



Agenda Date: 6/29/2020

Agenda Placement: 6D

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

UVDS/CFL CONTRACT REVISIONS; STATUS OF COMPANY OPERATIONS DURING COVID 19 EMERGENCY; 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 the status of the contract revisions to the UVDS/CFL agreements and next steps;
3. Approve amendment Number 1 to legal services agreement with Colantuono, Highsmith & Whately, PC, thus retaining the services of Bartle Wells Associates for professional accounting services a) to review the Fiscal Year 2020/2021 rate packages submitted by CFL and UVDS, at a cost of \$10,000, and to b) support the Agency during the contract negotiations process, for a cost of \$20,000.

EXECUTIVE SUMMARY

The Ad Hoc Committee has been working with the Company on potential revisions to both Franchise Agreements. Concurrently, the Public Health Emergency due to COVID 19 has dramatically impacted the Company.

It is expected that:

- | the Company provide an update on their business activities in relations to the COVID emergency;
- | the Ad Hoc committee report out on the current state of the negotiations and next steps; and
- | The Board approve an amendment to Mr. Bell's contract to include the services of Bartle Wells for reviewing this year's rate package (this was approved by the Board at our April meeting) and for providing assistance to the Agency during the remaining contract review process.

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**Health Emergency 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 had responded by trying to cut expenses proportionately, laying off employees and reducing salaries for higher level personnel. The following is an update from status provided in April. In many ways, the company has "steadied the ship" after the rough seas of the previous months.

- | The recycling line at Whitehall had 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. --June update: The MRF at Whitehall Lane has been upgraded and is once again handling UVDS blue can waste.
- | 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; --June update: The office has been reopened Tuesday to Saturday from 9-4 with social distancing requirements in place, the buy back center has been reopened.
- | For the few restaurants that are still operating; food waste is being picked up, though on a reduced

schedule. June update: While not yet back to normal, most businesses are coming back to life and service is being provided to them.

1. The Company has applied for small business loans available under the federal CARES Act. June Update: Complete

Contract Negotiations

Contract negotiations continue, but are not nearly complete. The negotiations continue among the Ad Hoc, our Counsel Gary Bell, 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, liquidated 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.

In developing the new agreement, the Ad Hoc would like the ability to hire a firm to help develop the new rate methodology. The proposed contract amendment in this agenda item will authorize the Chair to amend Mr. Bell's contract to include the services of a firm, Bartell Wells Associates, that specializes in rate methodology and solid waste accounting.

SUPPORTING DOCUMENTS

- A . Amendment #1 to CH&W Contract

Recommendation: Approve

Reviewed By: Steven Lederer