

Texas Disposal Systems Initial Response to
Agreement for Landfill Lease & Operations
Between City of San Angelo and Republic Waste Services of Texas, Ltd.

MAJOR ISSUES

1. Agenda Posting
Section 12.L Amendments

Agenda Item 15, if approved by City Council would delegate to the City Manager the authority to complete the negotiations and execute the final agreement without coming back to Council for review and approval. When you consider the potential 100 year life of this Agreement (see next issue) and the fact that Section 12.L of the Agreement allows City staff to amend the Agreement without further approval of City Council, this might be the last vote on a landfill issue by any City Council for the next 100 years. City Council should require the property lease and the legal description of the land involved in the lease be brought back to it for public review and final approval after City staff has finished its negotiations.

2. Section 4 Term
Section 7.J Expansion of Landfill
Section 7.Z Landfill Site
7.AA Soil
Exhibit B Legal Description of Landfill
Exhibit C-1 Access Agreement

A reading of these sections indicates the City is allowing Republic to use the existing landfill, any expansion of the existing landfill, and any new landfill for the rest of these facilities useful life in exchange for very little value to the City. The City proposes to close East 50th Street to accommodate an expansion of the landfill onto the approximately 320 acre City owned tract to the north of the existing landfill. With Republic using the 320 acre tract for a modern landfill, which could be designed, permitted and constructed to be more than two hundred feet tall, the City Council may not see another landfill contract for at least several generations; even more than 100 years. The proposed contract specifically states that amendments to the contract do not require further City Council approval. The landfill contract is a Life of Site contract, which allows for Republic to apply for permit amendments, i.e. landfill capacity expansions and height extensions, as long as City staff signs off on permit amendment applications. If expanded, this landfill could remain in day to day operations for over 100 years, and Republic would have the right to operate it for the duration of that time under this same contract. The terms under which City staff requested proposals, and the manner in which the landfill has been operated by Republic up until now, resulted in not one prospective proposer submitting a conforming bid to operate the existing landfill. Should Republic really be rewarded with effectively a 100+ year landfill contract after they have mismanaged the existing City landfill while overcharging San Angelo businesses millions of dollars in unauthorized waste collection fees? We respectfully submit that that would be inappropriate. This is a curious result since the RFP actually indicated the City was not really interested in expanding the existing landfill. Furthermore, the legal description and property Access Agreement are not included in this contract draft, so no one can be sure exactly what property is to be included in the landfill leased to Republic. Under no circumstances should the City Council approve such a contract until it is completely negotiated and posted at least two weeks for public review and comment.

3. Section 9.A & B Payments
Section 10 Closure and Post-closure Trust
Exhibit H Closure and Post-closure Trust Instrument

Section A&B requires Republic to pay the City a total amount of about \$10,310,000. This amount is approximately the amount the City says should be set aside for closure and post-closure care obligations for the existing City landfill under state regulations. Interestingly, these obligations were incurred while Republic was operating the landfill and enjoying the benefit of low operating costs and low disposal rates. Since Republic was retaining the revenue from the landfill, it should have been setting aside a portion of this revenue to cover the closure and post-closure care obligations accrued by Republic's use of the landfill. Republic's audited financial statements show that they accrue funds for this liability. The City should be demanding Republic pay the City the \$10,310,000 under the prior landfill agreements for liabilities already created by Republic. The City should not allow the \$10,310,000 payment to be considered as consideration for a new multi-generation landfill lease when it is really a payment for previous liability generated by Republic. The landfill closure and post-closure care requirements under the RFP were flawed in any respect. The RFP was essentially asking other proposers to pay the City a huge sum for liabilities created by Republic. This was obviously a condition no company other than Republic would accept, especially since Republic already had the responsibility. This one RFP condition virtually eliminated every other company from competing for the landfill, except for TDS.

4. Section 9.E Authorizes Republic to automatically increase landfill Tipping Fees to third party haulers, such as TDS, each year in an amount equal to 2.75% over the prior year's rates without regard to the actual increase in cost and performance. The landfill fuel surcharge is also allowed in addition to the 2.75% automatic increase. There are not many other entities that are guaranteed a raise every year no matter what. The effects of compounded interest and Republic's profit margin and internal disposal rate for its own truckloads of solid waste will further promote Republic's monopolistic control of surrounding communities waste service contracts.
5. Section 7.Q(f) Disingenuously states odors will be controlled and prevented by allowing the use of alternative daily cover material, such as tarps, spray foam, etcetera, applied over solid waste, instead of utilizing soils for daily cover. The experience of the rest of the world tells us alternative daily cover actually allows much more odors to emanate from the landfill, compared to traditional six inches of compacted soil for landfill cover.
6. Section 11.B(ii) Provides Republic an avenue to get out of the lease agreement if it ever determines the environmental liability exceeds the value of using the landfill. Republic can simply request a rate adjustment no matter how unreasonable it might be. Then when the City denies the unreasonable rate increase, Republic can simply terminate the lease.
7. Section G Moves the closing time for the landfill for Monday through Friday from 6 pm to 5:30 pm and on Saturday from 3 pm to 2 pm. These early closing times reduce access to the landfill for all citizens and third party haulers, such as TDS, but not for Republic since it can enter the landfill with its own truckloads of solid waste from surrounding communities anytime it wants. The landfill is already not open long enough to accommodate modern society schedules and thus the reduction of hours further inconveniences the citizens of San Angelo, and promotes Republic's advantage as a service provider with much more open access to the City's landfill.

OTHER ISSUES

8. Section 5.B Indicates the City's 65 acres reserved for expansion can be used for soil borrowing at a de minimis cost to Republic.
9. Section 7a Provides a long list of duties for Republic with respect to the landfill. It does not establish any performance standards other than the bare minimum required to meet the permit and regulations. If the City is going to give up the landfill for the life of the site and the more than 300 acres of expansion land located next door, it should at least demand a first class operation through specific landfill operations performance standards that exceed the minimum standards, which have not served the City well in the past.
10. Section 7.U Requires Republic to submit operational reports to the City only upon request of the City. This creates an opportunity for problems to slip by the City, if there is not constant oversight by City staff. The 20 days Republic has to provide such reports will frustrate citizens who make open records requests that should be provided within 10 days.
11. Section 7.W Requires the parent company to Republic to guarantee performance. This does not give any additional assurance to the City. If Republic is not complying with the Agreement it is probably doing so with the knowledge and consent of the parent company.
12. Section 8.D Retroactive application of the indemnity to Republic is of no consequence because Republic already has a continuing indemnity requirement under the current agreement. It gives the citizens an impression they are receiving an additional benefit when they are not.
13. Section 9.C. The Host Fees authorized under this section range from \$2.26 - \$2.60 per ton. Those Host Fees are simply a pass-through to the City because the City simply raised the landfill Tipping Fee ordinance to cover this payment. These higher tipping fees are simply passed on to third party haulers, such as TDS. The tipping fee Republic pays to itself matters not, since the only number that matters is Republic's cost to operate the landfill.
14. Exhibit A has Definitions that either make no sense or are not used in the Agreement, which raises the question of why those words are included in Exhibit A.

The definition for "Business Day" says it is "the first calendar day of each month" thus any time Republic has to do something the next "Business Day," it can be deferred as many days it is until the next month.

The following definitions are included, but not used:

- "City Fault"
- "Construction and Demolition Debris"
- "Government Approvals"
- "Mandate"
- "Monitoring Well"
- "Monthly Trust Payment"
- "Pass-Through Expense"
- "Processing Facility"
- "Residential Waste"
- "Special Circumstance Waste"
- "Suspicious Waste"
- "Type IV Waste"
- "USC"

15. Exhibit C provides for an Access Payment by Republic to the City that will expire when the landfill is expanded. Exhibit C does not require Republic to pay a market rate for the soil it consumes in the existing landfill.
16. Exhibit D is the guaranty agreement that is meaningless as explained above in comments to Section 7.W.
17. Exhibit E for liquidated damages will be impossible to enforce unless the City places an inspector with a Class A Solid Waste License knowledgeable in landfill operations at the landfill on a full time basis. Otherwise, it sounds like Republic has an incentive to operate a sound facility, but it really does not.
18. Exhibit G for the Letter of Credit is blank. There is no way to review whether the conditions upon which the City may draw on the LOC are reasonable. The Contract should not be considered by the City Council until all negotiations are complete and the public is allowed at least a two week review period.