



Legislation Text

File #: 15-0632, **Version:** 1

Community Development Agency, Environmental Management Division, recommending the Board consider the following:

1) Adopt and authorize the Chair to sign Resolution **143-2015** consenting to the assignment of, and authorizing the approval of consolidation of, the Sierra Disposal Service franchise service area and previously approved rate schedule into the El Dorado Disposal Service Franchise Agreement; approving the Second Amendment to the El Dorado Disposal Service Franchise Agreement; terminating the existing Franchise Agreement between the County and Sierra Disposal Service; and establishing the franchise transfer fee in an amount not to exceed \$35,000 to cover all direct and administrative expenses of County, including consultant and attorney fees, associated with the transfer of the Sierra Disposal Service Franchise Agreement to El Dorado Disposal Service; and 2) Authorize the Chair to sign the Second Amendment to the El Dorado Disposal Service Franchise Agreement incorporating the Sierra Disposal Service franchise area (designated as Area C). (Est. Time: 30 Min.)

FUNDING: Garbage Franchise Fees. (No Federal Funding)

DEPARTMENT RECOMMENDATION

Staff has analyzed the conditions set forth in Section 12, *Franchise Transferable/Consent Required*, of the Sierra Disposal Service (SDS) Franchise Agreement and finds that Waste Connections of California, Inc., doing business as El Dorado Disposal Service (EDDS) has satisfied all the conditions of Section 12 of the SDS Franchise Agreement. Staff recommends the Board of Supervisors (Board) adopt Resolution **143-2015 (Attachment B)** consenting to the assignment of SDS to EDDS and approve the consolidation of the SDS franchise service area (designated as Area C) into the EDDS Franchise Agreement and the corresponding Second Amendment to the EDDS Franchise Agreement (**Attachment C**), in order for customers in the SDS franchise service area to receive a higher level of service with no change to the rate schedule previously approved by the Board. Incorporating the SDS franchise service area into the EDDS Franchise Agreement will make the SDS Franchise Agreement unnecessary and therefore should be terminated by the Board. Staff further recommends the Board approve recovery of the County's costs associated with the sale and transfer of SDS to EDDS as allowed under Section 13, *Franchise Transfer Fees*, of the SDS Franchise Agreement.

Reason for Recommendation

Consent to Assignment

On May 12, 2015, the Community Development Agency, Environmental Management Division (EMD) received written notice (**Attachment D**) from SDS and EDDS indicating that SDS recently agreed to sell its hauling assets to EDDS and requested the County consent to the transfer of the SDS Franchise Agreement between the County of El Dorado and SDS, dated December 2, 2014.

The assignment of the SDS Franchise Agreement is contemplated and allowable under the terms and conditions of the agreement. Pursuant to the requirements of Section 12, *Franchise Transferable/Consent Required*, of the SDS Franchise Agreement, the written consent of the Board is

required, expressed by Resolution, prior to the transfer, sale, or assignment of the Franchise Agreement, which may be denied or approved by the County in its sole and absolute discretion.

Section 12 of the SDS Franchise Agreement contains several conditions that must be satisfied prior to the County's decision to approve or deny the request to assign the Franchise Agreement to EDDS. These conditions include, but are not limited to:

- Analysis of Waste Connections/EDDS' financial statements for the preceding five (5) years;
- Satisfactory proof that Waste Connections has at least seven (7) years of mixed solid waste experience on a scale equal to or exceeding the scale of operations conducted by SDS and has operated in a manner consistent with its contractual obligations to other municipalities which it serves in respect to AB 939 (Legislation requiring diversion of solid waste from landfilling);
- Satisfactory proof that in the last seven (7) years, Waste Connections has maintained its waste management operations in a manner satisfactory to other municipalities in which it operates and in compliance with applicable law and regulations;
- A copy of any and all purchase and assignment agreements containing, at a minimum, the terms and conditions of the sale, transfer, or assignment of the SDS Franchise Agreement;
- Any other information required by the County to ensure that EDDS can fully assume and satisfactorily perform all of SDS' obligations under the SDS Franchise Agreement in a timely, safe, and effective manner.

On June 16, 2015 (Item No. 37), EMD requested the Board to direct staff to analyze the request from SDS and EDDS to consent to the assignment of the SDS Franchise Agreement to EDDS and return to the Board with a recommendation. EMD enlisted the assistance of Crowe Horwath, LLP, the County's solid waste Consultant, and completed an analysis pursuant to the conditions set forth in Section 12 of the SDS Franchise Agreement. A summary report by Crowe Horwath is included in this transmittal (**Attachment E**).

Based upon the findings of Crowe Horwath and staff's analysis, EDDS has satisfied all the conditions of Section 12 of the SDS Franchise Agreement. EMD therefore recommends the Board consent to the assignment of the SDS Franchise Agreement to EDDS.

Benefits of Consolidation and Termination of SDS Franchise Agreement

If the Board approves consolidation of the SDS franchise service area into the EDDS Franchise Agreement, customers in the SDS service area, at no additional charge, will be provided additional services not currently offered by SDS including:

- Customers will have a choice of contractor provided cart sizes of 35, 64, or 96-gallons for solid waste; and 64 or 96-gallon for recyclables. Carts will be provided to all SDS service area customers by February 28, 2016. (The current SDS Franchise Agreement only provides recycle carts.)
- Customers in "Group Areas" will have the option of a 35 gallon recycling cart upon request.
- Annual vouchers for free disposal of up to two and one-half (2.5) cubic yards of solid waste and green waste (one each) at the Material Recovery Facility (MRF) located in Diamond Springs, CA.
- Annual voucher for the curbside pickup of used paint cans (in addition to the curbside pickup of fluorescent tubes and bulbs and electronic waste currently offered by SDS).
- Curbside unlimited green waste pickup to be scheduled during peak green waste seasons in

both Spring and Fall.

- Commercial customers will have the option of requesting free recycling carts if the business does not need or want large commercial container service.
- Increased economies of scale for EDD/SDS operations and administration, including consolidation of accounting, annual reporting, and elimination of SDS specific external financial audits thereby providing significant savings to the smaller SDS customer base.
- The County also will benefit from a single consolidated agreement and will realize efficiencies through a streamlined process (e.g., single rate application, Board preparation and presentation) as opposed to two separate agreements and associated items.

The aforementioned additional services are consistent with the strategies detailed in the County's Solid Waste Management Plan (SWMP) and will further assist the County in achieving its seventy-five percent (75%) diversion goal by the year 2020.

On December 10, 2013, the Board adopted Resolution 186-2013 approving the rate schedule for the SDS franchise area for the 2014 calendar year. As a result of Franchise Agreement negotiations with SDS that took place in 2014, SDS agreed to freeze rates under the new Franchise Agreement for 2015. The current SDS rate schedule will be incorporated into the amended EDDS Franchise Agreement corresponding to the services provided in the SDS service area. There will not be a rate adjustment for the aforementioned additional services. A table of residential rates for unincorporated franchise areas on the West Slope is provided for comparison purposes (**Attachment F**). By consolidation of the SDS franchise area into the EDDS Franchise Agreement, rates will be adjusted in the future in accordance with the Board approved Rate Setting Policies and Procedures Manual. EDDS rates for the SDS franchise area (designated as Area C) will be adjusted in interim years by the established formula of 85% of the Garbage and Trash Price Index and allowable pass through increases in disposal costs. The next base year rate setting will not take place until 2018.

Consolidation of the SDS franchise service area into the EDDS Franchise Agreement negates the need to maintain a separate and distinct SDS Franchise Agreement. If the Board approves the consolidation, the SDS Franchise Agreement would become null and void upon the Board's adoption of Resolution **143-2015**. The terms and conditions of the current EDDS Franchise Agreement would be applicable and enforceable with respect to SDS, designated as Franchise Area C. The SDS franchise area will assume the contract Term of the EDDS Franchise Agreement, which is five (5) years with an automatic ten (year) extension upon completion of construction of a new MRF by 2019, resulting in contract expiration in the year 2029.

Staff has not identified any negative impacts regarding the proposed franchise consolidation. Therefore, staff recommends approval of the consolidation of the SDS franchise area into the EDDS Franchise Agreement, the Second Amendment to the EDDS Franchise Agreement, and the termination of the existing SDS Franchise Agreement.

Cost Recovery for the Sale and Transfer of the SDS Franchise Agreement to EDDS

The current SDS Franchise Agreement provides for the County to recover its expenses in the event that SDS sells or transfers the exclusive franchise granted by the County of El Dorado to SDS. Section 13, *Franchise Transfer Fees*, allows the County to recover all direct and indirect administrative expenses to adequately analyze the transfer of the Franchise Agreement, including staff time, consultant and attorney fees, and reimburse the County up to \$35,000. The request for

reimbursement shall be supported with evidence of the expenses incurred.

Staff recommends the Board authorize staff to recover from SDS all direct and indirect expenses incurred as a result of the transfer of the SDS Franchise Agreement to EDDS.

DISCUSSION / BACKGROUND

On May 8, 2012 (Item No. 11), EMD brought forth an agenda item requesting the Board consider whether the County should enter into the competitive bid process for the collection and disposal of municipal solid waste and recyclable materials generated by residential, commercial, and industrial customers within all Franchise Areas in the County, with the exception of South Lake Tahoe (the Board previously approved a new agreement with South Tahoe Refuse on May 1, 2012, Item No. 11), or enter into negotiations with the current Franchisees: EDDS, Amador Disposal Service, SDS, American River Disposal Service, and Tahoe Truckee Sierra Disposal. The purpose of the negotiations was to generate new Solid Waste Service (Franchise) Agreements that incorporate new standardized solid waste rate setting policies and procedures and the El Dorado County SWMP. The Board provided direction to staff to engage in good faith negotiations with the existing Franchisees, and return to the Board with proposed new Franchise Agreements for discussion and consideration.

A new Franchise Agreement for EDDS was presented to the Board on October 21, 2014, and approved (Item No. 32). A new Franchise Agreement for SDS was presented to the Board on December 2, 2014, and approved (Item No. 28).

The EDDS franchise generally encompasses the central portion of the West Slope of the County along the Highway 50 corridor, from just east of Pollock Pines to the western boundary of the county, and includes the communities Pollock Pines, Camino, Diamond Springs, Shingle Springs, Rescue and Latrobe. The EDDS franchise does not include the City of Placerville or the Cameron Park and El Dorado Hills Community Service Districts as these areas have entered into their own Franchise Agreements with EDDS.

The SDS franchise generally encompasses the northern portion of the County on the West Slope, including the communities of Coloma, Cool and Georgetown. There are approximately 4,950 residential customers and 250 commercial customers within the SDS franchise service area.

ALTERNATIVES

The Board may consent to the transfer of the SDS Franchise Agreement to EDDS but not allow the consolidation of the SDS franchise area into the EDDS Franchise Agreement, and maintain the SDS franchise as a separate agreement. EDDS would assume the terms and conditions of the current Board approved SDS Franchise Agreement. In that regard, staff has prepared for Board's adoption an alternative Resolution **143-2015 (Attachment G)** consenting to the assignment of the SDS Franchise Agreement to EDDS; and for the Board to authorize the Chair to sign the Agreement for Assignment of Solid Waste Services Agreement from SDS to EDDS (**Attachment H**).

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION

CAO recommending the Board move staff's recommendations.

FINANCIAL IMPACT

There is no fiscal impact.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) Obtain the Board Chair's signature on the Resolution consenting to the assignment of, and authorizing the approval of consolidation of the Sierra Disposal Service franchise service area and previously approved rate schedule into the El Dorado Disposal Service Franchise Agreement, and forward a copy to EMD; and
- 2) Obtain the Board Chair's signature on two originals of the Second Amendment to the El Dorado Disposal Service Franchise Agreement, and forward one original to EMD for distribution.

STRATEGIC PLAN COMPONENT

N/A

CONTACT

Greg Stanton, REHS, Director
Environmental Management Division
Community Development Agency