

RELEASE OF CLAIMS

In consideration for the adoption on October 16, 2014 of a City Council Resolution, containing the exact language as provided in Exhibit A of this document (“the Resolution”), Ms. Daniela Ochoa Gonzalez hereby fully releases and forever discharges the City, and each of its officials, officers, agents and employees from all liability arising before she signs this Release, upon claims, demands, causes of action, claims for relief, obligations, damages, rights, and all liability for legal and equitable relief of any kind or nature whatsoever arising out of or related to the April 18, 2014 City Auditor Report entitled “Report on Allegations Involving a Zero Waste Advisory Commissioner”(“City Auditor Report”), Ms. Ochoa Gonzalez’ resignation from the Zero Waste Advisory Commission, or subsequent issues related to the April 18, 2014 report. This is a full and comprehensive release that includes, without limitation: (a) any claims arising under the Federal or State Constitutions for violations of due process; (b) all claims under the tort laws of the State of Texas; and (c) claims arising under any other state or local statute, including but not limited to the Declaratory Judgment Act. As part of this release of claims Ms. Ochoa Gonzalez understands and agrees that:

1. This release applies to claims based on actions, omissions, failures to act or events that occurred at any time before she signs this Release, regardless of whether such acts, omissions, failures to act or events were known to her at the time she signs this Release;

2. (a) she and her attorneys have had sufficient time to investigate the relevant facts and legal issues in this dispute in order to make an informed decision about the merits and weaknesses of the parties’ respective positions, claims and defenses, (b) she enters into this Release upon the legal advice of her attorneys, (c) her attorneys have explained to Daniela Ochoa Gonzalez to Ms. Ochoa Gonzalez’ satisfaction the terms, effect, and legal consequences of this

Release, (d) Daniela Ochoa Gonzalez fully understands and voluntarily accepts the terms of this Release, and (e) in deciding to sign, accept the terms of, and be bound by this Release, Daniela Ochoa Gonzalez is not relying upon any statement or representation or promise made by the City, or of any agent, employee, representative, officer, or attorney of the City that is not expressly set out in this Release. Instead, Daniela Ochoa Gonzalez is relying on her own judgment and the advice of her attorney(s).

Prior to the adoption of the Resolution by the City Council, Ms. Ochoa Gonzalez shall deliver in escrow to the City of Austin's Legal Department an executed version of this release. If the Austin City Council fails to adopt the Resolution on October 16, 2014 or makes any amendments to the Resolution, the Resolution is repealed or the Resolution is voided by a competent court at law, this release shall not be effective, valid or enforceable and the City of Austin's Legal Department shall return this document to Ms. Ochoa Gonzalez within 48 hours.



Daniela Ochoa Gonzalez

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Daniela Ochoa Gonzalez, who, being first duly sworn on her oath, stated that she has read and executed the foregoing Release, that she fully understands all of the provisions of the document and she acknowledges her agreement to Release her claims under the terms stated above, and she is executing the same for the purposes recited therein.

SUBSCRIBED AND SWORN TO BEFORE ME this the 16th day of Oct., 2014 to certify which witness my hand and official seal of office.



Chelsea Lane Livingston

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

[Signature]

Attorney for Daniela Ochoa Gonzalez

Date signed: 10/16/2014

RESOLUTION NO. 20141016-024

WHEREAS, Daniela Ochoa Gonzalez, during part of her tenure as a volunteer Commissioner at the Zero Waste Advisory Commission (ZWAC), also worked as an independent contractor for Texas Disposal Systems (TDS) helping schools to reduce waste; and

WHEREAS, the Integrity Unit of the Office of the City Auditor issued a report on April 18, 2014 entitled “Report on Allegations Involving a Zero Waste Advisory Commissioner,” which concluded that ZWAC member Daniela Ochoa Gonzalez “violated the conflict of interest requirements stipulated by the City of Austin” in City Code Sections 2-7-63 (Prohibition on Conflict of Interest) and 2-7-64 (Disclosure of Conflict of Interest); and

WHEREAS, prior to the publication of the City Auditor’s Report, Daniela Ochoa Gonzalez was not given an opportunity to make a formal response to the claims of the City Auditor’s Report; and

WHEREAS, the Office of the City Auditor plays an important role in investigating whether conflict of interest allegations may require further review by the City’s Ethics Review Commission; and

WHEREAS, the Office of the City Auditor typically handles internal departmental investigations related to City employees; and

WHEREAS, the Ethics Review Commission, under authorization by City Code, has sole jurisdiction to rule on sworn complaints alleging violations of the Code of Ethics; and

WHEREAS, the City Auditor’s Report concluded that Daniela Ochoa Gonzalez violated conflict of interest provisions of City Code without following



the Ethics Review Commission process expressly established in City Code for these allegations; and

WHEREAS, the Ethics Review Commission during two separate meetings, on April 29, 2014 and July 29, 2014, considered the allegations in the City Auditor's Report concerning Daniela Ochoa Gonzalez and decided not to take action; and

WHEREAS, City Code Section 2-7-2(1) states that "Affected means in the case of a person, entity or property, means reasonably likely to be subject to direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question;" and

WHEREAS, City Code Section 2-7-2(1) further states that "Affected does not include those persons or entities who are subject to an indirect or secondary effect from official action;" and

WHEREAS, the City Auditor's Report characterized ZWAC agenda items as "TDS agenda items," without any explanation as to how these agenda items were "reasonably likely to be subject to a direct economic effect" on Texas Disposal Systems, and, therefore, the Report failed to demonstrate how the alleged conduct might constitute a conflict of interest; and

WHEREAS, as a result of this matter, the Office of the City Auditor and the Ethics Review Commission are collaborating in order to propose an improved process for handling conflict of interest allegations; and

WHEREAS, concerns from the community have been voiced to City Council in which opinions have been presented concerning the process followed by the City Auditor, the failure of the City Auditor to disclose evidence, the perceived

flaws in the Report and the possible chilling effects that similar reports could have on citizen participation; and

WHEREAS, it is possible that reports containing determinations of guilt can result in damage to livelihoods and reputations; and

WHEREAS, the City Council relies heavily on the recommendations of the citizen volunteers who participate on our Boards and Commissions and the critical role they have in our community; and

WHEREAS, our citizens provide expertise and a commitment to the policy areas covered by their respective Boards and Commissions; and

WHEREAS, it is critical that the integrity of the Boards and Commissions process is maintained; and

WHEREAS, the City Council believes the Ethics Review Commission process for conflict of interest allegations against Boards and Commissions members must be followed; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Clerk and City Auditor are directed to coordinate meetings between the Ethics Review Commission working group and the Integrity Unit of the Office of the City Auditor to discuss process clarification and improvement for conflict of interest allegations which the City Auditor receives against Boards and Commissions members, and results are to be reported back to Council within 90 days.

BE IT FURTHER RESOLVED:

Council objects to the failure to follow the Ethics Review Commission process and does not accept the City Auditor's "Report on Allegations Involving a Zero Waste Advisory Commissioner," which concerned Daniela Ochoa Gonzalez.

BE IT FURTHER RESOLVED:

Council directs that any copy, electronic or otherwise, of the City Auditor's "Report on Allegations Involving a Zero Waste Advisory Commissioner" or any reference to the report shall contain on the first page a conspicuous notice in bold type which shall read: "Notice: This Report has not been accepted by the Austin City Council and is subject to Resolution No. 20141016-024, passed on October 16, 2014."

BE IT FURTHER RESOLVED:

The City Auditor is not prohibited from filing sworn complaints with the Office of the City Clerk and following the Ethics Review Commission process outlined in City Code for allegations concerning violations of City Code's conflict of interest provisions.

BE IT FURTHER RESOLVED:

Council thanks Daniela Ochoa Gonzalez for her service to our community on the Zero Waste Advisory Commission and her commitment to helping Austin move toward its Zero Waste goals.

BE IT FURTHER RESOLVED:

Council apologizes to Daniela Ochoa Gonzalez, members of the Zero Waste Advisory Commission and our community for not following the Ethics Review Commission process for Boards and Commissions members to address conflict of interest allegations investigated by the City Auditor.

ADOPTED: October 16, 2014 **ATTEST:** _____

Jannette S. Goodall
City Clerk