



Board Agenda Item 6

DATE: November 15, 2016

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: ESAP Hauler Agreement Negotiations Update

RECOMMENDED ACTION(S):

1. **Receive staff presentation on negotiated terms for proposed amendments to the Exclusive Service Area Program agreements.**
2. **Provide direction to staff to:**
 - a. **Finalize the amended Exclusive Service Area Program agreements, and**
 - b. **Provide written notice to all contracted haulers by February 26, 2017 on the County's intent to amend and extend, and**
 - c. **Return to the Board in the first quarter of 2017 for execution of the amended agreements, providing for a ten-year extension and setting the extended expiration date at 12:00 a.m. on February 26, 2028.**
3. **Provide direction to staff regarding trash, recycling and green/organic services for County Facilities to:**
 - a. **Issue Request for Quotation for required services, or**
 - b. **Incorporate County Facilities services as part of the Exclusive Service Area Program Agreements**

Staff's presentation is intended to provide information requested by your Board at the October 27, 2015 and January 26, 2016 Board meetings, where staff presented alternatives and options available for future solid waste management programs and related agreements. The current Exclusive Service Area Program (ESAP) Agreements (Agreements) stipulate that the County will provide, to all ESAP haulers, written notice of how the County intends to proceed with the Unincorporated County of Fresno (UC Fresno) solid waste collection programs by February 26, 2017. The Agreements include a provision that allow the County, at its discretion, to extend the Agreements for ten additional years.

ALTERNATIVE ACTION(S):

The Board may elect not to approve the recommended actions and direct staff to:

1. Continue contract negotiations on specific points and return to your Board, or
2. Extend one or more of the current Agreements for a period of two years, and issue a Request for Quotation (RFQ) for one or more of the 14 ESAP territories.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The work associated with this agenda item is budgeted in the Public Works and Planning - Resources Org 9015 FY 2016-17 Adopted Budget and funded by the County's AB 939 Service Fee.

DISCUSSION:

The County currently has 14 Agreements managed by nine ESAP haulers for residential and commercial solid waste, which are scheduled to expire at midnight on February 26, 2018. The Agreements define and regulate solid waste services available to residents and commercial businesses located in UC Fresno.

On February 24, March 10, March 24, and April 21, 2015, staff presented a series of workshops to the Board that addressed solid waste programs countywide, provided a history of actions taken by the Board, addressed regulatory issues and compliance, and discussed options available to the Board regarding the County's ESAP Agreements prior to termination.

On October 27, 2015, and January 26, 2016, the Board provided direction to address several areas, listed below, during negotiations with ESAP haulers. Since then staff has conducted seven negotiation meetings with a majority of the haulers attending, to address these areas.

- Minor Boundary changes
- Competitive Rates
- Rate reductions and Funding for State-mandated programs
 - Residential rates
 - Commercial rates
 - Organic Service Rates
 - Special Service Fees
 - Funding for County (AB939 Service Fee) to manage State-mandated programs
 - Southeast Regional Surcharge Fees
- Increase Efficiencies
 - Standardization of Special Services by Service Rate Areas (Zone)
 - Standardization of color lids for container for specific services
 - Standardization of labeling for bins
 - Standardization of fees associated with cart replacement
- Clean-up services
 - Clean-up collection for Urban Areas
 - E-Waste
 - Program to address illegal dumping and homeless encampments
- Education and Notices
 - Haulers education programs to subscribers regarding County programs
 - Direct mail addressing ESAP Agreement modifications to approximately 62,000 service points eligible to receive County solid waste services
- Program Oversight
 - Contract compliance
 - Regulatory Compliance
 - Hauler Compliance with reporting requirements
 - Contractual Flow Control
 - Insurance Requirements
 - Audit Requirements
 - Customer/Route Data access
- Program for Non Exclusive Waste Haulers (NEWHA)
 - Development of Agreements and related Ordinance and Permits

- Issuance of RFP/RFQ
 - Board to review negotiated elements, if not acceptable, direct staff to commence the RFP/RFQ process.

The following section provides a summary of elements negotiated. The format is intended to provide the Board with an opportunity to discuss issues previously identified and negotiated points. This affords the Board with the framework to provide staff with direction regarding the County's solid waste programs and related agreements.

To reduce confusion regarding Service Rate Area (SRA) designations by elimination of geographically imprecise references, the Urban SRA will be renamed Zone 1, the Rural with Green Waste SRA will be renamed Zone 2(a), the Rural without Green Waste SRA will be renamed Zone 2(b) and the Mountain SRA will be renamed Zone 3.

Boundary lines changes

Consistent with the foregoing, approximately 38 points of service, which border the Cities of Fresno and Clovis, will be rezoned from Zone 3 to Zone 2(a). Exhibit "A" provides a map depicting locations that were affected.

Competitive Rates

1. Although collection services are currently restricted to a single hauler for each ESAP territory, the County set rates through a competitive process 10 years ago. Staff and its consultant have evaluated UC Fresno solid waste services and rates compared to surrounding communities for trash, recycling and green waste/organic collection services. Exhibit "B" provides a comparison of current ESAP program rates for your review. This analysis shows that UC Fresno has maintained a relatively business friendly rate structure, with commercial rates significantly lower than surrounding areas. Although residential rates are higher for 60- and 90-gallon service, UC Fresno is the only jurisdiction to offer a 30-gallon trash service that includes 90-gallons of recycling and green waste collection. With that service, UC Fresno residents could save \$1.25 per month compared to the City of Fresno lowest cost service. As the State increases recycling and organics requirements, the UC Fresno 30-gallon service is better designed to meet those future requirements. In San Jose, for example, over 80% of the residents subscribe to a similar 30-gallon trash service.
2. All haulers indicated that a major factor in the lower rates in the City of Fresno and Clovis are the mandatory requirements of those programs, which are dissimilar to UC Fresno areas. ESAP haulers have stated that should the Board elect to mandate services for select urban territories, they would be willing to offer a reduction in rates for these areas.
3. Other factors cited by haulers to explain the availability of lower residential rates in neighboring areas include:
 - a. Compared to City of Fresno and Clovis
 - 1) Denser routes - more homes can be picked up in an hour which results in lower costs to service each individual home
 - 2) Lower landfill costs - City of Fresno has arranged significantly lower landfill rates with Fresno County as they have committed to a minimum of 250,000 tons of waste delivered to the American Avenue Disposal Site
 - 3) Lower incidence of bad debt - as a result of mandatory service and inclusion of charges on water bill
 - 4) State law prohibits profits from city services
 - 5) City services do not pay any franchise fee
 - b. Compared to Tulare County
 - 1) Recycling service provided on a biweekly rather than weekly basis (recycling is biweekly for rural areas and Green Waste service is biweekly for rural and foothill areas)
 - 2) Haulers allowed to charge for commercial recycling services
 - 3) Less steep a climb into mountain areas (in Fresno = 11,000 feet)

- 4) More centrally located landfills are available
 - 5) No recycling requirement in mountain areas
 - 6) Include roll-off service as part of exclusive franchise
 - 7) Mandatory service in urban area
4. If Fresno County wishes to have additional market competition through a RFP or RFQ process, the County could redesign its system to adopt some of the practices referenced above and then seek competitive proposals countywide or for specific territories, either on an exclusive or non-exclusive basis.

Maximum Hauler Rates and Funding of Mandated County Programs

1. Customer Monthly Rates: Zone 1, Zone 2(a), and Zone 2(b) haulers will maintain customer monthly rates at current levels. Zone 3 haulers have agreed to reduce the maximum rate tables by 6%, which will match what some Zone 3 haulers are currently charging their customers. All rates will be subject to Consumer Price Index (CPI) increased every July. The CPI will be adjusted by the applicable percentage, which is 75% for Cart Rates and 65% for Bin Rates.
2. Special Service Fees: Haulers will provide special services for fees by Zone, based on a County approved table of rates. All haulers within a zone will charge the same rates for services with a clear description of service, ensuring consistency in application throughout each service area. All rates will be subject to Consumer Price Index (CPI) increases every July. The CPI will be adjusted by the applicable percentage, which is 65% for all Special Service rates.
3. Organics (AB1826): Established a fee for haulers to add organics composting services (service fee = to 60% trash rates + processing fee) for all Zones.
4. Fee Increase for Administration of Mandated County Programs: AB939 Service Fee to be increased from 1% to 3% in the first year and from 3% to 4% in the third year to fund the implementation and administration of State-mandated UC Fresno solid waste, recycling, and composting programs as identified in Exhibit "C". NEWHA Agreements will incorporate a Service Fee separate from the ESAP.
5. Southeast Regional (SER) Surcharge: New rate tables for customers within the SER area will be established to appropriately fund the \$3.50/ton SER surcharge. This will equate to a \$0.20 to \$0.54 per month increase to cart customers and \$1.14 to \$40.95 per month for bin customers, depending on service levels. A map of the SER area is attached as Exhibit "D".

Increased Efficiencies

1. Standardized Special Services by Zones: Establish a Special Service Rate Table by Zone, instead of the existing 14 individualized Special Service Rate tables. This change was proposed by individual haulers and agreed to by the County to provide efficient services at a consistent comparable rate within each Zone.
2. Replacement of Damaged Carts: Haulers will provide one free cart per rolling 12 months to replace carts that were accidentally damaged. Thereafter, hauler may charge \$60 per cart for hauler to provide a replacement cart.
3. Standardization of lid colors for cart services: Haulers agree to use "Blue lids" = recyclables, "Green lids" = green waste and organics, "Gray" or "Black lids" = trash.
4. Standardization of labeling for bins: Haulers agree to use County approved labels on bins so message is consistent throughout all Zones within the County.

Cleanup services

1. Annual Community Cleanup Programs: All haulers will promote and manage their own cleanups for 2 cubic yards (including white goods/e-waste) from their customers, which will be funded by the County's Coupon Program; haulers will accept material from non-subscribers with use of County cleanup coupons; haulers will provide reports to the County on all materials collected. Haulers will use 2006 established rates after County's Coupon Program funding is expended.
2. Free Service for Homeless Encampments and Litter Abatement: Haulers will each provide up to 50 tons per year of roll-off services within their territory, upon request by the County and will report to the County the tons and materials types collected.

Program Oversight

1. Rate Adjustments: Effective date moved to July 1 of every year, with County approvals to be finalized during the month of March; this would coordinate issuance of notices to customers with hauler billing cycles.
2. Contractual Flow-Control: County may require any hauler who does not provide accurate reporting data to haul all controllable waste to a disposal facility specifically designated by the County.
3. Reporting Requirements: Updated to include State-mandated reporting data such as AB341 (Mandatory Commercial Recycling), AB1826 and SB1383 (Mandatory Commercial/Residential Organics). Haulers will provide tonnage data for all schools and state facilities that they serve in UC Fresno (even if not part of the ESAP). Federal Facilities already are included in the ESAP.
4. Scheduled Audits: County will stipulate and clearly define hauler audit requirements for ESAP.
5. Back billing limitations: If a customer receives solid waste collection service without being billed, a hauler may charge for up to three months of service once that customer is identified and noticed. Hauler is required to inform County prior to noticing customer.
6. County Access to Proprietary Customer/Route Data: Data to be maintained in a form acceptable to County, which will be confirmed at the time the County audits the hauler records, and data will be provided to the County, upon request, for emergency termination, or at the end of the term of the Agreement.
7. Changes to State Law: Provisions will be added to Agreements to allow for County to require haulers to implement new local, state and federal regulations as pass-through costs.
8. Revised Insurance Requirements: County staff and Risk Management are amenable to the Haulers' request to modify the Agreement to include somewhat less onerous language based on the Tulare County agreement.

Program exclusive to roll-off services

County is developing Non-Exclusive Solid Waste Hauler Agreements (NEWHA) and related ordinances and permits for management of waste collected by these haulers. ESAP haulers are in concurrence with County's direction, and are willing to execute such agreements and the requisite permits. NEWHA agreements will require payment of a 10% service fee and all of the County's required Surcharge fees.

Education and Outreach

1. Education and Notices: Haulers will provide via direct mail to all County residents who subscribe to services within their specific Zones, notice of the following: changes to services and rates; community clean-up program; and information related to local, state, or federally mandated requirements (e.g., AB341, AB1826, and SB1383). County will be responsible to notice non-subscribing customers of local, state, and federal mandates and compliance with these mandates.
2. County will be responsible for noticing non-subscribing residents of local, state, and federal mandates and compliance with these mandates.

Issuance of RFP/RFQ

If the Board directs staff to issue an RFP/RFQ for one or more of the 14 territories, the requested two year extension will allow for staff to begin the RFQ process, which includes, but is not limited to, multiple meetings with haulers, stakeholders, regulatory staff, and other County departments. Also required is the drafting of the Request for Proposals or Quotations, the evaluation process, contract development, negotiation, and selection of one or more firms through your Board approval process.

County Facilities

Currently there are no written agreements that address service levels, quality of service, rate structure and payment schedule, and/or reporting requirements for County Facilities (Facilities). County Purchasing has been working on issuing an RFQ process to secure services for trash, recycling, and green waste/organic services for all County owned Facilities.

At the September 29, 2016 negotiation meeting several ESAP haulers noted that trash services for the various Facilities were allocated after the ESAP Agreements were executed. The haulers stated that the arrangements for assignment of Facility accounts were made with County staff, consistent with the Board's direction during the establishment of the ESAP program, regarding the drawing of exclusive service area boundaries. Throughout the initial process, staff had made an effort, as directed by the Board at the outset, to work with the haulers to maintain a rough equivalency in the approximate number of accounts as each hauler had prior to the implementation of the County's ESAP.

Haulers are requesting that the County incorporate Facilities into the ESAP Agreements and allow current haulers to continue to provide the services that are within the scope of the ESAP Agreements, and cease work on the RFQ. Haulers indicated that they are willing to provide Facilities service based on the terms, rates, and conditions stipulated in the ESAP Agreements. Any waste hauling services that fall outside the scope of the ESAP Agreements (greater than 10 cubic yards) would still go through the RFQ process.

REFERENCE MATERIAL:

BAI # 23, February 24, 2015
BAI # 15, March 10, 2015
BAI # 18, March 24, 2015
BAI # 19, April 21, 2015
BAI # 8, October 27, 2015
BAI # 14, January 26, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibits A - D

CAO ANALYST:

John Hays