



Agenda Date: 2/10/2020

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: 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 has met with the Company several times and will report out on this meeting; there is general agreement on a frame work that will be presented to the full Board for their input;
- | Direction to staff as needed to next steps;

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. Powerpoint slides from Mr. Bell and Bryce Howard are attached to this agenda item.

It is intended that this item be the primary focus of the meeting, be conducted as a workshop to maximize discussion, and will be first administrative item to be discussed to maximize the value of Mr. Bell's time.

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 negotiations with the Company.

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 . CHW_Upper Valley Presentation re Proposal and Further Direction-PPT-02.10.20
- B . Company_Rate Adjustments-PPT-02.10.20

Recommendation: Approve

Reviewed By: Alice Ramirez