



Upper Valley Waste Management Agency Board Agenda Letter

TO: Board of Directors
FROM: Steven Lederer - Manager
Upper Valley Waste Management Agency
REPORT BY: Steven Lederer, Director, Public Works - 259-8228
SUBJECT: Ad Hoc Committee Update on UVDS/CFL Contract Revisions

RECOMMENDATION

UPDATE FROM AD HOC COMMITTEE/SELECTION ON UVDS/CFL CONTRACT REVISIONS

DISCUSSION AND POSSIBLE ACTION:

- | Ad Hoc Committee to provide an update of their activities;
- | Board to receive a presentation by Gary Bell on his analysis and recommendations regarding the two current Franchise contracts (full report is attached);
- | Board approve and direction for the chair to sign Amendment 1 to the agreement with Colantuono Highsmith Whatley PC, increasing the total cost of the contract from \$10,000 to \$15,000 to cover work completed;
- | Direction to staff as needed to: 1) Cease the current process, or 2) Enter into negotiations with the Company for revised agreements, or 3) Other;
- | If continuing the process, direction to staff as to resources (how are we going to accomplish this effort, including potential legal or other outside help).

EXECUTIVE SUMMARY

The Ad Hoc Committee and staff met with Gary Bell, our chosen outside attorney/consultant, for this project on July 16th to brief him on our current situation and concerns. Mr. Bell was assigned to review applicable documents, and provide some preliminary feedback and ideas. Mr. Bell has completed his report, which is attached. It is discussed in further detail below.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Upper Valley Waste Management Agency
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Per Board direction, Mr. Bell was engaged to provide feedback on our current agreements in order to determine if they could be improved
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	Mr. Bell would not be paid for his services.
County Strategic Plan pillar addressed:	
Additional Information:	

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Gary Bell, an attorney with Colantuono Highsmith Whatley, PC, was retained to review and provide recommendations on ways to improve our two current franchise agreements, with UVDS and CFL. Gary's report is attached, and his summary of recommendations, and Agency Manager comments (where applicable) are provided below. Staff requests Board input on these recommendations, and directions on next steps in this process.

Summary of Recommendations:

1. Establish maximum rather than actual rates to better defend against any challenge under Propositions 218 or 26;
2. 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;
3. 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, liquidates damages, or other remedies such as injunctive or other equitable relief; Board of Directors Upper Valley Waste Management Agency October 9, 2019 Page 2 215549.2
4. Reduce the cure and correct period for breaches from six months to ten days or two weeks and increase the liquidated damages amount significantly;
5. 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);
6. 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;

7. 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;
8. Consider imposing a franchise fee on gross receipts under the Upper Valley Franchise Agreement to fund operations of the Agency or its member agencies;
9. 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
10. 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. We understand the contractor is interested in a single franchise agreement and possibly reconfiguring the rates and the rate methodology. If so, this is an opportunity to address these items, as well as the others, in a single, renegotiated agreement. At the Board's discretion, negotiations could begin to address all or some

Staff Comments:

Recommendations 1 and 2, Staff agrees there is merit to these recommendations. This process would eliminate the need for a detailed annual review of a rate package, while not triggering the requirement to conduct a Prop 218 vote. Some process would be required to determine the approved maximum rate. Some exceptions (such as a change in state law) would be required to handle unusual situations.

Recommendation 3 and 4: Staff agrees with simplifying the "breach" process.

Recommendation 5: Staff agrees with increasing the auditing, reporting, and oversight processes.

Recommendation 6: Staff has no objection to returning to a fixed term for the UVDS franchise agreement, but welcomes the company's input on this point as in the past the company faced challenges in the later years of a contract.

Recommendation 7: Staff has no objection to moving to mandatory service so long as it does not trigger Prop 218, though it is possible that not all members are interested in doing so or what tools would be available to enforce this requirement (particularly in the unincorporated lands).

Recommendation 8: Staff has no objection to funding the agency in this manner rather than through a tip fee at the landfill (the current process).

Recommendation 9: Staff has no objection to combining the agreements, though the practicality of doing so will need to be worked out.

Recommendation 10: Increasing the rate of return for the company is a policy decision for the Board and obviously impacts rates charge to the customer.

Staff request Board input, Company and Public input, and direction on next steps.

SUPPORTING DOCUMENTS

A . Gary Bell Report

Recommendation: Approve

Reviewed By: Steven Lederer