



**MINUTES OF THE OCTOBER 19, 2020  
SPECIAL MEETING OF THE BOARD OF DIRECTORS**

**1. CALL TO ORDER**

The Upper Valley Waste Management Agency met in special session on Monday, October 19, 2020 at 2:00 p.m. via Zoom Teleconferencing Only. Chair Mohler called the meeting to order at 2:01 p.m.

**2. ROLL CALL**

The following members were present: Chair Mohler, Member Canning, Member Koberstein, Vice Chair Pedroza, and Member Dillon. (All members present)

**3. PLEDGE OF ALLEGIANCE**

Manager Lederer led the Pledge of Allegiance.

**4. PUBLIC COMMENT**

*In this time period, anyone who wishes to speak to the Authority Board of Directors regarding any subject over which the Board has jurisdiction, that is not on the agenda, or to request consideration to place an item on a future Board agenda, may do so at this time. Individuals will be limited to a three minute presentation. The Board of Directors will take no action as a result of any item presented at this time.*

Public Comment #1: Stuart Flashman, Attorney (Not representing any organization) with comment- Would like to see recordings of these meetings posted on the (UVWMA) website. Thank you

Public Comment #2: William McKinnon, Water Audit of California 952 School Street, #316, Napa, CA 94559 with a Question: Would like to know if there has been an investigation on the fires at landfill? What is the status of the bio mass gasification project and is there any involvement of the leachate draining from the landfill? Is this investigation being done, who is doing the investigation, and when will it be resolved?

Manager Lederer responded to Public Comment #2, at this time: Landfill is regulated by the Local Enforcement Agency (LEA) as well as other state and local agencies. They all maintain their own records on inspections and their actions, pertaining to the landfill. Mr. McKinnon is welcome to email Steve Lederer if he would like more info on these agencies ([steven.lederer@countyofnapa.org](mailto:steven.lederer@countyofnapa.org)).

Clarification on Public Comment #2: Mr. McKinnon was mostly interested in any agency investigation that does not report publicly, for example an insurance company.

**5. CONSENT ITEMS**

**A. \*APPROVAL OF MINUTES**

REQUESTED ACTION: Approval of the August 17, 2020 regular meeting minutes.

**B. \*NOTICE OF FUNDS AVAILABILITY**

REQUESTED ACTION: Staff requests:

1. Approval of a revision to the fiscal year 2020/2021 budget as shown in the attached budget spreadsheet (4/5 Vote Required), moving \$400,000 from reserves to operations to fund NOFA awards and \$55,000 to fund increased legal services; and,
2. Presentation of the Napa County submittal for financial support of waste related projects in response to the Notice of Funds Availability (NOFA) issued on February 10, 2020, and request for Board to take action to award funds based on that proposal; and,
3. Approve the attached agreement between the Agency and the Town of Yountville, and authorize the Agency Manager to sign this agreement and an agreement of similar form with each Member requesting funds, except the agreement between the Agency and County will be

signed by the Board Chair for the Agency in order to avoid an appearance of a conflict of interest with the Agency Manager.

**C. \*AMENDMENT NO. 2 TO AGENCY PSA NO. 200367D**

DISCUSSION AND REQUESTED ACTION: Agency Manager requests approval of and authorization for the Chair to sign Amendment No. 2 to Professional Services Agreement Between Upper Valley Waste Management Agency ("UVWMA") and Colantuono, Highsmith & Whatley, PC (CH&W)

**\*After calling for public comment (there was none) Approved Consent items 5A, 5B & 5C: (roll call vote): AP-Yes, MK-Yes, MM-Yes, DD-Yes, CC-Yes. Motion passes 5-0.**

**6. ADMINISTRATIVE ITEMS**

**A. PUBLIC HEARING: RESTATEMENT AND AMENDMENT TO UVDS FRANCHISE AGREEMENT**

DISCUSSION AND POSSIBLE ACTION: Staff recommends Adoption of Resolution 2020-04 and Board approval and authorization for the Chair to sign the Restatement and Amendment to former Agency Agreement #95-09 (Upper Valley Disposal Service) (as amended).

Chair Mohler thanked this JPA and those involved in the long overdue updating of this agreement to meet today's needs.

Company's Bryce Howard, on behalf of the company, also gave thanks and looks forward to continuing to serve the community for some time to come.

Agency Manager Lederer introduced the agenda item. Legal Counsel, Gary Bell reported on the agenda item based on the information in the staff report.

Members Dillon & Canning also thank everyone involved in this revision.

Agency Manager Lederer stated for the record that he emailed the full Board a memo dated October 16<sup>th</sup> from Bartle Wells (Associates) and Gary Bell providing more background on the franchise fees proposed. All information received by the Board after the agenda was posted will be attached to this agenda item on the County website for public review.

Open for Public Comment:

Comment #1 (for both items 6A & 6B): St. Helena Mayor Geoff Ellsworth, speaking as an elected official with comment-read submitted email provided dated 10/19/20.

Comment #2 Stuart Flashman, Attorney (Not representing any organization) with comment-would have liked to see both a red-line version of the agreement along with this final version before going ahead with this.

Legal Counsel Gary Bell responded to Comment #2, at this time: A red-line was not provided as this agreement was started from scratch. Some provisions were carried over, but this is a totally rewritten agreement.

Comment #3: William McKinnon, Water Audit of California 952 School Street, #316, Napa, CA 94559 with a Question: Question is for Mr Bell. Your comment that the agreement can be changed in the event of a change in law or regulatory agency action. Wondering if the agreement can be changed as a result of judicial decision or negotiated settlement? Suggests that the public trust be the fundamental issue of law, as this does not seem to be included.

Comment for both items 6A & 6B-Was not able to find notice of this transaction and finds there are many interested in the subject and asks this matter be continued for that reason. While the agreement in itself is fine, the operations may not. I would direct your attention to a series of documents in the public record starting in March of 2011 with a site evaluation for wastewater test pits that showed a well that was well within the riparian way. There was a second one in October 2018 which showed a well proximate to the house that by the time we get to February of 2020 it has completely disappeared. All of the wells magically have managed to omit Dutch Henry creek, which is at the base of the clover flat landfill and the beneficiary of any runoff. I think there's also approximately occurring, a question as to how much and how Clover Flat is going to take in of the toxic burn debris from the various places it's going to come from and this has previously caused

significant administrative action and because it has previously caused significant environmental cause, I would suggest that entering into this agreement without contemplating those contingent liabilities very seriously. May be, in fact, a very serious omission. And I'd be happy to talk to Mr. Bell about this. I do not wish to ambush him by making a legal argument in a public forum like this it's inappropriate. I think for the most part, this is an excellent agreement and it's something that will as an agreement if in fact it is the place right place and the right thing to do, water audit will take no position on it. But to the extent that this agreement is injurious to the public trust. I, I just want to be to give fair notice that this is something that is very troubling. Thank you for your time.

Legal Counsel Gary Bell responded to Comment #3, at this time: Worth noting this agreement is between the Upper Valley Disposal Service (UVDS) for collection. Questions asked were not pertaining to this agreement. His question was whether or not there were provisions for changing the services that were provided or for addressing changes in law and the answer to both of those is yes. And of course, the parties can amend the agreement as well.

Member Koberstein asked Legal Counsel Gary Bell to address the "no competitive bidding" on this.

Legal Counsel Gary Bell responded: As Steve mentioned there are currently agreements in place and so without this there's currently a contractual relationship between UVDS and the agency. The term of that agreement is for 15 more years at least. At this point you're already in an agreement this amends and restates it into a new agreement. So if there were no service currently being provided it would be different. The integrated waste management act allows for this process for selection of exclusive or non exclusive franchise and also with or without competitive bidding. So, but like I said that that process is not currently available because there's currently an agreement in place.

Comment #4 Mike Hacket, lives in Angwin, long time resident in Napa County: Would simply like to echo the sentiments expressed by Mayor Goeff Ellsworth and by Mr. McKinnon from Water Audit. The lack of transparency about some of these issues, especially related to the public trust and the flow of contaminants into the Napa River, especially those from creeks that are unnamed in this agreement. It troubles me greatly. Thank you very much.

Chair closed Public Comment and opened for Board discussion:

Member Canning commented on some of the public comments received: There have been some obvious challenges and issues in the past with the company and the operations of the facility. (Response referring to both items 5A & 5B). There is nobody who is more pressing on this group for this company to get in line than myself. Obviously Calistoga being adjacent to and actually this being in the unincorporated part of Calistoga we're very concerned about this facility and we're concerned about previous management practices. Fast forward a few years, we came down quite heavy and hard as an agency as well as a county along with state agencies. I am confident and satisfied in all of the efforts they've made over the past few years to get in compliance with the county, state and regulatory agencies. Also with the efforts they have made and changes to their management and changes to the management practices as well as improvement at the facility itself from a fire safety standpoint. Each of the jurisdictions that do receive service from both the waste hauling as well as the Clover Flat itself are represented on this board and we have been fully engaged in this process. We then go back and represent this to our public. In terms of transparency, it's all there. The meetings are public. We talked to our public about it. That exists. So in terms of the RFP. Thank you, Gary, for that we have had previous discussions about what the options would be out in the universe to service us. We are in contract and in agreement with them currently, and they have been again much improved over the last couple of years and I appreciate their efforts and if I thought that this facility was going to be putting my community in danger or at risk, I would certainly address that, as I have in the past. Thank you very much.

Member Dillon commented: The issue before us is simply a restatement of the agreement. The issue at hand is that this agreement was written a long time ago and amended over the years and sometimes you just need to do that with legal agreements to bring all the pieces into a better sync so that it's easier for people to understand. You also make sure that it's currently compliant with the law because you're looking at holistically and in addition to some changes being made that have been listed to be added to a revised or new agreement, that is not a new agreement, as in the representation of what that relationship of what that relationship is has been and will be. As someone who used to write mega (large) trusts documents, I appreciate all that went into this.

**Chair Mohler commented:**

This was a very important process and the agreement is so much better for the public so that they can feel confident that now we've got so much more in place, and I'm just talking about UVDS now, to actually provide better service and part of that is how the rate methodology will work. Over this three year period, we had very in depth discussions and I think the

company now with new management in place will also have financial ability to actually modernize how their businesses run, especially on the collection side will you apply here, the same comment from me when we get to the clover flat agreement.

**\*After public comment and Board Discussion: Approved Administrative items 6A & 6B: (roll call vote): DD-Yes, AP-Yes, MK-Yes, MM-Yes, CC-Yes. Motion passes 5-0.**

**B. PUBLIC HEARING: RESTATEMENT AND AMENDMENT TO Clover Flat Landfill (CFL or CFLF) FRANCHISE AGREEMENT**

DISCUSSION AND POSSIBLE ACTION: Staff recommends adoption of Resolution 2020-05 and Board approval and authorization for the Chair to sign the Restatement and Amendment to former Agency Agreement # 95-06 (Clover Flat Landfill).

Agency Manager Lederer introduced the agenda item. Legal Counsel, Gary Bell reported on the agenda item based on the information in the staff report.

Agency Manager also added for the record: Much like the public comment. I'm going to keep this short because it's the same process and same message. Started in 2018 many, many meetings. Gary Bell and Bartle Wells are here to answer any questions. I'll just comment in terms of public comment. The public comment that Mr. Ellsworth provided on 6A also came as an email and again, is identical for 6B. So that will be included in the public record on both 6A and 6B. We also received a letter which I have forwarded to the board that came in this morning from a Stuart Flashman who is an attorney representing Mr. Ellsworth and that letter also will be included in the public record. I'll just mention a couple of factual things about that particular letter. The letter objects to this contract extending the landfill contract to 2040. But as we've already talked about there are already contracts in place for the landfill, which actually extend to 2047. So not only does this restatement not extend the contract, it is the same, but it actually already is to 2047. So I just wanted to have that factually in the record. The letter also addresses some concerns with the companies use permit process and CEQA associated with that and I'll just state for the record that this process of the contract is entirely independent and separate from the use permit process, which is actually with the County. So I would actually recommend that if he has those concerns with the use permit process that he make those comments to the County as part of that process. Unless the board has any questions for me, I will once again turn it over to Mr. Bell for the details of the agreement.

Open for Public Comment:

Comment #1 Stuart Flashman, Attorney (Not representing any organization) with comment: I do apologize for the graphical error where I misstated expiration date of the contract. I want to just raise one item not covered in the letter and that has to do with insurance, the agreement does provide and require that there be significant amounts of insurance but I think there's one point that you may want to reconsider and that is has to do with fire insurance. We all know that landfills can have fires and we all know that a fire can start in a landfill and then go elsewhere. Looking at the liability that PG&E has for fires that started with its property and went elsewhere and that liability is huge. So I wonder whether there needs to be perhaps maybe a specialized provision, particularly, having to do with wildland fires and liability for wildland fires, because that's a huge item. If it happens. Thank you.

Legal Counsel Gary Bell responded to Comment #3, at this time: we currently got general liability auto and environmental I guess he's asking if we should add another fire insurance to that. Is I would ask the company if they'd like to chime in on what they currently have, or if that would cover it. My sense is, it probably is. So I think the current insurance policies we are requesting already addresses that concern raised by Mr. Flashman.

Chair closed Public Comment and opened for Board discussion:

Member Dillon commented: I'm expressing seriously joy that this project has been accomplished, because I think it is a success, just as item 6A was for this agency for this board to and to be able to do these restatements for the variety of reasons that were previously expressed by myself and others. To have this in place just really puts us in good shape and I believe that the company feels the same way. But I'm not speaking for them. But my point, saying that is that this is one of those situations that's a win win. And we always like to see those were possible. So again, my thanks to my colleagues for their efforts and Mr. Bell and his group for their fine work.

**\*After public comment and Board Discussion: Approved Administrative items 6A & 6B: (roll call vote): DD-Yes, AP-Yes, MK-Yes, MM-Yes, CC-Yes. Motion passes 5-0.**

Comment from Bryce Howard from the Company: It has been a couple of years. It's gone through a lot of different iterations. Lots of starts and stops. I thank this board. But I think about a year ago, we took some new action and brought Gary on board, got refocused thanks to you, and Mary and got this accomplished and I'm not sure any of us thought we'd get this done. But it did and we appreciate all that hard work and effort. We're looking forward to just continue to deliver a good service and to go forward to that note you know clover flat is going to be back open to the public tomorrow. And we were open to our commercial trucks. We wanted to finish up some road improvements which we've concluded now. So we're opening back up to the public tomorrow and we have fire debris information and packets on our website, there's about a dozen plus documents there on our website where you can download and see what all the different requirements are from the county and from us to accept fire debris. So we're excited about getting started.

**8. OTHER BUSINESS ITEMS**

**A. MANAGER'S REPORT**

DISCUSSION AND POSSIBLE ACTION: Manager to provide an update on the status of current activities and obtain Board direction on a process for use of available surplus funds.

Nothing to report

**B. REPORTS FROM JURISDICTIONS**

DISCUSSION ITEM: Reports by the member jurisdictions of current information relevant to the Agency:

- i. Napa County: Drug Take Back Day is this Saturday for all jurisdictions. November 13<sup>th</sup> & 14<sup>th</sup> is the Household Hazardous Waste Disposal Day at the Calistoga Fairgrounds. Friday for businesses and Saturday for residents, both of which are not for fire debris.
- ii. Calistoga: Nothing to report
- iii. St. Helena: Nothing to report
- iv. Yountville: Clean Up Day is Saturday, November 7<sup>th</sup>.

**C. Future Agenda Items**

Nothing to report

**9. ADJOURNMENT**

Meeting was adjourned at 3:14 p.m. The next regularly scheduled meeting of the Agency Board of Directors will be held on Monday, December 14, 2020 at 1:30 p.m. to be held via teleconferencing only.

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN (A): \_\_\_\_\_  
ABSENT(B): \_\_\_\_\_  
EXCUSED(X): \_\_\_\_\_

By: \_\_\_\_\_  
ATTEST: Steven Lederer, Manager of the Upper Valley Waste Management Agency

KEY

Vote: AP = Alfredo Pedroza; CC = Chris Canning; DD = Diane Dillon; MK = Mary Koberstein; MM = Margie Mohler  
BW = Brad Wagenknecht; GE = Geoff Ellsworth; GK = Gary Kraus; KD = Kerri Dorman  
The maker of the motion and second are reflected respectively in the order of the recorded vote.  
Notations next to vote: Y = Ayes; N = No; A = Abstain; B = Absent; X = Excused