

RESOLUTION NO. 2021-012

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, CONSENTING TO AND APPROVING THE FIFTH AMENDMENT TO NAPA COUNTY AGREEMENT NO. 3265 (UPPER VALLEY WASTE MANAGEMENT AGENCY JOINT POWERS AGREEMENT)

WHEREAS, the Upper Valley Waste Management Agency is a joint powers entity formed to provide economical coordination of regional waste management services to the Members, including but not limited to franchising of solid waste handling services, uniform rate review and rate setting for those services in the Agency's Service Area, and acting as the Regional Agency for purposes of implementing the provisions of the California Integrated Waste Management Act of 1989 (the "Agency"); and

WHEREAS, the Agency is organized and operates under California Government Code section 6500 et seq. (the "Joint Exercise of Powers Act") and is a separate and distinct public entity from its member agencies, which include the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville (the member agencies are collectively referred to herein as "Members" and individually as "Member"); and

WHEREAS, the Agency and Members are subject to that certain joint powers agreement (Napa County Agreement No. 3265) dated September 29, 1992, and subsequently amended on March 15, 1994, June 27, 1995, August 20, 1996, and August 25, 1998 (the "Joint Powers Agreement"); and

WHEREAS, the Joint Powers Agreement in Section 9.1 provides in relevant part: "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;" and

WHEREAS, Calistoga wishes to consent to and approve an amendment to the Joint Powers Agreement pursuant to this Resolution and as provided herein.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES HEREBY find and approves the following:

1. The Recitals above are true and correct and fully incorporated herein.
2. The "Fifth Amendment to Napa County Agreement No. 3265 (Upper Valley Waste Management Agency Joint Powers Agreement)," attached hereto as Exhibit "A" and fully incorporated herein by reference, is hereby consented to and approved.
3. The Mayor and City Manager are authorized to take all actions necessary or convenient to effectuate this Resolution.

4. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **2nd** day of **March 2021**.

I, Marni Rittburg, City Clerk of the City of Calistoga, hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Calistoga at a regular meeting held on the **2nd** day of **March 2021**, by the following vote:

AYES: Councilmembers Gift, Kraus, and Williams, Vice Mayor Lopez-Ortega and Mayor Canning

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:



Marni Rittburg, CMC, City Clerk

APPROVED:



Chris Canning, Mayor

**FIFTH AMENDMENT TO NAPA COUNTY
AGREEMENT NO. 3265
(UPPER VALLEY WASTE MANAGEMENT AGENCY
JOINT POWERS AGREEMENT)**

This **FIFTH AMENDMENT TO NAPA VALLEY AGREEMENT NO. 3265 (Upper Valley Waste Management Agency Joint Powers Formation Agreement)** (this "Fifth Amendment") is made and entered into effective July 1, 2021 by and between the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville.

RECITALS:

WHEREAS, by joint powers agreement (Napa County Agreement No. 3265) dated September 29, 1992, and subsequently amended on March 15, 1994, June 27, 1995, August 20, 1996, and August 25, 1998 (hereinafter referred to as "JOINT POWERS AGREEMENT"), the County of Napa, the City of Calistoga, the City of St. Helena, and the Town of Yountville (hereinafter referred to collectively as the "MEMBERS" and individually as "MEMBER") have formed the Upper Valley Waste Management Agency (hereinafter referred to as the "AGENCY") as a joint powers entity to provide economical coordination of regional waste management services to the MEMBERS, including but not limited to franchising of solid waste handling services, uniform rate review and rate setting for those services in the Agency's service area, and acting as the regional agency for purposes of implementing the provisions of the California Integrated Waste Management Act; and

WHEREAS, Assembly Bill 341 (Chesbro, 2011; Recycling of Commercial Solid Waste) amended the California Integrated Waste Management Act of 1989 and requires all commercial businesses and public entities that generate four cubic yards or more of waste per week to have a recycling program in place ("AB 341"); and

WHEREAS, Assembly Bill 1826 (Chesbro, 2014; Mandatory Organics Recycling) also amended the California Integrated Waste Management Act of 1989 and requires local jurisdictions to implement an organic waste recycling program to divert organic waste generated by businesses and multi-family properties ("AB 1826"); and

WHEREAS, Senate Bill 1383 (Lara, 2016; Short-Lived Climate Pollutants) further amended the California Integrated Waste Management Act of 1989 and establishes methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants ("SB 1383"); and

WHEREAS, on December 8, 2020, the California Department of Resources Recycling and Recovery ("CalRecycle") approved the final text of regulations implementing SB 1383, now found in Title 14, Division 7, Chapter 12 of the California Code of Regulations; and

WHEREAS, SB 1383 requires jurisdictions to implement an organic waste diversion program that includes organic waste collection services to businesses and residences, edible food recovery goals, public education and outreach, contamination monitoring and sampling activities, recordkeeping and reporting, organic and edible food recovery, infrastructure capacity planning, procurement of recovered organic waste products, and enforcement; and

EXHIBIT A

WHEREAS, the Agency is authorized to: (i) enter into franchises to provide for solid waste handling services within the jurisdictions of the MEMBERS, (ii) establish rates, tolls, tipping fees, other fees, rentals and other charges in connection with franchise solid waste handling services, and (iii) do all acts necessary or convenient for the exercise of such powers enumerated in the California Integrated Waste Management Act of 1989 or that each MEMBER could exercise separately; and

WHEREAS, on October 19, 2020, the Agency entered into that certain “Amended and Restated Franchise Agreement between Upper Valley Waste Management Agency and Upper Valley Disposal Service for Recyclables, Organics, Construction and Demolition Debris and Solid Waste Collection Services” (the “Franchise Agreement”) which, among other things, requires the franchisee to pay: (i) a franchise fee equal to 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, and (ii) an AB 939/Statutory fee of 3% of gross receipts each quarter following July 1, 2021 for the Agency’s costs of programs, pilot studies, education and outreach campaigns, reporting, compliance, and other activities in complying with the California Integrated Waste Management Act and other existing or future statutory requirements related to solid waste and recycling; and

WHEREAS, the fees are the product of extensive negotiation and represent the parties’ estimate of the reasonable value of the franchise and the rights conferred thereunder; and

WHEREAS, pursuant to Section 6.5 of the JOINT POWERS AGREEMENT, upon written request of any MEMBER, the Agency shall require the collection of a franchise fee by the franchisee from the ratepayers within that MEMBER’s jurisdiction and, as of the date first written above, the City of Calistoga has requested, and the franchisee collects, a franchise fee of 6% from ratepayers within the City of Calistoga; and

WHEREAS, pursuant to Section 9.1 of the JOINT POWERS AGREEMENT, amendments to the JOINT POWERS AGREEMENT shall be made only with the consent of all existing MEMBERS at the time of the amendment without regard to voting power and any such consent shall be in the form of duly authorized resolutions of the MEMBERS’ respective governing bodies; and

WHEREAS, the MEMBERS now wish to amend the JOINT POWERS AGREEMENT to: (i) provide for implementation and enforcement of state mandates regarding organic waste recycling, (ii) specify how the franchise fees collected under the Franchise Agreement will be distributed to Members, and (iii) clarify the sources of funds to carry out the duties and responsibilities of the Agency.

NOW, THEREFORE, BE IT AGREED as follows:

1. The foregoing recitals are true and correct and fully incorporated herein.
2. Section 6.1 of the JOINT POWERS AGREEMENT is hereby amended to add paragraph s. which reads as follows:
 - s. to undertake or assist with implementation and enforcement of state organic waste recycling mandates, as they may change from time to time and including, but not limited to, AB 341, AB 1826, and SB 1383, and in that regard is empowered by the MEMBERS to:

EXHIBIT A

- i. Enter into FRANCHISE(s) to provide organic recycling and collection services to all commercial and residential generators of organic waste within the SERVICE AREA;
 - ii. Enter into FRANCHISE(s) to provide for procurement of eligible recovered organic waste products;
 - iii. Enter in FRANCHISE(s) to establish, implement, and administer edible food recovery programs;
 - iv. Enter into Memoranda of Understanding with MEMBERS regarding implementation and enforcement of state organic waste recycling mandates;
 - v. Implement and enforce state organic waste recycling mandates.
3. Section 6.5 of the JOINT POWERS AGREEMENT is hereby amended to read as follows:

“6.5 Distribution of Franchise Fees. If 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.”
4. Section 7.2 of the JOINT POWERS AGREEMENT is hereby amended to read as follows:

“7.2 Funds for Duties and Responsibilities of AGREEMENT. The MEMBERS agree that funds for carrying out the duties and responsibilities of this AGREEMENT shall come from a surcharge placed on fees collected at the LANDFILL and/or fees or charges imposed and collected by the AGENCY. The MEMBERS understand that an allowance for ~~this~~ any such surcharge and/or fees or charges will be ‘passed through’ to the users of the SOLID WASTE SERVICES.”
5. Except as modified in Paragraphs 2., 3., and 4. above, all of the provisions of the JOINT POWERS AGREEMENT shall remain in full force and effect as previously adopted.

EXHIBIT A

IN WITNESS WHEREOF, this Fifth Amendment is executed by the parties hereto:

COUNTY OF NAPA:

ATTEST: Clerk of the Napa County Board of Supervisors

By: _____
Diane Dillon, Chair of the Board of Supervisors

Jose Luis Valdez, Clerk of the Board

APPROVED AS TO FORM: Napa County Counsel

Resolution No. _____ Adopted On:

Jeffrey Braz, County Counsel

_____, 2021

CITY OF CALISTOGA:

ATTEST: Clerk of the City of Calistoga City Council

By: _____
Chris Canning, Mayor of the City of Calistoga

Marni Rittburg, City Clerk

APPROVED AS TO FORM: Calistoga City Attorney

Resolution No. _____ Adopted On:

Michelle Kenyon, City Attorney

_____, 2021

CITY OF ST. HELENA:

ATTEST: Clerk of the City of St. Helena City Council

By: _____
Geoff Ellsworth, Mayor of the City of St. Helena

Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM: St. Helena City Attorney

Resolution No. _____ Adopted On:

Ethan Walsh, City Attorney

_____, 2021

EXHIBIT A

TOWN OF YOUNTVILLE:

ATTEST: Clerk of the Town of Yountville
Town Council

By: _____
John F. Dunbar, Mayor of the Town of Yountville

Michelle Dahme, Town Clerk

APPROVED AS TO FORM: Yountville Town Attorney

Resolution No. _____ Adopted On:

Gary B. Bell, Town Attorney

_____, 2021