

RESOLUTION NO. 2634

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
AUTHORIZING THE EXECUTION OF AN AGREEMENT  
BETWEEN THE CITY OF SOLEDAD AND THE  
SALINAS VALLEY SOLID WASTE  
AUTHORITY FOR WASTE  
DELIVERY

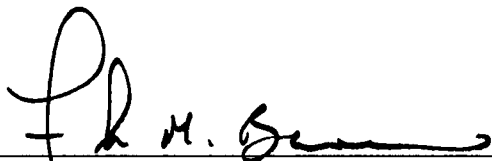
BE IT RESOLVED by the City Council of the City of Soledad that the Mayor be, and she is hereby, authorized and directed, for an on behalf of the City of Soledad, to execute an Agreement between the City of Soledad and the Salinas Valley Solid Waste Authority to provide waste delivery, in the form of the document hereunto attached, marked "Exhibit A," and by reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 1st Day of October, 1997, by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Fred Ledesma, Richard Ortiz, Mayor Pro Tem Gary Gerbrandt, Mayor Fabian Barrera.

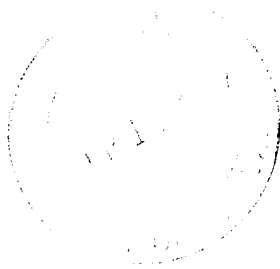
NOES, Councilmembers: None

ABSENT, Councilmembers: None

  
MAYOR OF THE CITY OF SOLEDAD

ATTEST:

  
CITY CLERK OF THE CITY OF SOLEDAD



**WASTE DELIVERY AGREEMENT**

by and between

**CITY OF SOLEDAD**

and

**SALINAS VALLEY SOLID WASTE AUTHORITY**

## WASTE DELIVERY AGREEMENT

**THIS WASTE DELIVERY AGREEMENT** (this "**Agreement**") is made and entered into as of the 1st of October 1997 by and between the City of Soledad ("**City**"), a municipal corporation, and the Salinas Valley Solid Waste Authority ("**Authority**"), a joint exercise of powers entity.

### RECITALS:

The Authority owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the Authority boundaries (the "**Disposal System**"). The Disposal System includes four landfills and one transfer station.

In December 1996, Monterey County and the cities of Gonzales, Greenfield, King, Salinas and Soledad ("**Member Agencies**") formed the Authority for the express purpose of managing the Disposal System and ensuring long-term disposal capacity for its Member Agencies.

In the Joint Powers Agreement which created the Authority, the Member Agencies transferred to the Authority the right to exercise flow control of solid waste within the Disposal System.

In order to meet its obligations under the Joint Powers Agreement and in reliance on this agreement, the Authority intends to issue certain long-term revenue bonds.

The City and the Authority hereby agree to enter into this Agreement for the purpose of ensuring that all solid waste controlled by the City may be directed by the Authority to the Disposal System.

**NOW, THEREFORE**, taking into account the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE I** **Definitions**

**1.1 Definitions.** Except as otherwise herein expressly provided, the following terms and phrases shall have the meanings set forth below:

"**Acceptable Waste**" shall mean all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from

residential (single family and multi-family), commercial, industrial, governmental and institutional establishments which are acceptable at Class III landfills under Applicable Law.

"Act" shall mean the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

"Agreement" shall mean the Waste Delivery Agreement, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

"Applicable Law" shall mean the Act; the City Code; the Monterey County Code; the Authority Code; and Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

"City Acceptable Waste" shall mean all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing wherever produced, whether within or outside the City.

"Controllable Waste" shall mean all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Recycled City Acceptable Waste;
- (2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate; and
- (3) collected and hauled by Franchise or Permitted Haulers.

"Disposal Fees" shall mean the tipping fees or charges imposed by the Authority for acceptance of Acceptable Waste in the Disposal System.

"Disposal System" shall mean the Salinas Valley Solid Waste Authority Waste Disposal System which includes, as of the date of this agreement, solid waste disposal operations at four landfills (Crazy Horse Landfill, Johnson Canyon Landfill, Jolon Road Landfill, and Lewis Road Landfill) and one transfer station (Jolon Road Transfer Station). The Salinas Valley Solid Waste Authority Waste Disposal System shall include such other facilities as the Authority may own, operate or maintain during the term of this Agreement.

"Effective Date" shall mean the date when this Agreement is signed by both parties.

"**Franchise or Permitted Hauler**" means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by a contract, franchise, permit or other agreement within the City. The term Franchise or Permitted Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City crews.

"**Governmental Body**" shall mean any federal, state, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"**Legal Entitlement**" shall mean all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement.

"**Legal Proceeding**" shall mean every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"**Non-Recycled City Acceptable Waste**" shall mean all City Acceptable Waste other than Recycled City Acceptable Waste.

"**Recycled City Acceptable Waste**" shall mean any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "recycled" within the meaning of Section 40180 of the Public Resources Code.

"**Term**" shall mean the Term of this Agreement.

**1.2 References.** All references in this Agreement to particular sections or actions shall, unless expressly otherwise provided, or unless the context otherwise requires, be deemed to refer to the specific sections or articles in this Agreement, and any references to "Exhibit" or "Schedule" shall, unless otherwise specified, refer to one of the exhibits or schedules attached hereto, each of which is hereby incorporated by reference and made a part hereof. The words "herein", "hereof", "hereunder", "hereinafter", "hereinabove" and other words of similar import refer to this Agreement as a whole and not to any particular section, subsection or article hereof. Whenever the words "including", "include" or "includes" are used in this Agreement, they should be interpreted in a non-exclusive manner as though the words "without limitation" immediately followed the same.

**1.3 Gender and Number.** Words of any gender shall include the other gender and the neutral. Whenever the singular is used, the same include the plural wherever appropriate, and whenever the plural is used, the same shall also include the singular.

**ARTICLE II**  
**Delivery and Acceptance of Waste**

**2.1 Delivery of Waste.**

(a) Waste Disposal Covenant. Commencing on the Effective Date and throughout the term of this Agreement, the City shall, in accordance with Applicable Law, exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith.

(b) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation diversion or recycling program shall cause the City any liability hereunder and shall not constitute a breach of this Agreement.

(c) Power to Obligate Waste Disposal and Comply with this Agreement. On or before the Effective Date, (i) any City franchise, contract, lease, permit or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Effective Date to direct the delivery of all Controllable Waste to a disposal location selected by the City and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise or Permitted Haulers, and (ii) the City shall designate the Disposal System as the disposal location pursuant to such franchise, contract, lease, permit or other agreement. On and after the Effective Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Effective Date, is subject to non-exclusive or exclusive franchise or contractual arrangements. The City agrees that the Authority shall be a third party beneficiary of the obligation of Franchise or Permitted Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise or Permitted Hauler of the Authority's third party beneficiary rights.

(d) Waste Flow Enforcement. The City, in cooperation with the Authority, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner

provided herein. The waste flow enforcement program shall consist of amending City franchises or permits with Franchise or Permitted Haulers, to the extent required by this Section, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to: (1) licensing or permitting Franchise or Permitted Haulers, upon the condition of compliance with the Waste Disposal Covenant, and (2) providing for and taking appropriate enforcement action under any such franchise, license or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise or Permitted Haulers.

(e) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend its rights to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the Authority, whether as plaintiff or defendant), by a Franchise or Permitted Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. At the option of the Authority or at the request of the City, the City may assign its rights and obligations pursuant to this paragraph to the Authority and the Authority shall accept such assignment and the Authority shall defend the City at the Authority's cost and expense and/or indemnify the City for the payment of any costs incurred by the City in defense of any such challenge.

(f) Franchise or Permitted Haulers. The City shall immediately notify the Authority of any changes in the franchise, license or permit with its Franchise or Permitted Haulers which would affect the hauler, the area of collection and transportation, or franchise and permit terms.

(g) Waste Information System. The City shall cooperate with the Authority in collection information and otherwise monitoring Franchise or Permitted Haulers in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of; Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of; Franchise or Permitted Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Authority in connection with this Agreement.

(h) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

## 2.2 Provision of Disposal Services.

(a) Service Covenant. Commencing on the Effective Date and throughout the term of this Agreement, the Authority shall provide or cause the provision of the service of receiving

and disposing of all Controllable Waste at the Disposal System (or other such facilities, including transfer stations, at the Authority may determine to use). The Authority shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto and undertaken in connection herewith. The Authority shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

**2.3 Charging and Securing Payment of Disposal Fees.** The City acknowledges that the Authority shall have the right to charge and collect Disposal Fees for the acceptance and disposal of Controllable Waste delivered to the System. The Disposal Fees shall be calculated and established, and may be modified from time to time at the discretion of the Authority. The Authority shall provide the City thirty (30) days written notice of any proposed Disposal Fee modifications. In addition, the City acknowledges that the Authority shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Disposal Fees.

### **ARTICLE III** **Term**

**3.1 Effective Date and Term.** This Agreement shall be effective when signed by each party and shall continue for so long as may be necessary to carry out the purpose of this Agreement or until terminated by mutual consent of the governing bodies of the parties, whichever is earlier; provided, however, that:

(a) The City may not withdraw from this Agreement so long as it remains a member of the Authority.

(b) Should the City cease to be a member of the Authority, the City may withdraw from this Agreement by a majority vote of the governing body thereof giving to the Authority one year's written notice of such intention to withdraw, so long as all revenue bonds or other forms of indebtedness issues pursuant hereto, and the interest thereon, shall have been paid or adequate provision for such payment shall have been made in accordance with the resolution (or indenture) adopted by the Authority governing board pursuant to the law authorizing the issuance thereof or the approval of the debt.

### **ARTICLE IV** **General Provisions**

**4.1 Further Instruments.** Each party will, whenever and as often as it shall be reasonably requested so to do by the other, cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and, purpose of this Agreement.

**4.2 Limitation of Liability.** No advisor, trustee, director, supervisor, officer, employee, accountant, attorney, beneficiary, shareholder, partner, participant or agent of or in Authority or City shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. The limitations of liability provided in this Section are in addition to, and not in limitation of, any limitation on liability applicable to City or Authority, as applicable, provided by law or by any other contract, agreement or instrument.

**4.3 Entire Agreement; Amendments; Captions.** This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior or contemporaneous agreements or understandings, verbal or written, between the parties hereto respecting such matters. This Agreement may be amended by written agreement of amendment executed by both parties hereto, but not otherwise. Section headings shall not be used in construing this Agreement.

**4.4 Time of the Essence; Non-Business Days.** Subject to the next full sentence, time is of the essence of this Agreement. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-business day, then such period or date shall be extended until the immediately following business day. As used herein, "business day" means any day other than Saturday, Sunday or a holiday when the offices of City are closed for business.

**4.5 Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of California, without regard to the rules governing choice of law.

**4.6 Successors and Assigns.** Neither Authority nor City may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party (in which event such transferee shall assume in writing all of the transferor's obligations hereunder, but such transferor shall not be released from its obligations hereunder). No consent given by either party hereto to any transfer or assignment of the other party's rights or obligations hereunder shall be construed as a consent to any other transfer or assignment of such other party's rights or obligations hereunder. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**4.7 Notices.** Any notice which a party is required or may desire to give the other shall be in writing and shall be sent by personal delivery or by either (i) United States registered or certified mail, return receipt requested, postage prepaid, or (ii) Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows:

To City:  
City of Soledad  
248 Main Street  
Soledad, California 93960  
Attention: City Manager

To Authority:  
Salinas Valley Solid Waste Authority  
c/o City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901  
Attention: Chief Administrative Officer

Any notice so given by mail shall be deemed to have been given as of the date of delivery established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, whether accepted or refused. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given. Any party hereto may designate a different address for itself by notice to the other party in accordance with this Section 4.7. In the event a party is not a natural person, delivery to an officer, director or partner of such party shall be deemed delivery to such party.

**4.8 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

**4.9 Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid by such court, shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

ATTEST:

Bue  
CITY CLERK

CITY OF SOLEDAD  
F. M. De  
MAYOR, CITY OF SOLEDAD

APPROVED AS TO FORM:

[Signature]  
CITY ATTORNEY

ATTEST:

[Signature]  
CLERK OF THE AUTHORITY

SALINAS VALLEY SOLID  
WASTE AUTHORITY  
[Signature]  
PRESIDENT OF THE BOARD OF  
DIRECTORS

APPROVED AS TO FORM:

[Signature]  
AUTHORITY COUNSEL