



Agenda Date: 8/17/2020  
Agenda Placement: 6D

## Upper Valley Waste Management Agency Board Agenda Letter

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**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**

DISCUSSION AND POSSIBLE ACTION FROM THE BOARD: Discuss the status of the contract 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. Various meetings (electronically) have occurred to continue to move this process forward. This agenda item is available for the Ad Hoc committee to report on current developments, should they feel a need to do so.

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact? No  
County Strategic Plan pillar addressed: Not applicable to this Agency

### **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****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.

**SUPPORTING DOCUMENTS**

None

Recommendation: Approve

Reviewed By: Steven Lederer