posted for public review prior to action being taken on their execution, including the TDS long term contracts for disposal, recycling and management of organics waste. We believe this is a legal and sound public policy for Council to use to foster public confidence, which can only be achieved through transparent purchasing processes.

**3. Should the "Local Business Presence" scoring criteria be amended to avoid absurd results?**

**TDS Response: Yes**

**Basis for Response:**

- The City's [Local Business Presence scoring criteria](#), as it is written, has produced some absurd results in the past and has resulted in truly local companies with offices at their waste services locations, appropriately located outside the City limits, being significantly disadvantaged relative to large international corporations with offices within the City limits. Under the current City criteria, businesses like TDS and Organics by Gosh, which were both founded decades ago serving the City of Austin, receive zero points for local business presence, while large publically traded waste services companies, have received the full ten points (10%) for their local business presence. This is an [absurd result](#) of a perfectly reasonable effort to reward local companies with additional evaluation points, which has effectively resulted in local companies being penalized relative to their multi-national competitors. We request that the location criteria for waste services businesses be expanded to award local business presence points to respondents with offices located within the City or within five miles of the City limits, to account for the physical location of solid waste processing and disposal facilities generally being required to be outside the city limits.

**4. Should staff assess and potentially exercise options within existing Council approved contracts that allow for the provision of additional services?**

**TDS Response: Yes**

**Basis for Response:**



- Staff should take an “all of the above” approach when considering its options to procure services within this market segment. Staff has rejected viable options to the detriment of affordability and waste diversion efforts numerous times over the past nine years. Maximizing the flexibility and efficiency of procurement will only benefit the City and its ratepayers. Transparency would be assured by posting full copies of negotiated proposed waste services contract documents for public review, with sufficient time for that review, prior to a City management request for a recommendation for or a vote for approval of a contract execution. Given that staff has negotiated and Council has approved [terms within existing contracts](#) that were intended to be used in the future for the provision of additional services, it seems inconsistent and odd that staff would then state that it is against City policy to even consider utilizing those existing contract provisions. In reality it is not against City policy to utilize contract amendment and negotiation options in existing TDS long term disposal, organics processing and recycling contracts, but rather, it has simply been the preference of staff not to utilize existing contract provisions that staff members negotiated and Council approved, in order to attempt to force TDS to respond to new solicitations to silence TDS through staff’s interpretation and use of the ALO restrictions. It is likely that the most efficient and cost effective options for service provision could be found through a combination of competitive bidding and negotiations under existing contracts, particularly when services are needed on short notice, and if those services are already allowed under existing contracts; then staff should certainly exercise those options.

**5. Should off-site land application of Class B biosolids be discontinued?**

**TDS Response: Yes**

**Basis for Response:**

- The direct land application of both Class B and Class A biosolids sludge on land outside Travis County is both more expensive and less environmentally beneficial than composting the sludge into a pasteurized and stabilized finished compost for beneficial use in flower beds, on lawns, fields and rights of ways throughout the City and Travis County and without legal restraint. Past efforts to allow the land application of Class B biosolids within Travis County have been met with public opposition and have failed to receive a variance from the [Travis County Solid Waste Facilities Siting Ordinance](#). According to Austin Water Utility staff, currently 75% of Class B biosolids are land applied in other counties. It seems inappropriate for the City to export a controversial process, which has been rejected by Travis County, while locally composting the sludge is viable, less expensive and more beneficial to our local environment and economy. Land application of Class B biosolids sludge should be eliminated as an option, except in emergencies. Further, the Council should reject City management’s decision to replace the Dillo Dirt program, which can efficiently produce a pasteurized and stable compost within a six month process, with a bogus “composting” process, which claims to produce a pasteurized and stabilized finished compost within three to four weeks, in order to classify the resulting Class A biosolids sludge as a material not requiring a permit for its direct land application and not subject to the Travis County siting ordinance. All sludge should be composted to the stabilization and maturity standards of a finished compost.

**6. Should the City determine whether solid waste, recycling and organics processing and/or disposal facilities used by the City or its contractors are fully authorized under applicable local, state and federal regulations, and have acceptable regulatory compliance and operating records?**

**TDS Response: Yes**

**Basis for Response:**

- All the facilities relied upon for the receipt of City generated or controlled waste should be fully authorized to receive and manage the waste under local, state and federal laws, be as risk free as reasonably possible from the long term environmental operating record of the facility and from City Super Fund liability, and provide the City assurance of uninterrupted services or reasonable contingencies for backup.

**7. Should the City maintain its longstanding policy of opposition to the expansion of the two north east Austin landfills?**

**TDS Response: Yes**

**Basis for Response:**

- The City Council has held the explicit position of opposition to any expansion of the WMI-ACL and the Sunset Farms Landfill since at least [2007](#). The Council has reiterated and affirmed this opposition numerous times by directing staff to oppose expansions through specific legal action and to not approve certain contracts. It would be a dramatic change in policy if the Council were to cease opposition to the expansion of these landfills. Also, we believe that the subsurface conditions still exist that were the basis for the City's third party engineering consultant conducting an environmental risk assessment on the three Type I landfills in Travis County ([Carter & Burgess](#)) and their strong recommendation against the City's continued use of the WMI-Austin Community Landfill. Furthermore, the 2008 restrictive covenants negotiated by City management regarding the permanent closure of the Sunset Farms Landfill to waste receipt is not binding on any entity other than the legal entity who executed them. Other potential owners are not bound; nor is the land specifically restricted from such uses.

**8. Are the current owners of the Sunset Farms Landfill permit and property bound by the restrictive covenants negotiated and executed by Assistant City Manager Robert Goode and City legal to effect permanent closure of the facility by November 1, 2015, and will these restrictive covenants ensure that the landfill will not be reopened and joined into a unified landfill expansion with the adjacent WMI-ACL?**

**TDS Response: Not Necessarily**

**Basis for Response:**

- A new deed was filed about January 17, 2017 conveying three of the four tracts of land comprising the Sunset Farms Landfill to BFI Waste Systems of North America, LLC. This entity was one of the two parties which executed and are bound by the [2008 Rule 11 Agreement](#) with a deed restriction requiring only those two entities to stop accepting waste on November 1, 2015. If this entity decides to convey the property to another entity the deed restriction requiring the landfill to be closed is not binding on the new owner. Neither the original restrictive covenant nor this most recent Travis County deed filing permanently prohibits the use of approximately 294 acres of land as a solid waste landfill and/or a transfer station by any other individual or company, other than the entity which executed it. Furthermore, Republic Services or a different entity not bound by the restrictive covenants is not restricted from seeking an authorization from the TCEQ to transfer the landfill permit, then seek to resume landfill operations, or to amend the permit to operate an enlarged landfill and/or a transfer station. To impose an absolute prohibition that the land will never be utilized after November 1, 2015 to receive, dispose of or transfer solid waste, then the restrictive covenants should be filed to apply to each tract of land regardless of which legal entity owns the land in the future. Please see the [additional TDS communications](#) on this topic.

**9. Should ARR provide collection service to commercial properties? (Note: This question was posed by ARR staff)**

**TDS Response: No, ARR should not provide collection services to commercial properties historically serviced exclusively by licensed private haulers.**

**Basis for Response:**

- [Current City ordinance](#) and past City policy precludes the City from providing the vast majority of commercial services utilizing City personnel and equipment, or through a designated contractor, as City management

attempted to do in the 2016 [Citywide Dumpster Services RFP](#), and [the CBD/Commercial Organics Pilot Program RFP](#). If ARR were to provide collection services to commercial entities it would result in enormous costs to the City of Austin to purchase the necessary equipment, and would destroy the competitive market on which commercial customers rely and upon which licensed private haulers and other service providers have built their businesses. If the Council chose to seriously consider changing long standing historical practice and policy and have the City provide these services to commercial businesses, it would need to evaluate the efficiency and affordability of ARR's existing residential service delivery and consider the effects of transposing that level of efficiency onto the entire commercial market, as well as what effect that would have on overall affordability in Austin, and on the likelihood of additional private dollars being invested in Zero Waste infrastructure given such a change. It is also relevant to note that the commercial sector has outperformed the residential sector regarding [waste diversion percentage](#), despite City staff's questionable history of adequately enforcing the requirements included in the Universal Recycling Ordinance.

Thank you for your kind consideration of our comments. We look forward to working with the Working Group. Please do not hesitate to let us know if we can provide additional supporting documentation for any of our statements or representations.