A Tradition of Stewardship
A Commitment to Service

Agenda Date: 3/2/2021
Agenda Placement: 11A

NAPA COUNTY BOARD OF SUPERVISORS
Board Agenda Letter

TO:	Board of Supervisors
FROM:	Steven Lederer - Director of Public Works Public Works
REPORT BY:	Steven Lederer, Director, Public Works - 259-8228
SUBJECT:	Resolution for 5th Amendment to Upper Valley Waste Management Agency (UVA) JPA Agreement

RECOMMENDATION

Director of Public Works requests adoption of a resolution approving Amendment No. 5 to Napa County Agreement No. 3265 - Upper Valley Waste Management Agency (UVA) Joint Powers Agreement (JPA).

EXECUTIVE SUMMARY

Napa County is a Member of the Upper Valley Waste Management Agency (UVA), a joint powers agency (JPA) organized and operating under the Joint Exercise of Powers Act (Government Code section 6500 et seq.). The Agency's members include the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville. Its operations are governed by state law and the Joint Powers Agreement between the members.

Section 9.1 of the Joint Powers Agreement states: "Amendments to this Agreement shall be made only with the consent of all existing MEMBERS at the time of the amendment without regard to voting power; any such consent shall be in the form of duly authorized resolutions of the MEMBERS' respective governing bodies."

At their meeting on February 8, the UVA Board of Directors unanimously approved the attached amendment to the JPA Agreement, pending approval of each of the four member's individual governing bodies. The attached resolution and amendment would amend the Joint Powers Agreement to: (1) provide for implementation and enforcement of state mandates regarding organic waste recycling, (2) specify how the franchise fees collected under the Franchise Agreement will be distributed to Members, and (3) clarify the sources of funds to carry out the duties and responsibilities of the Agency.

PROCEDURAL REQUIREMENTS

1. Staff report.

2. Public comments.
3. Motion, second, discussion and vote on the item.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Franchise Fees to be received by the County from its franchisee, Upper Valley Disposal Service (UVDS).
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	As apart of UVA's Franchise Agreement with UVDS, the County is entitled to an annual franchise fee. The adoption of this amendment provides the vehicle for UVA/UVDS to transfer the franchise fees to the County. These funds will aid the county in implementing improved recycling and diversion programs, including those required by new laws such as SB 1383 regarding organics diversion from the landfill in support of climate change aversion programs.
Is the general fund affected?	No
Future fiscal impact:	Franchise Fees will continue to accrue to the County for the life of the UVDS Franchise Agreement.
Consequences if not approved:	The County will not receive the Franchise Fees.
County Strategic Plan pillar addressed:	Effective and Open Government
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

UVA'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 (AB 939 of 1989) 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).) The Agency’s members include the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville. Its operations are governed by state law and the Joint Powers Agreement between the members.

This amendment (see attached) would amend the Joint Powers Agreement to: (1) distribute franchise fees to members according to members’ pro rata share of gross receipts collected by the franchisee, and (2) authorize the

Agency to implement state organic waste recycling mandates such as those imposed by AB 341, AB 1826, and SB 1383. 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 Barabra (2017) 3. Cal.5th 248, 270; Pub. Resources Code, §§ 40059, 47109.) This amendment will not become effective until approved by each of the member's governing bodies. Each of the members has committed to taking this amendment to the their governing bodies on or before April 15. The new agreement with UVDS becomes effective on July 1.

On October 19, 2020, the Agency entered into an Amended and Restated Franchise Agreement with Upper Valley Disposal Service for recyclables, organics, construction and demolition debris and solid waste collection services. Among many other things, the agreement requires the franchisee to pay franchise fees and an AB 939/Statutory fee for the Agency's operations. The new franchise fees are phased in as follows: 2.5% of gross receipts in fiscal year 2021-2022, 6% of gross receipts in fiscal year 2022-2023, and 10% of gross receipts in fiscal year 2023-2024 and for each fiscal year thereafter. Based on past revenue history, the County's share of the franchise fee will be approximately $200,000 in FY 21/22, $530,000 in the following year, and $960,000 in the next and subsequent years.

Under the current Joint Powers Agreement, Members of the Agency may request that the Agency collect franchise fees on their behalf. The City of Calistoga is currently the only Member with such an arrangement. This Resolution amends Section 6.5 of the Joint Powers Agreement to remove this procedure, while ensuring prior commitments regarding franchise fees are met, and would instead provide: When the Agency imposes a franchise fee on a Franchise for Solid Waste Handling Services, the franchise fee shall be distributed to Members, within 120 days of the Agency's receipt thereof, based on each Member's pro rata share of the Franchise's gross receipts collected within that Member's jurisdiction. For example, if the Franchise receives twenty percent (20%) of its gross receipts from a Member's jurisdiction, that Member shall receive twenty percent (20%) of any franchise fees received by the Agency. Notwithstanding the foregoing, if a Member is receiving a franchise fee as of October 19, 2020, that Member shall continue to receive franchise fees under this Section equal to the amount otherwise due until the amount distributed hereunder equals or exceeds such amount; thereafter, such Member shall receive distributions hereunder in the same manner as other Members. This provision was added to ensure that Calistoga continues to receive the 6% Franchise Fee it currently gets until the other members "catch up".

This Resolution also amends Section 7.2 of the Joint Powers Agreement to explicitly authorize the Agency to use fees and charges to fund its operations including, for example, an AB 939/Statutory fee. While other provisions of the Joint Powers Agreement grant this authority, Section 7.2 would do so explicitly in the same section governing other funding mechanisms for the Agency.

Mandatory Organics Recycling SB 1383 was signed by the Governor in late 2016 and regulations implementing its provisions were finalized in late 2020. The bill, as approved, sets specific targets for reducing the amount of organic waste in landfills as follows: – 50% reduction from 2014 levels by 2020 – 75% reduction from 2014 levels by 2025 The bill also sets a goal of recovering 20% of edible food for human consumption by 2025. The bill authorizes CalRecycle to adopt regulations to achieve these targets, including those mentioned above. The regulations take effect on January 1, 2022, two years after the 2020 goal. In addition, the bill authorizes local jurisdictions to charge fees to recover the costs incurred in complying with the regulations. Local jurisdictions must monitor compliance with organic waste disposal requirements, inspect waste containers, and contact violators for failing to sort waste. Beginning in 2024, local jurisdictions may impose penalties on individuals or businesses that contaminate waste bins with the incorrect waste. Local jurisdictions must also provide education and outreach to organic waste generators. The bill also requires local jurisdictions to adopt enforceable ordinances or mechanisms by Jan. 1, 2022 and establish an enforcement program that requires commercial and residential organic waste generators to comply with organic waste requirements. If a violation occurs between Jan. 1, 2022 and Dec. 31, 2023, jurisdictions must provide violators with educational materials. If a violation occurs after Jan. 1, 2024, jurisdictions may take enforcement action against the violator. This Resolution amends Section 6.1 of the

Joint Powers Agreement to add subsection (s). The amendment grants the Agency the authority to undertake or assist with implementation and enforcement of state organic waste recycling mandates under SB 1383 and two prior related bills, AB 341 and AB 1826, as well as future state organic waste recycling mandates. Specifically, the amendment authorizes the Agency to enter into franchises and memoranda of understanding with Members for this purpose, or directly implement and enforce these laws. It is anticipated that the Agency will work collaboratively with Members and the existing franchisee to reach a mutually agreeable framework to meet these requirements.

SUPPORTING DOCUMENTS

A . Resolution

B . 5th Amendment to JPA Agreement

C . Existing JPA Agreement

CEO Recommendation: Approve

Reviewed By: Susan Kuss