

Franchise Negotiations Communications Protocol

Purpose

The City of Cupertino presently contracts with Recology Cupertino for the provision of solid waste, recycling, and organics services. The current franchise agreement between the City and Recology Cupertino expires at 11:59pm on January 31, 2021, unless extended by amendment. However, pursuant to their respective authority under Section 2.2 of that agreement, Recology Cupertino has requested and the City has agreed to engage a period of negotiations to determine whether the parties can reach mutual agreement on a new (or renewed) franchise agreement (the “Franchise Negotiations”). The negotiations period is expected to run from April 21, 2020 until no later than January 31, 2021 (the “Negotiations Period”).

The City has an obligation to the public to ensure transparency and fairness in the process of awarding a new (or renewed) franchise. The intent of this Communications Protocol is to create an impartial climate during the Franchise Negotiations; to describe the characteristics of appropriate communications between Recology Cupertino and the City during the Franchise Negotiations; to streamline the Franchise Negotiations; and to ensure that the terms of any agreement that City may approve (if any) are favorable to the City and its residents.

Applicability

The Communication Protocol applies to communications between the City’s Mayor, Council Members, employees, consultants, or agents (collectively, the “City”), and any Recology Cupertino employees, consultants, or agents (collectively, “Recology”), that relate in any way to the Franchise Negotiations.

The Communications Protocol shall apply during the Negotiations Period; provided, however, that it shall terminate before January 31, 2021 upon either (a) public release of the staff report to the City Council regarding the proposed award (if any) of a new (or renewed) franchise, or (b) termination of the negotiations by either party by written notice to the other.

Nothing herein precludes communications between Recology and the City during open and noticed public meetings. The Communications Protocol is not intended to apply to casual social communications, to communications relating to the current franchise agreement, or to other communications unrelated to the Franchise Negotiations. For purposes of this protocol, communications related to the company’s provision of solid waste, recycling, or organics services in the City after the expiration or termination of the current franchise agreement shall be deemed to be communications related to the Franchise Negotiations.

Communications Protocol

The City Manager shall designate a City representative or representatives (the “Designated City Representative”) who shall serve as the point of contact between the City and Recology.

Recology shall:

1. Direct all communications concerning the Franchise Negotiations to the Designated City Representative. Recology may, however, direct communications to other City employees, consultants, or agents if the Designated City Representative approves of such communications, or if the communications are made at meetings organized to conduct the Franchise Negotiations where the Designated City Representative is present;
2. Refrain from distributing door-to-door materials, or from using newspaper, radio, television, internet, social media, or public space advertisements, in regards to the Franchise Negotiations;
3. Refrain from *ex parte* communications with the Mayor or any Council Member relating to the Franchise Negotiations; and
4. Confirm in writing its agreement to this Communications Protocol at the start of the Negotiations Period, and affirm in writing its adherence thereto concurrent with the public release of the staff report to the City Council regarding the proposed award (if any) of a new (or renewed) franchise.

The City shall:

1. Direct all communications concerning the Franchise Negotiations through the Designated City Representative.

The Mayor and Council Members shall:

1. Notify the City Manager of any actual or potential conflicts of interests relating to the Franchise Negotiations; and
2. Refrain from *ex parte* communications with Recology relating to the Franchise Negotiations.