



Agenda Date: 12/19/2016

Agenda Placement: 6A

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: Public Hearing: Ninth Amendment to UVDS Franchise and Fourth Amendment to CFL Franchise

RECOMMENDATION

PUBLIC HEARING: NINTH AMENDMENT TO UVDS FRANCHISE AGREEMENT AND FOURTH AMENDMENT TO CFL FRANCHISE AGREEMENT

DISCUSSION AND POSSIBLE ACTION: Staff recommends Board grant approval and authorization for the Chair to sign the Ninth Amendment to Agency Agreement #95-09 (Upper Valley Disposal Service) and the Fourth Amendment to Agency Agreement #95.06 (Clover Flat Landfill).

EXECUTIVE SUMMARY

The Board recently completed a series of study sessions regarding the future of the Clover Flat Landfill and Resource Recovery Park. (CFL). Following a year's worth of meetings and discussions, the Board at its September meeting appointed an Ad Hoc committee, consisting of Members Dillon and Canning, to negotiate the terms of a possible Franchise Agreement contract amendment. The Ad Hoc committee met with the company and developed a "framework agreement" that was then reviewed by the full Board at its November meeting. The Board directed staff to bring back the final agreements for consideration and possible approval. The elements of the framework agreement have been developed into draft contract language, which is before the Board today for approval. Although the physical changes being proposed are located at CFL, some of these changes are funded through the Upper Valley Disposal Services (UVDS) contract, which is why amendments to both contracts are needed and are presented here. While independent actions, amendments to both agreements must be approved together in order to implement the Board's previously stated plans for CFL.

These amendments make several changes, as discussed more in the background, but the primary goal of the amendments are to:

1. Shift a significant portion of the costs and responsibility for moving the Construction and Demolition Debris (C&D) facility and improving the gate house area from the Agency to the Company; and,
2. Extend the CFL agreement from 2025 to 2047.

All of the proposed changes are described in more detail in the background section of this report and are shown in both "tracked changes" and clean versions of the contracts, which are attached to this item.

FISCAL IMPACT

Is there a Fiscal Impact? No

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. While this agreement adjusts financial arrangements, physical changes at CFL are controlled by land use and Calrecycle permits, which implement the CEQA process when and if changes are proposed.

BACKGROUND AND DISCUSSION

The Board recently completed a series of study sessions regarding the future of CFL. At the September meeting, the Board appointed an Ad Hoc committee, consisting of Members Dillon and Canning, to negotiate the terms of a possible Franchise Agreement contract amendment. The Ad Hoc committee has since met with the company, and created a "framework agreement", as follows. This framework was discussed approvingly by the Board at our November meeting and staff was directed to bring back a finished agreement for approval. The elements of that agreement are described as follows:

1. The move of the C&D line from its current location must happen in the next few years in order to avoid impacting landfill operations. Based on the current agreement, the Agency is responsible for funding 75% of this move (roughly \$1.5M), and the company would be responsible for the remaining 25%. Any increase in costs (depending specifically on what caused the increase), would likely be split in the same percentage. The parties now agree to amend the contract so that the maximum financial responsibility of the Agency for the move of the C&D line and other front gate improvements will be \$300,000, and the remaining cost (estimated to be \$1.7M) will be the responsibility of the company. The parties also agree that the risk of cost overruns (and the benefit of cost savings), shall be shifted to the company.
2. The CFL contract shall be extended from its current expiration date in 2025, to the year 2047.
3. The company will provide a written scope of work for Agency approval defining the goals to be accomplished by the move, as well as a milestone schedule for completion. If reasonable delays are encountered during the project, the company will provide written explanation of said delays. The agency will review and will not unduly withhold approval of these delays (particularly delays associated with permitting, as these are notoriously difficult to control and predict). However, if delays result in impact to the operation of the landfill, and therefore meeting the company's commitments under the UVDS and CFL contracts, the agency will have the right to revert our approval to the original contract expiration date (2025). (Failure to perform clause)
4. The contract will be modified to allow the company to exceed the 5% out of county cap on imported waste in situations where the company can demonstrate that such hauling provides a benefit, and doesn't significantly impact traffic into and through the county. Examples include (but are not limited to) handling waste in an emergency (such as the Valley Fire), or the ability to pick up waste in trucks that might otherwise be returning empty from an out of town delivery (backhauling).

5. The current contract caps the CPI increase at CFL at 8% per year. The contract will be revised to maintain that cap on an annual basis, but provide for a make up provision the following year if the actual CPI exceeds that annual cap. For instance, if CPI is 10% in year one, and 2 % in year two, the CPI would be applied as 8% in year one and 4% in year two. If a rollover is not used in the next operating period then it is considered to be waived and relinquished by the Contractor and Agency.
6. The current contract requires that the landfill tip fee not be any higher than 15% above the price at the Devlin Road Transfer Station (DRTS). The contract will be revised to ensure the price also will not fall more than 5% below the DRTS price.
7. Subsequent to the meeting, and at the suggestion of Counsel, the Agency and the Company agreed to remove and modify language which allowed a "relative" to assume responsibility for performance of functions under the contract without Agency approval. As the term "relative" was undefined, and the provision was otherwise unclear, this provision was removed.

Staff recommends approval of both the UVDS and CFL contract amendments.

SUPPORTING DOCUMENTS

- A . UVDS 9th Amend Clean
- B . CFL 4th Amend Clean
- C . CFL 4th Amend Tracked
- D . UVDS 9th Amend Tracked

Recommendation: Approve
Reviewed By: Steven Lederer