

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into as of June 9, 2022 ("Effective Date") by and between the City of Chula Vista, a chartered municipal corporation ("City"), and Allied Waste Systems, Inc. dba Republic Services of Chula Vista ("Republic") (City and Republic may be referred to individually as a "Party" and collectively as the "Parties) with reference to the following facts:

RECITALS

WHEREAS, the Parties entered into that certain agreement entitled Amended and Restated Solid Waste Collection and Recycling Franchise Agreement, dated September 11, 2014 ("Franchise") which provided an exclusive franchise to Republic to perform collection, pick up, removal, disposal, and other related services within the jurisdictional boundaries of the City of Chula Vista during the term of the Franchise; and

WHEREAS, a dispute has arisen between City and Republic regarding performance under the Franchise which can generally be described as follows: a dispute over the extent to which Republic satisfied its obligations to perform collection, pick up, removal, and disposal services during a time period from December 17, 2021 to January 18, 2022 (the "Dispute Period") notwithstanding the occurrence of an "Uncontrollable Circumstance" in the form of a strike by Teamsters Local 542 involving all Teamsters Union members working for Republic in the City, and to what extent, if any, City is entitled to reimbursement from Republic for City's claimed costs to provide collection, pick up, removal, and/or disposal services during the Dispute Period (the "Dispute"); and

WHEREAS, the Parties have engaged in negotiations to attempt to resolve the Dispute on terms mutually acceptable to both Parties; and

WHEREAS, the Parties now desire to compromise and settle the Dispute on the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Republic hereby agree as follows:

1. Settlement Consideration.

(a) **Reimbursement Payment.** Republic agrees to reimburse City in the amount of \$16,668.80 for direct third-party costs (the "Reimbursement Payment") incurred by City during the Dispute Period. Republic shall pay the Reimbursement Payment to City by means of check, delivered to the City's Director of Finance at 276 Fourth Avenue, Chula Vista, CA 91911 by no later than seven (7) business days after the Effective Date.

(b) **Credits.** Republic will provide credits to its customers within the jurisdictional boundaries of the City of Chula Vista as follows:

(i) For each residential customer, Republic will provide a credit in the amount and in the manner provided in Exhibit A;

(ii) For each multi-family and commercial customer, Republic will provide a credit in the manner provided in Exhibit A.

Republic will also implement a procedure for customers to dispute the amount of any credit received, or not received, including without limitation a process for customers to express concerns and provide information that a credit received, or not received, is inadequate based on a lack of service during the Dispute Period, or self-help mitigation measures performed by the customer during the Dispute Period, or otherwise. Republic will complete the above-described credit process for residential customers by no later than April 30, 2022. Republic will complete the above-described credit process for multi-family and commercial customers by no later than June 30, 2022. After Republic has applied all credits, Republic agrees to provide City with documentation substantiating the cumulative amount of credits applied, including a breakdown by residential, multi-family, and commercial customer categories, by no later than July 13 2022.

(c) **Additional Services Credit.** In addition to any and all services that Republic is obligated to provide or perform under the Franchise, Republic hereby agrees to provide City, upon written request from City from time to time, with no less than ninety thousand dollars (\$90,000.00) in additional services at no cost to City ("Additional Services Credit"). A list of such potential additional services is attached hereto as Exhibit B. Republic shall apply the Additional Services Credit at the City's standard rate for such services, which shall include deductions for any free or reduced rates that are already provided pursuant to the Franchise (i.e. free or reduced rates for processing or disposal services). Republic agrees to provide City with documentation substantiating the application of all additional service credits on the request of the City and in a form reasonably acceptable to the City, until the entire \$90,000 Additional Services Credit has been applied.

(d) **Waiver of Fees and Penalties.** Republic agrees to waive any and all administrative fees, late fees, and penalties for all residential, multi-family, and commercial customers in good standing that failed to make payment, or make full payment, for invoices received or charges accrued during the Dispute Period, provided their accounts with Republic are brought fully current by the customer, minus only the credits allowed to that customer under this Agreement, no later than June 30, 2022.

2. **Mutual Release of Claims Related to the Dispute.**

Release. Each Party, on behalf of itself and its predecessors, successors, affiliates, and assigns, and its past, present, and future officers, directors, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, hereby releases and forever discharges the other Party together with its predecessors, successors, affiliates, and assigns, and its past, present, and future officers, directors, agents, employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, from all known and unknown charges, complaints, claims, liabilities, obligations, damages, actions, causes of action, suits, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether at law or in equity, or known or unknown, which one Party has, or may have had, against the other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from the Dispute.

Each Party certifies that it has read the provisions of California Civil Code Section 1542 and has consulted its own counsel regarding that section. Each Party waives any and all rights under California Civil Code Section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each Party agrees and acknowledges that the released claims extend to and include unknown and unsuspected claims related to the Dispute.

3. **Representations and Warranties.**

(a) **No Outstanding or Known Future Claims or Causes of Action.** Each Party represents and warrants that it has not filed with any governmental agency or court any type of action or report against the other Party, and currently knows of no existing act or omission by the other Party that may constitute a claim or liability excluded from the released claims set out in Section 2, above.

(b) **No Assignment or Transfer of Claims.** Each Party represents and warrants that it is the rightful owner of and has not encumbered, assigned, or transferred, nor will it in the future attempt to encumber, assign, or transfer, any claim for relief or cause of action released herein.

(c) **Parties' Authority to Settle.** Each Party represents and warrants that it has full authority to enter into, deliver, and perform under this Agreement, and that all acts and actions have been taken to grant such authority, and that no third-party consent, which has not already been obtained, is required.

(d) **Signatories' Authority to Execute Agreement.** Each signatory to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the Party for which he or she executed this Agreement.

4. **No Admission of Liability.**

The Parties acknowledge that this Agreement represents a settlement and release of claims related to the Dispute and agree that the performance under this Agreement is not to constitute or be interpreted as an admission of any liability or wrongdoing whatsoever by any Party to this Agreement.

5. **No Amendment to Franchise Agreement.**

The Parties acknowledge and agree that nothing contained in this Agreement shall constitute or be interpreted as an amendment to or modification of the Franchise.

6. **Attorneys' Fees and Costs.** The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred in connection with the Dispute, including, but not limited to, attorneys' fees and costs incurred in connection with the negotiation of this Agreement.

7. **Cooperation.**

Each Party agrees to take all actions and to make, deliver, sign, and file any other documents and instruments necessary to carry out the terms, provisions, purpose, and intent of this Agreement.

8. **Entire Agreement.**

This Agreement, including the recitals, constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Each Party acknowledges that in entering into this Agreement, it has not relied on any promise, representation, or warranty not contained in this Agreement.

9. **Modification.**

No modification of this Agreement shall be binding unless in writing and signed by each of the Parties hereto.

10. **Interpretation, Severability, and Enforcement.**

(a) **Interpretation.** The headings in this Agreement are purely for convenience and are not to be used as an aid in interpreting its terms. The Parties agree that this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

(b) **Severability.** Should any provision of this Agreement be declared or be determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

(c) **Enforcement.** Nothing in this Agreement shall be construed as, or constitute, a release of any Party's right to enforce the terms of this Agreement.

11. **Choice of Law and Forum.**

(a) **Choice of Law.** This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California.

(b) **Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the state or federal courts of California located in the County of San Diego. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

12. **Dispute Resolution**

Prior to initiating any litigation regarding any claim under this Agreement, an alleged breach of this Agreement, or to enforce the terms or conditions of this Agreement, the Parties shall strive to resolve any such dispute or claim arising out of or relating to this Agreement, or an alleged breach thereof, through non-binding mediation.

13. **Notice.**

Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") in writing and addressed to the other

Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

If to CITY:

Maria V. Kachadoorian
City Manager
City of Chula Vista
276 4th Avenue, Chula Vista, CA 91911

with a copy to:

City Attorney
City of Chula Vista
276 4th Avenue, Chula Vista, CA 91911

If to Allied Waste Systems, Inc
(dba Republic Services):

General Manager
Allied Waste Systems, Inc. (Republic Services)
881 Energy Way
Chula Vista, CA 91991

with a copy to:

Holly Doyle
Senior Corporate Counsel
18500 North Allied Way
Phoenix, AZ 85054

14. **Counterparts and Copies.**

This Agreement consists of six (6) pages and Exhibit A and Exhibit B . This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signature pages sent by email shall be binding as though they are originals.

EACH OF THE PARTIES CERTIFIES THAT IT HAS READ ALL OF THIS AGREEMENT AND FULLY UNDERSTANDS AND AGREES TO EACH OF THE ABOVE TERMS, CONDITIONS, AND PROVISIONS.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

IT IS SO AGREED.

Dated: _____, 2022

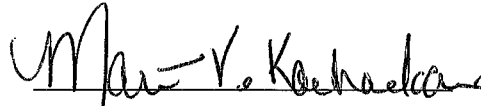
ALLIED WASTE SYSTEMS, INC

Javara Perrilliat

Javara Perrilliat, Vice President

Dated: June 13, 2022

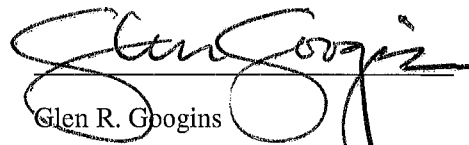
THE CITY OF CHULA VISTA



Maria V. Kachadoorian

City Manager

APPROVED AS TO FORM:



Glen R. Grogins

City Attorney

Exhibit A
Customer Rebates

For residential customers – Republic will calculate and process a credit for all residential customers during the Dispute Period as follows:

Credit calculation – the credit will be based on 2 factors

- 1.(A) Monthly rate (a combination of collection and disposal services)
- 2.(B) Percentage of bill that is for collection service

Example:

(A) Monthly bill = \$30

(B) Collection services = 46%

Credit = $A \times B$

Credit = $\$30 \times 46\%$

Credit = \$13.80

For multi-family and commercial customers – Republic agrees to notify all multi-family and commercial customers via its website at <https://www.republicservices.com/municipality/chula-vista-ca> that credits may be made available for agreed upon disruptions during the Dispute Period. Republic will calculate and offer a credit for each customer who contacts Republic requesting a credit on a case-by-case basis based on the level of disruption of service to each such customer, if any, during the Dispute Period.

Exhibit B

Potential Additional Services

- Costs, based on City standard rates, associated with container delivery and collection of trash, recyclables, and/or organic waste materials to service City-sanctioned or City-sponsored events, City-owned properties, or City-funded projects.
- Costs associated with Republic personnel providing assessment services and studies to determine best management practices to reduce waste and increase the collection of recyclables and organic waste at City-owned properties.
- Costs, based on City standard rates, associated with Republic personnel and existing equipment facilitating the use of compost at City-owned properties, including compost and mulch delivery.

Requests for services to Republic shall be made in advance by the City Manager or the City Director of Public Works and confirmed by the City via email or in writing. The City Manager or the City Director of Public Works and Republic may agree to use this credit for other services outside of this Exhibit B scope if both parties agree and confirm such agreement via email or in writing.