



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; specifically, the Ad Hoc committee met with the Company on 12/10 to discuss the Gary Bell recommendations and will report out on this meeting;
- | 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); If the Board chooses to continue use of Gary Bell, authorize staff to negotiate and for the chair to sign an agreement not to exceed a Board determined amount and in any event less than \$50,000;
- | This discussion should also include the provision of the general legal counsel needs of the agency going forward as requested by Chair Mohler at the previous Board meeting (e.g. continue with County Counsel or RFP for services).

EXECUTIVE SUMMARY

The Ad Hoc Committee and staff met with the Company on December 10th to discuss the recommendations in the Gary Bell report, our chosen outside attorney/consultant. The Ad Hoc committee will report out on the results of this meeting. Contemporaneous notes taken at the meeting are attached for information (such notes do not confirm commitments of either party at this stage).

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	UVA Reserves (a formal budget adjustment will be required later in the year to move appropriations from reserves).
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Retention of outside counsel to accomplish a stated goal of the Board, to revise the JPA agreements
Is the general fund affected?	No
Future fiscal impact:	The contract services will likely run into the 20/21 fiscal year and will need to be budgeted accordingly
Consequences if not approved:	Outside counsel will not be retained.
County Strategic Plan pillar addressed:	Not applicable to this Agency
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 summarized below. The Ad Hoc committee will provide a summary of the Company's feedback on these recommendations. (see attached notes).

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

SUPPORTING DOCUMENTS

A . SL Meeting notes

B . MK meeting notes

Recommendation: Approve

Reviewed By: Steven Lederer