



**WASTE MANAGEMENT of  
ALAMEDA COUNTY, INC.**  
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July 29, 2014

Honorable Mayor Jean Quan  
Members of Oakland City Council  
Henry Gardner, City Administrator  
Zero Waste Committee  
City of Oakland  
1 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 94612

**Re: Response to California Waste Solutions, Inc.'s Letter dated June (sic) 25, 2014**

Dear Mayor, City Councilmembers, City Administrator and Zero Waste Committee:

We are in receipt of California Waste Solutions above-referenced letter and it appears CWS has once again made a number of false and defamatory statements regarding the Oakland staff, the Zero Waste Committee and Waste Management of Alameda County, Inc. (WMAC). This is unfortunate, but understandable considering that after being given a second and third opportunity to demonstrate it was capable of meeting the City's **Zero Waste Initiative**, CWS' plan continues to pose considerable risk. This was made very evident by the staff's careful and diligent reevaluation of CWS' abandoned Plan A, abandoned Plan B and its subsequent Plan C with Plan B as a backup. After being given this opportunity, which no other proposer was given, and which was contrary to the requirements of the Zero Waste Services Procurement process, CWS' only response is to ignore the obvious defects in its proposal and instead attack the city Staff and our Company. CWS's desperation is regrettable, and we are left with no other option but to correct the record on a number of relevant issues and address the false assertion that "*City Staff also failed to listen to the clear direction of the City Council...*" Below is our response to CWS' inaccurate and/or defamatory allegations, followed by a recitation of the real facts on which the Council should rely in making a decision that benefits the ratepayers while also meeting the City's goal of Zero Waste beginning on **DAY ONE** of the new contract.

#### **1. Cooperation with EBMUD in Organics Processing**

Contrary to CWS' false assertions, WMAC and the East Bay Municipal Utility District (EBMUD) met on numerous occasions prior to our January 9, 2013 response to the City's Request for Proposals for Zero Waste Services in an effort to partner on processing of organics to meet the City's diversion goals. Because EBMUD's solution for residue was deposition into a landfill as Alternative Daily Cover (ADC), which does not count as "diversion" under the RFP and does not meet the definition of "diversion" under the policies set forth by the Alameda County Joint Power Authority, StopWaste.Org., WMAC and EBMUD were unable to collaborate and both parties submitted a joint letter so advising the Oakland Zero Waste Committee.

As a result, WMAC developed its own residential and commercial organic solution which includes aggressive Public Education and Outreach, improvements in Source Separation of all organics, separation of organics through Multi-Family processing at Davis Street (2015), Mixed Material



Processing at Davis Street (2017/18), Composting of Organics at Redwood Composting (2015) and digestion and composting of organics at the Altamont (2016). This was submitted in our response to the MMO RFP on January 9, 2013. Most importantly, we will be processing Multi-Family on DAY ONE and composting Oakland's organics as opposed to CWS, which proposes a five-year or more delay in processing Multi-Family.

Fourteen months after we developed our programs and submitted our response to the MMO RFP, and long after the MMO was originally anticipated to be awarded (on or before December 31, 2013), EBMUD proposed using its residue for "land application" versus use as ADC in an effort to get residue to count as diversion. Council directed staff to request WMAC and CWS to provide pricing for use of EBMUD for commercial organics (source separated and processed). WMAC met with EBMUD and provided pricing to the Zero Waste Committee in response to Council's Resolution. Currently, the parties have a draft Term Sheet outlining contractual terms (pricing and volume commitment) in the event Council directs WMAC to deliver commercial organics to EBMUD's Oakland facility.

Moreover, after the May 29, 2014 Council Meeting, WMAC and EMBUD representatives met on two separate occasions to discuss WMAC "financials" regarding its proposed organics solutions and pricing. EBMUD representatives asked a number of questions, all of which were responded to in detail. At no time was either meeting cut short. In fact, there continues to remain an opportunity for EBMUD and WMAC to partner around commercial organics with or without the direction of Oakland City Council.

Consequently, CWS' assertion in its July 25, 2014 letter that "*WM, in its 'my way or the highway' approach, simply refused to budge, instead insisting on privatization of Organics for the next two decades*" is categorically false.

## **2. Keeping Oakland Jobs in Oakland by Locating the Call Center in Oakland**

In response to the MMO RFP, WMAC included an Oakland-based Call Center. This is a fact and a matter of public record. However, WMAC, as directed by the RFP, provided an alternative discount if Oakland's Call Center remained "out-of-county". An in-county facility increases ratepayer costs due to expenses under WMAC's collective bargaining agreement with International Longshoremens Workers Union No. 6 versus our lower cost Regional Call Center. The option of an in-county or out-of-county call center was left to the discretion of the City; the recommendation before the Council includes the out-of-county option in order to reduce costs to ratepayers. It should be noted, however, that WMAC still has 28 Local 6 Clerical employees performing a variety of clerical functions at our 98th Avenue office including Oakland lien processing, Oakland customer service, Oakland pay station, Oakland billing and Oakland dispatching. Loss of the MMO to CWS would eliminate a number of Local 6 Clerical jobs. We trust if CWS is awarded the MMO, its local call center will be unionized with Local 6 Clerical employees providing the call center, customer service, dispatch, billing and clerical work and will further take on our current wages, health and welfare and pension cost. We just want to ensure there is an "apples to apples" comparison and obligation. The Council may wish to get clarification from CWS on this point. Just as important, contrary to CWS' defamatory statements in its July 25 letter, WMAC did not "*...close the local call center when it locked out its employees.*" The lockout of Local 70



occurred in July 2007. WMAC's closing of its local call center occurred in December 2009. There is no nexus between the two events and the inference that WMAC closed its call center in retaliation for the Local 70 lockout is completely false.. Waste Management company-wide has 22 million residential customers and has been consolidating "call centers" for the last 10 years. This was a business necessity to provide better customer service through backup facilities and redundancy in the event of spikes in call volume, inclement weather or natural disasters.

The City Council, City Administrator and staff may wish to ask CWS what its call center back-up plan is in the event of any difficulties. California and the Bay Area are not immune from natural disasters.

Finally, for the reasons stated above, CWS' allegations that WMAC has taken a "my way or the highway for local call center jobs" is false.

### **3. Working with Civicorps**

At no time has WMAC ever dismissed CivicCorps or suggested to Staff that CivicCorp could not be part of WMAC's operations if we were awarded the MMO contract. To the contrary, as evidenced in the Staff Report dated July 21, 2014: "*Both CWS and WMAC have stated their commitment to partner with CivicCorps for activities best suited to the non-profits strengths such as community outreach, surveying, tabling, door-to-door delivery to optimize outreach and diversion*". It should be noted that Staff advised CivicCorps a couple of years ago as it was beginning commercial organic service on behalf of Recology that *Commercial Organics* would be part of the Oakland franchise in 2015. CivicCorps began its commercial organics program but chose not to respond to the MMO RFP and further chose not to reach out to WMAC in an effort to partner in its response to the RFP submittal on January 9, 2013. Eighteen months after responses to the RFPs were due; CivicCorps now submits a non-qualifying proposal for commercial organics.

Nevertheless, CivicCorps would and should be a valuable partner with WMAC in our Community Outreach Strategy as we engage sectors and streams for maximum diversion, engage community partners, implement outreach pilots, mobilize our Zero Waste Ambassadors and deploy job training and internships. Additionally, WMAC and Local 70 have discussed, and continue to, discuss a "driver-training" program. This would be a program between WMAC and Local 70 as they have jurisdiction but could likewise involve CivicCorp and other non-profit organizations.

Once again, CWS' allegations that WMAC, "*...has ignored CivicCorps and, again, indicated its 'my way or the highway' approach to meeting the reasonable directives of the City Council*" is false.

#### **a. Rules & Legislation Committee Request to Schedule an Agenda Item dated July 23, 2014**

WMAC received a memorandum from the Rules & Legislation Committee "*directing the City Administrator to negotiate and execute a franchise contract with CivicCorps in accordance with their proposal...*" or "*as an alternative, the Council shall consider... CivicCorps as a subcontractor to provide services for collection of commercial organics...at the same overall rates set forth in the*



*Council approved franchise ordinance.*” WMAC is concerned for a variety of reasons with this proposed Agenda Item but will focus on two issues for the City to consider:

- **MMO Funding Mechanism:** All MMO ratepayers fund a portion of Oakland’s \$25,000,000 franchise fee and \$3,500,000 in free City Services (which includes services to all City/municipal buildings and facilities, city cans, illegal dumping abatement program, graffiti abatement program, Amnesty Days, Oakland Public Works free disposal at Davis Street, Councilmember District roll-off boxes, etc.). Just as important, the MMO ratepayer covers the cost of the \$5,000,000 performance bond, \$1,000,000 in annual Pub Ed expense as well as the Call Center, Billing and commercial/residential bad debt exposure. Carving out “Commercial Organics” revenue in favor of CivicCorps reduces MMO revenue and margin to fund the embedded costs as referenced above and would result in an increase in rates to the remaining MMO ratepayers. We request the Mayor, Councilmembers and Staff consult the City Attorney regarding the propriety of moving forward with this Agenda Item.
- **Sub-Contracting:** Under our Local 70 Collective Bargaining Agreement, subcontracting of bargaining unit or jurisdictional work is prohibited. Additionally, all Alameda County Local 70 CBA’s mirror the WMAC Local 70 Agreement and an amendment to one is an amendment to all and would require approval from Local 70 members at WMAC, AVI, ACI, Republic, CWS and Livermore Sanitation.

As stated above, if awarded the MMO and RR service groups, WMAC looks forward to partnering with CivicCorps as part of the Oakland Zero Waste initiative as well as other internships and job-training programs currently supported by WMAC.

#### **4. Eliminating the “Lock-Out Loophole” from WM's Proposal**

In CWS’ eagerness to “*say anything to get any portion of the Oakland contract(s)*”, CWS has made yet another false and disparaging statement towards Staff and WMAC. Our continued discussions and negotiations with Staff last week resulted in the elimination of force majeure language regarding “lockouts” in the draft MMO, RR and Disposal contracts.

We appreciate CWS’ continued references to WMAC’s 2007 lockout but would like to remind everyone of CWS’ 5-week strike in 1998 and its efforts to hire strikebreakers when it refused to honor its commitment to its employees and its contractual commitment with the City of Oakland to pay its recycling workers’ Oakland’s Living Wage and to provide healthcare benefits.

#### **5. CWS’ Claims that Meeting the City’s Zero Waste Initiative is not “Rocket Science”**

In CWS’ letter, it states that the “*The collection, processing and disposal of solid waste are hardly rocket science. It has been done for years and both CWS and WM are capable of doing the work*”. We strongly and respectfully disagree and are extremely concerned with CWS’ dismissive comments.



WMAC is Oakland's incumbent company with (a) all the infrastructure and assets already in place necessary to meet the City's Zero Waste initiative (b) qualified employees and management team, (c) 100 years of experience in the City of Oakland, (d) ample redundancies and resources, (e) necessary capital and cash flow; and, (f) a wealth of industry knowledge which has led to WMAC being part of the largest environmental service provider in the Country. Nonetheless, we are extremely humbled by, and cautious of, the awesome responsibility, obligations and effort needed to implement the most progressive Zero Waste initiative in North America. To ensure we are successful, we have hundreds of employees and third parties ready to jump in and implement our plan in the event we are awarded the MMO and RR contracts.

And, contrary to CWS' uninformed statement, it will, in fact, require "*rocket science*", or at least WMAC's decades of experience in large and complex municipal waste contracts, to economically, effectively and lawfully manage every fraction of Oakland's waste stream with a view towards greater diversion and reuse in order to fully achieve Oakland's Zero Waste goals. The stakes are high with hundreds of millions of dollars in required investments, looming liquidated damages for failing to meet contractual requirements and the overarching consideration to get Oakland to **Zero Waste**. Managing capital investments, ensuring there is sufficient recovery with minimal contamination, dealing with uncertainty in the commodities markets, constant changes in the regulatory environments, changes in customers' demands, meeting the needs of our employees, training recycling ambassadors and changing the behavior of our customers to source-separate waste, will be an enormous undertaking that will require full and complete preparation, sufficient resources and significant industry experience. The current staffing and engineering required to manage our Single Stream MRF, Dry Waste MRF, C&D MRF, Multi-Family MRF, Organics processing, Covered Anaerobic Static Pile composting, Altamont's landfill gas to natural gas plant as well as the future staffing and engineering for our Anaerobic Digester and Mixed Material MRF is significant.

Moreover, solid waste management is considered one of the most critical elements in meeting environmental concerns throughout the world. Indeed, California alone has one of the most comprehensive regulatory processes for managing waste streams, which is intended to ensure environmental compliance as well as meet aggressive diversion goals. The state Legislature has also declared that the responsibility for solid waste management is a "shared responsibility between the state and local governments." (Public Resources Code section 40001). The City of Oakland has embraced this responsibility in adopting its Zero Waste Policy, and in authorizing the implementation of Zero Waste Services through the current procurement process. Achieving these goals requires partnering with a provider who understands the complexity of the requirements, and has the attitude, assets, and experience to meet those requirements. WMAC has those qualities and would never dismiss the City's objectives as elementary.

## 6. Processing and Disposing of Trash on July 1, 2015

After nearly two years of review and negotiation, and after providing CWS an opportunity to revise its proposal and bid on services not included in its original response – an opportunity not given to any other proposer – the City Zero Waste Services staff once again concluded that awarding WMAC all three contracts "... is the most **practicable** and **prudent** option to deliver service on July 1, 2015,



would provide the best value for the Oakland ratepayers and the best customer experience, while meeting the City's adopted Zero Waste goal." CWS' confusing and impractical "Option 3" "... is not the preferred option."

CWS clearly does not like the outcome of this 18-month evaluation process, and has chosen the tactic of "killing the messenger" to avoid confronting the obvious facts. As the Staff Report, signed by the City Administrator, concluded:

*"WMAC is the sole proposer with qualified experience in the collection and processing of mixed materials and organics, and disposal of garbage. WMAC owns and operates a permitted 15-acre corporation yard on 98<sup>th</sup> Avenue in Oakland for dispatch, fueling, and maintenance of trucks, WMAC owns and operates the fully permitted Davis Street Transfer Station in San Leandro, which houses an organics processing facility, and recyclables materials that were not source separated by the residents or businesses."*

The Staff report further concluded that awarding WMAC all three contracts would ensure that all services requested in the RFP would start on Day One and would provide the best value to the ratepayer. As the report stated: *"Option 1 provides a superior approach to achieving the City's Zero Waste goal. On day one of the contract, WMAC will process multi-family mixed materials to divert materials from the landfill and return them to the economic mainstream. WMAC's long-term plan for organics diversion far exceeds diversion proposed by CWS in Option 3."*

By contrast, CWS' *"[p]lan C engages a number of entities woven together with varying levels of assurances and agreements. Additionally, required permits from regulatory agencies have not been secured, leaving this option in less than strong standing. With Option 3, mixed material processing would be delayed for five years, until the Gateway Facility is open, seriously impeding the City achievement of its Zero Waste diversion goals."*

The City of Oakland has put considerable time and effort into developing and adopting a policy that if properly implemented will make Oakland one of the greenest cities in the Country, which is an admirable accomplishment particularly in a state sensitive to the impacts of climate change and carbon footprint reduction. Its focus through this complex and elongated procurement process has been to solicit and evaluate proposals that best achieve the City's Zero Waste goals, provide continued exemplary service and control costs that the City knew would inevitably increase over current rates. One proposer can meet these goals on **Day One**; the other admittedly cannot. This distinction is beyond debate. We encourage the Council to keep these collective objectives in mind when awarding the contracts, and to not get distracted by irresponsible and inaccurate statements.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Skolnick".

Barry Skolnick, Area Vice President  
Waste Management of Alameda County, Inc.  
cc: Zero Waste Committee