

REPORT TO COUNCIL

SUBJECT

Request to Authorize City Manager to Execute: (1) The 2021 New Memorandum of Understanding (MOU) Between Cities of Sunnyvale and Mountain View for SMaRT Station® Services and (2) Amendment to 1992 MOU Among Sunnyvale, Mountain View and Palo Alto Clarifying That MOU Term Ends December 31, 2021, and Find That These Actions are Within the Scope of the 1990 Environmental Impact Report (EIR) and Subsequent Addenda

REPORT IN BRIEF

Approval is requested for authorization for the City Manager to take the following actions related to municipal partnerships at the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station).

1. Execute the 2021 New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station (Attachment 1).
2. Execute the Amendment to the 1992 Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long-Term Disposal of Municipal Solid Waste at Kirby Canyon (Attachment 2).

The City of Sunnyvale owns and operates the SMaRT Station at 301 Carl Road. The facility receives Municipal Solid Waste (MSW), source-separated recyclables, and organic materials from Sunnyvale, Mountain View, and Palo Alto. It sorts the MSW to remove recyclable and compostable materials, then transfers the remaining residue to the Kirby Canyon Landfill. Other processes at the facility prepare source-separated recyclables, yard trimmings, food scraps and other materials for shipment to recycling markets.

A 1992 Memorandum of Understanding (MOU) among the cities of Sunnyvale, Mountain View and Palo Alto established a municipal partnership. Each city has a separate agreement with Waste Management of California, Inc. (Waste Management), for landfill disposal at Kirby Canyon Landfill in San Jose. The MOU coordinates city actions regarding their landfill disposal agreements and allows SMaRT Station operating, capital, debt, and other costs to be shared among the cities, reducing costs to their refuse ratepayers.

In advance of the expiration of the 1992 MOU, the cities engaged in discussion of whether and how to continue their municipal partnership. This discussion led to development of a new, 2021 MOU that documents a proposed partnership through at least 2036. The City of Mountain View has agreed to the terms of this MOU, while the City of Palo Alto, which makes only partial use of the SMaRT

Station, has chosen to direct the remainder of its MSW to facilities linked to GreenWaste Recovery, Inc. its franchised hauler. The 2021 MOU allows for the addition of new partners in the future.

The term of the 2021 MOU is 15 years, starting January 1, 2022. The 2021 MOU proposes to allocate costs to each city based on the quantity of each type of material (MSW, recyclables, organics, etc.) delivered by each city. The 1992 MOU allocated costs based primarily upon the tons of MSW delivered by each city.

Staff is recommending approval of the 2021 MOU to continue the City's practice of sharing SMaRT Station costs with other agencies, thus providing financial benefits to both the Sunnyvale Solid Waste Fund and its refuse rate payers and the Sunnyvale General Fund.

Staff is also recommending approval of an Amendment to the current, 1992, Memorandum of Understanding (MOU) to document closure of a ten-week gap between the October 15, 2021 end date of the 1992 MOU and the December 31, 2021 end dates of the current landfill disposal agreements between the three cities and Waste Management.

BACKGROUND

The City built, owns, and operates, through a private contractor, the SMaRT Station, located at 301 Carl Road. The SMaRT Station was developed and funded under a 1992 Second Memorandum of Understanding among the cities of Sunnyvale, Mountain View and Palo Alto. This 1992 MOU coordinates city actions related to three separate, but largely identical, 1991 agreements between each of the cities and Waste Management that provide for disposal of MSW at the Kirby Canyon Landfill in southern San Jose. The disposal agreements and the 1992 MOU require each city to deliver MSW to the SMaRT Station and require that residues remaining after SMaRT Station recycling processes must be delivered to Kirby Canyon for disposal.

The 1992 MOU allocates costs for operation of the SMaRT Station and landfill disposal of non-recycled residues among the three cities based on each city's respective percentage of MSW delivered to the facility by that city (the "operations share"). Costs for debt service and replacement/refurbishment of capital items are allocated by specific percentages stated in the MOU (the "capital share"). Revenues from recycling materials delivered source-separated (e.g., curbside recyclables and yard trimmings) are allocated based on the types and amounts of those materials delivered by each city. Revenues associated with recycling or composting materials recovered from incoming MSW are allocated to the cities based on the operations share.

All MOU-related revenues and expenditures associated with the SMaRT Station are managed in SMaRT Station-specific operating and capital enterprise funds administered by Sunnyvale. Sunnyvale's share of SMaRT Station revenues and costs are handled by payments to and from the City's Solid Waste Fund. After the close of each fiscal year, an audit is performed by an outside audit firm, with the results shared among the three cities.

The 1992 MOU will expire on October 15, 2021. The current terms of the landfill disposal agreements between Waste Management and the three partner cities will expire on December 31, 2021. As the MOU's essential purpose is to coordinate city actions regarding the disposal agreements, staff from all three cities agreed that the 1992 MOU should be extended to December 31, 2021 to coincide with the terms of the current disposal agreements. The amendment to the 1992 MOU was approved by Palo Alto's City Council on May 24, 2021 and by Mountain View's City

Council on June 8, 2021.

In 2013, Sunnyvale extended its current disposal agreement by ten years (through 2031) in exchange for a 10% disposal fee reduction, which will begin on January 1, 2022. Palo Alto chose to not extend its disposal agreement with Waste Management beyond 2021. Mountain View has entered into a new 10-year disposal agreement with Waste Management which begins on January 1, 2022.

EXISTING POLICY

General Plan, Chapter 7, Environmental Management

Policy EM-14.3 Meet or exceed all federal, state, and local laws and regulations concerning solid waste diversion and implementation of recycling and source reduction programs.

GOAL EM-15 ENVIRONMENTALLY-SOUND DISPOSAL Dispose of solid waste in an environmentally sound, dependable and cost-effective manner.

Policy EM-15.2 Reduce the amount of refuse being disposed, generate recycling revenues, and minimize truck travel to the disposal site through use of the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station).

ENVIRONMENTAL REVIEW

Pursuant to CEQA Guidelines Section 15162(a), when an Environmental Impact Report has been certified for a project, no subsequent or supplemental review shall be prepared for that project unless “substantial changes” are proposed to the project, or to the circumstances under which the project is undertaken, or there is substantial new information, that will require revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Operation of the SMaRT Station under the new MOU will lessen, rather than increase, the impacts of the previous operation that was studied in the Final Environmental Impact Report “Sunnyvale Materials Recovery and Transfer Station (SMART)” dated September 14, 1990 and subsequent addenda dated July 21, 1992 (SCH #89022812) and December 2016 (SCH #89022812). These documents are available for review at: <https://sunnyvale.ca.gov/property/recycling/getrid/center.htm>

The proposed MOU will result in reduced waste tonnages and a smaller number of collection vehicle trips to the facility when compared to the project described in the 1990 FEIR and its addenda. A greater percentage of the incoming waste will be diverted from the landfill. Therefore, no additional environmental review of the project is required by CEQA.

DISCUSSION

New Memorandum of Understanding - Mountain View and Sunnyvale

The 1992 MOU included a requirement that, after 25 years, the cities meet “to discuss all issues relevant to the possible extension of the Term by one or more Cities...” Those discussions were conducted as per the 1992 MOU and resulted in the City of Mountain View deciding to continue as a partner in the SMaRT Station after 2021. The City of Palo Alto has never made full use of the services provided by the SMaRT Station. It declined the opportunity to continue as a partner and is arranging to have the portion of its MSW currently processed at the SMaRT Station to be handled at facilities operated by companies related to GreenWaste Recovery, Inc., its franchised hauler. The 2021 MOU allows for the addition of new partners in the future.

Staff and consultants of Sunnyvale and Mountain View carried out extensive meetings and discussions to scope out and agree on commitments in the New Memorandum of Understanding between the Cities of Mountain View and Sunnyvale relating to the operation of the Materials Recovery and Transfer Station (Attachment 1).

The MOU is updated to reflect changes in State law and regulations since the 1992 MOU was adopted and is informed by 29 years of experience operating the Facility and coordination among the partner cities. Its structure acknowledges the availability of local recycling processing and landfill disposal options that may not have been available when the cities agreed to the 1992 MOU.

The most significant change introduced in the 2021 MOU is with regard to how operating expenses are shared among the participating cities. The 1992 MOU has a simple, two-part structure for allocating costs:

1. All operating expenses are totaled, then allocated among the cities based on the tons of MSW delivered by each city.
2. Capital costs, including debt service and major repairs or replacement of capital items, are allocated based on percentages specified for each city in the 1992 MOU.

The 2021 MOU proposes to allocate both operating expenses and capital costs to various cost centers based on the material being processed or the service being provided. This acknowledges that, compared to conditions 29 years ago, cities are providing collection services for more types of materials and more processing options have emerged in the marketplace. For example, Mountain View wishes to split out processing of Construction and Demolition (C&D) Debris and its food/yard trimmings collections and have them handled at facilities operated by other service providers. Mountain View's share of unrecycled residue will be landfilled at Kirby Canyon pursuant to its new agreement with Waste Management, which has a term that ends on December 31, 2031 (with a five-year extension option.)

To accommodate these new options, the MOU identifies and separately prices these initial basic services to be provided by Sunnyvale in its role as Managing Partner:

MSW. Accept all MSW generated within each Partner's jurisdiction and delivered by a franchised hauler or through self-haul. MSW shall be processed to remove recyclables and organics for further processing, with the residue disposed of at the landfill.

Recyclables. Accept source-separated recyclables delivered on behalf of a Partner by a franchised hauler, through self-haul, or authorized third parties. Recyclables shall be processed for sale, then transported to markets, with unrecycled processing residue disposed of at the landfill.

Organics. Accept source-separated organics generated within each Partner's jurisdiction and delivered by a hauler or through self-haul. Organics shall be pre-processed at the SMaRT Station and shall be transferred to applicable processing facilities.

C&D Debris. The Partners may arrange for haulers to transport source-separated C&D Debris and other materials collected in roll-off boxes to facilities other than the SMaRT Station for processing and disposal, so long as that activity does not conflict with provisions of a landfill disposal agreement. Self-haul of C&D Debris to the SMaRT Station shall be permitted as approved by the partners. C&D Debris shall be processed at the SMaRT Station, except as otherwise mutually agreed by the Partners, then transported to markets, with unrecycled residue disposed of at the landfill.

Additional Services for Residents of Partner Cities.

- Public Haul Disposal: Trash, C&D Debris, yard trimmings, etc. (with fee; or Partner City Voucher or during Partner-provided special event)
- Drop off recycling area for residents and businesses
- Beverage Container Buy-Back: California Redemption Value (CRV) is paid on eligible bottles and cans.
- Compost is made available for pickup by residents of Partner cities
- Furniture and other items in good condition rescued from the garbage and recycling areas of the SMaRT Station are placed in a re-use trailer for customers to take home at no charge.
- Facility tours, by appointment
- Disposal/Recycling of various hard-to-handle and Universal Waste items, including:
 - Paint in original containers per PaintCare program guidelines
 - Cooking oil
 - Electronics (e.g., computers, TVs and monitors, small appliances, microwave ovens)
 - Clothes and shoes
 - Strings of holiday lights
 - Fluorescent bulbs and tubes
 - Empty one-pound propane cylinders
 - Household and auto batteries
 - Mercury-containing thermostats, thermometers, batteries, and compact fluorescent lamp bulbs
 - Sharps, needles, or lancets, (in biohazard, or hard plastic container with screw-top lid marked "sharps")
 - Used motor oil, oil filters and antifreeze
 - Mattresses

In addition to ongoing operations, Project 828260 (Post-2021 SMaRT Rebuild) has been underway for several years. This \$30 million project addresses the fact that the SMaRT Station has been in operation for almost 28 years and needs repairs to basic elements such as walls and floors. Some components of its processing equipment need updating, while others are obsolete and need to be replaced.

With consultant assistance, ESD staff has been conducting a detailed study of the condition of the facility and equipment and scoping out options for updates that would improve the efficiency of operations and increase the percentage of incoming material that is diverted from landfill disposal. Conceptual designs have been prepared and shared and discussed with staff members of the partner cities. Project 828260 will soon enter the design stage with construction expected to be completed by the end of 2023.

The term of the 2021 MOU is 15 years, beginning January 1, 2022. This will allow adequate time to amortize the facility improvements of Project 828260 and is compatible with the terms of Sunnyvale's collection, landfill, and organics processing agreements.

The 2021 MOU provides flexibility for cities to undertake both joint and independent efforts to pursue compliance with State of California mandates for reducing landfill disposal of organics and other discarded materials through methods that include reuse, recycling, and composting. The MOU equitably allocates costs and revenues to the participating jurisdictions, including the costs of the Post-2021 SMaRT Rebuild project. The MOU also provides for the continued and expanded provision of services to the public, all while protecting the environment and human health and safety.

The 2021 MOU continues a long-term, successful, mutually beneficial partnership between the cities of Sunnyvale and Mountain View. The June 8, 2021 report from Mountain View staff to their city council stated that "the change in cost sharing based on the number of tons by commodity type increases accuracy and simplifies cost distribution, and the planned capital improvements will increase the City's diversion rate. The recommended MOU is in line with the City Council goal to "Promote Environmental Sustainability and the Quality of Life for the Enjoyment of Current and Future Generations with a Focus on Measurable Outcomes," and it is the best option for processing the City's solid waste and residential recycling."

The MOU was prepared with assistance from Peter Deibler of HF&H Consultants, a firm that advises cities on solid waste and financial and rate setting issues, and outside attorney Joshua Nelson of law firm Best Best & Krieger, LLP. It was presented to and approved by the Mountain View City Council on June 8, 2021. Staff is recommending that Council authorize the City Manager to execute the 2021 MOU.

Amendment to 1992 Memorandum of Understanding - Mountain View, Sunnyvale, and Palo Alto

In a related matter, as part of the MOU discussions, staff of the three cities also agreed to clean up the long-standing, 10-week gap between the end date of the 1992 MOU and the three current Waste Management contracts. That resolution is contained in a First Amendment to the 1992 MOU (Attachment 2). The city councils of Mountain View, Palo Alto and Sunnyvale are being asked to approve this amendment, which states that the 1992 MOU will end on December 31, 2021. The Palo Alto and Mountain View city councils approved the amendment at their meetings on May 24, 2021 and June 8, 2021, respectively.

FISCAL IMPACT

New Memorandum of Understanding - Mountain View and Sunnyvale

Using the 2021 MOU to share costs with other agencies provides financial benefits to both the Sunnyvale Solid Waste Fund and its refuse rate payers and the Sunnyvale General Fund. The Solid Waste fund benefits because fixed capital costs and the fixed portion of operating costs can be shared with Mountain View and, potentially, another jurisdiction that could join the partnership in the future. The cost savings to Sunnyvale ratepayers, as compared to the cost of operating the facility on a Sunnyvale-only basis, are projected to be approximately \$3.8 million in the initial year of the 2021 MOU.

However, overall, costs to Sunnyvale Rate Payers are increasing due to the loss of Palo Alto as a partner and the implementation of new organics regulations. The loss of Palo Alto as a partner increases Sunnyvale's share of SMaRT Station costs by approximately \$1.3 million per year and decreases General Fund Host Fee revenue by approximately \$86,000 per year. Costs associated with the SMaRT Station, Landfill, and processing organics are increasing by approximately \$53.2 million over 10 years and \$131 million over twenty years. These costs are included in the FY 2021/22 Recommended Budget and the long-term financial plan for the Solid Waste Fund, as well as in the recommended solid waste rates for those twenty years. Rates are higher than planned in the current budget by between 1% and 3% per year for the next five years.

Under the 2021 MOU, Mountain View will continue to pay a "Host Fee" charged on all materials delivered to the SMaRT Station by City of Mountain View staff, its franchised hauler, and Mountain View public haul customers. The Host Fee compensates Sunnyvale for the cost to its infrastructure and services (e.g. streets, public safety) from Mountain View's use of the SMaRT Station. Host Fee revenue accrues to the General Fund. As of January 1, 2022, the Host Fee will be \$3.96 per ton. At projected tonnages for 2022, Mountain View sources will provide the General Fund with annual Host Fees of \$216,327.

The General Fund charges the Solid Waste Fund rent for the SMaRT Station site. Under the provisions of the 2021 MOU, Mountain View will begin paying a share of the land rent, calculated on a per-ton basis. As of January 1, 2022, Land Rent will be \$2.11 per ton. Based on assumed tonnages for 2022, Mountain View's share of Land Rent will be \$115,265 per year. The per-ton amounts of the Host Fee and Land Rent are annually adjusted to reflect changes in the Consumer Price Index.

Amendment to 1992 Memorandum of Understanding - Mountain View, Sunnyvale, and Palo Alto

There is no fiscal impact from approval of the amendment to the 1992 MOU.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at Office of the City Clerk, and on the City's website.

ALTERNATIVES

1. Authorize the City Manager to execute the New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station in substantially the same form as Attachment 1 of the

report.

2. Authorize the City Manager to execute the Amendment to the Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon in substantially the same form as Attachment 2 of the report.
3. Find that these actions are within the scope of the 1990 EIR and subsequent addenda and that no further environmental review is required under CEQA Guidelines Section 15162.
4. Do not approve Alternatives 1 or 2.
5. Take other action as determined by Council.

STAFF RECOMMENDATION

Alternative 1: Authorize the City Manager to execute the New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station in substantially the same form as Attachment 1 of the Report; Alternative 2: Authorize the City Manager to execute the Amendment to the Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon in substantially the same form as Attachment 2 of the report; and Alternative 3: Find that these actions are within the scope of the 1990 EIR and subsequent addenda and that no further environmental review is required under CEQA Guidelines Section 15162.

Staff is recommending approval of the 2021 MOU to continue the City's practice of sharing SMaRT Station costs with other agencies, thus providing financial benefits to both the Sunnyvale Solid Waste Fund and its refuse rate payers and the Sunnyvale General Fund.

Staff is also recommending approval of the Amendment to the 1992 MOU to document closure of the ten-week gap between the October 15, 2021 end date of the 1992 MOU and the December 31, 2021 end dates of the current landfill disposal contracts between the three cities and Waste Management.

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Reviewed by: David Krueger, Solid Waste Programs Division Manager

Reviewed by: Ramana Chinnakotla, Director, Environmental Services Department

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station
2. Amendment to the Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials

Recovery and Transfer Station and the Long-Term Disposal of Municipal Solid Waste at Kirby Canyon