

April 23, 2015

To the Citizens and Business Owners of San Angelo,

I believe it is appropriate and important for the citizens and business owners of San Angelo to have a thorough understanding of the issues surrounding the City's mismanagement of its first ever known competitively bid process for solid waste and landfill management services, and the selection of Republic Waste Services of Texas, Ltd. (Republic) for new life-of-site landfill and 10 year solid waste collection service contracts. Recent statements regarding the 2014 Request for Proposal (RFP) process and the City's new waste collection and landfill contracts by Mayor Morrison, among others, have necessitated a response, as the statements by Mr. Morrison and others miss wide the mark of the full truth. Please see attached "A Preliminary Review of Republic Waste Services of Texas, Ltd. and Texas Disposal Systems RFP Response Proposed Residential and Commercial Rates, as Compared to Negotiated Rates Adopted by the San Angelo Mayor and City Council on July 1, 2014" for a more complete response and details outlining the significant mismanagement of the City's RFP process.

Regardless of what Mr. Morrison would like you to believe, the fact remains that at the culmination of this flawed process the Council and City staff negotiated and adopted a contract with rates that provide Republic with at least \$20.2 million, as my staff has calculated, in additional revenue over the rates that they proposed in their RFP response.

During his campaign to be reelected as San Angelo's mayor, Mr. Morrison has circulated a handout purporting to tell the "true facts" about the new contracts with Republic, however that handout falls woefully short of telling the whole story. Rather, it appears to represent a spin of details designed to present what Republic and Mayor Morrison would like history to record. He has stated several times that the City only received two responses to its RFP, and that Republic's proposal was far superior to that received from Texas Disposal Systems (TDS). While the Mayor's judgment on the merits of the proposals remains questionable at best, the City did only receive two responses to its RFP; however, it is important to understand why this happened. The RFP process was based on a flawed premise. Specifically, it required the RFP respondents to assume all past, present and future liability for the City owned landfill, which had been operated by Republic and its predecessor for more than 30 years. Significant liability already belonged to Republic as the long time operator of the landfill for the City, and that liability is potentially significant, due to the long term apparent mismanagement of the landfill. There are several indications that Republic has mismanaged the landfill, not the least of which include the fact that groundwater monitor well tests show that contaminants from the landfill are migrating offsite and to the south, as disclosed in the City's RFP, contaminating the surrounding groundwater and potentially threatening the health and safety of citizens of San Angelo relying on that water; particularly some of the residents of Paul Ann Park. Also, the fact that the permit for the landfill states that at the completion of the landfill, as permitted, there should remain a soil surplus of 297,900 cubic yards, while Republic's management of the landfill will prematurely exhaust the soil balance, as disclosed in the RFP, several years prior to the landfill reaching capacity. While this reveals a shocking inefficiency of operation over a long period of time, what is more concerning is the squandered value of the City's asset that was entrusted to Republic, and the complete lack of accountability that allowed landfill capacity to be so inefficiently consumed. No reasonable company would willfully assume the extensive liability associated with the landfill that rightly belongs to Republic, and indeed no other company offered to do so. That is most likely why there were no other respondents to the City's RFP, other than TDS. By structuring the RFP solicitation as they did, the City staff and City Council bound themselves to Republic, simply because Republic was the only company willing to assume the liability it created by its operation of the City's landfill that had been entrusted to them for so long. In other words, Republic was rewarded for creating a huge potential liability that no other company wanted to accept, and the City gave credit to Republic for stating that they would assume liability that was already

Republic's liability, or liability that they already shared with the City. All the City had to do was hold Republic accountable for their landfill management and negotiate fairly with RFP respondents for the collection of the City's residential and commercial solid waste and recyclables. But the City officials chose to not structure a truly competitive process.

With the deck stacked in favor of Republic on the landfill portion of the proposal, it appears that City staff and City Council chose not to conduct an objective evaluation of the pricing for the solid waste and recyclables collection portion of the proposal. Apparently, the City staff and Council RFP review committee was committed to do pretty much whatever Republic required in order to get Republic to voluntarily accept liability for which they were already responsible. TDS proposed rates for collection options based on hypothetical landfill disposal costs of \$20, \$25 and \$30 per ton, because it was obvious to TDS that Republic should have been required to finish the closure of the existing landfill. Republic, as the operator of the landfill, charges its hauling company an internal rate for disposal that is based on its actual operating costs. The internal rate is not given to other companies, nor is it published in order for another company to calculate a comparable proposed rate. This internal disposal rate gives Republic a decided advantage when proposing rates for collection, and prevents an apples to apples comparison of Republic's and TDS' pricing proposals for collection services. TDS needed the City to determine the landfill disposal rate TDS would be charged. Nevertheless, in the handout he uses to defend the Republic contracts, Mr. Morrison has chosen just one of twenty-one separate TDS pricing proposals to compare to Republic's proposal, illogically added \$3 per month per residence to TDS' proposed rate, and touted that as evidence that TDS pricing was not worth the slightest consideration. Had the City staff or City Council had even one negotiation meeting with TDS representatives, they could have at least said they attempted to fairly evaluate the TDS proposal.

In our RFP response, TDS noted the serious issues with the past management of the landfill and recommended to the City that the existing landfill was not a good candidate for expansion, and that Republic should continue to be engaged to operate the existing landfill until the remaining permitted capacity is filled. TDS proposed several options to permit, construct and operate a new landfill for the City, either on City owned land or on land owned by TDS, with TDS assuming all liability or the City indemnifying TDS for its operation of a City owned landfill. What we tried to make clear to the City was that they had several options and they did not have to reward Republic for turning the landfill from a City owned asset to a potential liability for both the City and Republic. But, the City used the RFP anti-lobby provision to keep TDS from speaking directly to public officials to explain the merits of our RFP responses prior to the completion of the City's two new contracts with Republic.

If the review of the RFP responses seems to you like a complicated issue that was worthy of careful consideration, that's understandable; however, after receiving the voluminous RFP responses on a Friday last spring and holding one evaluation meeting on the next Monday, the evaluation committee chose to forgo asking for even one clarification from TDS or conducting respondent interviews which were planned prior to the City receiving proposals. Such a hastened evaluation timeline for a contract of this size and importance is disturbing. I believe it shows a willful commitment on the part of the evaluators to continue to do business with Republic, regardless of the merits of the proposals, as they certainly did not have time to consider or evaluate the value to the City of the numerous options proposed by TDS for future landfill services. It also shows a shocking lack of concern for the problematic nature of Republic's management of the landfill.

On top of all of this, the City was apparently unconcerned that Republic may actually have charged every San Angelo business utilizing commercial trash service unauthorized fuel and environmental surcharges for over fourteen years, in direct violation of the terms of their contract and City ordinance, estimated to total over \$9,200,000. In the process of preparing our RFP response, we discovered these unauthorized charges and made

the City aware of them in the cover letter of our RFP response. We thought that this might cause some concern among the evaluators and Council as to the wisdom of continuing to contract with a company that has demonstrated a willingness to flout the requirements of past contracts by abusing the monopoly over commercial customers granted to them by the City, but it apparently didn't even make them blink. The City staff did hold a press conference on April 30, 2014 where in the midst of praising Republic, they did state that they were working with Republic to determine if any unauthorized amounts were actually charged to customers. They also stated that upon completion of their investigation that they would privately inform the Council of the results of the investigation, but there would be no written report and they would not release their findings publically. Seriously? What kind of relationship is shared by Republic and the City officials, which would justify such an accommodation? After a competitor pointed out gross violations of Republic's contract and the public trust, the staff and Republic conducted a joint secretive investigation, while pressing forward with a new long term contract for Republic. Remember, Dwain Morrison has been on the Council for twelve years, and apparently at no point in that time did the Council or staff fulfill their responsibility to hold Republic accountable. While not admitting to doing anything wrong, Republic did agree to refund certain overcharges to commercial customers, after a lawsuit was filed seeking punitive damages and class action status. However, there has been no detailed public disclosure to suggest that Republic has refunded in full all that each business had been overcharged for more than fourteen years, or whether there should be further penalties assessed to Republic for these unauthorized overcharges. We are simply asked to trust Republic to do the right thing and forget about it. This should not be acceptable to anyone. That is why Mayfield Paper Co. and Acme Iron & Metal Co. have sued Republic on behalf of all of the several thousand overcharged businesses to determine how much was overcharged, and to determine whether Republic knowingly applied these overcharges in violation of their contract and City ordinance. I believe it is highly possible that evidence will show that Republic knowingly charged these customers more than was authorized, relying on the environment of almost zero accountability provided them by City staff and Council. I assure you, waste services companies like TDS and Republic are aware that when they receive an exclusive contract, an effective monopoly like Republic has in San Angelo, they are not given carte blanche authority to tack on fees in addition to established City ordinance approved rates in order to achieve what they deem to be "an acceptable operating margin" as Republic did in this case. That is the point of a municipality having exclusive contracts; to control the fairness of the price and the quality of the services. I believe that it is unlikely that this was a simple clerical mistake allowed to go on for fourteen plus years and totaling more than an estimated nine million dollars in overcharges.

While it is mystifying that City staff and Council were willing to ignore all of the serious issues regarding Republic's past performance, the Council did approve long term contracts with Republic for both solid waste and recyclables collection and landfill management. At the time the contracts were approved, the Mayor and Council members made several statements to the effect that their goal was to achieve the best deal for the ratepayers. While we knew that their analysis was incomplete, and it was certainly unwise to actually award contracts out of such a flawed RFP process, we had no idea just how misleading these statements were until we received a copy of Republic's RFP response. While the City posted the TDS RFP response on its website several weeks before signing its new contracts with Republic, the City withheld Republic's RFP response from public disclosure until they were ordered to release it by the Attorney General 75 days after the contracts had been executed. It seems apparent why the City fought so hard to avoid releasing the Republic RFP response. I urge you to review the attached detailed analysis, done by TDS, of the differences in the rates proposed by Republic in their RFP response and the rates that Council approved and contracted. You can also see them at [www.texasdisposal.com/sanangelo](http://www.texasdisposal.com/sanangelo). The short story is our calculations show that, in negotiations, the City allowed Republic to significantly raise the rates for trash and recyclables collection above those Republic proposed in its RFP response, to the tune of at least \$20.2 million over the life of the contracts. The rates were raised during negotiations to such an extent that

through the increase in rates over the RFP response, Republic will more than recoup the value of upfront payments to the City related to the landfill, and also will recoup the amount that Republic has reportedly paid back to businesses for unauthorized overcharges for ten of the fourteen years overcharged. It is the first time I have heard of a city negotiating significantly higher rates than what was proposed, and is certainly not consistent with an effort to achieve the greatest value for the ratepayers or to honor the intent of the RFP process.

Mr. Morrison has effectively accused anyone that does not join him in defending and praising the RFP solicitation process and the collection and landfill contracts of being uninformed or of spreading half-truths and misinformation. However, Mr. Morrison himself has spread half-truths and misinformation. To cite a good example, Mr. Morrison, at the April 14, 2015 Tea Party Mayoral Forum, in response to assertions that there was not enough transparency in the RFP selection process, said, "Nobody that plays cards ever shows their hand before the bets are made. And had Republic known that they were paying us tens of millions of dollars and TDS was paying us nothing, that TDS was going to charge us \$22 for what Republic was charging us \$15, we would have not had a trash contract as good as the one we have now." Setting aside the inaccuracy of the numbers quoted by Mr. Morrison, this statement completely seeks to rewrite history and mischaracterize the nature of the Republic negotiations. Mr. Morrison would apparently like us to forget that on April 30, 2014, a full 86 days prior to the execution of the Republic contracts, the City did exactly what Mr. Morrison recently claimed they did not do. On that date, the staff publically "showed its hand" in its press conference by disclosing (sometimes inaccurately) the contents of TDS' RFP response. The staff's statements included the inaccurate claim that TDS' proposed rates were 64% higher than Republic's; that TDS offered no lease payment for the existing landfill; that TDS did not propose to provide the City with any upfront payments; and that TDS did not propose to accept the past, present and future liability for the landfill. Further, Mr. Morrison's statement implies that Republic would have refused to honor the negotiated rates, higher than those Republic proposed, had Republic known the details of the TDS proposal. This ignores the facts that RFP responses are binding on the proposer for 150 days per the terms of the RFP, that the City allowed Republic to significantly raise its rates during the negotiation process, and that the City had posted the TDS RFP response on its website several weeks before the Republic contracts were executed. Mr. Morrison also stated "this is a contract that is paying us tens of millions of dollars." Mr. Morrison's statements regarding TDS' proposal, the Republic contracts and the rationale for the lack of transparency in the RFP process, are not even half true, they are a gross mischaracterization of the facts as set forth above.

I believe it is important for you to have a thorough picture of what took place throughout the City's flawed RFP process, in order for you to fairly judge the performance of the City staff, City Council and Republic. Unfortunately, that is impossible if you only listen to statements of Mayor Morrison, the Council members voting with him at that time, and City staff. That is why I feel it necessary to respond to their inaccurate and self-serving statements. I urge you to visit [www.texasdisposal.com/sanangelo](http://www.texasdisposal.com/sanangelo) to learn more about these issues and to monitor the ongoing litigation involving Republic, TDS, Acme Iron and Metal, and Mayfield Paper. Also, I urge you to hold public officials accountable for their statements and actions.

Sincerely,

Bob Gregory  
President and CEO  
Texas Disposal Systems, Inc.  
Acme Iron & Metal Co.

# **A Preliminary Review of Republic Waste Services of Texas, Ltd and Texas Disposal Systems RFP Response Proposed Residential and Commercial Rates, as Compared to Negotiated Rates Adopted by the San Angelo Mayor and City Council on July 1, 2014**

***The following report raises the question - Have the Mayor, City Council and City staff violated their fiduciary responsibility to act in the best interest of the residents and businesses of San Angelo?***

On August 1, 2014, the new 10-year contract between the City of San Angelo and Republic Waste Services of Texas, Ltd. (Republic) for solid waste and recyclables collection and disposal services, and the remaining life-of-site contract for landfill lease and operation, went into effect. A review of the rates initially proposed by Republic within their responses to the City's Request for Proposal (RFP), as compared to the negotiated rates later approved by the Mayor and City Council, raises questions about whether these two new contracts truly represent the greatest benefit to the residents and businesses of San Angelo, and whether the entire RFP process and subsequent contracts should be voided to allow for a new solicitation process to occur, which would allow open market competition for commercial dumpster and rolloff container services within the City of San Angelo.

## **Republic RFP proposed rates for residential services as compared to the negotiated rates adopted by the Mayor and City Council on July 1, 2014**

The RFP issued by the City on February 11, 2014 allowed respondents to propose different levels of residential services for the City to consider. The City chose to contract with Republic for once per week curbside collection of solid waste, once per week curbside collection of single stream recyclables, and quarterly curbside collection of bulky waste. A review of the proposed residential rates included in Republic's RFP response, as compared to the negotiated residential rates adopted by the Mayor and City Council, reveals the following financial impact to San Angelo residents:

Negotiated and approved monthly rate for residential services	\$14.47 per month <sup>1</sup>
<u>Republic RFP response proposed monthly rate for residential services</u>	<u>\$11.54 per month <sup>1</sup></u>
The City allowed Republic to increase their quoted rate	\$2.93 per month

32,200 residential customers X \$2.93 per month	\$94,346 per month
\$94,346.00 per month X 12 months	\$1,132,152 per year
\$1,132,152.00 per year X 10 year contract term	\$11,321,520 <sup>2</sup>

1. Monthly rates include Republic's penalty (\$0.50 per home per month) for City residences not collectively producing the minimum 500 tons per month of residential single stream recyclables. Due to the exclusion of glass bottles and jars from the recycling program, it is highly unlikely that 500 tons per month of residential single stream recyclables will be generated. As such, the \$0.50 per home per month penalty will likely be implemented, perhaps as soon as January 1, 2016.
2. This figure does not include the following amounts:
  - Guaranteed 2.9% annual rate increases beginning on October 1, 2015 and each October 1<sup>st</sup> thereafter during the contract term. Consequently, effective October 1, 2015 the monthly rate for residential services, including the recycling penalty, likely will increase from \$14.47 to \$14.89.
  - Fuel surcharge adjustments
  - Any growth that may occur in the number of homes / customer base. Actual figure will likely be higher.

**The increased residential rates adopted by Council equate to an additional \$18,006,240 in revenue to Republic over the life of the contract as compared to the 2013 rates in effect prior to adoption of the new contract, just from residential customers, not counting the compounded guaranteed 2.9% annual rate increases.**

**$(\$14.47^* \times 12 \text{ months} \times 10 \text{ years} \times 32,200 \text{ homes}) - (\$9.81^{**} \times 12 \text{ months} \times 10 \text{ years} \times 32,200 \text{ homes}) = \$18,006,240$**

\*2014 adopted rate \*\*2013 rate (See Attachment 1)

**Republic RFP proposed rates for commercial and rolloff services, as compared to the negotiated rates adopted by the Mayor and City Council on July 1, 2014**

The solid waste collection and disposal services contract between the City and Republic grants Republic exclusive rights to collect, transport and dispose of commercial and rolloff solid waste generated within the City of San Angelo. According to the RFP issued by the City on February 11, 2014, there are nearly 2,500 commercial and 435 rolloff accounts within the City limits of San Angelo. A review of the proposed commercial rates included on page 309 of the Republic RFP response, as compared to the negotiated commercial rates adopted by the Mayor and City Council, reveals the following financial impact to San Angelo businesses:

Negotiated and approved monthly rate to service 2,497 commercial accounts	\$489,045 per month
<u>Republic RFP response proposed monthly rate to service 2,497 commercial accounts</u>	<u>\$415,525 per month</u>
The City allowed Republic to increase their quoted rates	\$73,520 per month
\$73,520 per month X 12 months	\$882,240 per year
\$882,240 per year X 10 year contract term	\$8,822,400 <sup>3</sup>

3. This figure does not include the following amounts:

- Guaranteed 2.9% annual rate increases beginning on October 1, 2015 and each October 1<sup>st</sup> thereafter during the contract term
- Fuel surcharge adjustments
- Added charges for container locks, unscheduled container extra pick-ups, container deliveries, container exchanges, container relocations, etc.
- Any growth that may occur in the number of businesses / customer base. Actual figure will likely be higher.

A review of the proposed rolloff rates included on page 309 of the Republic RFP response, as compared to the negotiated rolloff rates adopted by the Mayor and City Council, reveals a similar pattern of allowed rate increases during the negotiation process as what occurred with residential and commercial rates.

<b>Rolloff Containers:</b>	<b>RFP Proposed:</b>	<b>Negotiated and Adopted:</b>
20 cubic yard delivery rate	\$71.50	\$75.00
20 cubic yard haul rate	\$143.00	\$175.00
20 cubic yard disposal rate	Landfill gate rate	\$35.50 per ton
20 cubic yard rental rate	\$0.00	\$3.00 per day
30 cubic yard delivery rate	\$71.50	\$75.00
30 cubic yard haul rate	\$143.00	\$175.00
30 cubic yard disposal rate	Landfill gate rate	\$35.50 per ton
30 cubic yard rental rate	\$0.00	\$3.00 per day
40 cubic yard delivery rate	\$87.50	\$75.00
40 cubic yard haul rate	\$175.00	\$175.00
40 cubic yard disposal rate	Landfill gate rate	\$35.50 per ton
40 cubic yard rental rate	\$0.00	\$3.00 per day

Detailed records of rolloff services within the City of San Angelo are necessary to estimate the effect of higher negotiated rates as compared to proposed rates. The rolloff customer information provided on March 17, 2014 as an addendum to the RFP is not sufficient for estimating the effect of higher negotiated rates. The City awarded Republic an exclusive service contract for all rolloff hauling services, even though state law appears to prohibit such exclusive contracts for waste collection from construction projects. Interestingly, though, the City's contract leaves it up to Republic to enforce the exclusive rolloff services protection. Republic is currently in litigation with Texas Disposal Systems to eliminate TDS as a competitor for servicing construction project rolloff containers within the City limits of San Angelo. Competing motions

are currently pending in federal court asking for a ruling as to whether Texas law forbids exclusive construction waste deals like the one between the City and Republic. Exclusion of all rolloff service rates results in a very conservative analysis and understated adverse impact on local businesses. Actual figures will much likely be of greater benefit to Republic than even this analysis shows.

**The increased commercial rates adopted by Council, not counting the effect of the increased rolloff rates or the compounded guaranteed 2.9% rate increases, equate to an additional \$24,539,760 in revenue to Republic over the life of the contract as compared to the 2013 rates, just from commercial customers.  $(\$489,045^* \times 12 \text{ months} \times 10 \text{ years}) - (\$284,547^{**} \times 12 \text{ months} \times 10 \text{ years}) = \$24,539,760$**

\*2014 monthly commercial revenue \*\*2013 monthly commercial revenue (See Attachment 3)

**Differences in Republic proposed compensation schedule for landfill lease and operation, as compared to the negotiated compensation schedule adopted by the Mayor and City Council on July 1, 2014**

<b>Description:</b>	<b>RFP Proposed:</b>	<b>Negotiated and Adopted:</b>
Initial lump sum payment	\$1,000,000	\$ 3,600,000
Purchase of Cell 11A airspace	\$1,049,800	\$ 1,305,000 <sup>4</sup>
Initial funding of Closure/Post Closure account	\$4,735,000	\$ 4,735,000
Sum of annual landfill lease payments	\$1,100,000	\$ 6,303,000 <sup>5</sup>
<u>Landfill gas infrastructure</u>	<u>\$ 0.00</u>	<u>\$ 670,000 <sup>6</sup></u>
	\$6,835,000	\$15,308,000 <sup>7</sup>

4. The Republic RFP response proposed to purchase landfill cell 11A airspace from the City for a rate of \$1.81 per cubic yard. However, the negotiated and adopted price per cubic yard for landfill cell 11A airspace is \$2.25 per cubic yard. Landfill cell 11A capacity was anticipated to be 580,000 cubic yards. The City had previously paid for excavation and construction of landfill cell 11A.
5. The Republic RFP response proposed lease payments of \$100,000 per year over the life of the landfill. However, the negotiated and adopted lease payments are \$573,000 per year over the life of the landfill. The sum of annual lease payments shown above is based upon the 2013 TCEQ Annual Report for the San Angelo Landfill, which reported a total of 11 years of estimated remaining disposal capacity. Republic Services RFP response unreasonably used an estimate of 18.9 years of remaining disposal capacity to calculate the value of its annual lease payments.
6. A payment from Republic of \$670,000 to fund the City's last two landfill gas infrastructure payments was committed in the form of two payments of \$335,000 each, as they become due.
7. The City's net financial benefit from the negotiated and adopted compensation schedule for landfill lease and operation is \$8,728,200. This figure does not include per ton host fee payments, as it is impossible to verify; beyond the future word of Republic Services on how many tons will fall into each host fee category.

**Comparison Summary**

The City's resistance to and delay of the public release of Republic's RFP response until 75 days after the execution of the Republic contracts makes sense considering that had Republic's RFP response been released before the execution of the contracts, stakeholders would have been aware that the City had negotiated much higher rates with Republic than in the RFP response, effectively acting not to secure the best rates for the citizens and businesses of San Angelo, but rather to secure the maximum benefit for Republic and the current City general revenue fund at the expense of the citizens and businesses. All this was done while the City staff and City Council refused to negotiate or even speak to TDS officials even once following TDS' submittal of its RFP response on March 21, 2014. Further, it appears that the increase in rates as adopted vs. those proposed in Republic's RFP response more than makes up for the increased upfront payments secured by the City as well as the reported six million dollars of unauthorized charges that Republic has reportedly elected to pay back to all businesses overcharged over the previous 14 years, even when not accounting for the positive effect for Republic of the increased rolloff rates and the provision of the contract giving exclusive construction project rights to Republic, which is of doubtful validity under state law. Republic is currently the defendant in a lawsuit seeking recovery of all Republic's unauthorized charges over the previous 14 years, not just the partial refund that Republic has provided

to some customers. Any Republic customer that believes it has not been fully compensated for the overcharges may join the lawsuit.

Given that the final rates adopted by Council are so much higher than those proposed by Republic in their RFP response, the question is raised whether the City negotiators and the Council really acted in the best interest of residents and businesses. Or, was there an intentional effort to conceal a substantial rate increase – which has the same effect as an enormous tax increase to the citizens and businesses of San Angelo – and did this possible concealment include allowing Republic to raise their rates during negotiations to such a degree that Republic would be able to recover from the rate payers far more than what the City was able to secure from Republic in upfront revenue that was only needed to temporarily relieve problems arising from questionable financial oversight and management of the City’s solid waste and water utilities?

**The combined rate increases for residential and commercial services equate to \$42,546,000 in additional revenue for Republic over the life of the contract as compared to the revenue that would have been generated under 2013 service rates, not counting the compounded guaranteed 2.9% annual rate increases. This number is the simple addition of the 48% residential rate increase and the 73% commercial rate increase adopted by Council. (See Attachments 1, 2 & 3)**

Effect of higher negotiated residential rates over the 10 year contract term	\$11,321,520
<u>Effect of higher negotiated commercial rates over the 10 year contract term</u>	<u>\$ 8,822,400</u>
Estimated gross benefit to Republic for increased rates allowed through negotiation, not including the benefit of rolloff increases	\$20,203,920
 Estimated gross benefit to Republic over the 10 year contract term	 \$20,203,920
<u>Less City’s net financial benefit from negotiated landfill compensation</u>	<u>(\$ 8,473,000)</u>
Estimated net benefit to Republic gained through negotiation; the amount the City officials allowed Republic to improve its position over and above the rates and payments quoted in its RFP response	\$11,730,920

The attached charts (Attachments 1, 2 & 3) illustrate TDS’ proposed rates included in its RFP response, compared to the negotiated Republic rates recommended by City staff and adopted by the Mayor and City Council on July 1, 2014. TDS proposed several different rates for residential and commercial collection which differed based on landfill disposal costs of \$20, \$25, and \$30 per ton (see Attachments 2 & 3). Using the highest landfill disposal rate proposed by TDS to be paid to Republic or to the City in its RFP response, \$30 per ton, the costs for TDS commercial services are \$6,666,750 lower over the ten year contract term than the negotiated and adopted Republic commercial service rates over the same ten year contract term (see Attachment 3). While some of the residential rates proposed by TDS, for the exact same service levels (1x/week trash 1x/week recycle) are higher than those proposed by Republic in its RFP response, the net amount of the most favorable residential and commercial rates proposed by TDS over the ten year term of the contract is actually slightly less than that of the negotiated and adopted Republic rates; however, TDS’ most favorable proposed residential rates, for much more conventional service levels (1x/week trash, 1x/ every other week recycle), are lower than those adopted by Council (see Attachment 1). If the City’s evaluation team had allowed TDS to present its proposal options during the period set aside for negotiations with RFP respondents, it would have seen that the most favorable rates proposed by TDS were certainly worthy of consideration, rather than the outright dismissal TDS received. Further, given the drastic differences in Republic’s RFP response and the final contract adopted by City Council, it appears Republic and the negotiation team exercised wide latitude in crafting the final agreement; such a negotiation process with TDS could have resulted in a far more advantageous agreement for the businesses and citizens of San Angelo. At the very least it could have provided leverage in negotiations with Republic, so that the City did not have to allow Republic to raise their rates sufficiently to reimburse local businesses more than \$9,200,000 in unauthorized overcharges over the previous 14 years (see Attachment 4. It is clear that the City did not use the competing RFP responses as negotiation leverage with the proposers, which is not consistent with a good faith effort to secure the best deal for the businesses and citizens of San Angelo. Accordingly, we believe the citizens would be better off if these contracts were voided, and a new solicitation be



initiated that allows for an open and competitive market for the provision of commercial services, and will allow for a contract to be crafted that truly protects the best interests of rate payers. We think the businesses and citizens should be concerned that the Council so grossly violated the expectation that they work to secure the best rates on the citizens' behalf. We urge the citizens and businesses to express these concerns to Council. And we urge the citizens to hold their public officials accountable.

### **The Bottom Line**

It's time for the residents and businesses to ask themselves whether the City of San Angelo City staff and City Council members have truly acted in their best interest when it comes to managing solid waste and recycling, and to determine whether the 2014 RFP process should be the basis for the City's solid waste services contracts over the next 10+ years. First, it was fourteen years of millions of dollars in unauthorized overcharges by Republic to the commercial and rolloff customers in San Angelo. Now, it appears the City and Republic have agreed on increased service rates that have the effect of imposing an enormous tax increase to the residents and businesses of San Angelo. For these reasons, the current management and leadership of the City of San Angelo should no longer be entrusted to act in the best interest of local residents and business owners with regard to managing solid waste and recycling. TDS is continuing to gather information through the discovery process in the ongoing litigation with Republic. Additional information will be provided, as additional information becomes available to complete this review and report.

Copies of RFP responses from Texas Disposal Systems and Republic Services of Texas may be found at the following URLs:

#### **TDS RFP Response**

[www.texasdisposal.com/sanangelo/tdsrfp](http://www.texasdisposal.com/sanangelo/tdsrfp)

#### **Republic RFP Response**

[www.texasdisposal.com/sanangelo/republicrfp](http://www.texasdisposal.com/sanangelo/republicrfp)

**Comparison of San Angelo Residential Solid Waste Service Rates**  
**2013 Ordinance rates, Rates offered by Republic in response to RFP-OP-01-14, Contracted rates**  
**effective August 2014, and Rates offered by TDS in response to RFP OP-01-14 and rejected by City**  
**staff and City RFP Review Committee**

	Base Rate per month	% Increase from 2013 rate
<b>2013 residential rate per City Ordinance - not including fuel adjustment fee</b>	\$ 9.81	
<b>Rate offered by Republic in response to RFP OP-01-14</b> - Trash and Recycle pickup once per week, bulky pickup 4 times per year and including recycled tonnage surcharge fee of \$.50 (1)	\$ 11.54	18%
<b>2014 Republic Contracted rate</b> - Trash and Recycle pickup once per week, bulky pickup 4 times per year and including recycled tonnage surcharge fee of \$.50 (1)	\$ 14.47	48%

<b>TDS Proposal</b> - Trash and Recycle pickup once per week, bulky pickup 4 times per year	Base Rate	% Increase from 2013 rate	% Difference - TDS proposed rates as compared to 2014 Contracted rate	
Landfill rate of \$20/ton	\$ 17.35	77%	20%	TDS is \$2.88 more than Republic
Landfill rate of \$25/ton	\$ 17.75	81%	23%	TDS is \$3.28 more than Republic
Landfill rate of \$30/ton	\$ 18.15	85%	25%	TDS is \$3.68 more than Republic

<b>TDS Alternate proposal</b> - TDS Trash pickup once per week, Recycle pickup every other week, Bulky pickup twice per year	Base Rate	% Increase from 2013 rate	% Difference - TDS proposed rates as compared to 2014 Contracted rates	
Landfill rate of \$20/ton	\$ 13.93	42%	4%	TDS is \$0.54 less than Republic
Landfill rate of \$25/ton	\$ 14.33	46%	1%	TDS is \$0.13 less than Republic
Landfill rate of \$30/ton	\$ 14.73	50%	2%	TDS is \$0.26 more than Republic

(1) This \$.50 per month per residence surcharge for all residences combined not generating a total of 500 tons of "recyclables" per month is almost assured to be charged for years to come, since glass is not included as recyclable and considering the way the contract is worded, Republic has no requirement to minimize the amount of residual (unsorted materials generally with a negative value) or maximize the amount of recyclables coming from the sorting of the single stream recycling program materials collected from residences. For example, if only half of the recyclable materials collected from residences are sorted from the single stream materials, then a minimum of 1,000 tons of single stream materials would need to be collected per month from residences to generate 500 tons per month of actual "recyclables".

(2) Adding 2 more TDS bulky collection per year would add \$0.20 per month to the TDS charge per residence.

### Comparison of San Angelo, Texas Non Residential (Commercial) Solid Waste Service Rates

2013 Ordinance rates, Actual rates billed by Republic for June 2014, Rates offered by Republic in response to RFP OP-01-14, Contracted rates effective August 2014 and rates offered by TDS in response to RFP OP-01-14 and rejected by City staff and City RFP Review Committee

Containers		2013 ORDINANCE RATES	ACTUAL RATES BILLED FOR JUNE 2014	RATES AS OFFERED BY REPUBLIC IN RESPONSE TO RFP AND CONTRACTED RATES EFFECTIVE 08/01/14-14				RATES AS OFFERED BY TDS ON 03/21/14 IN RESPONSE TO RFP OP-01-14 AND REJECTED BY CITY STAFF AND CITY RFP REVIEW COMMITTEE (4)					
		A	B	C	D	E	F	G	H	I	J	K	L
Pickup Cu yd Frequency Size per week		COSA Published ordinance base service rate effective October 2013	Rate to customer including overcharge amount (1)	Republic proposed RFP base service rate (2)	Contracted rates effective August 2014 (3)	% Increase - 2014 Contracted rate (D) as compared to October 2013 ordinance rate (A)	% Increase - Proposed rate (D) as compared to rate billed in June (B)	Proposed base service rate @ \$20/ton LF	% Difference - TDS proposed rates (G) as compared to Republic proposed rates (D)	Proposed base service rate @ \$25/ton LF	% Difference - TDS proposed rates (I) as compared to Republic proposed rates (D)	Proposed base service rate @ \$30/ton LF	% Difference - TDS proposed rates (K) as compared to Republic proposed rates (D)
2	1	\$42.54	\$58.41	\$62.00	\$73.00	73%	25%	\$56.00	23% LESS	\$58.00	21% LESS	\$60.00	18% LESS
2	2	\$70.01	\$96.14	\$102.00	\$120.00	73%	25%	\$102.00	15% LESS	\$105.00	13% LESS	\$108.00	10% LESS
2	3	\$88.91	\$122.09	\$129.50	\$152.75	73%	25%						
2	4	\$109.01	\$149.70	\$159.00	\$187.00	73%	25%	See note (6)		See note (6)		See note (6)	
2	5	\$126.43	\$173.62	\$184.50	\$217.00	73%	25%						
2	6	\$147.41	\$202.42	\$215.00	\$253.00	73%	25%						
3	1			\$80.75	\$95.00			\$75.00	21% LESS	\$78.00	18% LESS	\$81.00	15% LESS
3	2			\$127.25	\$149.75			\$142.00	5% LESS	\$147.00	2% LESS	\$152.00	2% MORE
3	3	See note	See note	\$169.00	\$199.13	See note	See note						
3	4	(5)	(5)	\$213.50	\$251.25	(5)	(5)	See note (6)		See note (6)		See note (6)	
3	5			\$252.75	\$297.75								
3	6			\$290.00	\$341.25								
4	1	\$68.24	\$93.71	\$99.50	\$117.00	73%	25%	\$88.00	25% LESS	\$91.00	22% LESS	\$94.00	20% LESS
4	2	\$104.57	\$143.60	\$152.50	\$179.50	73%	25%	\$161.00	10% LESS	\$168.00	6% LESS	\$175.00	3% LESS
4	3	\$142.98	\$196.34	\$208.50	\$245.50	73%	25%	\$234.00	5% LESS	\$245.00	0% LESS	\$256.00	4% MORE
4	4	\$183.74	\$252.31	\$268.00	\$315.50	73%	25%	\$304.00	4% LESS	\$322.00	2% MORE	\$337.00	7% MORE
4	5	\$220.38	\$302.64	\$321.00	\$378.50	73%	25%	\$382.00	1% MORE	\$400.00	6% MORE	\$418.00	10% MORE
4	6	\$250.21	\$343.60	\$365.00	\$429.50	73%	25%						LESS
6	1			\$117.50	\$146.25			\$113.00	23% LESS	\$118.00	19% LESS	\$123.00	16% LESS
6	2			\$235.00	\$247.50			\$200.00	19% LESS	\$211.00	15% LESS	\$222.00	10% LESS
6	3	See note	See note	\$352.50	\$337.50	See note	See note	\$288.00	15% LESS	\$304.00	10% LESS	\$320.00	5% LESS
6	4	(5)	(5)	\$386.00	\$443.00	(5)	(5)	\$375.00	15% LESS	\$397.00	10% LESS	\$419.00	5% LESS
6	5			\$457.50	\$538.25			\$461.00	14% LESS	\$489.00	9% LESS	\$517.00	4% LESS
6	6			\$549.00	\$631.25			\$549.00	13% LESS	\$582.00	8% LESS	\$615.00	3% LESS
8	1	\$102.20	\$140.34	\$149.00	\$175.50	73%	25%	\$132.00	25% LESS	\$139.00	21% LESS	\$146.00	17% LESS
8	2	\$183.74	\$252.31	\$268.00	\$315.50	73%	25%	\$238.00	25% LESS	\$252.00	20% LESS	\$266.00	16% LESS
8	3	\$250.21	\$343.60	\$365.00	\$429.50	73%	25%	\$344.00	20% LESS	\$366.00	15% LESS	\$388.00	10% LESS
8	4	\$332.32	\$456.36	\$484.50	\$570.50	73%	25%	\$450.00	21% LESS	\$479.00	16% LESS	\$508.00	11% LESS
8	5	\$406.49	\$558.21	\$592.00	\$698.00	73%	25%	\$555.00	20% LESS	\$592.00	15% LESS	\$629.00	10% LESS
8	6	\$485.06	\$666.10	\$707.00	\$832.75	73%	25%	\$662.00	21% LESS	\$706.00	15% LESS	\$750.00	10% LESS

(1) Includes fuel/environmental recovery fee of 33.2503% and the overcharge portion of the City franchise fee and sales tax as billed for June 2014.

(2) RFP response rates as offered by Republic Services and obtained by TDS as a result of an open records request

(3) Posted ordinance rates effective 08/01/14. Section 9(D) allows for an annual increase of 2.9% plus an annual fuel adjustment which will take effect October 2015 and each October thereafter.

(4) TDS offered several rate options depending on the disposal fee to be paid to the City. The majority of the rates offered are less than the rates proposed by Republic.

(5) 3 and 6 cu yd containers were not listed in the City Ordinance as being offered to customers by Republic services during the previous contract period.

(6) TDS did not offer certain size and pickup frequency combinations if other combinations would more efficiently and less expensively provide the same service yardage.



**Non Residential Service (Commercial) Contracted rates effective August 2014 applied to customer matrix information provided by City staff during the RFP process, compared to rates offered by TDS in response to RFP shows that TDS rates are lower than Republic contracted rates by 13%**

CUSTOMER MATRIX			2013 ORDINANCE RATES		RATES AS OFFERED BY REPUBLIC ON 03/21/14 IN RESPONSE TO RFP OP-01-14 (1)		REPUBLIC CONTRACTED RATES EFFECTIVE 08/01/14 (2)		RATES AS OFFERED BY TDS ON 03/21/14 IN RESPONSE TO RFP OP-01-14 AND REJECTED BY CITY STAFF AND CITY RFP REVIEW COMMITTEE (3)		DIFFERENCE CALCULATION			
Cu Yd Size	Pickup Frequency	# Accts	Base Rate	Total Monthly charges	Base Rate	Total Monthly charges	Base Rate	Total Monthly charges	Proposed base service rate	Total Monthly charges	Monthly Difference	TDS Higher/Lower than Republic	Annual Difference	10 year total Difference
2	1	679	\$42.54	\$28,885	\$62.00	\$42,098	\$73.00	\$49,567	\$60.00	\$40,740	\$8,827	TDS lower than Republic		
2	2	113	70.01	7,911	102.00	11,526	120.00	13,560	108.00	12,204	1,356	TDS lower than Republic		
2	3	11	88.91	978	129.50	1,425	152.75	1,680	-	1,680	0	See note (4)		
2	4	2	109.01	218	159.00	318	187.00	374	-	374	0	See note (4)		
2	5	3	126.46	379	184.50	554	217.00	651	-	651	0	See note (4)		
2	6	2	147.41	295	215.00	430	253.00	506	-	506	0	See note (4)		
3	1	1	See note (5)		80.75	81	95.00	95	81.00	81	14	TDS lower than Republic		
3	2	0			127.25	0	149.75	0	152.00	0	0	See note (4)		
3	3	0			169.00	0	199.13	0	-	0	0	See note (4)		
3	4	0			213.50	0	251.25	0	-	0	0	See note (4)		
3	5	0			252.75	0	297.75	0	-	0	0	See note (4)		
3	6	0			290.00	0	341.25	0	-	0	0	See note (4)		
4	1	548	68.24	37,396	99.50	54,526	117.00	64,116	94.00	51,512	12,604	TDS lower than Republic		
4	2	281	104.57	29,384	152.50	42,853	179.50	50,440	175.00	49,175	1,265	TDS lower than Republic		
4	3	101	142.98	14,441	208.50	21,059	245.50	24,796	256.00	25,856	1,061	TDS higher than Republic		
4	4	3	183.74	551	268.00	804	315.50	947	337.00	1,011	65	TDS higher than Republic		
4	5	26	220.38	5,730	321.00	8,346	378.50	9,841	418.00	10,868	1,027	TDS higher than Republic		
4	6	8	250.21	2,002	365.00	2,920	429.50	3,436	-	3,436	0	See note (4)		
6	1	1	See note (5)		117.50	118	146.25	146	123.00	123	23	TDS lower than Republic		
6	2	2			235.00	470	247.50	495	222.00	444	51	TDS lower than Republic		
6	3	0			352.50	0	337.50	0	320.00	0	0	See note (4)		
6	4	0			386.00	0	443.00	0	419.00	0	0	See note (4)		
6	5	0			457.50	0	538.25	0	517.00	0	0	See note (4)		
6	6	0			549.00	0	631.25	0	615.00	0	0	See note (4)		
8	1	192	102.20	19,622	149.00	28,608	175.00	33,600	146.00	28,032	5,568	TDS higher than Republic		
8	2	264	183.74	48,507	268.00	70,752	315.50	83,292	266.00	70,224	13,068	TDS higher than Republic		
8	3	135	250.21	33,778	365.00	49,275	429.50	57,983	388.00	52,380	5,603	TDS higher than Republic		
8	4	10	332.32	3,323	484.50	4,845	570.50	5,705	508.00	5,080	625	TDS higher than Republic		
8	5	59	406.49	23,983	592.00	34,928	698.00	41,182	629.00	37,111	4,071	TDS higher than Republic		
8	6	56	485.06	27,163	707.00	39,592	832.75	46,634	750.00	42,000	4,634	TDS higher than Republic		
<b>Total Accounts 2,497</b>			<b>\$ 284,547</b>		<b>\$ 415,525</b>		<b>\$ 489,045</b>		<b>\$ 433,488</b>		<b>\$ 55,556 TDS lower than Republic per month \$ 666,675 per year \$ 6,666,750 in the first 10 years</b>			

(1) RFP response rates as offered by Republic Services and obtained by TDS as a result of an open records request.

(2) Posted ordinance rates effective 08/01/14. Section 9(D) allows for an annual increase of 2.9% plus an annual fuel adjustment which will take effect October 2015 and each October thereafter.

(3) TDS offered several rate options depending on the disposal fee to be paid to the City. This comparison uses rates proposed with a \$30/ton landfill rate. TDS also offered rates assuming \$20 and \$25/ton.

(4) TDS did not offer certain size and pickup frequency combinations if other combinations would more efficiently and less expensively provide the same service yardage.

(5) 3 and 6 cu yd containers were not listed in the City Ordinance as being offered to customers by Republic services during the previous contract period.

Attachment 4

Calculation of estimated unauthorized amounts invoiced by Republic Waste Services of Texas, LTD to individual businesses, schools and institutions in excess of City Council approved Ordinance rates for Commercial Frontload and Commercial Roll off Customers in the City of San Angelo, Texas since 2000 and using reported revenue from Republic audited financial statements for the years 2011 and 2012

Commercial Frontload Services					Commercial Roll off Services				Combined Commercial Services	
Year	Assumed Growth % (2)	Estimated Commercial Annual Ordinance Revenue (1)	Estimated Unauthorized Charges Per Year (3)	Estimated City Franchise Fee Portion of Unauthorized Charges (4)	Assumed Growth % (2)	Estimated Annual Roll off Revenue (1)	Estimated Annual Unauthorized Charges (3)	Estimated City Franchise Fee Portion of Unauthorized Charges (4)	Total Estimated Unauthorized Charges Per Year (3)	Estimated City Franchise Fee Portion of Unauthorized Charges (4)
1 1997		\$ 2,515,255	\$ 0	\$ 0	1.0%	\$ 1,038,586	\$ 0	\$ 0	\$ 0	\$ 0
2 1998	1.0%	2,589,777	0	0	1.0%	1,069,358	0	0	0	0
3 1999	1.0%	2,883,126	0	0	1.0%	1,190,486	0	0	0	0
4 2000	1.0%	3,009,872	94,422	1,888	1.0%	1,242,821	38,988	780	133,410	2,668
5 2001	1.0%	3,040,275	95,375	1,908	1.0%	1,255,375	39,382	788	134,757	2,695
6 2002	1.0%	3,070,985	96,339	1,927	1.0%	1,268,055	39,780	796	136,119	2,722
7 2003	1.0%	3,102,005	131,952	2,639	1.0%	1,280,864	54,485	1,090	186,438	3,729
8 2004	1.0%	3,133,338	56,946	1,139	1.0%	1,347,270	24,486	490	81,432	1,629
9 2005	1.0%	3,290,643	136,316	5,453	1.0%	1,414,907	58,613	2,345	194,928	7,797
10 2006	1.0%	3,323,882	282,083	11,283	1.0%	1,429,199	121,290	4,852	403,373	16,135
11 2007	1.0%	3,357,456	322,918	12,917	1.0%	1,443,636	138,848	5,554	461,766	18,471
12 2008	1.0%	3,391,370	594,761	23,790	-12.0%	1,288,960	226,051	9,042	820,813	32,833
13 2009	1.0%	3,425,626	402,877	16,115	1.0%	1,301,980	153,122	6,125	555,998	22,240
14 2010	1.3%	3,468,989	579,236	23,169	1.3%	1,318,461	220,151	8,806	799,387	31,975
15 2011	1.5%	<b>3,521,816</b>	773,395	30,936	1.5%	<b>1,338,539</b>	293,945	11,758	<b>1,067,339</b>	<b>42,694</b>
16 2012	2.1%	<b>3,579,359</b>	903,926	36,157	2.1%	<b>1,501,662</b>	379,228	15,169	<b>1,283,154</b>	<b>51,326</b>
17 2013	2.5%	<b>3,419,976</b>	1,042,351	41,694	2.5%	<b>1,066,860</b>	325,161	13,006	<b>1,367,512</b>	<b>54,700</b>
18 2014	2.8%	3,599,425	1,230,978	49,239	2.8%	1,122,337	383,831	15,353	<b>1,614,809</b>	<b>64,592</b>
			<b>\$6,743,875</b>	<b>\$260,254</b>				<b>\$ 2,497,359 \$ 95,952</b>	<b>\$ 9,241,235</b>	<b>\$ 356,206</b>

**Assumptions**

- (1) Customer Matrix information (container quantities, sizes and frequency of service) provided by City staff during the RFP process applied to current ordinance rates yields estimated annual frontload container service charges of **\$3,419,976** and annual roll off container service charges of **\$1,066,860**. These numbers were used to estimate amounts invoiced for 2013 and 2014. Republic audited financial statements obtained on May 15th through an Open Records Request to the City of San Angelo show commercial revenue from accounts within the San Angelo City limits of **\$3,579,359** and **\$3,521,816** and roll off revenue of **\$1,501,662** and **\$1,338,539** for the years 2012 and 2011, respectively. Reported revenue was used to estimate amounts invoiced for years prior to 2011. Actual annual invoice amounts will not be known until there has been a complete audit or litigation discovery to determine the actual gross revenues from which the unauthorized overcharges and the excess portion of the franchise fees were derived.
- (2) Prior year billings back to 1997 were calculated based on estimated growth rates of 1% to 2.8% as provided by the San Angelo Chamber of Commerce. A -12% decrease was used for roll off services for the year 2008. These numbers are an estimate, as TDS has no knowledge of actual billings other than those to Acme Iron and Metal Co. and a few other companies in the market. These assumptions and calculations are intended to show one method for the calculation of total estimated unauthorized charges. TDS believes the gross revenue, as well as the estimated overcharges to be greater than estimated above.
- (3) The rate ordinance adopted 8/3/04 appears to have allowed for a flat rate fuel surcharge to be charged to commercial customers based on container size and pickup frequency. TDS has found no record of previous commercial rate ordinances, and subsequent rate ordinances have indicated "no change" to fuel surcharge rates. The flat rate monthly fuel surcharge allowed over the past ten years for a 4 cu.yd. container serviced once per week appears to be \$1.32 per month. This amount was deducted from the Fuel/Environmental Recovery Fees (FERF) amounts invoiced to Acme in order to calculate the percentage used to estimate the total unauthorized charges.
- (4) City of San Angelo franchise overcharge portion of unauthorized charges was calculated using the authorized franchise fee % as approved by Ordinance. The amount was 2% thru August of 2004, and a total of 4% thereafter. The franchise fee was charged on all Fuel/Environmental overcharge amounts applied to invoices by Republic.