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Subject: Thank you and please continue to insist on full transparency on Item 22 before
considering a vote to approve the execution of the contract

Mayor and Council Members,

I'm writing to thank you for your vote to reject the proposed "Citywide Dumpster Collection Services" contract on February 16th, and to urge you, for many of the same reasons, to please continue to insist on full transparency and clear compliance with Council policy for the proposed "Organics Processing Services" contract on this week's agenda before considering a vote to approve the execution of the contract.

Please note that ZWAC's somewhat split [recommendation](#) on Item 22 (the proposed Organics By Gosh (OBG) contract) was [contingent](#) upon the "necessary permits and registrations being obtained" and "with the added restriction that no biosolids or compost from biosolids will be mixed with City of Austin food waste or compost from food waste." Both of these conditions, and related major concerns, all detailed below, are currently the subject of either conflicting or unavailable information and simply cannot be satisfied with assurance unless and until City staff agrees to make the full, unredacted OBG contract documents available for public review and comment, and time is allowed to determine whether the needed authorizations can be obtained for facility operations.

On December 15th and February 16th, you moved to reaffirm Council policies and City practices for responsibly managing Austin's waste streams before moving forward with soliciting, negotiating or executing new long-term contractual commitments for waste-related services. Once the OBG contract documents are available for public review and critical details such as proposed processing site locations are identified, site operations authorizations and public notices are disclosed, and the composting methods, generator waste flows and product types are known, at that time City policymakers and Austin stakeholders can then reasonably determine whether the proposal – and the solicitation and evaluation process that resulted in it – complies with Council policy and community priorities. Given especially that City staff is proposing a three-year contract with three one-year extensions that would not require any further Council consideration, and that every commercial solid waste generator in Austin produces organic waste, which could be impacted by this contract, full transparency and confirmation of compliance with Council policy should be paramount before a Council vote to execute this six-year contract.

Why TDS Has Not Responded To City RFPs for Organics Processing Services

To understand why TDS, despite being the region's largest composter of both yard waste and food waste, did not respond to the solicitations associated with Item 22, or other recent waste-related City RFPs ([discussed here](#)), Council need look no further than the two memoranda issued by City staff on [February 13th](#) and [February 15th](#) regarding the now-rejected Republic Services contract and related policy issues, including a 9-page review of key issues for Council consideration related to management of all commercial and residential solid waste streams destined for landfill disposal, recycling, composting and reuse, and the City of Austin's regulatory role. While both memos lack critical information and analysis (and, unfortunately, falsely report that TDS has not allowed competitors to utilize our landfill and seriously overstates our landfill emissions), the February 15th memo is nonetheless of great value to all parties in finally acknowledging City staff's current dual role as both a competitor with private haulers and an industry regulator.

The many complications of this ongoing conflict of interest on City staff's part include application of the [Anti-Lobbying Ordinance](#) (ALO). Staff's [demonstrated misapplication of Austin's ALO](#) (illegally disqualifying TDS from bidding to process the City's residential single-stream recycling while at the same time secretly preparing and later submitting a competing RFP response through the Public Works department), and the now-acknowledged, current and ongoing conflict of interest inherent in applying the ALO to prospective City vendors with whom the City is directly competing, is the reason TDS has been unable to respond to these and other recent City solicitations for waste-related services.

Indeed, as noted below, over the first half of 2016, City staff brought forward six related RFPs for waste services, all with ALO restrictions in place, that together kept the ALO "no contact" period in effect for more than 11 months (March 21, 2016 through today). If TDS had responded to even one of these RFPs, we would have been prohibited under the ALO from communicating with any elected or appointed City official on essentially any waste-related topic for almost all of the past year, all the while watching City staff enter the market for commercial waste-related services in violation of City code. (Please recall that 17 of the 21 "sample" special events listed in the "Citywide Dumpster Collection Services" RFP to receive contracted services are current TDS clients, and many of the commercial businesses generating food waste in and around the downtown business area who could have been affected or taken over by City staff as part of the "Organics/compost Pilot Program for Downtown Central Business District, City Hall, and other Downtown Businesses" RFP, which wasn't cancelled until February 22, 2017, identified [here](#), [here](#), and [here](#)).

As ZWAC Commissioner Joshua Blaine observed during the February 8th discussion of the OBG proposal in City Council chambers: "The elephant in the room is the Anti-Lobbying Ordinance." We agree and urge the City Council to please prioritize resolution of this ongoing conflict in your upcoming discussions, so that TDS may resume responding to City solicitations and giving City policymakers more choices for responsibly and transparently managing City waste at a reasonable cost to taxpayers.

Item 22: Please Do Not Vote to Approve This Contract Yet and Please Lift the Veil of Secrecy

As you know, Item 22 is a proposed six-year, \$4.3 million contract with OBG for "Organics Processing Services" (to process food waste and yard waste organics collected from the expansion of the City's curbside composting program, and perhaps much more). Once again, this item is of concern to TDS and others for many of the same reasons that resulted in your December 15th vote on the "Beneficial Reuse of Biosolids" contract and the February 16th vote on the "Citywide Dumpster Collection Services" contract, as well as concerns related to unknown processing locations, methods, and product types, and the unknown degree to which commercial businesses currently serviced by licensed private haulers and competing processors may be included or impacted.

Most importantly, just like the staff-proposed Republic Services and Synagro contract documents (and the Simple Recycling contract documents, now the object of broad community concern since being executed by City staff without Council or stakeholder input), the OBG contract documents – both the proposed vendor's full RFP response and the full proposed contract language – have still not been made available for public review and comment, even on the week of proposed City Council action. Both citizen commissioners who were asked to vote to support or oppose this proposal, and community stakeholders who may be directly impacted by this proposal, have been denied access to basic information necessary to understand and evaluate it. Bottom line: The community does not know what is and what is not contained in the contract documents, and cannot reasonably ascertain all of the possible ramifications – including those for the competitive market – of Council direction to approve the proposed contract.

Indeed, the process by which City staff has advanced the OBG proposal has been marked by the exact same veil of secrecy characterizing all six of the separate but linked waste-related City RFPs issued – all under the direction of Assistant City Manager Robert Goode – in the first half of 2016. From utilizing the strictest-possible interpretation of the

ALO to silence criticism, to requiring RFP reviewers and department heads to sign questionable non-disclosure agreements, which prevents them from answering questions during public meetings, to relying on incomplete and inaccurate interpretations of State law and City code to obscure the full details of proposed contracts from policymakers and the public, City staff's efforts in 2016 to advance "City Policy by RFP" and gain control over the flow of nearly every local waste stream generated within the City's jurisdiction – from biosolids and organics to recyclables and solid waste – plainly prioritized ambition for market control and Enterprise Fund revenue over an appropriate commitment to public transparency and over any concern for the possible impact of their proposals on a broad range of community constituents, including non-profit groups, business owners, local waste haulers and processors, rate payers, and many others. Further, despite the broad, policy-making scope of the proposals – or perhaps because of it – Assistant City Manager Goode and City staff failed to solicit any pre-RFP input from the City Council or advisory commissions.

Most alarmingly, many of the 2016 proposals have been presented under the banner of achieving Austin's ambitious Zero Waste goals when their certain outcome would instead be to throw much of the competitive Austin marketplace, and the status of commercially-owned and operated facilities and infrastructure on which achieving our Zero Waste goals ultimately rely, into complete disarray. This raises fundamental questions as to whether City staff's definition of Zero Waste may dramatically differ from that of current and previous City Council members and community stakeholders. Plainly, arriving at a precise, shared definition of Zero Waste should be a central focus of Council's upcoming public policy discussion, rather than continuing to allow ambiguity to animate City staff's now-monthly efforts to seek Council approval of undisclosed RFP responses and proposed contracts.

As a reminder, the six identified 2016 RFPs were:

- **RFP SLW0509** for "Organics Processing Services" issued on March 21, 2016 and reissued on May 30, 2016. OBG was the only respondent to both solicitations, and the proposed contract is the subject of Item 22.
- **RFP JXP0501** for "Removal and Sale of Untreated Compost" issued on March 28, 2016. The proposed contract with Mr. Allen Click was postponed from City Council's October 20, 2016 meeting agenda, and staff reports that the solicitation has now expired.
- **RFP SLW0511** for "Curbside Textile Recycling Services" issued April 4, 2016. A 6-year contract with Simple Recycling was unilaterally entered into by City staff in July 2016, without ZWAC, City Council or stakeholder input. As you know, this contract has since become the subject of public outcry and City Council intervention.
- **RFP CDL2003** for "Beneficial Reuse of Biosolids" issued on April 4, 2016. On December 15, 2016 the proposed contract with Synagro was withdrawn by City Council for re-issue as a new solicitation based on concerns related to the review process and violations of the Anti-Lobbying Ordinance. Critical questions about Synagro's initial proposal – including the end of the Dillo Dirt program, whether questionably pasteurized biosolids meets the definition of Compost, the offsite processing of biosolids, the location of sites (perhaps inside the city limits of Austin or in Travis County) proposed for direct land application of Class A and/or Class B biosolids sludge, and the identity of subcontractors and their site, among others – remain unanswered.
- **RFP SLW0514** for "Citywide Dumpster Collection Services" (aka "City Facilities Dumpster Collection Services") issued June 6, 2016. The proposed contract with Republic Services was unanimously rejected by both ZWAC on November 9, 2016 and February 8, 2017, and unanimously rejected by the City Council on February 16, 2017.
- **RFP SLW0515** for "Organics / Compost Pilot Program For Downtown Central Business District, City Hall, And Other Downtown Businesses" issued on June 20, 2016. OBG was the only respondent to this solicitation and City staff did not propose a contract. Please note, this solicitation, with the ALO in effect, was [terminated by City staff on February 22, 2017](#) – over six months after the response deadline and after TDS inquired about its status last week. This broad RFP would have contracted for a "pilot" program for organics processing in the Central Business District – an area currently serviced by TDS via a City of Austin contract and other haulers in open market competition – and potentially many other areas and commercial customers. It remains unclear but of great concern whether this organics RFP – still open at the time of Council consideration of the Republic Services proposal – would have opened the door to City competition, via a toll hauler like Republic, with commercial haulers, and whether the organics waste generated by all the downtown businesses and businesses in other areas would have been or still will be directed to the OBG processing facility if the undisclosed contract under this week's Agenda Item 22 were to be approved. Please note that every solid waste generator in Austin is also an organics waste generator, and as such the implications of any potentially open-ended City contract involving commercial organics hauling and processing should certainly require a complete public disclosure, with adequate time allowed for review and comment before a recommendation is

considered by ZWAC and a vote to approve the execution of the contract by Council. Please see the linked [RFP Offer Sheet](#), [Scope of Work](#) and [February 22, 2017 Cancellation Notice](#).

In keeping with a pattern of behavior, secrecy has indeed been the hallmark of City staff's approach to the OBG contract documents. Like the Republic Services contract, this proposed contract appeared before ZWAC twice. During the [first discussion on November 9, 2016](#), City staff represented that "purchasing rules" specifically prohibited the proposed vendor, who was present on the front row at the public meeting, from responding to direct questions from ZWAC commissioners. Indeed, ZWAC commissioners and the respondent were cautioned at the time "against talking about anything having to do with the bid or the solicitation because that could cause some problems with all the rules." Further, City staff themselves declined in November to answer ZWAC commissioners' questions about the proposal, citing "confidentiality restrictions" and instead referred all questions to the City's Purchasing Office to be answered at a later date.

(This position appears to stem from a statement made by City of Austin Purchasing Office staff at the November 14, 2016 [Electric Utility Commission discussion](#) of the proposed Republic Services contract, as follows: "... around disclosure of proposals, of contents, anything like that, that is per Texas Local Government Code Chapter 252 and that states that any of the proposals that we receive are confidential until the award so we would not be able to disclose the pertinent details of a proposal or any of those details. That's actually from State law." In fact this is an inaccurate characterization of State law. [Texas Local Government Code Section 252.049\(b\)](#) states: "...proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations." In other words, all proposals must be kept confidential until the negotiations are complete, unless allowed to be disclosed by the respondent sooner, rather than until after the contract is finally awarded. The statute allows full public disclosure of the proposed contract and full discussion of all related facts after negotiations and prior to award; and, furthermore, Council does not need to cast a vote to authorize staff to negotiate a contract for full public disclosure and Council's consideration. See [City Council discussion](#) and staff clarification that the staff can negotiate proposed contracts without having to first seek Council authorization.)

In other words, with the proposed OBG contract posted on the ZWAC agenda to consider for recommendation to the City Council, City staff represented that City policy prevented commissioners from asking basic questions of either City staff or the proposed recipient of a multi-year, multi-million dollar City contract clearly under the commission's purview, including, in this case, critical questions about the location of the facility or facilities proposed for use, their compliance with state and local facility operations authorization requirements, the proposed composting methods and waste materials to be used, the odor control practices to be utilized, the cost for processing the waste, the marketing of the finished compost products, and a contingency plan to ensure program success.

Appropriately, ZWAC delayed consideration of the OBG contract pending requests for information; nonetheless, immediately preceding the second [ZWAC discussion on February 8, 2017](#), ZWAC commissioners were again informed via a [February 8, 2017 memorandum from Sam Angoori on the organics processing contract](#) that City staff could not answer questions about the OBG proposal "due to confidentiality restrictions." While finally acknowledging "questions for the vendor can be made from the dais during a public meeting" the memo also stated "the vendor may choose, but is not required, to respond to questions regarding their bid."

Ultimately, an OBG representative did respond to basic questions from ZWAC commissioners at the February 8th meeting and revealed additional details about their proposal, however, as noted, a host of vital unknowns still remain (see [transcript](#) here). While a majority of ZWAC commissioners ultimately voted to recommend the OBG proposal to City Council with conditions described above, TDS and other community constituents are concerned that commissioners did not have sufficient time to fully evaluate the information provided or weigh the possible risks of proceeding based on the range of unknowns. At the time of the vote, ZWAC members had been told that the permit was in the mail and did not know the location of the primary processing facility or the details of the still undisclosed proposed contract.

Known Unknowns and Why They Matter

Indeed, what we don't yet know about this proposal can definitely hurt us when it comes to achieving our community's Zero Waste goals.

To be sure, sustainable large-scale compost production and the successful marketing of and beneficial use of compost are central to Zero Waste, and curbside collection of food scraps is likewise central to large-scale compost production.

Executing a successful long-term citywide curbside food scraps collection program depends heavily on the City's ability to deliver reliable, uninterrupted service and service expansions over the program's initial years. Recall that the City's goal is to expand collection service from the current 14,000 pilot households to an estimated total of 210,000 households citywide, by 2020 – a 1,400% increase in serviced households over some 36 months.

Without, for example, assurance that the selected vendor has documented access to fully authorized facilities whose intended long-term use by the City has been made known to the public and surrounding landowners; proven resources exist to adequately service such volume in the near term; and a viable contingency plan is in place to manage odor problems, equipment failures or other emergencies, the City risks service interruptions and faltering rollout schedules that could quickly imperil the program's long-term success. When successful composting is on the line, the financial sustainability and environmental compliance reputation of the Zero Waste program is on the line.

This means City staff's veil of secrecy must be lifted with regard to the following unresolved issues before City Council action is taken:

- UNKNOWN CONTINGENCY PLAN – The Austin Monitor's recent characterization of the OBG contingency plan as "[lackluster](#)" could very well be a compliment based on the information currently available. The OBG contingency plan scored 1 out of a possible 5 points during the solicitation evaluation process.
- UNKNOWN PROCESSING LOCATIONS – At the February 8th ZWAC meeting, OBG revealed the existence of a second and third proposed processing location (in addition to the location where the City's pilot program has been conducted, which OBG has stated is not capable of processing citywide volume). The second location is currently undeveloped pastureland in Bastrop County (see [pictures](#) and [aerial](#)). The physical address, even the general area, of the third proposed location remains unknown. OBG's proposal scored 10 out of a possible 20 points for location during the solicitation evaluation process, but as the OBG RFP response remains secret, it is unknown whether the facilities intended for use were either identified by the respondent or evaluated by the City at any time before February 8th.
- UNKNOWN TCEQ AUTHORIZATION STATUS – At the February 8, 2017 ZWAC meeting, OBG informed ZWAC commissioners that a required TCEQ authorization for a proposed processing location was "in the mail". In fact, a subsequent inquiry to TCEQ revealed that the required authorization on at least one of the facilities has not yet been issued to OBG, but that on February 23, 2017 the TCEQ issued a [Notice of Intent to Operate a Compost Facility No. 47056](#) to the public, who will then have 23 days from the date of the TCEQ notification (March 20, 2017) to file a motion to contest the issuance of the authorization. (This facility is located in Bastrop County.) We are not aware that City staff has independently investigated the status of the required authorizations.
- UNKNOWN TRAVIS COUNTY "SITING OF SOLID WASTE FACILITIES ORDINANCE" VARIANCE STATUS – It is unknown whether OBG has or would need variances from the Travis County "[Siting Ordinance for Solid Waste Facilities](#)" on any of these sites located within Travis County, which are required to operate with defined distances from certain receptors. Please note that City staff previously allowed OBG to utilize a processing facility (for the trail curbside composting program) that did not comply with requirements of the Travis County ordinance.
- UNKNOWN STATE, COUNTY OR LOCAL REGULATORY / ENFORCEMENT HISTORY REGARDING PROPOSED SITES – Without knowing the address of proposed processing locations, any previous regulatory issues or enforcement actions that may be associated with these locations and any related facility operators remain unknown.
- UNKNOWN INVESTMENT PARTNER – At the February 8, 2017 ZWAC meeting, OBG revealed the existence of an unidentified investor who would not purchase and contribute the third, undisclosed processing location unless the long-term City organics processing contract was approved.
- UNKNOWN RELATIONSHIP WITH BIOSOLIDS VENDOR SYNAGRO – [Synagro has previously identified OBG](#) as a destination for Hornsby Bend biosolids after a short (15 to 28 day) period of on-site processing into Class A sludge, raising concerns about possible biosolids composting and the related odor concerns at OBG facilities, and possible blending of food scraps and biosolids in the OBG composting and compost-product blending process, both out of conformance with the conditions established by ZWAC for approval of this proposed contract.
- UNKNOWN FINISHED PRODUCT MARKETING PLAN – It is unknown how and to whom finished compost will be marketed in sufficient volume to support operations, and whether the undisclosed contract allows the blending of biosolids and food waste or food waste compost with biosolids compost.

- UNKNOWN ALTERNATIVES – As noted, OBG was the sole bidder to all three composting RFPs issued by the City in 2016. Once again, TDS has determined it cannot bid on City solicitations under the circumstances described in detail above. Instead, on April 12, 2016, following the close of the City’s first organics processing RFP, TDS sent both City Council and ZWAC an [unsolicited offer](#) for all requested organics processing services, as may be negotiated under the terms of our existing 30-year “[Waste Disposal and Yard Trimmings Processing](#)” contract without amendment (i.e. the City has already secured set rates and full access to the TDS composting facility in southeast Travis County, which is currently capable of processing as much as all organics collected from a fully-scaled, citywide curbside composting program). A comparison of the alternative proposals and their overall cost to the City, if one has been conducted by City staff, remains a secret.

RECOMMENDATION

In summary, TDS urges the Austin City Council to please insist on full transparency and clear compliance with Council policy before approving execution of the proposed contract contemplated in Agenda Item 22.

We respectfully request that this and all solid waste, recycling and composting-related solicitation responses and proposed contracts be posted and made fully available for an adequate period of time for public review and comment prior to a vote by the appropriate citizen advisory commissions to recommend the contract to City Council, and as well prior to being posted for a vote of approval by City Council.

Once contract documents have been made public with sufficient time for review, TDS further urges that the full contract(s) – as well as the solicitation and evaluation process that resulted in them – be fully vetted for compliance with Council policy and community priorities before any citizen commission or City Council contract execution action.

If the process and fully public contract documents are determined to be compliant with policy goals, consideration of approval can justifiably advance; if not, a new solicitation, including a new solicitation format and process, may be required to ensure a desired outcome and otherwise avert costly missteps, a la the Simple Recycling contract but with far greater consequence and cost to the City and to stakeholders.

Either way, our hope is that this or another proposed organics processing contract will ultimately result in the assured receipt, decontamination and composting of all of the comingled City’s residential curbside collected organics waste (food waste, yard trimmings, soiled paper, and more) as well as the marketing of the compost via bulk sales, bagged products and/or soil and compost blends, with all proposed sources of organic waste and the authorized processing facilities under contract specifically identified. This is a recipe for ensuring the success of large-scale composting in Austin and successfully meeting our community’s Zero Waste goals. This fair and open public process will also encourage other operators to establish competing facilities and seek City contracts.

Once again, please know that TDS and other local waste services providers and concerned constituents took note of your important decision on February 16th to reject the proposed “Citywide Dumpster Collection Services” contract and to instead reaffirm the City’s policies and practices for responsibly managing our community’s waste streams before the City moves forward with soliciting, negotiating or executing new long-term contractual commitments regarding waste materials, and we trust you to apply the same scrutiny and core values to this week’s proposal as well.

We look forward to participating in and serving as a resource for your upcoming discussions to ensure that the City’s waste-related policies, procedures and strategies accurately reflect Austin’s community values. Please don’t hesitate to contact me directly with any questions or concerns.

Respectfully,
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