



To: Zero Waste Advisory Commission
From: Bob Gedert, Director
Austin Resource Recovery Department
Date: September 13, 2016
Subject: **Director's Review of Organics Contracts**

I am writing this memorandum in response to ZWAC's inquiry regarding the management of collected organic material within city department contracts.

City Contracts Collecting Organics

I have reviewed a collection of city contracts that include the collection and disposal of organic material. This review is exclusive of the Austin Water sludge management contracts currently under discussion. I have categorized the contracts into three types of contracts; tree trimmings, landscaping maintenance, and food scrap composting.

There are four (4) tree trimming contracts from three (3) city departments: Austin Energy, Public Works, and Austin Water. These contracts do not itemize volumes (e.g. cubic yards or tons), and they do not designate diversion requirements.

There are at least eleven (11) grounds maintenance and mowing contracts from five (5) city departments: Austin Code, Austin Water, Parks & Recreation, Austin Housing & Finance Authority, and Watershed Protection. These contracts do not itemize volumes (e.g. cubic yards or tons), and they do not designate diversion requirements.

In addition, Austin Resource Recovery contracts with a vendor for the composting of co-mingled yard trimmings and food scrap. This contract tracks volumes, and requires composting. Tree trimmings not mixed with food scrap is sent to Hornsby Bend for the Dillo Dirt program, continuing through 2020.

The typical contract has the following language regarding the "disposal" of the material collected:

"Contractor shall dispose of all debris resulting from general landscape and grounds maintenance operations in a manner acceptable to the AHFC Representative and in accordance with all Federal, State, and local laws, rules, regulations and guidelines. Contractor shall not dispose of any debris or trash resulting from landscape maintenance in any dumpster or receptacle belonging to businesses or properties adjacent to landscape maintenance work locations, or where disposal is not allowed."

Consolidation Opportunities

Upon review of these contracts, there does not appear to be opportunity to consolidate any contracts. Some contracts are restricted by source of funds, and therefore cannot contractually be combined with other sourced funds. In other situations, the type of landscaping and maintenance services vary significantly based upon property conditions.

Instead of consolidation to seek a common diversion outcome, each contract can be required to include the same contract language for volume documentation and diversion requirements of collected organics, though this may have to wait until new solicitations/contracts are developed since this requirement is not currently in the scope.

Diversion Opportunities

All of the reviewed contracts have significant diversion opportunities, and may be diverted through composting or mulching. However, the contracts do not require diversion, and they do not require reporting and documentation of diversion. These requirements can be added to future contracts that collect and manage organic material.

Flow-Control

There may be a desire to send organics material to a particular facility (e.g. Austin Water's Hornsby Bend Facility) as a bulking agent to support the Dillo Dirt program, however, any such naming of receiving facilities must be through the contractual bid process, and not through governmental designation.

The US Supreme Court has ruled "Flow Control" by governmental mandate as a violation of the US Commerce Act, and therefore not a permissible activity. Subsequent court rulings have refined what is permissible under certain conditions. Governmental units possess the ability to designate a receiving facility *only by contract*, and not through governmental order (e.g. resolutions). To avoid any legal concern regarding flow control, any designation of a receiving facility should be through an open purchasing bid solicitation, following all city requirements for bid solicitation, and contracted through the terms noted in the bid documents. This is a common activity that local governments currently engage in.

Recommendations

Based on my cursory review of the contracts noted above, I offer the following recommendations, as the service contracts expire and are rebid:

1. Add a requirement that collected organic material be prohibited from final disposal, and require composting, mulching, anaerobic digestion, or other safe diversion method. This requirement may need adaptation to the level of contamination of the collected material.
2. By bid and contract, direct the delivery of clean woody based material (e.g. tree trimmings) to support the Dillo Dirt program (limited to legal means by contract).

As this item is not posted for discussion at the September 14th meeting, I provide this memo to address the issue as it was raised previously. This item can be added to a future ZWAC agenda if you desire.