



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legislation Details (With Board Report)

File #: 19-0338 **Name:** UFA Amend. No. 9

Type: General Agenda Item **Status:** Health Department - Consent

File created: 5/3/2019 **In control:** Board of Supervisors

On agenda: 5/3/2019 **Final action:**

Title: a. Set a public hearing to consider and adopt Resolution to approve Amendment No. 9 to the Unified Franchise Agreement (with a term of November 1, 2010 through June 30, 2020), Agreement No. A-11631 (UFA or Agreement) between the County of Monterey and Waste Management, Inc., dba USA Waste of California, Inc., dba Carmel Marina Corporation (Waste Management, Inc.), for the Exclusive Collection of Solid Waste and Recyclables in Unincorporated Monterey County to extend the Agreement through February 28, 2022; and
b. Approve and authorize the Director of Health to execute AMENDMENT NO. 9 to the Unified Franchise Agreement (Agreement No. A-11631) between the County of Monterey and Waste Management, Inc. dba USA Waste of California, Inc., dba Carmel Marina Corporation, for the Exclusive Collection of Solid Waste and Recyclables in Unincorporated Monterey County; and authorize the Director of Health or Assistant Director to provide written notice to Waste Management, Inc., that the County is considering its request for an extension of said UFA; and
c. Direct the Clerk of the Board to publish the Notice of Public Hearing in newspapers of general circulation to provide for County-wide Notice of Public Hearing on or before May 11, 2019.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. UFA_Public Hearing Notice_RCD_4-24-2019_mgp, 3. UFA_Amendment No 9, 4. UFA Amend 8, 5. UFA Amendment No 7, 6. UFA Amendment No 6, 7. UFA Amendment No 5, 8. UFA Amendment No 4, 9. UFA Amendment No 3, 10. UFA Amendment No 2, 11. UFA Amendment No 1, 12. Final Signed UFA 2 2 10

Date	Ver.	Action By	Action	Result
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a. Set a public hearing to consider and adopt Resolution to approve Amendment No. 9 to the Unified Franchise Agreement (with a term of November 1, 2010 through June 30, 2020), Agreement No. A-11631 (UFA or Agreement) between the County of Monterey and Waste Management, Inc., dba USA Waste of California, Inc., dba Carmel Marina Corporation (Waste Management, Inc.), for the Exclusive Collection of Solid Waste and Recyclables in Unincorporated Monterey County to extend the Agreement through February 28, 2022; and
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c. Direct the Clerk of the Board to publish the Notice of Public Hearing in newspapers of general circulation to provide for County-wide Notice of Public Hearing on or before May 11, 2019.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

a. Set a public hearing to consider and adopt Resolution to approve Amendment No. 9 to the Unified Franchise Agreement (with a term of November 1, 2010 through June 30, 2020), Agreement No. A-11631 (UFA

- or Agreement) between the County of Monterey and Waste Management, Inc., dba USA Waste of California, Inc., dba Carmel Marina Corporation (Waste Management, Inc.), for the Exclusive Collection of Solid Waste and Recyclables in Unincorporated Monterey County to extend the Agreement through February 28, 2022; and
- b. Approve and authorize the Director of Health to execute AMENDMENT NO. 9 to the Unified Franchise Agreement (Agreement No. A-11631) between the County of Monterey and Waste Management, Inc. dba USA Waste of California, Inc., dba Carmel Marina Corporation, for the Exclusive Collection of Solid Waste and Recyclables in Unincorporated Monterey County; and authorize the Director of Health or Assistant Director to provide written notice to Waste Management, Inc., that the County is considering its request for an extension of said UFA; and
- c. Direct the Clerk of the Board to publish the Notice of Public Hearing in newspapers of general circulation to provide for County-wide Notice of Public Hearing on or before May 11, 2019.

SUMMARY/DISCUSSION:

The Director of Health requests the setting of a public hearing on May 21, 2019 and publication of notice of said hearing with [Proposed] Amendment No. 9 by the Clerk of the Board pursuant to Government Code Section 66016. Pursuant to the terms of the Unified Franchise Agreement A-11631 (hereafter, “UFA” or “Agreement”), the Director of Health will seek authorization to execute Amendment No. 9 to said UFA as previously amended pursuant to Amendment Nos. 1, 2, 3, 4, 5, 6, 7 and 8 (collectively, UFA) between the County of Monterey and USA Waste of California, Inc., dba Carmel Marina Corporation (Waste Management, Inc.).

Article 2., Section 2.03 CONTRACTOR Request to Extend provides that,

On or before January 1, 2019, CONTRACTOR may submit to COUNTY a request for extension of up to five (5) years, along with the information, data, records and reports documenting to satisfaction of COUNTY that CONTRACTOR has met each of the following preconditions during each preceding Agreement Year (of portion thereof if less than an entire Agreement Year) ...

Preconditions set forth in Section 2.03 included Increased Diversion, Low Assessed Damages, Customer Satisfaction, Timely Payment of Fees, and Timely Implementation of Transition Plan. (UFA Sections, 2.03.1, 2.03.2, 2.03.3, 2.03.4 and 2.03.5).

Article 2., Section 2.04 provides that,

Upon receipt of a request to extend the Agreement, COUNTY shall provide written notice to CONTRACTOR as to whether COUNTY is considering, accepts or rejects CONTRACTOR’s request within one hundred twenty (120) calendar days of the date of the request. If COUNTY fails to provide such notice to (sic) within said one hundred twenty (120) calendar days, CONTRACTOR’s request shall be deemed accepted and COUNTY shall extend the term of this Agreement by a period not to exceed five (5) years as requested by CONTRACTOR.

[Proposed] Amendment No. 9 extends the term of the Unified Franchise Agreement with USA Waste of California, Inc., dba Carmel Marina Corporation (Waste Management, Inc.) for twenty months to allow for continued negotiations as the County considers Waste Management, Inc.’s request for an extension, and continues to engage in deliberations with Waste Management, Inc. This time frame will also allow a parallel Request for Proposal (RFP) process in the event that no agreement is reached with Waste Management, Inc.

On January 30, 2019, Waste Management, Inc., provided a written request to the Director of the Environmental Health Bureau to extend the Agreement pursuant to Article 2, Section 2.03 of said UFA. Pursuant to Article 2,

Section 2.04, County is required to provide written notice to Waste Management, Inc., as to whether County is considering, accepts, or rejects Waste Management, Inc.'s request within 120 calendar days of Waste Management, Inc.'s request for an extension. Per Section 2.04 of said UFA, County's response as to whether County is considering, accepts or rejects Waste Management's request for an extension is due on or before Thursday, May 30, 2019.

[Proposed] Amendment No. 9 is published with the Board Report for the May 7, 2019 consent agenda (set hearing) item. Notice of Public Hearing with [Proposed] Amendment No. 9 will be published in newspapers of general circulation on or before May 11, 2019 by the Clerk of the Board. In addition to the County's publication of the [Proposed] Amendment No. 9 for the May 7, 2019 consent agenda item, and publication of the Notice of Public Hearing with [Proposed] Amendment No. 9 in newspapers of general circulation, Waste Management, Inc., will be providing notice of the provisions in Amendment No. 9 in the mail to its residential and commercial customers within unincorporated Monterey County. Further, this Board report, which includes the basis for the proposed provisions, will be published on the County Health Department website which meets the minimum ten (10) day publication requirement in advance of the Public Hearing on the proposed Amendment No. 9.

The Director of Health seeks authorization to execute Amendment No. 9 to the Unified Franchise Agreement A-11631 (UFA) between the County of Monterey and Waste Management, Inc., dba USA Waste of California, Inc., dba Carmel Marina Corporation. In addition to the request for authorization to execute Amendment No. 9, the Director of Health seeks authorization to provide written notice to Waste Management, Inc., that COUNTY is considering CONTRACTOR's January 30, 2019 request for an extension of the UFA.

The original contract for these services was approved on February 2, 2010 when the Board of Supervisors awarded the exclusive franchise agreement (UFA Agreement A-11631) to Waste Management, Inc., dba USA Waste of California, Inc., dba Carmel Marina Corporation (Waste Management, Inc.) per Title 10, Chapter 10.41 Solid Waste Collection and Disposal of the Monterey County Code. In accordance with article 13.13, Adjustments to Service Rates, Surcharges and Fees of said UFA, the Director of Health requests adoption of a resolution to approve Amendment No. 9 to amend said UFA as previously amended pursuant to Amendment Nos. 1, 2, 3, 4, 5, 6, 7, and 8 (collectively, UFA). Proposed Amendment No. 9 would amend Article 2. Term and Scope of Franchise, Section 2.01 Initial Term of Agreement, to extend the Agreement commencing on November 1, 2010 and terminating at midnight on June 30, 2020 for an additional twenty (20) months through midnight on February 28, 2022.

Consistent with essential public health service item 6) and pursuant to Title 10 - Health and Safety, Chapter 10.41 - Solid Waste Collection and Disposal, MCC Section 10.41.030 - Mandatory collection. Subsection A. provides that, "...All solid waste shall be collected from every occupied residence, apartment, or business...at least once a week."

Further, MCC Section 10.41.030. Subsection B. Payment. provides that collection rates shall be established by the Board, as follows:

Residents... and owners of commercial and industrial businesses or the property owners of the property within the designated residential areas or the property on which such businesses are located shall pay the rates established by the Board.

While this work is not directly in support of a Monterey County Health Department 2018-2022 strategic initiative, it is in support of one (1) of the ten (10) essential public health services, specifically: 6) Enforce laws and regulations that protect health and ensure safety.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel-Risk Management has reviewed and approved this Amendment No. 9 as to form and legality. The Auditor-Controller's Office has reviewed and approved this Amendment No. 9 as to Fiscal Provisions.

FINANCING:

There is no General Fund Contribution resulting from this Board action. Waste Management, Inc. will continue to remit franchise fees, calculated at ten percent (10%) of collected revenue, to the General Fund.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Rob Durham, MA III, 8979

Approved by: Elsa Jimenez, Director of Health, 4526

Attachments:

Notice of Public Hearing is on file with the Clerk of the Board

[Proposed] Amendment No. 9 (with Exhibit 9) is on file with the Clerk of the Board

Amendment No. 8 is on file with the Clerk of the Board

Amendment No. 7 is on file with the Clerk of the Board

Amendment No. 6 is on file with the Clerk of the Board

Amendment No. 5 is on file with the Clerk of the Board

Amendment No. 4 is on file with the Clerk of the Board

Amendment No. 3 is on file with the Clerk of the Board

Amendment No. 2 is on file with the Clerk of the Board

Amendment No. 1 is on file with the Clerk of the Board

Waste Management, Inc. Uniform Franchise Agreement is on file with the Clerk of the Board