



Update on Franchise Agreements

Board of Directors

Upper Valley Waste Management Agency

February 10, 2020

COLANTUONO
HIGHSMITH
WHATLEY, PC

Recommendations and Direction from Board of Directors

- Recommendations to Board of Directors included:
 - Establish maximum rather than actual rates to better defend against any challenge under Propositions 218 or 26;
 - Consider increasing rates by the consumer price index alone, without resort to cost formulas, to reduce time and expense to the Agency (or, alternatively, require the contractor to hire an independent auditing firm to provide these calculations), make rate increases mandatory rather than discretionary, and prohibit charges to vacant properties;
 - Eliminate the distinction between major and minor breaches and instead provide for a list of “events of breach” to streamline and aid in enforcement, each of which could result in termination, liquidated damages, or other remedies such as injunctive or other equitable relief;
 - Reduce the cure and correct period for breaches from six months to ten days or two weeks and increase the liquidated damages amount significantly;

Recommendations and Direction from Board of Directors (Con't)

- Increase reporting, auditing, and oversight of the contractor to ensure compliance with the Act and its obligations under the agreements (e.g., to ensure diversion requirements are met);
- Consider a definitive term for the Upper Valley Franchise Agreement to ensure the Agency has an opportunity to renegotiate its terms and address operational or service issues when it does so;
- Consider making solid waste collection mandatory throughout the service area with a self-haul exception and other provisions, either by working with the member agencies to do so or by amending the joint powers agreement to grant this power to the Agency, to increase the customer base and in turn offset any franchise fee;
- Consider imposing a franchise fee on gross receipts under the Upper Valley Franchise Agreement to fund operations of the Agency or its member agencies;
- Consider a single franchise agreement rather than two to better ensure the contractor's obligations under the agreements, and the Agency's obligations under the Act, are met; and
- Consider increasing the rate of return to the contractor in conjunction with the imposition of a franchise fee and adoption of a revised rate formula.

Meetings with Ad Hoc Committee and UVDS/CFL

- Meetings to discuss recommendations and possible revisions to franchise agreements with UVDS and CFL
 - December 10, 2019 meeting between Ad Hoc Committee and UVDS/CFL
 - December 19, 2019 meeting with Ad Hoc Committee and Gary Bell
 - January 7, 2020 meeting with Ad Hoc Committee and Gary Bell
 - January 10 and 27, 2020 meeting with Ad Hoc Committee/Staff and UVDS/CFL

Further Direction from Board of Directors

- Ad Hoc Committee invites discussion and further direction from Board of Directors on the current proposal to:
 - Update the Board on activities and progress,
 - Ensure consensus on approach, and
 - Review proposed rate structure and franchise fee

Future Steps

- After direction on proposed rate structure, subject to negotiation:
 - In exchange for all or some of the recommendations being included in revised franchise agreements (or a single agreement), changes to rates, franchise fee, operating ratio, and other items to be discussed next by UVDS/CFL
 - Effect of enhancing performance and accountability of UVDS/CFL (i.e., improved oversight, default provisions, reporting, auditing, term of agreements, dispute resolution per recommendations)
 - New franchise agreement(s) with new terms and revenues acceptable to all parties

Colantuono, Highsmith & Whatley, PC

Southern California

790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101-2109
(213) 542-5700

Northern California

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
(530) 432-7357

www.chwlaw.us