CITY OF CHULA VISTA

Office of the City Manager

Date: December 28, 2023

To: Honorable Mayor and Members of the City Council

From: Maria V. Kachadoorian, City Manager MK

Re: Republic Services Franchise Agreement Extension

Encl: 12/21/23 Response to Republic Services

BACKGROUND

California State law authorizes the City to award a solid waste franchise. Public Resources Code section 49300 states, "The legislative body of a city may contract for the collection or disposal, or both, of garbage, waste, refuse, rubbish, offal, trimmings, or other refuse matter under the terms and conditions that are prescribed by the legislative body of the city by resolution or ordinance."

The current Franchise Agreement (Agreement) between the City of Chula Vista (City) and Republic Services (Republic) was approved by the Chula Vista City Council in September 2014. This agreement grants Republic exclusive rights to collect and dispose of solid waste and recyclable material from residential and commercial properties within the City's jurisdictional boundaries.

The Agreement also allows Republic to charge fees for waste collection services subject to maximum rates established in the contract and requires Republic to develop collection programs to help the City comply with new waste reduction and recycling laws. Per the Agreement, Republic is required to pay the City a 20% franchise fee and an additional 5% titled the Environmental Services fee that is used for waste reduction and recycling education programs. Operationally, the Agreement provides Chula Vista residents other collection services at no additional cost from their core services.

These services include:

- Weekly large and bulky collection for up to 10 items.
- Two (2) landfill passes per year for trash and two (2) landfill passes for yard and garden waste per year, equivalent to one ton each.
- Missed collection service.
- Most-favored nation rate price protection; Republic cannot provide waste collection services at a lower rate than in Chula Vista. If a lower rate is offered, then Chula Vista rates must be lowered to be below the newly contracted rates.
- Residential waste collection rates not to exceed a 90% County average.
- Cart or bin replacements.

Additionally, the contract requires Republic to provide the following services to the City at no cost:

- Trash, yard waste and recyclable materials collection for all City facilities.
- Disposal for all public works-type projects.

- Collection service for designated public place containers.
- Trash and recycling collection services annually for two large-venue public events of the City's choosing.

Republic is also required to maintain equipment (vehicles) in optimal and assigned conditions, respond to requests and complaints in a timely period and ensure the City always complies with all disposal and waste diversion directives required by State law.

AGREEMENT EXTENSION

The first term of the current Agreement is scheduled to terminate on June 30, 2024; however, contract terms provide the ability to extend the Agreement by an additional seven (7) years under the current terms and conditions.

Agreement section 3.2 gives Republic an option to extend the franchise without amending or renewing it pursuant to Chula Vista Municipal Code (CVMC) section 8.23.070. "An option is a contract, made for consideration, to keep an offer open for a prescribed period." (Erich v. Granoff (1980) 109 Cal.App.3d 920, 927–928.) "The length of time within which an option may be exercised is an essential term to an option contract. ... Moreover, an option contract may prescribe the method for the exercise of the option." (Allen v. Smith (2002) 94 Cal.App.4th 1270, 1280.) Section 3.2 of the Agreement states:

> Republic shall have the option to extend the Term for an additional seven (7) year period ("Extended Term"), on the same terms and conditions provided, or such other terms and conditions provided the City Manager reasonably determines that Republic has satisfactorily performed under and is in full compliance with this Franchise and Applicable Law and has the ability to perform its obligations under this Franchise during the Extended Term.

The option to extend is an element of the existing franchise, not an amendment or renewal subject to CVMC 8.23.070. This provision has been determined to be consistent with the Municipal Code, the City's Charter, and Republic's right to exercise of the option to extend under the current terms.

On July 26, 2023, the City received a letter from Republic Services expressing its desire to extend the current agreement with the City under the same terms for the additional seven (7) years authorized by section 3.2. After a thorough legal review and recommendation, a response was returned to Republic to approve the proposed extension on 12/21/2023 for another seven (7) years that would conclude the contract in 2031.

This was determined to be the best course of action as the current terms of the contract provides great benefit to the City as mentioned previously. Also, the City receives over $7 million dollars annually in franchise fees and an additional $1.5 million in other contract fees and in-kind services from Republic under this contract. These franchise fees are expected to grow as the city adds more development. Further analysis also determined that if a new contract is proposed, the City would risk losing many of the benefits currently provided, including price protections. In order to evaluate a new waste collection contract, the City would be required to create a request for proposals (RFP) protocol which would provide an incumbent advantage to Republic not only for waste collection services but in disposal costs as they own and operate the only landfill located within Chula Vista (Otay Landfill).

Republic satisfactorily performed under, and is in full compliance with, the Franchise Agreement and Applicable Law. Further, Republic has the ability to perform its obligations under the Franchise Agreement during the Extended Term. Per Agreement section 1.3, "'Applicable Law' means any federal, State, or local

law, rule, regulation, requirement, guideline, permit, action, determination, or order of any Governmental body having any jurisdiction applicable to the subject matter of this Franchise, as now in effect and as may be newly enacted or amended from time to time. Applicable Law shall include, without limitation, the City Charter, and Municipal Code." "Applicable Law" includes Senate Bill 1383 and CalRecycle's regulations of organic waste recycling, which Republic has agreed to perform.

Republic Services has also provided an updated Operations Plan, including a plan of action that would better equip and prepare both them and the City in the event of a future work stoppage impacting collection services. Republic has also notified the City that they are moving forward with their Fleet Electrification Plan, investing $16 million on 20 residential trucks providing cleaner and quieter vehicles for our community which support the goals set forth in our Climate Action Plan.

Please feel free to contact me if you have any questions, thank you.

CITY OF CHULA VISTA

Office of the City Manager

December 21, 2023

Via U.S. Mail & Electronic Mail

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Phoenix, Arizona 85054

Mr. Rojas:

This letter responds to your July 26, 2023, letter notifying the City of Chula Vista of Republic Services of Chula Vista's ("Republic") desire "to exercise its option to extend the Term of the Franchise for an additional seven (7) year period ('Extended Term')."

Section 3.2, titled "Extension of Initial Term by City or Republic," of the Amended and Restated Solid Waste Collection, Recycling and Disposal Franchise Agreement ("Franchise") states, in relevant part:

> Republic shall have the option to extend the Term for an additional seven (7) year period ("Extended Term"), on the same terms and conditions provided hereunder, or such other terms and conditions as may be agreed upon by City and Republic, each acting in their sole discretion, provided the City Manager reasonably determines that Republic has satisfactorily performed under and is in full compliance with the Franchise and Applicable Law and has the ability to perform its obligations under this Franchise during the Extended Term. Republic shall notify the City in writing as to whether it desires to exercise its option to extend the Term at least one hundred eighty (180) days prior to the end of the initial Term.

As City Manager, I make the following findings:

- The notice was timely received. Under Section 3.1 of the Franchise, the Term will expire on June 30, 2024. The City received Republic's notice on July 26, 2023, well before the December 23, 2023, deadline.
- Republic has satisfactorily performed under and is in full compliance with the Franchise and Applicable Law. Under Section 1.3 of the Franchise, "'Applicable Law' means any federal, State, or local law, rule, regulation, requirement, guideline, permit, action, determination, or order of any Governmental body having any jurisdiction applicable to the subject matter of this Franchise, as now in effect as may be newly enacted or amended from time to time. Applicable Law shall include, without limitation, the City Charter, and Municipal Code." Applicable Law also includes the legal requirements under Senate Bill No. 1383, the California Department of Resources Recycling and Recovery's regulations related to Senate Bill No. 1383, and Chula Vista Municipal Code Chapters 8.23–8.25.
- Based on the representations made by Republic to the City, Republic has the ability to perform its obligations under this Franchise during the Extended Term.
- An Operations Plan was received pursuant to section 6.2 of the Franchise that additionally lists current and future investments in Chula Vista by Republic Services; this plan also includes a Chula Vista Action plan that addresses appropriate responses to potential future work stoppages.

Therefore, the Term of the Franchise is extended by an additional seven years. The Extended Term will expire on June 30, 2031.

The Extended Term of the Franchise is conditioned upon Republic's continued ability to perform and performance of all the regulatory requirements, including reporting requirements, under the Franchise and Applicable Law, as defined above.

Respectfully,

Maria V. Kachadoorian
City Manager

cc: Manuel Medrano, Environmental Services Manager
Megan McClurg, Assistant City Attorney