Agenda Date: 4/20/2020
Agenda Placement: 6B

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

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RECOMMENDATION

UVDS/CFL CONTRACT REVISIONS; STATUS OF COMPANY OPERATIONS DURING COVID 19 EMERGENCY; POTENTIAL MODIFIED RATE PROCESS FOR THE COMING YEAR
DISCUSSION AND POSSIBLE ACTION FROM THE BOARD:

1. Review of the current status and operations of the Company during the present Public Health Emergency and what Board actions may be requested/required to maintain service to our customers;
2. Discuss what contract actions are requested by the Company and the Board to be completed before July 1, including how and if the rate process will be modified for this year;
3. Discuss the status of the longer term revisions to the UVDS/CFL agreements and next steps.

EXECUTIVE SUMMARY

The Ad Hoc Committee has been working with the Company on potential revisions to both Franchise Agreements. It seems clear at this point that this effort will not conclude during this fiscal year. Concurrently, the Public Health Emergency due to COVID 19 has dramatically impacted the Company, and separate from the current negotiations there may be need for short term agreement changes to get us through this fiscal year, including a discussion of what rate process might be best for this year.

It is intended that this item be the primary focus of the meeting, and will be conducted as a workshop to maximize discussion.

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

CURRENT STATUS

The current Public Health Emergency has impacted the daily operations of the company. Specifically, many commercial accounts have cancelled or dramatically reduced their services, resulting in a decrease in revenue for the Company. The Company has responded by trying to cut expenses proportionately, laying off employees and reducing salaries for higher level personnel. Some specific operational changes include:

- The recycling line at Whitehall has been shut down and all residential blue can waste is being sent to Napa for processing. The line at Whitehall is much more manually focused and does not have the space for proper physical distancing. The Napa line is much more automated.
- Employee to customer interaction has been greatly reduced; there are no walk ins accepted for bill pay or customer service; compost sales are closed, the buy back center is closed;
- For the few restaurants that are still operating; food waste is being picked up, though on a reduced schedule.
- The Company has applied for small business loans available under the federal CARES Act.
- The Company is continuing the process to obtain permits to allow collection of residential food waste. There is no present indication that the deadlines of SB 1383 will be extended.

What could be done/needs to be done before July 1?

The original goal was to have new contracts in place in sufficient time to be used for this year's rate setting process. It is clear now that that is unlikely to occur. As such the question arises as to what could, and what needs to, happen to get us through this fiscal year.

- Rates: Do we use the current rate model, or negotiate a "placeholder" increase to be implemented on July 1 or later in the year. This decision really needs to be made today to prevent a lot of unnecessary work around preparing and reviewing a complete rate package submittal. Is a rate increase or Franchise fee practical given the current crisis?
- Contract Points: Are there elements from the larger contract negotiations that are critical (or at least simple enough) to implement now rather than waiting for the finalized agreements.

The Company has voiced an interest in completing 1) Operating ratio decrease; 2) landfill fee increase; 3) remove JPA control of self haul pricing at the landfill; 4) Inflation at 100% of CPI or WST index as part of this early action. These items might be phased in over time. The agency would need to consider what we might want in return.

Contract Negotiations

Contract negotiations continue, but are not nearly complete. This meeting is an opportunity for either side to voice concerns to the full Board as to any points which are "deal breakers". Otherwise, the negotiations can continue between the Ad Hoc, our Counsel Gary Bell (who in the April 8th special meeting was selected to become the Agency's General Counsel), and the Company. As a reminder, Mr. Bell's original recommendations are included below:

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;
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;
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

With particular note to number 7 above, and in light of the current crisis, this item may be particularly relevant to maintaining cash flow in a situation such as this. The concept of mandatory service, and a baseline operating fee for commercial accounts only, may make some sense.

In developing the new agreement, the Ad Hoc would like the ability to hire a firm to help develop the new rate methodology. Thus, one action the Board may take today is to authorize the Agency Manager to select and develop a contract with, and for the chair to sign, an agreement, not to exceed $20,000, to hire a firm specializing in rate models. This firm could also further the possibility of mandatory service or a minimum base rate for commercial activities being included in the agreement. anticipated that company share in costs for this consultant.

SUPPORTING DOCUMENTS

None

Recommendation: Approve

Reviewed By: Steven Lederer