



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: July 21, 2015

Subject: First Amendment to the Franchise Agreement between Contra Costa County and Allied Waste Systems, Inc. and Related Actions

RECOMMENDATION(S):

1. FIND that the First Amendment to the County/Allied Franchise Agreement is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, as the Amendment is not expected to cause any significant effects on the environment.

2. APPROVE and AUTHORIZE the Chair of the Board of Supervisors to execute the First Amendment to the County and Allied Waste Systems, Inc. (Allied) Franchise Agreement (see Attachment 1), effective August 1, 2015, that (a) extends the term from August 1, 2015 through July 31, 2025; (b) sets the franchise fee to seven percent (7%) of gross annual revenue as of August 1, 2015; (c) expands the Franchise Area to include a pocket of unincorporated area in the vicinity of Cummings Skyway; (d) expands basic commercial services offered to including recycling collection for a single monthly rate as of September 1, 2015; (e) identifies existing maximum collection rates; and (f) establishes a range of new and enhanced basic and on-call collection services that Allied is obligated to provide to residential and commercial customers as well as the County within the designated service area (as set forth in Exhibits D, E, and F of Attachment 1 and summarized in Tables 1 and 2 of this report).

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **07/21/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor

ABSENT: Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 21, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: David Brockbank (925)
674-7794

cc:

3. DIRECT the Department of Conservation and Development (DCD) staff to file a CEQA Notice of Exemption with the County Clerk.

RECOMMENDATION(S): (CONT'D)

4. DIRECT staff to prepare recommended revisions to the Rate Setting Process and Methodology Manual for the County/Allied Franchise, based in part on previously approved modifications to other County Rate Manual(s), for future consideration by the Board of Supervisors.

5. AUTHORIZE the Director of Conservation and Development or his designee to sign “Proof of Designation” forms upon request of any franchise hauler collecting electronic waste from customers within unincorporated areas served under one of the four Franchise Agreements administered by Contra Costa County at no additional charge as described in Section III.

FISCAL IMPACT:

The Amendment to the County/Allied Franchise Agreement has no impact to the County General Fund. The costs for County staff time spent administering the Franchise Agreement and any related consulting services are covered by solid waste/recycling collection franchise fees. The additional franchise fee revenue to be derived from the recommended 2% fee increase (from 5% to 7%) in Recommendation # 1 would help offset costs of services related to administering the Franchise Agreement.

BACKGROUND:

In May 1995, the County entered into a Franchise Agreement with Allied’s predecessor company, Pleasant Hill Bayshore Disposal, Inc. The Franchise Agreement grants Allied the exclusive right to collect solid waste, recyclables and green waste (organics) routinely generated by residential and commercial customers within the designated service area (also known as the Franchise Area). The Franchise Area includes the following unincorporated communities, which are located throughout all five Supervisorial Districts (as shown in the map labeled as Exhibit A of Attachment 1):

1. Alhambra Valley (portion) – District I
2. Canyon – District II
3. Antioch, unincorporated – District III
4. Morgan Territory – District III
5. Concord, unincorporated (portion) – District IV
6. Clayton, unincorporated (Marsh Creek) – District IV
7. Pleasant Hill, Unincorporated – District IV
8. Martinez, unincorporated /Pacheco/ Vine Hill – District V
9. Bay Point (Eastern) – District V
10. Cummings Skyway (portion) – District V [*NEWLY PROPOSED ADDITION*]

I. FIRST AMENDMENT TO THE ALLIED FRANCHISE AGREEMENT

[Recommendations # 1 -3]

In 2012, the Board of Supervisors directed DCD staff to negotiate with Allied Waste

Services, Inc. to develop mutually agreeable terms for extending the County/Allied Franchise Agreement term beyond July 31, 2015.

A. Collection Rates

The Collection Rate is set by the County using an established rate review process. The Collection Rate has not increased for the County's Allied service area since 2009 for residential services and 2010 for commercial services. The last rate review conducted for the Allied Franchise Area in 2012, identified annual cost savings expected as a result of service efficiencies achieved by Allied. The total amount of cost savings potentially warranted a rate reduction of 10.20%. Rather than reducing rates by 10.20% only to increase rates to reflect annual changes in the Consumer Price Index (CPI) adjustments, rates were not adjusted in order to stabilize rates. This resulted in a rate credit adequate to offset CPI adjustments that would have been applied in 2013, 2014, and 2015. Of the original 10.20%, there still remains a credit to offset a future rate increase of 2.36%. Allied has submitted the rate application with cost and revenue details that will be used to conduct the rate review for 2016 rates.

The funding yielded from the rate reduction credit between 2012 – 2015 is considered Rate Setting Methodology Revenue, which is detailed in Exhibit F of the First Amendment. This revenue functions a service credit that will help offset allowable costs for fees or enhanced services governed under the amended County/Allied Franchise Agreement, which are not compensated through existing rates.

B. Terms of the Proposed Amendment to the County/Allied Franchise

The County's Franchise Agreement with Allied to provide solid waste and recycling collection service expires this year. Allied has provided satisfactory service during the franchise period as evidenced in their most recent residential customer satisfaction survey (random sample), conducted in 2012. Based on the survey results, the overall customer satisfaction rating for Allied was about 92 percent for residential collection services when rated by the customer as excellent, good, or average/fair. A random phone survey of commercial customers found Allied's quality of service to be about 98 percent for commercial collection services.

County staff and Allied representatives negotiated mutually agreeable terms for an amendment to the County/Allied Franchise. Primary reasons staff is recommending that the County retain Allied as the solid waste, recycling, and green waste collection service provider is that Allied is:

(i) meeting the needs of their customers,

(ii) offering competitive rates, and

[Allied's residential rates are approximately 35-50% lower than the average of residential rates found in the nearby cities. See Attachment 3 for rate comparison with other County Franchise Areas and local cities.]

(iii) providing comparable services.

[Allied offers a full range of basic residential and commercial collection services and associated disposal (trash), recycling (source-separated recyclables) and composting (yard waste) of collected waste and materials. The basic services offered as well as the types of materials accepted for curbside recycling are comparable to what is provided in the other service areas.]

Staff is recommending that the Board of Supervisors approve the proposed First Amendment to the Franchise Agreement and the associated Exhibits provided in Attachment 1. The amended Franchise Agreement includes the following changes:

- Extend the Franchise Agreement with Allied for 10 years, until July 31, 2025, consistent with the extensions approved in amendments to other County Franchise Agreements.
- Increase the franchise fee from 5% to 7% (of Allied's Gross Annual Revenues) effective August 1, 2015 to cover the cost administering the franchise, consistent with the increases approved in amendments to other County Franchise Agreements.
- Modify the Franchise Area to incorporate a pocket of unfranchised area, adjacent to the existing boundary as shown in revised Exhibit A to Attachment 1.
- Modify the Corporate Guaranty as shown in revised Exhibit B and document

existing maximum rates in revised Exhibit C. Updated to reflect change in the parent company (now Republic Services, Inc) as the Guarantor. The Corporate Guaranty provides that under specific circumstances Republic would be obligated to fulfill Allied's responsibilities as Contractor under the amended Franchise Agreement.

- Add new Exhibit D – Public Facilities and Exhibit E – Basic Residential and Commercial Services to clearly identify all existing services to be provided by Allied, as well as the new and enhanced services summarized in Tables 1 and 2 below.
- Add new Exhibit F – Enhanced Services from Rate Setting Methodology Revenue to reflect the rate credit and service credit amounts yielded as a result of cost savings identified in Allied's last rate review.

Potential Rate Impact of Proposed Changes to Fees and Services: Allied estimated a total combined potential rate impact for the proposed fee and service changes included in the First Amendment equivalent to roughly 16%. According to Allied's draft rate application, the total costs of these new fees and services in addition to the amounts needed to sustain existing levels of service warrant an overall increase of approximately 33.5%.

County staff has enlisted the assistance of the County's existing consultant to conduct a detailed review projected costs of existing and proposed services in Allied's rate application submitted in July 2015 in order to confirm how much of a rate adjustment is potentially warranted for 2016. Staff will return to the Board of Supervisors late this year to request consideration of the recommended rate adjustment that would take effect in January 2016.

1. On-Call Services

Table 1 provides a list of services that would be provided upon request of either the customer (On-call Bulky Item Collection) or the County (Community Clean-ups, Right-of-Way and Abatement Projects). Similar new and enhanced services were included in the most recently approved amendment to another County Franchise governing the services provided in West County by a different Republic-owned company.

Table 1: New and Enhanced On-call Services		Start Date
A.	<i>Bulky Household Items:</i> Residential customers may request up to two on-call curbside bulky item collections each year at no additional charge. Prior to starting this service, Allied will distribute information materials to all residential customers regarding new on-call curbside bulky item collection services.	September 1, 2015
	<i>Community Clean-ups:</i> Up to six additional 20-cubic yard debris boxes to be provided for community clean-ups	

D.	upon the County's request. Increasing the number of boxes to be provided annually from 10 to 16	September 1, 2015
C.	<i>Right-of-Way</i> : Illegally dumped waste to be removed from specified locations within the County rights-of-way in the Franchise Area and disposed upon the County's request	September 1, 2015
D.	<i>Abatement Projects</i> : On-call bin/box service to be provided for specified County abatement project locations within the Franchise Area	September 1, 2015

Projected costs for the right-of-way collection to be provided in 2015 will be offset with service credit funding as specified in Exhibit F to Attachment 1. In order to sustain these new and expanded County directed services, costs for all three on-call services will need to be factored into this year's rate review to identify what rate increase will be recommended to take effect on January 1, 2016.

2. New and Enhanced Services for Residential & Commercial Customers

Table 2 provides a list of new and enhanced services that would be provided to residential and commercial customers, as well as the proposed start date for each service. Similar new and enhanced services were included in the most recently approved amendment to another County Franchise governing the services provided in West County by a different Republic-owned company.

Table 2. New & Enhanced Collection Services		Start Date
A.	<i>Residential - Household Battery, CFL, and Plastic Bag Recycling:</i> Additional items that will be collected for recycling if properly placed out for pick-up by residential customers.	September 1, 2015
B.	<i>Residential - Weekly Recycling Collection:</i> Collection of non-organic recyclables would occur more often, changing from bi-weekly to weekly. Additional considerations related to this service enhancement are identified below.	January 1, 2016*
C.	<i>Commercial - Eliminate Recycling Charge:</i> Commercial customers will no longer be charged separately for recycling collection, this will become part of the basic collection services consistent with residential customers.	September 1, 2015
D.	<i>Commercial – Mandated Recycling:</i> Conduct and document outreach and monitoring efforts required to help ensure the County remains in compliance with mandatory recycling and organics requirements in State law	August 1, 2015
E.	<i>Commercial - Recycling Coordinator (part-time):</i> Dedicated assistance and support to maximize success of diversion programs in the Franchise Area, including but not limited to performing commercial (including multi-family) waste assessments upon request.	September 1, 2015
F.	<i>Commercial - Food Waste Recycling:</i> Commercial customers that routinely discard food waste and food-soiled paper, will have the option of placing it in their organics bin (along with green waste) for composting consistent with the recently approved State law.	January 1, 2016*
G.	<i>Both - Compost source-separated organic materials:</i> Collected organics will cease to be used as landfill cover and will instead be composted or otherwise diverted in accordance with the Integrated Waste Management Act.	September 1, 2015

** Effective January 1, 2016, unless Allied requests and the Director or his designee authorizes a later start date. Later start dates would be requested if necessary to correspond with the dates that the trucks needed to provide these two expanded recycling collection services in the County/Allied Franchise Area would become available.*

Projected costs for providing the applicable services expected to start in 2015 will be offset with service credit funding as specified in Exhibit F to Attachment 1. In order to sustain these new and expanded services, costs for all of these services will need to be factored into this year's rate review to identify what rate increase will be recommended to take effect on January 1, 2016.

Additional Considerations - Weekly Recycling Collection: Staff has identified this service enhancement as the one which the Board may wish to defer or provide further direction about due to the potential significance of the rate impact to sustain weekly recycling in 2016 and beyond. Although the exact rate impact solely for this service enhancement has not been identified, the projected annual costs provided by Allied suggest the cost could warrant an approximate rate increase ranging from 3.5-10%. Following are a few additional factors related to this service change that the Board may want to consider:

- Collecting non-organic recyclables from households more often than bi-weekly is not necessitated to comply with local or state laws.
- After having rates stay the same for four to six years, preliminary rate setting information suggests a substantial rate increase may be warranted in 2016.
- Allied sent the 2012 residential customer satisfaction survey to its approximately 3,600 customers and received 447 responses (12.4%). The second question asked the customers, in their opinion, how Allied could improve its garbage collection service. Out of the 116 customers that provided an answer to this question, only six responses specifically requested weekly recycling service, or about five percent (5%) of those responding. When the customers were asked how Allied could improve its recycling service, 75 of the 146 customer that provided a response suggested including weekly recycling collection service (51%), which was the number one response by a large margin. However, when customers were directly asked if they would recycle more materials if they received weekly recycling collection service, 43.2% said “yes”, 52.1% said “no”, and 4.7% did not provide a response. The results of this response accounts for the 447 total customer satisfaction surveys that Allied received back.

If desired, the Board could direct staff to:

- eliminate the increased frequency of weekly residential recycling collection,
- delay this change in services and rates until a future rate year, or
- defer the decision to eliminate or delay the increased collection frequency until later this year, when the Board considers recommended rate changes for 2016.

II. RATE SETTING METHODOLOGY MANUAL - ALLIED FRANCHISE **[Recommendation # 4]**

The County establishes and regulates the collection rate that Allied may charge in the Franchise Area for residential and commercial collection services. The County’s rate setting process is governed by terms of the Franchise Agreement which were mutually agreed upon in 1995. Rate setting is also guided by the parameters specified within the County’s “*Rate Setting Process and Methodology Manual for Solid Waste Collection Charges As Applied to Allied Waste Systems, Inc.*” (“Rate Manual”), which was approved by the Board in 1998. The Rate Manual specifies details about the approach and process selected by the County to help ensure that rate setting authority is exercised

in a consistent manner.

The County regulates rates in accordance with the Rate Manual, which (i) provides for rate reviews accompanied by annual audited financial statements (Base Years), (ii) incorporates annual Consumer Price Index (CPI) adjustments between audited rate applications (Interim Years), (iii) provides for the recovery of the reasonable costs incurred by Allied in performing services under the Franchise Agreement, including identification of allowable costs and operating ratio range.

The Rate Setting Methodology Manual needs to be revised to acknowledge changed circumstances since the original Rate Manual was approved and incorporate changes made to Rate Manual used in other County Franchise Areas. Rate Manual changes identified to date include, but are not necessarily limited to:

- Provide clarification or added specificity where needed to minimize Allied's potential uncertainty related to future expected treatment of costs (e.g. Allied's actual costs for providing the required free drop boxes for community clean-ups) when preparing/reviewing rate applications.
- Delineation of the method Allied proposes to allocate/segregate costs for regulated and non-regulated operations. Allied is required to obtain the County's written approval of its method of segregating its financial records between County-regulated and non-County regulated operations pursuant to the terms of the Franchise Agreement.
- Establishment of a streamlined process for Consumer Price Index (CPI)-only rate changes consistent with terms of the Franchise Agreement.
- Simplified Interim Year process by eliminating use of adjusted CPI in Interim Years which was intended to account for variations between projected and actual change in CPI.
- Specified process for requesting extraordinary rate changes pursuant to the Franchise Agreement.
- Eliminated rounding to the nearest \$0.05 when establishing recommended rate changes.
- Added detail related to certain diversion program costs to ensure household hazardous waste (HHW) fees paid to the Delta Diablo Sanitation District for operating the household hazardous waste (HHW) facility serving East County are treated as a "pass-through" expense and not allowed with profit.

III. PROOF OF DESIGNATION FOR STATE-FUNDED ELECTRONIC WASTE COLLECTION INCENTIVES [Recommendation # 5]

The 2003 Electronic Waste Recycling Act (SB 20/SB 50) established a State administered recycling payment system for certain covered electronic wastes to facilitate expanded collection and recycling. This system offers a financial incentive, in the form of State issued payments, to eligible collectors and recyclers that comply with all applicable

requirements. In order to receive payment from the State, most eligible collectors and recyclers are obligated to provide the name and address of origin for each electronic waste item collected within California. In order to streamline the payment process for electronic waste collected at the direction of public agencies, the State has a "Proof of Designation" form that can be used by public agencies to identify an entity as a "Designated Approved Collector". Designated Approved Collectors are not required to provide names and addresses of origin for each electronic waste item in order to receive State issue payments.

Cities and counties only have the authority to designate approved collectors for activities solely addressing the collection and recycling of certain electronic wastes generated "from California sources within the jurisdictional responsibility of the designating local government". Furthermore, cities and counties have been strongly encouraged not to extend this Designated Approved Collector privilege to an entity/organization the agency does not have a direct established contractual relationship. It is reasonable for franchise haulers which collect electronic waste items for free as a part of the services offered pursuant to a Franchise Agreement with the County to be Designated Approved Collectors. Therefore, staff recommends that the Board authorize the Director of DCD to sign the applicable Proof of Designation form specific to the collection services provided pursuant to a County Franchise Agreement, if requested by any of the County's franchise haulers.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors does not approve a First Amendment that at least extends the term, the existing Franchise Agreement would expire on July 31, 2015. This would result in no company being authorized to provide collection services in this Franchise Area, therefore any company providing collection services thereafter would be violating County Code requirements (Chapter 418-7). Furthermore, property owners in the area would have no certainty that they could subscribe for routine collection services as required under Chapter 418-6 of County Code.

CHILDREN'S IMPACT STATEMENT:

Not Applicable.

CLERK'S ADDENDUM

Dana Dean, resident of Benicia, thanked the county staff and Allied Wasted Systems for addressing the concerns voiced by herself and others in regard to the use of alternative daily cover. In the First Amendment to the Franchise Agreement, Item 3. Section 2 (n) reflects a date of January 1, 2015 for the cessation of use of green waste collected in this franchise area as alternative daily cover; this date is corrected to read September 1, 2015. Supervisor Andersen inquired about the possibility of Canyon area being annexed into this coverage area. Staff noted that research has already begun to determine why this once-included area was separated many years ago and the feasibility of an annexation. Following discussion the Board took the following actions: FOUND that the First Amendment to the County/Allied Franchise Agreement is

exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, as the Amendment is not expected to cause any significant effects on the environment; APPROVED and AUTHORIZED the Chair of the Board of Supervisors to execute the First Amendment to the County and Allied Waste Systems, Inc.; DIRECTED staff to prepare recommended revisions to the Rate Setting Process and Methodology Manual for the County/Allied Franchise, based in part on previously approved modifications to other County Rate Manual(s), for future consideration by the Board of Supervisors; AUTHORIZED the Director of Conservation and Development or his designee to sign “Proof of Designation” forms upon request of any franchise hauler collecting electronic waste from customers within unincorporated areas served under one of the four Franchise Agreements administered by Contra Costa County at no additional charge ; and DIRECTED that changes to the frequency of recycling collection not be implemented until the Board conducts a rate review.

ATTACHMENTS

Attachment 1 - First Amendment to the County/Allied Franchise Agreement

Attachment 2 - Original County/Allied Franchise Agreement

Attachment 3 - Residential Rate Comparison