

Chronology of Solid Waste, Recycling, Organics and Zero Waste under Austin Assistant City Manager Robert Goode and Others

Texas Disposal Systems (TDS) was founded in Austin in 1977, forty years ago. Over that time we have developed the solid waste management facilities that enable us to provide environmental services to many thousands of customers across Texas. We have also consistently advocated for, and defended, policies at the local and state level that are environmentally protective, transparent, fair, economically sustainable, and consistently and vigorously enforced. The manner in which we've done so has resulted in our Travis County recycling, composting and disposal facility being named the best managed landfill in North America by the Solid Waste Association of North America, and the induction of our founder and CEO into the Environmental Industries Association Hall of Fame, among many other awards.

TDS is proud to be the City of Austin's primary partner in managing solid waste and recyclables. For over twenty years TDS has provided excellent service to the City through several different contracts. TDS has also remained engaged in all aspects of City policy development and application with regards to the local solid waste, recycling and organics management industry. This industry is unique in that the City functions as both a competitor with, and regulator of, licensed waste haulers. Our industry is further unique in that the City does have the statutory authority to eliminate the competitive market for commercial solid waste, recycling and organics services which currently exists, and to seize the associated revenue for itself and the flow of discarded material to facilities the City owns or controls through contracts. On several occasions in the past, the City staff has explicitly sought from the City Council the means to exercise this authority; however, the Council has consistently voted to maintain and protect the competitive private market that haulers, processors and generators of waste, discarded trash, recyclables and compostable materials rely on. Unfortunately, staff has continued to seek the means to expand its control over the private solid waste services market through the staff controlled procurement process by embedding significant policy implications and facility management authorizations within solicitations and the resulting contracts, while utilizing the Anti-Lobbying Ordinance to stifle dissent and control what City Boards and Commissions, and City Council members can see and hear.

The following chronology shows that since the appointment of Assistant City Manager Robert Goode in 2008, TDS has been all too frequently forced to oppose staff's explicit and implicit efforts to establish policies that are detrimental to TDS, other private solid waste management companies, and commercial businesses and institutions, and that are inconsistent with the established policies of the City Council. The chronology further reveals the staff's apparent attempts to harm TDS, and their tendency to avoid doing business with TDS, if at all possible, regardless of the adverse financial impact on the City.

TDS strongly believes that many of the initiatives and actions included in this chronology illustrate a pattern directed by Assistant City Manager Goode and other City management officials that constitutes:

- Misuse of City Departments and City Ordinances for the advancement of an agenda unsanctioned by City Council;
- Noncompliance with key duties, functions and responsibilities pursuant to the City of Austin [Job Description](#) for Assistant City Managers and other positions;
- Wasting City resources through questionable purchasing practices and contract negotiations; and
- Favoritism of contractors and an apparent disregard for fiduciary responsibility to Austin's ratepayers.

TDS has no choice but to view all initiatives of current and former City staff related to solid waste, recycling and organics management through the context of the following history. We offer this account to you in the hope that it will provide context to the frequent conflicts between TDS and City staff, and will inform your decisions as you chart the City's future.

March 2008	Robert Goode was appointed as Assistant City Manager overseeing Austin Resource Recovery and several other City departments. Previously Robert Goode served as Director of
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Transportation and Public Works for the City of Fort Worth. While working for the City of Fort Worth, Mr. Goode reported to then-Assistant City Manager Marc Ott.

- June 5, 2008 City staff proposed and recommended award and execution 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 and recommended to City Council as a no cost to the City, profitable revenue-generating contract with projected City net revenue of approximately \$3,000,000 during the initial two-year term, and an additional \$1,500,000 during the two six-month extension options, for a total estimated profit to the City of \$4,500,000. However, contrary to staff's representation to City Council, the Greenstar contract actually [cost](#) the City \$2,834,265 for the initial 2-year contract term. While Greenstar charged Austin to process and market its single-stream recyclables, the cities of San Antonio and Dallas received payments from Greenstar to provide the same recycling processing and commodity sales services for their residential single-stream recyclables. City staff also represented to City Council that Greenstar objected to ZWAC's [recommendation](#) 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, a representation that was later determined through separate conversations between TDS and Greenstar personnel to be false. City staff apparently knew 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.
- July 2008 City staff had to be forced to pay TDS approximately **\$350,000** in recycling revenues that were improperly [withheld](#) from payment while TDS used the City's dual-stream recycling facility on Todd Lane. TDS discovered that City staff arbitrarily changed, without notice or justification, the overall composition of TDS curbside recyclables 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 City staff "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 of City-owned Materials Recovery Facility (MRF). The City's plans to build its own MRF were scrapped after the projected costs for the project [skyrocketed](#) to a reported **\$72,000,000**.
- August 28, 2008 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 (Nacogdoches biomass contract). City Council approved execution of the Nacogdoches biomass contract at its regular meeting on August 28, 2008. Since that time, significant concerns have been raised by the City Council and community stakeholders about the City's obligations and costs associated with the wood waste to energy biomass project, often referred to as a ["boondoggle"](#) that reportedly costs Austin ratepayers approximately \$50,000,000 per year. In February 2016, the City Council approved a \$325,000 contract with [Jackson Walker LLP](#) to review the biomass contract to identify means for reducing the City's enormous financial exposure. City staff reported the plant would be fueled primarily with wood waste, leaving other waste products as a possible fuel source.
- Sept. 2008 City staff declared [commercial collection](#) of solid waste and recyclables a public utility under Article XI of the City Charter and proposed non-exclusive franchise agreements for all private haulers that included a **minimum 4% hidden tax on all Austin businesses, apartment complexes, institutions and non-profit organizations** for commercial waste and recyclables collection services. The proposed franchise agreements would have also granted City

Management and staff broad powers to set service charges, to regulate the number of collection vehicles used by haulers and to direct collected materials to City-owned and operated or contractually controlled facilities. TDS responded to Assistant City Manager Goode's franchise proposal with an aggressive [petition campaign](#) that over the course of approximately three weeks generated nearly 3,000 individual business signatures, over 30 individual proclamations from various large businesses and industry trade organizations, and a collective Hauler's Resolution signed by 17 local solid waste and recyclables haulers. The TDS [petition campaign](#) and pleas from businesses and haulers ultimately convinced City Council to direct City Management and staff to withdraw the controversial franchise proposal. See www.texasdisposal.com/austinwastehaulerfranchise for more details.

Oct. 16, 2008

City staff 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 to the City reporting the weight of each commodity sorted and 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 City staff's decision to dispose of construction waste materials that were reported to Austin Energy and in LEED certification project applications as recycled with specific pounds of different commodities diverted.

Oct. 31, 2008

[Without Council's consent or knowledge](#), Assistant City Manager Goode and City legal staff 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 (a.k.a. Allied Waste and Republic Services) controversial Sunset Farms Landfill in northeast Austin, reportedly in exchange for permanent closure of the landfill to the receipt of waste for disposal and the transfer of waste on or before November 1, 2015 – 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 Mr. Goode and City staff proposed to award the Citywide Dumpster Collection Services and special events services contract to Republic Services (previously BFI) and to direct City-generated waste to the beleaguered adjacent Waste Management, Inc. Austin Community Landfill – another contradiction of Council policy – TDS demonstrated that the Sunset Farms Landfill restrictive covenants negotiated and executed by Mr. 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 a permit amendment to their TCEQ Permit No. 1447A to eliminate the November 1, 2015 closing date requirement and re-open the landfill for waste disposal, processing and/or transfer station activities.

Nov. 16, 2009

After privately seeking and securing a commitment from TDS founder and CEO Bob Gregory to participate in a competitive solicitation to build and operate a Materials Recovery Facility (MRF) and offer other recycling options for the City to consider, Assistant City Manager Robert Goode and City staff issued [Request For Proposal No. RDR0005](#), subject to the City's Anti-Lobby

Ordinance (ALO) restrictions, for Recycling Services and the provision of a MRF under a new long term contract.

Dec. 2009 – March 2010

City staff proposed and recommended execution of Option 3 of the 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). Approval of this item would have completely negated the justification for the City's 11/16/2009 RFP No. RDR0005 - for Recycling Services and provision of a MRF - and would have resulted in a massive staff-projected loss to the City of **\$12,393,589** over the full contract term of the staff recommended restated and amended Greenstar contract. Mr. Goode and City staff also placed their Greenstar contract revision and extension recommendation on two separate ZWAC agendas ([12/9/2009](#) and [2/10/2010](#)) and four separate Council agendas ([12/17/2009](#), [2/11/2010](#), [2/25/2010](#), [3/25/2010](#)). City Council ultimately rejected the staff's recommendation and denied the Greenstar contract amendment, instead expressing a desire to see whether the City's RFP for recycling services would produce a local, financially favorable, and lower carbon footprint long-term partner.

January 2010

[Bob Gedert](#) began his service as director of Austin Resource Recovery (ARR), under the direction of Assistant City Manager Robert Goode. In FY10-11, when Mr. Gedert assumed his role as ARR director, the ARR enterprise fund balance was **\$24,256,000**. When Mr. Gedert retired from ARR 7 years later, the FY16-17 approved [enterprise fund balance](#) was **\$4,781,276**.

January 21, 2010

After TDS sent an email to the Zero Waste Advisory Commission (ZWAC) on 12/8/2009 urging the Commission to reject City staff's proposed amended and restated contract with Greenstar, and explained how approval of the item would have completely negated the need for the City's 11/16/2009 RFP for Recycling Services, due to the fact that the City's single stream recyclables could not be dedicated to fund the cost of both contracts, Assistant City Manager Goode and City staff sent TDS an official [letter](#) that stated that the TDS email to ZWAC was a prohibited representation under the City's Anti-Lobbying Ordinance (ALO), and therefore TDS was disqualified from competing for the City's RFP No. RDR0005 for Recycling Services and provision of a MRF. In addition to disqualifying TDS from competing for the City's RFP, the City also disqualified Greenstar for a communication it sent to a City attorney in response to TDS' email to ZWAC. Once it became known that TDS had already purchased its own sorting equipment and was moving ahead to construct its new 107,000 square foot MRF in southeast Travis County, we believe that Mr. Goode and City staff set out to eliminate two of the leading contractors most capable of servicing the City's impending contract for recycling services, but, in their haste to attempt to derail the TDS construction of its MRF, they did not realize that they had disqualified TDS from competing for the RFP before TDS was even qualified to be *disqualified*, because TDS had not yet become a respondent as defined under the City's ALO. After exhausting all City administrative remedies to have the disqualification overturned, TDS was forced to file a lawsuit against the City for improperly assessing the disqualification and to have the disqualification removed from its record. In March 2014, U.S. District Court Judge Lee Yeakel ruled that the City acted improperly when it found that TDS violated the ALO, and entered a judgment that the violation be removed from TDS' record. TDS estimates the City spent tens of thousands of dollars in legal fees defending City staff's improper disqualification of TDS. See www.texasdisposal.com/cityofaustin for more details.

February 9, 2010

The City received eight competing proposals in response to its RFP No. RDR0005 for Recycling Services, including a [competing proposal](#) submitted by the City of Austin Public Works Department to build and operate a \$45.7 million MRF located at the City's closed FM812

landfill. City staff's RFP response included an Executive Summary, which plainly revealed City staff's longtime desire to seize control of the local waste services marketplace: "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 Republic Services and Waste Management, Inc., potentially knowing the Council would have concerns about contracting with either private company on a long-term basis given both companies problematic facility operating records in Austin. In addition, Howard Lazarus, Austin's then Director of Public Works, later testified under oath in the above-referenced TDS v COA improper disqualification litigation that his department spent \$100,000 preparing its response to the City's RFP for Recycling Services. Mr. Lazarus also signed the RFP's required Anti-Lobby Ordinance compliance certification, indicating that City staff had not communicated with City staff and City officials concerning the RFP solicitation or their response since 11/16/09, and would not communicate with other City staff or City officials about the City's RFP response until the completion of the procurement process, which would have been impossible. 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, SWS 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 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.

February 9, 2010 In lieu of responding to the City's RFP No. RDR0005 for Recycling Services, TDS submitted to City Council and ZWAC an unsolicited proposed contract amendment to its 30-year Waste Disposal and Yard Trimmings Processing contract with the City of Austin. 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 10/1/2010;
- 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.

Other departments and Mr. Goode orchestrated the rejection of TDS' proposed contract amendment and disqualified TDS again from the RFP services solicitation process, even though TDS still had not become a respondent to the RFP subject to the disqualification. To date, Mr. Goode has not pursued any of the unsolicited option items proposed by TDS, which would have resulted in many millions of dollars in cost savings to the City and its ratepayers.

Feb. 10, 2010 In response to the pending March 1st retirement of Austin Energy General Manager Roger Duncan, City Manager Marc Ott named Assistant City Manager Robert Goode as the interim General Manager of Austin Energy effective 2/26/2010. Simultaneously, Mr. Ott also appointed Public Works Director Howard Lazarus to fill the role as Assistant City Manager effective 2/26/2010. Mr. Ott later hired Larry Weis to take over as Austin Energy's permanent General

Manager effective 9/27/2010. Mr. Lazarus, who signed the ALO certification as discussed above, oversaw the ARR department and the Public Works department, while the City staff's RFP response moved through the procurement process.

- Feb. 25, 2010 City staff proposed and recommended to Council a **\$1,209,014** professional services agreement with [HDR Engineering, Inc.](#) (HDR) to provide planning services for Austin Resource Recovery's 30-year Master Plan. As HDR began to finalize its draft of the Master Plan and the estimated costs for the City's Zero Waste programs, it became known that City staff was not comfortable with HDR's recommendations, and ultimately Bob Gedert reportedly took over the process of drafting a Master Plan himself. Mr. Gedert was credited with rewriting his own version of the department's Master Plan, which was published in December 2011. To our knowledge, the original HDR Master Plan draft has never been made public, nor has the City produced it in response to our Open Records Request, or provided a basis to be critical of HDR's work product, and it is unknown what the City ultimately paid for professional services rejected by City staff.
- June 10, 2010 After learning that City staff secretly [submitted](#) and [favorably scored](#) their own RFP proposal to build and operate a City-owned **\$45.7 million** MRF, including Howard Lazarus signing their own [Anti-Lobby Ordinance compliance certification](#), committing that City staff would not speak to City staff or to Council about their RFP response, the City Council voted as noted above to reject all RFP proposals and cancelled the City's RFP No. RDR0005.
- June 24, 2010 City Council passed [Resolution No. 20100624-081](#) directing the City Manager to negotiate with both TDS and Balcones Resources for a long-term agreement for recyclables processing services; and with TDS, Balcones Resources and Greenstar for a short-term agreement for recyclables processing services. TDS was awarded the short term (2 years) contract and negotiations continued for the long-term, 20-year contract. The \$17 million TDS MRF opened to serve the City on 10/1/2010. 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 TDS and Balcones for the long term MRF contract, City staff, under direction of Assistant City Manager Goode and Howard Lazarus, recommended that the City direct 100% of its residential single-stream recyclables to Balcones Resources, 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: Balcones' wholesale agreement to several controversial contract terms that staff knew TDS would logically strongly object to; staff's reliance on absurdly unrealistic projections of future commodity prices to simulate the financial performance of Balcones' pricing offer; and the use of a bogus transportation study based on an irregular costing methodology to justify the City's use of the Balcones facility and which is not used by the industry. We believe City staff deliberately orchestrated these factors in order to arrange their predetermined recommendation of Balcones, which, to our knowledge, at the time did not have a single stream MRF or experience with processing and marketing residential single-stream recyclables. City staff under the direction of Mr. Goode plainly revealed their willingness to favor other contractors over TDS, even when the net costs to the City and its ratepayers are higher. City Council ultimately decided to split the City's volume 40/60 between TDS and Balcones, with both companies receiving 20-year contracts with guaranteed minimum volumes of 2,000 tons per month for the first eight years. Once again, as noted above, TDS offered the City the most favorable pricing for 100% of the City's volume; acceptance of TDS' offer would have resulted

in approximately [\\$5,800,000 in cost savings](#) to Austin ratepayers for the period October 2012 – September 2017.

- Sept. – Oct. 2011 City staff ignored protections granted to 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 on 10/1/2011, pursuant to the City's recent annexation of the area, even if they wished to keep their service with TDS for two years, as the law allowed, not having to also pay the City's rate. The City's misinformation and heavy-handed tactics created significant customer confusion and resulted in hundreds of TDS' paying customers unnecessarily cancelling their services with TDS, even though [state law](#) provided a two-year period following an annexation for private service providers to continue servicing accounts/customers without interruption from the annexing municipality.
- June 2012 City staff proposed and recommended revisions to City Code Chapter 15-6 following over a year of ZWAC stakeholder meetings regarding the Hauler's Ordinance. Of [greatest concern](#), was the proposal to remove the right for haulers to appeal a denial or revocation of a license to the City Council. Ignoring pleas from haulers, Assistant City Manager 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 the long-standing appeal rights to City Council but also required all future revisions to the Administrative Rules for Chapter 15-6 to be presented to ZWAC for consideration and recommendation and to City Council for final approval.
- Aug. – Nov. 2012 City staff attempted to [conceal](#) a \$1,200,000 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. City Council and ZWAC 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. We believe, City staff, under the direction of Mr. Goode, would use the versatile rolloff waste handling equipment to compete with licensed private haulers to service commercial accounts had the Council not imposed the restriction on staff's use of the equipment.
- Nov. 2012 – April 2013 City staff deemed TDS' bid for collection, management, recycling and disposal of Austin Energy's Class 2 Non-Hazardous Industrial and Special Wastes as non-responsive due to a correctable administrative error caused by TDS inadvertently leaving out two signature pages of 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 Austin Energy 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 Council approval of the sole other bidder, Republic Services, at rates 26% higher than TDS' and with Republic Services providing no recycling or repurposing of the waste materials generated by Austin Energy, including a small portion of the AE which the solicitation required to be recycled. Despite Bob Gedert's and the office of sustainability [determination](#) that none of Austin Energy's materials were suitable for recycling, composting or beneficial reuse, it should be noted that [TDS recycled and repurposed nearly 50%](#) of Austin Energy's waste materials during the previous 4-year period. Ultimately, City Council approved an abbreviated 2-year contract and directed staff to seek Council approval of all contract extension options, primarily due to Republic's inability to fulfill the landfill disposal capacity requirement for the full contract

period, but we believe also to prevent Republic and staff from using the contract requirement as a basis to seek TCEQ approval to keep open or to reopen their landfill after the agreed upon closure date on or before 11/1/2015.

June 2013

City staff issued two separate biosolids sludge management solicitations at roughly the same time, both contemplating management of the same biosolids material. 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, staff knew TDS would remain silenced under the Anti-Lobby Ordinance until a new solicitation was reissued, which staff apparently never intended to do. Staff then pursued City Council approval to award and execute a contract with Synagro (again, at higher prices than the TDS composting proposal) for Biosolids Hauling and Land Application Services. TDS could not provide comment to Council because it remained an ALO-restricted respondent under the other biosolids solicitation. The day after City Council authorized award and execution of a contract with Synagro, TDS was informed that staff would not reissue the solicitation for Beneficial Reuse of Fire Damaged Materials - the same biosolids sludge materials.

April 2014

City staff misused the City Auditor's Integrity Unit to conduct a terribly improper investigation of ZWAC Commissioner Daniela Ochoa Gonzales and produced an erroneous report that we believe was intended to malign Mrs. Ochoa Gonzales' reputation and create the illusion of unethical conduct by both Mrs. Ochoa Gonzales and Texas Disposal Systems in her business affiliation with the company. City staff released the report to the Austin American Statesman before providing it to Mrs. Ochoa Gonzales. A seriously damaging news [article](#) was published in the Austin-American Statesman on 4/29/2014, based on an unprecedented City Auditor staff investigation report - which was done in a manner without a basis in City Code. Mrs. Ochoa Gonzales was immediately asked to resign from the Zero Waste Advisory Commission based upon the false allegations concocted by City staff and was terminated from her job at the University of Texas, we believe because of the newspaper coverage and the false and damaging report. Ultimately, the City Council passed [Resolution No. 20141016-024](#), formally rejecting the report and publicly apologizing to Mrs. Ochoa Gonzales, members of 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, Assistant City Manager Goode and City staff appeared to strongly object to any apology from staff or Council to TDS even though TDS' name was smeared by the same report and newspaper article. TDS believes Mr. Goode and City staff defamed Mrs. Ochoa Gonzales in an effort to maliciously damage the reputation of TDS and its owners. See www.texasdisposal.com/cityauditorreport for more details.

August 2014 City staff decided to not pursue back-billing of Clean Community Fees and Cart fees for thousands of identified ARR customers. Staff [estimated](#) the amount of unbilled fees could potentially be as much \$847,000. Assistant City Manager Goode informed City Council in his 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 for such practices.

Feb 2015 – May 2016

City staff 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 TDS and Balcones. 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 Balcones 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 was shocked to learn that Assistant City Manager Goode and Mr. Gedert agreed to accept pricing from Balcones that was not "equal to or better than" their existing pricing. In fact, Mr. Goode and Mr. Gedert allowed Balcones to significantly increase the prices charged to the City, while maintaining all of their designated 60% volume of recyclables from the City, including the 2,000-ton monthly guarantee for the next five year period. The net effect of Mr. Goode and Mr. Gedert's agreement to accept Balcones' higher pricing is expected to unnecessarily cost the City and its ratepayers an additional \$2,000,000 over the next five years. See attached City staff email regarding the [financial impact of the reset terms](#) negotiated with TDS and Balcones.

Sept. – Dec. 2015 City staff proposed and recommended a \$264,820 1-year contract extension with Republic Services for management and disposal of Austin Energy's industrial Class 2 non-hazardous and special waste materials. After questions about the proposed contract extension were raised, City staff under Assistant City Manager Goode were forced to reveal their willingness to allow Republic Services to utilize the Waste Management, Inc. Austin Community Landfill (WM-ACL) for disposal of Austin Energy's waste materials, despite City Council's 2013 opposition to using the WM-ACL for disposal of waste materials generated by Austin Energy and despite Council's directive to staff to bring contract extensions back to Council for approval. Council rejected City staff's proposed contract extension with Republic Services and allowed the contract to expire. Since then, staff has been managing this waste stream under an existing contract with another vendor at higher prices than those offered in the TDS 2013 bid response, which City staff deemed "non-responsive", and the contract extension offer.

Oct. 2015 – Aug. 2017

City staff 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 closed to the public FM812 landfill, which is adjacent to the active Travis County Landfill owned and operated by IESI (now controlled by Waste Connections). 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. 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 Austin Resource Recovery to assume future ownership of the various operations at the ReManufacturing HUB, and more importantly, about the likelihood of IESI (now Waste Connections) or any other entity purchasing the [25-acre parcel](#) of City-owned land located along their property line and located within the TCEQ permit boundary of the City's FM812 landfill. IESI or Waste Connections' ownership of this particular parcel of City-owned land, a [critical infrastructure](#) detention pond component of the City's landfill, could be used now as a basis for Waste Connections to reassert the [2004-2005 proposal](#) to seek TCEQ approval to combine their active Travis County Landfill with the City's still technically "Active" TCEQ permitted landfill but closed to the public landfill, and to seek a major expansion of the combined landfills as IESI proposed at the time. It can easily be argued that under no circumstance should the City sell its largest detention pond needed to gain its landfill closure authorization and to maintain the landfill throughout the required 30 year TCEQ closure and post-closure care period. Ultimately, the City Council appropriately rejected City staff's proposed land sales and directed staff to examine a public-private partnership approach to the ReManufacturing HUB project. Subsequently, in May 2017, City staff's private consultant published a feasibility analysis of the Austin ReManufacturing HUB - which concluded that no profit-oriented private developer would be attracted to the opportunity without major subsidies. Accordingly, City staff informed City Council that they no longer recommend constructing the ReManufacturing HUB.

March – Oct. 2016 City staff proposed and recommended a **\$387,000** potential 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 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 local market. As an alternative to participating in the solicitation and subjecting ourselves to the Anti-Lobbying Ordinance restriction and potential abuse by City staff, TDS made an unsolicited offer to purchase the material at a reasonable market price of \$4.50 per cubic yard, which would have yielded an additional \$1.6 million in revenue to the City. However, City staff, under Assistant City Manager Goode, refused to even consider TDS' more favorable offer, despite its obvious benefit to the City and its ratepayers.

April – Dec. 2016 City staff proposed and recommended a potential 10 year **\$20,351,000** 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 Assistant City Manager Goode, City staff sought to effectively terminate the City's award-winning Dillo Dirt biosolids compost program by contracting with Synagro to produce a biosolids sludge product dubbed "agricultural compost." Elected and appointed officials, environmental stakeholders and others raised questions about the secretive plan to 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 standards required and to produce a still immature and unstable material by compost standards Class A biosolids sludge

for a pretended unregulated application on pasture land in Travis County and other surrounding counties. Serious questions were also raised about Synagro's environmental and ethical record in [Detroit and Philadelphia](#) and City staff's refusal to enforce the alleged violations of the Anti-Lobbying Ordinance against Synagro for [noted violations](#) of the ordinance. Due to the aggressive Anti-Lobbying Ordinance restrictions associated with this solicitation, the unconventional use of the term "agricultural compost" to more appropriately describe a Class A biosolids sludge, not yet a mature or stable compost, which we believe should not be direct land applied without a biosolids sludge direct land application permit and is subject to the Travis County solid waste facility Siting Ordinance, and the necessity for TDS to maintain its ability to speak freely to Council, City commissions and staff about a variety of solid waste, recycling and composting policies and issues, TDS was forced to offer the City its biosolids sludge composting services through provisions in its 30-year Waste Disposal and Yard Trimmings Processing Contract. Mr. Goode and City staff were unwilling to even entertain negotiating with TDS for the provision of biosolids sludge composting services, despite the fact that TDS has significant experience with providing similar services to the City of Victoria, the San Antonio Water System, and the San Antonio River Authority, and our 30 year contract with the City allows for the addition of this service.

April – Dec. 5, 2016

City staff 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 or consent of ZWAC or City Council. Under the contract, Simple Recycling agreed to pay the City \$20.00 per ton for all materials collected from Austin residents. City staff under Assistant City Manager 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 under the basis that it directly competed against area nonprofit organizations. See www.texasdisposal.com/COAsimplerecycling for more details.

June 2016 – Feb. 2017

City staff 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. Ultimately, Mr. Goode and City staff decided to not recommend award of a contract and subsequently cancelled the solicitation approximately eight months after it was issued.

June 2016 – Feb. 16, 2017

City staff proposed and recommended a potential 6-year **\$16,995,000** contract with Republic Services for [Citywide Dumpster Collection Services](#) to specifically provide "non-residential collection services for refuse, recycling, brush, compostable materials, special events, Class 2 special non-hazardous waste and emergency collection services." If approved, the proposed contract would have granted City staff the ability to use a toll contractor – Republic Services – to completely transform Austin's commercial waste collection marketplace into a City-controlled and City-billed public utility in direct conflict with long established policy as being indirect competition with the many licensed haulers within the City, and would have allowed the collected waste materials to be disposed at the Waste Management, Inc. Austin Community Landfill, a controversial disposal facility long opposed by the Austin City Council, Travis County and residents of northeast Austin. In addition, approval of this contract would have

memorialized and perpetuated City staff's practice of providing event organizers with [free](#) services in [direct competition](#) with licensed private haulers. For reasons already stated regarding the Anti-Lobbying Ordinance restriction, and numerous objectionable requirements within the solicitation's scope of work, TDS was unable to participate in this solicitation. See www.texasdisposal.com/citywide-dumpster for more details.

- Feb. 17, 2017 City staff had to [correct a false representation](#) made to the Mayor, City Council and City Management that 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 false misrepresentation about access to the TDS permitted facilities was done knowingly to bolster an argument by Assistant City Manager Goode and City staff that the City and area haulers must have access to permitted facilities other than those owned and operated by TDS - yet another of many attempts by Mr. Goode, we believe, to favor Waste Management, Republic Services and Waste Connections, and harm TDS.
- May 25, 2017 City staff misused the Office of Sustainability to present [misleading information](#) to the City Council Waste Management Policy Working Group 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 Policy Working Group 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. The TDS compliance record over the past 27 years speaks for itself.
- May – Aug. 2017 City staff issued an Invitation for Bid, which excluded the Anti-Lobby Ordinance restriction, for the purchase, removal and screening of approximately 8,000 cubic yards of unscreened biosolids and yard trimmings compost that was made by 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. TDS then responded to this 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 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, and that we could not fulfil 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 material of several curing piles in order to fulfil the City's 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.

June 22 – Oct. 30, 2017

City staff proposed and recommended a potential 6-year **\$4,360,000** contract with Organics By Gosh 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 location in the 100-year flood plain and in close proximity to residences, neighborhoods, schools and churches. Assistant City Manager 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 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 offered by TDS available in the City's existing 30-year Waste Disposal and Yard Trimmings Processing Contract. Ultimately, at its 6/22/2017 meeting, City Council authorized staff to negotiate and execute a contract with Organics By Gosh to provide organics processing services of yard trimmings mixed with food waste collected eventually from approximately 210,000 residential customers by Austin Resource Recovery. Over 4 months later and after multiple public information requests, on 10/30/17 City staff produced a copy of the [fully executed contract](#) it negotiated with Organics By Gosh. A cursory review of this contract revealed that City staff agreed to utilize 2 known OBG facilities, and potentially a third undisclosed facility to be determined at a later date. Furthermore, the contract creates a clever financial incentive for OBG to maintain City access to its small 7.32-acre facility, which both City staff and Organics By Gosh publically acknowledged was insufficient to support the volumes generated under a citywide residential organics collection program. The effect of this clever contractual arrangement provides a financial incentive for Organics By Gosh to make available for City use an unauthorized 7.32 acre solid waste transfer station facility. See www.texasdisposal.com/OrganicsProcessing for more details.

July 21, 2017

City staff rejected without explanation or justification TDS' proposed contract amendments intended to reasonably address the longstanding issue of downtown commercial establishments improperly using TDS' dumpsters for disposal of bulk liquid waste, including greases and oils. On August 3, 2017, City staff unilaterally initiated the final 120-day contract holdover period, and signaled their intent to allow the Central Business District (CBD) contract for solid waste and recycling services to expire on November 29, 2017 without addressing TDS' repeated requests to compensate TDS fairly for its required but unanticipated cost of approximately \$250,000 up to then to manage the excess bulk liquids on behalf of the City over the previous three year initial contract term, and to implement meaningful measures to resolve the serious public health and safety risks that have resulted from the City staff's ongoing allowance for COA customers to discard bulk liquid waste in City-contracted dumpsters provided by TDS. In response to staff's decision to let the contract expire without resolution of the bulk liquids issue, TDS representatives met with the Legal Department in October to formally notify them of TDS' intent to file a lawsuit against the City for breach of contract. Soon thereafter, representatives of ARR and City Legal met with TDS representatives in a follow up meeting to discuss their agreement to exercise the first extension option of the contract extending the contract until May 2018, to fully reimburse TDS for the expenses incurred to properly manage and dispose of the bulk liquids on the City's behalf over the last 3+ years, 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 fully 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

type of issue with its favored contractors well in advance of it reaching a cost to the City of more than \$250,000 and/or potential litigation. See www.texasdisposal.com/CBD for more details. TDS is pleased to settle this issue without lengthy and expensive litigation.

August 23, 2017

Austin Energy staff disconnected and locked out TDS owned electrical breakers downstream (e.g. flowing into the TDS equipment and building) from the Austin Energy meter. Austin Energy staff intentionally locked out the TDS-owned electrical breakers so TDS could not use its generator to supply temporary power to the TDS facility. This disconnected and locked out power to the mainframe computer systems and main telephone systems at the TDS primary business centralized operations and maintenance facility located at 12205 "A" Carl Road. The utility disconnection and lockout was done approximately 22 hours after an Austin Energy representative appeared at a TDS reception desk to notify TDS of a \$6,000 account balance that had to be paid within 24 hours on one of TDS' 23 Austin Energy accounts. The utility disconnection was done 22 hours after TDS paid within less than an hour from being notified and confirmed the electronic payment of the \$6,000 balance due and which was 20 days past due. On August 23, an Austin Energy field technician, followed an authorized TDS employee through TDS' gates and then proceeded to padlock three TDS owned breaker boxes in an "off" position, so that TDS was unable to utilize its permanently installed backup generator to provide emergency power to its operations and maintenance facility in the 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 systems, were effectively debilitated while the facility was improperly left without power until the same Austin Energy representative, who refused to disclose his name or display his employee badge or identify who had instructed him to carry out the service disconnection of TDS' utilities, restored the power by removing the City's padlocks from TDS power switches downstream from the City's switches. A TDS officer contacted Austin Energy immediately after the power was restored and was told that the account balance was shown to have been paid and that the records showed "payment pending." TDS personnel believes this act by Austin Energy staff was directed with the intent of punishing and intimidating TDS personnel for challenging the City Manager's office in the WMPWG meetings. Electrical contractors consulted about the event have reported that they have never heard of Austin Energy doing anything like this before.