



GRAVES DOUGHERTY HEARON & MOODY
A PROFESSIONAL CORPORATION

1
Michael J. Whellan
512.480.5734
512.480.5834 (fax)
mwhellan@gdhm.com

MAILING ADDRESS:
P.O. Box 98
Austin, TX 78767

May 14, 2014

Kenneth J. Mory, Austin City Auditor
OFFICE OF THE CITY AUDITOR
3701 Lake Austin Blvd., 2nd Floor
Austin, Texas 78703

VIA HAND DELIVERY

RE: Inaccurate City Auditor's Report on Allegations Involving a Zero Waste Advisory Commissioner

Dear Mr. Mory:

I write this letter on behalf of Texas Disposal Systems ("TDS") to express -- as did the Ethics Review Commission at its April 29, 2014 meeting -- great frustration in the way in which the City Auditor's office has treated Ms. Daniela Ochoa Gonzalez, a former Zero Waste Advisory Commissioner. *See* attached transcript of the Ethics Review Commission agenda item discussion.¹ I am also concerned about the direct impact upon TDS and its reputation, as a result of your inappropriate investigation, reporting, and distribution of your April 18, 2014 City Auditor's Integrity Unit ("CAIU") Report ("Report"). The reputation of TDS is a highly valued asset of the company and TDS seeks your immediate withdrawal of the Report and the issuance of a clarifying statement, as discussed herein, to mitigate the false allegations in the Report.

The City Auditor office's handling of this matter was riddled with failures, most notably including:

- the failure to properly apply the City Code;
- the failure to notify Ms. Ochoa Gonzalez or TDS of findings in advance of publication;
- the failure to provide Ms. Ochoa Gonzalez or TDS a copy of its Report, before its distribution, to allow an opportunity to present the facts of the matter;
- the failure of the City Auditor's office to notify Ms. Ochoa Gonzalez or TDS of the Ethics Review Commission meeting at which the Report was going to be discussed; and
- the City Auditor's failure to have a representative attend the Ethics Review Commission meeting, at which the commission was to consider filing its own

¹ The April 29, 2014 Ethics Review Commission Agenda Item 4.b. was entitled "City Auditor's Integrity Unit investigation reports generally, including Report on Allegations Involving a Zero Waste Commissioner and possible action by Ethics Review Commission to file a complaint on its own initiative."

May 14, 2014
Page 2

formal complaint against Ms. Ochoa Gonzalez. *See* April 29, 2014 Ethics Review Commission Agenda Item 4.b., Footnote 1.

The improper actions of the City Auditor's office have resulted in real and significant harm. The distribution of the flawed Report and City officials' reliance on its purported validity resulted in requests to Ms. Ochoa Gonzalez to resign from the Zero Waste Advisory Commission ("ZWAC"), which she did. The flawed Report also caused an article to be published in the April 29, 2014 Austin American-Statesman that contained inaccurate information against Ms. Ochoa Gonzalez and TDS. The day after the newspaper article was published in the Austin American Statesman, Ms. Ochoa Gonzalez was asked to resign from her employment, which she also did. TDS did not know about the Report until April 28, 2014, when TDS was contacted by an Austin American Statesman reporter requesting a quote for the story being written that same day. The City Auditor's office should be ashamed with the way it has mismanaged this so-called "investigation" and its submittal to the Ethics Review Commission for disciplinary action.

This flawed Report is scheduled for discussion at the May 14, 2014 ZWAC meeting (Agenda Item 4.a.). TDS requests that you attend this meeting to respond to this letter. TDS strongly urges you to take this opportunity to formally withdraw the inaccurate Report, cease publishing false statements about Ms. Ochoa Gonzalez and TDS, and rectify the injustice your office has caused to Ms. Ochoa Gonzalez with a written apology and clarifying statement.

Background

On April 18, 2014, the City Auditor's Integrity Unit ("CAIU") released a report containing accusations against Daniela Ochoa Gonzalez for allegedly violating conflict of interest City Code provisions. Ms. Ochoa Gonzalez did not violate the conflict of interest ordinance because she did not have a "substantial interest" in TDS nor did the agenda items cited by the City Auditor have a "direct economic effect" on TDS as required by the Code of Ethics.

Instead of analyzing Ms. Ochoa Gonzalez's conduct based on the specific requirements set forth in the City Code, the City Auditor reportedly relied upon an anonymous tip in a highly competitive business to then make assumptions, which led to reckless conclusions. For example, without ever speaking to someone from TDS about the Report, the City Auditor assumed that Ms. Ochoa Gonzalez had a "substantial interest" in TDS during all three ZWAC meetings in question and that the ZWAC agenda items were "TDS agenda items" just because a TDS representative spoke on the item; however, that is not the standard under the Code. We believe the CAIU Report mischaracterized agenda items as "TDS agenda items" to further the Report's purposes of promoting an inaccurate narrative and damaging the reputations of both Ms. Ochoa Gonzalez and TDS.

In her "Concise Response to the Report on Allegations Involving a Zero Waste Advisory Commissioner," Ms. Ochoa Gonzalez wrote that the CAIU report failed to mention the following: "In several instances before and during my tenure on the Commission, I sought

May 14, 2014

Page 3

guidance from several members of the City staff (Austin Resource Recovery and others) on the ethics rules. In these discussions I also disclosed that I was providing consulting services on waste management issues, including waste assessment and education services to Independent School Districts under a contract to waste haulers. Based on these discussions, I was led to believe that the educational nature of my work performed at schools pursuant to the TDS contract would not subject me to disclosure or recusal requirements." See attached. We are unaware of any follow-up investigation performed by your office concerning the advice City staff provided Ms. Ochoa Gonzalez.

Elements Were Not Met: No Violation of the Code of Ethics

The CAIU cited Ms. Ochoa Gonzalez's conduct at three ZWAC meetings (involving a total of 4 agenda items): February 13, 2013; April 10, 2013; and August 14, 2013. The CAIU claims Ms. Ochoa Gonzalez violated City Code Section 2-7-63, "Prohibition on Conflict of Interest," and City Code Section 2-7-64, "Disclosure of Conflict of Interest," at these meetings.

Pursuant to these Code provisions, in order for there to be a violation, the vote or decision must *both* (i) "affect" an entity, which means that the entity is "reasonably likely to be subject to a direct economic effect or consequence, either positive or negative" as a result of the vote or decision, and (ii) the City official participating in that vote or decision must have a "substantial interest" in the affected entity at the time of the vote or decision. The City Code is careful to state that "[a]ffected does not include those persons or entities who are subject to an indirect or secondary effect from official action."

No "Substantial Interest" Existed For 2 of the 3 Meetings

If the CAIU had actually done research rather than merely making unwarranted assumptions, the City Auditor would have discovered that Ms. Ochoa Gonzalez did not have a "substantial interest," as that term is defined in Section 2-7-2(10), in TDS on the dates of two of the meetings. An actual investigation therefore would have eliminated the need for any further inquiry concerning two of the three meetings, and two of the four agenda items.² Ms. Ochoa Gonzalez did not meet the substantial interest test until at least April 17, 2013. On that date Ms. Ochoa Gonzalez exceeded the \$5,000.00 threshold in professional fees that a contractor must receive before having a "substantial interest."

² "Substantial Interest" can also be triggered by other inapplicable means such as five percent ownership in the voting stock, shares or equity of the entity. Furthermore, based on Ms. Ochoa Gonzalez's representation of household income under Texas law, the ways of triggering a substantial interest are inapplicable or have a higher threshold that was not reached in this case until after April 17, 2013.

May 14, 2014
Page 4

Ms. Ochoa Gonzalez received funds from TDS for instructing AISD school children how to sort waste products for recycling and composting as follows:

Date	Payment	Subtotal
March 5, 2013	\$2,791.25	\$2,791.25
April 17, 2013	\$2,378.75	\$5,170.00

These dates are significant for triggering the requirements of the City's conflict of interest provisions. The first two agenda dates complained of by the CAIU occurred before April 17, 2013, the date Ms. Ochoa Gonzalez first attained the "substantial interest" status. Therefore, it is impossible for Ms. Ochoa Gonzalez to have violated the City conflicts of interest ordinance at the ZWAC meetings held on February 13, 2013 or April 10, 2013. The failure to ascertain when Ms. Ochoa Gonzalez reached this threshold is a fundamental flaw in the CAIU's Report. The City Auditor's disregard of this threshold requirement and these dates reflects the City Auditor's reckless disregard for the truth, and apparent eagerness to publicly and inappropriately smear the names of Ms. Ochoa Gonzalez and TDS.

The Agenda Items Did Not Have a Direct Economic Effect on TDS

The other key test in the City's conflict of interest ordinance is whether the subject matter of the vote or decision has a "direct economic effect" on TDS. The CAIU assumed that, if TDS commented on an issue, then there must be a direct economic effect on TDS. This assumption resulted in an incorrect analysis and erroneous decision by CAIU on each and every agenda item.

The ZWAC agenda items at issue in the CAIU's report were not directly related to TDS:

February 13, 2013	"Discussion and Action – URO Phase 2 Ordinance"
April 10, 2013	"Discussion and Action – Austin Energy Waste Disposal Contract"
August 14, 2013	"Discussion and Action – Special Events Ordinance" "Discussion and Action – URO Data Collection and Reporting Contract"

February 13, 2013 Agenda – Universal Recycling Ordinance ("URO") Phase 2 Ordinance

The February 13, 2013 URO Phase 2 Ordinance amendment agenda item reviewed several proposed amendments to the URO, so that recycling requirements could expand to all applicable properties in Austin by 2017. These amendments included requirements that certain property owners, who were already subject to recycling initiatives, submit an annual recycling plan to the City; clarification that recycling does not include waste-to-energy processes, placement in a disposal facility, or use as daily cover in a disposal facility; and revision of the description of property owners subject to the URO requirements. TDS' representative suggested

May 14, 2014

Page 5

a modification to the definition of composting facilities to require that such facilities have all required governmental authorizations. See attached transcript of the agenda item discussion.

These and other changes to the URO did not have a direct economic effect on TDS and to suggest otherwise is just silly. In fact, it would even be tenuous to suggest “an indirect or secondary effect” from ZWAC action on the URO – Phase 2 Ordinance amendments. As noted above, Ms. Ochoa Gonzalez also did not meet the threshold for the substantial interest test on this date, and the issue was not a “TDS agenda item” as alleged in the inaccurate Report.

April 10, 2013 Agenda – Austin Energy Waste Disposal Contract

The April 10, 2013 agenda item was to approve the award of a contract for the disposal of Austin Energy generated waste to Republic Waste Services of Texas. The recommendation was made after a bid process. During that bid process, TDS’ bid was not considered because in City staff’s opinion it was ineligible due to an incomplete bid. TDS protested having its bid ruled ineligible and objected to City staff’s refusal to rebid the contract under the circumstances. TDS believed its bid provided the best option for the City. See attached transcript of the agenda item discussion and the TDS handout presented to ZWAC.

But the issue of TDS’ ineligibility or rebidding the contract was not before the ZWAC in this agenda item. The only item on the agenda was the contract with Republic Waste. There was no option to select TDS and, therefore, the agenda item had no direct economic effect on TDS. And, as previously mentioned above, Ms. Ochoa Gonzalez did not have a substantial interest on April 10, 2013, so her participation in the deliberations (she did not vote) could not violate the conflict of interest provisions, and the issue was not a “TDS agenda item” as alleged in the inaccurate Report.

August 14, 2013 Agenda—Special Events Ordinance and URO Data Collection and Reporting Contract

The items on the August 14, 2013 ZWAC agenda, on their face, have no direct economic effect on TDS and were not “TDS agenda items,” as alleged in the inaccurate Report. The Special Events Ordinance required event organizers to provide details about the waste management and recycling activities during an event. The burden under the ordinance is on the event organizer to submit a permit application for the event describing how it will manage the waste and recyclables during the event. See attached transcript of the agenda item discussion.

The other item on the August 14, 2013 agenda was the award of a contract to Emerge Knowledge and Design, Inc. for a web-based data collection and reporting system for Austin Resource Recovery. TDS is not in the business of writing software and its only interest in the item was to ensure any confidential information of TDS that is collected be protected from disclosure. See attached transcript of the agenda item discussion.

May 14, 2014

Page 6

None of the four agenda items described above had a direct economic effect on TDS. Any effect on TDS would be the same as on any other entity in the waste services and recycling business and, at best, would constitute "an indirect or secondary effect," which does not qualify as a violation of either Section 2-7-63 or 2-7-64 of the Code of Ethics. No entity in the waste business was assured of any financial benefit associated with these agenda items, with the exception of Republic Waste Services of Texas because of the award of the contract with Austin Energy. Had the Austin Energy contract been rebid, either Waste Management of Texas or Republic Waste Services of Texas could have also qualified as a bidder, and a separate agenda item would have been posted at a later date to award that new bid. Ms. Ochoa Gonzalez's participation in the discussions and voting did not violate the City's conflict of interest rules because of the lack of direct economic effect on TDS. Furthermore, she reported that she had been advised by the Director of the Austin Resource Recovery Department that her consulting work with a local hauler involving public schools educational programs would not constitute a conflict of interest. See Ms. Ochoa Gonzalez's attached statement.

Conclusion: City Auditor Needs to Retract Its Report, Update Its Investigation Techniques, and Apologize to Ms. Ochoa Gonzalez and TDS.

As noted above, Ms. Ochoa Gonzalez has been unjustly forced to resign from both her job and as a ZWAC commissioner, as a result of the publication of this inaccurate Report. Regardless of whether the CAIU Report is now moot because of her resignation from ZWAC, the fact that it exists in the public record with inaccuracies that have had a direct effect on Ms. Ochoa Gonzalez's life, should motivate the City Auditor's office to retract the Report and provide a written apology to Ms. Ochoa Gonzalez, which she can use to try to repair the reputational damage your office has caused with its sloppiness and recklessness. TDS requests a formal withdrawal of the inaccurate Report and a statement clarifying that the referenced ZWAC agenda items were not "TDS agenda items" as alleged by the Report, and that TDS did not inappropriately influence the discussion or the vote involving these issues before ZWAC.

TDS would ask that your office use this mistake with Ms. Ochoa Gonzalez's case as a learning opportunity to improve and update its interpretation of City Code, and its investigation techniques, especially with anonymous tips.

TDS would also request that your office provide a report to City Council to allow the public to comment on the investigation process and methodology that your office will undertake in the future. The City Auditor must proceed with caution in its investigations, especially ones initiated from anonymous tips in which the accuser is unwilling to face the accused.

Moreover, the City Auditor's interpretation of City Code in this situation is startlingly broad and could have wide-ranging implications. The Code's ethics rules apply to "City Officials." Many persons who fall under that defined term are involved in industries that are relevant to boards and commissions on which they sit, such as engineers serving on the Planning Commission or the Environmental Board. Under the City Auditor's interpretation, these persons

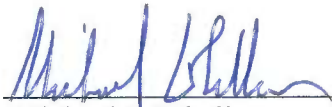
May 14, 2014

Page 7

are in jeopardy of a determination that they violated the City's Code of Ethics, if it is later alleged that an item they discussed or voted on indirectly benefitted their client, employer, or spouse, and if they have received (or may in the future receive) more than \$5,000 in connection with their employment within the previous 12 months. This overly broad interpretation would certainly act as a disincentive for people with relevant expertise to serve on boards and commissions, even when no actual conflict exists – a result that is undesirable and that does not further the legitimate goals of the Code of Ethics.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

By: 
Michael J. Whellan

MJW/pd

cc: Mayor and City Council
Zero Waste Advisory Commissioners
Marc Ott, City Manager
Director, Austin Resource Recovery

1 **Ethics Review Commission Transcript, April 29, 2014: Item 4B**

2 **Austin Kaplan:** Next agenda item, next order of business is, I want to move to 4B again with your
3 permission skipping over a few of the other things, this is the city auditors integrity to investigation
4 reform generally -

5 **Donna Beth McCormick:** Could you take the baby out, please

6 **Austin Kaplan:** – including report on allegations involving a zero waste commissioner possible actions
7 by any Commissioner to file a complaint on its own initiative

8 **D. Ochoa-Gonzalez:** And they are mentioned all in your packets, after the financial statement

9 **Austin Kaplan:** Unless it's really bothering anybody I think we are okay, we'll be okay with the baby as
10 long as...

11 **D. Ochoa-Gonzalez:** It's ok

12 **Donna Beth McCormick:** Well it's bothering, it's a bit distraction, I'm sorry.

13 **Mitchell Harrison:** I imagine you are talking about him-

14 **Donna Beth McCormick:** Uh-huh, yeah, because it's a big distraction with the noise for me, I'm sorry.

15 **Mitchell Harrison:** Ok, what was your request?

16 **Donna Beth McCormick:** You could just wait outside or have somebody take the baby I think.

17 [Mumbling]

18 **Austin Kaplan:** I'm sorry. I apologize.

19 **Cynthia Tom:** Did he want to...was he signed up for speaking?

20 **Austin Kaplan:** Yes, he is signed up to speak.

21 **Donna Beth McCormick:** Ok well then maybe we can do something, but it is a big distraction.

22 **Cynthia Tom:** Daniela is saying that she thinks that, that's your husband right? That he was planning to
23 donate his three minutes to her.

24 **Donna Beth McCormick:** Oh, ok.

25 **Austin Kaplan:** Ok, and that's fine.

26 **Cynthia Tom:** Is that alright with you?

27 **D. Ochoa-Gonzales:** Do you have a copy of the email I sent? If not I'll have to share it.

28 **Cynthia Tom:** Yeah, it should be in your packets.

29 **Austin Kaplan:** I think Commissioners all have copies, just before we roll into it so this is 4B and it is also
30 item...oh never mind.

31 **Several Commissioners:** It's just 4B.

32 **Austin Kaplan:** Okay and you have the backup information in your packets.

33 **Cynthia Tom:** And what you have in your packets, I think, the second thing it's what she is discussing in
34 her email and concise response to the report and allegations of involving the Zero Waste Advisory
35 Commissioner dated April 28, 2014 at the top? Does everybody see it?

36 **Commissioners:** Yes.

37 **Cynthia Tom:** And there is some other materials related to this item also in your packet, confirmation
38 should be in there at least one, maybe more than one. And a copy of the audit report in which all of you
39 received by email directly from the auditor last week or the week before. Everybody have everything?
40 Great, let me see...

41 [Mumbling]

42 **Donna Beth McCormick:** April 18th?

43 **Cynthia Tom:** Yeah, that's the date of the auditor's report investigation that ya'll were emailed.

44 **Commissioner Austin Kaplan:** Everyone have all the forms? Thank you so much for coming to speak
45 with us. I am going to put the timer on. I think you got six minutes - no nine minutes total, yeah.

46 **D. Ochoa-Gonzales:** Thank you, Commissioners, good evening, and again thank you for this opportunity.
47 As you serve here voluntarily, I was also serving voluntarily at the Zero Waste Advisory Commission.
48 This was my first tenure in such a role. I have a true passion and life commitment to contribute to the
49 public good and environmental topics especially the ones that pertain to the ZWAC Commission. I gladly
50 dedicated much volunteer time for the city without any expectation of gain and without any improper
51 motive. I highlight that I do not believe that I have violated the conflict of interest rules, the reports and
52 actions of the city auditor's integrity unit were deeply flawed for various reasons but I want to highlight
53 the main five here today. The report ambiguously condemned me for violating conflicts of interest
54 without adequately examining two factors that require to determine the existence to the conflict of
55 interest: substantial interest and likelihood of causing direct economic consequence on the interested
56 party. Glaringly, the report did not even discuss if or how my participation in the commission meeting
57 had likely direct effects on Texas Disposal Systems. Oh that was number one, so I'll try to be clear. The
58 number two is that the only matter brought to the commission which had a direct economic effect on
59 TDS, which is the abbreviation for Texas Disposal Systems, in this matter I abstain from voting and even
60 though the report determined that I violated the conflict of interest. Number three; is that the City
61 Auditors Integrity Unit completely ignored the process expressly established in the City code for conflict

of interest, and recusal complaints. And number four would be, that in addition to these irregularities in the report the Auditors Integrity Unit then widely, and in my belief prematurely, disseminated the report and make it very, you know, public, to many people that, you know, they share the report with, disregarding the harm that this will cast on me.

Number five is the way that this was handled, you know, the entire process from the Auditor's Integrity Unit, has seriously tramped, just tramped my basic due process rights. And now I have been effectively kind of tarred and feathered by these improper actions which have resulted irreparably in harm to my reputation. I have provided you a document with further information on these matters. Certainly, while it is important to ensure transparency and ethics in the policy making process, the City Auditor's Integrity Unit must be held to a basic and minimal responsibility to ensure accuracy on its reports prior to irreparably injuring a person's reputation.

You know, the act of public participation in the government's process is one of Austin's strengths and contributes to the vitality of our city. It's an honor to be part of one of the boards, especially for someone like me that comes from central Mexico, where there is not a democratic process that has such a participatory community, so I really appreciate the opportunity to be on one of those boards. And I consider it a great class, you know, better than going to grad school.

The City, and all of us, have a duty to ensure that citizens will volunteer their time and that the City treat them fairly and respectfully, and that they are provided adequate support.

So, in conclusion, I respectfully request that, first, the inaccurate, incomplete, improper disseminated report of the CAIU Unit be publicly withdrawn. Second, that my name be cleared of wrongdoing; and third, that the City spends more time providing volunteers adequate ongoing support on the Conflicts of Interest rules. That they conduct - instead of conducting one-sided persecutions. Thank you.

Austin Kaplan: So this is brought to our attention, and if it's okay with you, I just wanted to have you here, and we can kind of discuss this in a group, perhaps. This was brought to our attention when we were all emailed this report from CAIU on late Friday. We were given it individually, all of us commissioners, as was Council, and some other folks, was the first time that I was aware of it, and I think that any of us were aware of it. When we saw it, obviously because of the nature of the allegations in the report I felt compelled to put it on the agenda to at least discuss here in the Commission, and the reason for that is usually we'll get complaints from individuals about other individuals; in this case it became, we became aware of a conflict of interest, a potential conflict of interest situation through other means, and we actually have the ability as a commission, to file our own complaint kind of sua sponte, and to have our own investigation. And so that's why we had to put it on the agenda. But I do want to talk about kind of where we are in the process and where you are in the process and see what we want to do as a commission given all of that. I do want to kind of address the three things that you, the three actions that you requested. And I know we have a written statement from you on the same thing. One is that this report is that the city auditor's integrity unit report be publicly withdrawn unless there is something I don't know we as the commission don't have any ability

104 to do anything about that. There is no action that we can really take on that. The second piece that your
 105 name be cleared - because of the allegations here, and I'll defer to my fellow commissioners who may
 106 see it differently, but I don't think that we really have the ability to do that either. We can hear
 107 complaints about conflicts of interest and violations of city policies and we can issue a result that there
 108 is no violation but we can't kind of issue the all-clear, I don't know a good way to put it but we can't do
 109 that for you, we can't clear someone's name all we can do if we go through a process is to find that
 110 there is no violation but of course if we do go through a process we can also find that there was a
 111 violation. The third piece is something that we can do and hopefully we are doing an ok job of it but
 112 maybe it's something we can do better on and that is to make sure that all boards and commissioners
 113 are well aware of conflicts of interest rules and aware of that they are enforced or hopefully are
 114 enforced pretty vigorously and you know there is a training packet that HR and the clerk worked really
 115 hard on, there is training that every board commissioner goes to when they are brought on to the board
 116 there is also reoccurring training that happens but maybe it's something that we can look into and even
 117 kind of beef up or emphasize in the conflicts of interest sessions on these trainings just so that the rules
 118 are, the rules of the roads, are really clear for everybody.

119 So one thing, so those are the three sort of action items that you had in mind but the, I guess what's
 120 important to us is...so what's your current status with respect to Zero Waste Advisory Commission?

121 **D. Ochoa Gonzalez:** Well this report also came to the attention of the City Manager, Mike Martinez,
 122 Chief of Staff, and you know it's such a big statement that immediately after receiving the report he
 123 asked for my resigning and so I did because I believe that you know we are all here willing to represent
 124 someone in a good relationship. So if he didn't want me there the most appropriate thing was to resign
 125 so in that email that I sent you I resigned.

126 **Austin Kaplan:** Ok- so I think that is important for us is that we are trying to decide what we want to do.
 127 I think that in terms of our - the sanctions that we can impose at the end of a process the most serious
 128 sanctions essentially in this situation, unless I am missing something would be recommendation for
 129 removal from position so...

130 **Dennis Speight:** Which is moot at this point.

131 **Austin Kaplan:** Which is moot at this point. And so you know, we can, of course, we are not, I don't
 132 think there is anything stopping us from going through our process, but if we were going through our
 133 process and have a negative finding we would end up right where we already are today. So I think it is
 134 something to keep in mind. Any other thoughts about any of what we kind of just been discussing from
 135 other commissioners?

136 **Velva Price:** Well, I just wanted to ask you, when you were going through with your email and your
 137 response, is it your position that you were never contacted by the auditors to be able to give, I guess, a
 138 response to the fact that they are investigating? You weren't aware of it until and I think your email
 139 says until you got a call from somebody in Councilmember Martinez's office?

140 **D. Ochoa Gonzalez:** Yes, so I was first called to be interviewed and, I did interview for them.

141 **Velva Price:** So the auditor did interview you?

142 **D. Ochoa Gonzalez:** Yes, but in that interview they didn't give me – oh, I am sorry I didn't mean to
143 interrupt.

144 **Velva Price:** Oh I interrupted first, so you first.

145 **D. Ochoa Gonzalez:** Thank you. They didn't give me any chance to provide any evidence so I could
146 have brought the copy of my bank statements or provide some financial information and I wasn't given
147 that choice or just to provide my evidence. That was back in like early January or late December and so
148 once they came to this conclusion they never contact me back to try to, you know say we are going to
149 grab this ad do you have anything to add to these and the reports itself doesn't say you know how if I
150 do, you know I get influenced by TDS now. To the best of my ability I read that training three times and
151 those ethicals you know back in the first training time that I have to be ready to be a ZWAC member and
152 then once the situation arose and I, English is my third language, but I am very clear especially as I am
153 reviewing it now so specifically that I have not violated the conflict of interest because of the various
154 specific, you know, details that it says there whether it's a substantial interest or not. So I started my
155 work with TDS at the same time and I was very remotely related to the company itself as I was the third
156 party between those independent school districts, which are also an independent entity and TDS as a
157 provider of a service to the school district. So it was the arrangement between them that they wanted a
158 neutral part to come and visit the schools and make an assessment of the operation to also provide
159 feedback of service improvement needs from this company TDS. And that is what I did. I was never
160 presented physically at that office or involving in any of the decisions that that office, you know, would
161 pertain.

162 **Velva Price:** But two things, one is, so you were told by the City Auditors office that they were
163 investigating a complaint. So you were aware of that and you had a chance to interview with them. I
164 just was worried that basically they did the investigation without getting your own input I guess that
165 what I am hearing is they did get some input but you're thinking that maybe they should have come
166 back and got additional information from you.

167 **D. Ochoa-Gonzalez:** I was very willing to participate in the investigation because I was very troubled
168 myself, you know, and at that time I attended that interview but I didn't believe that that was going to
169 be it. I openly shared all my responses with them. They didn't ask all the questions though. And at that
170 time I asked the City Manager, I mean the City Council Manager, Andrew, back in January, if he wanted
171 me to resign at that time, and, you know, this situation has been brought to their attention, and he said
172 that the regular procedure on these cases was that that was going to come to this Commission and
173 there might be even public hearings, but I as clear then as I am now, I don't believe that I have a conflict
174 so that I should have, you know, more likely if I was going to come out clear, then I actually should have
175 continued attending those meetings. Unfortunately, the result of the report wasn't there.

176

177 **James Sassin:** I have a question, Chairman Kaplan; do you have any notion why it didn't come to us
178 before it went to the Auditor?

179 **Austin Kaplan:** That's a fair question, and I do not. My understanding is that...

180

181 **James Sassin:** I mean, what triggered this? Does anybody know?

182

183 **Austin Kaplan:** Is there anyone from the Auditor's office here?

184

185 **Cynthia Tom:** I don't believe anyone from the Auditor's office was able to attend. I did speak with a
 186 couple of folks from the Auditor's office; one person today, and one person a couple of weeks ago when
 187 y'all first got the report. My understanding, although the Auditor is willing to send a representative to
 188 your next meeting, if you would like, to kind of give y'all an overview of what the Integrity Unit does,
 189 how they receive complaints, sort of their investigative process, so you all are more aware of it. I only
 190 know a little bit about it, but my understanding is that the City has an anonymous kind of complaint line,
 191 and there's a phone number, and I think maybe there's also a way to submit complaint online
 192 anonymously. Those complaints, I understand, go to the Auditor's office, specifically to the Integrity
 193 Unit, which is the one that produced the report. The Auditor's jurisdiction should be that, would be
 194 totally separate from the Ethics Review jurisdiction, so, for example, if someone wanted to make a
 195 complaint, generally the Auditor, sometimes in the law department people will call us... the Ethics and
 196 Compliance team's function is to give training, and to give perspective advise. So if someone calls and
 197 says, "Hey, I don't know if I can do this. Can you help me work it out?" under City Code, the law
 198 department will help with that. If somebody called the law department and said, "Somebody did
 199 something and I think it was wrong." The law department doesn't investigate that. The law department
 200 will forward those complaints, or reports, to either the Auditor's office for the Integrity Unit to
 201 investigate, or the Human Resources/Employee Relations office to investigate - sometimes to both. So if
 202 someone wanted to make an anonymous complaint, they can't really do that with Ethics Review
 203 Commission. The way your procedures are set out, the complainant has to come here, they have to put
 204 their name on the form, they have to swear to it, they have to come and make a presentation in front of
 205 a hearing...

206

207 **Dennis Speight:** And that's the way this one came in, it was an anonymous complaint?

208

209 **Cynthia Tom:** This one, I don't know if it was anonymous, but I know that the Auditor's has a complaint
 210 line which is anonymous, so it is possible.

211

212 **Dennis Speight:** But they can also self-start an investigation... I don't know how they would know to do
 213 it.

214

215 **Cynthia Tom:** I don't know if the Auditor would start these types of investigations without some sort of
 216 outside information; but definitely, if you guys would like, a representative of the Auditor's Integrity
 217 Unit to come to our next meeting –

218

219 **Velva Price:** We definitely would.

220 **Cynthia Tom:** – they said they would be able to come and give you a better idea than I can of how these
 221 types of investigations get started. But they're jurisdiction is totally separate from yours. So they have
 222 the authority to do reports, to hear complaints. You don't necessarily see it. This time they chose to
 223 share it with you. They may do investigative reports involving conflicts of interest or other ethics
 224 violations that y'all have never seen. If you want to see those, a representative of the Auditor's office
 225 told me they might be willing to share more, but in some instances, you know, there might not be a
 226 need for both the Auditor to investigate and for y'all to have a hearing. It's kind of parallel tracks.

227
 228 **Peter Einhorn:** I would like them to come next time. And you can express to them that Commissioner
 229 Einhorn is frustrated they are not here tonight. Because this is pretty ridiculous that they brought this
 230 ...this is the one they bring to us and then they don't even show up? That's annoying to me.

231 **Cynthia Tom:** I don't know that the Auditor... I'm not interpreting this report from the Auditor as the
 232 Auditor filing a complaint... I think they send it to you, sort of, as an FYI.

233 **Peter Einhorn:** I'd also like to see what other reports like this they've done, that are...

234 **Donna Beth McCormick:** Is there something that raises a red flag... that...

235 **Peter Einhorn:** Yeah, why this one?

236 **Dennis Speight:** I understand they provided this to us as courtesy, but I assume they also knew we put it
 237 on our agenda.

238
 239 **Cynthia Tom:** I let the Auditor's office know that it was going to be on the agenda. I double checked
 240 with him that they considered the report to be public information, and it was okay to post it as backup
 241 online. And they said, "Yes." He is out of town right now, which may be why he's not here. But I did
 242 speak with someone else from the Auditor's office today, and I said... and he said, "Do you need more
 243 information from us tonight, do you need us to come?" And I said, "You're welcome to come if you're
 244 able. If you're not, then I understand." But at that time I didn't have a request from anyone for the
 245 Auditor to come, so... if I had, and I told him "Yes", the Chair, or the Vice Chair, or one of the
 246 Commissioners has asked that you be here," then they might...

247
 248 **Peter Einhorn:** I didn't know I needed to ask. I would have thought it would have been in their interest
 249 to come.

250
 251 **Donna Beth McCormick:** Common courtesy.

252
 253 **Cynthia Tom:** I can't speak for the Auditor. They are willing to...

254
 255 **Peter Einhorn:** I understand, but *the* Auditor may be out of town, but he's got to ... he has a substantial
 256 staff.

257

258 **Dennis Speight:** ... the one who signed this...

259
260 **Austin Kaplan:** We'll get an overview process of the complaint process, we'll see where we're on
261 parallel tracks, make sure we're not duplicating work, and also find out about other conflicts of interest,
262 investigations of those, especially reports on commission members that we're not aware of just so that
263 we can kind of roll that into our potential review of maybe beefing up our conflict of interest training
264 and heading off any potential issues at the pass. I think we all sort of agree that people have the right
265 intentions, but aren't real clear on the rules. That's the worst scenario that we could have to deal with.
266 We want everybody to be real clear up front and know the rules of the road as they're serving.

267
268 **Cynthia Tom:** I will convey to my contacts in the Auditor's office that you would like them to attend the
269 next meeting.

270
271 **Austin Kaplan:** We have one more citizen speaker on Item 4B and I'd like to do that before we circle up
272 and finish it. Oh, I apologize...

273
274 **D. Ochoa-Gonzalez:** I only spoke five minutes, so would you just, may I just say a couple more things?

275
276 **Austin Kaplan:** Sure.

277
278 **D. Ochoa-Gonzalez:** I would like to know why the City Auditor's office didn't let, you know when they
279 disseminated this report, they didn't send me a copy. They sent it to everyone else listed in the report
280 but they didn't send me a copy. And when it was posted in this agenda, as an Agenda Item here, they
281 didn't notify me either, or this Board didn't notify me that it was here. It was by mere accident that I
282 figured out the item was there. When I emailed [cannot understand name] asking, again because English
283 is not such a great... I think that the understanding she had of my email was that I wanted to file a
284 complaint and so she actually sent me a form, because my email was not properly speaking. So it was by
285 merely accident that I found out about it. And I understand that you mentioned that there is not much
286 you can do about my request, but I believe in Boards, that's why I was part of one, and so I believe that
287 if you, as a Board, consider that if this matter would have been properly brought to your bureau that
288 you would have had a decision different than, you know, than forcing me to submit a resignation. I
289 would encourage you to express that to the City Councils because even if you don't think that that will
290 clear my name, in my conscience that will tell me that there is, you know, people that voted to be on an
291 ethics board that will, you know, provide their opinion, if that is different from the Commissioner's
292 report, that's pretty much all I need.

293
294 **Peter Einhorn:** To be clear, you said that you have admitted that you were a contractor of Texas
295 Disposal Systems. Is that correct?

296
297 **D. Ochoa-Gonzalez:** That I...?

298

299 **Peter Einhorn:** That you were a contract employee of, or a contractor, or you did work that you were
300 paid for...

301
302 **D. Ochoa-Gonzalez:** Yes, I openly disclosed that to the City Auditors, and I also disclosed it to the City
303 Council representatives and in that meeting that they mentioned on February 8th, I openly disclosed it to
304 the Director of Austin Resource Recovery and the Deputy Director. I didn't mention the word TDS, but I
305 mentioned that I was under a contract, for a hauler, doing educational work that was very limited to
306 waste assessments, and recycling and composting. And I was very surprised that that wasn't in the
307 report, because even before the meeting on February 13, I doubly, double checked, even if I haven't
308 received one penny from Texas Disposal Systems, I double checked with the Director, and I expressed to
309 him that, you know, that I was again, a contractor, doing educational work for a private entity. And he
310 said that he was very clear that the City code 2-7-63, in Provisions for Conflict of Interest says, that
311 "where there is an interest of a city official or an employee in the subject matter of a vote or decision,
312 that is remote or incidental, the city official or employee may participate in the vote or decision and
313 need not to disclose the interest." He didn't quote it exactly like that, but he said, "As long as you're
314 absolutely sure that your job is nowhere related, you know, and you're only doing education, you're
315 fine." And so I was probably mislead. That was my mistake to not disclosed, by not understanding
316 perhaps that this was a substantial interest when in my best of perception, until today, I don't see there
317 is.

318
319 **Peter Einhorn:** (Posing question to Cynthia Tom) Cindy, what is the definition of remote? Or incidental?
320 In 2-7-63?

321
322 **Cynthia Tom:** "A remote interest means an interest of a person or entity, including a city official or
323 employee, who would be affected in the same way as the general public." So, somebody who happens
324 to be a council member, and happens to live in Austin, is going to be affected by the property tax rate, if
325 they own property... like every single other...

326
327 **Peter Einhorn:** So it sounds like you got bad advice on the definition of remote or incidental.

328
329 **Cynthia Tom:** Incidental interests would kind of be like an opposite, almost, of substantial interest and
330 it would be "an interest in a person, entity or property, which is not a substantial interest and which has
331 insignificant value de minimis", and it doesn't establish dollar limits or de minimis but it's kind of like
332 regular interpretation. Substantial interest, on the other hand, would be an interest in another person
333 or entity if you've got voting stock, if you received funds from that entity or person, during the prior 12
334 months, or prior calendar year that equals or exceeds either \$5,000 in salary, bonuses, commissions, or
335 professional fees; if it's 10% of your gross income during that prior calendar year, or prior 12 months
336 that would also be a substantial interest, or if it's \$20,000 in payment for goods, products, or
337 professional services. So if you meet, if the income that was received from TDS, met any of those
338 thresholds in the calendar year. So, it depends on what year we're looking at. If we're looking at 2013, it
339 would be that calendar year. If we're looking at 12 months back from today, you know, we would go... or
340 12 months back from the votes, or the discussion, it could meet any of those thresholds; the \$5,000 in

341 salary, the 10% of gross income, or the \$20,000 in payment for goods or services. So that would be a
 342 substantial interest, versus incidental, de minimis, very small. It would definitely be smaller than any of
 343 those thresholds.

344
 345 **Peter Einhorn:** Does the Zero Waste Advisory Commission have an attorney advising them like you
 346 advise us? Or a staff?

347
 348 **Cynthia Tom:** I'm not aware. They may. I'm sure they have a staff liaison. You are unique in that your
 349 staff liaison is provided from the law department and is an attorney as well. Most other Boards and
 350 Commissions have a regular staff liaison who is not an attorney.

351
 352 **Peter Einhorn:** But those staff liaisons are going to be trained on the conflict of interest rules, right?

353
 354 **Cynthia Tom:** They should. Every staff liaison is supposed to go through the same training that all the
 355 Boards and Commission members do, and I personally, just to let you know, in my role as an attorney on
 356 the Ethics and Compliance team, have frequently received questions, either directly from City Boards
 357 and Commissions members, asking about conflicts of interest, or from staff liaisons asking me to help a
 358 board or commission member. So if there was a legal question and a staff liaison was not sure, or a
 359 Board or Commission member was not sure, if they had a conflict and if they needed to recuse, they
 360 could contact the Ethics and Compliance team and the law department and we would provide them
 361 legal advice to help them figure that out. That may not have been clear...

362
 363 **Velva Price:** I was thinking that we need to look to see what's on the video, for training,

364
 365 **Peter Einhorn:** (speaking to Daniela) I'm sorry, just to repeat again, you said that you had spoken with
 366 the Director of the Austin Resource Recovery department when this issue first came up for you?

367
 368 **D. Ochoa-Gonzalez:** Yes, and just to be clear, I never mentioned the word Texas Disposal Systems. But I
 369 mentioned the word, "I'm doing contracting work, you know, I'm doing business as doing educational
 370 work for a hauler."

371
 372 **Peter Einhorn:** And the director never asked the name of the hauler.

373
 374 **D. Ochoa-Gonzalez:** [Shakes her head no]

375
 376 **James Sassin:** Did you work for any other... what portion of that work is with TDS?

377
 378 **Daniela Ochoa-Gonzalez:** So, it didn't reach that \$5,000 threshold on the first two dates are mentioned
 379 on the report. It does reach that threshold because I only received basically one check. It's also in that
 380 comment I sent you. I had received my first check from them of \$3000 on February 28th and so the first
 381 one, you know, I had received nothing and then on the second one I had not received more than that

382 amount and so after the April 10th meeting that is mentioned there I received another check so it does
383 reach the \$5000 dollar threshold. However I did not vote in that matter.

384 **Peter Einhorn:** But at the August 14th meeting you had reached the \$5000 threshold?

385 **Daniela Ochoa-Gonzalez:** Yes, but I did not vote

386 **Dennis Speight:** It says you voted.

387 **D. Ochoa-Gonzalez:** I'm sorry, I'm sorry, yeah, you're right.

388 **Dennis Speight:** It says "discussed and voted."

389 **Cynthia Tom:** And code provisions say that if you have a conflict you should not participate in a decision
390 or vote and a decision is defined in Chapter 2-7 at the beginning to include discussions or deliberations
391 which may lead to a vote so generally if someone were to ask the law department a hypothetical, "hey, I
392 might have a conflict, what do I need to do?", we would have recommended they abstain from
393 discussion and from voting.

394 **Austin Kaplan:** And that's why when we pass around, and all the Courts and Commissions do this, pass
395 around their recusal sheet beforehand, you know, to peruse each item you can recuse like that. What I
396 don't want to do is go through and have a final hearing right now because I don't think that's necessarily
397 within the scope of our abilities. You know, what we can do is take possible action on 4B and I think
398 that's what we're still considering and we're just about out of time. Is there anything else you want to
399 offer?

400 **D. Ochoa-Gonzalez:** No, I just made a mistake actually. I was referring to April 10th so I did not vote in
401 April 10th but I did vote in August, but the votes were not benefitting or affecting TDS in any way that I
402 could perceive you know to be connected to my work to them anyhow.

403 **Velva Price:** We have to hear from one more person, right?

404 **Austin Kaplan:** We do have one more person on this agenda item before we can move on so Michael
405 Whellan is going to speak for three minutes.

406 **Michael Whellan:** Michael Whellan on behalf of Texas Disposal Systems. Our client first heard, my
407 client first heard about this by a reporter who called. We were given no notification, nothing from the
408 auditors. We still haven't had contact with the auditor's office. I met Ms. Gonzalez for the first time
409 today. I'd never met her and she indicated she had no discussion with anybody at TDS about any of
410 these matters while she on the Zero Waste Advisory Commission. I ask you today to vote not to
411 proceed further especially since she's resigned, but I wanted to clarify some things and I forgot your
412 name, Commissioner, I apologize.

413 **Peter Einhorn:** Peter. Peter Einhorn.

414 **Michael Whellan:** I hadn't planned on speaking that I think are important. First, we know it's an
415 anonymous complaint. You should know this is an incredibly competitive industry. I can't even - I've
416 never seen anything like it. As soon as I got involved in hauling and garbage -

417 **Velva Price:** You're an attorney.

418 [Laughter]

419 **Michael Whellan:** It is unbelievable. I've never seen anything like it. So think for a moment. You've got
420 an anonymous complaint in a highly competitive industry. Also, we know that in the auditor's report
421 and, Mr. Einhorn, I think this is what's misleading. It keeps referring to them as TDS agenda items. Well,
422 pull up the items and you'll see the items we're talking about, the ones she abstained from is a Republic
423 Waste contract on April 10th. Of course we were there. We didn't think it should be awarded. We
424 thought there should be further discussion. I think, in fact, I might have made a presentation there. The
425 ones she did vote on though, Commissioners, February 13th and August 14th have nothing to do with
426 TDS. TDS is a stakeholder and makes appearance regularly. In fact, we have reps at every single ZWAC
427 meeting because it has a significant impact on this business. Generally, the one that they're referring to
428 is Universal Recycling and there was an issue about the definition of composting. We wanted to provide
429 feedback and then the two that I do recall because I'm involved in both of them actually - Special Events
430 Ordinance. The Special Events Ordinance and what the recycling provision would be and the other one
431 was data collection and reporting contract. It was a data collection and reporting contract from Emerge
432 and I made a presentation, I think at ZWAC, I know I made one at Council for sure. We had concern
433 about the confidentiality provisions in the data collection contract. That was our - TDS's - interest in
434 that. So I think you've already identified this is moot. Ms. Gonzalez has already identified she had
435 nothing to do with this. She never discussed any of these matters with anybody relating to and why
436 would she think that Universal Recycling, Special Events ordinance or data collection and reporting
437 would have anything to do with TDS. And with regard to the Republic Waste contract, again, no
438 conversation, she abstained; she did obviously participate in the discussion, but no vote there so. And
439 by the way, the Republic Waste contract was approved ultimately by City Council. So, I'm a little
440 disturbed by the way the auditor, I'm glad you're going to ask the auditor to come and outline a little bit
441 better what their process and procedures are. I'm a little disturbed that they didn't get any input. I just
442 got the transcripts today and had a chance to look at them so I'm more than a little disturbed by that
443 and especially the fact that they didn't let the defendant, if you will, show up or tell the defendant about
444 this or even let her see this and start widely distributing it as a public document to people without giving
445 her a chance to really be heard. I hope you'll vote not to proceed further and make that a final vote
446 especially since it is moot, I forgot who mentioned that, I think one of the Commissioner's down here
447 mentioned that, and give her some peace of mind with family so that she can go on her way now that
448 she's resigned, but also keep in mind the precedent that is being set here by the auditor. Everybody
449 who has expertise -

450 **Cynthia Tom:** We've got just a few minutes...

451 **Michael Whellan:** Can I just finish this one statement? This last statement. I just realized when I was
 452 coming over here that everybody, all of y'all, so many of you are lawyers, because you have expertise,
 453 you're involved in the issues at hand. People that are on ZWAC are involved in hauling; people who are
 454 on the Music Commission are involved in music. If we are to extend this the way this anonymous tipper
 455 has done it or has thought it should be extended, we really put a lot of people on these boards and
 456 commissions at extraordinary risk in terms of what we're talking about. I think there's been a bit of
 457 overreaching here frankly by somebody, I don't know who, but I hope that at least given the facts as
 458 you've heard them today you'll allow Ms. Gonzalez to move on with her life with some peace of mind.
 459 Thank y'all very much.

460 **Mitchell Harrison:** I had signed up to speak, but if she used the time that's fine with me, but I'm not
 461 sure of...

462 **Austin Kaplan:** She did, but we can give you just a minute. I apologize for that.

463 **Cynthia Tom:** Just for the record can you state your name.

464 **Mitchell Harrison:** Mitchell Harrison. And out of clarity she's my wife.

465 **Velva Price:** She? For the record...

466 **Mitchell Harrison:** Daniela Ochoa Gonzalez - has not changed her name if she wanted to or...the
 467 address is the same on the form; our names are not, so it's not a clear link between us, except for our
 468 child and one thing I want to say, first off, I apologize for the noise. I really didn't intend that. Secondly,
 469 I want to say a Commission of this nature deserves a better environment. If something in this City is
 470 going to be so substantial you need to be able to be in a more substantial space.

471 **Austin Kaplan:** Duly noted.

472 [Laughter]

473 **Mitchell Harrison:** I know I am surprised to see both rooms were empty, but it sounds like I mentioned
 474 you're creating precedence especially as boards and commissions are being reviewed to consolidate and
 475 10-1 has a lot of opportunity for change. Take note of the voluntary time and contributions of the
 476 private citizens, their expertise for which qualifies them to work in this commissions and the ability to
 477 train them or provide an attorney because my wife had no intent to do anything wrong as I have heard
 478 since the day she was first informed, and she would like whatever is in your power to clear her name.

479 **Austin Kaplan:** Alright, thank you so much.

480 **Austin Kaplan:** I think, unless there is a burning desire to discuss this more I think what I would like to do
 481 is propose possible action have a vote on it and decide what we want to do. Our possible action is to
 482 continue to respond to as the ethics commission file our own complaint and move ahead with our
 483 process and so to add a motion to consider whether we want to do that.

484 **Velva Price:** But if we don't have a motion – if nobody makes a motion on this then it's just dies?

485 **Austin Kaplan:** Then I don't have a motion and it just dies.

486 **Velva Price:** Okay.

487 **Donna Beth McCormick:** But we have asked for the auditor to come, does that continue?

488 **Austin Kaplan:** That is happening

489 **Peter Einhorn:** Do we have to file our own complaint to further investigate the background of this
490 process?

491 **Austin Kaplan:** I don't believe so.

492 **Peter Einhorn:** I mean can we table the possibility of filing.

493 **Dennis Speight:** I think tabling is the right thing to do.

494 **Austin Kaplan:** I would make a motion to table

495 **Cynthia Tom:** As long as, just so you know there are time limits, but its two years so if you want to keep
496 open the possibility of filing a complaint on your own initiative related to the events that are discussed
497 in the auditor's report you would just need to make sure that you did it within two years of when the
498 events are alleged to happened and I think these events happened the last calendar year

499 **Peter Einhorn:** That last one was August 2013, right?

500 **Cynthia Tom:** And your next meeting is in July 2014.

501 [Mumbling]

502 **Austin Kaplan:** Well, what we can do...

503 **Cynthia Tom:** I think if there were events if they happened in 2012 we would be getting close to that
504 but if they all happened in 2013 we could table and keep that possibility alive if we want to. That
505 conversation with the auditor you could file

506 **Austin Kaplan:** So it looks like we have a couple of options. We can table it and re-discuss this agenda
507 item in our next meeting, we can have a motion to have a vote there is a motion, or we can just have no
508 motion, no action and move on and not reassign this for the future agenda item.

509 **Cynthia Tom:** But the auditor will be...

510 **Austin Kaplan:** Yeah, the auditor is coming regardless.

511 **Cynthia Tom:** I wouldn't say the auditor himself, but a representative from the auditor's office I will ask
512 to come to the next meeting and if you want them to discuss generally their process, if you want them
513 to discuss this report specifically. What's the –

514 **Austin Kaplan:** Can we talk to them next time? Can we talk to them, I love this to be part of the
 515 contacts for that part of conversation because I think that they kind of threw a lot of stuff out there and
 516 then they didn't show up to substantiate any of it. I got some questions about who is on the distribution
 517 list. You know the fact that nobody, you know the staff liaison for the ZWAC is not on the distribution
 518 list, who gets these? Why? Is it a public document?

519 **Dennis Speight:** A lot of it came public without the actual people knowing about it.

520 **Cynthia Tom:** I can ask the Auditor's representative if they would be willing to discuss both their general
 521 processes and investigation and items related to this specific report.

522 **Austin Kaplan:** I mean it seems to me...

523 **Cynthia Tom:** Some of their information, they might consider it confidential related to their
 524 investigation - some of their working papers - I am not sure, but I will ask if that's what the
 525 Commissioners wants me to do.

526 **Austin Kaplan:** It sounds like we want to get as much information as we can. It sounds like there was
 527 some information that Mr. Whellan has that we don't yet have from the auditor, basically interviews
 528 that we might already transcripts that we might be able to get even though it's not public maybe we can
 529 review them, meaning. I am still inclined since we have a Board and Commission member who has
 530 resigned that that's the ultimate thing that we can do in terms of sanctioning to have a vote on this now
 531 and resolve it and then have this discussion with the auditors separately.

532 **Velva Price:** I agree.

533 **Austin Kaplan:** But I'll defer to ya'll if that motion exists.

534 **Peter Einhorn:** It seems to me like there is a possibility of a conflict of interest, but it is also doesn't
 535 seem that there's a whole heck of a lot of malice behind it; seems like bad advice was given and I think
 536 we ought to take a closer look at how we make sure that our boards and commission members are
 537 getting (A) the right training up front and (B) the right advice going through this process so.

538 **Cynthia Tom:** Yup.

539 **Austin Kaplan:** Alright so, we may have come full circle. Do I have a motion to a possible action on 4B?

540 **Peter Einhorn:** I'll make a motion for no action.

541 **Velva Price:** And I will second that.

542 **Donna Beth McCormick:** I don't think we need to do that. We don't have a motion. I don't understand.

543 **Cynthia Tom:** Is that a motion not to file?

544 **Peter Einhorn:** Not to file

545 **Cynthia Tom:** A complaint on the commission?

546 **Peter Einhorn:** Yeah, otherwise we are going to be leaving it out there.

547 **Velva Price:** And I will second that motion because...

548 **Austin Kaplan:** Ok, she is concerned about the language

549 **Cynthia Tom:** Yeah, and a motion to not make a motion...the motion is specifically for the commission
550 not to file or to complain.

551 **Dennis Speight:** Take no action or is it to not file? So that's no action and not file?

552 **Donna Beth McCormick:** What?

553 **Dennis Speight:** Are we making a decision not to file our own?

554 **Cynthia Tom:** If no one makes a motion to file a complaint then we can't have a vote on it, right?
555 Someone could make a motion...

556 **Peter Einhorn:** Well, we can make a motion to reconsider at any time if more information on that
557 comes up later.

558 **Cynthia Tom:** You don't have to make a motion on this, other than maybe a motion to postpone as a
559 future item...

560 **Velva Price:** I'm not going to do that either.

561 **Peter Einhorn:** I will drop my motion; I am ready to take no action.

562 **Velva Price:** Ok so, and then I withdraw my second to whatever he...

563 **Austin Kaplan:** Alright hearing no motion, no second, take no action hearing further discussion on 4B
564 and there is none and the commission will move on to the rest of its business. Thank you all for coming.

ZWAC Meeting, February 13, 2013: Agenda Item # 3B

Cathy Gattuso: The next item of new business is the discussion and action on the URO Phase II Ordinance.

Bob Gedert: And I invite Aiden Cohen up here to present a PowerPoint to you.

Brent Purdue: Chair, I'll request to recuse myself from this agenda item.

Cathy Gattuso: Thanks. And we still have a quorum.

Aiden Cohen: Good evening, Commissioners. My name is Aiden Cohen, I'm with Austin Resource Recovery, I'm a program manager. Tonight I'm going to walk you through our recommendations for proposed amendments to the Universal Recycling Ordinance. Just to get you oriented, there's three documents that were included in your backup. So I want to draw your attention. We have what I hope is a handy cross reference guide here; we have the recommendation of legal language that's in the legal draft form; and we have the Commission approved intent document. So those are the 3 documents I'm going to be referencing throughout here. Generally I'm hoping that this quick reference, with this cross reference guide, will kind of be your Cliff's Notes to what we have going.

Ochoa Gonzalez: And these are exactly the same that we had in January? Just checking...

Aiden Cohen: So, yes. It's just a delayed action. So, the purpose of the amendment is to really update the, update and clarify the existing Ordinance; deleting references to the Commercial Multi Family Recycling Ordinance; and to expand, as the Commission directed, expand and extend the Universal Recycling Ordinance to the other property types. In addition, we are looking to add compostable materials; and we'll go through all of these different intents and where they're reflected in the actual language and to schedule for small or multifamily and commercial properties. And so, eventually, the direction that staff received is to expand recycling requirements to all properties in Austin by 2017.

So, I should clarify that the intent document, which was approved by Commission, we followed this through the presentation. So if you want to reference back to the intent document, it follows the presentation as well. So the first piece of this was referencing the Recycling Plan form, which is an annual form due by effected properties. We're clarifying that it's due by February 1st on an annual basis. And it's due within 30 days of lease, so this is really housekeeping for the intent of what the Recycling Plan form was. And the Plan Form includes service capacities and information required to verify compliance and to track progress toward our zero waste goal in the community.

It also clarifies that those properties receiving City services are not required to submit a Recycling Plan, but are required to follow the other requirements in terms of education, and the materials and signage requirements of the Ordinance.

42
43 The second topic that we covered is the Affected Properties. And so, in a couple of slides we will have
44 the timeline which I think boils down the recommendations that we're bringing to you tonight. But,
45 we're clarifying the title and the intent of the section; we're organizing dates by property use, and
46 clarifying that the current scope of the Universal Recycling Ordinance includes medical facilities, and
47 religious buildings, and private educational facilities. And so that, I believe, was the intent of the initial
48 Universal Recycling Ordinance where we're codifying that in this update; and then it's doing some
49 definitions on who's affected when by referencing the Travis County Appraisal District information.

50
51 The third topic is who is affected, and that includes some housekeeping and deletions in some of the
52 paragraphs that are not consistent with the intent anymore. Expanding the number of properties or the
53 size of properties over time so that all properties are affected for recycling requirements; authorizes the
54 Director to exempt certain properties through the rules process and so there's certain situations where
55 the Director would have that opportunity, and added the effective dates for the smaller properties.

56
57 So this also clarified, this portion also clarified the authority to adopt the rules and to extend the waiver
58 process through the Annual Recycling Plan Form. And so it really just clarifies that if a property is acting
59 in good faith to meet the intent of the zero waste goals that they can apply through the Recycling Plan
60 Form.

61
62 So this is a kind of busy slide, I apologize; but this is really the compendium of the timeline of what we
63 are recommending to the legal verbiage in a graphical means. So, as you can see, all properties by 2017
64 will... we're recommending that all properties establish recycling and composting programs by October
65 1st of 2017. The bolded numbers, 2012 through 2015, those bold and asterisks property sizes are the
66 ones that are currently effected under the URO, and the extension of the properties into the food
67 service, retail, manufacturing; so the columns on your right are the Phase Two, or the Ordinance
68 recommendations for Phase Two, along with the smaller properties, requiring all properties to have
69 recycling requirements and composting requirements in place.

70
71 So the composting requirements which would go into effect October 1st, 2016, for the largest food
72 service businesses; those are really grocery stores that are over 5,000 square feet. That was the intent of
73 the committees, we had about, I guess, 18... about a dozen stakeholder meetings over 18 months, and
74 so we established some criteria in terms of property size, improvement size, and some dates. So part of
75 the compostable materials was through the restaurant pilot that we had, that we reported to the
76 Commission about. And so this is the recommendations associated with the restaurant pilot. Other
77 recommendations include supporting the hierarchy of food recovery. And so establishing the hierarchy
78 of greatest and best use the EPA has established as our intent to fulfill, and encourage food recovery
79 and reference the Good Faith Donor Act and the Chapter 76 of the Texas statute that allows people to
80 donate food without liability. So we will continue to work with the Health Department, and the working
81 group and other folks, to ensure that we look for our highest and best use.

So the requirements when we extend the Ordinance to compostable materials mirror what's required for the recycling portion of it, which is annual education for tenants and employees; the reporting of your material types and diversion activities through the Recycling Report, the annual report that's online. Clearly marked receptacles and signage; well-maintained collection service so there's not spillage and leaking and smells, and vectors; and transportation to an authorized compost facility.

So I want to call the Commission's attention to the fact that this does not interfere with previous Commission action on the, on the quick serve restaurants. So these recommendations are consistent with the alternative compliance that was recommended by the Commission and will be incorporated into the Administrative Rules. So that piece is...that's been taken into consideration.

And the last is just some really cleanup of deleting out of sections that are obsolete, or out of date; updating the dates and the aligned effective dates. So that's reflected in the intent document if you're looking for more details on that piece of it. There's additional topics that are kind of ... that don't really fit into any of the previous slides. And so we're looking to delete the reference to a minimum service frequency, recognizing that the property owners and the service providers know better of what's best for that property. To clarify: the Ordinance does include plastic, aluminum, glass bottles, jars and cans. It's updating the document; seems like we're doing a lot of that, referencing Austin Resource Recovery versus Solid Waste Services, and to clarify the Director has authority to add materials with at least a year notice as is consistent with the Administrative Rules.

Aiden Cohen: Continuing on there is the intent was to allow properties to substitute materials when it made sense in terms of reaching zero waste so there is some properties that may have not produced any glass but have lots of pallets, for example, and so we want to make sure that there is acknowledgment of a property to ask through the annual reporting process to provide us information and request a waiver from the city for perhaps other materials that are required, but that don't make sense for their unique situation. We're just being consistent in changing volume quantities so we are all talking the same measures, we're updating and adding definitions and in getting those are reflecting the intent document if you like to reference, but we are making all of the definitions consistent with our definitions and other administrative rules or ordinance, and to clarify which staff are authorized to enter premises - that was a legal recommendation for us. So definitions - we matched the new definitions with the Phase 1 rules which have been adopted by Council as approved by this Commission. The master plan and, where possible, we try to be consistent with EPA and TCEQ and existing code for other departments so all our definitions are the same and we're not creating new definitions. We did encounter some challenges. One of the speakers earlier today I think highlighted one of the challenges which are mobile food courts and we've had several discussions about that - both public discussions and department discussions. It's a challenging situation. There are several departments that are involved in making decisions when it comes to mobile food courts: Permitting Review, Austin Resource Recovery has a piece of it, the Health Department, Public Works, the water utility, the electric utility, believe it or not, because these mobile food vendors need power from somewhere so there is really - and the watershed is the other one - there are really a lot of departments that are involved in this discussion when it comes to mobile food courts. I think it's an innovative thing, it's truly Austin and we need to

have a larger discussion about the mobile food courts. So we are seeking your input on making decisions. We have not addressed mobile food courts specifically and the Phase II amendments because of all the unanswered questions. Just, for example, one of the questions that remain is who's ultimately responsible for insuring that the recycling actions are done by these mobile food courts? We have put the onus on - through the universal recycling ordinance - the requirements eventually get to the property owner, but it is unclear and who should be responsible. Should it be the vendor? Should it be property owner? Should it be the leaser? Who is responsible in the mobile food vendors? The topics do include yellow grease as a separate topic which is really being led by the Watershed Protection Department and so we are looking into the yellow grease opportunities and requirements for mobile food vendors as well. So coming to our recommendations, staff recommends the approval items so we can move forward to Council. You do have some options when it comes to mobile food court challenges and recommendations from the Commission. So one option, you have many options, but one of the options is to reconvene the Universal Recycling Ordinance committee to focus on mobile food vendors or to schedule time on a future agenda to discuss the mobile food courts as a full Commission. The next steps - so once this body has taken action - the next steps include an update to a Food Policy Board. We are looking to get on the Council agenda over the next few months to have City Council consideration in action and once City Council has taken action we would look to initiate stakeholder meetings and develop the administrative rules associated with implementing Phase II with the ordinance. So that is all I have for you today, but if you have any questions I'm definitely available.

Cathy Gattuso: Alright, thank you, yes.

Dave Sullivan: This is kind of a minor question, but is there any difference between the terminology about a mobile food vendor versus a mobile food court? I mean a court makes me think that there are several of them, but do we make a distinction?

Aiden Cohen: So I think that this is where the code is looking to catch up with what the reality is, so I think that's one of the outstanding questions that we have is how do we define this? There's kind of three different segments that we see operating. One is kind of somebody with a push cart that is selling ice cream or fruit out of their push cart. We have the folks that are going to construction sites that are really mobile food vendors that are moving every 15 minutes or so, and then we have the mobile food courts, which we have, I think, at last count 16 or 20 around the city and so each one of those have different challenges, but the current code just has one name for them all so that is one of the distinctions that we can make in the future.

Dave Sullivan: Ok, so one thing that we could do because we do have the URO committee that we created, we could send that issue to the URO committee.

Aiden Cohen: Absolutely and because we have not addressed it in the Phase II piece of the ordinance, that would be an independent action.

Ochoa Gonzalez: How about, just clarification questions... in the section where you explain all that little table where all is clustered, that's actually on the third page where it provides the... yes... they combined, that one, in the official one with the legal vocabulary, and in this one too, there is no section

that explains how many, on average, how many buildings will have to comply, or commercial, and probably is because that is not something that should be in here, but I just wanted to ask, if that is something that, that once this is approved you annex a number of approximated buildings, or at least of the businesses and commercial buildings, that have to be complying to this, so that if a multifamily is worried about it, they can go on your website and when they see that this is approved, there is an annex and they say "Oh yes, and the name of my multifamily is in there." Is that even possible? But that was my first question...

Aiden Cohen: So we do have, and I'm looking for it in my backup materials here, we do have the number of approximate properties that are affected, and the approximate dwelling units. The vast majority are affected in the first several years in terms of the number of square feet that are affected. There's a tremendous number, so I think at the end there's about 12,500 properties that are affected by 2017, which include all the businesses within those properties, so about 35,000 businesses.

Ochoa Gonzalez: So, about 80%, right? Of the ones that are 75 or more, or 100,000 square feet.

Aiden Cohen: So those are big proportion of the number of dwelling units that are out there for multifamilies, and the amount of square footage. If you'd like that specific information we can certainly give it to you. It's all available public information on the Travis County Appraisal District so that's the information that we're accessing to develop our mailing list, and to develop our list of properties.

Ochoa Gonzalez: I understand that the owner of the multifamily or the commercial business may not, but if you are somebody with a small business renting in a big building, you don't really know; or if you are a tenant, you don't really know, but maybe you're super-green and you want to know, if that complies to your building or not, I'm trying to think if there is any way that the average citizen can have that information. It's just a question. I don't know if that needs to be addressed.

And the second one was... and I'm reading all these things too carefully... trying to not to miss it, on the explanation that you provided in addition to the cheat sheet, number 7, you explain that "authorize Director..." at the end it says "or achieve the City's current zero waste goals through alternative means." And the "alternative means", it made me confused, bad, then I checked on your cheat sheet what that refers to and that's the number "F" here, and in number "F" there is no lingo, or vocabulary mentioning "alternative means" ... so... it may not be an issue though.

Aiden Cohen: So there's two things that are governing the definition of what alternative means. One is our zero waste definition. So our zero waste definition includes language that says incineration, for example, is not part of our zero waste definition. So, in terms of - we have defined alternative means as consistent with our zero waste goals, but there's some latitude for the director to address unique circumstances and a lot of those particulars will be addressed through the administrative rules process.

202 **Ochoa Gonzalez:** It won't leave room for confusion. I know we're all on the same page. I just wanted
 203 to point that out because there no cool machines that burn the waste and make energy for the same
 204 building.

205 **Bob Gedert:** I'll add just in a general sense, Aiden's answer is correct. Alternative compliance situations
 206 may pop up and I'll give you a recent example. The fast food industry felt that they could not honor the
 207 URO because of the waste composition being different than what was identified in the URO. So they
 208 presented - I think it was in our September meeting – there was a presentation of our alternative
 209 compliance which was adopted by ZWAC. If there are future requests for alternative compliance I
 210 imagine that we would go through that same process. There would be a presentation to ZWAC and a
 211 discussion of whether this is a legitimate variance from the Universal Recycling Ordinance and the
 212 administrative rules is where we would clean that up and actually identify that process.

213 **Fayez Kazi:** Aiden, I got a quick question for you. You mentioned on the mobile food vendors that
 214 you're still struggling with determining where does the buck stop? Is it the property owner or the
 215 tenant and so on. For the remaining properties, does the URO – one and two – does it define who is
 216 responsible?

217 **Aiden Cohen:** Absolutely. So for physical brick and mortar property, it's the property owner who is
 218 ultimately responsible and who will be ultimately liable for any enforcement fines or the Class C
 219 misdemeanor which is established by city code. So it's very clear who's ultimately responsible. The
 220 property owners responsible for ensuring that capacity exists and that they're meeting the requirements
 221 of the ordinance.

222 **Fayez Kazi:** Okay, thank you.

223 **Cathy Gattuso:** Thank you, Mr. Cohen. We have two speakers on this tonight. The first one is Andrew
 224 Dobbs

225 **Andrew Dobbs:** Thanks, Commissioners. Andrew Dobbs, of Texas Campaign for the Environment. I
 226 wanted to say a couple of things here. I want to express that we generally are very much in favor of this,
 227 of these changes, and looking forward to this Phase Two URO going through. I wanted to specifically
 228 commend the Department for its definition of recycling, making sure to exclude alternative daily cover
 229 to make sure and explicitly call that out and say that it doesn't count. That makes this, I think, a really
 230 forward looking definition. I know some other folks are going to bring this up, but there is some concern
 231 that the definition of composting facilities, which is five on the list, let's see here, it's 1561 and then five,
 232 it says with composting facilities that the definition is kind of broad and I know that other person who
 233 signed up is probably going to the one that brings this up but that it's kind of a broad definition and that
 234 there's been some suggested amendments to that, that they will be required to, be limited to those
 235 facilities holding all required local, state and federal authorizations and that they be using the compost
 236 for beneficial re-use. This is important because there is an increasing problem of kind of fly-by-night
 237 composters and composting facilities. Even though you might not think about it, but they can create a
 238 lot of problems for their neighbors and for other folks so we want to make sure that we're not setting

239 ourselves up for a messy situation for a future Commission. But like I said, in general, it's a great
240 document and we support its passage.

241 **Cathy Gattuso:** Thank you, Andrew. Ryan Hobbs?

242 **Ryan Hobbs:** Good evening, Commissioners. Ryan Hobbs, Texas Disposal Systems. Mr. Dobbs touched
243 on this briefly. The request is related to the fifth definition listed in the proposed ordinance that you
244 guys are considering tonight. It just strengthens the definition of composting facilities and it's actually
245 consistent with the stakeholder meeting process. I particularly recall discussing this during the 12 or 18
246 meetings that we were involved in and it's actually also consistent with one of Mr. Cohen's slides, slide
247 9, where it talks about transport to an authorized composting facility. And so we're simply requesting
248 that the definition of composting facility fit this redline version that we've distributed tonight. I'd be
249 happy to read it. Composting facilities means an off-site facility holding all required local, state and
250 federal authorizations where the organic component of municipal solid waste is decomposed under
251 controlled conditions for beneficial re-use. That's our request.

252 **Fayez Kazi:** Ryan, don't go too far. I might have a question for you, but after...

253 **Bob Gedert:** Just a very quick response. We fully support the change. The language that's proposed
254 and in writing right now is TCEQ's definition and we fully support those changes that are recommended.

255 **Fayez Kazi:** Ryan, besides TCEQ what are other departments that would authorize this facility, at the
256 local level or federal level?

257 **Ryan Hobbs:** The County would be involved in that as well; that comes to mind. Obviously the state
258 was mentioned. Federal? I'm not aware of any at the moment.

259 **Cathy Gattuso:** Any discussion?

260 **Ochoa Gonzalez:** I just came back from the US Compost Council and there is discussion there about not
261 having a federal definition, but I cannot think of one that would. EPA don't so I'm really much in favor of
262 the local and state, but not necessarily need to include the Feds in these. Keep it a little Austinite.

263 **Bob Gedert:** I would highly recommend maintaining the Federal...Daniela is correct, however there are
264 discussions periodically. About two years ago there were discussions at the Federal EPA level about
265 regulating composting facilities. It has not happened. There are composting associations across the
266 country that are asking for those regulations for the simple reasons that Ryan Hobbs had mentioned and
267 it's the fly-by-night and unauthorized composting facilities that create neighborhood nuisances.
268 Generally this is a local issue. Generally it's handled by municipalities, counties and states, but I think
269 this might become a Federal issue at some point.

270 **Ochoa Gonzalez:** And if I understand correctly - US rules - it's always more constrictive as it goes
271 smaller, right? So it cannot be...wouldn't hurt.

272 **Bob Gedert:** That's correct.

273 **Cathy Gattuso:** Anyone else? More discussion? Do I have a motion on this?

274 **Dave Sullivan:** Yes, I'll move. Staff recommendation with the amendment that was offered by Mr.
275 Hobbs.

276 **Fayez Kazi:** I'll second.

277 **Cathy Gattuso:** All right, all those in favor?

278 **All Commission Members:** Aye.

279 **Cathy Gattuso:** Opposed? No.

280 **Dave Sullivan:** Okay, Chair? I'd like request that the mobile food court issue go to the URO's committee
281 so I don't think we need to take an action on that. I just wanted to make that known so when that
282 committee does meet and you haven't discussed that yet I would like that to be one of their agenda
283 items.

284 **Cathy Gattuso:** Absolutely. All right. The motion has passed unanimously and the change will be noted
285 on the definition of composting facilities to what Mr. Hobbs suggested and they'll be future URO
286 committee looking at the mobile food vendors and mobile court issue. Thank you.

287 **Bob Gedert:** And I thank you for your vote of confidence on this. The next step is for us, as Aiden had
288 noted, we will be presenting to the Sustainable Food Policy Board and then the next step is the City
289 Council. We have not secured a date with City Council, but we will notify the Commission when the date
290 is selected.

291 **Cathy Gattuso:** Thank you. Very good work. It's a big accomplishment

TRANSCRIPTION OF APRIL 10, 2013 ZWAC Meeting

Discussion of Items 3B & 3C

MR. COFER: Moving on, item 3B, which is posted for discussion, city manager's direction on disposal contracts.

MR. GEDERT: Yes. And before I dive in, just a personal note, I over the weekend injured my back and I'm on a painkiller that requires me to drink a lot of water. So excuse me on that, but weathering through the back pain here.

The -- on March 7th of city council, there was an Austin Energy waste disposal contract that was pulled for discussion. Austin Energy is here on the next agenda item. And this -- this item that I'm to speak to flows right into the next agenda item. And the discussion with city council was -- it was pulled by Council Member Morrison and discussed by several of the members of council.

And the gist of what we got out of that discussion was that council desires a more formal review through me and the ZWAC commission on waste disposal contracts. And I was asked to set up a process. And the following day, the city manager documented that concept in a memo to all the different department directors. And the -- basically, we're still fishing through time lines and process.

I'm to communicate with the departments within the next few weeks, but the current policy is that any waste flows, waste contracts that involve municipal solid waste class one, class two, class three and hazardous waste must be reviewed through the ARR review process for diversion act -- potential reporting requirements and, you know, kind of like a contract or a bid document review to see if the interest of the Zero Waste Plan is integrated into that contract.

There's also a second point and that is the need to consolidate some of these contracts over time. There is direct action employ -- deployed that as hazardous materials contracts of different city departments expire, we're going to coordinate for a master contract in 2015. And similarly, with this action of council, we're considering the same action on general solid waste, as well, a master contract, rather than a piece here and there from different departments.

The awkward part of this process is there's a lot of special waste involved and that's what brings us to the discussion of Austin Energy's contract because it is not general dumpster waste and it does not fit the general classifications of our hazardous waste materials contract as well too.

The general direction as we speak on 3B, as I conclude on 3B, is that I am to review over these contracts for diversion activities and fitting in the goals of the zero waste and determining whether the contracts fit the purview of the Zero Waste Advisory Commission. So some of these contracts will now need to go through this Commission for review and recommendation based upon the bylaws of the ZWAC.

And the first guinea pig, if you will, of this process is the Austin Energy waste disposal contract. And I had determined that it did fit the purview of the Zero Waste Advisory Commission and therefore on the agenda here. We are talking to Purchasing -- is Yolanda here? Yeah. Purchasing is represented here as well and we're working with the Purchasing

Department so that this new process is integrated and does not slow down any bid process.

So we're trying to capture the contracts that are in process right now, the bidding that is taking place on certain contracts right now. But in the long run, this will be an integrated process, seamless, won't affect the time lines of bid reviews and so forth. But some of the departments will need to present to this Commission because of the impact of the Zero Waste plan.

MR. COFER: All right. Any other further questions on 3B?

COMMISSION: (No response).

MR. COFER: All right. Then moving into 3C, first we'll have citizen communication. It's taken up in the order in which people signed up and we have some more. Hold on.

(Brief pause.)

MR. COFER: Okay. Gotcha. The new citizen communication cards also have a notation on there for what time individuals signed up at. So I know in the past there were some worries about how these cards got shuffled or in what order they went, but now there's a firm record on when people sign up. So the first speaker donating time to Lee Kuhn is Mark Littlefield.

Is Mark Littlefield present? Or he just stepped out I guess? Okay. But I'm sure he'll probably be back here in the next six minutes. Lee Kuhn signed up next from Republic Services. And so we'll start you out at three minutes. Then hopefully, he can waive. Okay.

MR. KUHN: Good evening. Lee Kuhn, Republic Services. I'm probably like most people, not sure exactly what the scope of discussion and action will be tonight on this agenda item. But I did want to take the opportunity to address a couple points concerning some previous comments, previous, I guess, comments that have come up in the past.

First, I'd like to say that in no way will this 24-month contract or any subsequent extension change or extend our closure date of our landfill. We've committed to closing the landfill on November 1st, 2015. That's going to remain the same whether we're awarded this contract or not.

This commitment, just to kind of run through it, this commitment is -- or this is a commitment that we're obligated by contract, regulation and law through multiple instruments, one of which is it's enforceable through our TCEQ permit, through our -- as a permit condition in our 2009 TCEQ permit; was a condition of the CAPCOG ZWAC conformance letter to the TCEQ; and most importantly, probably what this board or this Commission rather is concerned about most, it was included in a restrictive covenant with the City of Austin.

So even if we attempted to expand the landfill, we'd have to seek prior approval from the City of Austin City Council, Travis County, CAPCOG, not to mention we would have to embark upon a limited scope major amendment at a minimum, which would involve significant public notice, significant public comment and is a rather lengthy, lengthy permit pursuit. So I'll just say again, we're

resolved to close the landfill November 1st, 2015.

I'd also like to say that the initial term of this contract falls well within the permitted life of the landfill. So if there's a concern about the initial term of the contract falling outside the life of our landfill, it falls well within the life of the landfill.

But in addition, we do have currently contracted access to waste disposal at a local type one landfill beyond the life of our landfill. So we would meet any obligation providing waste disposal for this contract even beyond the life if through a potential extension. So -- and again, at the end of that 24-month period, Austin Energy can make the decision if they decide to extend or immediately go out to bid.

And I'd also like to point out that many companies operate here in Austin and provide collection - waste collection, and recycle collection without owning or operating a landfill. And in fact, I'd just point out that it's actually the goal, namesake, of this very commission --

(Beeping sound.)

MR. KUHN: Is Mark back? Oh, there he is.

MR. COFER: We have Mark Littlefield present.

MR. KUHN: Okay.

MR. COFER: You have an additional three minutes.

MR. KUHN: So my point was it's actually the very goal of this commission to ultimately not to need the landfills and not to rely on landfills. So I'd hate for that to be held against us to

provide service to the City, to Austin Energy.

The last point is that -- and most important point for me, I think, is that Austin Energy invitation for bid, to my knowledge, met all City Purchasing requirements. The bid was issued on November 28th, 2012, with an original due date of December 19th, 2012. The IFB was ultimately extended twice to January 16th, 2013, which, if my math is correct, is a total of 50 days for the bid period.

So responders had 50 days to provide complete and accurate bids. In good faith, we followed all the rules and met all the requirements of this invitation. And quite frankly, we're concerned that if this process is -- if the bid is rebid or the invitation to rebid is rebid, that we're the only company that provided complete and comprehensive information and that we would be subject to an unfair advantage if it was rebid.

Also, I'm sure that the current service provider and its lobbyists may argue that offering -- that they're offering lower pricing. But it would be pricing that was outside the bid period and it would also be pricing that would come after having the opportunity to view all of our pricing. So I don't know how that could possibly be fair and take those comments seriously.

They also may argue that we bid one item or we no-bid one item, which equates to less than two percent of the total material encompassed in the invitation for bid. And so when you take that compared with the only other bid, which my understanding was deemed non-responsive, it doesn't compare. It's not equitable.

So -- and last, I'd just like to say that, you know, in good faith we acted. We think we met all the requirements and we think we're providing a fair and competitive pricing. Austin Energy can speak to that because that's -- certainly out of my purview and I'm certainly available for any questions.

MR. COFER: Questions for Mr. Kuhn?

COMMISSION: (No response).

MR. COFER: All right. Thank you, Mr. Kuhn.

MR. KUHN: Thank you.

MR. COFER: All right. I have eight individuals who signed up at 6:15 p.m. and they all are with TDS. And so I'm just going to say the eight names and then I figure y'all could figure out which order you want people to appear in.

Adam Gregory, Ryan Hobbs, Ray Bryant, Dennis Hobbs, Bobby Gregory, Rick Freeman, Freeman (Fraumann) and Liza Lerma (Lisa Lerma) and Michael Whellan.

And Vera, could you explain, what's the policy on lending time at this point?

MS. LABRIOLA: By the last rules of procedures you approved, it is one time -- one time donation allowed. So that would be a total of six minutes --

MR. COFER: Okay.

MS. LABRIOLA: -- per person.

MR. COFER: Okay. So each person can have up to six minutes if there's someone donating time to that person?

MS. LABRIOLA: That's correct. And the person donating

the time needs to be present.

MR. COFER: Okay. All right. So with that --

ADAM GREGORY: It's in your discretion to request more time.

MR. COFER: Okay. When we hit the six minutes, I'll ask to see if there's consent to extend. And I imagine that we will have that courtesy.

MR. WHELLAN: I think I'll be very quick. I think -

MR. COFER: Sure.

MR. WHELLAN: -- we can get this done pretty quickly.

MR. COFER: Okay. Michael Whellan representing TDS.

MR. WHELLAN: Correct. Michael Whellan on behalf of Texas Disposal Systems, Inc. In reflecting on this contract, which I know all of us have done, I wanted to begin with comments that people have made about the process and our city's policies. I'm going to focus a little bit on city's policies.

Implementation of the city's policies should indeed be reflected in the Purchasing's decisions and staff's reviews of bids. The Commission's and Council's public review and approval of contract provides the opportunity and the appropriate format to test the integrity of the system and insure that the city's policies are, in fact, reflected and implemented through the bidding process and contracts.

The Austin Energy bid for this disposal class two non-hazardous industrial and special waste and the staff recommendation to award the contract to BFI does not reflect the city's policies as set

forth in the Zero Waste Strategic Plan, the Austin Resource Recovery Master Plan and a Rule 11 agreement that the City entered with BFI.

TDS believes that the best way to restore integrity to the contract review process and to insure that the city's policies are implemented will be for the Austin Energy IFB to be rebid.

Alternatively, we would request that ZWAC either 1) recommend that the three one-year contract extensions be eliminated from this contract so it will, in fact, end before November 2015; or 2) recommend that the current contract with

TDS for the disposal of this non-hazardous industrial and special waste be extended for an additional four years at the 2009 prices as allowed by the existing TDS/Austin Energy contract. That can be done currently.

By recommending that the contract be rebid, ZWAC is providing the check and balance that is necessary in this case and highlighting the disconnect that exists between the city's policies and the contract that staff today stands before you to recommend. In fact, by recommending a rebid, ZWAC will allow staff a new opportunity to emphasize consistency with city policies when they go back and do their analysis.

The most obvious disconnect between the city's policy and the bid from BFI that is before you today is a Rule 11 agreement, which requires BFI's landfill to close by November 1st, 2015. As a result of this contract, if it is approved as is, the city council would be authorizing and funding a contract that violates BFI's commitment to close the landfill by November 1st, 2015 period. That's

what it does.

And yet, the staff's recommendation is to enter into this contract that, by its own terms, would allow staff to extend the contract beyond the November 1st, 2015 date. BFI may claim that it will be able to subcontract the disposal of that waste at a later date. However, the bid explicitly does not contemplate subcontracting a landfill disposal. And we understand no subcontractor was identified by Allied/BFI in their bid response. Ask Purchasing yourself when I sit down whether a subcontractor was identified and I believe the answer will be no.

In addition to BFI and staff ignoring --

(Beeping sound.)

MR. COFER: Is that three or six?

UNIDENTIFIED MALE: Three.

MR. COFER: Okay. So if someone wants to --

UNIDENTIFIED MALE: Three more.

MR. COFER: Grant three more. Okay.

MR. WHELLAN: In addition to BFI and staff ignoring the Rule 11 agreement, staff has also ignored the goals of the Zero Waste Strategic Plan. I know Mr. Gregory is going to address this in a moment. However, I too must pause with astonishment at the suggestion in writing today -- and it's in your backup -- by Mr. Gedert that materials to be disposed by Austin Energy, and I quote, quote from Mr. Gedert's memo, "are not suitable for recycling, composting or beneficial reuse."

This is incorrect and I'm not sure why the director of

Austin Resource Recovery, given its goals, and given the department's goals, did not know that TDS has been able to recycle, compost or repurpose over 46 percent of the 3,300 tons of waste that Austin Energy has shipped under the current contract.

Another city process failure is the way in which the staff has expressed the need for (quote) "bidders to provide pricing for all line items for award of this turnkey waste disposal contract." And yet, the current BFI bid that is being recommended as being responsive and as the representative just said (quote) "it was complete and comprehensive," did -- does not have any response to the recycling line item. He makes that sound such -- like such a small element and yet it's so inconsistent with the fundamental policy -- fundamental policies of this city.

Obviously, we think this is a failure by the bidder to acknowledge something that is important to the city, policy makers, but it also a failure of city staff to synchronize city policy with contracting requirements. Ironically, as noted over the last four years, TDS has been able to recycle, compost or repurpose over 1,500 tons of Austin Energy waste that the city would have otherwise buried in a landfill, perhaps BFI's landfill, if not for TDS.

Of course, there are other additional legitimate reasons to recommend that the city council reject this bid and rebid the entire package. For example, this BFI bid is 16 percent greater than the current contract. There's now a new analysis by the city that says six percent. The BFI bid also contains (quote) "overweight fees" that would add an additional ten percent to the cost, which is over

\$20,000 in fees per year. It's unclear whether that's included in the six percent analysis, the new analysis.

So we would ask you to please recommend that staff include an estimated cost within its report to ZWAC and city council that uses the actual weights from prior years and includes the BFI overweight fees that they've now included.

Finally and for clarify, the current TDS contract for management and disposal of the class two non-hazardous waste explicitly allows the existing contract to be extended on the same terms and conditions for an additional 12 months and it may be extended thereafter for three additional 12-month periods upon written notice by the city. So it's easy to -- or should be asking yourself why the city won't just extend the current contract at the 2009 prices and with a 46 percent recycling landfill diversion record. Please ask them why they won't do that.

So that's why we're asking you to make that recommendation.

(Beeping sound.)

MR. WHELLAN: Again, we ask that you recommend a rebid of this process to rectify the mistakes that were made by all the participants and elevate attention that -- to the city's policies as the rebidding process is undertaken so that there can be synchronicity between the policies and contract review and contract bidding. Thank you very much.

MR. COFER: Any questions for Mr. Whellan?

MR. SULLIVAN: Chairman? Mr. Whellan, could you be

specific? Is that 46 percent diversion rate for class two waste?

MR. WHELLAN: Yeah, of this contract. I mean, and the materials -- we'll be handing you out the materials of the 3,300 tons from Austin Energy and how 46 percent of it has been diverted from the landfill and repurposed.

MR. SULLIVAN: Okay.

MR. WHELLAN: That's why -- that's why we're just, you know, we're just in shock that -- of where we are right now.

MR. COFER: All right. Thank you, sir. And next Bobby Gregory. And Mr. Hobbs, do you want to yield three minutes to Mr. Gregory?

MR. HOBBS: Yes.

MR. COFER: Okay.

MR. BOBBY GREGORY: May I pass these?

MS. OCHOA-GONZALEZ: Sure. But we'll need a copy for our records also.

MR. BOBBY GREGORY: All right. Good evening. Those of you that know me know I like to be precise. I like to hand out a lot of information to make our point. And it's always frustrating when there's the anti-lobby provisions that disallow that.

Anyway, there's a lot of information to cover and after the report by Bob Gedert came out this morning and the sustainability officer, the statement this morning, we went to work on putting together information to make our point knowing we had such a limited time.

I'd like to call your attention particularly to what is

marked as Exhibit 16. This is Exhibit 16 in the other document that you have, which is chronology. That chronology includes the detailed steps that have been involved in this process including all the correspondence with the Purchasing officer since the contract was submitted.

The Item 16 is a response to the memo that was posted this morning on -- as a response to questions from council. And you can see the question from Laura Morrison and you can see the response that was given from the sustainability officer as well as Bob Gedert and my comments are listed. But for time sake, I'd just like to introduce you to the other documents. Hopefully you can look at them as you're discussing the item.

There is a listing of reasons why TDS believes Allied Waste is non-responsive on this and should not move forward -- you should not move forward with this bid. There is specific comments on the recommendation for council action that are related to that e-mail. There is the answer that staff gave to council last month when this item came up and they stated that all -- that everyone -- that bidders had to bid on all items to be responsive. As even Allied Waste mentioned to you, they did not bid on the one and only item that involves recycling because they didn't do recycling of that type of material, which is wood waste, at that time.

The next document itemizes each and every load that was overweight and they charged \$800 per ton for overweight fee, 40 cents a pound. So that is a document that, what we did is, we applied that overweight fee had it applied over the last four years to the weights

that came into our site and that was \$93,000. It's almost \$23,000 a year of financial impact in this bill that's not even mentioned by staff, even though it's clearly stated on page two of their three-page pricing sheets.

The next one includes the -- a detail of the items diverted from the TDS landfill and you'll see a photograph of telephone poles or pieces of telephone poles that are over 10,000 pieces there that we use on our ranch. We personally believe that a pole's highest and best use is in the ground as a fence post or an enclosure on the ranch rather than buried in the landfill. You can see out of 3300 tons, 1500 tons of just poles were diverted as well as some wood, construction and demolition material that was recycled and some metal that was recycled. These things were allowed within the bid and the contract.

Last is the Rule 11 agreement, which you will see clearly gives the city manager or his designee the right to renegotiate this and change it. City council had voted at one time to vote to -- unanimously to oppose the permitting of this landfill. The city manager did a deal, cut a deal, with the Rule 11 agreement without council's knowledge where the city would not oppose it.

So we encourage you, regardless of what has been said today, to not extend the contract beyond the period that BFI and the city manager and his staff could say that the council has approved the landfill remaining open. The 2009 contract that's currently in place has a holdover period and we're in the first 60 days of it.

It has an additional 60 days that goes to July 8th,

2013. There's plenty of time to rebid this. TDS made a mistake. We did not submit two pages of the three pages of price sheets. Allied made a mistake by not submitting one price when all prices staff says are required. They also didn't mention that their landfill can't remain open for the time period that the bid was due. We think that justifies rebidding. We think the lack of care by the staff brings about a lot of questions.

When Bob Gedert came out today saying no, this material isn't recyclable, it shocked me. You've seen -- we're doing it legally. We're managing the material properly. We've had no problems, no complaints in four years from Austin Energy and he says we don't even have to recycle it. That stopped me in my tracks. That's the reason I felt you needed this information.

The contract has a clause in it that allows you -- allows the city upon their request -- and we have already agreed -- to extend it for the like period, another four years. It's the exact same area of the contract, 6B under Term of Contract, is where they did the holdover period. 6C allows the renewal for another four years.

To save 28 percent, we think there's a reason why --
(Beeping sound.)

MR. BOBBY GREGORY: -- and we don't understand why the council -- is that my time?

MR. COFER: It is, but you -- but I can -- is there a consent to allow Mr. Gregory to finish his remarks?

UNIDENTIFIED: (inaudible)

MR. COFER: All right. Please continue, sir.

MR. BOBBY GREGORY: Okay. Thank you. The landfill contract includes the contractor hauling all loads -- the landfill contract is not just a hauler contract. The landfill contract clearly requires the holder has a landfill for operation. BFI has announced in the council meeting in March that they have a contract with Waste Management and they will sub that contract out, this contract out.

This contract allows for a subcontractor to be named for something, but not for the very thrust of the contract. We did not submit a contract -- a subcontract. Had we done so, the city staff would have noted that on the agenda item and the recommendation for council action. They said that there were no identified subcontractor opportunities so I assumed they did not identify a subcontractor.

If they're going to come back after the fact, after the bid is done, and say oh well, gosh, you caught me. You know, yeah, we don't have room and we can't stay open for the five years so we'll just sub it out to our neighbor, who didn't bid and we didn't notify or didn't disclose in the bid, I think that also warrants a rebid.

So that's my comments. And I could go on for hours, but I won't -- I won't do that. I'll let the information speak. I'll be happy to answer any questions now or during your discussions.

MR. COFER: Thank you, sir. Questions for Mr. Gregory?
All right. Mr. (inaudible)?

MR. PAINE: I just have one question and I don't know if I'm alone here or not, but just to make sure I'm understanding. Can you just clue me in and remind me how the initial contracts went to

both Austin -- or BFI and you guys in terms of handling Austin Energy's waste, the time line for that?

MR. BOBBY GREGORY: Are we talking about four years ago, the -

MR. PAINE: Yeah, however far back we need to go.

MR. BOBBY GREGORY: The contract that's just ending is a four-year contract. It was a one-year contract with three contract extensions.

MR. PAINE: Sure.

MR. BOBBY GREGORY: And actually, I have those prices and I have someone here that can probably speak to it quicker than I can. But if you -- if you would like for him to come up and address that. If not, he'll give me the numbers and I'll address them.

MR. PAINE: No, that's fine. So you guys, TDS's contract has been for four years, one year with three extensions?

MR. BOBBY GREGORY: One year with three year -- one-year renewals and that term has run.

MR. PAINE: Uh-huh.

MR. BOBBY GREGORY: That 6A in the term. 6B allows for 120 -- up to a 120 day holdover period.

MR. PAINE: Uh-huh.

MR. BOBBY GREGORY: 6C allows for the -- a replay of the whole thing if we were willing.

MR. PAINE: Uh-huh.

MR. BOBBY GREGORY: And we are willing. The staff does not want to do that. They've denied that request even though by their

numbers, at least in March, it was 16 percent higher. Now, they're saying it's six percent higher with a seven percent of CPI and I'm not sure how they're figuring it. That's going to be interesting to see, but it's higher in any event.

Nevertheless, the bid that we placed was lower than our current contract because we're getting so much recycling out of it. Now, the poles come in. We do have to go through them. There are broken poles -

MR. PAINE: Uh-huh.

MR. BOBBY GREGORY: -- in the loads. We do go through them. We throw away the bad ones. We stack the good ones. You'll see in those pictures in there how they're already arranged. We have to cut some of them because they have broken ends.

So there is work involved in it, but we were able to lower our price. If it's bid, we will not bid higher, so BFI knows our prices.

MR. PAINE: Uh-huh.

MR. BOBBY GREGORY: They know what it is. They want the -- they can bid it low enough. Our main concern is that going beyond the period because I'm concerned that staff will do again what they did before.

MR. PAINE: And -- and --

MS. OCHOA-GONZALEZ: I have a question.

MR. PAINE: Sorry. Just one more. When did Allied Waste's contract begin? I just don't have it in front of me.

MR. BOBBY GREGORY: It hasn't begun. Well, they had it

actually -- we've had it four years. They had it prior to that --

MR. PAINE: Oh, okay.

MR. BOBBY GREGORY: -- and they'll have to answer that question. I don't know whether it was a two, three, four or five-year contract.

MR. PAINE: Okay.

MR. BOBBY GREGORY: But as I recall -- is that correct, Lee, that y'all had it before then?

LEE KUHN: (inaudible)

MR. BOBBY GREGORY: I think they had it before we did; is that right, Lee?

LEE KUHN: (inaudible)

MR. BOBBY GREGORY: Okay.

MR. PAINE: Okay. And then they'd be taking over after you if things were to run the current course?

MR. BOBBY GREGORY: If council awards this contract --

MR. PAINE: Yeah.

MR. BOBBY GREGORY: -- then they would taking over after us and there would be about a \$1500 container delivery fee to do that. I mean, there's a number of things -- end fee costs that are involved that I just don't have time to go into here.

MR. PAINE: No, that's -- that's what I was looking for. Thanks.

MR. BOBBY GREGORY: Okay.

MS. OCHOA-GONZALEZ: And I just want to ask more questions to make sure I understand. Given the fact that we are

trying to go zero waste and the Zero Waste Master Plan and that you are already diverting the 46 percent of it, just to make double sure, the 46 percent that we're talking about that you're already diverting for not going to the landfill, is that mainly the wood poles?

MR. BOBBY GREGORY: It is broken down actually in the report that you have. It's mainly the wood poles. That's correct.

MS. OCHOA-GONZALEZ: Okay. It's just we didn't have time to read these before we sit here so --

MR. BOBBY GREGORY: But you can also see that it includes in addition to wood poles, there is metal and there is -- you can see the tonnage of brush, capacitors, --

MS. OCHOA-GONZALEZ: Can you give me the page, please?

MR. BOBBY GREGORY: I'm sorry?

MS. OCHOA-GONZALEZ: It's in this contract (holding up)?

MR. BOBBY GREGORY: It's in the one with Exhibit 16 on the front of it.

MS. OCHOA-GONZALEZ: Okay. Okay.

MR. BOBBY GREGORY: And it's about an eighth of an inch further back and --

MR. COFER: It's the page right before the photograph.

MR. BOBBY GREGORY: Right before the photograph. I'm sorry.

MS. OCHOA-GONZALEZ: Thank you. It's very interesting because I was also very confused to see that the other papers indicate that there was no potential for diversion. And I don't know if that was also your -- what you understood, but under the recommendations

that were submitted, it says that nothing will be diverted and all compost that are recycled and there's a discrepancy with these.

MR. BOBBY GREGORY: There's clearly room for diversion. Obviously, 46 percent.

MR. PAINE: Yeah. I will say that when I was looking over Bob's letter, the first thing that jumped at me was the wood utility poles. I can think of probably 30 people I could call right off the top of my head that would instantly haul those off for free. And then I wondered about those capacitors. It sounds like those are recyclable.

MR. BOBBY GREGORY: Some are.

MR. PAINE: Yeah.

MR. BOBBY GREGORY: And the ones that are, we do and there's steel and there's some copper in them --

MR. PAINE: Uh-huh.

MR. BOBBY GREGORY: -- so you know the value of copper.

MR. PAINE: Sure.

MR. BOBBY GREGORY: That's something that we've -- we really go after.

MR. COFER: All right. Any additional questions for Mr. Gregory?

COMMISSION: (No response).

MR. COFER: All right. I bet we'll probably have some more later.

MR. BOBBY GREGORY: Thank you.

MR. COFER: Thank you, sir. Signed up at 6:28 is Andrew

Dobbs, Texas Campaign for the Environment.

MR. DOBBS: Hey, everybody. Andrew Dobbs, Texas Campaign for the Environment. I'll keep it brief. Our big concern, of course, is the diversion element here. You know, I look at the bid sheet for the new contract and there's just not -- I don't -- I see landfill, landfill, landfill, landfill, landfill, landfill.

And I note the existing contract does a great deal -- apparently 46 percent diversion and, you know, I -- and as Jeff just said, this is the kind of waste that it makes sense that there's a lot of room for this. You know, and if we're going to keep to our -- if we're going to stick to our guns here, we really ought to think about making sure that -- that we hear all the sides on this and that we give everybody an opportunity to give us what we need, which is the opportunity to divert as much material as possible. So that's just my two cents I guess.

MR. COFER: Thank you, Mr. Dobbs.

MR. DOBBS: Thanks.

MR. COFER: Ed Hurley? All right. No Ed Hurley? And finally, Melanie McAfee.

MS. MCAFEE: Hello. I'm Melanie McAfee. I've had a business in the area since 1981 so I'm a long, long time. I was there before the landfills. I have been fighting the landfills about 30 years and I can tell you there has been a pattern over and over where we have gone to the politicians. We've gotten the desire to stop the landfills and either staff or TCEQ come back over and over and over.

And I find it just unbelievable that we finally got a

closure date and here the city is trying to do business with a company that they have vocally and written a resolution to oppose them. Why would you give them business? We want them closed. And then the thought that they could then sub it out to Waste Management is just beyond my comprehension.

In the past, SWAC and now ZWAC has been a pivotal force to try to keep that line open with the council and I really plead with you guys to take that stand again like you have in the past so that what happens in the future when this contract comes up and all these things are forgotten, that's when these bad things happen.

And I find it a little strange that BFI has not written that. They stand up here and say yeah they're going to close, but then they will not put it in the contract or in writing and just say well, you know, TCEQ will act upon it later. Well, I'm here to tell you TCEQ is the first one to fold when things like this happen. So we're depending on you guys to be the strong ones. Thank you.

MR. COFER: Thank you. Oh, hold on, Melanie. Does anyone have any questions for Ms. McAfee?

COMMISSION: (No response).

MR. COFER: All right. Thank you and thank you for your work.

All right. We don't have any further citizen communication on this item. But if we have any questions for Lee Kuhn, we can certainly give Lee Kuhn an opportunity to finish his thoughts.

MR. PAINE: I'd give him the opportunity.

MR. COFER: Yeah. Yeah.

MR. KUHN: Going first and not knowing what to expect here tonight and this being a new process with these contracts, I just wanted to have an opportunity to address a couple of the items that was brought up.

First, from a from a recycling standpoint, the largest quantity of materials and, in fact, the largest quantity of materials that TDS says that they're recycling and reusing, the term where, in the treatment it says grind and reuse and dispose and process of landfills. So grind and reuse in terms of reusing it and -- onsite as beneficial reuse. Sounds very similar to what they're doing.

I'm not -- I'm not sure if that material is going off in composting or not. But we just want to highlight and point out that the -- it didn't ask to specify how we reused. It wasn't a question that was asked of me while I was up here and how we intended to use these materials. So I did want to highlight the fact that we can, in fact, reuse those materials onsite, that largest component.

Secondly, I also want to point out that irrespective of the comments on the -- after the initial term of the contract, we do, in fact, have a landfill in San Antonio, Tessman Road Landfill, that we do own and operator and we can very easily haul the necessary materials that's not reused to San Antonio to that landfill to be reused. It's a process that's very common. If I'm not mistaken, TDS operates a transfer station in San Antonio and hauls a significant amount of waste from San Antonio to Austin. It can easily be done going the other way.

So I just want to say that if for whatever reason there is an issue or concern about the time the landfill closes and after the landfill closes and any extension thereof, we do own and operate a landfill and we can send that material to that landfill if that is what's ultimately deemed necessary, if Austin Energy decides to extend and if there's a concern about where that waste is placed.

So two primary points I wanted to make. We are diverting. The question was not required to specify in here. It was not a question that was asked. So we can divert and it was our intent to do so and on the Tessman Road piece that again we do own and operate a landfill there. So any other questions, I'd be happy to answer.

MR. PAINE: Can you describe the reuse purposes of the utility poles?

MR. KUHN: Yeah. They could be used again. They could be used, reused, at our site in terms of the wind fencing that we have, putting in place additional wind screen fences. That's a very similar use to what they're even provided for - or ultimately was prior use rather. In addition, they can be ground and reused and reused on site for wet weather turnaround and can offset having to purchase rock or other material so it could take the place of that so it would have a beneficial reuse.

MS. OCHOA-GONZALEZ: So it would -- just to make sure, what you're trying to say is that that would be a bulking item to put a layer on your landfill?

MR. KUHN: Not a -- not necessarily a bulking item, but

it could be put down on the turnaround area for the trucks during wet weather to provide traction. So the materials - you either have to buy that material through rock or use wood chips or mulch. And so we have it where we grind that material and we can reuse that material on site.

MR. COFER: All right. Thank you, Mr. Kuhn.

MR. KUHN: Thank you.

MR. COFER: And what I think I'll do -- so Mr. Kuhn had an opportunity to talk. I certainly want to hear the TDS perspective. What if we do the staff presentation and then I'll have some questions for you. Does that work? And then gives everyone a little bit of time.

All right. Staff?

MR. GEDERT: I would like to invite Austin Energy to present their PowerPoint. But before that, I'd like to present my report to Austin Energy since it was referred inaccurately through tonight.

I had been asked to evaluate the contract and present it -- a statement to Austin Energy on Monday of this week on my evaluation. And I itemized the type of waste stream based upon the contract terms that were bidded out and I interviewed Austin Energy on the use of this material and the -- and the con -- the types of materials for disposal. I also interviewed TCEQ on the permissible end uses of this material as well. And that's the formation of my evaluation.

My diversion opportunity statement is materials

identified above are not suitable for recycling, composting or beneficial reuse. No diversion opportunities were identified through this review. The statement -- I stand -- I stand by that statement based upon the true definition from our zero waste plan on diversion. And I caution you on the swirly and changing definition of diversion.

For most of last year, there was a great deal of waste to energy conversation around the country where waste to energy was defined as a diversion activity. I spoke in many forms against that. I noted that although there may be an energy output from waste to energy, it does not constitute diversion. That is disposal. So we need to be real clear about our disposal versus diversion activities and our definition.

An example, another example, is the utility poles. If they're treated, if they're chemically treated, they are regulated by TCEQ and they cannot be composted. And they -- there is potential reuse of the item. There is no -- no possibility of recycling or composting of the item, but

chemically treated utility poles could be reused, but it is a regulated reuse. It cannot go out into the general public.

So there is -- because it cannot be reinstated into a general public stream, it is a regulated process. Is that beneficial reuse? That's still a national discussion, whether that's beneficial reuse. It -- in our master plan, if the item stays within the confines of a landfill, it's disposal. So for instance, shredded glass, if it's used around a leachate collection system of a landfill, that is not recycling. That is not beneficial reuse. That

is disposal.

So I stand firm on this statement here that we don't have suitable types of materials for composting, recycling or beneficial reuse in the general public. I would note that 98 percent of the items that are listed there -- 98 percent by volume -- is the utility poles. And so that's the main topic on the recycling, reuse. 98 percent of what's documented as recycled or reused is utility poles.

The environmental safeguards of the contract are very strong. It does include the ARR's interests in reporting of volumes and it does have the generator status of Austin Energy correctly noted and they are -- they are following state and federal laws. So from my environmental review, it does meet that.

I did not review any environmental safeguards of the receiving facility. That is not my task. That's more of the task of Purchasing and the review committee that's reviewing over the bids. I was not involved in the review of the bids. My review is over the material and the type of material and how the material can be handled.

I did evaluate that this is under the purview of SWAC by its bylaws. Therefore, we're here today for that discussion. I did mention earlier about the consolidation concept of contracts and therefore, my recommendation to Austin Energy is that the end of the term of this agreement - I suggest a contract term to end September 30th, 2015 in hopes that perhaps this material could be combined in a city-wide contract. And that's -- that was my recommendation.

And Austin Energy is here to present to you what this

contract's about and their intent in the se of this contract.

MR. COFER: All right. Thank you, sir.

MR. SULLIVAN: Could I ask a question?

MR. COFER: Yes.

MR. SULLIVAN: So in your putting together the requirements for a proposal, do you consider that the landfill might be 70 miles away or do you look at whether it's -- we can save energy and resources by having it nearer?

MR. GEDERT: Yeah. My evaluation is not over who is selected by the bid. Because I cannot interfere in the bid-selection process. So that's in the purview of the Purchasing Department. So I did not evaluate that end of the selection. I only evaluated Austin Energy's generation of this material and how it should be handled.

MS. OCHOA-GONZALEZ: Mr. Gedert, you've been for how many years now, two or three years?

MR. GEDERT: I'm --

MS. OCHOA-GONZALEZ: With the Austin -- ARR has been honored to have you for two or three years? How long have you been here, three --

MR. GEDERT: Three years.

MS. OCHOA-GONZALEZ: Three years. In these past three years, these diversion rates did exist, the 46 percent diversion. And you just happened to realize now that TCEQ does not approve these poles for proper disposal but you did know the last three years that they were being composted and --

MR. GEDERT: No.

MS. OCHOA-GONZALEZ: -- you didn't --

MR. GEDERT: No.

MS. OCHOA-GONZALEZ: You didn't know?

MR. GEDERT: I was unfamiliar with the end use of this material and I have been pulled into this discussion as of March 7th. I have not been involved in this contract until March 7th of this year.

MS. OCHOA-GONZALEZ: Okay. Because I -- it's just a surprise to me that ARR wouldn't know what was happening with the -- and it's just authentically, honestly a curiosity of why TCEQ will not accept these to be properly, you know, composted if they have an explanation in their website or what is their reason or their classification to just not let it be diverted.

MR. GEDERT: There is autonomy among city departments. And therefore, I have no control or designated authority over Austin Energy's contracts or decisions. Our master plan has a voluntary agreement with Austin Energy and several other departments towards waste diversion. This contract and this material was not included in that discussion.

MS. OCHOA-GONZALEZ: And the reason why I'm asking is because if you do achieve the opportunity to make those consolidated master contracts in the future, then all of those questions will be passing your way, right --

MR. GEDERT: Yeah. We're looking for --

MS. OCHOA-GONZALEZ: -- for the future?

MR. GEDERT: We're looking forward to the future. We

have -- we are piecing together what contracts other departments are engaged in. This is new, a new topic that we have not been engaged in. This was not brought up in the master plan development of the -- of the waste hauling contracts of other city departments. This was not under consideration.

This was brought to my attention on March 7th and I am engaged towards researching with the Purchasing Department. In fact, Purchasing sent me a fairly long spreadsheet of review of contracts to see if it has waste hauling involved in it. It's not always obvious. And so there's -- there was a chore in looking over future contracts and this is a brand-new activity of our department.

MS. OCHOA-GONZALEZ: I don't get why TCEQ -- and you probably went through this because you already determined that they're not suitable. You said TCEQ has some specifications that said that they were not suitable.

MR. GEDERT: Well, I don't think it's as simplistic as that. If there is an intent to take a special waste or any waste that has a hazardous component to it outside the realm of a permitted site, it does require testing from TCEQ. There are some basic tests that TCEQ requires and it requires the permission of TCEQ for that activity once it's been tested.

I do know that our Dillo Dirt program at Austin Water goes through TCEQ testing quite frequently and must be permitted by TCEQ for consumer impacts and output there. So there is a process. The material type that is identified in this generally does not go through a recycling or a beneficial reuse.

MS. OCHOA-GONZALEZ: How --

BRENT PERDUE: Perhaps we can have -- if I may -- perhaps we'll have Mr. Gregory clarify later, but it sounds like to me that these utility poles are not being composted, they're being reused --

MR. GEDERT: That's right.

BRENT PERDUE: -- as fencing material. So what's being composted --

MR. GEDERT: As fencing.

UNIDENTIFIED MALE: -- is brush materials, pallets, wood -- untreated wood debris. Treated wood, such as utility poles, is being beneficially reused in both scenarios it sounds like.

MR. GEDERT: And the brush and other woody material is less than one percent of the overall waste flow and therefore, incidental. But the utility posts, I don't have the numbers in front of me, but it's about 1500 tons of materials. So that's the elephant in the room is the utility poles.

And you're correct, as my understanding of the reuse is fence posts and that doesn't leave the property and therefore, probably fits the definition of TCEQ. I questioned the definition of reuse and diversion. I find that more in the realm of disposal as opposed to diversion. It's a technical definition, but there's a safeguard around that definition because of what's happening around the nation. The waste to energy conversation is a very good example of how diversion is getting abused and stretched in its definition and we need to safeguard that

definition.

MR. COFER: All right. Austin Energy I guess.

MR. ELDRID: Well, good evening. My name is Jim Eldrid. I'm an employee of Austin Energy and I'm here with my director of environmental services for Austin Energy, Kathleen Garrett. She can wave her hand.

It's a pleasure and an honor to be here to represent and -- not just represent Austin Energy, but also have an opportunity to share with you what, you know, what I purview as part of my realm as an employee in managing waste to the best of our ability as a utility and really, meet the goals and the mandates of zero waste is something that we've been in the business of for a long time under the guise of pollution prevention way before zero waste came into the forefront of the conversation.

But what I'd like to do is just share a little background information on our waste, kind of, you know, set a big picture for it and then talk a little bit about our efforts on zero waste and then a few facts that I know about this contract and the bidding process, for what it's worth.

There are a variety of ways that Austin Energy does manage, including PCB waste that is regulated under TSCA, the Toxic Substance Control Act. That's through the EPA and the State Health Department. PCBs are in our older transformers and we manage that very carefully according to the TSCA regulations. So that's an important contract for us and waste stream.

And then we manage hazardous waste under the RCRA

regulations, federal regulations, and also the Texas Administrative Code, Title 30, Chapter 335, which references federal regulations, 40 CFR 261.

The hazardous waste for Austin Energy has come a long way and I think -- I have a little bit of data that shows that, that we've come a long way in reducing the waste we generate. Right now, both our main power plants that generate power are conditionally except small quantity generators and that's a big achievement for us. It means they generate a less than a hundred kilograms or 220 pounds a month of hazardous waste.

Okay. We have class one industrial waste besides hazardous waste. There's class one, non-hazardous industrial waste. And this applies just to our industrial generators, the power plants mainly, not to our service centers or other office buildings or support buildings.

Class one industrial waste is deemed some level of hazard by the State of Texas. It's somewhat in between class two waste and RCRA hazardous waste. For example, lead. If you have lead in the order of 1.5 to 5.0 parts per million, it's not hazardous under RCRA under 5.0 parts per million, but it is class one down to 1.5. Class one also high -- waste with high total petroleum hydrocarbons such as contaminated soils from fuels would be considered a class one industrial waste.

The main thing about most class one industrial waste is it can't go to a local landfill. They're all class two or municipal landfills. It has to go as far as -- San Antonio is the closest class

one landfill that we can use. There are a couple of them down there we have used.

Beyond that, there's some other class one waste streams. I mentioned PCBs regulated under TSCA are also class one. They're not RCRA waste. Friable Asbestos, class one.

Then we have a variety of recycle streams. We recycle a great deal of metal as you can imagine. Half our company is a wires company so we have a lot of metal to reclaim and sell it to great value revenue for Austin Energy and the City of Austin. We also recycle transformers. The core of the transformers is copper so that's another high-metal waste stream and high value waste stream for us. We recycle single-stream items at our office buildings through our city-wide contract with Allied Waste. We put boxes out there for cardboard, paper, metal, plastics and that's been a big effort on our part in recent years to really get some commitment to get diversion from our refuse to single stream. Used oil, universal waste, which are hazardous, we recycle, things like florescent bulbs and batteries, paint.

Okay. I talked a little bit about our refuse and single-stream recycling. Refuse being household-type garbage. At a power plant, the only refuse comes from the admin building or the cafeteria. So it's office-type waste. If any waste is generated out in the industrial site, it's considered a class two, non-hazardous waste, not refuse, and it's managed under this contract we're talking about and it's called plant trash. Plant trash is a generic term that the State came up with for industrial trash. So it's different than

our refuse. I just want to make that clear.

Okay. Just to talk in detail a little bit about class two and the types of things that make up the class two waste stream, we have things like we do generate a little bit of rust. It's usually stored in drums and that rust has to be tested for metals to make sure it's not class one or hazardous. That -- that's a class two waste.

Our weathered poles, we've talked a great deal about weathered poles. Austin Energy does sell used poles and anyone in the public can buy them. So if your friends are interested, we're interested in selling them. No question about it. Unfortunately, we don't sell a large majority of them.

When I first came to Austin Energy from Solid Waste Services in 1999, we sold all our weathered poles to a big farming outfit and made money off of them. That farming outfit was up near Waco and gradually over time, they paid us less, less and pretty soon they wouldn't bid, nor would anyone else bid that contract. We were interested in an end-user for those poles, but no one wanted them. Now, we did sell some to the public, you know, 50 cents a foot. You know, it used to be 2.50 a foot, but we really make a lot of effort to try to divert that before we go to landfill.

And in all fairness, I had no idea that TDS was selling these poles or reusing them in their ranch. I had no idea. I thought they were being landfilled. I don't like to see poles landfilled so I'm happy to hear that our class two waste -- you know, I definitely would request respectfully a copy of your report and your numbers because I don't have them. No one's ever communicated as the

coordinator of the contract that, in fact, this was being done. So it's interesting to me because it will help our zero waste numbers.

My throat's a little dry, just bear with me. I'm sorry. Low level contaminated soil or water is a significant waste stream for us. Contamination low level, most of it, like transformer spills is mineral oil. We occasionally have some contaminated soil at some of our facilities. That generally is a class -- it can be a class one, class two, it could even be hazardous. We have to do thorough testing before we classify it. Also, some water is occasionally, not much these days but we used to have more contaminated water and we worked real hard at reducing that through a variety of processes.

There are two exceptions to the class two definition that we are allowed to go to local landfills for soil contaminated with transformer oil even though it is above the threshold of 1500ppm tph, we get a special exemption from the State to go to the municipal landfill and it makes sense because mineral oil itself is relatively benign and it's appropriate I think exemption for us to go to a local landfill than ship it all the way to San Antonio to a class one landfill. We also have some asbestos from our abatement projects. It's a class one waste, but as long as you take precautions to prevent airborne contamination, it can go to local landfill.

Zero waste at Austin Energy. We -- my work group at Austin Energy, Environmental Services, tracks and reports on waste performance every year. We train and promote our employees on principles of pollution prevention and now zero waste, which to me is an extension of pollution prevention.

We recognize -- we were recognized by the auditor's office for our high level of care in taking -- in managing our waste relative to other city departments. I wanted to bring that to the council's attention.

We are collaborating with -- I think under the direction of city council really with Austin Resource Recovery on our hazardous waste contract to see if we can get some economies to scale and combine our contracts, you know, make them city-wide as Bob had addressed earlier.

Austin Energy. Our waste is trending down. Our diversion relative to waste has been trending up. Even without the figures that Bob Gregory, you know, shared with us, our own figures discounting class two waste that goes to what we thought was going to the landfill, we're trending up on diversion. We're making great progress and we're very proud of that.

We've done -- we've bought some equipment to mechanically strip insulation from our copper wire that enhanced our revenue and further -- you know, that's the other thing is, you know, what makes the most business sense. Where can we make the most money for our recovered materials? We have started recycling wood from our power plants and diverting that out of our plant trash stream. Single stream's been enhanced at most of our facilities now or a lot of them where we're gradually phasing in -- making sure the single stream recycling is available at all our office and support facilities.

And then we've done other pollution prevention business cases that haven't worked out from the monetary sense or capital

recovery, you know, cost benefit analysis, but we looked at grinding up poles at one time just to make it cheaper to landfill, if you will. We didn't really intend to compost that and I had real concerns about chemically-treated wood as compost or what is the proper use and I didn't want to do that, but it would have lessened our cost by about four fold if we were able to mush it up if you will, compress it. But the problem is the capital expense and location of the equipment was deemed too high and the payback was too long.

We also looked at doing more cardboard re-baling like any Wal-Mart or grocery store. At least we're recycling the cardboard, but you know, bailing something that I think -- you know, we made a good business case for it and it's being applied or trying to be applied at some places.

There -- this graph shows the tracking our waste and you can see the purple is the total waste, the blue is the landfill waste and the gold is recycled, what we're doing in tons per year since 2005 when I first came downtown and started tracking these various waste streams.

One thing I'll have you note that peak in 2008 is mainly poles. We had a huge spike in poles, about doubled our average annual that year and I think it was right before the recession. We were doing a lot of re-conducturing, just a lot of poles were coming out of service. It could have been, you know, the end of life for a lot of poles as well where our troubleshooters go out and recognize they better take these poles down before -- you know, so that they're still stable basically or structurally sound.

But it looks like an anomaly, but I don't think it was. We got into the recession. I think business and building slowed down some in Austin, but our pole numbers definitely went down after 2008. I think what we see is a general trend down with, you know, that anomaly in 2008.

And in recycling, in 2007, I'm trying to think of what the stream was, metals, I think we had a very heavy year in metals in 2007, and it kind of peaked and then receded a little bit.

Here's a big picture of all the waste that I can track at Austin Energy, and there are a few things that are missing. We need to do a better job of tracking our construction waste, and I think furniture and a few other things, but for the most part, I try to grab facts and weight on all the waste we generate at each facility. The green there represents everything that is diverted from landfill in tonnage. Admittedly, a large percentage is tree trimmings, you know, that are either composted on-site or mandated - the tree trimming contractors have to take that to composting facilities. Then we took the blue pie and slit it down and cut it into a pie and that's the 1400 tons that are landfill waste annually, and you can see there that poles make up - and we're considering all these going to landfill and I learned tonight that they're not going to landfill, they're being used, at someone's ranch, so that's great and I'm glad they're used, but I would like to know that, I would like to know that up front. And I'd like to take credit for it being a diverted waste stream, but you don't mind sharing credit. Okay. But the refuse there - 49% clearly - that's where we need to target our

efforts in further landfill diversion. I think for us to eclipse 90% will not be terribly tough, but I recognize that pie on the bottom there is what we have to work on. And we do that by training our employees, talking up pollution prevention, talking up the goals of zero waste, and trying to lead the City, which should lead the community in these efforts. And that's what I understand our mission is.

MR. PAINE:: Can I interrupt you for a second?

MR. ELDRID: Yeah.

MR. PAINE: On the previous slide, is it easy to go back to the previous one?

MR. ELDRID: Uh, give me about ...

MR. PAINE: If not, it's okay, I can wait until the end. Oh, there we go. On the pie chart on the left, could you explain if the green on this pie chart relates to the orange in the previous graph, the previous slide?

MR. ELDRID: The gold. Yeah. It didn't - I think the gold did not include tree trimmings.

MR. PAINE: Okay.

MR. ELDRID: So that's the big difference. That's why I mentioned tree trimmings here. It is a large percentage of the weight. There's no question. And part of me really wants to take that out of the equation because it allows us to concentrate on the work we have to do and not take credit for something that's a little more passive --

MR. PAINE: Okay. Thank you.

MR. ELDRID: -- in my estimation or obvious.

But you can see, we have made a lot of progress if you look at plant project waste, one percent. Plant trash, four percent. You know, we have further to go. Contaminated soil is one of those things that, you know, we work hard to prevent spills, but it's - it sometimes seems like it's out of our control. It goes up, it goes down. But we're doing what we can to prevent spills. And we have a lot of policies and procedures in place to do that very thing.

Now, the contract, these are the facts as I understand them. We manage five of the six contracts in my own work group that five of the six waste-related or recycled contracts. One thing that's not mentioned here -- and I do want to acknowledge reclamation does manage a lot of material that's diverted including the wire and the metals and that's a large revenue and that's not listed here.

But we have a city wide, you know, all city departments share a refuse and single-stream recycling contract through Austin Resource Recovery now. We manage PCB disposal for -- under TCSA. We manage houses and class industrial waste, which we are exploring combining with other city departments. Used oil recycling contract, we recycle a lot of used oil. We have a scrap transformer reclamation contract. And then we have our class two non-hazardous disposal contract that we're discussing now.

As far as the class two contract bid history, we've had, since I've been here, three multi-year contracts over the last 12 years and they've been awarded to all three of the local landfills almost in succession. They include TDS now, Texas Disposal Systems, Allied Waste

that we had prior, and Waste Management.

Now, this is just a statement as I assess it. From 2005, our landfill volume has decreased 40 percent over 2005, but our costs have increased 105 percent. And I think if I were, you know, in California, that would sound really reasonable to me, you know, but that's the way it is. I mean, you know, as we grow, land space, you know, becomes more precious, you know those costs are going to go up unless you divert them, divert your waste.

Waste Management has not bid Austin Energy contract the last two times. You know, we want them to bid, but they haven't bid. Okay, our IFB, as I understand, was originally scheduled to close on the 19th of December, it was extended to January 9th and again January 16th. It closed on January 16th, 2013. Two bids were submitted and one bid was disqualified. The responsive bid received was from Allied Waste for a total amount of \$264,820.

Allied bid represents a six percent increase across the bid from 2009 prices. Originally, we estimated higher, but that was on a sample evaluation for some line time, select line items. But it's a six percent increase. If you look at the graph, it shows the producer price index for waste or waste collection and actually the PPI shows a 7.4 percent increase over that same time period. So you know, judging by that, it looks reasonable.

And that's all I have from my standpoint. One thing I did want to address that I did see in here is -- and I don't know if this is just someone guessing at our intent, but I don't think Austin Energy really wants to reclassify our class two waste as hazardous

waste. We have no interest in that. We have no interest in that. We do what the State requires to classify the waste and show them that it's classified properly.

But anyway, thanks. Any questions?

MR. PERDUE: Thank you. I have one question.

MR. COFER: You're going to have some questions.

MR. ELDRID: Yes?

MR. PERDUE: The one bid that was disqualified is because the front bid sheet wasn't signed?

MR. ELDRID: No. To my knowledge, it was incomplete.

MR. PERDUE: Incomplete?

MR. ELDRID: Yeah. And that's -- again, it's not my decision. That's just -- yeah, you know.

MR. PERDUE: A purchasing thing.

MR. COFER: What was incomplete about it?

MR. ELDRID: I think it only -- it only submitted -- I think there were two, at least two pages, missing. It only submitted bid items on a -- on a percentage of the waste so we had nothing to compare.

UNIDENTIFIED MALE: (inaudible)

MR. ELDRID: Yeah.

UNIDENTIFIED MALE: (inaudible)

MR. COFER: Okay. I'm sorry.

MR. PERDUE: Okay. (inaudible)

MR. ELDRID: (inaudible) purchasing and (inaudible).

MR. COFER: Okay. So you're not with purchasing?

MR. ELDRID: No. I'm with Austin Energy, Environmental Services.

MR. COFER: Okay. Okay. Gotcha. So -- well then, let me ask you this while you're walking up. Are you generally happy with the service you're receiving now?

MR. ELDRID: I've been happy with the service I'm receiving now. I was happy with the service I received from Allied. And I was happy with the service I received from Waste Management. So yes, I'm happy with the service I have now and I've been doing this for a while and I've actually gotten good service from all three companies.

MR. COFER: All right. And -

MR. PAINE: I've got -- I've got -- go ahead.

MR. COFER: Oh. Well, so was it your decision or whose decision was it to send this out for bid rather than extending the existing contract?

MR. ELDRID: Yolanda can speak to this.

MR. COFER: Okay.

MR. ELDRID: My understanding is it was an annual contract that we could re-let, I think, three or four times in succession before we would rebid it and it ran the full extent and now it's time for us to rebid and we've done this three times since I've been down at corporate office.

MR. COFER: Okay.

MR. ELDRID: Okay.

MR. COFER: All right. Let's hear from purchasing.

MR. ELDRID: Thank you.

MR. COFER: Thank you.

MS. MILLER: Hi. Yolanda Miller, deputy purchasing officer. Do you have a question?

MR. COFER: So why was the -- why was one of the bids disqualified?

MS. MILLER: The bid was disqualified because there were two of the three offer sheets -- bid sheets missing --

MR. COFER: Okay.

MS. MILLER: -- when we publically opened it.

MR. COFER: Is that just an error or a mistake or what is that?

MS. MILLER: I can't speak to why it was missing. But when you open a bid, in order for it to be responsive, all the bid sheets must be present.

MR. COFER: Okay. And so what's the price increase from the current contract to the new proposed contract?

MS. MILLER: We did an analysis of all the line items in the bid and we came up with a six percent increase in price over the 2009 prices to the bid we opened in January.

MR. COFER: And is the city paying today the same prices under this contract that it was paying in 2009 when the contract was initiated?

MS. MILLER: I believe so.

MR. COFER: Okay. And so what was the rationale -- well, what was the rationale then for doing an invitation for bid rather than extending the current contract?

MS. MILLER: Well, you know, we are a public entity and we traditionally, when a bid expires, we rebid it to give other vendors the opportunity to competitively bid on a supply or product or something. So it's a -- it's a matter of a routine in our office.

MR. COFER: Okay.

MS. MILLER: So --

MR. COFER: Additional questions for the Purchasing Commissioner?

MS. OCHOA-GONZALEZ: I was born in 1980 and so most of my life I've known e-mail and electronic backup. It's just hard for me to understand that the problem is two paper sheets and that it's only on paper. So I want to ask if the submission of the bids -- and this might be in all departments, not only yours -- are just in paper or people just also provide a backup electronically? You know, because every contract I provide personally, I have to put a CD, a USB, an e-mail copy, a backup and a paper is kind of the extra thing. And as we're going Zero Waste paperless, I just --

MS. MILLER: That's a very good question.

MS. OCHOA-GONZALEZ: -- wonder if those fell in the -- fell in -- (inaudible) what happened there?

MS. MILLER: Well, today our bid process is paper and the bids are submitted, one copy, and they're publically opened at the time advertised, the date and time, time advertised.

Now, for some of our requests for proposals, we ask for one paper proposal and then we may ask for electronic copies, maybe on a thumb drive. But for -- this was an invitation for bid and we

required all the bids to be in at a certain time where they were publically opened at the - a minute after the bid closed. So it's just a matter of what our internal policy is.

MS. OCHOA-GONZALEZ: I'm honestly just curious because it seems fascinating that it's just two sheets, you know, and I just don't know why the paper issue might be a mistake? I don't know if they were missing the sheets or if they honestly if they fell down or --

MS. MILLER: Following the requirements in local government 252, it states that the bid must be opened at a time that is advertised. And so when you open it, it does not give you the ability to alter the bid, to correct the bid. It means that anything that is required in the terms and conditions as being part of that bid must be there at the time of the opening. And so the offer sheet or the pricing sheet was a requirement of the bid. So that's why we're following the course we are today.

MS. OCHOA-GONZALEZ: When I bought a house, they made me make like ten copies of everything and I just have to verify that nothing was missing or applying for anything in America, you know, I just -- I don't know, it's just papers. (inaudible) I'll stop there. Thank you.

MR. KAZI: Okay. I've got a couple of questions. If you could help me understand the purchasing process, so does Austin Energy come up with the bid documents?

MS. MILLER: There are -- there's a total bid package.

MR. KAZI: Okay.

MS. MILLER: And Austin Energy works on the specifications or the statement of work. So they'll work on the technical portion of the solicitation. And then we will work with Austin Energy to put the terms and conditions and the offer sheet and the price sheet along with the solicitation. And then purchasing will then send it out to people who are on our bid list that want -- who have expressed an interest to do work with the City of Austin and have been qualified as being a person that can bid on a certain solicitation so --

MR. KAZI: Okay. So specifically on the bid form, the line items, was that in Austin Energy's scope or was that in Purchasing's scope?

MS. MILLER: It probably came -- oh, wait. I'm almost sure it came from Austin Energy in identifying what items they wanted to be on this contract.

MR. KAZI: Okay. Thank you. I've got a couple of follow up questions for Austin Energy.

MR. COFER: Wait. Hold on. Anything further for Purchasing?

COMMISSION: (No response).

MR. COFER: Okay. Great. So I think we're back to Austin Energy. Thank you, ma'am.

MR. KAZI: So I've got two --

MR. ELDRID: If I may, I just -- I wanted to clarify something that was made that I wasn't aware of. I used to work with weathered poles quite a bit, the field services group, I worked with up

at Kramer Lane. We handled the treated poles. But I was told that we are now selling only non-treated, not treated. So I do want to take that back because I -- you know, that's something I should know, but I misspoke. I was speaking about my experience back six years ago, not since I've been downtown. So I've been corrected.

MR. KAZI: Okay.

MR. ELDRID: Thanks.

MR. KAZI: So my question is about the line items that are in the bid form or that were in the bid form. And I want to hear your opinion about the importance of the line item that was left out in Allied -- in Allied's bid.

MR. ELDRID: There was, I guess, a blank. Was it the wood?

MR. KAZI: No. I think it was recycling.

MR. ELDRID: Re -- recycled wood. Yeah, recycled wood is a new recycled stream. It's one we're interested in capturing. It isn't a large quantity. It's mainly out of our power plants, scrap wood that ended up in the plant trash and we wanted to divert that from plant trash for landfill to recycle. So we did start and we added that to our contract. It is a very small volume relatively speaking. I think Bob addressed the percent and that's accurate. It's very small.

MR. KAZI: Were the volumes or percentages represented in the bid documents?

MR. ELDRID: Yeah. Yeah, we had an estimate --

MR. KAZI: And --

MR. ELDRID: -- of how much based on what we've done in

the past.

MR. KAZI: Between Austin Energy and Purchasing, was there a discussion about, hey, does this disqualify them? Is this okay? Is this a problem?

MR. ELDRID: You know, I think Delores and I may have mentioned that there was a no-bid item on wood.

MS. MILLER: When we have certain requirements, in this particular one, it was not an all-or-none bid. Therefore, there were line items that you -- we had to -- we would have had to determine if the importance of if we -- like say we had three or four bidders and half were low in half of the line items and someone else was low in other line items. We could have made the decision to take certain line items and award to another company.

And I'm not saying that that's exactly what happened in this situation, but there are instances where we do - either we'll take all the line items and we will state in the bid that you must bid all line items. To my knowledge, that wording did not -- was not in this particular solicitation.

Therefore, when someone does a no bid, we are able to determine the importance of that line item and go forward if we determine that to be an insignificant item that was no bid.

MR. KAZI: Okay. So I deal with bids all the time so I'm aware of the generalities, but I'm really interested in the specifics of this contract. And so I understand that there wasn't language in there that said specifically all line items must be filled out --

MS. MILLER: Uh-huh.

MR. KAZI: -- but was there any language that suggested one was more significant than the other?

MS. MILLER: No. No, there was not.

MR. KAZI: But there was something about the percentage of that particular line item as far --

MS. MILLER: It had --

MR. KAZI: -- as volume or --

MS. MILLER: It had a quantity of I think 200 cubic feet.

UNIDENTIFIED MALE: Cubic yards.

MS. MILLER: Cubic yards.

MR. KAZI: 200 cubic yards. Okay.

MS. MILLER: Now, if the solicitation had said - if it had a requirement that all line items must be completed, then we would have taken the appropriate steps.

MR. KAZI: I can partly buy that. Okay. Thanks. Thank you. I've got one more question for Austin Energy. There was some mention about how the bids -- invitations to the bids go out to previous providers and others that expressed interest. So did Waste Management express interest?

MR. ELDRID: You know, they did in a conversation I had by phone. I want to say it was the December time frame the first time. And I was somewhat surprised they didn't, but -- but I don't -- they didn't bid it the last two times so I wasn't shocked. But they did tell me, yes, we would like to bid. So yeah, I'm not certain. You know, I don't know.

MR. KAZI: Thank you.

MR. ELDRID: Thanks.

MS. OCHOA-GONZALEZ: Were there any conversations about their possibility to partner up with other companies being a subcontractor?

MR. ELDRID: Not that I'm aware of. Austin -- you mean Waste Management?

MS. OCHOA-GONZALEZ: Yes.

MR. ELDRID: Not that I know of.

MS. OCHOA-GONZALEZ: Because what I'm not understanding here correctly is what is the risk or the concern this -- you give these bid to a company that is going to have a closed landfill, right?

MR. ELDRID: (No response).

MS. OCHOA-GONZALEZ: It's going to have a closed landfill by 2015?

MR. ELDRID: Yeah.

MS. OCHOA-GONZALEZ: And the recommendation is that you move forward to that. And then this company has a closed landfill, but there wasn't a specifications that they contract that. And so can they utilize your contract to go to TCEQ or the county or CAPCOG and say, listen, we cannot fall -- we cannot let down Austin Energy, then you need to extend our -- our landfill --

MR. ELDRID: Not that I'm aware of. I don't think that -
- that would be a likely scenario.

MS. MILLER: But the situation here is we did not mandate where Allied had to -- what -- which landfill they had to utilize. So as you've heard earlier, they are able to use other landfills that they

have. They're able to use this one to a certain time. So we don't -- we didn't make that determination in this particular solicitation that you had to tell us which one you were going to use and where it had to be.

MS. OCHOA-GONZALEZ: And I'm just very familiar with the climate protection plan and the Air Force office of sustainability and the Air Force of reduction of carbon emissions of the city and the Imagine Austin plan, which is such a passionate plan that we all ambition. So as a purchaser, why didn't you include the mileage and the effects of carbon that will be implied by the landfill, because as a purchaser I will think if I'm committed to climate protection in Austin Energy that hosted the climate protection, that will be an essential part of my contract and I would reconsider rebidding if that was something that I didn't include there on the first place because that's not in line with the climate protection, the Austin -- the Imagine Austin and the Zero Waste plan. So did that cross your mind?

MS. MILLER: That is -- At this time, I don't know if there was discussion about --

MS. OCHOA-GONZALEZ: At the moment of --

MS. MILLER: -- (inaudible)

MS. OCHOA-GONZALEZ: -- creating the bid, yeah.

MS. MILLER: Uh-huh.

MS. OCHOA-GONZALEZ: Yeah.

MS. MILLER: I -- unfortunately, I don't know that answer.

MS. OCHOA-GONZALEZ: Because there is a discrepancy of

putting up the bid outside that it's not in line with what we say we are in line as a city, don't you think?

MS. MILLER: But honestly, we have so many contracts with the City of Austin so we would -- if the recommendation you're making is something we -- I guess you're probably recommending we do this for all of our contracts, which could have some unintended consequences. So we probably have to look at all of our -- all of our contracts to incorporate sustainability efforts like the one you're recommending to determine what could be the consequences of putting that kind of language in there. And what then would be our responsibility to manage that contract and insure that no loads are being gone -- taken to somewhere else when our main objective in this con -- in this particular one was to get rid of these items and do whatever the specifications were dictating them to -- you know, dictating the vendor to do, so --

MS. OCHOA-GONZALEZ: Mrs. Miller, I just mean this in a very impersonal way. I'm most passionate about how these things work and it's not about this contract. I'm just saying if the city is going to buy fruit for the rest of the year and whether they're bringing, you know, raspberries from New Zealand or they're bringing local -- on that end.

MS. MILLER: I can tell you that the issue in the sentiment that you are expressing is being weighed and talked about as we speak. I meet almost weekly with the sustainability office. I'm working on a policy for healthy foods and local producers. And so what you are saying is very much in the forefront, but we have not analyzed

what it is for -- to reduce our carbon emissions and how that will react with every single contract we have. However, it is definitely something that is very important to the City of Austin.

MS. OCHOA-GONZALEZ: So the city or you or the purchasers, do they have the capacity that when they notice this is a missing element to restructure their biddings and rebid or just --

MS. MILLER: It does, but it doesn't -- it's not just adding that. You need to look at what could be the unintended consequences for doing it. Now, we're working with the Office of Sustainability to do such a thing, to look at all of our contracts, to make sure we assess these kinds of things. But we're kind of tackling it --

MS. OCHOA-GONZALEZ: One at a time?

MS. MILLER: We're trying. So...

MS. OCHOA-GONZALEZ: Thank you.

MR. COFER: Additional questions?

COMMISSION: (No response).

MR. COFER: All right. Well, I was curious to hear Mr. Gregory's perspective on how the bid process went, sort of in response, you know, like a follow up from -- everyone gets to speak twice. I guess. All right. Mr. Gregory?

MR. BOBBY GREGORY: I have a lot of follow up.

MR. COFER: Yeah.

MR. BOBBY GREGORY: But you tell me when you want it to stop. TDS messed up. We didn't bid -- we didn't include the second and third page on a bid. There were ten signatures I think that were

included, but there's one on the third page so there was a signature missing.

The statement that staff does not require all bids to be made is confusing to me. If you look in Exhibit 16, the separate one that I gave you, there's a sheet that has red lettering on both sides. This is a question from council member -- an answer to a question Council Member Tovo asked. And I won't read the whole answer, but the operative part from Purchasing was the bidders were required to provide pricing for all line items for award of this turnkey waste disposal contract.

That sounds to me like they required all line, all line items, to be bid. They were using that against us when they wanted to disqualify TDS. I think they forgot that BFI had not bid a line item as well. Other things stated in the bid are, "to be eligible for this contract, the contractor shall, at a minimum, own or operate a landfill permitted to accept the city's waste under this task." That is not anyone can bid it and you can haul it to any landfill.

Another statement, "No subcontracting opportunities were identified. Therefore, no goals were established for this solicitation." And another one, "In order to comply with the federal, state and local regulations, Austin Energy requires the turnkey services of a waste disposal contractor to transport and dispose of industrial class two and non-hazardous special waste generated." That's a turnkey disposal and landfill contract.

There is no basis, in my belief, to state that this is a contract that they can subcontract out. And there are two places on

the bid forms that you have to check a box to state whether you're going to sub it out or not. We checked no. If you check yes, then you go into a whole different category of what you have to do, whether women in minority-owned business and things like that were qualified or if there are some. They said, staff said, there were no subcontracting opportunities qualified -- I mean, identified. So I don't know what -- how BFI bid it or not.

I'm 61-years-old. The day I was born, my dad was in the scrap metal business. My brother and I have been in the business, scrap metal business, and the recycling business our whole life. Starting with one and two employees, me, then Jimmy and now 600 employees, we have built up a huge business centered around recycling and diversion. You heard Mr. Gedert say disposal -- it is -- if it stays within the -- what was it - within the boundary, I think, of the landfill, it's disposal.

We have almost 2,000 acres tied up in our facility. We're worldwide known for the operation that we have. Composting and recycling and landfill, we're the first in the history of the state to have it in one complex, 734 acres and permitted, of which all of this happens. Well, there's an indust -- eco-industrial park where the MRF is. When it comes to our facility, it goes to a landfill. To state that it's not recycling or diversion because it's used on our site, or used on our site where we have one of the most renowned facilities in the world, is really, really inappropriate, for a company who is seeking to find zero waste and has done more than the city, the county and every other hauler put together to accomplish it.

And I present to you tonight what we've done with this -- I love the presentation for Austin Energy. That was great. We can do more business with those guys. I've always heard of this gentleman and I don't think I've ever met him, but he's well regarded within our staff of running such a fine operation in the way they handle their business.

The -- we do not do any composting of poles. We do not sell the poles. We don't resell the poles. We don't do any grinding for the use of the ground material on site for like traction control and things like that. We don't use them in fuel. I think those were the things that I wrote down that were said that perhaps we were doing with them. We use them, as I said, for the highest and best use for a pole or an enclosure or a fence post. There's -- some of them are long enough. You can see that's a 6'2" guy in that photograph. So we you can get a scale of how big he is and how long the poles are there.

TDS went through a 13-year ordeal where a company disposed of hazardous waste on our facility and declared it hazardous three hours after they disposed of it. It was an unbelievable ordeal. I hope we're not starting an ordeal like that with the City of Austin stating today that they're thinking of reclassifying it. Jim Eldrid said no. Bob Gedert said perhaps. That would be an unbelievable thing to come now and say that that material is hazardous. I don't think he has a clue - he knows the gravity of what -- of what that -- that involves.

MR. COFER: So what would be sort of the bottom line action moving forward that you'd like to see?

MR. BOBBY GREGORY: Well, what we would like to see is, as Michael Whellan laid out, is either you move the - I think you should send the thing for rebid and send a strong message to council about zero waste. Council wanted ZWAC to weigh in on this because it was seeing there was so little opportunity for recycling. 200 yards I think is what that one category was that BFI didn't bid. We bid a dollar a yard, \$200 impact on the grinding of clean wood.

I would like to see it go out for rebid because of the reasons I've laid out. I'd like to see you encourage council to weigh in with a process on this. Whether it's a scoring system, whether it's now that you -- and Jim Elrid knows of what we're doing out here -- they can come in and say -- and weigh some more options of what can be recycled. I've got the language right here from the contract which clearly allows what we're doing. It's there. So this is not -- we're not doing anything inappropriate with the poles.

Otherwise, it would be a matter of extending the existing contract for the other four years, which is allowed. That language in your contract is part of Exhibit 14 in the chronology you have. The other one would be to approve it for two years and not approve the three year - three one-year extension options, which would take it past the time of closure and then subject it to subcontracting.

MR. COFER: All right. Any questions for Mr. Gregory?

MR. KAZI: I've got a question. The picture that's provided in the packet of the poles and with the 6 foot 2 gentleman standing, is that picture recent?

MR. BOBBY GREGORY: That was last week.

MR. KAZI: Last week. And is that - what percentage of that would you say has been used compared to this picture in the last four years?

MR. BOBBY GREGORY: Of the four years? Not a great -- not a -- not a great deal. I do not know how many tons. It would be certainly some, but not 50 percent. That would represent probably 1500 tons of material I would imagine.

MR. KAZI: So most of the poles are being stored onsite right here?

MR. BOBBY GREGORY: Most of them are being stored. We do get poles from a few other places and they go and they come out and they're used out of the pile just like the others are. So these are not all Austin Energy, but almost. Probably -- by the estimate of my staff, 98 percent is Austin Energy.

MR. KAZI: And could they potentially be used in the eco-industrial section of your --

MR. BOBBY GREGORY: Yes.

MR. KAZI: -- property?

MR. BOBBY GREGORY: Yes.

MR. KAZI: Knowing the -- whatever environmental issues come with the poles?

MR. BOBBY GREGORY: They have creosote on them. And yes, we know the environmental impact of it. It's like railroad ties. And we know the limits of where we think it could and should be used and they're great for putting in the ground and not rotting. And as you may know, we have exotic animals on our site. So we have a lot of

enclosures. We don't have it where they can eat it or something like that, but cows are around telephone poles, you know, all over the world. And so there's only certain animals that are drawn to the -- like the taste of it, so to speak. But we're very, very possessive of our animals out there and we're very careful about that. But our goal is to reuse them on the site for barriers and fencing and enclosures.

MR. KAZI: Thank you.

MR. COFER: Anything further for Mr. Gregory?

COMMISSION: (No response).

MR. COFER: All right. Thank you, sir.

MR. BOBBY GREGORY: Thank you.

MR. COFER: Does staff want to close with anything? And then we'll go into discussion.

MR. PAINE: I think I had one question for -- it might be purchasing, but in speaking with what Mr. Gregory said about the statement here, the bidders were required to provide pricing for all line items, because that does seem to conflict with what we -- what we heard at the podium in terms of not all line items were required. I'm just...

MS. MILLER: Unfortunately, I don't have the bid right here. I need -- I would have to look at it and make sure what the line item said. But I'm pretty sure because I -- we talked about it and I -- I just would like to have it here in order to --

MR. PAINE: Sure.

MS. MILLER: -- definitively tell you that it said or didn't say it. However, I'm pretty sure that this information that

said all line items is not correct.

MR. PAINE: Okay.

MS. MILLER: And that -- and it came from our office. But it's my understanding that the bid did not say every single line item.

UNIDENTIFIED MALE: (inaudible)

MS. MILLER: That's the -- it says it may jeopardize, but I really would like to look exactly at the language that's in the bid documents --

MR. PAINE: Uh-huh.

MS. MILLER: -- and be able to tell you exactly what it -

MS. OCHOA-GONZALEZ: Just tell us what it says.

MS. MILLER: Oh, right here it says, "Special instructions: be advised that exceptions taken to any portion of the solicitation may jeopardize acceptance of the bid." So I want to be clear. I should tell you that in a request for bid, if it says "must," then we take no exceptions. If it says "may," then we look and determine what is the extent, so that we're not disqualifying every single bid every single time. So we - but if it says "must," like you must turn in your bid sheets, you must turn it in on time, you know, it must be signed, we don't make any exceptions under an information for bid for those kinds of items. So --

MR. PAINE: Uh-huh.

MS. OCHOA-GONZALEZ: Is this related to the ethics code and the ethics people, the may and must? Who decides where the lingo -

MR. COFER: Where what goes?

MS. OCHOA-GONZALEZ: You know, that phrase, for example.

MR. COFER: Oh.

MS. OCHOA-GONZALEZ: And the -- the city ethics department, do they give you the liberty to put a may or a must or is that decision of the purchasing people doing it?

MS. MILLER: It's -- it's -- it's not only the position of purchasing, but it's also in a lot of the government code. So we -- but just about all of our bids...(papers are handed to Ms. Miller)-- It -- when we have a requirement for line items, we usually say every line item must be completed. So I mean, we're very specific on this because we want the opportunity to take one line item out or take some of the line items out or award in categories if we feel that it's to the advantage of the city to award by categories.

And usually -- sometimes when you have multiple bidders, it just makes sense to award by category and not by line items. But there are some bids that we will have in the -- in the language, this is an all or none bid. You must bid every line item. In fact, we just had something for our bunker gear where we said, stated in the bid, that you must be every line item.

So this, that they brought to me, says contractor shall respond on bid sheet and summarize briefly how scrap wood would be recycled. So, they did respond. They responded with a no bid on that line item. So it was a response.

MR. COFER: Okay.

MS. OCHOA-GONZALEZ: I'm sorry. It's just English is not my first language and I don't -- those two together don't make sense to

me. Not responding is a response?

MS. MILLER: Oh, absolutely. If you say "no bid," that is a response. We didn't say you had to provide a price for every line item. So --

MS. OCHOA-GONZALEZ: Oh. So they did say no bid?

MS. MILLER: Uh-huh.

MS. OCHOA-GONZALEZ: Oh, okay.

MS. MILLER: Oh, yeah. They filled it out.

MS. OCHOA-GONZALEZ: So the contractor has a choice to say I'm not going to -- I'm not going to include that and so they might not enter into category if that's your decision.

MS. MILLER: Only if the bid does not allow it, then we're looking for a price on every line item. And you want to give yourself some flexibility so that you have the opportunity to do some evaluation without having to disqualify everyone for what we might determine is not a large, you know, not a very significant omission or something that's not in the bid. So -- but it must -- anytime it says "must" or "shall," then we take the appropriate action if that doesn't happen.

MS. OCHOA-GONZALEZ: When you say no bid, it's like I don't want to play in this one. It's like I pass, right?

MS. MILLER: I am not going to provide --

MS. OCHOA-GONZALEZ: Okay. Okay.

MS. MILLER: -- a price for a certain line item. And you know, in some of them, some people will send back an entire bid with no bid because they want to insure that I'm interested, but on this particular solicitation, I'm not going to bid but please send me one the next time. So they send back a solicitation with just no bid written across it. So that is something that people typically -- vendors typically do.

MS. OCHOA-GONZALEZ: For a minority business, a small contractor, might only apply to one line because that's the one they can --

MS. MILLER: In this particular one --

MS. OCHOA-GONZALEZ: Okay.

MS. MILLER: -- it was one line item.

MS. OCHOA-GONZALEZ: Okay.

MS. MILLER: And it was not a large amount so...

MR. COFER: All right. Thank you very much.

MS. MILLER: Thank you.

MR. COFER: So I think Director Gedert is going to sum up staff's perspective and then we'll engage in discussion.

MR. GEDERT: Yeah. Just a clarification on one item. If items are stored, they can't be counted as diversion. I go back to the diversion definition.

But I would note that the evaluation of this bid and the bid being presented to you did not consider the actions of the previous vendor. The information provided to you tonight was never presented to

Austin Energy or me so we're currently looking it over. You're seeing it at the same time I'm seeing it.

And this bid is presented to you based upon the information presented through the purchasing office. I make no evaluation of the receiving facility and I make no evaluation of the bidding procedures. That's the purchasing office's determination. But I do make evaluation over the environmental impacts of the material and I will be in the future engaging in more discussion with Austin Energy on waste elimination, waste minimization efforts, seeing if we can avoid generation of some of this material.

But what is before you today is an item that's on council's agenda tomorrow. And I do apologize for that time period. My general philosophy is items before ZWAC would not go to council for another two weeks for a time period in there. However, this was scheduled by council. It was rescheduled by council for tomorrow so it was a very tight time turnaround.

What we are asking is a recommendation from ZWAC of your view on how purchasing should go forward and how Austin Energy should go forward with this contract. It is up for review by council tomorrow and council's decisions could be a deference on the issue, could be a request for rebid, could be the acceptance of the bid, could be a modification of the bid.

And I think I got everything that Byron Johnson usually lists as options. But that is the opportunity of action that council may have and we're requesting your recommendation to council. We will communicate your recommendation to council early tomorrow morning so

that they have that before the council starts.

MS. OCHOA-GONZALEZ: That's faster than usual, right?

MR. GEDERT: Yes.

MR. COFER: All right. Thank you, Mr. Gedert. Is there a motion that someone wants to make so that we can start having discussion?

MR. KAZI: I'll make a motion to approve the three years without the extensions.

MR. COFER: So there's been a motion. Is there is a second?

MR. PAINE: Well, that is staff recommendation, but a limitation of the number of extensions?

MR. KAZI: Yes, zero extensions. Or two -- two year -- is it -- extend until 2015, I guess.

MR. SULLIVAN: I'll second.

MR. COFER: Okay. So we have a motion by Commissioner Kazi and a second by Commissioner Sullivan. Discussion is in order. Who wants to kick off?

MR. SULLIVAN: Well, I'll -- I have one item and that's that I do hope we could get into the purchasing rules, that we do look at the distance between, you know, where a product comes from or where some of our refuse is going to go.

MR. COFER: Let me --

UNIDENTIFIED MALE (assumed to be Gedert): Let me add my concurrence to that. I have talked to (inaudible).

MS. OCHOA-GONZALEZ: I'd like to see more connection in

the future of what this involves in terms of the distances and the carbon footprint. It's just the natural way to go.

MR. COFER: I mean, I have two concerns on this thing. One, I do think that there's some genuine confusion or at least room for differing minds about the subcontracting issue in terms of ownership of a landfill. Right? Because you have the WM landfill that's next door and you could sub out material to WM, which isn't explicitly stated in the contract, but it's also not prohibited.

Alternatively, Allied owns other landfills in the state, so it would be compliant with the -- with that requirement. But it's still a little bit vague and not clear as to what the intention of that contract is in terms of subbing the actual landfilling and where that would occur and if there's an issue if it's not local.

And then two, the confusion or lack of emphasis on opportunities for reuse, which is the discussion that we had about the reuse of the poles. So those would be sort of the two things that sort of jump into my mind as perhaps warranting a re-evaluation of how this process went and maybe a request to reissue that invitation for bid.

MR. PERDUE: Yeah. I'm leaning in that direction as well. I don't want to vote against a recommendation that restricts this contract to two years to 2015. But I have great concerns that this stuff would be shipped to San Antonio and that this would allow for any sort of arguments to keeping that landfill open past this date. You know, whereas I'm supportive of that as a worst-case scenario, I do think there's a lot of questions here that should potentially call for a rebid.

MS. OCHOA-GONZALEZ: I also think that my biggest concern here is that -- see, so I'm so new about this, but I don't know what the future holds and how people play these cards. I'm just starting to understand that these are potential lobbies for the future and I would not want to have one my back that the -- you know, that at least we give our recommendation -- I don't -- I also don't know how -- how much weight our recommendation has if the city council is going to decide anyway. It's a new territory for me.

But I will not want to say because of us just not being reaching about our belief at Zero Waste Commission, then these guys are going to have a letter to go and play with the county and CAPCOG and the state and say let's keep this landfill open because that would be like putting ourselves (stabbing motion) in the back.

MR. SULLIVAN: I would remind the commission though that our motion is explicit, that it wouldn't extend beyond 2015. I'd also just like to add that in my day job, I do put in bids and I do count on being treated fairly if I do follow all the rules and that's partly why I do support the city's position on this.

MR. PAINE: Hypothetically, if this were rebid, what are the chances that carbon footprint and so on could be incorporated into the bid?

MR. GEDERT: Excuse me, but Kathleen has an added point in the discussion of one of the points you were discussing here.

MS. GARRETT: I just want to let you know -- I'm Kathleen Garrett, Director of Environmental Services. We do control where anything goes. It has to be prior approved and it's written in here.

It says, "All disposal sites and treatment methods used by the contractor under this contract shall be approved in advance by the City's project coordinator." That would be Jim Eldrid. He manages our waste program. "Any change in disposal site or treatment methods without obtaining prior approval of the City's project coordinator shall constitute a material breach of this contract."

We audit everywhere it goes. I mean, if they're going -- I don't believe we would allow a subcontracted landfill. We audit our landfills prior and we've done business with TDS for years. We've done business with Allied Waste. We've been to their facilities. They're top-notch facilities. We're not going to let this waste go anywhere that we don't pre-audit and we don't pre-approve. And we're pretty strict on everything we do. Cradle to grave, you know, we've been in superfund sites before. So our restrictions are very stringent and we don't alleviate (sic) from them.

I mean, when we said that we would want you to own and operate the landfill, there was a reason for that. You have a vested interest in that. You're not just going to take it someplace you don't have any vested interest. If it's becomes a superfund site, it's not your pocket that it's going into it, you know, it will be the city's pocket or whoever else disposed there.

So that's why that requirement was in there. And, you know, doing the contract until 2015, whatever you recommend, I'm, you know, fine with. It's fine by me because we're going to audit whatever we do anyway. So if they decide to change a landfill, if they don't own it, I doubt we'll approve it. If they do own it, it will be

audited and made sure all of their environmental records, all of their entire history, everything, what goes there, everything is audited and approved prior to anything going out because it's too big a risk for us.

MR. PAINE: So the criteria is a legal one based on the potential for this hazardous waste to create a superfund site; is that -- is that what you're saying?

MS. GARRETT: That's part of it. That's why it's so stringent. We have been involved -- long ago prior to my coming to Austin, but I was also involved in other utilities, where at one point in time, we used a facility, a lot of Texas utilities did, where we disposed of transformers. And unfortunately, that ended up being a superfund site. So most of the utilities in Texas ended up paying a lot of money to help clean that up.

So every utility has really stepped it up on, you know, you do audits of your landfills. You do audits of the companies. You know, you make sure that they're financially stable, they're not about to go under, that where they're taking it is actually where they taking it, you know, their facility -- the trucks that they use are, you know, classified, permitted or whatever they need for hauling.

So Jim is very diligent on all of that stuff and he's been doing this for -- I don't know -- at least probably 20 years. I mean, this isn't new to him. He's worked in this area for a long time and he's got a good working relationship with all of the staff on all of the different contractors that we use and they're all very good and they're all very diligent.

But we don't -- nobody is going to be able to say, "Oh well, we've decided we're going to just go sub this out," because they have to get our approval first and, you know, nine times out of ten, we won't approve it if you don't own it. And that's the reason why, is because we don't want to get caught into a superfund site. You need to have a vested interest in it as well. You know, and by owning that landfill, you have that vested interest.

MR. PERDUE: Can I offer a friendly amendment that says the expiration of the base contract term is September 30th, 2015, with no contract extensions, so that, at that time, the bid has to be reopened?

MR. SULLIVAN: Right. I think that was our intent.

MR. PERDUE: Okay. Can you explicitly state -- state that?

MR. KAZI: Yes, I accept that.

MR. PAINE: And that's something that the council can write into the contract? Does it still work that way?

MS. GARRETT: That's an option that we have anyways already.

MR. PAINE: Uh-huh.

MS. GARRETT: And I -- I should -- Yolanda can probably speak to that, but it will have an option if we want to, to like extend it further or go out for bid. And at that point in time, if the landfill isn't up to our specifications or they're closing that landfill and they're going to be using a different landfill that we don't approve of or we haven't audited or they don't own, then we would

probably go out to bid.

I mean, you can do it all different ways, whatever, you know --

MR. PAINE: Well, what --

MS. OCHOA-GONZALEZ: (inaudible)

MS. GARRETT: I'm sorry?

MS. OCHOA-GONZALEZ: What's our biggest - because you know about (inaudible) actually be respected and (inaudible)?

MS. GARRETT: I can guarantee it 100 percent because I'm responsible for this contract and we will not send waste anywhere that -- like I said, it has to be approved, prior approved, and we are very, very stringent on those approvals. I mean, we audit. We audit numbers. We, you know, Jim maintains that high integrity. So we have to. It's a huge risk. It's a financial risk to Austin Energy to let anything go and become a superfund site or be disposed of illegally or inappropriately or whatever else. It's a huge risk to us. And Austin Energy has a national reputation, as does the City of Austin.

But we have a national reputation as being the greenest utility in this country. I sit with EPA and help write regulations and policies and stuff. So we're proud of that. We're not going to let anything happen that's going to reflect badly on Austin. We're green, we're proud that we're green, and we monitor everything.

MR. COFER: Thank you very much.

MS. GARRETT: Uh-huh.

MR. COFER: All right. There's a motion and a second.
The motion as I understand it is to recommend to proceed with the

contract with an expiration of the base term, September 30th, 2015, and with the intent of not exercising any options to extend the contract; is that correct?

COMMISSION: (No response).

MR. COFER: Is there any further discussion?

MR. KAZI: Yeah. I had a question. If it did get rebid, would it be possible to include other metrics such as carbon footprint and other such things?

MS. MILLER: Yes, that is possible. Again, you would have to look at it and make sure that we're ready to manage a contract like that and that, you know, all the -- any unintended consequences are considered. But the --

MR. KAZI: Yeah. No, I --

MS. MILLER: -- next --

MR. KAZI: I understand --

MS. MILLER: -- but -- but we're going down that road.

MR. KAZI: I understand the challenges and you've got, you know, I don't know if -- I think I heard 60 days to do that before the current contract expires. And so I'm asking how likely is it that you can incorporate that and look at all the challenges that you have? What is the percentage of likelihood?

MS. MILLER: You're talking about if this particular contract --

MR. KAZI: This particular contract.

MS. MILLER: -- gets approved?

MR. KAZI: Gets rebid. Not gets approved, if it gets

rebid.

MS. MILLER: Oh, it would take longer than 60 days.

MR. KAZI: Okay.

MS. MILLER: But it's not that -- it would take longer than 60 days.

MR. KAZI: Okay. Thank you.

MR. SULLIVAN: One thing I think to bear in mind is going forward, the city manager is directed always that disposal contracts to through department heads. So we should have some safeguards there going forward.

MR. COFER: All right. Is there any further discussion on the motion?

MS. OCHOA-GONZALEZ: I don't know if this is going to sound sensible but I would like to see one commission and if this is the origin, to just encourage the city council to do move forward, to reframe those contracts and do take a step further to include the carbon footprint. Because it - every time that this arises in other commissions, people are like yes, we're going down the road, in that direction, yes. And 2040 is going to get here and we're not going to be at zero waste. So somebody has to at least push -- they always have the option to say no.

MR. COFER: Sure. And what I might suggest on that because it's certainly a tree that a lot of us have barked up, is you may want to draft a recommendation --

MR. KAZI: Exactly.

MR. COFER: -- under the new policy that was outlined

earlier in the meeting. And that's something that if we posted it correctly and went through the right channels, we could have ready for the May ZWAC meeting.

MR. KAZI: Yep. It sounds like a great candidate for a recommendation.

MS. LABRIOLA: And that would be the big recommendation so that -- yeah, --

MR. KAZI: The -- the capital --

MS. OCHOA-GONZALEZ: That would be the big R, correct.

MR. KAZI: Correct.

MS. OCHOA-GONZALEZ: That would be the perfect example of that.

MR. COFER: Yes.

MS. LABRIOLA: That -- like one of you will draft it in the appropriate format, e-mail it to me and we vote on it --

MR. COFER: (inaudible)

MS. LABRIOLA: -- approve it and we'll push it through to the council.

MR. COFER: I was paying attention. Okay. Motion and second. Discussion. All those in favor of the motion -- and this is the motion to approve the contract -- I have it written down here, sorry -- to approve the contract with an expiration of base contract terms at September 30th, 2015, and without exercising options for extension. All those in favor, please say ay.

COMMISSION: Ay.

MR. COFER: Is everyone -- raise your hands. Dan. Okay.

All those opposed, nay? Danielle. Wait. How'd you vote, Danielle?

MS. OCHOA-GONZALEZ: (No response).

MR. COFER: Any abstentions?

MS. OCHOA-GONZALEZ: I'm abstaining.

MR. COFER: Okay.

MS. OCHOA-GONZALEZ: I'm an abstention.

MR. COFER: All right. So the motion is approved with
Commissioners Perdue, Sullivan, Paine and Kazi voting "ay;"
Commissioner Cofer voting "Nay;" and Commissioner Ochoa-Gonzalez
abstaining. Okay.

Bob Gregory

From: Bob Gregory (bgregory@texasdisposal.com)
Sent: Wednesday, April 10, 2013 6:29 PM
To: 'Dolores.Castillo@austinenergy.com'
Cc: Rick Fraumann (rfraumann@texasdisposal.com); Ray Bryant; Gary Newton (gnewton@texasdisposal.com); Whellan, Michael (MWhellan@gdhm.com); JimHemphill (JHemphill@gdhm.com); Adam Gregory (agregory@texasdisposal.com)
Subject: City Council Agenda Item 19, Austin City Council, 4/11/13, Solicitation No. DC0093 - ZWAC Agenda Items 3b and 3c; Management & Disposal of Class 2 Industrial & Special Waste
Attachments: 4-10-13 D Castillo ltr.pdf; 1. Council Q & A.pdf; 2. AE Class 2 Non-Haz Ind & Spec Waste Disp IFB w attachments.pdf

Please see attached.



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

P.O. BOX 17126
AUSTIN, TEXAS 78760-7126
512-421-1300
512-243-4123 (FAX)
www.texasdisposal.com

April 10, 2013

City of Austin Purchasing Office
Attn: Dolores Castillo, Senior Buyer
Municipal Building
124 West 8th Street, Room 310
Austin, Texas 78701

RE: City Council Agenda Item 19, Austin City Council, 4/11/13, Solicitation No. DKC0093
ZWAC Agenda Items 3b and 3c; Management & Disposal of Class 2 Industrial & Special Wastes

Ms. Castillo:

This letter contains the initial TDS response to the Council Question and Answer, which includes Bob Gedert's memo and the Chief Sustainability Officer's statement and which was posted today to Councilmember Morrison's question, "Have the Director of ARR and the Sustainability Officer reviewed this contract for management and disposal of waste for Austin Energy? What was the outcome of that review?" It also contains the TDS response to the Recommendation for Council Action very specifically and attachments responding to both the RCA and the posted statement and memo. Please see attached documents.

I am very disappointed that the leaders of the City's staff overseeing the Zero Waste program have reported that Austin Energy's identified waste materials "are not suitable for recycling, composting, or beneficial reuse" and that, "No diversion opportunities were identified" through their review. TDS is very pleased to report a 46.9% diversion from landfill disposal of the 3,364.7 tons of materials generated by Austin Energy and hauled by TDS and Austin Energy to the TDS landfill over the past 49 months. Please see the TDS diversion report and photograph in the documents attached to the RCA, along with an explanation of this diversion.

The Class 2 Non-Hazardous Industrial and Special Waste waste stream shipped under this contract is shipped almost exclusively in roll-off dumpsters and is separate and apart from the Conditionally Exempt Small Quantity Generator waste generated by Austin Energy. While the City can self-classify non-hazardous waste to be managed and disposed as a hazardous waste, this is not required.

Austin Energy has manifested all loads sent to the TDS landfill, composting and recycling facility over the past 49 months and their staff has been diligent in classifying and documenting the waste loads. TDS is also diligent in properly managing this waste stream and has diverted the materials recycled, composted and beneficially reused, as allowed under the bid and contract. I am very surprised to learn that the

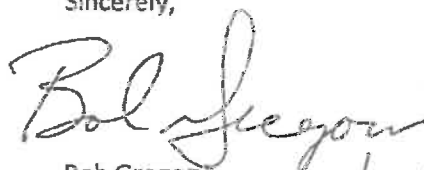
staff is considering classifying these wastes as hazardous. TDS has a long history of protecting the environmental integrity of its landfill. I would be most interested to know whether Austin Energy or Mr. Gedert intends to reclassify this waste as hazardous.

Regarding Mr. Gedert's report that, "The City (through ARR) is coordinating existing City generated solid waste contracts to expire in 2015 to support a consolidated city-wide solid waste material contract," I would like to seek a clarification as to whether that includes the City's intention to cancel the thirty year long term contract the City now has with TDS. If so, ZWAC and Council should know, since the City transports all of the solid waste it currently collects to the TDS landfill, and could ship all of the Austin Energy generated Class 2 Non-Hazardous Industrial and Special Waste under that same contract, as special waste.

My comments continue on the attached document.

TDS respectfully requests that you share this letter and attachments with City Council members and City Management prior to the Council consideration of Agenda Item 19. Please contact me, if you have any questions.

Sincerely,


by: Alan Gregory

Bob Gregory
President and CEO
Texas Disposal Systems, Inc.

April 10, 2013

**Austin Energy's Class 2 Non-Hazardous Industrial and Special Waste Disposal IFB
on 4/10/13 ZWAC Agenda and Item 19 on 4/11/13 City Council Agenda**

TDS comments concerning the April 11, 2013 Austin City Council Agenda Item No. 19, and the April 10, 2013 ZWAC Agenda Items 3b and 3c. Please see attached Recommendation for Council Action with numbers marked to correspond to the points numbered below:

- 1) TDS believes that Allied/BFI was not responsive to the Austin Energy Management and Disposal of Class 2 Non-Hazardous Industrial and Special Waste IFB Solicitation No. DKC0093, for the following reasons:
 - Allied does not have the ability to receive the Austin Energy Class 2 and special waste for the full duration of the term of the proposed contract and the three one-year extension options, which staff is requesting ZWAC and Council pre-approve payment for now, and leave the decision as to whether to execute the contract extension options to the City Manager. As required in the bid; "To be eligible for this contract, the Contractor shall, at a minimum, own or operate a landfill permitted to accept the City's waste listed under this task." The Rule 11 Agreement allows Austin's City Manager or his designee to alter, amend or modify the Agreement without Council authorization (see pages 2 and 6 of the Rule 11 Agreement, attached.)
 - The Allied/BFI Sunset Farms Landfill currently has a permit requirement with the TCEQ and a Rule 11 Agreement with the City of Austin requiring the landfill to close to the receipt of waste on or before November 1, 2015. This means Allied would not have an Austin landfill to haul the City's waste into or to receive the City's waste direct hauled by Austin Energy during the final 2.5 years of the contract term the staff seeks approval for payments. Even if the staff allowed BFI to haul the Austin Energy waste to the Waste Management Austin Community Landfill under a subcontract with WMI, that would not address the waste that might be transported by Austin Energy or another contractor on their behalf. We believe the City Council should not pre-approve payments for contract extension periods beyond the required November 1, 2015 landfill closing deadline, and leave it up to the City Manager to decide whether to assist Allied in obtaining the approval from the TCEQ to not close their landfill.
 - Allied submitted a "No Bid" on the line item, and did not bid on one of the bid categories (the only bid item specified to be recycled was scrap wood – from broken pallets, crates, or construction debris), and staff reported to City Council that all items had to have bids for the bidder to be considered responsive. See staff's answer to Councilmember Tovo's question attached.

- Allied apparently intends to meet the City's needs over the final 2.5 years of the staff proposed BFI contract funding period by subcontracting the disposal services to the Waste Management, Inc. (WMI) Austin Community Landfill, even though Allied apparently did not identify WMI or the Austin Community Landfill as a subcontractor in its bid proposal, and the bid specifies that "AE requires the turn-key services of a waste disposal contractor to transport and dispose of Industrial Class 2 and Non-Hazardous Special Wastes generated." The bid also specifies, "The waste management services required by the City are described below and will be awarded to a single contractor."
- 2) Allied stated during the March 7th Council meeting that it has an agreement with Waste Management, Inc. to use its Austin Community Landfill after Allied has to close its landfill and that this subcontract can be used to meet the needs of Austin Energy when Allied closes its landfill. However, Allied apparently did not identify WMI as a subcontractor in its bid, and the bid does not allow WMI to step in as a subcontractor to accept waste hauled directly to their landfill by Austin Energy, nor to allow Allied to haul Austin Energy's waste to a landfill not identified in the bid. See the transcript of this discussion during the March 7, 2013 City Council Agenda Item 26. We believe the City Council should not pre-approve payments for contract extension periods beyond the required November 1, 2015 landfill closing deadline, and leave it up to the City Manager to decide whether to assist Allied in obtaining the approval from the TCEQ to not close the landfill.
- 3) See the response to 2 above, and see the requirement in the bid; "To be eligible for this contract, the Contractor shall, at a minimum, own or operate a landfill permitted to accept the City's waste listed under this task." The Allied landfill will be closed approximately half way through the first 12 month contract extension, according to the Rule 11 Agreement.
- 4) There was not "Adequate Competition." Two nonresponsive bids were received. TDS inadvertently left out pages 2 and 3 of a three page price quote sheet, and Allied did not bid the one line item specified for recycling, and failed to notify the City that its landfill will not be open to receive the waste beyond November 1, 2015.
- 5) The staff has revised their Price Analysis justification from, "The pricing offered represents a 16% increase to the last contract awarded in March 2009," when this item went before the EUC and Council last month. Now, staff reports the increase in rates as, "The pricing offered represents a 6% increase to the last contract awarded in March 2009. The increase can be attributed to increased disposal costs from reduced landfill space and PPI increases totaling 7.4% over the last four years for this commodity." TDS assumes this revised price increase explanation is intended to encourage ZWAC and Council to accept the higher rates as reasonable. However, the staff ignores the Allied "Overweight fee maximum per load is 10 tons. Anything over 10 tons will be charged \$.40 per pound." This Allied fee is noted on page 2 of Allied's 3-page price quote sheets under "Other – List any other charges not included in above line items that are necessary for completion of waste mgmt. task. Please specify each

additional", and will apparently apply to all loads, whether hauled to the landfill by Austin Energy or by Allied. This is an \$800.00 per net ton overweight penalty to be imposed by Allied if this bid is approved. Such an overweight fee would have cost Austin Energy an additional \$93,077.60 over the four year life of the existing TDS contract, had the penalty applied to the loads generated over the past four years, or an average of \$22,794 per year. This overweight fee calculation, if added to the staff estimated 16% annual increase in cost would raise the cost difference to approximately 26% higher per year comparing the TDS 2009 rates to the 2013 proposed Allied rates for a new contract. The staff has not reported these potential added costs to ZWAC or Council, even though the "overweight fee" is identified on page two of the Allied bid price sheets. See attached report.

- 6) Staff gives no weight to the fact that Allied did not bid the one very small estimate (200 cu. yds. per year) of materials designated by Austin Energy to be recycled, and that TDS recycled, composted and diverted for reuse significant volumes of Austin Energy's waste over the past four years, and that this volume of waste represents a large portion of the waste generated by the City of Austin and should be considered as a priority for recycling as part of the City's Zero Waste goals. See the TDS report of waste material generated by Austin Energy over the past four years (3,364.7 tons), as well as the TDS estimate of those materials recycled, composted and diverted for reuse at the TDS southeast Travis County landfill, recycling and composting facility (approximately 1,577.1 tons), for a waste diversion rate of 46.9%. Also, see the attached photograph of approximately 10,000 pieces of Austin Energy utility poles diverted from landfill disposal and stored on the TDS facility for use on site in fencing and safety barriers. TDS looks for every opportunity to safely and efficiently recycle, compost and repurpose all Austin Energy materials, as allowed within the contract.

AGENDA				
Recommendation for Council Action (Purchasing)				
Austin City Council	Item ID:	22500	Agenda Number	19
Meeting Date:	April 11, 2013			
Department:	Purchasing			
Subject				
Authorize award and execution of a 24-month requirements service contract with ALLIED WASTE SERVICES #843, for the management and disposal of industrial Class 2 non-hazardous waste for Austin Energy in an estimated amount not to exceed \$529,640, with three 12-month extension options in an estimated amount not to exceed \$264,820 per extension option, for a total estimated contract amount not to exceed \$1,324,100.				
Amount and Source of Funding				
Funding in the amount of \$132,410 is available in the Fiscal Year 2012-2013 Operating Budget of Austin Energy. Funding for the remaining six months of the original contract period and extension options is contingent upon available funding in future budgets.				
Fiscal Note				
There is no unanticipated fiscal impact. A fiscal note is not required.				
Purchasing Language:	Lowest responsive bid of two bids received			
Prior Council Action:				
For More Information:	Dolores Castillo, Sr. Buyer/512-322-6466			
Boards and Commission Action:	Not approved by the Electric Utility Commission on a 1-3-2 vote.			
Related Items:				
MBE / WBE:	This contract will be awarded in compliance with City Code Chapter 2-9C (Minority Owned and Women Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.			
Additional Backup Information				

①

②

This contract is to provide services for the management and disposal of industrial Class 2 and non-hazardous Special Wastes for Austin Energy (AE). AE manages/occupies several facilities and work sites that generate non-hazardous liquid and solid wastes, generally through routine maintenance activities. Waste includes items such as weathered utility poles, contaminated soil from transformers and construction/demolition debris.

In order to comply with federal, state, and local regulations, AE requires the turn-key services of a waste disposal contractor to transport and dispose of industrial Class 2 and non-hazardous Special Wastes generated.

MBE/WBE Solicited: 1/1

MBE/WBE Bid: 0/0

BID TABULATION

IFB No. DKC0093

Management & Disposal of Class 2 Waste
36 Line Items

Vendor

Allied Waste Services #843
Del Valle, Texas

Total Bid 12 Month Period

\$264,820

Texas Disposal Systems
Austin, Texas

*Note: Nonresponsive, did not submit complete bid sheet including signature

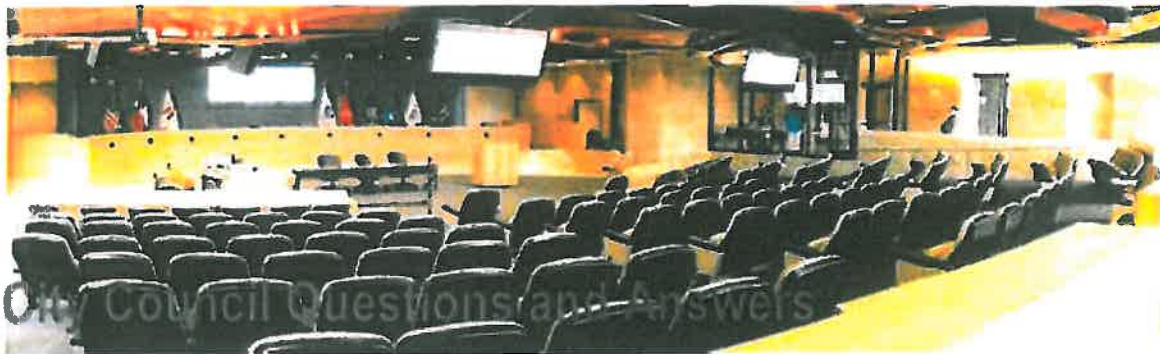
A complete bid tabulation is on file in the Purchasing Office and is on the City of Austin, FASD Purchasing Office website.

PRICE ANALYSIS

- a. Adequate competition.
- b. One hundred thirty-eight notices were sent including one MBE and one WBE. Two bids were received, with no response from the MBE/WBEs.
- c. The pricing offered represents a 6% increase to the last contract awarded in March 2009. The increase can be attributed to increased disposal costs from reduced landfill space and PPI increases totaling 7.4% over the last four years for this commodity.

APPROVAL JUSTIFICATION

- a. Lowest bid received. Allied Waste Service is not the current provider of this service.
- b. The Purchasing office concurs with Austin Energy's recommended award.
- c. Advertised on the Internet.



**City Council Questions and Answers for
Thursday, March 07, 2013**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, March 07, 2013 at Austin City Hall
301 W. Second Street , Austin, TX



Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions

of departments via the City Manager's Agenda Office. This process continues until the final report is distributed at noon to City Council the Wednesday before the council meeting.

DRAFT REPORTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

QUESTIONS FROM COUNCIL

1. Agenda Items #2-4

- a. QUESTION: Please indicate total cost of the energy efficiency improvements and percentage AE proposes to reimburse. COUNCIL MEMBER TOVO
- b. ANSWER: For agenda item #2: The total cost of the Austin City Lights project is \$109,025 and the rebate will cover 90% of the cost. For agenda item #3: The total cost of the Hudson Miramont project is \$110,415 and the rebate will cover 90% of the cost. For agenda item #4: The total cost of the Toscana Apartments project is \$135,109.33 and the rebate will cover 90% of the cost. Austin Energy will include this information in future RCAs for multi-family rebates.

2. Agenda Items #2-8

- a. QUESTION: Are any of these properties located outside the city limits? COUNCIL MEMBER MARTINEZ
- b. ANSWER: No, these projects are located within the Austin city limits.

3. Agenda Item #18

- a. QUESTION: Please describe the community outreach that was performed in preparation for the addition to the park, and the process for determining that the community is in favor of the new amenity. When were the elements presented to PARB (2 nature trails and dog park)? COUNCIL MEMBER MORRISON
- b. ANSWER: See Attachment

4. Agenda Item #26

- a. QUESTION: Please provide the bid tabulation that was included in the Electric Utility Commission's back up materials. The bid tabulation indicates that the pricing represents a 16% increase since the last (2009) contract. Did the other bid received by the COA offer lower pricing? How much? Please indicate why the other bid was disqualified. If there were errors in the bid package, was there an attempt by the bidder to make corrections? Can the City elect to re-bid the contract? References to a 2009 settlement agreement

indicate that the Allied Waste facility is scheduled to be closed in November 2015. Is that accurate? If so, why would the contract before the City this week be proposed to include renewals beyond November 2015? COUNCIL MEMBER TOVO

- b. ANSWER: For the bid tabulation, please see attachment. The other bid received from Texas Disposal Systems (TDS) could not be evaluated nor compared to the Allied Bid pricing because it failed to provide pricing for 19 service items of 30 required items (plus 6 optional items) included in the Invitation For Bid (IFB). The Bidders were required to provide pricing for all line items for award of this turn-key waste disposal contract. \$137,273.20 for the 11 line items was proposed by TDS. Bid disqualified because incomplete pricing was provided for the service items required in the solicitation and no signature on the Bid Sheet (nor for the offer proposed.) Per the local government code, purchases over \$50,000 requires us to follow a competitive sealed bidding process with bids publicly opened and read. Yes, they attempted to provide the missing prices after notified by the Purchasing Office that such pricing errors existed in their bid. However, per the terms of the solicitation the completed bid sheet must be submitted with each bid. Technically yes, however in this case the City did receive a responsive bid for this solicitations. Usually rebids are allowed when a significant scope change is required, or as directed by the governing body. Yes, Allied Waste has confirmed this date. The IFB solicitation indicated to the public that we were seeking three annual extension options beyond the 24 month contract term. The extension options are not automatically approved, but rather agreed upon by both parties at the anniversary date. Allied Waste has a current permit for their operations thru November, 2015. The City does not have knowledge at this time whether Allied Waste will seek renewal of their permit to continue operations beyond November 2015.

Neither Allied nor TDS submitted bids on all line items on the bid sheet.

TDS did submit a signed cover page. It failed to submit pages 2 & 3 of price quotes.


The Allied bid was not responsive. It did not bid the one category to be recycled, and failed to notify the City that its landfill will not be open to receive waste beyond 11/1/2015 for a contract that can be extended to 2018.

City's Rule 11 Agreement prohibits Allied/BFI from submitting a permit amendment to allow the landfill to remain open past 11/1/2015; however, the Rule 11 Agreement can be revised without City Council's approval by the City Manager, and the approval of this Austin Energy landfill disposal bid includes the City Council authorization for the City Manager to extend the contract requiring the landfill to remain open approximately 2.5 years beyond the November 1, 2015 currently required Allied/BFI closure date. The City Manager and Allied/BFI could consider that as Council authorization for a permit amendment to remove the landfill closure requirement.

5. Agenda Item #27

- a. QUESTION: Does ISS Facility and Goodwill provide benefits to their employees? If this information is available, what are the benefits? COUNCIL MEMBER MORRISON
- b. ANSWER: See attachment.

END OF REPORT - ATTACHMENTS TO FOLLOW

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance please call 974-2210 OR 974-2445 TDD.*

This report documents the amount of the Allied over weight fees for loads in excess of ten net tons, which would have been applied, had the Allied fee been in place from 3/9/09 through 4/3/13

Ticket#	Date	Net load weight in tons per scale ticket					Weight > 10 net tons per scale ticket					
		2009	2010	2011	2012	2013	2009	2010	2011	2012	2013	Total
0694844	20090414	10.20					0.20					
0703573	20090507	13.41					3.41					
0708231	20090520	11.70					1.70					
0710799	20090527	10.76					0.76					
0716620	20090611	10.66					0.66					
0719272	20090618	10.11					0.11					
0737747	20090811	12.94					2.94					
0741446	20090821	10.20					0.20					
0743496	20090827	10.28					0.28					
0748759	20090911	11.06					1.06					
0748760	20090911	10.96					0.96					
0754470	20090930	10.86					0.86					
0759552	20091016	10.78					0.78					
0770627	20091118	10.83					0.82					
0775475	20091204	10.44					0.44					
0784844	20100106		10.01					0.01				
0791252	20100127		10.40					0.40				
0810688	20100326		11.15					1.15				
0815335	20100407		10.02					0.02				
0823171	20100429		11.45					1.45				
0827609	20100511		10.29					0.29				
0833741	20100527		11.93					1.93				
0839066	20100611		11.26					1.26				
0844208	20100625		11.54					1.54				
0857607	20100803		12.80					2.80				
0918075	20110208			10.99					0.99			
0919573	20110214			12.28					2.28			
0923371	20110224			13.28					3.28			
0933084	20110322			11.89					1.89			
0936901	20110401			14.77					4.77			
0950998	20110510			12.12					2.12			
0952349	20110513			15.86					5.86			
0956957	20110526			13.44					3.44			
0967595	20110624			12.26					2.26			
0971986	20110707			13.27					3.27			
0978917	20110727			13.02					3.02			
0985915	20110817			12.39					2.39			
0993605	20110909			12.52					2.52			
1003083	20111007			12.29					2.29			
1008448	20111025			13.42					3.42			
1016206	20111117			13.02					3.02			
1023568	20111213			13.00					3.00			
1057358	20120328				13.28					3.28		
1063177	20120412				11.87					1.87		

This report documents the amount of the Allied over weight fees for loads in excess of ten net tons, which would have been applied, had the Allied fee been in place from 3/9/09 through 4/3/13

Ticket#	Date	Net load weight in tons per scale ticket					Weight > 10 net tons per scale ticket					
		2009	2010	2011	2012	2013	2009	2010	2011	2012	2013	Total
1072846	20120509				12.61					2.61		
1072946	20120509				10.98					0.98		
1080072	20120530				14.53					4.53		
1090230	20120626				13.58					3.58		
1094496	20120709				13.61					3.61		
1097557	20120717				13.39					3.39		
1114202	20120831				11.92					1.92		
1124751	20121002				10.08					0.08		
1136545	20121106				15.48					5.48		
1148557	20121212				11.55					1.55		
1153003	20121227				14.49					4.49		
1164638	20130201					12.77					2.77	
1170914	20130220					10.47					0.47	

Total over weight net tons 15.12 10.84 49.81 37.34 3.24 116.347

Total over weight pounds 232,694

Over weight fee per pound proposed by Allied for 2013 through 2018 \$0.40

Total over weight fees, which would have applied had the Allied bid been in place \$93,077.60

Average over weight fees per year, which would have applied had the Allied bid been in place \$22,794.51

TDS Austin Energy Contract No. MA1100NA090000114 Management and Disposal of Class 2 Non-Hazardous Industrial and Special Wastes

Material Hauled by TDS to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets						# of Tons						Recycled / Reused	% Recycled / Reused
	2009	2010	2011	2012	2013	Total	2009	2010	2011	2012	2013	Total		
BRUSH BY THE TON TO TOP			2	4		6			4.5	7.0		11.5	10.8	94.0%
CAPACITORS	6	2	6	3		17	37.5	12.8	43.7	23.3		117.4	23.3	19.9%
CONTAMINATED SOIL	17	15	18	15	3	68	178.1	152.0	225.0	183.7	32.9	771.6	0	0.0%
DIVERTED METAL	1					1	1.9					1.9	1.9	100.0%
FILTER CAKE	30		1			31	187.3		1.9			189.2	0	0.0%
PLANT TRASH	15	21	36	22	3	97	46.9	63.0	72.6	64.8	9.3	256.6	0	0.0%
SOIL IN 55 GAL DRUMS	1	1	7	2	1	12	0.0	0.0	12.4	0.0	0.0	12.4	0	0.0%
UNCOMPACTED TONNAGE	2	1	2	1	1	7	18.7	1.8	4.6	0.8	7.2	33.1	0	0.0%
UTILITY POLES	73	69	48	50	13	253	612.1	525.1	338.7	367.9	82.5	1926.2	1541.0	80.0%
Sub Total	145	109	120	97	21	492	1082.5	754.7	703.4	647.5	131.9	3319.9	1577.1	47.5%

Material Hauled by AE to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets						# of Tons						Recycled / Reused	% Recycled / Reused
	2009	2010	2011	2012	2013	Total	2009	2010	2011	2012	2013	Total		
CAPACITORS	1					1	0.7					0.7	0	0.0%
CONTAMINATED SOIL	3			3		6	23.8			20.3		44.1	0	0.0%
UNCOMPACTED TONNAGE	1					1						0.0	0	0.0%
Sub Total	5	0	0	3	0	8	24.5	0.0	0.0	20.3	0.0	44.8	0.0	0.0%

Material Hauled by TDS & Austin Energy to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets						# of Tons						Recycled / Reused	% Recycled / Reused
	2009	2010	2011	2012	2013	Total	2009	2010	2011	2012	2013	Total		
Grand Total	150	109	120	100	21	500	1107.0	754.7	703.4	667.8	131.9	3364.7	1577.1	46.9%

Note: No liquid wastes have been disposed of through this contract during its four year term.





516 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

TELEFOONER COVER SHEET

October 31, 2008

PLEASE DELIVER THE FOLLOWING PAGES:

<u>Recipient</u>	<u>Company</u>	<u>Fax No.</u>
Steve Shepherd Susan White	TCEQ	512-239-0606
Christina Mann	OPIC	512-239-6377
Kevin Morse	Travis County	512-854-4808
Holly Noelke	City of Austin	512-974-6490
Bob Renbarger J.D. Head	TJFA, L.P.	512-477-5267
Jim Blackburn Mary Carter	Northeast Neighbors Coalition	713-524-5165
Paul M. Terrill, III	Giles Holdings, L.P.	512-474-9688
Stephen P. Webb	Pioneer Farms	512-472-3183

Client No.: 1635-03

From: Paul Gosselink

No. of Pages: 20 + cover sheet

Comments: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW
In re Permit Amendment Application of BFI Waste Systems of North America, LLC
MSW Permit No. 1447A

Part I of II

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-6800.

Lloyd Gosselink Rochelle & Townsend, P.C.

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:44 FAX 8124720532 Lloyd Gosselink

• Ikon

002/021
002/021



Mr. Gosselink's Direct Line: (512) 322-5806
Email: pgosselink@lglawfirm.com

816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

October 31, 2008

Judge William E. Newchurch
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW
Permit Amendment Application of BFI Waste Systems of North America, LLC
MSW Permit No. 1447A; Rule 11 Agreement

Dear Judge Newchurch:

Enclosed for filing please find the Rule 11 Agreement by and between the City of Austin, BFI Waste Systems of North America, LLC, and Giles Holdings, LP.

By copy of this letter we are providing copies of the Rule 11 Agreement and all attachments to all parties of record in this case.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Gosselink".
Paul Gosselink

Enclosures

cc: See attached Certificate of Service
Gary McCristion
Brad Dugas

October 3, 2008

Page 2

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery on October 31, 2008:

FOR THE CHIEF CLERK:

LaDonna Castaneda
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

FOR THE PUBLIC INTEREST COUNSEL:

Christina Mann
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4014
Fax: (512) 239-6377

FOR THE EXECUTIVE DIRECTOR:

Steve Shepherd, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

REPRESENTING CITY OF AUSTIN:

Holly Noelke
Assistant City Attorney
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767
Tel: (512) 974-2630
Fax: (512) 974-6490

REPRESENTING GILES HOLDINGS, L.P.

Paul M. Terrill, III
The Terrill Firm, P.C.
810 W. 10th Street
Austin, Texas 78701
Tel: (512) 474-9100
Fax: (512) 474-9688

REPRESENTING NORTHEAST NEIGHBORS
COALITION AND INDIVIDUALS:

Jim Blackburn and Mary Carter
Blackburn and Carter, LLP
4709 Austin Street
Houston, Texas 77004
Tel: (713) 524-1012
Fax: (713) 524-5165

REPRESENTING TIFA, L.P.:

Bob Renbarger and J. D. Head
Fritz, Byrne, Head, & Harrison, LLP
98 San Jacinto Blvd., Suite 2000
Austin, Texas 78701
Tel: (512) 476-2020
Fax: (512) 477-5267

REPRESENTING TRAVIS COUNTY:

Kevin Morse
Assistant Travis County Attorney
Travis County Attorney's Office
P. O. Box 1748
Austin, Texas 78767
Tel: (512) 854-9313
Fax: (512) 854-4808

REPRESENTING PIONEER FARMS:

Stephen P. Webb
Webb & Webb
1270 Bank of America Center
515 Congress Avenue
P. O. Box Drawer
Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183



 Paul G. Gosselink

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:44 FAX 5124720332

Lloyd Gosselink

+ Ikon

004/021
004/021

SOAH Docket No. 582-08-2178
TCEQ Docket Number 2007-1774-MSW

IN THE MATTER OF THE
APPLICATION OF BFI WASTE
SYSTEMS OF NORTH AMERICA, INC.
PROPOSED SOLID WASTE PERMIT
AMENDMENT No. 1447A

§
§
§
§
§


BEFORE THE STATE
OFFICE OF ADMINISTRATIVE
HEARINGS

RULE 11 AGREEMENT

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, the undersigned counsel agree as follows:

1. The City of Austin ("City"), BFI Waste Systems of North America, LLC ("BFI") and Giles Holdings, L.P. ("Giles") have entered into a binding Agreement Regarding Operations and Closure of the Sunset Farms Landfills ("Agreement") (copy attached as Exhibit A).
2. BFI, Giles and the City desire for the TCEQ to consider the Agreement in this contested case.
3. BFI, Giles and the City desire and request that the proposal for decision and any permit amendment issued by the TCEQ in this contested case contain the provisions set out in the Agreement as Special Conditions in the permit.
4. The City participation in the contested case hearing will be limited to testimony and evidence in support of the terms of this Rule 11 Agreement and the Agreement.

Agreed on this date, October 31, 2008.



Paul Gosselink

Texas State Bar No. 0822280

Attorney for BFI Waste Systems of North America, LLC



Paul Terrell

Texas State Bar No. 08785094

Attorney for Giles Holdings, LP



Holly Noelke

Texas State Bar No. 04651000

Attorney for City of Austin

Page 2

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery on October 31, 2008:

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

FOR THE PUBLIC INTEREST COUNSEL:

Christina Mann
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4014
Fax: (512) 239-6377

FOR THE EXECUTIVE DIRECTOR:

Steve Shepherd, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

REPRESENTING CITY OF AUSTIN:

Holly Noelle
Assistant City Attorney
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767
Tel: (512) 974-2630
Fax: (512) 974-6490

REPRESENTING GILES HOLDINGS, L.P.

Paul M. Terrill, III
The Terrill Firm, P.C.
810 W. 10th Street
Austin, Texas 78701
Tel: (512) 474-9100
Fax: (512) 474-9838

REPRESENTING NORTHEAST NEIGHBORS
COALITION AND INDIVIDUALS:

Jim Blackburn and Mary Carter
Blackburn and Carter, LLP
4709 Austin Street
Houston, Texas 77004
Tel: (713) 524-1012
Fax: (713) 524-5165

REPRESENTING TEA, L.P.:

Bob Renbarger and J. D. Head
Fritz, Bynne, Head, & Harrison, LLP
98 San Jacinto Blvd., Suite 2000
Austin, Texas 78701
Tel: (512) 476-2020
Fax: (512) 477-5267

REPRESENTING TRAVIS COUNTY:

Kevin Morse
Assistant Travis County Attorney
Travis County Attorney's Office
P. O. Box 1748
Austin, Texas 78767
Tel: (512) 854-9513
Fax: (512) 854-4808

REPRESENTING PIONEER FARMS:

Stephen P. Webb
Webb & Webb
1270 Bank of America Center
515 Congress Avenue
P. O. Box Drawer
Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183


Paul G. Gosselink

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
 10/31/08 17:44 FAX 5124720832 Lloyd Gosselink

• Ikon

006/021
 006/021

AGREEMENT REGARDING OPERATIONS AND CLOSURE OF THE SUNSET FARMS LANDFILL

This Agreement ("Agreement") is made by and between BFI Waste Systems of North America, LLC ("BFI"), Giles Holdings, L.P. ("Giles"), and the City of Austin ("Austin" or "City") a home rule municipality located in Travis County Texas, in connection with BFI's application to expand the Sunset Farms Landfill ("Landfill") located at 9912 Giles Road in Travis County, Texas.

I. RECITALS

Whereas, BFI applied to the Texas Commission on Environmental Quality (TCEQ) for a vertical expansion to the Sunset Farms Landfill (TCEQ MSW Draft Permit No. 1447A);

Whereas, BFI's application to expand the Landfill has been referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing, SOAH Docket No. 582-08-2178;

Whereas, Austin obtained party status in SOAH Docket No. 582-08-2178 with the stated goals of ensuring discontinuance of waste acceptance at the Landfill by November 1, 2015 and requiring improved enforceable operating standards as long as the Landfill remains open;

Whereas, the area surrounding BFI has become urbanized through the years subsequent to the initial permitting of the Landfill;

Whereas, landfill operations in close proximity to residential neighborhoods present unique problems requiring specialized solutions;

Whereas, a portion of the property on which the Landfill is located is owned by Giles and the remaining property on which the landfill is located is owned by BFI;

Whereas, BFI is of the opinion that it has a valid exemption from the City's site development plan permitting requirements;

Whereas, the City is of the opinion that BFI must obtain administrative site plan approval under Austin City Code Chapter 25-5, Article 2;

Whereas, whether and the extent to which BFI can vertically expand the Landfill and whether Austin can prevent or restrict the expansion is uncertain; and

Whereas BFI and Austin have agreed to resolve their disputes regarding closure and operations of the Landfill.

10/31/2008 17:58 IFAX IncomingFax@fbhh.com
10/31/08 17:44 FAX 5124720532

Lloyd Gosselink

+ Ikon

007/021
007/021

NOW THEREFORE and in consideration of the mutual covenants and agreements to be performed as set out below, City, BFI and Giles agree as follows:

II. ACKNOWLEDGEMENTS, REPRESENTATIONS, AND WARRANTIES

- A. BFI and Giles and Austin acknowledge that they understand the purpose and intent of this agreement.
- B. BFI and Giles and Austin represent and warrant that they have the full right and authority to execute this agreement.

III. DEFINITIONS

For the purposes of this Agreement:

- A. Side slope means the exterior edges of fill areas or sidewalls of detention ponds which generally will have a slope steeper than 10%.
- B. Top Deck means the top portion of the landfill which generally will have a slope flatter than 10%.
- C. Adequate vegetation growth means 85% surface area coverage in vegetation at least 1" tall.
- D. Seeding events means seeding in compliance with City of Austin Environmental Criteria Manual (ECM) Section 1.4.7 A (Exhibit 1) except as otherwise noted.
- E. Amended landfill permit means proposed TCEQ draft permit 1447A for the Sunset Farms Landfill.
- F. Property means the property on which the Landfill operates as described in the amended landfill permit application.

IV. TERMS

- A. BFI agrees to cease accepting waste at the Landfill and agrees to restrict the property on which the landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.
- B. Giles agrees to restrict the property on which the Landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:44 FAX 5124720532

Lloyd Gosselink

• Ikon

008/021
008/021

C. This Agreement is understood by the parties to be a written contract under which the Parties are granting certain concessions and providing services to one another. This Agreement shall be binding upon and inure to the benefit of each and all of the Parties hereto and their affiliates, successors and assigns and shall be a covenant and restriction running with the land that constitutes the Landfill site and adjacent land owned by BFI and Giles as follows:

Parcel 1: Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.

Parcel 2: Approximately 172.531 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 176.10 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 101, of the deed records of Travis County, Texas; said 172.531 acres being more particularly described by metes and bounds in Exhibit "B" attached hereto.

Parcel 3: Approximately 122.711 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 73.20 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 117 and a portion of a 102.87 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 109, both of the deed records of Travis County, Texas; said 122.711 acres being more particularly described by metes and bounds in Exhibit "C" attached hereto.

Giles and BFI represent that no other person or entity other than themselves currently possesses any interest in such land that would allow them to dispose of waste or operate a transfer station at the Landfill and agree that such covenant and restriction shall bind all future holders of any interests in such land. BFI and Giles will execute and deliver to Austin a document memorializing the restrictive covenant and the City of Austin may record the restrictive covenant in the Travis County Real Property Records. BFI and Giles agree that any sale, assignment, or transfer of the Landfill permit shall be made expressly subject to the terms of this Agreement.

D. BFI will comply with the following terms related to drainage, erosion and revegetation:

1. BFI agrees to place intermediate cover and implement seeding events, on all side slope disturbed areas on which activity has not recommenced within 60 days except BFI is under no obligation to seed such areas during the months of July

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:44 FAX 5124720532

Lloyd Gosselink

+ Ikon

008/021
008/021

and August. These seeded areas shall be irrigated in accordance with the requirements of Exhibit 1.

2. BFI agrees to place intermediate cover and implement seeding events on the top deck of the landfill in all disturbed areas on which activity has not recommenced within 120 days except for that area immediately up gradient to the five proposed or constructed drainage down chutes on intermediate cover areas as shown on attached Exhibit 2. Those up gradient areas shall be immediately vegetated upon construction of each down chute with a filter strip of buffalo grass sod that extends at least 100 feet out from each down chute inlet and is wide enough to filter the run off to be directed to each down chute (See Exhibit 2 for width dimensions). The buffalo grass filter strip shall be maintained until final cover is placed. In addition, a silt fence or mulch berm shall be placed on the top deck in front of the inlet of each down chute and at the end of each constructed down chute (See Exhibit 2 for locations). These silt fences or mulch berms shall remain in place and be maintained until the areas contributing runoff to these down chutes achieve adequate vegetation growth.
3. The initial seeding event for all disturbed areas will be accomplished using hydro-mulch seeding application procedures per Exhibit 1.
4. Seeding of the disturbed areas will be of a seasonally appropriate mix. Currently the seed mix is bermuda/millet for warm weather and rye for cold weather. When cold weather seed is used the seeded area shall be reseeded within 60 days of the onset of sufficiently warm weather to support the warm weather mix. The reseeded area shall be irrigated until adequate vegetation growth is achieved.
5. Seeding for the final cover shall include a seasonally appropriate 509-S (native seeds) mix as defined in the City of Austin Standard Specifications Manual on approximately 15% of the surface area of the eastern and northern slopes of the landfill and for the remainder of the site a seasonally appropriate mix.
6. Perimeter sediment/erosion control devices such as silt fences, hay bales or other systems acceptable to the City shall be in place prior to the establishment of any soil stock piles on site. For soil stock piles which have slope lengths greater than 20 feet, mid-slope temporary stabilization controls such as seeding, turping or placement of silt fences or mulch berms shall be implemented within fourteen days of the initial establishment of the soil stock pile and shall be maintained in good working condition until the stockpile is removed.
7. BFI shall install and maintain silt fences or mulch berms within 14 days of completion of intermediate cover at the base of all side slope and top deck intermediate cover areas until adequate vegetation growth is achieved.
8. Stormwater runoff from the landfill area designated as Drainage Area 2 shall be routed through the existing detention pond, or the proposed water

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
 10/31/08 17:45 FAX 5124720532

Lloyd Gosselink

* Ikon

010/021
 010/021

quality/detention pond, when the waste fill in Drainage Area 2 has reached the final grades proposed in the landfill expansion plan.

9. BFI will ensure that the side slopes of the existing detention pond and the side slopes of the proposed water quality/detention pond in the northeast portion of the landfill shall be adequately stabilized through proper grading and maintenance and by implementing/applying vegetation on the side slopes of the ponds within thirty days of completion of construction of the pond. BFI further agrees to inspect the sedimentation ponds/basins every three months and after every half-inch rainfall event and to clean the ponds/basins by removing the accumulated sediment once the sediment has reached 25% of the respective pond capacity.
10. BFI shall amend its Storm Water Pollution Prevention Plan (SWPPP) for the Sunset Farms Landfill within 90 days of the effective date of this Agreement so as to incorporate the specific practices and procedures described in this Agreement. The SWPPP will be submitted to the City for review and concurrence.
11. BFI agrees to begin operating the Sunset Farms Landfill pursuant to the terms of this Agreement and the amended SWPPP within 60 days after the SWPPP has been amended and the City's concurrence has been achieved.

E. BFI agrees that it shall not accept liquid waste that has not passed the TCEQ's paint filter test and shall not construct or operate a liquid waste stabilization/solidification basin at the Sunset Farms Landfill.

F. BFI agrees to prohibit commercial waste hauling vehicles from utilizing Blue Goose Road as ingress or egress to the Sunset Farms Landfill except for those few vehicles which service businesses and residences in that area. Specifically, BFI shall progressively discipline any of its own drivers, up to and including termination, which ignore this prohibition. BFI shall also incorporate into its future and/or renewal contracts with other commercial waste haulers that the haulers will not be allowed to dispose of their waste loads at the Sunset Farms Landfill if they utilize Blue Goose Road for ingress or egress more than one time.

G. BFI will request that the Administrative Law Judge issue a proposed permit containing special provisions incorporating the terms of paragraphs D. 1 through 9 and E. and F. as set out above.


H. BFI will request a site plan permit from the City for the Landfill vertical expansion, and will file a site plan permit application with Austin within 60 days of execution of this Agreement. The City will process this site plan application as a "D" site plan application under Austin City Code Chapter 25-5, Article 2, and will not unreasonably withhold approval of the site plan if all technical requirements of the City are satisfied.

J. As long as BFI and Giles are in substantial compliance with this Agreement, Austin will limit its participation in the contested case hearing regarding the landfill expansion to testimony and matters in support of the terms of this Agreement.

V. TERM, TERMINATION

- A. This Agreement shall be effective from and after the date of execution.
- B. If any party defaults in the performance of any of the terms or conditions of this Agreement, the defaulting party shall have 10 days after receipt of written notice of the default within which to cure the default. If such default is not cured within the 10 days, then the offended party shall have the right without further notice to terminate this Agreement or seek enforcement of the Agreement in court including specific performance of the terms of the Agreement and attorneys fees.
- C. The parties agree that monetary damages would be inadequate compensation if any party defaults in the performance of any of the terms or conditions of this Agreement, therefore specific performance should be required.

VI. MISCELLANEOUS

- A. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulation contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- B. Force Majeure. No party shall be liable for any delay, failure or default in performing under this Agreement if such delay, failure or default is caused by conditions beyond its control including – but not limited to Acts of God, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- C. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Travis County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this Agreement will take place in Travis County, Texas.
- D. Alteration, Amendment, or Modification. This Agreement may not be altered, amended, or modified except in writing, approved by BFI and Giles and the City Manager of the City of Austin or his designee.
- 

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:48 FAX 5124720532

Lloyd Gosselink

* Ikon

012/021
012/021

E. Entire Agreement. This Agreement constitutes the entire agreement between Austin and BFI and Giles. No other agreement, statement or promise relating to the subject matter of this Agreement which is not contained in this Agreement is valid or binding.

F. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing. The address of the City of Austin for all purposes shall be:

CITY:
City of Austin
Solid Waste Services
P.O. Box 1083
Austin, Texas 78767

The address for BFI and for Giles for all purposes under this Agreement and for all notices hereunder shall be:

BFI:
2575 IH 35 South, Suite 103
San Marcos, TX. 78666

Giles:

Steve Mobley
2205 Westover Road
Austin, Texas 78703

Ron Habitzreiter
1208 West Avenue
Austin, Texas 78701

F. Giles joins this Agreement for the reason that it owns fee simple title to land on which the Landfill is located and leases that land to BFI for operation of the Landfill and benefits from the mutual covenants and agreements herein. Giles hereby consents to BFI and Austin entering into, complying with and enforcing the terms of this Agreement and agrees to take no action that would be inconsistent with or impede implementation of and compliance with this Agreement by any Party.

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
 10/31/08 17:48 FAX 5124720532

Lloyd Gosselink

+ Ikon

019/021
 013/021

IN WITNESS WHEREOF, the authorized representative of Austin, Giles and BFI, by the signature of their authorized representatives below, have caused this Agreement to be executed in duplicate originals, effective as of the latest of the three dates entered below.

~~BFI WASTE SYSTEMS OF
 NORTH AMERICA, LLC~~

Date: _____

~~President City Manager
 CITY OF AUSTIN~~

Date: _____

Oct. 31, 2008

~~Holly Chelke
 Assistant City Attorney~~

~~GILES HOLDINGS, L.P.
 Formerly Known as Mobley
 Chemicals, Inc.~~

Date: _____

10/31/2008 17:50 IFAX IncomingFax8fbhh.com
 10/31/08 17:45 FAX 5124720532

Lloyd Gosselink

* Ikon

014/021
 014/021

OCT-31-2008 FRI 01:23 PM duncan disposal-midland FAX NO. 14325830544
 10/31/08 13:53 FAX 5124720532 Lloyd Gosselink

P. 01
 0002

IN WITNESS WHEREOF, the undersigned representative of Austin, Giles and
 HFI, by the signature of their authorized representatives below, have caused this
 Agreement to be executed in duplicate originals, effective as of the latest of the three
 dates entered below.

BFI WASTE SYSTEMS OF
 NORTH AMERICA, LLC

CITY OF AUSTIN

Bruce Dyer, President

GILES HOLDINGS, L.P.
 Formerly Known as Mobley Chemicals, Inc.

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
 10/31/08 17:45 FAX 5124720592

Lloyd Gosselink

+ Ikon

015/021
 015/021

Page 20: Record at 10/31/2008 17:45 FAX 5124720592. Duration: 00:01:10

0000

GILES HOLDINGS, L.P.
 Formerly Known as Mobley Chemicals, Inc.

Steve Mobley

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:45 FAX 5124720532

Lloyd Gosselink

+ Ikon

018/021
016/021

Exhibit A

Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:45 FAX 5124720532

Lloyd Gosselink

+ Ikon

017/021
017/021

100
2110 1111 / 12
3/930

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

**FOLLOWING RECORDATION,
RETURN TO:**



LID

2005198209

5 PCS

BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
c/o Allied Waste Industries, Inc.
15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, AZ 85260
Attn: Steven M. Helm, Vice-President - Legal

SPECIAL WARRANTY DEED

Date: August 17, 2004

Grantor: **Giles Holdings, L.P.**

Grantor's Mailing Address (including county):
c/o Steve Mobley
2205 Westover Road
Austin, Travis County, Texas 78703

Grantee: **BFI WASTE SYSTEMS OF NORTH AMERICA, INC.**

Grantee's Mailing Address:
c/o Allied Waste Industries, Inc.
15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, AZ 85260

I, Dana DeBauwch, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on August 17, 2004.

Dana DeBauwch, County Clerk
By Deputy:
Michael P. Gonzalez
Michael P. Gonzalez

Consideration:

The Grantor acknowledges the receipt of \$10.00 and other good and valuable consideration paid to Grantor by Grantee, for which no lien, express or implied is retained.

Property (including any improvements):

APPROXIMATELY 54.13 acres of land out of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Exhibit "A" attached hereto, SAVE AND EXCEPT that

portion of the subject property lying within that certain 1.606 acre tract of land awarded to the City of Austin in Eminent Domain proceedings, recorded in Document No. 2003143218, Official Public Records of Travis County, Texas.

Reservations From and Exceptions to Conveyance and Warranty:

Subject to taxes and assessments not yet delinquent, reservations in patents and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record and such state of facts as would be disclosed by a proper inspection or accurate TLTA survey of the Property

Grantee is accepting and taking the Property in its current condition, "AS IS".

Grantor, for the consideration set forth herein and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the above referenced property, together with all the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend said property to Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor, except as to the reservations from and exceptions to conveyance and warranty set forth herein. When the context requires, singular nouns and pronouns include the plural.

EXECUTED this 17 day of AUGUST, 2004.

GILES HOLDINGS, L.P.
by: Mobley Management Company,
General Partner

Steve Mobley
Steve Mobley, Vice President

I, Debra Delaney, County Clerk, Travis County,
Texas, do hereby certify that this is a true and
correct copy as same appears of record in my office.
Witness my hand and seal of office on
this 17th day of August, 2005.
Debra Delaney, County Clerk
By Debra Delaney
Michael P. Gonzalez
Michael P. Gonzalez

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
 10/31/08 17:48 FAX 5124720532

Lloyd Gosselink

+ Ikon

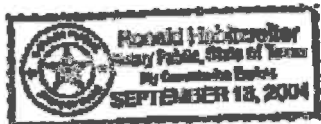
018/021
 019/021

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Steve Mobley, the Vice-President of Mobley Management Company in its capacity as General Partner of Giles Holdings, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office on this the 17 day of AUGUST, 2004:



Notary Public, State of Texas

I, Ron Gosselink, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on this day of Dec 30, 2005.

By Deputy:
 Michael F. Gonzales

EXHIBIT "A" TWO PAGES

54.13 Acres
Lucas Munos Survey No. 55, A-513
Travis County, Texas

FM 2945 (TWH)
May 14, 2003
SAM, Inc. Job No. 23147-01

SAID 54.13 ACRE TRACT OF LAND AS SHOWN ON SURVEYING AND MAPPING, INC. DRAWING NUMBER 23147-01.DWG AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found in the southwest Right-of-Way (ROW) line of Blue Goose Road, a variable width ROW for which no deed information was found, for the northwest corner of said 55.10 acre tract;

THENCE with the southwest ROW line of said Blue Goose Road, the northeast lines of said 55.10 acre tract, and the northeast lines of the tract described herein, the following two (2) courses and distances:

1. S 63° 16' 26" E, a distance of 532.82 feet to a 1/2-inch iron rod found, and
2. S 63° 01' 29" E, a distance of 2574.44 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set in the proposed northwest ROW line of Giles Road, a variable width ROW, described in a Right of Entry and Possession Agreement with the City of Austin as recorded in Document No. 2000069032 of the Official Public Records of Travis County Texas;

THENCE leaving the northeast line of said 55.10 acre tract, and crossing said 55.10 acre tract with the proposed northwest ROW line of said Giles Road, being the southeast line of the tract described herein, the following six (6) courses and distances:

1. S 26° 54' 06" W, a distance of 20.00 feet to a 1/2-inch iron rod with a plastic cap found at the beginning of a non-tangent curve to the right, from which a 1/2-inch iron rod found in the southeast ROW line of said Giles Road bears S 61° 54' 17" E, a distance of 179.98 feet.
2. with the arc of said curve to the right, passing at a distance of 17.14 feet a 1/2-inch iron rod found for the northeast corner of a proposed slope easement described in said Right of Entry and Possession Agreement, in all a total distance of 40.00 feet, through a central angle of 91° 40' 42", having a radius of 25.00 feet, and a long chord which bears S 17° 38' 13" E, a distance of 35.87 feet to a 1/2-inch iron rod with a plastic cap found for the end of said curve to the left.
3. S 27° 57' 12" W, a distance of 230.98 feet to a 1/2-inch iron rod with a plastic cap found.
4. S 26° 51' 02" W, a distance of 224.91 feet to a 1/2-inch iron rod with a plastic cap marked "SAM INC" set.
5. S 27° 52' 16" W, a distance of 356.71 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set, from which rod a 1/2-inch iron rod found for the west corner of said proposed slope easement bears with the west line of said easement, N 61° 56' 34" W, a distance of 16.04 feet.
6. S 27° 59' 39" W, a distance of 203.63 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set in the south line of said 55.10 acre tract, from which a 1/2-inch iron rod found for a point of intersection in the northwest ROW line of said Giles Road bears with said ROW line, S 26° 52' 08" W, a distance of 28.68 feet.

I, Dana DeBussche, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office this 30th day of May, 2005.
Dana DeBussche, County Clerk
By: *Michael P. Gosselink*
Michael P. Gosselink

10/31/2008 17:51 IFAX IncomingFax@fbhh.com
10/31/08 17:46 FAX 5124720532

Lloyd Gosselink

• Ikon

021/021
021/021

54.13 Acres
Lucas Mines Survey No. 55, A-513
Travis County, Texas

FN 2943 (TWH)
May 14, 2003
SAM, Inc. Job No. Z3147-01

THENCE with the west and south lines of said 55.10 acre tract and the tract described herein, being the remaining part of a called 102.87 acre tract described in a deed as recorded in Volume 7671, Page 109 of the Deed Records of Travis County, Texas, and a called 176.10 acre tract of land described in a deed as recorded in Volume 7671, Page 101 of the Deed Records of Travis County, Texas, the following six (6) courses and distances:

1. N 62° 45' 22" W, a distance of 224.16 feet to an X chained in the top of a headwall,
2. N 27° 49' 51" E, a distance of 1233.92 feet to a 1/2-inch iron rod found,
3. N 35° 43' 02" W, a distance of 1282.31 feet to a 1/2-inch iron rod found,
4. N 63° 03' 14" W, a distance of 1030.00 feet to a calculated point in the margin of a spoils pile,
5. N 27° 35' 24" E, a distance of 260.00 feet to a 1/2-inch iron rod found,
6. N 17° 29' 12" W, a distance of 894.12 feet to the POINT OF BEGINNING, and containing 54.13 acres of land, more or less.

Bearing Basis: Bearings are based on the Texas State Coordinate System, NAD 83(86), Central Zone.

THE STATE OF TEXAS

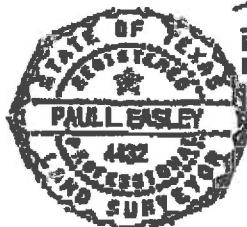
KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, Paul L. Easley, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during May, 2003 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 14th day of May 2003 A.D.

SURVEYING AND MAPPING, Inc.
4029 Capital Of Texas Hwy., So. Suite 125
Austin, Texas 78704



Paul L. Easley
Paul L. Easley
Registered Professional Land Surveyor
No. 4432 - State of Texas

I, Dana DeBenedictis, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office.

Dana DeBenedictis, County Clerk
by Deputy:
Michael P. Gonzalez
Michael P. Gonzalez
2005

FILED AND RECORDED

OFFICIAL PUBLIC RECORD

Ana DeBenedictis

2005 Oct 24 04:41 PM 2005198203

WILLIAMS, \$22.00

DAVE DEBENEDICTIS COUNTY CLERK
TRAVIS COUNTY TEXAS



**City Council Questions and Answers for
Thursday, April 11, 2013**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, April 11, 2013 at Austin City Hall
301 W. Second Street , Austin, TX



**Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5**

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions

of departments via the City Manager's Agenda Office. This process continues until the final report is distributed at noon to City Council the Wednesday before the council meeting.

DRAFT REPORTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

QUESTIONS FROM COUNCIL - None at this time

1. Agenda Item #11

a. QUESTION: a) Does AE currently have an accounting system that is based on the standard accounts promulgated by the Federal Energy Regulatory Commission? If not, what are the advantages to making changes that would comply with this? b) Is Article 5 necessary given that it does not describe a change from current practice? c) Please explain why the January 2014 and October 2014 dates were chosen instead of earlier dates? COUNCIL MEMBER SPELMAN

b. ANSWER: See attachment.

c. QUESTION: a) When the resolution came before Council on 2/14, staff included a list of expenditures for the last several years so that Council could review whether any would have triggered a Council vote under a \$100 million threshold. Please republish that information through the Q/A process. b) Does this ordinance provide for expenditures that cumulatively add up to \$100 million to trigger Council approval? c) This item does not yet include a fiscal note. Please list the components that would require the City to incur costs beyond those currently incurred (i.e. contracting with a professional search firm, board member stipends, etc.) and, when available, provide estimates for those costs on an annual basis. d) The original resolution specifies that Council should retain authority over rates. Section 15-13-43 suggests that while Council would retain that authority, it would require a vote of Council to trigger a review of the board's actions regarding rates. Please verify whether that understanding is accurate, i.e. that rate recommendations would not necessarily come to Council for review. COUNCIL MEMBER TOVO

d. ANSWER: See attachment.

2. Agenda Item #13

a. QUESTION: In the midyear budget work session there was discussion about the possibility of not spending the full amount requested as the local match for the 9% tax credit projects - depending on what projects gain final state approval. Is this part of the plan for the \$10M? COUNCIL MEMBER SPELMAN

b. ANSWER: Of the \$7 million reserved for rental assistance, \$4.5 million will

be reserved to assist in leveraging potential successful applications that are awarded tax credits through the Texas Department of Housing and Community Affairs.

3. Agenda Item #19

a. QUESTION: Have the Director of ARR and the Sustainability Officer reviewed this contract for management and disposal of waste for Austin Energy? What was the outcome of that review? COUNCIL MEMBER MORRISON

b. ANSWER: See attachment.

4. Agenda Item #37

a. QUESTION: The Austin Playhouse has requested that Council grant an extension through May. If they can meet that deadline, would there be any money available to assist with their request? COUNCIL MEMBER TOVO

b. ANSWER: Pending

5. Agenda Item #39

a. QUESTION: On March 5, City Council received a memo outlining the timeframe form the special events ordinance stakeholder process. Is the current process on schedule? If not. Please provide an updated timeline for the review process. COUNCIL MEMBER TOVO


b. ANSWER: Pending


6. Agenda Item #45

a. QUESTION: Please confirm that without legislation such as that currently being considered in the state legislature, a change in utility governance would otherwise require voter approval. COUNCIL MEMBER TOVO

b. ANSWER: The Law Department will answer by separate memo and be prepared to discuss the issue in the executive session scheduled for April 11, 2013.

END OF REPORT - ATTACHMENTS TO FOLLOW

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance please call 974-2210 OR 974-2445 TDD.*



Council Question and Answer

Related To

Agenda Item # 19

Meeting Date

April 11, 2013

Additional Answer Information

The following statement was received from Chief Sustainability Officer Lucia Athens:

"I have not reviewed the contract. I was not asked to. However, I would defer to ARR regarding any review. I have looked at their comments and they look quite thorough. I support their review.

ARR is the authority on waste disposal issues. Their opinion on waste disposal issues represents the most sound technical advice the City could provide. If there were a broader sustainability issue that ARR was not able to address, I am sure they would consult with me before issuing a recommendation."

The following memo was received from Austin Resource Recovery Director Bob Gedert:



A City of Austin Department

M E M O R A N D U M

To: Larry Weis, General Manager, Austin Energy
Cheryl Mele, Chief Operating Officer, Austin Energy

CC: Robert D. Goode, Assistant City Manager

From: Bob Gedert, Director
Austin Resource Recovery (ARR)

Subject: Austin Energy Special Waste Hauling/Disposal Contract

Date: April 8, 2013

Re: AE Industrial Class 2, Municipal and Special Waste Disposal

The purpose of this memo is to summarize the Austin Resource Recovery review of the AE disposal contract, as requested by City Council, in regards to any possible waste diversion opportunity, a review of the disposal environmental provisions, and determination of the requirement for ZWAC review.

Type of Waste Stream:

Austin Energy generates non-hazardous Special Wastes that are not suitable for dumpster disposal as general plant trash. These wastes include used treated wood utility poles, soil contaminated with <1500ppm TPH, soil contaminated with mineral oil from transformers with >1500ppm TPH soils (as permitted by TCEQ), demolition debris, Class 2 wastewaters, rust, spent desiccants, unused solid chemical products, no-pcb bushings/capacitors and asbestos.

Diversion Opportunities:

Materials identified above are not suitable for recycling, composting, or beneficial reuse. No diversion opportunities were identified through this review.

Environmental safeguards:

The bid documents and the subsequent contract language includes the appropriate waste documentation (through required manifests) and City's right to perform environmental audits. The designated facility has the proper permits from TCEQ to handle this type of Special Wastes.

Austin Energy, as generator of this waste stream, is properly classified as a Conditionally Exempt Small Quantity Generator (CESQG). The expected quantity and types of wastes covered by this contract is within the range permissible by state and federal law.

Zero Waste Advisory Commission (ZWAC) Review:

The waste stream identified is under the purview of the ZWAC as noted in the Commission's by-laws. This contract is scheduled for ZWAC review and recommendation on April 10, 2013.

Consolidation of city waste-hauling contracts:

The City (through ARR) is coordinating existing City generated solid waste contracts to expire in 2015 to support a consolidated city-wide solid waste material contract. The type of waste stream identified in the AE contract cannot be combined with other City general solid waste (dumpster) contracts, due to its special regulatory characteristics.

The City (through ARR) is coordinating existing City hazardous waste contracts to expire in 2015 to support a consolidated city-wide hazardous waste material contract. It is currently uncertain that the Special Waste generated by AE could be combined in the city-wide Hazardous Waste disposal contract. Further research is required to determine if Special Waste streams could be included in a Hazardous Waste contract.

Recommendation

I recommend no changes to the bid documents and subsequent contract. If the special waste streams identified in this contract can be combined in a City-wide consolidated hazardous waste disposal contract (undetermined at this time), then I recommend an expiration of the base contract term of September 30, 2015.

1 **August 14, 2013 Zero Waste Advisory Committee Meeting: Item 3a Special Events Ordinance**

2 **Rick Cofer:** Item 3A is the Special Events Ordinance. We do have Mr. Gregory and Mr. Dobbs have
3 signed up for citizen communication. We can do that before the item, before the staff presentation or
4 after. After? Okay. Let's just go ahead with staff presentation on Austin Special Event Ordinance.

5 **Gordon Derr:** Good evening, my name is Gordon Derr. I'm assistant director of the Austin
6 Transportation Department. I was here several months ago to speak to you. I have a PowerPoint that
7 would probably take a half an hour or so or I can skip to want you want to talk about. It's either way
8 y'all want to go on that.

9 **Rick Cofer:** Is there a scaled down version of the PowerPoint where you hit the highlights?

10 **Gordon Derr:** I'll try to do that verbally if you want to move forward. So the City Council directed staff
11 to look at the Special Events Ordinance to simplify and make it more efficient to consolidate activities.
12 The Special Events team, which we call the Austin Center for Events - the ACE - has been in operation
13 now for quite a while and has developed some operating procedures so when we came in to look at the
14 ordinance we felt the most important thing was to establish the ACE as the authority over permits.
15 Previously the ordinance that really dealt with Special Events was part of the Transportation section of
16 the City Code – Section 14-8. We felt it was important to write a new section code that really gave the
17 authority to the Austin Center for Events to oversee applications and to involve other departments as
18 needed and then to formally then do the final permitting process. So, staff from Austin Resource
19 Recovery – Jessica and Annette and Tammy – have been involved in our discussions over the last six
20 months and really have come forward with some great ideas about what we need to do for special
21 events in the future. You should have in your packet a copy of the proposed ordinance. So I think
22 probably the issues that are the most interest to you are in Section 44. I apologize that each one of the
23 pages says "page 1 of 1", but if you go through the sections it's x-x-x 44. So in this section there's
24 specific requirements that events do a waste management plan that no Styrofoam, glass containers or
25 single-use carry out bags be involved with those events and protection from storm water needs to be
26 put in place. On the next page, a big part of what's been done with this ordinance is really set up so that
27 the important issues related to special events, that the promoters do plans for those events, particularly
28 in the area of public safety. The barricading plan is something we've always done, but they need to
29 address how police, fire, EMS resources are needed - and discussions among staff with Director Gedert
30 and Lucia Athens. Another plan we put into the ordinance as is stands right now is that an event would
31 have to do a sustainability plan. And the sustainability plan would be for events that are larger than –
32 the Ordinance sets up tiers of events. Tier one would be a block party, tier four is SXSW or ACL, and it
33 would set up that any event tier two, three or four would have to do a sustainability plan. The Waste
34 Management plan would be a part of that as well as waste reduction and recycling plan, reduce vehicle
35 idling, bicycle parking, and other requirements. So as with all things that the City does there will be an
36 ordinance, below that will be a set of rules. So in this case, the requirement for a sustainability plan is in
37 the Ordinance, the rules will say this is what has to be done to do this plan and then below that will be a
38 guide book which has an illustration of what the plan could look like, and then the resources a promoter
39 would have to do to prepare the plan. 80% of the events that are held in the City ever year are repeats

of the previous year, so although this will take some work in the first year to put the plans together, subsequently there shouldn't be a requirement for major revisions to those plans. So it'll take some activity up front and then as we move forward. So the plans would have to be prepared, they would be submitted to staff, the ACE team including representatives from Austin Resource Recovery would be involved in reviewing those plans, would have to approve the plan before the final permit could be issued. Then there would be resources made available to make sure that the plan is implemented as written. We're still having some discussions on that, but it likely would be a variety of different department enforcement activities based on the different requirements of the plan. So in the discussion we had last week, maybe Health and Human Services as they're checking the kitchen facilities can look into things like Styrofoam and how they're going to provide the meal to folks and then maybe Code Compliance is looking at the recycling receptacles and making sure those are in place so right now we're putting everything in place and we still need some discussion about how we're implementing that, but we're taking that into account as we write the Ordinance and hopefully implement the Ordinance. Last night we went to the Urban Transportation Commission...y'all are next on the path. We're going to a couple of more Commissions and right now we're scheduled to go to Council on the 29th of this month. So I guess that's, in brief, we've got a bunch of slides if you want to see specific pictures or if there's other specific things that you would like to talk about.

Rick Cofer: Questions for Mr. Derr?

Daniela Ochoa Gonzalez: Yes, on the article second, the permit requirement exceptions, there are three exceptions there and first one and second one are really directed to the City. I'm going to read really quickly. It says, "an event conducted entirely on City parkland that uses only Park and Recreation Department facilities, personnel and equipment." Number two says, "an event conducted in the City meeting rooms requires only facilities, personnel and equipment related to the facility." Number three like an emergency event which is completely understandable. But Number one and number two – aren't they lax of trying to go against what we're trying to preach because if the City is trying to reducing the, you know, leading the way, why would they have an exception?

Gordon Derr: Well, for example, if a family reunion of 75 people meet in a park, they just use the parking facilities and the picnic tables. Or let's say 101 since the criteria is for a 100 people or more, we don't really want to trigger that as requiring action by the Special Events Ordinance -

Daniela Ochoa Gonzalez: But we should, right?

Gordon Derr: They would still work with the Parks Department to reserve the space and Parks would deal with them on particular issues.

Daniela Ochoa Gonzalez: I still don't understand because if it's more than 100 people, even if it's only Park Department requiring it, shouldn't they then be complying, too? Because if it's a birthday of somebody that works at the Park that's why you're saying that's what the exception is? Because why will everyone have to comply if it's more than 100 and then if you're a City employee...it just doesn't make sense to me.

77 **Gordon Derr:** Well, this comes from discussion with all the City departments and looking at the
 78 activities there. If my sense of what you're getting to is if it's in the street instead of in the Park then we
 79 use the rules related to a Waste Management Plan would be in effect, and if it's in the park they
 80 wouldn't. But at this point we're moving forward with the things we think we can get adopted.

81 **Brent Perdue:** I think, theoretically, too, Parks and Recs needs to do a better job providing on-site
 82 recycling services and that would avoid that issue if the City of Austin in general had all their facilities:
 83 aviation, parks and rec are going to have access to recycling. You show up for an event on a park land
 84 area, it's there. You know what I mean? This is somewhat of an important issue, but a separate one.
 85 I'm imagining that's why it was there.

86 **Jessica King:** Good evening, Commissioners. Jessica King, Austin Resource Recovery. In our
 87 conversations with the Parks Department, basically what they'll be doing is really modifying their own
 88 rules and requirements regarding any type of reservation at their park facilities so one of the things
 89 they're doing separate from this Ordinance is re-evaluating their rules and they plan to look at the same
 90 requirements that you're looking at here and applying those into their own rules because again, with
 91 the Parks – it's not necessarily Parks ordinance to find out if it's an ordinance or a rule in terms of what
 92 the requirements are. They have contracts so part of the requirements in order to reserve park space
 93 will include things that we've identified here, including recycling and trash management, too. So in
 94 other words it will be handled – your concerns about zero waste related to events contained entirely in
 95 a park facility will be handled in a separate process as part of their contracts and part of their rules.

96 **Daniela Ochoa Gonzalez:** Okay, what about events organized by the City like there is the different
 97 events they make like for leadership and invite employees of all departments of many other good
 98 programs that they don't have recycling or composting. This will give them an exception to not do
 99 anything.

100 **Jessica King:** Right. Well, of course ordinances are definitely different in terms of practice and so one of
 101 the things as a department we've been working towards is making sure that all City departments,
 102 whenever they have an event, they've put on an event, that Austin Resource Recovery is at the table to
 103 help them plan that event. Many more organizations and departments are contacting us directly now.
 104 For example, the Asian Cultural Center that's opening up off of Cameron Road for example, we're
 105 already involved in the planning of that event and that event will take place in September 28th and we
 106 are planning on the recycling so because of the zero waste efforts that we've put in place and our
 107 communications and being at the table at these events we've become a go-to point of contact. Annette
 108 has been our primary point of contact for the events that the City is putting on within departments and
 109 throughout the City so depending upon if it's at a park facility or any other City facility. Another
 110 example is City Hall is putting on a Green Event on the 15th – tomorrow – and Kay Gadilla who is helping
 111 to organize that has contacted us about both recycling and composting so we are working very closely
 112 with every event that comes across our table and many of those have become City events.

113 **Daniela Ochoa Gonzalez:** I don't mean to be radical here, but everything – if we're really going to move
 114 to Zero Waste there shouldn't be any exceptions. And whether this ordinance is going to pass or not
 115 with exceptions then maybe we can take off the exceptions. I'm not into these exceptions.

116 **Rick Cofer:** Thank you. Any other questions for Mr. Derr? Comments?

117 **Daniela Ochoa Gonzalez:** I'm sorry, I need to – in the other section, in section 31, I just want to clarify in
 118 the second number where it says hotel information regarding the physical layout. Letter E says,
 119 "proposed location of dumpsters, roll-offs, trash and diversion containers." Could we add diversion
 120 containers for composting and recycling specifically, not just diversion containers? This same expression
 121 comes out three pages later, again in number 34, number 5 it says, "provide sufficient waste
 122 management services." I don't know, I feel like we could just add the words composting and recycling
 123 there because if not people will be like, "oh, I have trash that's enough diversion."

124 **Jessica King:** Again, Jessica King, Austin Resource Recovery. The reason we actually chose diversion was
 125 because 1, it's replicated in URO rules. If you'll look at the rules of the department, diversion is
 126 specifically identified. It also gives a little more flexibility because composting and recycling are not the
 127 only methods for diversion. We want to be able to have that open so that if we need to change the
 128 rules later to include other types of diversion methods we want to be able to do that. So we chose
 129 diversion because it gives us more flexibility, especially through the rules process. In the rules, what
 130 we'll do is specifically identify recycling and composting as options.

131 **Rick Cofer:** So let me ask you this. On the rules process, how do you envision that drafting going?

132 **Gordon Derr:** Well, I'm sure that this Commission would be consulted as part of the rules process. We'll
 133 be doing the rules primarily through the Office of Sustainability so the normal process is, the rules would
 134 be written by staff with consultation with appropriate Boards and Commissions, the department
 135 director, Lucia Athens, would then have those posted and we would go through a formal process of
 136 people commenting on those rules before they're finally adopted.

137 **Rick Cofer:** And would the rules go back to Council? The rules aren't approved by Council?

138 **Gordon Derr:** No.

139 **Rick Cofer:** So, if there's stakeholder opposition or disagreement that's substantive with rules there's
 140 no redress to Council?

141 **Gordon Derr:** My understanding is redress is to the City Manager, but I believe y'all's department has a
 142 unique rules process, or Austin Resource Recovery. So for our department we post it. If there are some
 143 details we can't work out we either pull them back or if we feel it's important we go to the City Manager
 144 to have him say it's okay to have that rule in place.

145 **Rick Cofer:** I certainly admire the effort and the vision with this. My concern is that the ordinance is a
 146 scaffolding and the rules are where all the meat is and there's just very thin, minute scaffolding on the
 147 issues of diversion. If I organize an event in Austin two years from now, right? I don't know what the

rules are today, but I can look at this ordinance and it tells me I need to file a plan and it needs to have something about waste diversion. I don't know what that means, right? And through the rules drafting process, none of us up here are going to know what those requirements and mandates are going to look like. In other words, I think that there might be a strong argument for having a little bit more detail in the Ordinance instead of leaving it all to the rules making process. I mean, I understand that there's a balance – you don't want it to be overly specific, you don't want it to be overly general, but my fear is that the ordinance as it's drafted now leans a little too far towards the absence of detail where being a little more specific might help.

Gordon Derr: There's actually more detail related to the waste recovery plan than there is for any other plan so this requires an emergency services plan, but all it does is require there's an emergency services plan. It doesn't speak to any of the elements of that. So this again as you said is seen as a framework. It gives the authority to the Center for Events, but then it's really up to the departments to build the framework under that and put the covering on the outside of things. So this is the next step we need to take to get the Austin Center for Events – for a consolidated application to bring in all those folks together and there be a clear chain of whose responsibility things are, for the Ordinance and also enforcement.

Rick Cofer: So about 5 years ago there was a process that was initiated in part through what was then Solid Waste Service to develop to what is called the "Green Events Ordinance" and it actually went through I think probably 18 months of stakeholder input and ultimately I think there was an ordinance that was produced and ended up being shelved by the City Council it was never implemented or even voted on and in the absence of passing that for the last several years the Resource Recovery department has been tasked with providing certain services for diversion and a handful of events. I guess my question is this ordinance seems like a pretty dramatic departure from the Green Events Ordinance and what that ordinance envisioned, which was quite a bit more specific and really had some teeth in it and real requirements about what special events would need to do in Austin. To what extent is this based on that initial effort and if it is not based on it at all, what happened?

Jessica King: Jessica King again, Austin Resource Recovery. As one of the people who was involved in Green Events Ordinance discussion - just a recap - several stakeholders discussion took place. Many of the stakeholder discussions really didn't involve everybody at the table at the same time. So, what ended up happening over the long run was actually presentations that occurred going to a variety of the boards and commissions, one of which includes the Park Department. I think the Zero Waste Advisory Commission had a general discussion on it as well. The key element there though was at the end, the City Council passed a resolution directing staff to provide, at the bare minimum, recycling at all city co-sponsored events which gets to Ms. Ochoa's main concern about making sure the city sponsored, city events have recycling at the very least. So, by resolution we are required to do that already. In terms of the Green Events Ordinance, the key components that were discussed throughout the course of that time frame, we have spoken with Lucia we've given her – Lucia Athens our sustainability officer – we've given her the background and the history and a lot of the recommendations that were made a lot of that historical information has transferred appropriately and when the sustainability plan comes into place what we will be looking are a lot of the recommendations that came forward as well. The sustainability

188 plan my understanding is the concept that was discussed at the green event ordinance discussion which
 189 included, basically giving people a list of options and an opportunity to say ok if you're this large of event
 190 then you need to do three of four things, so that they can choose which measures to put in place. So it is
 191 following because of the history we are trying to look at that sustainability plan to follow very similar
 192 guidelines. They'll get a list of options they can choose from and then that plan has to be implemented
 193 at we'll have to check for that. The one element that will not be an option though, will be the recycling
 194 part. That will be a requirement according to this section.

195 **Rick Cofer:** A requirement in what way?

196 **Jessica King:** I'm sorry, in terms of diversion making sure that diversion options are available at all
 197 events so that's not, in your sustainability plan, providing diversion is not an option it will be a
 198 requirement. Does that help with the distinction?

199 **Rick Cofer:** I think so.

200 **Jessica King:** In other words we really need to make sure that the events are actually providing either
 201 recycling and or composting at the event. And it won't be an option under your sustainability plan you
 202 must provide a waste management plan that includes diversion options.

203 **Rick Cofer:** Alright, so would it be fair to say that this ordinance will require every special event in
 204 Austin that isn't just a small family gathering, to have recycling and waste diversion.

205 **Jessica King:** Based on tier, yes

206 **Rick Cofer:** and this is just totally aside and that does serve some of my concerns. So based on my
 207 reading of a tier one event, if you have a five hour birthday party at the W, does that then turn you into
 208 a tier three event?

209
 210 **Jessica King:** So that kind of mixes and mingles a couple of things. I'll speak first to the Universal
 211 Recycling Ordinance element of that because keep in mind that the Universal Recycling Ordinance
 212 because of the special events ordinance does not go away. If you are a hotel motel or any property that
 213 falls under the guides of the Universal Recycling ordinance you're still required to comply with the
 214 Universal Recycling Ordinance. So for example, if you are a hotel motel you need to provide the
 215 standards that are identified by the URO which will include, if you're a food service provider, composting
 216 down the road based on the time frame identified, so there is a yes and no on that. If the W decides to
 217 close down a bunch of streets then we kick it to the street events part.

218 **Rick Cofer:** What if I have a five hour birthday party at my house? Like if it's longer than four hours.

219 **Gordon Derr:** As long as we don't know about it.

220 **Rick Cofer:** As long as you don't know about it?

221 **Gordon Derr:** As long as your neighbors don't complain, but things like the W, they have a certain
 222 capacity to hold people for events like special events. So unless they want to exceed that capacity they
 223 would not come under the special events ordinance. That's a normal part of their business. Now if they
 224 close Second Street which they have a couple of times for events at the ACL, then it would fall under the
 225 Special Events Ordinance and it would be dealt with under these rules.

226 **Rick Cofer:** I mean I am going to vote for this but my real concern, I understand that by leaving a lot of
 227 the details out it makes it a lot easier to consensus but the rules making process on this is going to be a
 228 real bear. I mean getting all these different events organizers to sign on to a lot of these requirements is
 229 going to be very challenging. My concern is that in that rules drafting process there's going to be a lot of
 230 pressure to water down requirements and I really wish that there was some back stock but if that's not
 231 possible I can understand.

232 **Jessica King:** Commissioners, if we can offer another option to you we'll, obviously my staff is heavily
 233 involved in this Ordinance process it's very important to us as well as you. What we would like to do is
 234 bring our rules that we are proposing and kind of give you a brief overview or just an overview
 235 presentation of the recommendations we'll be making for the rules process and see if you have any
 236 additional input or suggestions to add.

237
 238 **Rick Cofer:** I appreciate that, thank you Ms. King.

239 **Brent Perdue:** To go back to Daniella's point earlier sorry I am re-reading this and so something like ACL
 240 it's on auditorium shores does it fall under the exceptions an event conducted entirely in a City Parkland
 241 because it doesn't use city park employees?

242 **Gordon Derr:** No because it closes Barton Springs it would fall under this ordinance.

243 **Brent Perdue:** OK

244 **Gordon Derr:** Just like Eyore's birthday party although most of the activity is around the park, it does
 245 require closing some of the streets in there and barricading so that kicks it in the special events
 246 ordinance and out of just strictly park event.

247 **Brent Perdue:** Ok, got it.

248 **Rick Cofer:** You know this is just on the side as well, one thing you can possibly contemplate including in
 249 here, although it probably would really tick off a lot of the stakeholders, would be some maximum cap
 250 on fee waivers. Right? 'Cause the city council caves and it's going to vote for fee waivers 80% of the
 251 time, something like that, you know if there was some back stock that said, well the council can only
 252 waive fees up to 50% of what they would be, that would be real helpful because with a department like
 253 Austin Resource Recovery that has to provide a lot of services at very difficult times that removes key
 254 employees from doing what they are supposed to be doing, to go handle a special event. Austin
 255 Resource Recovery doesn't get paid any extra money for that. So that just comes out of the existing plan
 256 and we call these things "special events" but they are really not because they happen every year so they

257 are routine events so we should just plan these in the budget because Mr. Geddert knows that on
258 certain weekends his employees aren't going to be able to do the job that they are assigned to, because
259 of City Council has voted to waive the fees and tell Mr. Gedert's employees what they have to do that
260 weekend.

261 **Gordon Derr:** We are certainly looking at that as part as the total package we're bringing to the city
262 council. It's not in the ordinance but what additional people do we need to implement the ordinance.
263 What really is the impact that special events right now by department, and how each department is
264 paying for it. I think that complete picture is what need to provide to the City Council; you know what
265 we are doing now. What should we move towards in the future. So I think that is that's going to be part
266 of the discussion. It's not just the ordinance, it's everything that goes with special events I think will be
267 talked about through this period.

268 **Rick Cofer:** Thank you Mr. Derr I appreciate it.

269 **Daniela Ochoa Gonzalez:** One last thing on the side, because I realize that at least gives us a chance to
270 put it out of our chest. Is that another big thing regarding what Mrs. King was mentioning is that one
271 thing is providing recycling option and another thing is that people will take it and there is no way to
272 enforce that but my frustration with these exceptions is that I've seen people in the city events that are
273 city employees that are not necessarily romanced yet with our Zero Waste agenda and the recycling bin
274 is right there and they don't put it in the recycling bin, is almost like on purpose they put it in the
275 garbage one. So nothing can go to enforce that but I do want to mention that it'll be nice that in
276 addition of providing people will actually take advantage of these options for them to divert. Thank you.

277 **Fayez Kazi:** I got a quick comment, so is this going to council for action at the end of this month?

278 **Gordon Derr:** That's the current schedule yes.

279 **Fayez Kazi:** So my only frustration is that we haven't seen the rules and we're really not able to give any
280 useful feedback on a very bare bones framework. And so it just seems like it's moving too fast for me,
281 but that's just me.

282 **Rick Cofer:** I mean I feel the same way, I wish that there was more of a balance between the rules and
283 ordinance. I understand the necessity and I guess the rational is once you have the office up and running
284 you're basically having Ms. Athens office run point on drafting these rules and you would assume that
285 based on that they would be pretty progressive and have a lot of sustainability requirements and have
286 teeth. But I'm correct to understand that the rules would come back to us before they are finalized, is
287 that correct?

288 **Jessica King:** So two steps actually, depending upon the rules schedule and the time frame for the rule
289 adoption that will dictate when we'll be able to bring the rules back for your discussion on it. In terms of
290 the rules specific to Zero Waste and potentially even the sustainability elements we actually because
291 we've been working on events for the last two or three years, we already have the vast majority the
292 rules that we would like to propose. We've been at the forefront of making sure that those are

293 implemented city events, many of the events that we've worked with, so we have draft language that
 294 we are prepared to share with you at the next Zero Waste Advisory Commission meeting in terms of at
 295 least the Zero waste elements. For the sustainability portion we'll obviously have to check in with Ms.
 296 Athens and see if she is available.

297 **Rick Cofer:** Oh and if she is that would be wonderful if she or someone from her office could come visit
 298 with us.

299 **Cathy Gattuso:** so I would have appreciated a little more information before we had to vote on this
 300 tonight. I would have liked to know more about our rules. I think that comment about the recycling bins
 301 and composting and then for the landfill, I would like to see where there is a person there directing
 302 people what to do to orient them. I know that it sounds silly but we need to do that because it's going to
 303 end up in the Landfill. So there is a lot of things like this that I wish that we could have more feedback
 304 on, so I feel a little hurried on this to vote on this tonight and not know any more than we do.

305 **Rick Cofer:** When is your goal for taking this to council?

306 **Gordon Derr:** We are on the Council agenda right now for August 29.

307 **Rick Cofer:** Isn't that budget?

308 **Gordon Derr:** And if I can speak, you know to me, if we can get this approved by the council, the council
 309 has then said we need security plan, we need a sustainability plan, it sets in place that the council has
 310 taken action saying these will be done. Then we are just talking about the details of what's in those
 311 plans as opposes to climbing the hill up. We got to have the plan and it has to be done and approved for
 312 you to have the special event and to me that is a big step forward. I understand the concerns about
 313 what is in that, but to me the big thing is for the council to say, you got to have it.

314 **Rick Cofer:** Alright, do you plan on taking this to the public safety commission?

315 **Gordon Derr:** It's not currently on our schedule, no.

316 **Rick Cofer:** Alright I might encourage you to see, that might mean pushing it back because I believe they
 317 meet in the early part of the month, but if there is public safety impact I imagine there is, it might be
 318 worthwhile to visit with them I sometimes think they are the forgotten board commission. Alright
 319 anything else for staff because we do have some citizen communication on this. Alright, at 6:10PM
 320 Adam Gregory with TDS signed up on this item. So Mr. Gregory.

321 **Adam Gregory:** Good evening commissioners Adam Gregory with TDS I primarily had several questions
 322 which actually most of them were answered however I got more concerns now than I did before. You
 323 were right to bring up that we've had a history discussing a green events ordinance and our master plan
 324 has a section on the green events ordinance and if I am not mistaken I bet that there is language in that
 325 master plan on the green events ordinance that references the stakeholder process. I find it troubling
 326 that we've had absolutely no input into the ordinance development as stakeholders, it's good that
 327 Jessica and her team have been highly involved the whole time, but as stakeholders we've not been

involved. My question was does this ordinance replace or accomplish what our intention was with what we talked about as being the green events ordinance in the master plan? Sounds like that's the case. And Rick you made another very good point about the rules. And the answer to is there any approval to the rules once the ordinance has passed the answer is no. Not under that section of the code. Jessica is nice enough to bring it back and report to you and the pertinent sections of the rules that might have to do with us, but all we can do is issue comments, they can respond to us and then they are able to do exactly what they want. Our section of the code is different, the code that most of our ordinances are under. They do have to go back to Council. I would put it before you that our department has earned that special distinction through things like this where ordinances come up that we've never had a stakeholder process on. So if this does go forward, a minimal request would be that the section of the rules that affect the ARR and Zero Waste portion, if it's possible be included under our section of the code instead of 14-8, which I believe is this section. So it seems to me a little fishy that it's been very quiet but all of a sudden it's announced that our Green Events Ordinance is done and we're not going to have a stakeholder process, you're not going to be able to comment on rules because we put it under a different section of the code. We might see that happening in a lot of ordinances that we thought we'd be involved with because of that requirement of having to take rules to Council. I'd hope that we'd have a lot more information and a lot more involvement and a better opportunity in the future to shape these rules. Which we have none now. That's it. Thanks. Any questions?

Rick Cofer: Thank you, Mr. Gregory. Anything for Adam? All right. Thank you Sir. And then, also signed up to communicate is Mr. Scott Johnson. Oh there he is. Hey Scott.

Scott Johnson: Good evening, Commissioners. Along with Rick, I helped initiate the process, April 2008, on the Green Events ordinance. What I'd like to say is that the Public Safety Commission has talked about the cost of APD helping out, and that is germane to the budget as they request more staff people. The Fire Department actually has a bill that they, or a contract, that they provide services for a set amount. So they're doing it right, and I share your concern as well about that cost. Under the sustainability plan it says "at a minimum the following information". I have witnessed at the Night of the Bat, that happened last year, where the beer trucks, and those that are close to the bridge, close to where people are mingling, were idling, and so to put in there "reduce vehicle idling" certainly could be helpful, but as all of us know, it's a matter of: if we're not in control of the enforcement, or if there's not someone in control of the enforcement, or incentivized to enforce something, it can be a little bit slack, or lax, within the City, I've noticed it quite a bit. So that is a concern. I hope that APD is fully on board and these other departments, in terms of enforcing it and these provisions that are on the sustainability plan.

Regarding the event recycling rebate, which is available but not being utilized to a great extent, I don't know what the figures are for 2013, there was talk when we developed it about phasing it out, and I still think that may be the case, however, if there's a way to evaluate how well these large events are diverting waste, maybe there's a way to keep the incentive in there, broaden it, to help people get even further along to reducing waste, and recycling, and organics, if that's an opportunity as well. I would say that if this is going to fall under the Austin Sustainability, my experience with them, as you know I'm involved with other activities within the City, the outreach part of the Climate Protection Plan to the

community is by far the weakest part, and has not been implemented at all; I can state publicly without fear of people countering me, and so therefore I would say that the Austin Sustainability, and the leadership, could do a much better job of visiting with this commission, with visiting other commissions and keeping them up to date and trying to get a group, a network of people that are involved and engaged on sustainability matters, to use them as resources and to talk to them, and communicate with them, and network with them. And I'm not aware that that's happening at all. Maybe you all have some experience with that, but I talk to people regularly who are front and center in the community for 25, 30 years or more, and they've never met the leadership of the Office of Sustainability. They've never contacted them, they've never asked for their assistance. That's a huge issue. I hope that you all will speak up and join my voice on this particular issue. And the situation within the department is generally good, but, based on relationships that I have with the management, it's good, or very good, but if that wasn't the case, it would not be as good as it is. Thank you for your attention.

Rick Cofer: Thank you Mr. Johnson. Any questions for Mr. Johnson? Thank you Scott. I think for further discussion we need a motion. Oh I'm sorry. No you're right, I'm sorry Mr. Dobbs, you did. I apologize.

Andrew Dobbs: No problem. Andrew Dobbs, Texas Campaign for the Environment, Austin Zero Waste Alliance. I think that you, you know, you said, "I don't want you to give up too easily, here", Rick, and other guys. I think that you do need to make it very clear in whatever you say to Council that we need more specifics on this, because everything you said was spot on, you know, that this is going to end up boiling down to the rule making process. And if rule making doesn't go right, then this thing is a dead letter, you know what I mean, it's meaningless. The, you know, as it stands, this, it's just so open ended, and, I mean, I came up here to start, to talk at the beginning of things, about the lack of enforcement going on... that's all... So for all we know, we could pass something good and it doesn't even get enforced, right? And we have a situation like the Kite Festival where we have Zilker covered in filth, and you know, "Oh well" is the kind of response. If we have this, if we have a good ordinance, then at least we have something that we can point to that ought to be enforced. As this stands right now, you know, they could write rules that are pretty weak-sauce, and we end up having situations where the event's waste reduction and recycling plan is "We will have some recycling bins there." And that's it. And that is completely compliant and we will have a huge barrier to our getting to 95, to 90-95 percent diversion. Our Zero Waste master plan will be in peril. So, I don't know what, we've got 6, you know 5, 6 smart people up there. At least 5 smart people. (All laugh) I'll let you figure out the other one. But no, we've got smart people up there to figure out how we, what specifically should be said. I think that a recommendation that's like, "We recommend...", which is good, I mean, I know that nobody wants, people have been working on this ordinance for a long time, are ready for Council to put it out the door. I can get it. I mean, you hear the words "Why don't you try to delay it until September" and, you know, hearts start skipping beats. I get it. But a recommendation that there be specifics, some kind of specifics be added to this, and then go to you respective Council members and do that. I don't know what kind of language you should add, but make that recommendation here, and then come up with some, and then go to your specific Council members and make sure they flag this so that we can get it amended from the dais on the 29th. I think that's the best scenario, I think.

Rick Cofer: Thank you Mr. Dobbs. Anything for Mr. Dobbs? All right, thank you sir.

408 **Brent Perdue:** I have a question for staff, if it's all right. Is it possible to direct Council, or the ordinance
 409 crafters, to move ARR's portion of this ordinance into ARR's ordinance, and have that stakeholder
 410 process?

411 **Bob Gedert:** Bob Gedert, Director of Austin Resource Recovery. And you lead me to the comment that I
 412 wanted to bring forward to you as to process and what your role is today. And, leading towards your
 413 request there, one thing that I recommend to you as your role, this is an action item, we're asking for an
 414 action from the Commission. My recommendation as Director of Austin Resource Recovery is that you
 415 approve and move forward with this ordinance to Council, but with certain concerns or reservations,
 416 and Vera can document those in the communication to Council. And I heard enough of them here to say
 417 that this is not an easy "Yes", so I would recommend that those comments be itemized. A second point
 418 on process is that, I can, Gordon has committed to, there he is, Gordon has committed to bringing back
 419 the rules to the ZWAC Commission. I would like to request of the rule making process that ZWAC have a
 420 more direct role prior to the presentation of the draft rules, and be part of the stakeholder process. A
 421 ZWAC Commission meeting could be dedicated to being a stakeholder meeting in the development of
 422 the rules prior to them being presented to ZWAC; so a more direct involvement. I'd recommend that to
 423 Gordon and the working group. Gordon, did you have any comments?

424 **Gordon Derr:** No, I think that's appropriate, and again I'm from the Transportation department. I'll be
 425 dealing with the rules for the Transportation department. We'll work with Jessica and her staff, and the
 426 staff from the Sustainability department, however we can help them, to get the rules done the way they
 427 should be done. My goal is to get the framework set up. And then the departments need to do the work
 428 to build the foundation under that.

429 **Rick Cofer:** What would you think if this ordinance were amended to include a requirement that the
 430 rules making process had to include the relevant Boards and Commissions, and then a final Council
 431 approval of the rules? Does that additional layer of approval inhibit the goals of the ordinance
 432 significantly?

433 **Gordon Derr:** Well, again, it sounds like what you want to do is have the rules coming through the ARR
 434 rules making process as opposed to another department's rules making process. Like my department,
 435 Transportation; we have the Urban Transportation Commission, that's who we'll work with on the rule
 436 making related to transportation issues. So, what I heard, is that you want specifically the rules related
 437 to the waste management plan and the sustainability plan to have a different process, and it would
 438 seem like that's entirely appropriate recommendation to make to the Council.

439 **Rick Cofer:** And that's absolutely true, but even beyond that, I don't understand why it wouldn't work to
 440 have a final Council approval for the rules, period. For all different facets. For the public safety
 441 component, for transportation, the electric usage, you know, I don't know who the bike racks fall under,
 442 I guess transportation, or solid waste on our end, and food would probably include whoever the health
 443 department. In other words, we do a lot of stakeholder work in Austin Resource Recovery land; I know
 444 certainly other departments engage in a lot of stakeholder process; I know your department in
 445 particular, certainly, when it comes to street closures and the development of that street closure

446 ordinance back when Mayor Winn was still the mayor, that had a lot of stakeholders, and in my
 447 experience, stakeholders like process, and usually that's really good. And affording a real structure in the
 448 ordinance for that kind of input and stakeholder process is usually a good thing. And having that
 449 backstop of it having to go to Council can, it gives leverage to both sides; both to staff and the
 450 stakeholders who are trying to develop these rules. And ultimately, if Lucia Athens is in charge of the
 451 rules making process for this ordinance, in total, you're putting the sustainability office in the position
 452 where they're the final decider of all of this. And if that office does a good job from my perspective that
 453 could be one thing, or if they do a good job from someone else's perspective, and I disagree with that,
 454 but I don't have any recourse to Lucia Athens. I don't have any recourse to Mark Ott. Right? The only
 455 employee that Lucia Athens really reports to is the City Manager, and he reports to the Mayor and
 456 Council, and he has to keep 4 of them happy enough to not fire him. So, what's my recourse if I think
 457 these rules suck?

458 **Gordon Derr:** Well, I guess my main comment as someone who's been with the City for a while is that if
 459 the Council takes action on the rules that means every time we want to change any rule, we have to go
 460 back to Council. And we're talking about rules that cover at least six different departments and it's going
 461 to be a lot of pages of rules, and this is a process in which we need to be dynamic, which we can change
 462 the rules over time as we find out what works and what doesn't work. And if we build into that a
 463 process that goes to Council, that just adds another layer to the process.

464 **Brent Perdue:** And, you know, I think that comment is fair, but it just even more so encourages the
 465 framework to be our minimum that we're comfortable with, and I don't know that this is.

466 **Rick Cofer:** I mean, I understand where you're coming from. I'm not trying to be argumentative or
 467 disrespectful. I know that, I mean especially Transportation department, y'all do a lot of work in this
 468 area and I don't want to diminish that at all. I know that it's difficult to strike that balance between
 469 citizen input, and process, and stakeholders, versus actually getting stuff done. And I guess where I'm at
 470 is, yeah, we need to move on this, you know, I wanted to move on this six years ago, and boy howdy, I
 471 know it takes a long time to get anything done at City Hall. And I'm not trying to slow this down, but I
 472 think that there's a way to work in, you know, at least an initial approval of the rules through Council, or
 473 a mandatory process where it goes through Boards and Commissions. And look, I have a lot of respect
 474 for Lucia Athens, I think she's going to do a great on this, but what I do genuinely fear is, you know, I was
 475 deeply involved in that '08 stakeholder process, it was then solid waste staff that lead it, and look, a lot
 476 of the stakeholders hated this stuff, and they put up a big stink, and ultimately that's pretty much what
 477 killed it. And my concern is that you have very powerful interests in the Special Events universe who
 478 have a lot of resources at their disposal, and they use them, and they especially use them with people
 479 who have influence on Council, and I just think it's important that we get a good product out there. At
 480 the same time, look, I'm totally sympathetic. Let's get this thing created and move forward. And so what
 481 I'm going to recommend, I think, is that we approve it, but that we approve it with the caveat, or the
 482 recommendation that we then add an additional process of the rules going through the Boards and
 483 Commissions, and then going through Council. And that might be a fly in the ointment but I think it's
 484 doable. Let me just respectfully disagree.

- 485 **Brent Perdue:** I've got a couple of motions if we're ready for that.
- 486 **Rick Cofer:** Any other questions for Mr. Derr, or staff? Thank you, Mr. Derr. We really do appreciate your
487 time. All right. Commissioner Perdue.
- 488 **Brent Perdue:** I'd like to move for approval of the draft Special Events Ordinance.
- 489 **Daniella Ochoa-Gonzalez:** Second.
- 490 **Rick Cofer:** And... are there any...
- 491 **Brent Perdue:** - with a series of friendly amendments.
- 492 **Rick Cofer:** Yes, yes. And I think, Vera, can, Brent can amend his own motion, right?
- 493 **Vera:** I'm not sure about that.
- 494 **Brent Perdue:** Make it all one motion?
- 495 **Rick Cofer:** Yeah, just make it all one motion. We're going to undo the clock, and we're starting over.
496 That's not the official term.
- 497 **Brent Perdue:** All right, I'll move to approve the Draft Special Events Ordinance with two caveats. One,
498 that Council move ARR components of this ordinance under that ARR stakeholder rules process; and
499 then two, there is initial Council approval of the rules and a Boards and Commissions review, rules
500 review process.
- 501 **Daniella Ochoa-Gonzalez:** And I second.
- 502 **Rick Cofer:** All right, so we have a motion by Commissioner Perdue and a second by Commissioner
503 Ochoa-Gonzalez to approve the ordinance relating to Special Events with the two recommendations
504 that the elements affecting waste diversion/Austin Resource Recovery be handled through the Austin
505 Resource Recovery rules making process and two, that the initial rules also be run through the Boards
506 and Commissions process, and City Council?
- 507 **Brent Perdue:** Right.
- 508 **Rick Cofer:** Is that right? Okay. So you may to go back on the tape on that one. Discussion on the
509 motion? All right, hearing none, all those in favor please say aye.
- 510 **Commissioners:** Aye.
- 511 **Rick Cofer:** Any opposed? Okay. Commissioner Kazi. Anyone abstaining? All right, so the motion is
512 approved on a vote of 5 to 1, with commissioners Cofer, Gattuso, Ochoa-Gonzalez, Paine and Perdue
513 voting aye; commissioner Kazi voting nay, and that represents all the members on the dais. Mr. Derr,
514 thank you; and staff.

Zero Waste Advisory Committee Meeting August 14, 2013: Item 3D

Commissioner Rick Coffey: So with that, Item 3d. Mr. Hobbs did sign up on Item 3D, would you like to speak now or later? So this is the item on data collection and reporting, outsourcing.

Elizabeth Corey: Good evening Commissioners, Elizabeth Corey, Austin Resource Recovery.

The purpose of item 3D is to obtain a favorable ZWAC recommendation for the Austin City Council to approve execution of a 24 month service agreement with Emerge Knowledge Design. Emerge Knowledge will design and develop and maintain a secure web based data collection and reporting system. The 24 month contract with Emerge Knowledge will be for an amount not to exceed \$200,000.00 with four 12 month extension options for an estimated amount not to exceed \$100,000.00 per extension option. The total contract amount will not exceed \$600,000.00 over the potential contract period of six years.

This is a new contract. The Universal Recycling Ordinance requires private waste service providers, which are sometimes referred to as private haulers, and recyclable material generators, which are certain non-residential properties and multi-family properties of a designated size, to provide recycling plan data to the City regarding waste streams, compliance reporting, and other information. The data management system will help City staff enforce the URO and measure compliance.

This web based data management system will be used to develop reports for analysis by city staff to help ensure compliance with the URO. It will help us develop innovative programs to assist the business community; to promote economic development and provide technical assistance to local companies. It will enable the City to analyze and communicate its progress toward its zero waste goal of reducing the amount of material sent to landfills by 90 percent by the year 2040. It will also allow flexibility to develop integrated systems for online data collection required by future ordinances and zero waste initiatives. Are there any questions? Yes?

Commissioner Daniella Ochoa: I am a very big fan of this, as a stakeholder on the process of the zero waste master plan, I was really involved in suggesting some sort of data that will allow private parties to feel comfortable reporting. And I just want to know if this provides a feature, because I know this has to go hand in hand with the laws that would require the private companies to report that data, but maybe we won't get there until like 2020, or maybe earlier, but in the meantime I think it would be very, very useful that all those private entities that are not willing to open their records yet because of whatever tax and issues they have, to have the opportunity to collect the data so that when they are trustful and confident to share it you will not have lost all that data. And so my question is, do these system take that into account providing some sort of tool to private haulers and other parties to have that data collected whether they are going to share it with you immediately or not? Thank you.

Elizabeth Corey: Aiden Cohen, Austin Resource Recovery

Aiden Cohen: Hello Commissioners, Aiden Cohen, Austin Resource Recovery. Yes, we are looking to protect that data by all legal and reasonable means and make sure that we have historical trend data over a long period.

We're committed to the business community to make sure that those recycling plan forms those online forms are required by ordinance to fill out that those are as simple and as elegant and useful as possible and so that we have good data as we look back to report to this commission and to the City Council about our progress toward zero waste.

Commissioner Daniela Ochoa: And my last comment is as we go into making everyone to apply to these food vendors and everyone just applying to the Hispanic site if that reporting will also be in Spanish for, you know, later on, that would be great.

Aiden Cohen: Yeah, absolutely, we're looking to make the recycling plan form as useful as possible and right now at the bottom of the recycling plan forms we have an email and a Spanish direction that you can call and get some bilingual help to fill out those forms as well. Almost all of our education outreach is in both English and Spanish.

Commissioner Faye Kazi: Got a couple of comments. So help me walk through this. You create a web tool within two years for two hundred thousand; is that when it goes online, is after two years?

Aiden Cohen: Well, sir, we have 18 months that is the outside the maximum time before we get something that is acceptable to the city. This was competitively solicited so we had to put in something that allowed somebody to either create it from scratch or use some exiting systems and some existing capabilities. The vendor that has been evaluated as the best evaluated vendor, who is being recommended tonight, currently does provide similar services to both state and federal governments to report in the waste management, we expect that the project will get up and running much sooner than the 18 months.

Commissioner Faye Kazi: Ok, and then the initial tool I guess when it is acceptable. What does it cost for that? Is that two hundred thousand?

Aiden Cohen: The bid came in at about \$54,000. We are asking for additional spending allowance from Council so that we can prepare in future years, you know, the unknown needs in terms of IT and in terms of making a system that meets all our needs over the long term.

Commissioner Faye Kazi: And the other vendor was, I know, they scored like ten times less than the other ones. What was the other cost?

(Mumbles)

Phil Tindall: Phil Tindall, Austin Resource Recovery, The other bidder came in with a cost proposal that was in excess of 1.4 million dollars so there was quite a bit of variance between the two price proposals.

83
 84 **Commissioner Fayed Kazi:** So it was fifty-four thousand compared to one point something million.
 85 Okay, you guys made the right choice.
 86

87 **Aiden Cohen:** One clarification, sorry. It was about a fifty-four thousand dollars per year per contract
 88 year versus for a total amount for that bid amount of 125, for years one or two, it's 125,000 dollars
 89 from Emerge Knowledge, the recommended vendor, and for those same two years from the next best
 90 evaluated vendor was 1.4 million.
 91

92 **Commissioner Rick Cofer:** Fair to say, just looking at your matrix, in addition to the cost factor did it
 93 appear to you that Emerge was the more appropriate, more appropriately, skilled service provider?
 94

95 **Aiden Cohen:** Absolutely. They do provide similar, they have experience, in waste management and the
 96 materials management industries and are providing a similar database with lots of capabilities, some
 97 that we don't know how we would use at this moment, but we expect they will be easy to work with
 98 and will have a product that will be useful very quickly.
 99

100 **Commissioner Rick Cofer:** And I might add, I think nine times out of ten or more, the preference is
 101 certainly to go with a local company, but given that one of the original rationales for entering into a
 102 contract like this were privacy and security concerns of the companies providing the data, I think you
 103 make a pretty strong argument that there is actually value in having a foreign , or you know Canadian,
 104 as foreign as Canada is, Canadian corporation doing this, I mean, that does actually provide the private
 105 sector companies quite a bit of legal security and additional privacy safeguards. For what's it worth.
 106

107 **Commissioner Jeff Paine:** Is this package going to be handed over and then it's ARR's or the city's to
 108 just use however they want or is there going to be kind of we're going to have to continue to pay
 109 Emerge every year for the license of the software in perpetuity or how does that element work?
 110

111 **Aiden Cohen:** This is a complete solution so the data will not remain on city's servers as we access the
 112 system on any kind of web enabled device. There will be no access thru City systems and so it is a
 113 complete system there will be ongoing cost as we add additional property types and add additional
 114 complexity as more properties become affected by the universal recycling ordinance and as we get more
 115 sophisticated in our measurements we will want to continue to customize that and so that will be part
 116 of that.

117 **Commissioner Jeff Paine** Sure, so is that way even though they are quoting \$125,000.00 for the first
 118 two years, that's why you are asking for an extra \$475,000.00 then? That seems like quite a bit of an
 119 increase for just some, to tack on a few additions here and there.

120 **Aiden Cohen:** So the total request to counsel is for \$600,000.00 is over six years and so for years one
 121 and two, we are basically asking for spending authority of up to \$100,000.00 per year from counsel, and
 122 that would include all of the customizations that might be needed in the future. It's a lot of work, as you

123 know, to competitively solicit these projects. So we wanted to ensure that we have sufficient spending
124 authority from council to address our future needs.

125 **Commissioner Jeff Paine:** So it could end up being a lot less you just don't want to get in a situation
126 where, we really need that element and we don't have any money?

127 **Aiden Cohen:** We have a budget for about \$75,000.00 a year and we expect to be under that per year.

128 **Commissioner Faye Kazi:** The other local vendor, did they have no experience with waste
129 management and so on?

130
131 **Aiden Cohen:** That is correct.

132 **Commissioner Faye Kazi:** And was there any effort to invite other bidders? I mean did you try to look
133 for others that provide that kind service, there were three bidders one was disqualified and one was...

134 **Aiden Cohen:** If it is okay with you I'll let the purchasing folks talk about their process.

135 **Elizabeth Corey:** Go ahead and finish your questions

136 **Commissioner Faye Kazi:** Oh that was it, go ahead

137 **Elizabeth Corey:** Ok, yes there were three vendors, that we received proposals from and one was
138 disqualified because their proposal was not complete they omitted several forms and that is a natural
139 process

140 **Commissioner Faye Kazi:** Sure I was more interested in how it was advertised, was it selectively
141 advertised?

142 **Elizabeth Corey:** Yes, we advertised in the Statesman's and The Austin Business Journal I believe and
143 two hundred and eighty seven notices were sent through our automated process via our vendor
144 connection registration. So in other words, everyone who had the same code that we assigned to this or
145 series of codes, anyone who registered that had those codes assigned to their company, they got a
146 match. They got a notice that this was available. I believe that, that number includes six firms that were
147 MWBE's and four that were WBE's so ten within that group and we did not receive any responses from
148 those ten firms.

149 **Commissioner Faye Kazi:** Thank you.

150 **Commissioner Rick Cofer:** Anything additional for staff? Alright thank you all so much. Alright we have
151 an item to approve the purchasing item for the URO reporting system. . . Oh right, I'm sorry. We have
152 citizen's communication from Mr. Hobbs. I apologize, Mr. Hobbs with Texas Disposal Systems

153 **Ryan Hobbs:** Good evening commissioners. I got a one pager I'd like to distribute if you don't mind.

154 **Commissioner Faye Kazi:** Just one page?

155 **Ryan Hobbs:** Just one.

156 **Commissioner Rick Cofer:** All that says is Canada sucks, what is this?

157 **Vera Labriola:** Can I get that for the record?

158 **Ryan Hobbs:** Our concern here is the authorization to execute this contract and it goes back to what
 159 Commissioner Ochoa Gonzalez was hitting on. This contract is for collection and reporting proprietary
 160 business information. This has been a central theme of our stakeholder input going back to 2008 when
 161 you were on the subcommittee to create the URO. We're very concerned that we don't know what is in
 162 this contract. We are asking that the commission simply award the contract and instruct staff to
 163 negotiate it and bring it back for commission approval that would allow a period of time for
 164 stakeholders such as TDS and other private waste haulers, other affected stakeholders, to review the
 165 contract and provide comments. We don't know what is in this contract. We have a right to be
 166 concerned to be concerned about what is in it. We also have a right to provide some comments on it.

167 During the stakeholder process, staff promised on several occasions, and Rick, you may recall, that
 168 stakeholders would be offered the opportunity to be involved in the contract drafting, and certainly, the
 169 review and the ability to provide comments on it. What's not included in your backup information is the
 170 actual scope of work, and I've pulled out a couple of excerpts from the scope of work. There are
 171 somewhat concerning to us, and we're concerned they may of perhaps found themselves, or found their
 172 way into the draft contract. One of them I'll read in verbatim. If the contractor fails to fulfill the
 173 contractual obligations of the contract, and is thereby in breach of the contract, this is out of the scope
 174 mind you, the contractor agrees to transfer all necessary information data, software programming
 175 codes, queries, tables, reports, and any other information created under the terms of this contract to a
 176 city designated, independent third party who the city will select.

177 We have a problem with that. We want to be involved in that. We are simply asking that you guys not
 178 approve execution of this contract, give us a chance to weigh in on it.

179 **Commissioner Rick Cofer:** Alright. Any questions for Mr. Hobbs? I kind of hear what the staff thinks, but
 180 I think that's a good point.

181 **Aiden Cohen:** Thank you, commissioners. Aiden Cohen, Austin Resource Recovery. We don't have a
 182 problem. We will work with our corporate purchasing office to bring the contract, in its finalized version
 183 back to the commission. That's not a problem. And, those specific areas are in order, are part of our
 184 discussion with our law department to fulfill the stakeholder needs and requests during our stakeholder
 185 process of the URO to protect their proprietary information.

186 **Commissioner Rick Cofer:** Alright, thank you sir. Any questions for staff or citizen input?

187 **Commissioner Brent Perdue:** I'd just like to echo. Section 3.2 is pretty concerning. I think we should
 188 definitely take a moment to consider that, have legal look it over. That could, the timing of that could
 189 really be problematic.

190 **Aiden Cohen, ARR:** So that the contract, we knew that some of these sections would be of concern, and
191 we have had our legal department review those. Those, that's language that has been approved by the
192 department. The intent of that statement is that if there is a public information request that we would
193 file for an exemption through the attorney general's office per the PIR process.

194 **Commissioner Rick Cofer:** Alright, thank you Mr. Cohen. Alright – so I think what we're looking for is for
195 a motion to approve the RCA with the amendment that we authorize award and negotiation and
196 request that the contract be returned to us for final approval. Is that correct?

197 **Commissioner Daniela Ochoa Gonzalez:** Motion.

198 **Commissioner Rick Cofer:** Alright, so, we have that motion made by Commissioner Ochoa Gonzalez.
199 Seconded by Commissioner Gattusso. Is there any discussion? Hearing none, all those in favor 'Aye'.
200 'Aye' (heard). Anyone opposed or abstaining? All commissioners present vote 'Aye' to authorize and
201 award and negotiate the contract but not for the final approval but for that to come back to ZWAC.

202 Alright, so I believe that concludes the new business portion of our evening. Now we'll move on to Item
203 4A, which is a staff briefing on the collection services division.

From: Daniela Ochoa Gonzalez <daniela@solorso.org<<mailto:daniela@solorso.org>>>

Date: April 29, 2014 at 10:57:46 AM CDT

To: <bgregory@texasdisposal.com<<mailto:bgregory@texasdisposal.com>>>, <rfraumann@texasdisposal.com<<mailto:rfraumann@texasdisposal.com>>>

Subject: Response to auditor's report

Good Morning Mr. Bob and Mr. Rick,

As I saw on the Statesman article today that you had been requested on feedback regarding this report, I want to share here my response to the allegations which I emailed yesterday to all the people listed in the report as recipients FYI.

Sincerely,

Daniela Ochoa Gonzalez.

April 28, 2014

CONCISE RESPONSE TO THE REPORT ON ALLEGATIONS INVOLVING A ZERO WASTE ADVISORY COMMISSIONER

As you may know, I am a member of the Zero Waste Advisory Commission and have been the subject of an investigation by the City Auditor's Integrity Unity (CAIU) for allegations that I have violated conflict of interest rules. I highlight I am a volunteer on the Commission, this is my first tenure in such role and have dedicated much volunteer time for the City without any expectation of gain and without any improper motive.

The CAIU investigation concluded that I violated conflicts of interest and recusal rules by participating in votes or decisions in which Texas Disposal System (TDS), a party in which I allegedly have a "substantial interest," made public comments. These findings are included in a "Report on Allegations Involving a Zero Waste Advisory Commissioner" (the "Report").

I did not learn of the outcome of the CAIU investigation until Andrew Moore, Council Member Martinez' Chief of Staff, called me on April 22, and informed me of the Report and asked for my resignation from ZWAC. I only learned that the report would be an agenda item on the Ethics Review Commission at its April 29 meeting by mere accident.

I highlight that the CAIU:

- never provided me an opportunity to defend against the accusations;
- conducted a flawed investigation and drafted an erroneous report; and
- publicly "tarred and feathered" me by widely and prematurely disseminating the report to the Mayor, City Council and many others in violation of the City's regulations regarding such matters.

All of this was done disregarding the procedure expressly established in the City Code Chapter 2-7, Article 3 for complaints of conflicts of interest.

Although this situation is truly unjust and unwarranted, I recognize that my permanence in the Zero Waste Advisory Commission will generate an unnecessary and negative distraction from the important and positive work that still needs to be performed by the Commission. For this reason, I hereby submit my resignation.

Finally, I respectfully request that: 1) the inaccurate, incomplete, improperly disseminated Report of the CAIU be publically withdrawn; 2) that my name be cleared of wrongdoing; and 3) that the City spend more time providing volunteers adequate ongoing support on the conflicts of interest rules rather than conducting one sided persecutions.

Specific shortcomings of the Report, include among other items:

1. The Report is inaccurate and misleading because it a) does not substantiate if or how I have a *substantial interest* in TDS, b) never considers if or how the matters in which I participated had a *likelihood of creating a direct economic consequence* on TDS, and c) fails to address the totality of the circumstances.

The Report prepared by the CAIU sought to “determine if Daniela Ochoa Gonzalez, Zero Waste Advisory Commissioner, violated the City Code regarding conflict of interest.” Its findings conclude that:

- my participation in discussions of agenda items of interest to TDS on April 10, 2013 constituted a conflict of interest;
- my participation in discussions and voting in February 13, 2013 and August 14, 2013 also constituted a conflict of interest; and
- these actions appear to constitute a violation of City Code § 2-7-63 [recusal] and §2-7-64 [disclosure of financial interest] of the City code.

The Report is erroneous because it fails to properly address the 2 factors that must be met for a conflict of interest to exist: *substantial interest* and *likelihood of direct economic effect*.

The City Code prohibition on conflict of interest and the obligation to disclose conflicts of interest are both triggered when a City official participates on a vote or decision on a matter *affecting* a party in which the official has a *substantial interest* (City Code § 2-7-63 and §2-7-64). Hence, a conflict of interest is triggered when 2 tests are satisfied: a) a matter *affects* a party, and b) the city official has a *substantial interest* in such affected party.

Per the City Code *affecting* or *affected* means “*reasonably likely* to be subject to a *direct economic effect or consequence*, either positive or negative, as a result of the vote or decision in question...Affected does not include those persons or entities who are subject to an indirect or secondary effect from official action.” (City Code §2-7-2)

Substantial interest is defined as “an interest in another person or an entity if: ...funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees...or 10 percent of the person’s gross income during that period, whichever is less...” (City Code §2-7-2)

The payment I received from TDS did not meet the *substantial interest* test at any time before the ZWAC meeting of April 10, 2013: I recognize that I have an agreement with TDS under which I work as an independent contractor to perform assessments and education of school waste management practices. (I did not hide this work; in fact, I verbally disclosed to City Council staff prior to my designation to the Commission and to City staff during my tenure at the Commission that I was performing this type of work for waste haulers.) The investigators concluded that I had a substantial interest without requesting or reviewing relevant financial information (such as my tax return or bank statements or the dates of the payments by TDS).

Pursuant to my work assessing school waste management practices, on February 28, 2013, I received a payment from TDS of \$3,050.11. This payment was received after the ZWAC meeting of February 13, 2013, so I clearly did not have a **substantial interest** in TDS at such meeting. Further, based on an initial review of my financial records, I also understand this payment did not meet the **substantial interest** threshold which would have required me to make disclosures or recuse myself from the ZWAC meeting of April 10, 2013.

In any case, even if it is somehow determined that I had a substantial interest in TDS prior to the April 10 ZWAC meeting, **my participation during such meeting was very limited, irrelevant, AND I abstained from voting.**

Subsequent to the April 10 meeting, my participation in the August 14, 2013 meeting did not relate to any matter that affects TDS: During the August 14, 2013 ZWAC meeting, I participated in two votes on items of the agenda which featured public comments from TDS representatives: item 3A (Special Events Ordinance) and 3D (URO Data Collection and Reporting Contract).

On Item 3A, the Commission and I voted in favor of approving the draft of the Special Events Ordinance presented to us by City Staff with two conditions aimed at strengthening the stakeholder input process. The Commission vote was 5-1.

On item 3D, I voted in favor of authorizing the negotiation of an Agreement with Emerge Knowledge Design Inc. to develop a data collection system pursuant to the Universal Recycling Ordinance but requested that the final draft of the contract be submitted to the Commission for final approval. The Commission vote was unanimous (6-0).

My participation and votes in such agenda items promoted stakeholder input and reasonable contractual control by the Commission, all in furtherance of principles that the Commission agrees on.

I never perceived, then or now, and I do not think a reasonable person could perceive-- how any of these matters could be **reasonably likely to be subject to a direct economic effect or consequence** of TDS or myself.

The CAIU report does not address this issue at all. In short, the CAIU Report reaches a finding of "guilt" without fully considering the two factors that are required to determine if a conflict of interest existed.

In addition, the Report fails to mention significant considerations:

- I completely collaborated with the investigation and acted in good faith. While the report ignores this fact, it does take the time to thank the City Clerk and the Austin Resource Recovery Staff;
- In several instances before and during my tenure on the Commission, I sought guidance from several members of the City staff (Austin Resource Recovery and others) on the

ethics rules. In these discussions I also disclosed that I was providing consulting services on waste management issues, including waste assessment and education services to Independent School Districts under a contract to waste haulers. Based on these discussions, I was led to believe that the educational nature of my work performed at schools pursuant to the TDS contract would not subject me to disclosure or recusal requirements;

- My contract work for TDS was completely unrelated to any matter brought before the commission. Additionally, I never discussed with any TDS person any matter related to the discussions of the Commission.
- There was no improper motive in my actions and there was no harm to the City or its constituents.

2. **The process conducted by the City Auditor's Integrity Unity (CAIU) did not follow the procedure expressly set forth in the City Code for the Ethics Review Commission. Instead, the CAIU conducted a flawed investigation, drafted an erroneous report and distributed it widely without ever giving me adequate opportunity to defend the allegations, all of which has caused me grave harm.**

City Code, § 2-1-24, expressly states that complaints alleging a violation of conflicts of interest and recusal rules are handled according to the process established in Chapter 2-7, Article 3 (Violations; Complaint and Hearing Procedures).

Per the City Code, the Ethics Review Commission has jurisdiction over chapter 2-7 (Ethics and Financial Disclosure) and Section 2-1-24 (*Conflict of Interest and Recusal*). The Ethics Review Commission is also tasked with hearing and ruling on complaints alleging violations of the provisions within the commission's jurisdiction. (City Code, § 2-7-26).

City Code Chapter 2-7, Article 3 expressly provides a process to formalize conflict of interest and recusal complaints. This procedure includes obligations to notify the respondent, to hold a preliminary and final hearing, and other provisions, all of which seek to balance the rights of all parties involved.

None of this required process was followed. Instead, the CAIU violated my due process rights by conducting an investigation based on an anonymous tip, never providing me an adequate opportunity to defend the accusation, and never notifying the Ethics Review Commission, the one body tasked with overseeing the process. Finally, the CAIU has caused great harm to my reputation by widely circulating its flawed Report to:

- the Mayor,
- City Council and Council Members' staff,
- the City Manager,
- the Assistant City Managers,
- the Ethics Review Commission,

- the City Clerk,
- the Director of Austin Resource Recovery; and
- the Director of Communications and Public Information.

Beyond any consideration of legality, such conduct by the CAIU was more than simply unjust and not commensurate to the alleged offense. I have been effectively “tarred and feathered” in the public perception without having been provided my legally entitled due process rights in this matter. Further, the CAIU’s action in disseminating the report in the manner they did has rendered worthless the process expressly required in the City Code, Chapter 2-7, Article 3.

There is no purpose for the Ethics Review Commission and the process for managing ethics and financial disclosure complaints established in the City Code if the CAIU can effectively determine guilt and widely publicized their unsubstantiated conclusions?

Based on the foregoing, I ask the following questions:

- Doesn’t the CAIU have a minimal responsibility ensure the accuracy of its reports prior to irreparably injuring a person’s reputation?
- Can the CAIU disregard the Ethics Review Commission and the process for managing complaints required in City Code Chapter 2-7, Article 3?
- Does not the CAIU have the power to deny the due process rights of the citizens of Austin?
- Is this the way the City treats its citizens who volunteer to participate in the governance process?

I trust you will respond to these answers in a just manner and grant the relief I seek.