Agenda Item Number: 39  
(This Section for use by Clerk of the Board Only.)

<table>
<thead>
<tr>
<th>County of Sonoma</th>
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<tbody>
<tr>
<td>Agenda Item</td>
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<tr>
<td>Summary Report</td>
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</table>

Clerk of the Board  
575 Administration Drive  
Santa Rosa, CA 95403

To:  
Board of Supervisors

Board Agenda Date:  
March 3, 2015

Vote Requirement:  
Majority

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

Staff Name and Phone Number:  
Susan R. Klassen, 707-565-2231

Supervisiorial District(s):  
All Supervisiorial Districts

Title:  
Regional Solid Waste Planning

Recommended Actions:

Adopt Resolution authorizing the Chair to execute (1) the First Amendment to the Master Operations Agreement (MOA) for long-term development, operation and maintenance of County Solid Waste Facilities, (2) the Landfill Settlement Agreement between the County and the Cities, (3) the Limited Term Indemnity Agreement with Republic Services Related to Composting Operations, and (4) the Joint Defense and Indemnity Agreement with Sonoma County Waste Management Agency; and delegating authority to the Director of Transportation and Public Works and staff to take further actions as necessary to meet the conditions precedent to the effectiveness of the MOA.

Executive Summary:

Staff is recommending the approval of (1) the First Amendment to the Master Operations Agreement for the Operation of the Central Landfill and County Transfer Stations (MOSA) with Republic Services of Sonoma County, Inc. (Republic) approved by the Board on April 23, 2013; (2) the Landfill Settlement Agreement between the County and the Cities, (3) the Limited Term Indemnity Agreement with Republic Services Related to Composting Operations, and (4) the Joint Defense and Indemnity Agreement with Sonoma County Waste Management Agency. In addition, staff is requesting that the Board delegate authority to the Director of Transportation and Public Works and staff to take further actions as necessary to meet the conditions precedent to the effectiveness of the MOA.

Brief History of the MOA Process:

The MOA is the product of the 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 launched by the Board of Supervisors in December 2009 to build consensus regarding Sonoma 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 provides:

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 — 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

On June 12, 2012, based upon the recommendation of the SWAG, the Board directed County staff to negotiate with existing contractors at the Central Landfill and Transfer Stations to develop a long-term operations agreement that would meet both the SWAG’s goals for diversion, cost efficiency and local control as well as address our regional unfunded solid waste liabilities. The long-term operations agreement has the current contractors providing solid waste handling services to the County pursuant to Public Resources Code section 40059.

Benefits from the private sector:  
1. Funding of $119 million in infrastructure development  
2. Closure and post closure maintenance costs  
3. Liability indemnification in perpetuity for the Cities and the County  
4. Construction of a Material Recovery Facility (MRF) within the tipping building, contingent on further permitting  
5. Guaranteed diversion commitment  
6. Overall economic efficiencies

Benefits from the public sector:  
1. The County retains ownership of all infrastructure and property for long term flexibility  
2. Public enforcement of ongoing contract compliance  
3. Public oversight of County owned infrastructure  
4. Long term stable and predictable rate structure with public oversight  
5. Opportunity to introduce new programs or future technology

The MOA is one of three agreements that work together in order to achieve the SWAG’s goals. The other two agreements are the waste commitment agreements between each city and Republic and a landfill settlement agreement between the County and the cities to resolve the unfunded landfill liabilities associated with the County’s solid waste system.

After the MOA was approved by the Board on April 23, 2013, Republic and the Cities spent approximately 12 months negotiating the terms and conditions of the proposed waste delivery agreements. During this same time, the cities and the County negotiated the terms and conditions of the proposed landfill settlement agreement. There was also a CEQA lawsuit filed against the approval of the MOA which was settled last June. In addition, in August 2014, a Clean Water Act lawsuit was filed against the County, the Sonoma County Waste Management Agency (Waste Management Agency) and
Sonoma Compost Company concerning alleged violations due to the composting operations at the Central Landfill site.

All of the cities, with the exception of Petaluma, have approved the waste delivery agreements and the landfill settlement agreement. The 8 cities are referred to as the “Committed Cities” since they have agreed to commit their waste streams to Republic for a 25 year term.

Since August 2014, County staff has been working with Republic and the Waste Management Agency to address Republic’s concerns about the impact of the Clean Water Act lawsuit on Republic so that Republic is willing to effectuate the MOA. The parties have figured out a way to move the MOA forward by entering into certain indemnity agreements that are described below.

There are four agreements that are before the Board for approval which are necessary to move the MOA forward and transfer operations to Republic. The four agreements are:

1. MOA Amendment;
2. Landfill Settlement Agreement;
3. Limited Term Indemnity Agreement with Republic; and

**MOA Amendment:**

The substantive changes to the MOA reflected in the First Amendment include:

- Changes to the waste commitment period from 20 years to 25 years consistent with the waste delivery agreements executed by the cities.
- After the initial 25 year waste commitment term, Republic has agreed to provide transfer station and transportation services for the County and Cities committee waste at market rates.
- Adding a County owned Ford F150 vehicle to the list of personal property that will be transferred to Republic.
- Clarifying that County committed waste includes materials from the Graton Casino pursuant to the Intergovernmental Mitigation Agreement between the County and the Federated Indians of Graton Rancheria dated October 23, 2012.
- The County Concession Payment Schedule has been finalized which is reflected in the proposed gate rates below (See Amended Exhibit R attached to the MOA Amendment for further details):

<table>
<thead>
<tr>
<th>Total Initial Gate Rate on Committed City Waste:</th>
<th>$126.45</th>
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</thead>
<tbody>
<tr>
<td>Total Initial Gate Rate on Committed County Waste &amp; Self Haul</td>
<td>$122.45</td>
</tr>
</tbody>
</table>

Rate Components:

- Initial Contractor Service Fee (on all waste): $104.35
- Initial Governmental Fee Component (on all waste): $7.85
  (Consists of the following fees detailed below)
- Waste Management Agency Fee: $4.85
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>AB 1220 Fee (State Board of Equalization):</td>
<td>$1.40</td>
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<tr>
<td>Sonoma Local Enforcement Agency (LEA) Fee:</td>
<td>$0.91</td>
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<tr>
<td>Regional Water Board Fees:</td>
<td>$0.57</td>
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<tr>
<td>Bay Air Quality Air Districts:</td>
<td>$0.12</td>
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<tr>
<td>County Concession Payment (on all waste):</td>
<td>$9.25</td>
</tr>
<tr>
<td>Committed Cities Contingent Liability Fee (on Committed City Waste only)</td>
<td>$5.00</td>
</tr>
<tr>
<td>Special Concession Payment (on Committed County Waste &amp; Self-Haul Waste only)</td>
<td>$1.00</td>
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</tbody>
</table>

The above disposal rate structure is projected to impact unincorporated curbside waste collection rates by approximately 2.2%. In addition there will be a rate impact from the application of these concession payments and fees onto the green and wood waste tipping fees. There will be an additional increase to wood and yard waste fees which is expected to be determined by the SCWMA at their March 2015 meeting, to generate the funding needed for Joint Defense and Indemnity and Agreement between the County and the SCWMA described below. At this time that rate has not been determined by the SCWMA therefore the impact is unknown.

Staff will return to the Board on April 7, 2015, with an action that will incorporate the revised curbside collection rates in the Amended and Restated Solid Waste Collection Franchise Agreement By and Between the County of Sonoma and Redwood Empire Disposal dated Oct. 19, 2010 and the Solid Waste Collection Franchise Agreement By and Between the County of Sonoma and Sonoma Garbage Collectors dated July 13, 2010.

Staff is also requesting the Board delegate authority to the Director of Transportation and Public Works Department to take any necessary action to facilitate the effectuation of the MOA in order to transfer operations and liabilities to Republic Services. Such delegated authority may include: amending, assigning or terminating existing County service contracts so that the County does not pay for duplicative services once Republic takes over operation; terminating the Sunrise Garbage Lease at the Guerneville Transfer Station (per Section 12.3.2 H of the MOA); executing certificates related to the MOA including a bill of sale for the personal property that will be transferring to Republic; transferring permits related to the operations; entering into agreements with Republic concerning the transition of utilities at various transfer stations (per Section 12.3.3 B (1) of the MOA); and other matters related to the overall long term transfer of the operations to Republic.

**Central Disposal Site and Former Landfills Settlement Agreement (Settlement Agreement)**

The Settlement Agreement is intended to settle any potential liability that the Committed Cities may have for disposal of their solid waste to the Central Landfill and/or the Former Urban Landfills owned by the County (Airport, Healdsburg, Roblar, and Sonoma closed landfills). Under the Settlement Agreement, the County and the Committed Cities have agreed to apply the Concession Payments from Republic under the MOA to cover the ongoing costs of the Former Urban Landfills for the next 30 years. The County also agrees that it will allocate 70% of the County Concession Fee collected under the MOA and hold in trust the Healdsburg Leak Fund of $2,567,504 and the Sonoma Leak Fund of $2,170,837 creating
a fund to cover the costs of closure and post-closure maintenance for the Former Urban Landfills. Thirty percent (30%) of the County Concession Fee shall be allocated for the County’s actual Administrative Costs which are defined in the agreement for oversight of the MOA and the collection and reporting of the various funds.

Under the Settlement Agreement, the County agrees to release and indemnify the Committed Cities for any potential liability in connection with the former Rural Landfills owned by the County (Annapolis, Occidental and Guerneville closed landfills) and will assume all costs of post-closure maintenance for those three sites.

As part of the Settlement Agreement, the Committed Cities have requested, and the County and Republic have agreed, to collect an initial $5.00/ton “Committed Cities Contingent Liability Fee” on committed city waste as part of the Gate Fees. Fees collected are allocated to each Committed City based on solid waste tonnage delivered from its jurisdiction. The County will hold, administer and report on the funds at no cost to the Cities. Funds are to be used solely to cover the contingent liabilities or associated costs for the benefit of the ratepayers.

A more complete executive summary of the terms of the Landfill Settlement Agreement is attached.

**Limited Indemnity Agreement with Republic for Composting Operations**

Republic has been unwilling to effectuate the MOA without sufficient protection from potential liabilities associated with the composting operations at the Central Disposal Site. Since approval of the MOA, the County has received a letter from the Regional Water Quality Control Board, dated March 18, 2014, threatening fines if the compost operations did not achieve zero discharge of compost waste water by October 1, 2014. In addition, on June 17, 2014, the County received a 60-day notice letter from Renewed Efforts Neighbors Against Landfill Expansion threatening to file a Clean Water Act lawsuit against the County, Sonoma County Waste Management Agency and Sonoma Compost Company for alleged violations of the Clean Water Act stemming from the Agency and Sonoma Compost Company's compost operations. On August 21, 2014, RENALE filed a Clean Water Act lawsuit against the County, the Agency and Sonoma Compost.

Although the MOA already includes a liability “carve out” in favor of Republic for any liabilities due to third party operations at the Central Landfill, Republic was concerned that the provisions were not detailed enough given the recent Clean Water Act lawsuit filed in connection with the composting operations, as well as the recent letters from the Regional Water Quality Control Board threatening fines and penalties if compost operations did not achieve zero discharge. County staff however was unwilling to renegotiate the environmental liability provisions in the MOA. As a compromise, County staff and Republic have negotiated a Limited Term Indemnity Agreement that provides Republic with more protections while the compost operations continue at the current location within the Central Landfill. The additional protections offered by the County to Republic will expire once the Clean Water Act lawsuit is resolved. To the extent there are any costs incurred by the County under the Limited Term Indemnity Agreement with Republic, those costs will be covered by the Waste Management Agency under the proposed Joint Defense and Indemnity Agreement (discussed below).

**Joint Defense and Indemnity Agreement with Sonoma County Waste Management Agency**

Revision No. 20140617-1
The proposed indemnity agreement with the Waste Management Agency protects the County from the liabilities associated with the composting program at the Central Landfill. The Indemnity Agreement provides a backstop for the County so that the County can in turn enter into the Limited Term Indemnity Agreement with Republic. Under the proposed Joint Defense and Indemnity Agreement with the Agency, the Agency agrees to:

- Indemnify the County for liabilities associated with the RENALE Clean Water Act Lawsuit;
- Deposit $5 million in funds in an escrow account over a 2-year period, for the County to access to cover County costs associated with the compost liabilities;
- Build a second compost detention pond at the landfill by October 2015 in order for the composting operations to meet zero discharge requirements;
- In the event the second pond is not completed by October 2015, the Agency agrees to terminate the license agreement with the County and out-haul all yard and wood waste materials to other composting sites.

The proposed agreement with the Waste Management Agency is being driven by the Agency’s request to the County to support the Agency’s decision to maintain a local composting program to the extent possible. The Agency has stated that it does not want to have to outhaul the yard and wood waste because it would be costly, estimated at approximately $5,000,000 between now and February, 2017, as well as increase greenhouse gas impacts due to the truck hauling. In addition there is the loss of the compost business and their compost products to the community. County staff believes that the Agency’s decision may actually cost more than $5,000,000, as they have already spent approximately $850,000 this year to combine their two small existing ponds and to haul compost wastewater to the treatment plant. They are expecting to spend another $1,600,000 for the construction of the additional pond, another $400,000 - $750,000 in next year’s budgets for wastewater hauling, and then must make the $5,000,000 deposits to the escrow account, and incur 100% of the cost of the defense of the litigation, as well as the potential plaintiff’s attorney fees, and potential penalties that may be imposed by the court in the Clean Water Act Litigation. However, ultimately it is the Agency that oversees the composting program and makes the policy decisions about its operation. Because the Agency has requested that the County work with the Agency to maintain the program, County staff is recommending that the Board approve the agreement with the Agency. The proposed Joint Defense and Indemnity Agreement offers the County protection from the liability for the potential outcomes outlined above and at the same time allows the County to protect Republic from these potential liabilities, through the Limited Indemnity Agreement with Republic for Composting Operations.

Prior Board Actions:

4/23/13: Board adopted Resolution No. 13-1054 making findings related to the approval of the Master Operations Agreement (MOA), authorized the Chair to execute the MOA, delegated authority to the Director of Transportation and Public Works (TPW) to file a Notice of Determination to the Sonoma County Central Disposal Site Improvement Program Final EIR for the MOA, and delegated authority to staff to take further actions as necessary to meet the conditions precedent to the MOA effectuation.

4/9/13: Board accepted a report on the draft final MOA, accepted public comments, and directed staff to modify the MOA and bring back for final approval.

6/12/12: The Board accepted a report on the activities and direction of the County City Solid Waste Advisory Group, direct staff to enter into
negotiations for a long term operations agreement, and authorized the Director of TPW to enter into any necessary contracts to facilitate the negotiations. 6/12/11: The Board accepted a report providing an update on SWAG activities; presenting recommendations of the SWAG Research Committee including next steps, and directed the County SWAG representative to vote to process with a consultant analysis of the recommendations. 10/26/10: Board adopted Resolution No. 10-0774 concurring with SWAG priorities and objects for developing a regional long-term solid waste options. 12/8/09: Board approved and authorized relate of the Request for Proposals (RFP) for Short-Term Transfer Station Operations, Transportation and Disposal Services. 10/27/09. Board did not approve the proposed divestiture of the County solid waste facilities.

**Strategic Plan Alignment**  
Goal 1: Safe, Healthy, and Caring Community  
Providing community members with access to safe solid waste management services, and Goal 2: Economic and Environmental Stewardship, providing the community with a solid waste system which is focused on providing increased recycling and greenhouse gas reductions in a manner that is economically efficient.

**Fiscal Summary - FY 14-15**

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<tr>
<td><strong>Total Sources</strong></td>
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**Narrative Explanation of Fiscal Impacts (If Required):**

The MOA, once approved and effectuated, will have a beneficial fiscal impact to the County by increasing diversion, reducing trash outhaul and resulting GHG emissions, and providing a sustainable rate model. The initial rate impact to a typical franchise collection customer is expected to be nominal (less than 4%). The contractor’s service fee is adjusted annually during the 25-year commitment period by 90% of the change in Consumer Price Index with a maximum cap of 3.5% in any given year.

**Staffing Impacts**

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Revision No. 20140617-1
<table>
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<tr>
<th>Narrative Explanation of Staffing Impacts (If Required):</th>
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<tr>
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<tr>
<td><strong>Attachments:</strong></td>
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<tr>
<td>Resolution; First Amendment; Executive Summary of Landfill Settlement Agreement</td>
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<tr>
<td><strong>Related Items “On File” with the Clerk of the Board:</strong></td>
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<tr>
<td>Landfill Settlement Agreement; Limited Term Indemnity Agreement with Republic Services Related to Composting Operations; Joint Defense and Indemnity Agreement with Sonoma County Waste Management Agency; Master Operations Agreement</td>
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