

**Chronology and cost of City of Austin solid waste, recycling, organics and Zero Waste programs under the direction of Assistant City Manager Robert Goode:**

The following 10-year history details the experience of [Texas Disposal Systems](#) (TDS) working with City of Austin staff under the direction of Assistant City Manager Robert Goode. Mr. Goode has been responsible for all City operations, contracting, regulatory functions and policies related to solid waste, recycling and organics processing since his appointment by former City Manager Marc Ott in March 2008. As detailed below, TDS' experience throughout this time has been that Mr. Goode and his staff have consistently been driven by a 'control and capture' waste management agenda: a plan to control Austin's commercial waste services free marketplace to capture revenue for the City.

Within six months of arriving in Austin, Robert Goode explicitly sought a full City takeover of all commercial waste collection, proposing to require franchise agreements with all service providers that created a hidden City tax on all commercial customers and gave City staff control over service rates, material flow, and even operators' private assets. After stakeholders objected en masse and the City Council rejected staff's plan, Mr. Goode and staff changed approach but not agenda. In 2009 staff launched a still-ongoing effort to use the City waste contracting process to incrementally advance policies and agreements to expand City control over parts of the commercial waste marketplace and favor service providers who support staff's agenda. This included an outright attempt in 2011 to take over all recycling services in Austin – another effort rejected by the City Council.

Staff's plans culminated in 2016 with series of City solicitations including embedded policies whose proposed resulting contracts not only again advanced staff's commercial waste agenda but also sent City-controlled waste to a controversial waste facility long opposed by the City Council, effectively terminated the City's signature biosolids composting program, obscured the identity of subcontractors and location of waste facilities, and significantly increased the projected cost of services. Current members of the Zero Waste Advisory Commission (ZWAC) will confirm that these proposed contracts were also advanced by City staff with an alarming lack of process and transparency, including slipshod application of Austin's Anti-Lobbying Ordinance to the benefit of a staff-preferred service provider. Council responded once again by rejecting all proposed 2016 contracts and voting in early 2017 to create the Waste Management Policy Working Group.

In sum, even when to do so has flouted public process, transparency, environmental protection, City policy, specific Council direction to the contrary, or even the law, Mr. Goode and staff under his direction have nonetheless persisted in a years-long pursuit of City control of Austin's commercial waste services marketplace and revenue, without any discernable regard for the potential impact on private service providers, possible cost to Austin residents and businesses, or likely effect on the success of the City's Zero Waste program, which itself has often been used as a false rationale for staff's plan to control

commercial waste. This agenda, taken alongside simple episodes of mismanagement, has in fact been extremely costly to ratepayers. Based only on the events in this history, TDS estimates that waste operations, contracts and programs managed by City staff under Robert Goode's direction will unnecessarily cost Austinites over \$37 million through 2027.

The following is offered to provide context for the ongoing Waste Management Policy Working Group process to identify and implement policy and procedural solutions to restart the City's stalled waste contracting process. TDS believes this chronology demonstrates the need for Council-led reform across several fronts but especially to ensure that Austin's Anti-Lobbying Ordinance regulates lobbying without also violating free speech rights or restricting policymakers' access to information, and cannot continue to be misused by City staff to silence criticism or advantage preferred service providers. TDS also believes the episodes below should provide a basis for City management to consider bringing new leadership to Austin's critical solid waste, recycling and composting efforts.

### **March 2008**

Robert Goode was [appointed](#) as Austin Assistant City Manager overseeing Solid Waste Services (later renamed Austin Resource Recovery) and other City departments. Previously, Mr. Goode served as Director of Transportation and Public Works for the City of Fort Worth. While working in Fort Worth, Mr. Goode reported to then-Assistant City Manager Marc Ott, who served as Austin City Manager from February 2008 to October 2016.

### **June 2008**

Austin City staff under the direction of Assistant City Manager Robert Goode proposed and recommended to the Austin City Council award of a no-bid contract with [Vista Fibers/Greenstar](#) for transportation, processing and marketing of City-collected residential single-stream recyclables. The contract was presented to the City Council as a no-cost-to-the-City, revenue-generating contract with projected City net revenue (profit) of approximately \$3,000,000 during the initial two-year term, and an additional \$1,500,000 during the two proposed six-month extension options, for a total estimated City profit of \$4,500,000. Instead, the staff-supported Greenstar contract actually [cost](#) the City a net loss of \$2,834,265 for the initial 2-year contract term. While Greenstar charged Austin to transport, process and market its single-stream recyclables, the cities of San Antonio and Dallas received payments from Greenstar to provide recycling processing and commodity sales services for their residential single-stream recyclables. City staff also represented to the City Council that Greenstar objected to the [recommendation](#) of the Solid Waste Advisory Commission that the transportation component of the contract be solicited under a separate bidding process, and that Greenstar [would not guarantee](#) receipt of the City's recyclables if the transportation component was removed from the contract. This representation that was later determined through separate conversations between Texas Disposal Systems (TDS) and Greenstar personnel to be false; staff apparently determined

that a separate bidding process would have allowed TDS to offer its existing transportation services to the City at a lower price than what Greenstar charged for the same services.

ACTUAL COST: \$2,834,265.00

### **July 2008**

Texas Disposal Systems (TDS) was forced to demand payment from the City of Austin for approximately \$350,000 in recycling revenues that were improperly [withheld](#) from payment while TDS relied upon and used the City's dual-stream recycling facility on Todd Lane. TDS discovered that City staff under the direction of Assistant City Manager Robert Goode arbitrarily changed, without notice or justification, the overall composition of TDS curbside recyclables collected in the Austin area to include nearly 35% green glass, resulting in an artificial decrease in the calculated value of TDS' curbside recyclables processed by the City.

### **August 2008**

Austin City staff under the direction of Assistant City Manager Robert Goode permanently "shelved" approximately \$1,000,000 in [planning and design services](#) included in a \$3,500,000 contract with R.W. Beck, Inc. for engineering, permitting and design services for a City-owned Materials Recovery Facility (MRF). Staff's plans to build a City-owned MRF were scrapped after the projected project cost [skyrocketed](#) to a reported \$72,000,000.

ESTIMATED COST: \$1,000,000.00

### **August 2008**

Austin City staff recommended execution of a 20-year, [\\$2,300,000,000 no-bid agreement](#) to purchase 100 megawatts of power generated from wood waste-to-energy biomass (the Nacogdoches biomass contract); the City Council approved execution of the contract at its regular meeting on 8/28/08. Since then, Council members and community stakeholders have raised [major concerns about the City's enormous financial obligations under the "boondoggle" contract](#), reported to cost Austin Energy ratepayers more than \$50,000,000 per year. In February 2016, the City Council approved a \$325,000 contract with [Jackson Walker LLP](#) to review the biomass deal to identify means for reducing the City's financial exposure; as of this writing, staff's original recommended contract remains in place. In May 2018, [the Texas Monitor dubbed the Nacogdoches biomass plant a "money pit"](#) while reporting that the estimated annual cost to Austin ratepayers had reached \$54,000,000. According to Texas Monitor reporter Mark Lisher: "Austin city officials and energy officials have deflected customers' requests for details of the costs ... the project has been cloaked in secrecy."

### **September 2008**

Austin City staff under the direction of Assistant City Manager Robert Goode proposed to declare [commercial collection](#) of solid waste and recyclables a public utility under Article XI of the Austin City Charter and require all private haulers to sign non-exclusive franchise

agreements including a minimum 4% hidden tax on all Austin businesses, apartment complexes, institutions and non-profit organizations for commercial waste, recyclables and compostable materials collection services. The proposed franchise agreements would have also granted broad authority to City staff to set service charges, regulate the number of collection vehicles used by haulers, and direct collected waste materials to City-owned and operated or contractually-controlled facilities. Texas Disposal Systems (TDS) responded to staff's proposed franchise system with a community [petition campaign](#) that over the course of just three weeks generated nearly 3,000 individual business signatures, over 30 individual proclamations from various large businesses and industry trade organizations, and an opposing resolution adopted by 17 local solid waste and recyclables haulers. Ultimately the TDS [petition campaign](#) and pleas from local businesses and haulers convinced the Austin City Council to direct Mr. Goode's staff to withdraw the controversial proposal. See [www.texasdisposal.com/austinwastehaulerfranchise](http://www.texasdisposal.com/austinwastehaulerfranchise) for more.

### **October 2008**

Austin City staff under the direction of Assistant City Manager Robert Goode proposed and recommended execution of a \$198,000 [contract for debris removal](#) services from 30 acres of City-owned property located on FM973 near the airport. The property was used by a City contractor to sort and recycle construction and demolition waste generated by contractors participating in Austin Energy's Green Builder program, and to provide reports to the builders and the City documenting the weight of each commodity sorted and confirming that the commodities were recycled. City staff then allowed the unsorted debris to be disposed of at the Waste Management, Inc. Austin Community Landfill instead of being recycled as originally intended. It is believed that the City paid tens of thousands of dollars in additional hauling and disposal fees to dispose of the material. It is unknown how many Austin Energy Green Builder projects were affected by staff's decision to dispose of construction waste materials that were reported to Austin Energy and in LEED certification project applications to have been recycled with specific pounds of different commodities diverted from landfill disposal.

ESTIMATED COST: \$198,000.00

### **October 2008**

[Without the knowledge or consent of the Austin City Council](#), Austin City staff under the direction of Assistant City Manager Robert Goode negotiated and executed a [Rule 11 Agreement](#) with [restrictive covenants](#) to drop the unanimous City Council opposition to the landfill capacity expansion in the contested case hearing involving the proposed expansion of BFI's (later renamed Allied Waste, then Republic Services) controversial Sunset Farms Landfill in northeast Travis County, reportedly in exchange for permanent closure of the landfill to the receipt of waste for disposal and the transfer of waste on or before 11/1/15 – a direct contradiction of a Council resolution and policy to oppose the expansion of the Sunset Farms Landfill. In response, Council passed [Resolution No. 20081211-071](#) directing the City Manager to enter into a \$25,000 contract with an outside law firm to

assess the City's options for dealing with the unauthorized Rule 11 Agreement. Eight years later, in December 2016, when City staff under the direction of Mr. Goode proposed to award the Citywide Dumpster Collection Services and special events services contract to Republic Services (BFI) and to direct City-generated waste to the beleaguered adjacent Waste Management, Inc. Austin Community Landfill – another contradiction of Council policy – Texas Disposal Systems [demonstrated](#) that the Sunset Farms Landfill restrictive covenants negotiated and executed by Goode and City legal staff in 2008 were effectively unenforceable, having been signed on behalf of entities that did not own the land comprising the landfill at the time. As a result, the entities in control of the Sunset Farms Landfill could at any time move forward with a permit modification or amendment to their TCEQ Permit No. 1447A to seek to eliminate the 11/1/15 closing date requirement and re-open the landfill for waste disposal, processing and/or transfer station activities.  
ESTIMATED COST: \$25,000

### **November 2009**

After privately seeking and securing a personal commitment from Texas Disposal Systems CEO and principal owner Bob Gregory to participate in a competitive solicitation process to build and operate a Materials Recovery Facility (MRF) and offer other recycling options for the City to consider, Austin Assistant City Manager Robert Goode and City staff on 11/16/09 issued [RFP RDR0005](#), subject to the City's Anti-Lobbying Ordinance restrictions, for recycling services and provision of a MRF under a new long-term contract.

### **December 2009 – March 2010**

Soon after issuing a major City of Austin solicitation for recycling services and provision of a Materials Recovery Facility (MRF), City staff under the direction of Assistant City Manager Robert Goode unexpectedly recommended to the City Council execution of Option 3 of a restated and amended contract with Greenstar for transportation, processing and marketing of single-stream recyclable materials for a 36-month initial term (10/1/08 – 9/30/11) with four six-month extension options (10/1/11 – 9/30/13). Alarming, approval of this item would not only have negated the justification for the City's RFP for recycling services and MRF operations (because the City's single-stream recyclables could not be dedicated to fund the cost of both contracts) but would also have resulted in a massive staff-projected loss to the City of \$12,393,589 over the full contract term. Mr. Goode and City staff nevertheless presented the proposal to the Solid Waste Advisory Commission twice ([12/9/09](#) and [2/10/10](#)) and the City Council four times ([12/17/09](#), [2/11/10](#), [2/25/10](#), [3/25/10](#)). The City Council ultimately rejected staff's recommendation and denied the Greenstar amendment.

### **December 2009 – January 2010**

After Texas Disposal Systems (TDS) CEO and principal owner Bob Gregory sent an email to the Austin Solid Waste Advisory Commission (SWAC) on 12/8/09 urging the commission to reject City staff's proposed amended and restated contract with Greenstar and

explaining how approval of the item would have negated the need for the City's [RFP No. RDR0005](#) for recycling services and provision of a Materials Recovery Facility (MRF), City staff under the direction of Assistant City Manager Robert Goode sent TDS an official [letter](#) stating that Mr. Gregory's email to SWAC was a prohibited representation under the City's Anti-Lobbying Ordinance (ALO) and therefore TDS was disqualified from competing for the recycling services/MRF contract. The City also disqualified Greenstar for a communication it sent to a City attorney in response to TDS' email to SWAC. Especially as it had then become known that TDS had already purchased sorting equipment and was moving ahead with construction of a new 107,000 square-foot MRF on TDS property in southeast Travis County, TDS believes that Mr. Goode and City staff set out to eliminate BOTH of the providers most capable of servicing the City's contract in order to better position City staff's own later-revealed plan – to build and operate a City-owned MRF to control Austin's recycling marketplace. In response to Robert Goode's disqualification letter, TDS protested that Mr. Goode and City staff had erred – as TDS had not yet become a respondent to RFP No. RDR0005 as defined by the ALO, TDS could not be disqualified – but staff rejected TDS' formal appeal, ultimately forcing TDS to file a lawsuit to have the disqualification overturned and removed from its record. In March 2014 – more than four years after the ALO disqualification – U.S. District Court Judge Lee Yeakel [ruled](#) that the City acted “improperly” when it determined in 2010 that TDS violated the ALO, and entered a judgment that the violation be removed from TDS' record. It is unknown what City staff spent in outside legal fees defending the improper disqualification of TDS by City staff acting under the direction of Robert Goode. See [www.TexasDisposal.com/ALOREFORM](http://www.TexasDisposal.com/ALOREFORM) for more details.

### January 2010

[Bob Gedert](#) began his service as director of Solid Waste Services (SWS), under the direction of Assistant City Manager Robert Goode. In FY10-11, when Mr. Gedert assumed his role as SWS director, the department's enterprise fund balance was \$24,256,000; when Mr. Gedert retired seven years later, the FY16-17 approved [enterprise fund balance](#) was \$4,781,276.

### February 2010

The City of Austin received eight competing proposals in response to its [RFP No. RDR0005](#) for recycling services and provision of a Materials Recovery Facility (MRF), including a [competing proposal](#) unexpectedly submitted by the City's Public Works Department in partnership with Solid Waste Services – a plan to build and operate a \$45,700,000 MRF located at the City's inactive FM812 landfill in southeast Travis County. City staff's RFP response included an [Executive Summary](#) which plainly revealed staff's longtime agenda to seize control of the local commercial waste services marketplace, stating: **“The development of a MRF in the Austin area will allow the City to take control over the flow of recyclables and will provide a ‘regional solution’ for these materials. By operating its own MRF, the City can eliminate the ‘middle man’ that otherwise would be sharing profits from the sale of commodities when processing is contracted out.”**

Not only did City staff evaluate and score its own RFP response, staff favorably ranked its proposal [third](#) behind those of Republic Services and Waste Management, Inc., knowing that the Council would have legitimate concerns about contracting with either private company on a long-term basis given the problematic facility operating records in Austin of both. Howard Lazarus, Austin's then Director of Public Works, later testified under oath in the above-referenced Texas Disposal Systems (TDS) v. City of Austin Anti-Lobbying Ordinance (ALO) disqualification litigation that his department spent \$100,000 preparing its response to the City's RFP for recycling services. Further, demonstrating the level of absurdity accommodated by the ALO's vague provisions and capitalized on by City staff, Mr. Lazarus also signed the staff RFP's required ALO compliance [certification](#), thus affirming that City staff had not communicated with other City staff or City officials concerning the RFP solicitation or the staff response since 11/16/09, and would not communicate with other City staff or City officials about the staff RFP response until the completion of the procurement process – a patent impossibility. The Executive Summary in City staff's RFP response also revealed the staff's transition plan: "Contingent upon the approval to proceed with the building of a city-owned and operated Single-Stream MRF, Solid Waste Services will extend the current processing contract and continue transferring single-stream materials to the Greenstar Facility in San Antonio until such time as the new Single-Stream MRF would be operational." Clearly, staff's motives to extend the Greenstar contract in December 2009 and disqualify TDS from the RFP process were intended to pave the way for a City-owned and operated MRF and discourage TDS from building and operating a competing MRF. It became clear to TDS at this point that the City staff's newly-conceived Zero Waste program was not going to be about achieving maximum diversion of solid waste from landfill disposal; rather, it would provide a smokescreen for City staff to capture control over a \$200,000,000+ per year commercial, multi-family and institutional waste stream of trash, food waste, yard waste, construction and demolition waste, and recyclables – and once controlled, to systematically raise the mandated service rates to create a new, unregulated public utility.

ESTIMATED COST: \$100,000.00

## **February 2010**

In lieu of responding to the City of Austin's [RFP No. RDR0005](#) for recycling services and provision of a Materials Recovery Facility (MRF), which City staff had earlier disqualified Texas Disposal Systems (TDS) from, TDS submitted to the City Council and Solid Waste Advisory Committee an unsolicited [proposed contract amendment](#) to its 30-year Waste Disposal and Yard Trimmings Processing contract with the City of Austin, which allowed such a contract amendment. TDS' proposed contract amendment included offers for:

- Construction and operation of a single stream MRF to receive, process and market the City's recyclables starting on 10/1/10 at no charge;
- Brush grinding and composting services for yard waste, biosolids and food waste materials;
- 20-year contract extension for landfill disposal services;

- Siting, permitting, construction and operation of a north Austin solid waste and recyclables transfer station for joint use by the City and TDS to significantly reduce transportation cost and impact; and
- Shared facilities agreement for office space, tire maintenance, vehicle washing, cart storage and maintenance, vehicle maintenance shop, and diesel and alternative fuel stations.

City staff under the direction of Assistant City Manager Robert Goode rejected TDS' proposed contract amendment and disqualified TDS from responding to the City's recycling services RFP for a second time, even though TDS still had not become a respondent to the solicitation subject to disqualification. To date City staff has not pursued any of TDS' unsolicited proposals, which would have saved the City and its ratepayers many millions of dollars as compared to the contracts subsequently pursued under Mr. Goode.

### **February 2010**

In response to the pending March 2010 retirement of Austin Energy (AE) General Manager Roger Duncan, Austin City Manager Marc Ott [named](#) Assistant City Manager Robert Goode as the interim AE General Manager effective 2/26/10. Simultaneously, Mr. Ott also appointed Public Works Director Howard Lazarus to fill the role as Assistant City Manager, effective 2/26/10. Mr. Ott later hired Larry Weis to take over as AE's permanent General Manager effective 9/27/10. Mr. Lazarus, who signed the Anti-Lobbying Ordinance certification associated with [RFP No. RDR0005](#) noted above, oversaw both the Solid Waste Services department and the Public Works department while City staff's RFP response moved through the procurement process.

### **February 2010**

Austin City staff under the direction of Assistant City Manager Robert Goode proposed and recommended to the City Council a \$1,209,014 professional services agreement with [HDR Engineering, Inc.](#) (HDR) to provide planning services for the Solid Waste Services (SWS) 30-year Master Plan. As HDR began to finalize its draft of the Master Plan and the estimated costs for the City's new Zero Waste programs, it became known that Mr. Goode was not comfortable with HDR's recommendations, and ultimately SWS department director Bob Gedert took over the drafting process himself. The resulting Master Plan was published in December 2011. To the knowledge of Texas Disposal Systems, the original HDR Master Plan draft has never been made public nor has the City produced it in response to open records requests.

ESTIMATED COST: \$1,209,014.00

### **June 2010**

After learning that Austin City staff under the direction of Assistant City Manager Robert Goode and Public Works Director Howard Lazarus had secretly [submitted](#) and favorably [scored](#) their own response to [RFP No. RDR0005](#) to build and operate a \$45.7 million City-

owned Materials Recovery Facility – including Mr. Lazarus signing staff’s own [Anti-Lobby Ordinance compliance certification](#) committing, impossibly, that City staff would not speak to other City staff or to Council about their RFP response – the City Council voted to reject all RFP proposals and cancelled the solicitation. The Council subsequently passed [Resolution No. 20100624-081](#) directing the City Manager to negotiate with both Texas Disposal Systems (TDS) and Balcones Resources (BR) for a long-term agreement for recyclables processing services; and with TDS, BR and Greenstar for a short-term agreement for recyclables processing services. TDS was awarded the short term, two-year contract, and negotiations continued for the long-term, 20-year contract. The \$17 million TDS Materials Recovery Facility opened to serve the City and community on 10/1/10. During the first six months of the short-term contract with TDS, the [City received approximately \\$360,000](#) in net revenues (profit) for its single-stream recyclables.

### **March – April 2011**

Following months of contract negotiations with Texas Disposal Systems (TDS) and Balcones Resources (BR) for the long term Materials Recovery Facility (MRF) contract, Austin City staff under the direction of Austin Assistant City Manager Robert Goode and Public Works Director Howard Lazarus recommended that the City direct 100% of its residential single-stream recyclables to BR, despite the fact that TDS submitted the most favorable pricing offer for 100% of the City’s volume, and even for [lower percentages](#) of the City’s volume of curbside collected recyclables. The staff’s recommendation was based on several factors, including: BR’s wholesale agreement to several controversial contract terms that staff knew TDS would strongly object to; staff’s reliance on absurdly unrealistic projections of future commodity prices to simulate the financial performance of BR’s pricing offer; and the use of a bogus transportation study based on an irregular costing methodology to justify the City’s use of the BR facility. TDS believes City staff deliberately orchestrated these factors in order to arrange their predetermined recommendation of BR, which to TDS’ knowledge at the time did not have a single stream MRF or experience with processing or marketing residential single-stream recyclables. City staff under the direction of Mr. Goode plainly revealed their willingness to favor other service providers over TDS even when the net costs to the City and ratepayers are higher. The City Council ultimately decided to split the City’s volume 40/60 between TDS and BR, with both companies receiving 20-year contracts with guaranteed minimum volumes of 2,000 tons per month for the first eight years. Once again, TDS offered the City the most favorable pricing for 100% of the City’s 20-year volume, and estimates that for the City to have accepted TDS’ offer would have resulted in cost savings to the City and ratepayers of \$28,760,405.00 through 2027.

ESTIMATED COST: \$28,760,405.00

### **September – October 2011**

Austin City staff under the direction of Austin Assistant City Manager Robert Goode ignored protections granted to Texas Disposal Systems (TDS) and its customers under [Texas Local Government Code section 43.056\(n\)](#) by [misinforming](#) approximately 1,600 TDS customers located in the Springwoods Municipal Utility District that they would be required to begin using and paying for services provided by Austin Resource Recovery (previously Solid Waste Services) on 10/1/11, pursuant to the City’s recent annexation of the area, even

though [state law](#) in fact allowed the customers to keep their service with TDS for two more years. Ultimately City staff's misinformation campaign resulted in hundreds of customers unnecessarily cancelling their services with TDS.

### **June 2012**

Austin City staff under the direction of Austin Assistant City Manager Robert Goode proposed and recommended to the City Council revisions to City Code Chapter 15-6 following over a year of Zero Waste Advisory Committee (ZWAC, previously the Solid Waste Advisory Committee) stakeholder meetings regarding the Hauler's Licensing Ordinance. Of [greatest concern](#) was staff's proposal to remove the right for haulers to appeal a denial or revocation of a license to the City Council. Ignoring pleas from local haulers, Mr. Goode and City staff insisted on limiting appeals to either the department director or the City Manager. Fortunately, City Council not only sided with the haulers and maintained their long-standing appeal rights to City Council, but also recognized the conflict inherent in City staff's dual role as both regulator and competitor in the waste services marketplace and simultaneously voted to require that all future staff-proposed revisions to the Administrative Rules for Chapter 15-6 be presented to ZWAC for consideration and recommendation and to City Council for final approval prior to implementation.

### **August - November 2012**

Austin City staff under the direction of Austin Assistant City Manager Goode attempted to [conceal](#) the intent of a \$1,200,000 proposed purchase of multi-purpose commercial rolloff trucks, rolloff pup trailers and steel rolloff dumpsters as replacement equipment for non-rolloff trucks owned and operated by Austin Resource Recovery (ARR). The City Council and the Zero Waste Advisory Committee reluctantly approved the equipment purchase, but did so contingent upon the equipment never being used for serving commercial customer purposes or to provide services to property types not served by ARR. Texas Disposal Systems believes that City staff under the direction of Mr. Goode planned to use the versatile rolloff waste handling equipment to compete with licensed private haulers to service commercial accounts at much higher rates charged to Austin businesses, institutions and multi-family units had ZWAC and Council not imposed the restriction.

### **November 2012 - April 2013**

Austin City staff deemed Texas Disposal Systems' (TDS) bid for collection, management, recycling and disposal of Austin Energy's (AE) industrial Class 2 non-hazardous and special waste materials as non-responsive due to a correctable administrative error caused by TDS inadvertently leaving out two signature pages on its submitted bid response. After refusing to consider TDS' "non-responsive" bid or allow TDS to correct the administrative oversight, the Purchasing Office then rejected TDS' offer to extend the current contract between TDS and AE for an additional four years at the then-existing rates charged by TDS, an option clearly allowed for in the supplemental purchasing provisions of the existing contract. Instead, City staff chose to recommend City Council approval of the sole other bidder, Republic Services (RS), at rates 26% higher than TDS' and with RS providing no recycling or repurposing of the waste materials generated by AE, including a small portion of the AE waste which the solicitation actually required to be recycled. Despite the [determination](#) by

Austin Resource Recovery department director Bob Gedert and the Office of Sustainability's that none of AE's materials were suitable for recycling, composting or beneficial reuse, in fact [TDS recycled and repurposed nearly 50%](#) of AE's waste materials during the previous 4-year period. Ultimately, Council approved an abbreviated 2-year contract and directed staff to seek future Council approval of all contract extension options, primarily due to RS's inability to fulfill the landfill disposal capacity requirement for the full contract period. TDS believes it was also the intent of the Council to prevent RS and staff from using the contract requirement as a basis to seek Texas Commission on Environmental Quality approval to keep open or to reopen RS's Sunset Farms landfill after the agreed upon closure date on or before 11/1/15. TDS estimates that to have accepted TDS' AE bid response and continued to contract with TDS rather than RS would have saved the City and ratepayers a total of \$178,143.

ESTIMATED COST: \$178,143.00

### **April 2013**

City staff from Austin Resource Recovery (ARR) distributed two anonymous fax communications intended to alert recipients about internal departmental issues at ARR. An anonymous fax received by Texas Disposal Systems (TDS) on [4/4/13](#) disclosed a \$10,000 sponsorship approved by Assistant City Manager Robert Goode for the Local Institute of Self-Reliance to assist ARR and the Economic Growth & Development Services Office with establishing relationships with companies looking to relocate, start or expand initiatives for recycling, reuse, refurbishment and remanufacturing. A second anonymous fax received by TDS on [4/17/13](#) disclosed numerous allegations against ARR department director Bob Gedert and upper management, ranging from inflating the City's actual diversion rate to misuse of City resources. The anonymous communication also reported abysmal employee morale throughout ARR and revealed that numerous employees were seeking other employment.

### **June 2013**

Austin City staff under the direction of Austin Assistant City Manager Goode issued two separate biosolids sludge management solicitations at roughly the same time, both contemplating management of the same biosolids material. Texas Disposal Systems (TDS) and Synagro both responded to the City's bid for Beneficial Reuse of Fire Damaged Materials at Hornsby Bend. TDS offered to compost and beneficially reuse 100% of the biosolids sludge and commingled mulch and wood waste, while Synagro proposed to either landfill or direct land apply the biosolids sludge. Around the same timeframe, the City conducted another separate biosolids solicitation for Biosolids Hauling and Land Application Services, which Synagro and Terra Renewal Services both responded to. Both companies proposed to direct land apply over 90% of the biosolids material and compost the remaining amount. Staff realized that between the two solicitations, TDS offered the City the most favorable proposal at a [lower rate](#) to compost and beneficially reuse 100% of the biosolids, as compared to the other proposed rates for hauling and direct land application and only a small amount of composting. Rather than award TDS a contract to compost and beneficially reuse all of the biosolids and wood waste, staff chose to cancel the bid for Beneficial Reuse of Fire Damaged Materials with the [stated intent to reissue](#) the solicitation at a future date. By doing this, Mr. Goode and City staff knew TDS would be

silenced under the Anti-Lobbying Ordinance (ALO) until a new solicitation was reissued. Staff then pursued City Council approval to award and execute a contract with Synagro (again, at higher prices than the TDS composting proposal) for the Biosolids Hauling and Land Application Services contract, for the same organic materials. As noted, TDS could not comment to Council because it remained an ALO-restricted respondent under the other biosolids solicitation due to City staff's stated intention to reissue the cancelled bid. The day after the Council authorized execution of a contract with Synagro, TDS was informed that staff would not reissue the Beneficial Reuse of Fire Damaged Materials RFP.

### **June 2013 – December 2014**

As previously noted, in June 2012, following a year of stakeholder meetings, the Austin City Council voted to uphold the provisions of City Code Chapter 15-6 allowing haulers to appeal a denial or revocation of a license to the City Council. At the same time, acknowledging the conflict inherent in City staff's dual role as both regulator and competitor in the waste services marketplace, the Council also voted to require that all future staff-proposed revisions to the Administrative Rules for Chapter 15-6 be presented to ZWAC for consideration and recommendation and to City Council for final approval prior to implementation. A full year later, in June 2013, City staff under the direction of Austin Assistant City Manager Robert Goode initiated a new series of stakeholder meetings intended to update the Administrative Rules for Chapter 15-6 following Council's June 2012 vote, and to also propose a new set of revisions. Staff's stated goal for further revisions to Chapter 15-6 was to address supposed challenges with verifying hauler compliance with City Code and to more clearly define the City's role as a service provider. Given previous efforts by City staff to either partially or wholly displace licensed haulers in the Austin marketplace, private service providers were encouraged by the opportunity to finally codify the respective roles of the City and licensed haulers. Following a new series of stakeholder meetings, staff published a summary document reflecting broad stakeholder agreement that clearly delineated the roles of licensed private haulers and of the City. Stakeholders were thus dismayed in May 2014 when City staff presented an entirely different proposal to the Zero Waste Advisory Commission (ZWAC) for recommendation to Council, stating that the City's Law Department was uncomfortable with the draft language developed as a result of the stakeholder meetings. ZWAC rejected staff's proposal and recommended amendments to Chapter 15-6 comporting with the consensus language, effectively codifying the long-standing practice of having licensed private haulers service most commercial properties and the City service most residential properties. Remarkably, City staff then returned to ZWAC two months later requesting that the commission approve all other revisions to Chapter 15-6 but table the proposed service delineations. Instead ZWAC, responding to the continued advocacy of licensed private haulers, unanimously upheld their previous recommendation. Following two postponements in August and November 2014, the City Council voted in December 2014 to adopt the consensus language recommended by ZWAC, resulting in the current language contained in [City Code Chapter 15-6](#).

### **April 2014**

Austin City staff misused the City Auditor's Integrity Unit to support an improper investigation of Zero Waste Advisory Commission (ZWAC) member Daniela Ochoa

Gonzales and produce an erroneous report that Texas Disposal Systems (TDS) believes was specifically intended to malign Mrs. Ochoa Gonzales' reputation and create the illusion of unethical conduct by both Mrs. Ochoa Gonzales and TDS in her business affiliation as a recycling and composting trainer with the company. City staff released the report to the Austin American-Statesman before providing it to Mrs. Ochoa Gonzales. A [damaging](#) news article was published in the Austin-American Statesman on 4/29/14 based on the unprecedented City Auditor investigation, executed without a basis in City Code. Mrs. Ochoa Gonzales was immediately asked to resign from the ZWAC based on the false allegations and was terminated from her job at the University of Texas, TDS believes as a direct result of the false and damaging media coverage promoted by City staff. Ultimately, the City Council passed [Resolution No. 20141016-024](#), formally rejecting the report and publicly apologizing to Mrs. Ochoa Gonzales, members of the ZWAC and the community. The Council also required City staff to permanently and conspicuously present a disclaimer on the first page of the report in bold type that reads: "Notice: This Report has not been accepted by the Austin City Council and is subject to Resolution No. 20141016-024, passed on October 16, 2014." Nevertheless, City staff under the direction of Assistant City Manager Robert Goode appeared to strongly object to any apology from staff or Council to TDS, even though TDS' reputation was damaged by the same report and media coverage; indeed TDS believes Mr. Goode and City staff defamed Mrs. Ochoa Gonzales in a purposeful effort to damage TDS. See [www.texasdisposal.com/cityauditorreport](http://www.texasdisposal.com/cityauditorreport) for more details.

#### **August 2014**

City staff under the direction of Assistant City Manager Robert Goode decided to not pursue back billing of Clean Community fees and cart fees for thousands of identified Austin Resource Recovery (ARR) customers. Staff [estimated](#) the amount of unbilled fees could potentially be as much \$847,000. Mr. Goode informed City Council in an 8-25-14 [memo](#) that the anticipated staffing costs needed to pursue customer back billings would exceed the estimated revenue recovered and therefore determined customer back billings would not be pursued, even though City Code allows it.

#### **February 2015 – May 2016**

City staff under the direction of Assistant City Manager Robert Goode initiated and conducted the first of four designated reset negotiations included in the City's 20-year Master Recycling, Processing and Marketing Services Agreements with Texas Disposal Systems (TDS) and Balcones Resources (BR). The reset negotiations, scheduled for the third anniversary and every fifth anniversary thereafter, are intended to be good-faith discussions regarding potential changes in volumes, services and financial terms of the long-term agreements. A key item included in the first reset negotiations involved the City's commitment to guarantee each vendor a minimum of 2,000 tons of recyclables per month during the first eight years of the agreements. TDS and BR would be entitled to maintain their 2,000-ton monthly guarantee of recyclables delivered by the City for the next five year period provided their proposed pricing was "equal to or better than" the pricing charged to the City during the first three years of the agreement. Once reset negotiations were concluded and each vendor's pricing was made public, TDS learned that Mr. Goode and Austin Resource Recovery department director Bob Gedert had agreed to accept pricing from BR that was *not* "equal to or better than" existing pricing but instead

significantly higher, with the same monthly ton guarantee and BR's same designated 60% volume from the City. Per [City staff's own subsequent calculation](#), the financial impact of the reset terms agreed to by staff under Mr. Goode's direction are expected to needlessly cost Austin ratepayers an additional \$400,000 per year over the five-year contract period. ESTIMATED COST: \$2,000,000.00

### **September – December 2015**

City staff under the direction of Assistant City Manager Robert Goode proposed and recommended a 1-year, \$264,820 contract extension with Republic Services (RS) for management and disposal of Austin Energy's (AE) industrial Class 2 non-hazardous and special waste materials. After questions about the proposed contract extension were raised, Mr. Goode and City staff were forced to reveal their plan to allow RS to utilize the Waste Management, Inc. Austin Community Landfill (WM-ACL) for disposal of AE's waste materials, despite the City Council's 2013 vote opposing the use of the WM-ACL for disposal of waste materials generated by AE. Council rejected staff's proposed contract extension with RS and allowed the contract to expire. Since that time City staff has been managing the AE waste stream under an existing contract with another vendor at higher prices than those offered in the Texas Disposal Systems (TDS) 2013 bid response – which City staff deemed “non-responsive” – and the proposed contract extension. Once again City staff under Mr. Goode's direction would rather increase costs to ratepayers than award a contract to TDS.

### **October 2015 – August 2017**

City staff under the direction of Assistant City Manager Robert Goode proposed to finance, construct and operate the Austin ReManufacturing Hub, an industrial park development with ground leases available to recycling and reuse businesses recruited by the City. Specifically, the City proposed to develop approximately 100 acres of unused property at the City's inactive to the public FM812 landfill, which is adjacent to the active Travis County Landfill now owned and operated by Waste Connections (formally IESI). The staff-produced [business plan](#) for the ReManufacturing HUB stated that funding for the development's infrastructure items (utilities, facility entrance, interior roads, etc.) would be generated through a variety of sources, including a federal grant, a [20-year loan](#) from Austin Water, a long-term lease of [condemned property](#) formerly owned and utilized by Republic Services for its recycling operations, and the sale of three parcels of City-owned land managed by Austin Resource Recovery (ARR). However, once City staff actually began the process of selling City-owned land, numerous questions from City Council and other stakeholders began to surface about the ReManufacturing HUB, including whether the development was financially viable and whether it was appropriate to use the proceeds generated from sales of City-owned land to subsidize the development of an industrial park for privately-owned tenants that would directly compete with existing recycling and reuse businesses. Questions were also raised about the potential for ARR to assume future ownership of the various operations at the ReManufacturing HUB, and more importantly, about the likelihood of Waste Connections or any other entity purchasing the [25-acre](#) parcel of City-owned land located along their property line and located within the Texas Commission on Environmental Quality (TCEQ) permit boundary of the City's inactive FM812 landfill. Waste Connections' ownership of this particular parcel of City-owned land,

a [critical infrastructure](#) detention pond component of the City's landfill, could then be used as a basis for Waste Connections to reassert its [2004-2005 proposal](#) to seek TCEQ approval to combine their active Travis County Landfill with the City's still technically "active" (but closed to the public) TCEQ-permitted landfill and to seek a major expansion of the combined landfills. Troubled by the potential outcome of selling a critical infrastructure detention pond necessary to receive state permit authorizations to maintain the landfill over the 30-year TCEQ closure and post-closure care period, the City Council appropriately rejected City staff's proposed land sale and directed staff to examine a public-private partnership approach to the ReManufacturing HUB project. Subsequently, in May 2017, a City consultant published a feasibility analysis of the Austin ReManufacturing HUB that concluded that no profit-oriented private developer would be attracted to the opportunity without major subsidies. Accordingly, in August 2017 staff informed City Council that they no longer recommend constructing the ReManufacturing HUB.

### **March – October 2016**

Austin City staff under the direction of Assistant City Manager Robert Goode recommended to the City Council a potential \$387,000, 6-year contract for the sale and removal of up to 450,000 cubic yards of unscreened biosolids and yard trimmings compost, at an irregularly low price of \$0.86 per cubic yard ([previous City sales](#) of this material ranged from \$4.50 - \$6.00 per cubic yard). Approval of this item would have been hugely detrimental to the local market for finished compost as it would have resulted in hundreds of thousands of cubic yards of below-cost compost material being dumped on the market. As an alternative to participating in the solicitation and submitting to [City staff's inconsistent application of the Anti-Lobbying Ordinance restrictions](#), TDS made an unsolicited offer to purchase the material at a reasonable market price of \$4.50 per cubic yard, which would have generated additional City revenue in the amount of \$1.6 million. Mr. Goode and City staff declined.

### **April – December 2016**

Austin City staff under the direction of Assistant City Manager Robert Goode proposed and recommended to the City Council a potential \$20,351,000, 10-year contract with [Synagro](#) for beneficial reuse of 100,000+ cubic yards of biosolids sludge per year produced at the City's Hornsby Bend facility. Under Mr. Goode, City staff had effectively terminated the City's award-winning Dillo Dirt biosolids compost program and, TDS believes, sought to conceal it by contracting with Synagro to produce a biosolids sludge product dubbed "agricultural compost." Elected and appointed officials, environmental stakeholders and others raised questions about staff's secretive plan to fully privatize the City's biosolids sludge management operation with Synagro and its unidentified "partners." Scrutiny and questions about the proposed plan revealed that Synagro proposed to treat the City's biosolids to the minimum standard required to produce so-called "agricultural compost" – a still immature and unstable Class A biosolids sludge – for unregulated application on pasture land in Travis County and the surrounding area. Questions were also raised about Synagro's environmental and ethical record in [Detroit and Philadelphia](#) and ultimately about City staff's refusal to enforce the alleged violations of the Anti-Lobbying Ordinance (ALO) against Synagro for [noted](#) (and [later discovered](#)) violations of the ordinance. Due to the inconsistently administered ALO restrictions associated with this solicitation, the unconventional use of the term "agricultural compost" to more appropriately describe a

Class A biosolids sludge (which should not be direct land applied without a biosolids sludge direct land application permit, and which is subject to the Travis County Solid Waste Facility Siting Ordinance) and the necessity for Texas Disposal Systems (TDS) to maintain its ability to speak freely to the City Council, City commissions and staff about solid waste, recycling and composting policies and issues, TDS offered the City biosolids sludge composting services through provisions in TDS' 30-year Waste Disposal and Yard Trimmings Processing Contract with the City, as specifically allowed by the contract. Mr. Goode and City staff declined to negotiate with TDS for the provision of biosolids sludge composting services despite the fact that TDS has significant experience providing the same services to the City of Victoria, the San Antonio Water System, and the San Antonio River Authority. In December 2016, following ongoing controversy and a vote by ZWAC not to support the proposed contract, the City Council voted to terminate the solicitation process, to retroactively waive alleged ALO violations by Synagro on the basis that the violations were created by staff's own actions, and to direct staff to reissue the biosolids solicitation following Council and board/commission review of City biosolids policies.

#### **April – December 2016**

Austin City staff under the direction of Assistant City Manager Robert Goode solicited proposals for the development and implementation of curbside textile recycling services, and subsequently executed a potential 6-year contract with Simple Recycling without the knowledge of ZWAC, the City Council or community stakeholders. Under the contract, Simple Recycling – [affiliated](#) with [the “F”-rated Military Order of the Purple Heart Service Foundation](#) based in Virginia – agreed to pay the City \$20.00 per ton for all materials collected from Austin residents. City staff under Mr. Goode [notified City Council](#) of the new curbside service less than 30 days before services began. Public outcry [erupted](#) from area nonprofit organizations soon after the new services were announced, with calls from Goodwill, The Salvation Army and others for the City to immediately cancel the contract on the basis that it directly competed against area nonprofit organizations. See [www.texasdisposal.com/COAsimplerecycling](http://www.texasdisposal.com/COAsimplerecycling) for more details.

#### **June 2016 – February 2017**

Austin City staff under the direction of Assistant City Manager Robert Goode solicited proposals for an organics pilot program for the Central Business District (CBD), City Hall and other downtown businesses. The solicitation's scope of work contemplated expansion of the program to include other businesses in the greater downtown area and specified that the program would assist City staff in determining effective methods to establish business-wide organics collections services within the CBD and other areas. Mr. Goode and City staff decided to not recommend award of a contract and cancelled the solicitation approximately eight months after it was issued.

#### **June 2016 – February 2017**

City staff proposed and recommended a potential 6-year \$16,995,000 contract with Republic Services (RS) – formerly BFI and Allied Waste – for [Citywide Dumpster Collection Services](#) (to provide “non-residential collection services for refuse, recycling, brush, compostable materials, special events, Class 2 special non-hazardous waste and emergency collection services”) even though RS was not announced as a solicitation respondent at the

time of the public bid unsealing, as required by City bidding rules. Based on City staff's inconsistent application of the Anti-Lobbying Ordinance (ALO) and the objectionable premise of the solicitation's scope of work, Texas Disposal Systems (TDS) did not participate in this solicitation but instead opted to ensure that City policymakers and their advisors were fully informed as to the possible impact of the staff-proposed contract. Indeed, as fashioned by City staff under Mr. Goode, the proposed contract would have surreptitiously granted City Council approval for staff to use RS as a toll contractor to completely transform Austin's commercial waste collection marketplace into a City-controlled and City-billed public utility, in direct conflict with Council-enacted City Code intended to protect the ability of licensed haulers in Austin to compete with each other and not the City. Further, despite City staff's initial unwillingness to reveal to the Zero Waste Advisory Commission (ZWAC) what facility was proposed to be utilized for disposal of the collected waste materials (including citing staff-signed non-disclosure agreements), it was ultimately revealed that staff and RS proposed to use the Waste Management, Inc. Austin Community Landfill (WM-ACL) – the controversial facility once dubbed “Austin's Love Canal” and long opposed by the Austin City Council, Travis County and residents of northeast Austin. (As noted in the November 2008 chronology entry, TDS additionally discovered and [revealed](#) during consideration of this proposal that the re-opening of the inactive Sunset Farms Landfill – located immediately adjacent to the WM-ACL – could also have resulted from Council approval of the proposed contract, as [the restrictive covenants negotiated and executed by Assistant City Manager Robert Goode and City legal staff in 2008](#) were effectively [unenforceable](#), having been signed on behalf of entities that did not own the land comprising the landfill at the time.) Finally, City staff's proposed contract with RS would also have memorialized and perpetuated staff's practice of providing special event organizers with [free](#) services in [direct competition](#) with licensed private haulers via staff's designated toll hauler (indeed the solicitation itself referenced the provision of waste services to local special events like SXSW and Austin City Limits, both of whom were and are TDS customers – as were and are 15 of the 17 other “example” special events listed by City staff). Following unanimous votes by ZWAC in both [November 2016](#) and [February 2017](#) not to recommend contract approval to the City Council, on 2/16/17 [the Council voted to reject the proposed contract](#). See [www.texasdisposal.com/citywide-dumpster](http://www.texasdisposal.com/citywide-dumpster) for more details.

### **February 2017**

Austin City staff under the direction of Assistant City Manager Robert Goode had to [correct a false representation](#) made to the Mayor, City Council and City management that Texas Disposal Systems (TDS) refuses to allow competing haulers to utilize its landfill. The TDS Landfill has always been and remains open to the public and to all haulers who choose to deliver authorized materials to the facility. TDS believes this malicious misrepresentation about access to the TDS permitted facilities was made knowingly to bolster an argument by Mr. Goode and City staff that the City Council and area haulers should not rely upon the TDS facilities – another attempt to favor preferred vendors like Waste Management, Republic Services and Waste Connections, and harm TDS.

### **February 2017**

Following the Austin City Council's December 2016 rejection of staff's proposed biosolids

management contract, and in anticipation of Council rejection of staff's proposed [Citywide Dumpster Collection Services](#) contract at its scheduled 2/16/17 meeting, on 2/15/17 City staff distributed a [memorandum](#) to the City Council detailing major waste policy considerations to inform possible future Council discussions and decision-making. The memorandum both specifically acknowledged staff's conflicted dual role as waste industry regulator and competitor – noting that the Austin Resource Recovery (ARR) provision of various waste-related services to local special events “competes with private haulers” – and once again revealed the agenda of City staff under the direction of Assistant City Manager Robert Goode to transform Austin's commercial waste services marketplace into a City-controlled public utility, noting that if Council were to authorize ARR to provide commercial collection services “businesses could include ARR services on their utility bills.”

### **March 2017 – Present: Waste Management Policy Working Group**

In response to the City's stalled waste contracting process and ongoing controversy over staff's inconsistent application of the Anti-Lobbying Ordinance (ALO) and lack of transparency with the Zero Waste Advisory Commission (ZWAC) and other stakeholders under the direction of Assistant City Manager Robert Goode, in March 2017 the City Council [voted unanimously](#) to create the Waste Management Policy Working Group (PWG) to convene waste industry and community stakeholders and develop policy and procedural recommendations for review by City boards/commissions and ultimate consideration by the full Council. The Council's PWG, chaired by Council Member Leslie Pool, convened at City Hall on four occasions over the course of April and May 2017, and ultimately issued a series of [eight policy and procedural recommendations](#) on 7/21/17, including recommendations for ALO reform and changes to the City's landfill selection process and biosolids management practices. As noted in the original [discussion](#) and final [resolution](#) creating the PWG, Council directed that each of the recommendations of the PWG be reviewed by appropriate City boards/commissions prior to presentation to Council. As of this writing, only the PWG's proposed reforms to the ALO have been considered by the full City Council; the remaining policy proposals have either yet to be acted on by City staff or are still pending before ZWAC.

### **May 2017**

Austin City staff misused the Office of Sustainability to present [misleading information](#) to the City Council Waste Management Policy Working Group (PWG) to suggest that the number of methane gas collection wells at the TDS Landfill is insufficient, that TDS is not responsibly capturing and controlling methane gas generated within the TDS landfill, and that the TDS landfill generates and releases into the atmosphere excessively large quantities of landfill gas. This [presentation](#) was intended to create a false impression about the environmental integrity of the TDS Landfill and the commitment of its owners to environmental compliance, as compared to landfill gas emissions from much older landfills located in the region (one of which received the largest environmental fine against a landfill in state history at the time for landfill odor emissions). The erroneous data used by City staff to falsely discredit the TDS Landfill and its owners during the PWG proceedings failed to take into account numerous [factors](#), including the innovative facility design and operating practices at the TDS Landfill and TDS' programs for diverting thousands of tons of organic materials and liquids from landfill disposal each year. TDS record of full

compliance with all operational requirements over the past 27 years speaks for itself.

### **May – August 2017**

Austin City staff issued an Invitation for Bid (IFB) solicitation – which excluded the Anti-Lobbying Ordinance (ALO) restriction per City Council’s action in April 2017 – for the purchase, removal and screening of approximately 8,000 cubic yards of unscreened biosolids and yard trimmings compost that was reportedly made by Austin Water Utility (AWU) staff in 2016 and had been curing in its current pile for approximately one year. At the pre-bid meeting, staff represented that this material was not classified as Dillo Dirt only due to the fact that it had not yet been screened. Indeed an examination of the surface of these piles appeared to show a stable and mature screenable compost product. Texas Disposal Systems (TDS) responded to the IFB and was awarded the contract. However once TDS brought equipment onsite and attempted to process the material, it became apparent that the vast majority of the 8,000 cubic yards of materials that had not been exposed to the sun and air for a year was in fact [unstable and immature biosolids sludge, of wet fudge like consistency, entirely unscreenable, emitting noxious odors and entirely inconsistent with any accepted definition of compost.](#) TDS informed the AWU staff that their characterization of the subject material was incorrect, that TDS could not fulfill the requirements of the contract as the material could not be screened, and that the material could not be used or sold as compost. AWU then spent several weeks mixing older unscreened compost with the dried crust outer surface material of several curing piles in order to fulfill the City’s 8,000 cubic yards contractual commitments. Through this process it became apparent to TDS that very little if any of the supposed unscreened Dillo Dirt currently located at Hornsby Bend has been composted sufficiently to be a marketable beneficial material without costly additional processing. Note that unstable Class A biosolids sludge materials cannot be direct land applied in Travis County without a direct land application permit for biosolids sludge and being in compliance with Travis County’s Solid Waste Facility Siting Ordinance.

### **June – October 2017**

Austin City staff under the direction of Assistant City Manager Robert Goode proposed and recommended to the City Council a potential 6-year \$4,360,000 contract with Organics By Gosh (OBG) for organics processing services of up to an estimated 72,000 tons per year of yard trimmings mixed with residential food waste at a small and likely unauthorized composting facility, given its Texas Commission on Environmental Quality (TCEQ) authorizations and its location in the 100-year flood plain and in close proximity to residences, neighborhoods, schools and churches. Mr. Goode and City staff pursued Council approval of this contract with no apparent concern for legitimate questions raised about the contractor’s facility operations authorization as a waste transfer station and a food waste composting facility, both regulated by TCEQ and the Travis County Solid Waste Facility Siting Ordinance, and operations regulations. Even more troubling, Mr. Goode and City staff decided to reject a more affordable and fully authorized option then offered by TDS as per TDS’ 30-year Waste Disposal and Yard Trimmings Processing Contract. At its 6/22/17 meeting, City Council ultimately authorized staff to negotiate and execute a contract with OBG to provide organics processing services of yard trimmings mixed with food waste collected from approximately 210,000 Austin Resource Recovery residential

customers. Over four months later, after multiple public information requests, on 10/30/17 City staff produced a copy of the [fully executed contract](#) it had negotiated with OBG. A review of this contract revealed that staff agreed to utilize two known OBG facilities, and potentially a third undisclosed facility to be determined at a later date. Further, the contract created a financial incentive for OBG to maintain City access to its small, 7.32-acre facility, which both City staff and OBG publically acknowledged was insufficient to support the volumes generated under a citywide residential organics collection program. The effect of this contractual arrangement provides a financial incentive for OBG to make available for City use an unauthorized solid waste transfer station facility. See [www.texasdisposal.com/OrganicsProcessing](http://www.texasdisposal.com/OrganicsProcessing) for more details. TDS estimates that for City staff to have accepted TDS' unsolicited offer rather than contract with OBG at a higher rate would have saved the City and ratepayers \$866,160 over the first 3-year contract period.

ESTIMATED COST: \$866,160

### **July 2017 – May 2018**

Austin City staff under the direction of Assistant City Manager Robert Goode rejected without explanation or justification Texas Disposal Systems' (TDS) proposed contract amendments intended to reasonably address the longstanding issue of downtown commercial establishments improperly using TDS dumpsters – provided via contract with the City – for disposal of bulk liquid waste, including grease and cooking oil. On 8/3/17, City staff initiated the final 120-day contract holdover period, signaling their intent to allow the Central Business District (CBD) contract for solid waste and recycling services to expire on 11/29/17 without addressing TDS' repeated requests to compensate TDS fairly for its required but unanticipated costs (at that point \$250,000) to manage the excess bulk liquids on the City's behalf over the previous three-year initial contract term, and to implement measures to resolve the serious public health and safety risks that resulted from staff's ongoing inaction. In response to the decision by Mr. Goode and City staff to let the contract expire without resolution of the bulk liquids issue, TDS representatives met with the City's Law Department in October 2017 to formally notify them of TDS' intent to file a lawsuit against the City for breach of contract. Soon after, representatives of Austin Resource Recovery (ARR) and City lawyers met with TDS representatives to discuss a potential agreement to exercise the contract's first extension option until May 2018, to reimburse TDS for the expenses incurred to properly manage and dispose of the bulk liquids on the City's behalf over the initial contract terms, and to work with TDS to implement meaningful measures to address management of the bulk liquid going forward. Apparently City staff realized that doing nothing and expecting TDS to absorb all of the risk and costs associated with properly managing bulk liquids produced and improperly discarded by the City's CBD customers was a position they could no longer defensibly maintain. TDS believes City staff would have been willing to promptly resolve this issue with a preferred contractor well in advance of it reaching excess cost to the City and/or potential litigation. TDS was pleased to settle this issue without litigation, but estimates that City staff's actions increased City costs by \$262,573.

ESTIMATED COST: \$262,573.

### **July 2017 – Present: Anti-Lobbying Ordinance (ALO) reform**

When the Austin City Council voted in March 2017 to create the Waste Management Policy Working Group (PWG), in order to allow industry stakeholders to participate without fear of violating the Anti-Lobbying Ordinance (ALO) by communicating with City officials about waste issues while at the same time responding to City waste solicitations, Council also [voted](#) to temporarily waive the ALO for all waste-related solicitations “until such time as Council has given staff direction on the policies applicable to such matters.” In July 2017 [the PWG issued recommendations that included reforms to the ALO](#). In September 2017, despite Council’s clear March 2017 direction to City staff to first present all PWG recommendations to appropriate boards and commissions for review, staff under the direction of Assistant City Manager Robert Goode instead presented a proposed ALO revision directly to Council, [incorporating only selected PWG recommendations](#). Council declined to consider staff’s revised ordinance and gave direction to staff to adhere to the original process. Subsequently the [Zero Waste Advisory Commission](#) (ZWAC) and [Ethics Review Commission](#) (ERC) as well as [Texas Campaign for the Environment](#) (TCE) and other community and industry stakeholders provided a broad range of input on staff’s revised ordinance. Among the reference materials provided by Texas Disposal Systems was a [chart](#), previously presented to the PWG, demonstrating that between 2009 and 2017, ALO restrictions were in place for waste-related solicitations for all but 56 days – effectively silencing criticism and strictly controlling all information about waste-related City solicitations for almost 7.5 years. In November 2017, staff again posted an agenda item requesting Council approval of its still-unchanged proposed ALO revision, but subsequently withdrew the item and requested a six-month delay in order to “further consider feedback” and “allow more time for the City’s entire vendor community to weigh in.” Council responded by voting to set a 180-day deadline for the original March 2017 temporary ALO waiver to expire in an effort to prompt a resolution faster. In January 2018, City staff released an updated proposed ALO revision (“[Version 2](#)”) reflecting only nominal changes from their November 2017 version and failing to incorporate key reform recommendations from ZWAC, ERC, TCE and others. In February 2018, TDS and others provided [extensive feedback](#) on staff’s “Version 2” revision, none of which was incorporated into staff’s subsequent “[Version 3](#)” ALO revision, which was [presented to the City Council’s Audit and Finance Committee on 4/25/18](#). As reported in the [Austin Monitor](#), City staff’s presentation received a “tepid response” from Committee members, who voted to forward staff’s proposed revised ordinance on to the full City Council without a recommendation. Nearly a month later, on 5/21/18, City staff still had not placed the proposed “Version 3” ordinance on the City Council agenda when the 180-day deadline established by Council in November 2017 expired and the temporary ALO waiver for waste-related solicitations terminated. On 6/1/18, City staff finally posted “Version 3” of the ALO for consideration at the 6/14/18 City Council meeting, noting in an [accompanying memo](#) from Purchasing Officer James Scarboro that after nearly a year of developing the proposal, “the recommended changes to the ALO are very modest and consistent [sic] mostly of consolidation and clarifications.” In [an email to the City Council on 6/8/18](#), TDS president Bob Gregory raised concerns that staff’s proposed “revised” ALO in fact failed to address any of the ALO’s major problems or include any of the proposed solutions advanced by key stakeholders over the previous year, including the Council’s own PWG, urging the Council to reject staff’s proposal and instead exempt waste solicitations from the requirement of the ALO and / or to adopt [a redlined version of staff’s “revised” ordinance proposed by](#)

TDS. Unfortunately, [the City Council's final revised ALO, adopted on 6/14/18](#), left critical reforms undone, with only two minor modifications to staff's "Version 3" ordinance added – referring disqualification appeals to a subcommittee of the City's Ethics Review Commission for a binding decision, and requiring that disqualifications resulting from contact initiated by City employees or officials be waived. TDS continues to advocate for ALO reforms to fully eliminate restrictions on free speech; to confine ALO-restricted communications to direct, solicitation-specific advocacy; to allow vendors to communicate with City officials about the policy implications of staff-issued solicitations outside of three allotted minutes at a Council or commission meeting; and to allow disqualification appeals to the full City Council. For more information, see [texasdisposalpolicy.com/alo-reform](http://texasdisposalpolicy.com/alo-reform).

### **August 2017**

On 8/22/17, a representative of Austin Energy (AE) appeared at a reception desk at Texas Disposal Systems' (TDS) central offices at 12205 "A" Carl Road to notify TDS that an owed \$6,000 payment on one of TDS' 23 AE accounts was 20 days past due. TDS paid the balance – and confirmed AE's receipt of the payment – within the hour. The next day, an AE field technician followed a TDS employee vehicle through the gate of TDS' primary business operations and maintenance facility, also at 12205 "A" Carl Road, and proceeded to turn off and padlock three TDS-owned electrical breaker boxes located downstream from the AE meter in such a manner as to ensure that TDS was unable to utilize its own permanent backup power generator to provide power to its operations and maintenance facility in case of a power outage. For more than two hours, numerous TDS departments – including its customer service call center, operations management, dispatching, maintenance operations and its central computer and telephone systems – were effectively disabled, until the same AE technicians (who refused to disclose his name, display his employee badge or identify who had instructed him to carry out the service disconnection) restored the power by removing the AE padlocks from the TDS breakers. A TDS officer who contacted AE immediately after the power was restored was told that the account balance was in fact shown to have been paid. TDS believes the irregular and unwarranted service disconnection was the result of TDS' ongoing conflict with Assistant City Manager Robert Goode and City staff under his direction.

### **October 2017 – Present: Beneficial Reuse of Biosolids Resolicitation**

Austin City staff under the direction of Assistant City Manager Robert Goode reissued a revised version of the biosolids management solicitation initially rejected by the City Council in December 2016 (see earlier Chronology entry) following controversy over staff's proposed biosolids management policies and inconsistent administration of the Anti-Lobbying Ordinance (ALO). With the ALO temporarily suspended for all waste solicitations per Council's action in April 2016, Texas Disposal Systems (TDS)' sister company Texas Landfill Management, Inc. (TLM) was able to respond to the RFP resolicitation (RFP CDL 2003REBID) and did so on 11/11/17; the vendor recommended by City staff to receive the earlier cancelled solicitation, Synagro, also responded to the RFP. After an irregularly abbreviated 5-day evaluation and scoring process over the Thanksgiving 2017 holiday, City staff again recommended awarding the biosolids contract to Synagro despite the fact that TLM submitted the lowest bid response by an amount later estimated to total more than \$1,000,000 over the life of the possible 10-year contract.

Per purchasing rules, TLM requested a post-recommendation debriefing meeting with City staff, which occurred on 11/30/17. Based on the information provided to TLM in the debriefing meeting indicating that staff had inappropriately scored all of the RFP responses based on an inaccurate and incomplete analysis of TLM's proposal, TLM filed a formal protest of staff's recommendation on 12/11/17. On 1/4/18, the City Purchasing Office notified TLM that it had assigned Mr. Stephen Webb to serve as the protest's hearing officer; the same day, TLM responded and requested that the Purchasing Office assign a different hearing officer based on Mr. Webb's erroneous rejection of TDS' only previous appeal, of City staff's Anti-Lobbying Ordinance (ALO) disqualification of TDS during the 2010 solicitation process for recycling services and provision of a MRF – an illegal disqualification that was later overturned by a federal court. Two weeks later, on 1/23/18, [City Purchasing Officer James Scarboro responded and granted TLM's request for a different hearing officer](#), and the protest hearing was held on 2/9/18. During the hearing, [TLM presented arguments](#) that City staff evaluators had 1) inappropriately deducted qualitative points from TLM's proposal; 2) improperly assigned quantitative points to other respondents; and 3) irregularly removed "local business presence" scoring criteria from the solicitation in direct conflict with the recommendation of the Council's Waste Management Policy Working Group (PWG). TLM not only rebutted the specific perceived weaknesses of the TLM RFP response as identified by City staff at the debriefing meeting, but also questioned the refusal of City evaluators to consider the offer contained in the proposal to provide the City with brush and yard trimmings grinding services – a necessary precursor to the biosolids composting process, currently performed by City staff – at a greatly-reduced cost (estimated to save the City approximately \$1,000,000 per year, or \$10,000,000 over the possible life of the contract). TLM requested that the protest officer provide for the reevaluation of all RFP responses, the reapplication of "local business presence" scoring criteria as recommended by the Council's PWG, and the resulting reallocation of points, as well as the ultimate presentation of the top two bidders' proposals to appropriate boards/commissions and the City Council for recommendations and final authorization for contract execution. As an alternative, TLM requested that the protest officer recommend that the biosolids solicitation be reissued as an objectively evaluated Invitation to Bid (IFB) format rather than a subjectively evaluated Request for Proposal (RFP) format, given staff's demonstrated refusal in this instance to consider the proposed innovative solutions that the RFP solicitation format was ostensibly intended to solicit. On 5/4/18, nearly three months after the protest hearing was held, staff shared [the written recommendation of hearing officer Pamela Lancaster](#) with TDS (originally issued on 2/23/18), which concluded that "portions of TLM's response were overlooked or read in a piecemeal fashion" and recommended a new evaluation process with different Evaluation Committee members. At the same time, staff informed TDS of their [rejection of the hearing officer's conclusion and recommendation in favor of setting aside the initial staff recommendation and instead entering a "Best and Final Offer" process](#). On 5/17/18, TDS received [a request from staff to participate in the "Best and Final Offer" solicitation](#) based on the same instructions, requirements, terms and conditions as the original resolicitation issued in October 2017, including the opportunity to protest solicitation terms prior to the solicitation due date. Accordingly TDS informed staff on 5/18/18 of its intent to protest the "Best and Final Offer" solicitation and [did so formally on 5/24/18](#), based on two concerns: 1) City staff's decision to include no consideration of the financial value of

requested additional proposed services (i.e. grinding services), in conflict with the understood purpose of the RFP solicitation format; and 2) City staff's decision to include no "local business presence" scoring criteria, in conflict with the recommendation of the PWG. Over the subsequent two weeks, staff initially responded only by [twice changing the "Best and Final Offer" solicitation due date](#) – from 5/31/18 to 6/8/18, and then from 6/8/18 to 6/15/18. Finally, on 6/8/18, [the City Purchasing Office informed TDS that the "Best and Final Offer" solicitation had been cancelled](#), without explanation; separately, on the same day, City Purchasing Officer James Scarboro informed TDS that as the solicitation had been cancelled, TDS' protest was "[no longer applicable](#)." On 6/12/18, it was revealed to the City Council by Mr. Scarboro that [the "Best and Final Offer" solicitation had been cancelled "due to an unintentional release of records."](#) Mr. Scarboro subsequently informed TLM representatives via [email](#) that the records released by the City comprised TLM's confidential response to RFP CDL2003REBID, and that TLM's RFP response had been released directly to the registered lobbyist of the current vendor, Synagro. Two months later, on 8/13/18, the City issued a third iteration of the twice-cancelled biosolids solicitation, [IFB CDL2003REBID2](#), changing the solicitation format from RFP (Request for Proposal) to IFB (Invitation to Bid). As the City Council had acted in June 2018 to adopt changes to the ALO, IFB CDL2003REBID2 became subject to anti-lobbying restrictions. On 8/22/18, [TLM formally protested IFB CDL2003REBID2](#) based on the improper release of TLM's previous solicitation response to Synagro; the exclusion of "local business presence" (as defined by the June 2017 PWG recommendation) scoring criteria from the solicitation evaluation process even though "local business presence" identification forms were included in the solicitation package; and the exclusion of grinding services from the IFB. On 8/24/18, City staff responded to solicitation questions by stating that ["the City will validate the Local Business Presence status of Offers who respond to this solicitation"](#) even though the status would not be employed by staff to evaluate the bids; however on 8/30/18, staff amended the solicitation to [fully remove the previously-included "local business presence" identification forms](#). On 8/31/18, the City Purchasing Officer responded to TLM's 8/22/18 protest letter by [denying each of the protest grounds](#), finding "no legal or factual grounds to substantiate the claims raised" and stating that IFB CDL2003REBID2 was "inherently different" from RFP CDL2003REBID even though "there may be similarities between the previous solicitations [SIC] scope and pricing requirements." On 9/4/18, TLM submitted a formal response to IFB CDL2003REBID2. At the bid unsealing, it was revealed that [Synagro had lowered their previous bid price \(the price submitted in their response to RFP CDL2003REBID\) such that their revised pricing was .05% lower than TLM's bid price](#), which was consistent with TLM's previous response, and which had been revealed to Synagro when staff released TLM's previous confidential bid to Synagro's registered lobbyist. On 9/14/18, TLM notified City staff of its intent to file a second protest regarding IFB CDL2003REBID2. As of this writing, Synagro – despite an alarming environmental and ethical record, including uninvestigated [violations of Austin's ALO in October 2016](#) – continues to manage the City's biosolids reuse program. The cost to Austin ratepayers of City staff's decision to extend Synagro's contract beyond its initial term and extensions, particularly as compared to the prices proposed by TDS to provide the same or improved services, is unknown at this time.

### **November 2017 – Present: Landfill Criteria Matrix**

Nearly four months following the July 2017 recommendation of the City Council’s Waste Management Policy Working Group (PWG) to develop new criteria to guide City Council decision-making on landfill utilization for City contracts, City staff under the direction of Assistant City Manager Robert Goode released their initial draft of proposed criteria; two months later, staff revised and expanded the draft criteria prior to presenting it for consideration at the Zero Waste Advisory Committee (ZWAC). Exactly as with staff’s earlier draft of a proposed revised Anti-Lobbying Ordinance (ALO) as recommended by the PWG, staff’s drafts of proposed new landfill criteria not only failed to incorporate key PWG recommendations but also included different proposed policies assigning broad new regulatory authority to staff. For example, rather than simply creating a new scoring matrix to be used in the evaluation of City solicitation responses and proposed contracts for landfill utilization as the PWG recommendation suggested, staff instead proposed to create a standing new “qualified vendor” program requiring an annual, staff-administered certification and approval process for landfills desiring to bid on City contracts. Further, in keeping with staff’s May 2017 presentation to the PWG of misleading information falsely discrediting the environmental integrity of the Texas Disposal Systems Landfill, staff’s proposed landfill criteria appeared to be fashioned similarly to favor the Waste Management, Inc. Austin Community Landfill (WM-ACL) in particular by nominalizing the evaluation of facilities’ known environmental risks and potential future liabilities (as alarmingly detailed with regard to the WM-ACL in the \$100,000 City Council-commissioned study [Carter & Burgess Private Landfill Environmental Assessment](#)). At the 2/14/18 ZWAC meeting, after receiving public comments indicating broad opposition to staff’s drafts ([characterized as a “debacle” by the Austin Monitor, which reported that “no one in the room outside of Austin Resource Recovery staff championed the current landfill criteria matrix draft”](#)), the commission voted unanimously to [endorse alternate draft criteria proposed by Texas Campaign for the Environment, and to create a subcommittee and convene a stakeholder process](#) to develop a revised proposed criteria draft for consideration by ZWAC. Between March and May 2018, City staff [met with stakeholders](#) six times – on 3/21/18, 3/29/18, 4/5/18, 5/2/18 (technical session), and 5/14/18. As of this writing, TDS and other stakeholders are waiting to receive staff’s revised recommendations based on the input received, with staff’s proposed revised landfill criteria matrix expected to be considered by ZWAC and the City Council in the coming months.

### **February 2018**

Austin City staff under the direction of Assistant City Manager Robert Goode [requested](#) that the Zero Waste Advisory Commission (ZWAC) vote to recommend a funding request to the City Council to extend the current City facilities services contract with Republic Services (RS) for a “holdover period” stretching 19 months beyond the contract’s original termination date, to February 2020, at a cost of \$1,511,385. (As noted, staff’s proposed award of a dramatically expanded rebid of this contract to RS was rejected by the City Council in December 2016 and helped lead to the creation of the City Council’s Waste

Management Policy Working Group process and recommendations issued in July 2017.) It was also revealed in February 2018 that City staff had already unilaterally executed a similar contract extension with Synagro for biosolids management services, including a significant price rate increase, until December 2018 – more than two years after the Synagro contract’s initial termination date in November 2016 – further indicating staff’s willingness to accommodate unlimited “holdover periods” and thus indefinite extensions of contractual services, with rate increases, with preferred service providers.

**February 2018**

Austin City Council Member Ellen Troxclair sponsored a [resolution](#), unanimously approved by the Council, to initiate a benchmarking study to [analyze the comparative affordability](#) of services provided by Austin Water and Austin Resource Recovery (ARR). The Council resolution immediately followed a public admission and apology from Austin Energy and Austin Water (the latter under the direction of Assistant City Manager Robert Goode) regarding the [inaccurate billing of more than 7,000 customers](#). Soon after Council approval of the benchmarking study, television reports indicated that residents in a newly-annexed area of southwest Travis County had experienced a [500% increase in waste collection rates](#) upon transitioning from receiving service from private haulers to receiving them from ARR.

**February 2018**

Newly-appointed Austin City Manager Spencer Cronk begins work.

**March 2018**

Austin Assistant City Manager Robert Goode began his 11<sup>th</sup> year of overseeing virtually all of the City’s solid waste, recycling and composting related contracts and responsibilities.