



## Legislation Text

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**File #:** 2020-0002, **Version:** 1

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**To:** Board of Supervisors

**Department or Agency Name(s):** Transportation and Public Works

**Staff Name and Phone Number:** Johannes J. Hoevertsz 707-565-2231

**Vote Requirement:** Majority

**Supervisorial District(s):** All

**Title:**

Regional Solid Waste Planning

**Recommended Action:**

Authorize the Chair to execute the Amended and Restated Agreement for Operations of the Central Landfill and County Transfer Stations, also known as Master Operations Agreement (MOA), between County of Sonoma (County) and Republic Services of Sonoma County, Inc. (Republic Services) and a letter agreement settling the County's concession fee dispute with Republic Services.

**Executive Summary:**

The Department of Transportation and Public Works (TPW) is recommending the Board approve an amendment to the MOA. The recommended amendment will limit the exception to Republic Service's obligation to make concession payments to the County and the Committed Cities for special waste, ensure the County's discretion to review permit modifications in the event of a large-scale disaster, settle the concession fee dispute related to 2017 wildfire debris, reinstate County control over the Hammell Road Mitigation Area, create an exemption for County concession payments as to uncommitted Construction and Demolition materials, give the Waste Management Agency the ability to license space at the Central Transfer Station for the purpose of accepting green waste, allow Republic to use the sedimentation pond at the Guerneville Transfer Station, require compliance with the Living Wage Ordinance, clarify certain administrative provisions to support rate review and adjustment processes, and make miscellaneous clerical corrections.

**Discussion:**

The original MOA was the result of a three-year County-City Solid Waste Advisory Group (SWAG) collaborative process between the Cities, the County, and a diverse group of public stakeholders. The public process was initiated by the Board of Supervisors in December 2009 to establish consensus regarding the County's long-term solid waste and recycling strategy. The provisions of the MOA were carefully crafted to accomplish fundamental goals to create a system that provided:

1. Increased diversion; decreased landfill disposal.
2. Public ownership for "local control;" private operations for "economic efficiencies"
3. No pre-set volume (put-or-pay) disposal commitments which supports increased diversion and local flexibility

4. Long term liability relief for closure, post-closure, and unforeseen environmental liabilities at the Central Landfill site
5. A sustainable rate model that works with high levels of waste diversion
6. In-county landfill to end reliance on outhaul export of Sonoma County trash
7. Quantifiable greenhouse gas (GHG) reductions
8. Ongoing funding for education, household hazardous waste, and other programs
9. Ongoing funding source for closed county landfill sites

Effective April 1, 2015, all Sonoma County cities, with the exception of Petaluma, approved the Waste Delivery Agreements and entered into a Landfill Settlement Agreement with the County, which dictates how concession payments under the MOA were appropriated for four of the seven County owned closed landfills. The eight cities are referred to as the “Committed Cities,” as they have committed their waste streams to Republic Services for a 25-year term. On April 1, 2015, the MOA became effective, and Republic Services began operating the County’s solid waste facilities. The Board of Supervisors later approved the First and Second Amendments to the MOA on March 3, 2015 and March 1, 2016, respectively. These prior Amendments to the MOA responded to then newly-established flow commitments from the cities, and to various changed conditions, such as the termination of the County’s agreement with Sonoma Garbage Collector to provide Reuse and Recycling Operations at the Sonoma Transfer Station.

#### Special Waste Exemption from Concession Fees:

Following the October 2017 wildfires, approximately 917,000 tons of fire debris waste was received at the Central Disposal Site, representing 3 years of normal tonnage entering the facility, and consuming approximately 1.5 years of site life (airspace). Concession fees, which are normally paid to the County on all waste that enters the facility to fund liabilities associated with the closed urban landfills, were not paid on the wildfire debris as they were deemed “special waste” and therefore exempt from fees. Under the terms of the proposed amendment to the MOA, the first 35,000 tons per year of “special waste” may enter the Central Landfill exempt from concession fees. This provides assurance to the County that large-scale debris flows will not consume valuable air space unless associated concession fees are paid. Related changes to the MOA clarify the County’s discretion to limit permit modifications that would significantly and suddenly reduce site life following the occurrence of a catastrophic event.

#### Settlement of Concession Fee Dispute:

As a condition of Republic’s willingness to provide the above-described procedural protections that support the County’s ability to manage the site life implications of large-scale disaster events while also ensuring concession fees are paid on catastrophic debris flows, Republic requests the County agree to settle the outstanding dispute regarding the concession fees not paid on the 2017 wildfire debris. County Counsel recommends the Board approve the requested settlement, consisting of the attached letter agreement.

#### Hammell Road Site:

The Sonoma County Department of Transportation and Public Works is working with Permit Sonoma's Natural Resources Section to develop a wetland and sensitive species mitigation area at the properties located at 403 Meham Road and at the nearby 37.7 acre property located adjacent to the Central Landfill off of Hammell Road, which is an existing mitigation site (Hammell Road Site). The purpose of this project is to create a bank of credits to utilize for future projects in the County's interest. The existing MOA includes the Hammell Road Site as part of Republic's potential operational footprint, but Republic does not need the location for any existing or anticipated operations. Since the Hammell Road Site still has additional development potential for mitigation credits, it is in the County's interest to terminate Republic's access to and responsibility for this land. The proposed MOA amendment accomplishes this by omitting the legal description for the Hammell Road site from the definition of the "Landfill Land" under Republic's control.

#### Changes to Construction and Demolition Concession Fees:

Under the existing MOA, Construction and Demolition (C&D) delivered to the County's Facilities on an open market basis, e.g. uncommitted C&D, is exempt from the Contingent Special Concession Payment. However, Republic has been collecting the County Concession Fee and the Sonoma County Waste Management Agency Fee on these materials because the MOA doesn't clearly provide for an exemption. Republic has urged that this was a drafting error, as evidenced by language in the County's Settlement Agreements with Committed Cities and the Committed Cities' Waste Delivery agreements which suggests that concession fees were to be imposed only on committed C&D. Consistent with the intent of these companion agreements, Republic has requested that the County agree to a new exemption from the County Concession Fee as to open market C&D deliveries to County Facilities ("Exempt C&D"). This exemption, if approved, will result in a loss of County Concession Fee revenue of approximately \$50,000 - \$70,000 per year, based on average volumes from 2019. Staff are persuaded that this new exemption is consistent with the intent of the Settlement Agreement and the Waste Delivery Agreements, and we recommend the Board approve this exemption as part of this negotiated package. Republic will continue to collect the Sonoma County Waste Management Agency fee on Exempt C&D.

To ensure that residuals from Exempt C&D are not deposited in the landfill without payment of County Concession fees, language has been added to the MOA in order to clarify that residual tonnage (waste left over after the processing for separating recyclables) generated from uncommitted Construction and Demolition material processed at County Facilities will be charged the Base Concession Fee and the Contingent Special Concession Fee. Due to operational constraints, Exempt C&D is comingled with all other C&D before processing at the Central Facility. As a result, actual residual volumes for Exempt C&D cannot be separately measured for the purposes of calculating the fees due. Thus, the County and Republic will, on an annual basis, set the fee due from Republic based on the diversion rate achieved by Republic for all C&D material delivered to County Facilities to over the prior 12-month period. For example, for the July 1, 2020 - March 31, 2021 period, Republic will pay the concession fee on 50% of all Exempt C&D received, as that is the diversion rate achieved for the July 1, 2019-June 30, 2020 period. This percentage will vary from year to year based on MRF diversion reports for the prior calendar year. All concession fees are due to the County on a quarterly basis.

#### Green Waste

In order to reduce hauling costs and associated greenhouse gas emissions with the current operation along

with reducing traffic and wait times at the outer transfer stations the County has requested that Republic license space at the Central Transfer Station to the Sonoma County Waste Management Agency (Zero Waste Sonoma) for acceptance of Green Waste. Because this condition was not contemplated by the original MOA, Republic is requesting a reasonable fee for use of the space, which will be negotiated by the parties and paid through the tip fee. If license terms can be negotiated between the County, Sonoma Zero Waste, and Republic Services, the tip fee will be reduced by at least \$1 per ton and above-described burdens at the Healdsburg and Sonoma Transfer stations will be reduced, if not eliminated. Further, such action would provide additional convenience to customers at the Central Disposal site.

Allowance for Use of Sedimentation Pond at the Guerneville Transfer Station:

Based on a request by Republic Services, the proposed MOA Amendment gives Republic access to the sedimentation pond at the Guerneville Transfer Station. Such allowance will assist Republic in complying with existing storm water regulations and with its settlement of a certain lawsuit known as *California Sport Fishing Protection Alliance v. Republic Services of Sonoma County*. As a condition of the County's willingness to surrender access to the sedimentation pond to Republic, Republic will reimburse the County for its actual costs, including staff time, to improve the existing down drain that runs adjacent to the sedimentation pond as may be necessary to ensure separation of surface waters from the Closed Landfill from any flows emanating from the Guerneville Transfer Station.

Living Wage Ordinance:

Because the MOA pre-dates the July 1, 2016 effective date of the County's Living Wage Ordinance, it has been exempt. However, any contract that is amended on or after July 1, 2016 is subject to the terms of the ordinance. Thus, the Amended and Restated MOA requires Republic Services to comply with the Living Wage Ordinance.

Miscellaneous:

Other updates to the MOA include the addition of needed definitions and clarifications regarding the process for annual reconciliation of government fees collected through the gate rate.

**Prior Board Actions:**

03/01/16: Board approved the Second Amendment to the MOA.

03/03/15: Board approved the First Amendment to the MOA, the Landfill Settlement Agreement between the County and the Cities, the Limited Term Indemnity Agreement with Republic Services Related to Composting Operations, and the Joint Defense and Indemnity Agreement with Sonoma County Waste Management Agency;

9/17/13: Board approved the Second Amendment to the Services Agreement for Reuse and Recycling Operations at the Sonoma Transfer Station ("Agreement") with SGC.

4/23/13: Board approved the MOA with Republic.

10/26/10: Board approved developing regional long-term solid waste options.

9/21/10: Board approved the First Amendment to the Agreement with SGC.

9/27/05: Board approved the Agreement with SGC. 10/26/10: Board approved developing regional long-term solid waste options.

9/21/10: Board approved the First Amendment to the Agreement with SGC.

9/27/05: Board approved the Agreement with SGC.

12/8/09: Board approved and authorized relate of the Request for Proposals (RFP) for Short-Term Transfer Station Operations, Transportation and Disposal Services.

#### **FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY 20-21 Adopted</b>	<b>FY21-22 Projected</b>	<b>FY 22-23 Projected</b>
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>			

#### **Narrative Explanation of Fiscal Impacts:**

Funding sources for the administration of the MOA and maintenance of the four Closed Urban Landfills, Roblar, Sonoma, Airport, and Healdsburg Closed Landfills, are generated from Concession fees collected on municipal solid waste that is disposed of at the County owned landfill or transfer stations on a per ton basis. Anticipated revenues for Fiscal Year 19-20 are \$1,054,310.69 to cover administration costs and \$2,460,058.28 for maintenance expenses. The approval of this Amended and Restated Agreement provides additional assurance these revenues will be fully received in the future. There is no financial impact to the General Fund.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>

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**Narrative Explanation of Staffing Impacts (If Required):**

None

**Attachments:**

Letter Agreement with Republic Services

**Related Items "On File" with the Clerk of the Board:**

Amended and Restated Agreement for Operations of the Central Landfill and County Transfer Stations