

From: [Bob Gregory](#)
To: ARR.Solicitations@austintexas.gov
Cc: [Bob Gregory](#)
Subject: TDS Response to RFI No. 1500 SLW6005, City Facilities
Date: Friday, August 9, 2019 8:00:00 PM
Attachments: [TDS Response to No. RFI 1500 SLW6005, City Facilities.pdf](#)

Please see TDS Response to RFI No. 1500 SLW6005, City Facilities attached.



CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR INFORMATION (RFI)
Cover Sheet

SOLICITATION NO: RFI 1500 SLW6005 Collection, Hauling, Processing, and Disposal of Refuse, Recycling, and Compostable Materials at City Facilities.

COMMENTS DUE: 11:59 PM (CST), August 9, 2019

The City of Austin is requesting comments on the Collection, Hauling, Processing, and Disposal of Refuse, Recycling, and Compostable Materials at City Facilities Scope of Work to determine if modifications are necessary before issuing a possible future solicitation for the services. The comments are for informational purposes only, and the City is not compelled to make any changes or include or remove any of the recommendations that the City does not deem necessary or advantageous.

SUBMISSION OF COMMENTS:

All comments are due by August 9, 2019 at 11:59 PM (CST). To be considered, all comments, questions, and suggestions must be submitted with this cover sheet via email to ARR.Solicitations@austintexas.gov.

Commenters are requested to consider the following questions in preparing their comments:

1. Identify specific requirements within the Scope of Work that are of concern. Why are these requirements a concern?
2. What suggestions do you have to improve the clarity of the Scope of Work? Provide reasoning that supports your suggestions.
3. Of the Services mentioned in Section 3.0 of the Scope of Work, what services would your company have the ability to perform?
4. What changes could be made to the Scope of Work to ensure the most cost-effective solution for the City?

The undersigned ("Respondent"), by their signature, acknowledges that they are authorized to represent the organization below. The Respondent, by submitting and signing below, acknowledges that this request is not a solicitation, will not result in a contract award, and the information provided may be utilized in possible future solicitations.



Signature of Person Authorized to Sign

Bob Gregory, President

Signer's Name and Title (Please Print)

Company Name: Texas Disposal Systems, Inc.
Address: 12200 Carl Road
City, State, Zip Code: Creedmoor, Texas 78610
Phone No.: (512) 421-1300
Email Address: bgregory@texasdisposal.com

TO: ARR.Solicitations@austingtexas.gov

FROM: Texas Disposal Systems, Inc.

DATE: August 9, 2019

RE: Questions, Comments & Suggestions - Request For Information No. 1500 SLW6005, Collection of Refuse, Recycling and Compost at City Facilities

Texas Disposal Systems, Inc. (TDS) has reviewed the draft solicitation documents published on July 26, 2019 as part of RFI 1500 SLW6005 – Collection of Refuse, Recycling and Compost at City Facilities – and respectfully submits the following comments, questions and information for review and consideration.

Participation in this RFI process and submission of the following information does not in any way subject TDS to the restrictions of City Code Chapter 2-7, Article 2 (Anti-Lobbying and Procurement).

GENERAL QUESTIONS, COMMENTS & SUGGESTIONS:

1. What is the City’s anticipated time period for issuing a solicitation for Trash, Recycling, and Organics/Composting Collection Services for the Central Business District, evaluating vendor responses, conducting contract negotiations, securing recommendations from Boards & Commissions and approval from City Council? The City’s current contract for these services does not expire until February 28, 2020, not considering any agreed upon allowable contract holdover period.
2. What is the anticipated annual value of this contract?
3. The City should include language in the solicitation that informs prospective respondents that when seeking a recommendation from Boards and Commissions and approval from City Council that the City intends to post all contract documents as agenda backup materials.
4. Has the City determined the scoring criteria it intends to use for evaluating vendor responses to a solicitation for Collection of Refuse, Recycling and Compost from City Facilities, and if so will the scoring criteria be available for review and comment prior to issuance of the solicitation? As part of the scoring criteria, we suggest including a criteria for Local Business Presence that is consistent with the July 2017 recommendation of the City Council Waste Management Policy Working Group:

“Within waste management matrices, revise the definition of “local” to more accurately represent local business presence. The current point allowance favors businesses with offices within the city limits regardless of the type, nature, or history of their presence in the local community. At the same time it penalizes businesses with headquarters just outside the city limits but with substantial business presence in the Austin Area.”

5. The published RFI documents do not mention or include a duration for the initial contract term, or any contract extension options. This information is critical for a contractor to know in order for them to conduct a cost analysis of the significant investment in human resources and capital equipment required to meet its responsibilities under this contract. In order for the contractor to depreciate its investment, we suggest a minimum initial term of 36 months, with several 12-month contract extension options, subject to mutual agreement by the contractor and the City.
6. The published RFI documents are not clear how the contractor will be compensated by the City. Is a sample pricing form available for review and comment prior to issuance of the solicitation?
7. How will this contract be affected if the City modifies the regulatory manner in which commercial and industrial waste materials are managed within its jurisdiction during the term of this contract?

SECTION 0500 – SCOPE OF WORK QUESTIONS, COMMENTS & SUGGESTIONS:

1. Section 2.0- “The City currently contracts with private haulers to provide various sizes of dumpster and roll-offs as necessary to collect, transport, process, and dispose of refuse, single-stream recyclable materials, composting material, and brush at approximately 200 City facilities. In 2018, these facilities produced approximately 7,800 tons of refuse and 1,400 tons of recycling.”

In order for the contractor to accurately determine its cost and establish pricing for these services, the solicitation must include specific annual volume estimates for each material contemplated in the solicitation, including: municipal solid waste; construction and demolition debris; single stream recyclables; source separated and baled recyclables; organic materials with food scraps; bulky items; scrap wood and brush; and industrial Class 2 and non-hazardous special waste materials.

2. Section 3.1, Section 3.2 E: “The Contractor shall not commingle materials collected from City Facilities or special events with materials from any other source.”

Requiring the contractor to exclusively operate dedicated routes will unnecessarily increase the contractor’s cost, and consequently will increase the contractor’s rates charged to the City. As an alternative to the requirement of dedicated City facility routes, the City and contractor should mutually work together to periodically schedule dedicated routes, either on an annual or semi-annual basis, for example. This will enable the City and contractor to capture accurate disposal and diversion rates for materials collected from City Facilities, while still allowing the City and contractor to mutually benefit from the efficiencies of undedicated routes.

3. Section 3.1.2- Recycling: “The City reserves the right to modify the list of items to be recycled (below) at its sole discretion.

In order for the City to receive the most cost effective proposal, any addition of materials to the list of recyclable items should be by mutual agreement of City and contractor.

4. Section 3.1.5 B- Brush Processing: “The Contractor shall deliver all brush (no food scraps) collected under the terms of this contract to the City’s Hornsby Bend Bio-solids Management Plant, located at 2210 South FM 973, Austin, Texas 78725.”

The solicitation documents should clarify the daily hours of access to the City’s Hornsby Bend Bio-solids Management Plant, and whether the Contractor is subject to tipping fees, if any, for brush materials delivered to the facility. If there are applicable brush tipping fees, then the specific fee amount and unit of measure should be included in the solicitation documents.

Alternatively, in order for the City to receive the most cost effective proposal, the Contractor should have the flexibility to utilize brush facilities of their choice, which may be closer to the actual brush collection points and may be accessible to the contractor 24 hours per day.

5. Section 3.1.7 A- Special Events: “For any special event co-sponsored by the City that requires additional collection services, the Department Contract Operations Manager will work with the awarded Contractor to come to an agreement on collection schedule, containers, and pricing via written amendment.”

In order for the contractor to accurately determine its cost and establish pricing for these services, the solicitation documents should include at least a comprehensive listing of past special events and expected future special events which have been designated by City Council action, and identify which specific events will require services after normal/non-working hours between 6:00pm and 6:00am.

6. Section 3.1.7 B- Special Events: “The City currently coordinates and supports City co-sponsored special events where services may be required.”

The solicitation documents must make it explicitly clear that organizers and promoters of all special events maintain their existing right to select any licensed service provider of their choice, and that they have no obligation to utilize any services provided under this contract, and only those events that are City sponsored or co-sponsored by an official vote of the City Council will be eligible to purchase services under this contract. The solicitation should make it clear that any event services performed under this contract will be no more extensive than those directed to be performed by [City Council Resolution #20091022-040](#).

7. Section 3.1.7 D vii

There is a disparity in the post event reporting deadlines included in Section 3.1.7 D vii and the post event reporting deadlines included in Section 8.1.1.

8. Section 3.2 F- Disposal and Processing Facilities: “Please reference Section 7.4, Approved Landfill Facility, for landfill requirements.”

Since Section 7.4 does not exist in the RFI documents, Section 3.2 F should correctly reference Section 7.3 (Confirmation of Facilities Used).

9. 3.2.2- Material Recovery Facility (MRF):

The solicitation documents must include details and data about the specific material composition of single stream recyclables collected from City facilities and special events, and include the annual volume estimates for the different types of recyclable materials contemplated in the contract, including recyclables that are commingled single stream, source separated and baled. Furthermore, due to the potential for increased cost to utilize MRFs in different geographic locations, any decision to designate a different MRF used for recyclable materials collected from City facilities and special events should be by mutual agreement of the City and contractor.

10. 3.2.3- Compostable Materials Processing (Food Scraps):

Due to legitimate concerns raised about several local composting facilities, specifically their daily operating practices, close proximity to flood plains and apparent compliance issues with Travis County siting regulations, any decision to designate a different composting facility used for compostable materials collected from City facilities and special events must be by mutual agreement of the City and contractor. It is inappropriate for the City to hold the exclusive contractual right to direct its contractor to utilize composting facilities that may be in violation of local and/or state rules and regulations.

11. Section 3.3.2- Locking Lids, Doors and Casters:

In order for the City to receive the most cost effective proposal, the solicitation must allow for the contractor to recover its costs to install and operate lock bars and casters. Without the means for the contractor to recover these costs the City will have no disincentive to require locking bars and casters on as many as all containers, drastically increasing the cost and difficulty of operations. If the contractor is able to recover its cost to add lock bars and casters, it will be more likely that they will only be utilized when necessary, and it will enable respondents to provide the lowest possible base pricing.

12. Section 4.3- Spill Prevention, Spillage, and Clean Up: “The Contractor, its employees, subcontractors, agents, and/or consultants shall solely be responsible and liable for all management, cleanup, transportation, resulting damages, expenditures, and other considerations for all drips, leaks, and/or spills from any source, solid or liquid, and/or loss of debris, even minor amounts, that occur anywhere (from collections, transportation, disposal, or processing of materials associated with the contract), and anytime during the performance of the contract.”

The City maintains exclusive responsibility for ensuring safe and proper utilization of all carts, containers, dumpsters, rolloffs, compactors and other associated receptacles provided by the contractor. During times in which unsafe and improper use of these containers occurs, and subsequently creates a public health and safety matter, for example, the contractor must have the means to recover any costs incurred to manage such exceptional instances. Without the means for the contractor to recover these costs, the City has no incentive to ensure safe and

proper utilization of the contractor's containers. As a result, the contractor will be forced to consider and include these potential costs in its proposal, which consequently and unnecessarily will increase the contractor's rates charged to the City.

13. Section 8.4.3- "The contractor and any subcontractors shall also allow access by City staff to audit financial statements, and all environmental, safety, and training records."

The audit and inspection rights being sought by the City are far too extensive, particularly for companies with hundreds or thousands of employees and identified records. These rights must be limited to those pertinent records which are directly relevant to the provision of the specific services under this contract.

14. Sections dealing with Landfill Criteria Matrix (LCM)
Section 3.5.1, Section 4.5 (A), Section 7.1.4 (A), any other section explicitly or implicitly referencing the LCM

There are numerous reasons TDS has vehemently opposed the staff's LCM, and our concerns were confirmed by the ridiculous results of staff's LCM scoring. The determination by staff that the Waste Management-Austin Community Landfill (WM-ACL) is superior to the Texas Disposal Systems Landfill, Inc (TDSL) facility is patently absurd, false and defamatory, and entirely contrary to objective reality, common sense and the public record.

TDS objects to the implementation of the staff's LCM prior to the City Council's specific and singular consideration and determination independent of the purchasing process. Specifically of concern is the City staff's apparent effort to secure the Council's approval of the LCM after it has already been unilaterally implemented by staff and while the process is cloaked by Anti-Lobbying Ordinance (ALO) restrictions that are imposed by incorporating this major LCM policy decision within the staff controlled purchasing process.

Staff stated its intent to proceed in this unprecedented fashion when the Agenda Item for Council consideration of the LCM on its own was [withdrawn by staff from the City Council's November 15, 2018 Agenda](#). This was done after the Zero Waste Advisory Commission (ZWAC) considered staff's LCM policy on October 10, 2018 and [recommended that Council reject all versions of the LCM](#) due to staff's apparent refusal to include in the matrix those criteria deemed most important by Council, ZWAC and stakeholders. Apparently it was decided by staff that they could not allow the Council to consider the LCM and the ZWAC's October 10, 2018 recommendation to reject it, unless staff had first secured for itself the dubious authority to regulate and punish the speech of affected stakeholders, and until the implications of the LCM could be obscured by ancillary contracting and purchasing process issues. This is precisely [the staff practice that has plagued stakeholders, including TDS over the last several years](#). Please also see the [TDS annotated version](#) of the November 9, 2018 City Manager memo to Council on the LCM.

TDS strongly recommends that the City Council be given the opportunity to consider the LCM, prior to its implementation within the purchasing process, as a stand-alone Council Agenda Item without the unconstitutional threat of ALO speech restrictions and penalties. In any event, TDS cannot be silent while staff advocates for Council approval of their LCM and simultaneously attempts to restrict the speech of stakeholders who may respond to City solicitations.

TDS' strong opposition to staff's LCM is based on:

- **POLICY:** ERASING past policy positions established by City Council: Staff seeks to establish itself as the policymaker for which landfill(s) the City can and can't use, regardless of the landfill's past history and prior City Council positions taken regarding specific landfills.
- **PROCESS:** IGNORING stakeholder input by proposing that LCM scoring determine contractor eligibility rather than being advisory to policymakers, and by failing to allow landfill operators due process to challenge the scores and the scoring criteria imposed by staff.
- **CRITERIA:** IGNORING direction from the City Council and ZWAC by proposing to exclude Council's environmental priorities and the presence of hazardous materials from LCM scoring.
- **SCORING:** IGNORING the obvious origination of the entire LCM process by proposing to devalue other environmental factors in LCM scoring and ignoring the damage to the reputation of the Texas Disposal Systems Landfill, Inc. and the reputation of its owners by staff's intentional creation of a scoring criteria to disparage the environmental integrity of their landfill in comparison to the other two landfills being scored.
- **IMPACT:** ENABLING the probable expansion of Austin's two most controversial landfills, and placing unregulated recycling and unauthorized waste transfer and disposal operations in a competitive advantage over landfill operations.
- **FAIRNESS:** CREATING an absurd difference in criteria between Municipal Solid Waste (MSW) and Construction and Demolition (C&D) landfills, and excluding the landfills used by recycling, composting and transfer facilities from the evaluation, which was never discussed by stakeholders in the community/industry stakeholder process, and which would create an advantage for less regulated and frequently illegal waste transfer stations pretending to be recycling facilities.
- **AMBIGUITY:** FAILURE of staff to provide the actual code/ordinance language that would supposedly effect this criteria; and, FAILURE to define terms such as "city-controlled waste" which could very well mean, or evolve to mean, all MSW and C&D waste generated in the City, resulting in FLOW CONTROL to staff's favored landfill facility.

BACKGROUND

The LCM item has been before ZWAC three times and is the result of a [July 2017 recommendation by the City Council's Waste Management Policy Working Group](#) (PWG). The PWG process itself was launched after the City Council voted to reject every waste contract recommended by City staff in 2016 based on a range of policy concerns, including staff's plan to utilize the controversial Waste Management Austin Community Landfill (WM-ACL) facility in northeast Austin to process City-controlled MSW and C&D waste (even after numerous previous Council votes rejecting staff's proposed use of that facility).

Regarding landfill utilization, the policy question ultimately posed to the PWG by City staff was: "Should materials be directed to or away from certain landfills in future solicitations?" The full PWG response / recommendation follows:

- "Yes, materials should be directed to or away from certain landfills through the use of a landfill criteria matrix that reflects Council's environmental priorities"; and
- "Recommendation to Staff: Direct waste diversion by criteria not by landfill. Staff should develop criteria for waste diversion to include considerations such as: community impact and social equity, carbon footprint, amount and type of waste, existing levels of hazardous materials at landfill. Staff should prepare this matrix and it should come before the Council for approval before implementation."

The PWG additionally noted: "Prior Council has established environmental priorities relative to landfills. The City is in a unique position to be a culture maker around environmental practices. Although the City cannot single handedly affect the closure of any one landfill, the City can uphold and apply best positive practices relative to area sustainability, adhering to (Council) policy with contract requirements and designations. A matrix reflecting these best positive practices would provide a transparent scoring mechanism to determine the use of any particular landfill."

In response, in late 2017 and early 2018, City staff developed and presented initial LCM drafts for ZWAC review. [After staff's LCM drafts met with widespread opposition from stakeholders, ZWAC passed a resolution in February 2018](#) proposing specific matrix revisions; reiterating support for each of the PWG-recommended LCM criteria; urging staff to add new environmental measures to the LCM including "commitment to waste diversion"; and recommending that staff convene a community / industry stakeholder process to gather input to inform a revised LCM draft.

Texas Disposal Systems Landfill, Inc. (TDSL) and TDS representatives actively participated in the resulting stakeholder process in March, April and May 2018. While all of the meetings were professionally facilitated by an independent contractor, **the unfortunate end result is yet another fatally flawed LCM unilaterally imposed by City staff**, whose primary purpose appears to be to minimize the decision-making authority of policymakers while maximizing staff's own ability to continue recommending utilization and expansions necessary for the WM-ACL facility to accept major volumes of City-controlled waste.

As noted above, staff's LCM proposal: 1) ignores the consensus of stakeholders that the LCM should provide policymakers with MORE INFORMATION rather than FEWER CHOICES, and instead grants new decision-making authority to staff; 2) ignores specific direction from both the Council PWG and ZWAC for the revised LCM to reflect "Council's environmental priorities" and account for "existing levels of hazardous materials"; and 3) ignores the obvious origination of the entire LCM process by proposing LCM point assignments that devalue environmental factors, making it possible for environmentally inferior facilities to score higher than environmentally superior facilities. Basically staff's matrix focuses on less important issues to the exclusion of major issues such as effective landfill design, protective perimeter groundwater and methane gas monitoring, the presence of large volumes toxic and hazardous materials within the landfill, prudent and effective operational practices, minimization of long term financial liability for clean-up costs, impacts to surrounding neighbors, etc. These are the important issues a rational waste generator and consumer of landfill services is concerned with when evaluating the use of a particular landfill, since waste generators remain liable for their waste forever.

Perhaps most importantly, not only would staff's draft LCM effectively "greenwash" the WM-ACL facility in the near term, it would also ultimately create the potential for Waste Management to pursue a dramatic expansion of the ACL facility landfill capacity without City opposition—an expansion very likely to include the lateral and vertical increase in capacity over the immediately adjacent Republic-Sunset Farms Landfill and/or the SH 290E Travis County Landfill, which are both closed to the public but still hold active TCEQ permits and are not closed to the point of being able to enter their minimum of thirty year long-term post closure care periods, – and make it potentially impossible for the City Council to CONTINUE to oppose such an expansion before state regulators, as well as the joint expansion of the City's 812 landfill and the adjacent IESI/Progressive/Waste Connections Type IV landfill. Further, it would provide non-landfill C&D waste recycling facilities exempt from LCM requirements, unauthorized C&D waste disposal facilities, and MSW and C&D waste transfer stations exempt from LCM requirements a competitive advantage over properly authorized and operated facilities required to comply with LCM requirements to qualify to receive City controlled waste. Additional examples of the problematic facilities that must be part of any discussion of the LCM, whether they are included or exempted, are as follows:

- Waste Connections (formerly IESI and Progressive) FM 812 Travis County Landfill- This facility, located at 9600 FM 812, is a permitted Type IV landfill and its owner/operator is currently seeking a major permit amendment capacity expansion from the TCEQ. Given this landfill's location adjacent to the end of the main runway of Austin Bergstrom International Airport (ABIA) its operations ought to be of great concern to all Austin area residents and anyone who might fly in or out of ABIA. Unfortunately, this landfill appears to be what should be an unacceptable public safety hazard due to the ongoing presence of exposed waste, standing water, and the apparent presence of prohibited putrescible waste which are consistently attracting birds including large turkey vultures (buzzards). The presence of these birds greatly increases the chances of a collision between birds and airplanes that could have catastrophic results. [These diagrams and photographs](#), taken on Sundays between November 2018 and July 2019 show these dangerous conditions are a consistent and apparently acceptable part

of this landfill's operating practices. Pilots have advocated for the closure of this facility throughout the years for public safety reasons. Incredibly, none of these operating practices, the buzzards they attract or the potential for catastrophic bird-strike are considered by the staff's LCM as a Community Impact issue, even though the presence of birds is well documented. In our opinion, the City's support of this landfill's continued operation would make the City complicit in potential collisions with birds attracted to this landfill; and while the City may not be culpable, it would certainly be reprehensible. This concern was expressed by the City Council in 2005 when the Council voted to table a staff recommendation to tie together the City landfill with the adjacent landfill now owned by Waste Connections due to environmental concerns and aircraft bird-strike safety concerns reported [here](#) and [here](#).

- Recon Services FM 973 Pit- This facility, located at 6005 FM 973, appears to be operating as an unauthorized Type IV landfill. Despite being named by the City as a "qualified processor" under the City's C&D Recycling Ordinance, this facility has been accumulating and burying in the floodplain huge amounts of what appears to be ground up C&D waste in the floodplain. [These diagrams and photographs](#), taken on Sundays between November 2018 and July 2019, show the condition of the site currently as well as an example of the flooding it periodically experiences being relatively close to Onion Creek. This facility is currently seeking a Type V permit from the TCEQ to transfer solid waste. To our knowledge, their permit application is not for any additional activities, but potentially is the result of TCEQ inspection deficiencies indicating that their current activities may be unauthorized without the Type V transfer station permit they are seeking now. The City should ensure that it is not promoting the use of facilities that attempt to achieve an advantage in the marketplace through environmentally harmful unauthorized activities, such as the burial of solid waste within and near a floodplain without proper authorizations.
- JV Dirt & Loam/Walker-Aero- While this facility, located at 3600 FM 973, is a TCEQ permitted composting facility, they also process large amounts of C&D waste. [It appears from these diagrams and photographs](#), taken on Sundays between November 2018 and July 2019, that significant material accumulation is taking place and that a massive amount of what appears to be ground up and otherwise residual solid waste from the processing of C&D material is being landfilled onsite into large ponds in close proximity to and directly adjacent to the Colorado River. It is highly unlikely that this is an authorized activity. The City should ensure that it is not promoting the use of facilities that attempt to achieve an advantage in the marketplace through environmentally harmful unauthorized activities, such as the burial of solid waste within and near a floodplain and within ponds without proper authorizations.
- Organics by Gosh- The facility located at 13602 FM 969 is apparently operating simultaneously as an unauthorized MSW transfer station, as well as a food waste composting facility that is arguably in violation of the Travis County Solid Waste Facility Siting Ordinance as it regards the facility's acceptance of large volumes of food-waste, its location in the floodplain and its [proximity to sensitive receptors](#) established prior to their reporting the

acceptance of food waste, such as schools, neighborhoods and churches. [These diagrams and photographs](#), taken on Sundays between November 2018 and July 2019, show the prevalent conditions of the facility and the significant and ongoing issue of buzzards being attracted to the site and feeding on exposed putrescible waste awaiting transfer to their composting facility in Bastrop County. You can read more on this facility [here](#) and [here](#).

To be clear, if Council were to approve staff's unilaterally implemented LCM and evaluation process, TDS would be forced to challenge the periodic landfill scoring qualification for future City solicitations involving landfill utilization. Our concerns are further detailed below.

PROCESS: GIVING POLICYMAKERS FEWER CHOICES INSTEAD OF MORE INFORMATION

TDS believes that all community/industry LCM stakeholders and the independent facilitator would agree that our meeting process in March, April and May 2018 established an important "big picture" question about City staff's Landfill Criteria Matrix (LCM) evaluation process – namely, would staff's proposed process result in City policymakers having MORE INFORMATION or having FEWER CHOICES?

It was understood by stakeholders that giving policymakers MORE INFORMATION would mean that staff's LCM evaluation would be advisory to policymakers – a factor to consider when weighing staff recommendations. By contrast, giving policymakers FEWER CHOICES would grant staff the authority to administratively eliminate landfill contractors from consideration based on their most current LCM score, shifting the power to establish environmental policy from elected policymakers to City staff.

To establish environmental policy in contradiction to the clear consensus among stakeholders that staff's LCM evaluation should be advisory to policymakers and provide MORE INFORMATION ([see the notation at the top of the 5-23-18 stakeholder landfill criteria](#)), staff's draft [Request for Council Action](#) indicated that **"staff's proposed process is to utilize the landfill criteria matrix to identify landfills eligible to receive City-controlled MSW or C&D debris"** – in other words, use the LCM evaluation to give policymakers FEWER CHOICES. This could result in staff only allowing one landfill or one transfer station to do business with the City which could establish a monopoly in violation of the Texas Constitution Article 1, Section 26.

This bad idea is made worse by staff's further proposal to periodically institute a new LCM RFI and evaluation process to implement it. If each proposing contractor's LCM score were instead only advisory to policymakers during each contracting process rather than being used to create a standing eligibility list, it could instead be established only on an as-needed basis. In those instances where landfill utilization is contracted for more than once per year, a proposed facility's LCM score assigned within the previous 12 months could suffice to inform policymakers.

There can simply be no question that to allow staff to fully control landfill contractor eligibility will ultimately yield more, rather than less, conflict and controversy. Staff's past actions within this

industry should preclude them from obtaining the unchecked authority over landfill eligibility that their proposed matrix would grant them.

CRITERIA: IGNORING COUNCIL ENVIRONMENTAL PRIORITIES AND EXISTING HAZARDOUS MATERIALS

As noted, both the City Council and ZWAC provided specific direction and recommendations to staff to develop a draft LCM that “reflects Council’s environmental priorities” and accounts for “existing levels of hazardous materials.” The Council PWG further noted “Prior Council has established environmental priorities relative to landfills” and advocated for “upholding (Council) policy with contract requirements.”

Indeed, both the Austin City Council and ZWAC have voted REPEATEDLY over a period of many years to establish clear environmental priorities, especially relative to the proposed use of the WM-ACL facility. Most significantly, this includes:

- [Austin City Council’s May 2007](#) resolution opposing the expansion of the WM-ACL and seeking its permanent closure by November 1, 2015; and
- [ZWAC’s January 2010 resolution](#) recommending that the City Council “enter into no further contracts, contract extensions, or other contractual obligations” with Waste Management based WM-ACL operations.

In addition, both the City Council and ZWAC have voted numerous times in recent years to reject staff-recommended contracts proposing utilization of the WM-ACL. Most recently, both the City Council and ZWAC voted unanimously in February 2017 to reject a staff proposal to utilize the WM-ACL for waste from City facilities; and the City Council voted unanimously in December 2015 to reject a staff proposal to utilize the WM-ACL for waste from Austin Energy facilities.

Importantly, Council and ZWAC opposition to utilization of the WM-ACL has not only been in response to widespread community opposition to the facility but in fact derives largely from the findings of a [1999 City-commissioned third party environmental study of Austin-area landfills](#) which concluded that the WM-ACL facility “poses a substantial environmental risk and potential future liability to the owners and users of the site.” This conclusion from a City-commissioned independent expert was based in part on “**existing levels of hazardous materials**” on-site at the WM-ACL, specifically **a hazardous materials unit with approximately 21,000 drums and several acid ponds (about 60,000 to 80,000 tons) of industrial and toxic waste disposed of in unlined pits and trenches.** (See also the [2003 assessment of the WM-ACL by Robert Kier Consulting](#) which reported that an EPA official dubbed the facility “Austin’s Love Canal” and Dr. Kier noted that “the aggregate capacity of the unlined pits into which bulk quantities of spent acids, paints, solvents and industrial process water were placed was in excess of 1.8 million gallons.” See also, [here](#), [here](#), [here](#), [here](#) and [here](#) for details on the hazardous materials disposed at the WM-ACL)

In fact, based on the findings of the City-commissioned environmental study and Council's subsequent direction, in 2009 [City of Austin attorneys filed numerous briefs as a protestant in a contested case seeking denial of a WM-ACL expansion](#). The following excerpts from The City of Austin's legal filings accurately reflect the facts then as now:

- "...the [WM-ACL] Industrial Waste Unit (IWU) accepted a plethora of chemicals and industrial waste materials, many of which are considered hazardous materials under the existing regulations ... although it stopped taking materials in the 1970's, the IWU is still in place and is part of the facility ... there is no evidence in the record that the IWU has ever been 'closed'..."
- "...the record is replete with evidence that the [WM-ACL] is currently adversely impacting human health and the environment; and since [Waste Management] is not proposing to do anything different under its proposed permit for expansion, the facility will continue to adversely impact human health and the environment..."
- "If ever there was a case where an MSW landfill permit amendment to extend the life of a facility should be denied, this is that case. In 2004 WMI was assessed the largest fine ever levied by the TCEQ on a MSW operator in the State of Texas. One of the many reasons this application should be denied, is that the operation of this facility has and will continue to impact the surrounding neighborhoods, as evidenced by the repeated and voluminous complaints regarding odors, traffic, litter, dust, erosion and sedimentation of streams. By virtue of its record of operation the Applicant has failed to demonstrate that the facility will not adversely impact human health or the environment, as required by 330.61 (h)."

Please see this [November 8, 2017 memo from Gary Newton to ZWAC re: the extensive history of the City of Austin vigorously pursuing the closure of the WM-ACL](#). All of the evidence cited by the City of Austin as the basis for their opposition to WM-ACL is as valid today as it was then because none of the underlying conditions that were the basis of that evidence have changed.

Despite this clear and extensive history of both Council and ZWAC rejecting utilization of the WM-ACL based on **environmental priorities** (including votes resulting in the formation of the Council PWG, and the PWG's direction to staff to develop the LCM), the well documented presence of "**existing levels of hazardous materials**" at the WM-ACL site, and the extensive City Attorney's office Legal briefs presenting the serious and on-going threat the WM-ACL continued presence and operation poses, staff's proposed LCM contains NO criteria reflecting any measure truly relating to Community Impact, despite specific direction and recommendations to the contrary.

SCORING: DEVALUING ENVIRONMENTAL FACTORS

Even more broadly, staff's proposed LCM devalues the overall impact of environmental factors, making it possible for environmentally inferior landfill facilities to score higher than environmentally

superior landfill facilities, and eliminates a nearby landfill that could easily be relied upon for the disposal of City-controlled waste.

For example, staff's proposal assigns a total of just 15 (out of 100 possible) points for "Zero Waste / beneficial waste diversion" activities (a criteria specifically recommended for inclusion in the LCM by ZWAC), but assigns a total of 25 possible points for operational safety factors, including on-site injuries – a set of criteria that neither the Council or ZWAC recommended for inclusion in the LCM.

Similarly, simply providing affirmative hiring policies (not even proof of compliance with those policies) is assigned 15 points, and providing a living wage and health insurance is worth 10 points.

While TDS of course agrees that operational safety and fair wages and working conditions are important, **none of these concerns have been the motivation for Council/ZWAC opposition to the WM-ACL, the formation of the Council PWG, or the PWG direction to staff to "direct waste diversion by criteria not by landfill."** Instead, it has been exclusively environmental concerns, and the impact of those environmental concerns on surrounding neighbors, that have resulted in this effort to seek policy clarity. (It should be recalled that [Waste Management's operation of the WM- ACL resulted in the largest fine ever levied by the Texas Commission on Environmental Quality on a MSW landfill](#) – a non-factor in staff's LCM since staff evaluation goes back to cover only the most five years of compliance history.)

IMPACT: EXPANDING THE WM-ACL

Perhaps most importantly, TDS urges all those concerned to recognize the potential of staff's proposed LCM to not only "greenwash" the WM-ACL facility in the near term but to ultimately enable the facility's permitted capacity expansion through a TCEQ permit amendment, despite the City's past opposition to any further expansion or continued operation.

That is, by enabling utilization of the WM-ACL facility for City-controlled waste, the LCM could potentially result in City waste collection and/or disposal contracts that ACL's operator, Waste Management of Texas, Inc., would undoubtedly present to state regulators to justify a proposed expansion, of their landfill capacity, and Waste Management could use the City staff's approval of the WM-ACL for receipt of City-controlled waste and a City Council approval of a contract to dispose of City-controlled waste as a legal basis for filing a lawsuit against the City if the City Council voted to oppose the expansion of its landfill that scored the highest of all landfills under a Council approved LCM. At the same time, utilization of the WM-ACL would plainly invalidate the City's political position in opposition to the facility's expansion and in favor of its permanent closure.

Further, any proposed expansion of the WM-ACL facility is likely also to include the immediately adjacent "closed" Republic-Sunset Farms Landfill, which has also been opposed by the City Council in the past, and could also include the officially still active adjacent 290E Travis County Landfill, that resides on land not owned by Travis County.

You may recall that in 2008 City staff unilaterally entered into a Rule 11 Agreement based on restrictive covenants that removed the City Council's complete opposition to the Republic-Sunset Farms Landfill expansion in exchange for the facility's "permanent" closure by November 1, 2015. You may also recall that TDS previously informed ZWAC and the City Council that while the Republic-Sunset Farms facility did indeed "close" to the receipt of waste as scheduled, the 2008 restrictive covenants engineered by the City Attorney's office and then Assistant City Manager Robert Goode were **executed by entities that did not own the land comprising the landfill, but instead with the owners of the landfill permit**. As a result the covenants were not binding on the land itself, meaning a simple transfer of the landfill permit from the bound entity to any non-bound entity, such as Waste Management who has since acquired Republic's customers and assets in Austin and surrounding areas, could easily result in resumption of full operations at the Republic-Sunset Farms Landfill.

Given the [dramatic increase in the volume](#) of material received by the WM-ACL since the closure of the Republic-Sunset Farms Landfill and the resulting decrease in the remaining years of capacity in the WM-ACL, it should be of utmost concern to the City Council of Austin that Waste Management could seek to transfer the Sunset Farms Landfill permit into its name and seek the permit authority to re-open and expand the "closed" landfill. With that permit authority, Waste Management would be positioned to seek a permit amendment to combine and expand its WM-ACL with both adjacent landfills, fill in the valleys between the three landfills, and raise the approved height of the expanded landfills over the combined disposal footprint. Such an expansion could potentially **add over 110 million cubic yards of disposal capacity and decades of operating life to Austin's most controversial landfill**.

- [Please review the analysis by TDSL General Counsel Gary Newton for more details about City staff's 2008 Rule 11 Agreement and flawed restrictive covenants.](#)

COMMENTS ON SPECIFIC CRITERIA

1a. Estimated landfill gas collection emissions, 18 points.

This criteria will award 18 points for a certain level of "normalized emissions" which is a number that is not real. It is an amount calculated by a formula based on assumptions since there is no known method to measure actual emissions from a landfill. The formula can be manipulated by the assumptions made by the landfill operator. The formula does not take into consideration operational methods that limit actual emissions. To calculate normalized emissions you divide the formula generated emissions by the landfill's waste in place. Some facilities have been operating long before accurate records were kept about waste in place so certain estimates have to be made that are probably not accurate. This calculation will result in a number that could penalize a landfill operator that does not represent actual landfill emissions.

1c. Landfill gas beneficial use, 2 points

Staff's LCM gives an unfair advantage to older landfills because it takes a lot of waste in place to

generate a reliable quantity of landfill gas to produce electricity, supply landfill gas to a pipeline, or some other beneficial use.

2a. Permit Compliance, 10 points

Points are only awarded for a High compliance rating by TCEQ. Currently all the landfills in the Austin area have a High compliance rating. However, any landfill can be reduced to a Satisfactory rating without points awarded due to a minor violation. These minor violations will cause a landfill to lose these points for the next five years that this Notice of Violation (NOV) remains part of the compliance history.

The other problem with relying only on the TCEQ compliance rating is it does not take into consideration the effectiveness of design of the various landfill cells or the effectiveness of the groundwater and methane gas migration monitoring to protect the environment. The TCEQ permit compliance rating does not evaluate the effectiveness of the operation to control odor, windblown debris, dust, flies, birds, etc.

2b. Zero Waste/beneficial waste diversion, 15 points

This criteria will award maximum points for minimum effort. A landfill operator would only have to divert one hundred tons in five categories to receive the full 15 points. This pales in comparison to the TDS facility operations which divert hundreds of thousands of tons from the landfill, but yet five hundred tons of diversion by another landfill, or potentially the same one hundred tons of waste that fits the criteria for each of the five categories will receive the same credit.

3a. Safety Record, 10 points

This relies on the OSHA 300 report to determine if points are awarded. The problem is this report is not based on just landfill operations. The report is based on each location the entity operates. This means an entity may have many different activities in addition to the landfill operations that affect the incidence rate for accidents and illness. There is no accurate method for just reporting accidents and illness from landfill activities only in this situation, unless the landfill operator only buries waste, in which case, they would have a marked advantage over an operator who has many employees involved in landfill diversion through recycling, composting and the utilization of diverted materials to create and grow valuable products.

3b. Onsite fatalities or catastrophes, 15 points

Most landfills will not lose points for fatalities because fatalities are rare. However, severe injuries are more common so the landfill operator will lose the points for at least five years under the staff's approach. This would also ignore the fact that in many instances fatalities or severe injuries that have to be reported are not caused by the negligence of the landfill operator or involve the company's employees.

4a. Workforce Diversity Hiring and Advancement Policy, 15 points

This criteria may violate the Texas Constitution's "Due Course of Law" Provision in Article 1, Section 19 because it is not rationally related to a governmental interest.

4b (1). Living wage and health care benefits, 10 points

This criteria may violate state law that says minimum wage law is reserved for the Texas Legislative to establish, not by a city.

Finally, please note that while Waste Management and its allies have frequently suggested throughout the LCM process that if the WM-ACL facility were to be denied contracts for City-controlled waste, the result would be a TDS Type I landfill monopoly in the Austin area. This is either misinformed or designed to deceive. [This map and information page](#) clearly indicates that Waste Management operates a total of six Type I landfill facilities within 101 miles of Austin's City Hall – meaning that the TDS Creedmoor landfill is the only facility currently PREVENTING a Waste Management Type I landfill monopoly in the Austin area.

In sum, TDS believes that staff's LCM plainly effects a transition of the Council's policy making authority regarding the award of City contracts utilizing specific landfills to City staff and is designed to directly assist and promote the expansion of the disposal capacity and the operating life of the WM-ACL and the Waste Connections landfill over the next five years. This should be entirely unacceptable, under the circumstances. **TDS thus urges the City Council to direct staff to pull down its LCM and its scoring of the three facilities and to exclude staff's LCM from all solicitations under consideration.**

Alternatively, TDS would support a new and revised LCM and evaluation process that is advisory to policymakers and that APPROPRIATELY scores environmental and public safety considerations, including, as noted, previous Council / ZWAC opposition based on environmental and public safety to any facility based on environmental priorities, and the presence of large volumes of hazardous materials at any facility; and, which properly defines the operative terms and applicability limitations of the matrix in a final code/ordinance that can be reviewed and responded to by stakeholders in a public process prior to Council approval.