



AGENCY RESOLUTION #22-06

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
UPPER VALLEY WASTE MANAGEMENT AGENCY
CONSENTING TO THE ASSIGNMENT OF THE FRANCHISE AGREEMENT WITH
UPPER VALLEY DISPOSAL SERVICE**

WHEREAS, the Upper Valley Waste Management Agency (hereinafter referred to as “Agency”) is a joint exercise of powers authority organized and operating under California Government Code section 6500 et seq. (the “Joint Exercise of Powers Act”) and 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 Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (the “Act”) (California Public Resources Code section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction; and

WHEREAS, pursuant to Public Resources Code section 40059 and Section 6.1(a) of the JPA Formation Agreement between the Members, the Agency may determine whether services are provided by a partially exclusive or wholly exclusive franchise, either with or without competitive bidding, and has the authority to prescribe the terms and conditions under which services are provided thereunder; and

WHEREAS, on October 19, 2020, the Agency and Upper Valley Disposal Service, a California corporation (“UVDS”) 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,” which is fully incorporated herein by this reference (the “UVDS Franchise Agreement”); and

WHEREAS, Section 4.1 of the UVDS Franchise Agreement provides, in the event of any assignment, the term of the Agreement shall automatically revert to a fifteen (15) year term from the date of such assignment and shall expire following fifteen (15) years from such date; and

WHEREAS, Section 12.6 of the UVDS Franchise Agreement prohibits assignment of the agreement without the prior written consent of the Agency and authorizes the Agency to place reasonable conditions thereon; and

WHEREAS, Section 12.6 of the UVDS Franchise Agreement defines "assignment" to include, among other things: (i) a sale, exchange or other transfer of ten (10) percent or more of the corporate assets, stock, or ownership of UVDS, (ii) an arrangement which results in a change of ownership or control of ten (10) percent or more of the value or voting rights in local, regional, and/or corporate stock of UVDS, and (iii) any combination of the foregoing which has the effect of any such transfer or change of local, regional, and or corporate ownership and/or control of UVDS; and

WHEREAS, UVDS is a wholly owned subsidiary of Whitehall Corporation, a California corporation, and all of the stock of Whitehall Corporation is being sold to Upper Valley Disposal Holdings, Inc., a Delaware corporation ("UVDH"), which is a wholly owned subsidiary of Waste Connections US, Inc., a Delaware corporation ("WCI"), thus constituting an "assignment" under Section 12.6 of the UVDS Franchise Agreement (the "Assignment"); and

WHEREAS, WCI and UVDS are corporations in good standing and authorized to transact business in the State of California, in the business of Collection, Processing, and Transportation of Solid Waste, Recyclable Materials, Construction and Demolition debris, and Organic Materials; and

WHEREAS, the Agency desires to consent to the Assignment, having determined that UVDH and WCI are qualified to provide for the Collection of Solid Waste, Recyclable Materials, Construction and Demolition Debris, and Organic Materials within the Service Area of the Agency and the Transportation of such material to appropriate places of Processing, Recycling, Composting, and/or Disposal.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors consents to the Assignment subject to the following reasonable conditions:

- 1 . The consent provided by this Resolution shall expire one hundred twenty (120) days from the effective date of this Resolution such that the Assignment must occur within that timeframe or UVDS must seek further consent from the Agency for this or any other assignment of the UVDS Franchise Agreement;
- 2 . Upon the effective date of the Assignment, the term of the UVDS Franchise Agreement shall be fifteen (15) years;
- 3 . UVDS, WCI, and/or UVDH shall notify the Agency in writing of the effective date of the Assignment no later than the date thereof;
- 4 . UVDS, UVDH and WCI, jointly and severally, shall indemnify, defend, and hold harmless the Agency and the Members, individually and/or collectively, their appointed and elected officials, employees, and/or independent contractors from and against any and all claims, suits, losses, costs, or expenses arising out of or related to the Agency's consent to the Assignment; provided, however, that the foregoing obligation to indemnify, defend, and hold harmless the Agency and the Members: (i) shall not apply to claims, suits, losses, costs, or expenses to the extent such are contained and specifically pled in litigation involving the Agency or the Members that was filed in a court of competent jurisdiction before the effective date of this Resolution, but (ii) shall apply to all other claims, suits, losses, costs, or expenses arising out of or related to the Agency's consent to the Assignment.

BE IT FURTHER RESOLVED that the Board of Directors finds that this consent is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) (CEQA only applies to projects which have potential for causing a significant effect on the environment). This consent merely approves the legal assignment of the UVDS Franchise Agreement from one party to another and makes no changes whatsoever to the UVDS Franchise Agreement itself. To the extent this consent is a project under CEQA, it is exempt under CEQA Guidelines 15301, 15306, 15307, 15308, 15273, and 15183.

BE IT FURTHER RESOLVED that the Agency's Director and General Counsel may take all other steps necessary or convenient to effectuate this consent.

BE IT FURTHER RESOLVED that this Resolution shall be effective immediately upon its adoption.

The foregoing resolution was duly adopted at a special meeting of said Board of Directors of the Upper Valley Waste Management Agency in the County of Napa, State of California, held on the 17th day of October 2022 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

By _____
Margie Mohler, Chair
Upper Valley Waste Management Agency

ATTEST:

APPROVED AS TO FORM

By: _____
Steve Lederer, Director
Upper Valley Waste Management Agency

By: _____
Gary Bell, Agency Counsel
_____, 2022