



Council Meeting: October 22, 2013

SUBJECT: Adoption of a Resolution Establishing Financial Assurance for Postclosure Maintenance and Corrective Action Costs for the Sunnyvale Landfill and Approval of the Related Pledge of Revenue Agreement

BACKGROUND

The Sunnyvale Landfill stopped accepting waste in 1993 and was certified as closed in 1994. State law requires the City to maintain a Financial Assurance Mechanism (FAM) that demonstrates the City's financial ability to maintain the closed landfill as described in the Postclosure Maintenance Plan. This plan was prepared in 1992 and approved by CalRecycle, the state agency that oversees recycling and waste management. A related Water Corrective Action Plan and associated cost estimate for its implementation was similarly submitted to, and approved by, the Regional Water Quality Control Board.

The City's FAM is structured as a "pledge of revenue" that commits future solid waste rate revenues to guarantee the City's financial ability to manage the landfill in compliance with air and water quality laws and regulations.

The original guarantee requirement was for 30 years. Based on the City's 1992 estimate of the annual cost, the combined FAM liability for postclosure maintenance and corrective action reached \$27,743,824 in 2012 after the required annual CPI adjustments.

EXISTING POLICY

General Plan Goal EM-15 - Dispose of solid waste in an environmentally sound, dependable and cost-effective manner.

CEQA REVIEW

This action is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential of causing a significant effect on the environment. (Title 14, California Code of Regulations, Section 15061(b)(3).)

DISCUSSION

Recent changes in State law required the City to review and update the Sunnyvale Landfill's Postclosure Maintenance Plan and the cost of implementing the plan. The new regulations also require landfill owners to

study and provide a cost estimate for a Non-Water Release Corrective Action Plan.

The City hired SCS Engineers to prepare the updates, which resulted in lower estimates of annual post-closure environmental compliance costs when compared to the CPI-adjusted 1992 estimates.

Regulations also call for the City to demonstrate financial assurance for the cost of implementation of the more expensive of (1) the Water Corrective Action Plan Cost or (2) the Non-Water Corrective Action Plan Cost. The \$538,435 Water Corrective Action Plan implementation cost is the more expensive of the two, so a demonstration of financial assurance for this item is also required. The previous cost estimate was \$1,057,830.

The plans and cost estimates have been reviewed and approved by the necessary regulatory agencies (CalRecycle, the Regional Water Quality Control Board and the Santa Clara County Department of Environmental Health, which acts as the Local Enforcement Agency for CalRecycle).

Because the landfill has been closed for nearly 20 years, when the City submitted the revised documents for approval, staff also asked CalRecycle to approve a decrease in the number of years for which funds must be guaranteed. The new, approved amount is 15 years, the shortest period allowed by law.

The reduced annual amount and reduced number of years combine to lower the FAM liability for postclosure maintenance and corrective action from \$22,743,824 in 2012 to \$5,792,842 in 2013. While this reduction of \$16,950,982 in the Solid Waste Fund's long-term liability has no effect on operating expenses, the change does strengthen the City's balance sheet and makes Solid Waste Fund bonds more attractive to lenders.

To complete the process, staff is recommending that Council approve the attached resolution (Attachment A) and authorize the City Manager to execute a new Pledge of Revenue Agreement (Attachment B) citing the updated amounts.

FISCAL IMPACT

There is no fiscal impact. The recommended actions will beneficially affect the City's financial statement by reducing the long-term liability for the FAM, but will not change the annual budget.

PUBLIC CONTACT

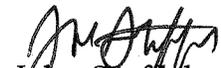
Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

Staff recommends that Council:

1. Adopt the resolution (Attachment A)
2. Authorize the City Manager to execute the Pledge of Revenue Agreement (Attachment B)

Reviewed by:



John Stufflebean, Director, Environmental Services

Prepared by: William Theyskens, Environmental Engineering Coordinator

Reviewed by:



Grace K. Leung, Director, Finance

Reviewed by:



Joan Borger, City Attorney

Approved by:



Gary M. Luebbbers
City Manager

Attachments

Attachment A - Resolution Establishing Financial Assurance for Postclosure Maintenance and Corrective Action at the Sunnyvale Landfill

Attachment B - Pledge of Revenue Agreement Establishing Financial Assurance for Postclosure Maintenance and Corrective Action at the Sunnyvale Landfill

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ESTABLISHING FINANCIAL ASSURANCE FOR POSTCLOSURE MAINTENANCE AND CORRECTIVE ACTION COSTS FOR THE SUNNYVALE LANDFILL

WHEREAS, Public Resources Code sections 43500 through 43610.1 and Title 27, California Code of Regulations (Regulations), Division 2, Subdivision 1, Chapter 6, require operators of solid waste landfills to demonstrate the availability of financial resources to conduct closure, postclosure maintenance, and corrective action activities; and

WHEREAS, sections 22228 and 22245 of the Regulations specify a Pledge of Revenue as an acceptable mechanism to demonstrate financial responsibility for financing postclosure maintenance and/or corrective action costs of a solid waste landfill; and

WHEREAS, the City of Sunnyvale owns and operates the Sunnyvale Landfill, a solid waste landfill, in conformance with the findings, conditions, prohibitions and requirements contained in Solid Waste facilities permit No. 43-AA-0007 issued by the Santa Clara County Health Department serving as the Local Enforcement Agency for California Department of Resources Recycling and Recovery (CalRecycle).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City Manager shall execute a Pledge of Revenue Agreement on behalf of the City of Sunnyvale to demonstrate financial responsibility for postclosure maintenance and corrective action of the Sunnyvale Landfill in accordance with sections 22228 and 22245 of the Regulations.
2. Disbursement of funds for postclosure maintenance and corrective action shall be in accordance with the Sunnyvale Landfill Postclosure Maintenance Plan (SCS Engineers, dated November 2012) and the *Corrective Action Costs and Financial Assurance, City of Sunnyvale Landfill, Sunnyvale, California* letter (Ulrick, dated 10/30/08), as approved by CalRecycle and the Regional Water Quality Control Board, San Francisco Bay Region (RWQCB), respectively.
3. In the event CalRecycle and/or the RWQCB determines that the City of Sunnyvale has failed, or is failing, to perform postclosure maintenance and/or corrective action as required by law, CalRecycle may direct the Director of Finance to pay to the Solid Waste Programs Division Manager from the pledged revenues sufficient funds to ensure postclosure maintenance and corrective action, who then shall be obligated to use such funds for postclosure maintenance and corrective action in accordance with the directives of CalRecycle.
4. The Solid Waste Programs Division Manager is directed to produce an Annual Certification Report (form CalRecycle 114) as required by Section 22233(b)(4)(B) of the

Regulations to demonstrate that the pledged revenue continues to be available when needed and will cover the cost estimates identified in the updated Annual Inflation Report required by Section 22236 of the Regulations. It is understood that copies of the Resolution and Pledge of Revenue Agreement are not required annually, unless amended.

5. This action is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential of causing a significant effect on the environment. (Title 14, California Code of Regulations, Section 15061(b)(3).)

Adopted by the City Council at a regular meeting held on October 22, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

PLEDGE OF REVENUE AGREEMENT
ESTABLISHING FINANCIAL ASSURANCE FOR
POSTCLOSURE MAINTENANCE AND CORRECTIVE ACTION
AT THE SUNNYVALE LANDFILL

This agreement, dated _____, 2013, establishes a Pledge of Revenue to assure that adequate funds are available to carry out the Postclosure Maintenance and Corrective Action of the Sunnyvale Landfill.

This Agreement shall become effective immediately, and is made and entered into by and between the City of Sunnyvale and the California Department of Resources Recycling and Recovery (CalRecycle).

WHEREAS, Public Resources Code, sections 43500 through 43610.1 and Title 27, California Code of Regulations (Regulations), Division 2, Subdivision 1, Chapter 6, require operators of solid waste landfills to demonstrate the availability of financial resources to conduct closure, postclosure maintenance, and corrective action activities; and

WHEREAS, sections 22228 and 22245 of the Regulations specify a Pledge of Revenue as an acceptable mechanism to demonstrate financial responsibility for postclosure maintenance and corrective action costs of a solid waste landfill; and

WHEREAS, the City of Sunnyvale operates the Sunnyvale Landfill, a solid waste landfill, in conformance with the findings, conditions, prohibitions and requirements contained in Solid Waste Facilities Permit No. 43-AA-0007 issued by the Santa Clara County Department of Environmental Health, serving as Local Enforcement Agency (LEA) for CalRecycle; and

WHEREAS, the City of Sunnyvale is pledging revenues from its solid waste management collection fees (Solid Waste Facilities Permit No. 43-AA-0007), deposited into the City of Sunnyvale Solid Waste Management Fund; and

WHEREAS, the City of Sunnyvale has determined that projected revenues from solid waste management collection fees during the remaining fifteen (15) year period of postclosure maintenance and corrective action shall, during each year of this period, be greater than the yearly postclosure maintenance and corrective action costs contained in the most recent Cost Estimate for the Sunnyvale Landfill, which has been submitted to CalRecycle in accordance with section 21840 and sections 22100 - 22103 of the Regulations.

NOW THEREFORE, the City of Sunnyvale and CalRecycle do agree as follows;

1. The City of Sunnyvale hereby establishes a pledge of revenue to demonstrate financial responsibility for postclosure maintenance and corrective action costs of the Sunnyvale Landfill in accordance with sections 22228 and 22245 of the Regulations.
2. The City of Sunnyvale agrees to pledge revenues from the Solid Waste Management Fund as described herein.

3. The amount of the pledged revenue shall be equal to \$350,294 per year for the remaining fifteen (15) year period of postclosure maintenance, representing the most recent CalRecycle – approved postclosure maintenance cost estimate for the Sunnyvale Landfill (inclusive of the Annual Inflation Factor 2012 adjustment). It is agreed that the amount of this pledge may increase or decrease to match any adjustment to the identified cost estimate, which is mutually agreed to by the City of Sunnyvale and CalRecycle.

4. The amount of the pledged revenue shall be equal to \$35,896 per year for the remaining fifteen (15) year estimated length of the corrective action period, representing the most recent corrective action cost estimate for the Sunnyvale Landfill (inclusive of the Annual Inflation Factor 2012 adjustment). It is agreed that the amount of this pledge may increase or decrease to match any adjustment to the identified cost estimate, which is mutually agreed to by the City of Sunnyvale and CalRecycle.

Note that the total of the combined postclosure maintenance and corrective action annual costs are assured.

5. The Solid Waste Programs Division Manager is directed to produce an Annual Certification Report (form CalRecycle 114) as required by Section 22233(b)(4)(B) of the Regulations to demonstrate that the pledged revenue continues to be available when needed and will cover the cost estimates identified in the updated Annual Inflation Report required by Section 22236 of the Regulations. It is understood that copies of the Resolution and Pledge of Revenue Agreement are not required annually, unless amended.

6. If the City of Sunnyvale ceases at any time to retain control of its ability to allocate the pledged revenue as identified herein to pay postclosure maintenance costs and corrective action costs, the City of Sunnyvale shall notify CalRecycle and the LEA and shall obtain alternate coverage within sixty (60) days after the control of funds lapses, pursuant to section 22245 of the Regulations.

7. In the event that CalRecycle, Regional Water Quality Control Board (RWQCB) or LEA staff determines that the City of Sunnyvale has failed, or is failing, to perform postclosure maintenance and corrective actions as required by law, CalRecycle, RWQCB and/or LEA staff shall confer with the City of Sunnyvale and attempt to resolve the alleged violation. If no agreement is reached, the matter shall be presented to CalRecycle which shall give reasonable notice, hold a public hearing, and consider the testimony and documentation submitted by CalRecycle and/or LEA staff, the City of Sunnyvale, and any interested parties, prior to making a determination in the matter. In the event CalRecycle then determines that the City of Sunnyvale has failed, or is failing, to perform postclosure maintenance and corrective action as required by law, CalRecycle may direct the Director of Finance to pay the Solid Waste Programs Division Manager from the pledged revenues sufficient funds to ensure postclosure maintenance and corrective action, who then shall be obligated to use such funds for postclosure maintenance and corrective action in accordance with the directives of CalRecycle and RWQCB.

IN WITNESS HEREOF, the parties have executed this agreement on the date as set forth below.

By City of Sunnyvale this _____ day of _____, 20__

By CalRecycle this _____ day of _____, 20__

STATE OF CALIFORNIA
California Department of Resources
Recycling and Recovery (CalRecycle)

CITY OF SUNNYVALE

By: _____
Authorized Officer of the CalRecycle

By: _____
Gary Luebbers
City Manager

APPROVED AS TO FORM
AND PROCEDURE:

ATTEST:

By: _____
Authorized Counsel of the CalRecycle

By: _____
Mark Bowers, Solid Waste
Programs Division Manager

APPROVED AS TO FORM
AND PROCEDURE:

By: _____
Rebecca L. Moon
Assistant City Attorney