



Agenda Date: 8/17/2020

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: Gary Bell, Contractor -

SUBJECT: Discussion and Possible Direction Regarding Amendment to JPA Formation Agreement for Collection and Disbursement of Franchise Fees

RECOMMENDATION

AMENDMENT TO JPA FORMATION AGREEMENT FOR COLLECTION AND DISBURSEMENT OF FRANCHISE FEES
DISCUSSION AND REQUESTED ACTION: Authorize Agency Staff to prepare an amendment to the JPA Formation Agreement that would distribute any franchise fees collected on a pro-rata basis to each Member based on collections from ratepayers in that Member's jurisdiction.

EXECUTIVE SUMMARY

The Agency's operations and powers are governed by the JPA Formation Agreement. The Agency is authorized to enter into franchises for solid waste handling services and to establish, among other things, fees in connection with those services. (JPA Formation Agreement, § 6.1, subds. (a) & (b).) The Integrated Waste Management Act also authorizes the Agency to grant franchises "under the terms and conditions prescribed by the governing body of the local government agency by resolution or ordinance." (Pub. Resources Code, § 40059, subd. (a)(2).)

Franchise fees are a charge on the franchisee (the contractor) by the franchisor (the Agency), contained in the franchise agreement and based on the value of the franchise conveyed, the use of public infrastructure, and other lawful measurements. (Jacks v. City of Santa Barbara (2017) 3. Cal.5th 248, 270; Pub. Resources Code, §§ 40059, 47109.) Franchise fees are typically stated as a percentage of gross receipts of the contractor and typically range from 5% to 20% of gross receipts, although sometimes franchise fees are higher or lower than these percentages.

The JPA Formation Agreement currently authorizes any Member (i.e., the County of Napa, the City of Calistoga, the City of St. Helena, or the Town of Yountville) to request from the Agency, in writing, the collection of a franchise fee from the ratepayers in the Member's jurisdiction. (JPA Formation Agreement, § 6.5.) Currently, only the City of Calistoga has made such a request and the Agency collects a 6% franchise fee from ratepayer's in that jurisdiction. The franchise fee is then paid to the City of Calistoga after collection by the Agency.

The Agency is currently negotiating a revised and restated franchise agreement with Upper Valley Disposal Service (UVDS). As part of these negotiations, the Agency is considering a franchise fee based on total gross receipts of UVDS from all jurisdictions. The JPA Formation Agreement does not currently account for this process (i.e., where the Agency collects a franchise fee in all jurisdictions rather than upon request from a Member). Thus, an amendment to the JPA Formation Agreement would be needed to account for collection and disbursement of the new franchise fee. Amendments to the JPA Formation Agreement must be approved by resolution of the governing body of each Member (i.e., the Napa County Board of Supervisors, the City Council of Calistoga, the City Council of St. Helena, and the Town Council of Yountville).

Agency Staff is requesting direction and authorization to prepare an amendment to the JPA Formation Agreement that would distribute any franchise fees collected on a pro-rata basis to each Member based on collections from ratepayers in that Member's jurisdiction. For example, if 10% of UVDS's gross receipt are received from a Member's jurisdiction, 10% of any franchise fee collected would be distributed to that Member. Agency Staff would work with County Counsel and City Attorneys to explain the process and the need for the amendment. In the event the franchise agreement is not amended, the amendment to the JPA Agreement would maintain the current process for Members to request franchise fees.

ALTERNATIVES:

1. Disbursement of the franchise fee based on some metric other than gross receipts collected in the Member's jurisdiction;
2. Retention by the Agency of some amount of the franchise fee; and
3. Maintaining the current arrangement by which Members individually request franchise fees in their jurisdictions.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed:

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. To the extent this is a project under CEQA, it is exempt under 14 California Code of Regulations 15061(b)(3).

BACKGROUND AND DISCUSSION

Nothing additional.

SUPPORTING DOCUMENTS

A . Upper Valley JPA Agreement

Recommendation: Approve
Reviewed By: Steven Lederer