

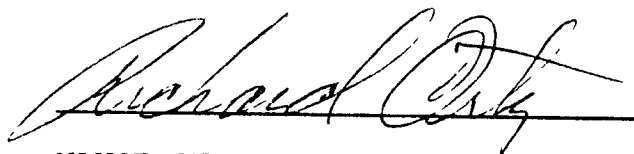
RESOLUTION NO. 1887

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
 AUTHORIZING AND APPROVING EXECUTION OF A SETTLEMENT
 AGREEMENT BY AND BETWEEN ARTHUR J. MITTELDORF,
 AXEL JOHNSON ENERGY DEVELOPMENT, INC.,
 INDUSTRIAL POWER TECHNOLOGY, INC.,
 AND THE CITY OF SOLEDAD

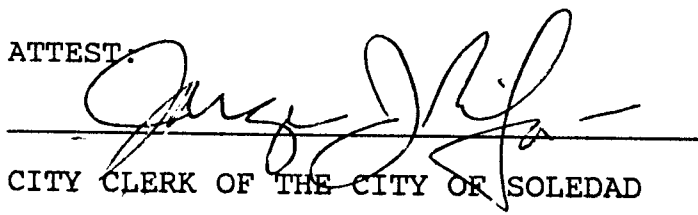
BE IT RESOLVED by the City Council of the City of Soledad that the City Manager and the City Clerk be, and they are hereby, authorized and directed for and in behalf of said City to execute and deliver a Settlement Agreement by and between Arthur J. Mitteldorf, Axel Johnson Energy Development, Inc., and Industrial Power Technology, Inc., 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 23rd day of November, 1988, by the following vote:

AYES, and in favor thereof, Councilmembers: Campos,
 Holguin, Ledesma, Mayor Pro Tem Untalon, Mayor Ortiz
 NOES, Councilmembers: None
 ABSENT, Councilmembers: None
 ABSTAINING, Councilmembers: None


 MAYOR OF THE CITY OF SOLEDAD

ATTEST:


 CITY CLERK OF THE CITY OF SOLEDAD

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made this 28th day of November, 1988, by and among Arthur J. Mitteldorf ("Petitioner"), the City of Soledad ("Respondent") and Industrial Power Technology, Inc. and Axel Johnson Energy Development, Inc. ("Real Parties In Interest").

WHEREAS, a legal proceeding commenced by Petitioner, involving a petition for writ of mandate, is presently pending in the Superior Court of Monterey County under Docket Number 87493 (hereinafter "the Litigation"); and

WHEREAS, Respondent and the Real Parties In Interest deny the allegations Petitioner has asserted against them in the Litigation, and maintain they have acted in good faith and in accordance with law; and

WHEREAS, numerous contested issues of law and fact exist in the Litigation; and

WHEREAS, the parties wish to compromise and settle their disputes and to terminate the Litigation and to avoid the expense, inconvenience and distraction of further protracted litigation, without any admission of liability whatsoever by any of them;

NOW THEREFORE, the parties to this Settlement Agreement agree that the Litigation shall be, and hereby is, compromised and settled as follows:

1. Simultaneously with the execution and delivery of this Settlement Agreement, the parties, by their respective counsel, shall execute, deliver and cause to be filed in the Superior

Exhibit "A"

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Court for Monterey County a Request for Dismissal of the action with prejudice (Exhibit "A" hereto), Stipulation and Order for Entry of Judgment (Exhibit "B" hereto), and a Judgment Pursuant to Stipulation (Exhibit "C"). The terms of this Settlement Agreement will be incorporated into the Stipulation and the Judgment, and the Court shall retain jurisdiction of this action for the purposes of ensuring that the provisions of the Stipulation and the Judgment are complied with fully by the parties.

2. The parties expressly covenant, promise and agree that they or any of them shall not now, or hereafter, on their own behalf or on behalf of any other persons or entities:

A. Appeal from or make any motion or request to vacate or modify the Request for Dismissal, the Stipulation, or the Judgment; or

B. Institute, maintain or assert against any other party hereto, or any such party's heirs, executors, administrators, legal representatives, predecessors, successors, assigns, past, present and future employees, directors, agents, representatives, partners, or affiliates, or any affiliate's past, present and future employees, directors, agents, representatives, partners, joint venturers, heirs, executors, administrators, successors and assigns, any claims, counter-claims, cross-claims, third party claims, demands, rights or causes of action that have been, could have been, or may be asserted against each party or parties in the Litigation, or

which arise out of, in any way relate to, or are based in whole or in part upon, any of the acts, omissions, facts, matters, investments, transactions or occurrences directly or indirectly alleged, described, set forth, involved or connected in any manner with the Litigation.

C. In the event of one of more breaches of the foregoing covenants, promises and agreements, the breaching party or parties shall be liable for and pay all damages, costs, expenses and losses, including attorneys fees, of the party or parties injured by such breach.

D. Nothing in this paragraph 2 shall preclude any actions to enforce this Settlement Agreement. The cost of enforcing this Settlement Agreement shall be borne by the breaching party or parties, as may be determined by the Court.

3. The parties agree that in exchange for Petitioner's dismissal of claims challenging the legal adequacy and validity of the City of Soledad's actions in certifying a final environmental impact report and issuing a conditional use permit in connection with the approval of the Real Parties' proposed biomass-to-energy project ("the Facility"), the City of Soledad and the Real Parties In Interest shall adhere to the following terms and conditions, as applicable, in connection with the construction and operation of the facility:

A. The facility will be constructed in a manner which incorporates hybrid technology for cooling (e.g. a combination wet/dry cooling tower). The facility shall be designed,

specified and sized to reduce the facility's consumption of water by one-third, from a maximum of 272 acre-feet annually to a maximum of 182 acre-feet annually. Construction of the facility shall not commence until an independent engineer, selected by and satisfactory to both Petitioner and Real Parties In Interest (with all parties using due diligence and good faith efforts in the selection of the engineer), issues a report confirming that the cooling design is likely to reduce the facility's consumption of water by one-third, from a projected maximum of 272 acre-feet annually to 182 acre-feet annually, and that direct costs of the facility's operation are likely to be less than for the facility operator to pay five times the projected current maximum price for water consumed in excess of 182 acre-feet annually, as provided herein. Direct costs of the facility's Operation shall include neither construction costs nor indirect costs such as allocations for overhead, amortization, depreciation, interest charges, legal charges, insurance, etc. Real Parties In Interest agree to pay for the cost of the independent engineer's report.

B. Water usage will be calculated based upon City of Soledad billings or other source documentation satisfactory to the parties, commencing at the time the facility begins commercial operation, as defined and determined according to the provisions of the facility's construction contract. Each twelve (12) month period measured from the facility's initial commercial operation date shall be called "a measuring year." If the facility uses more than 182 acre feet per measuring year, any

water over and above 182 acre feet per measuring year will be purchased for an amount which represents five times the City of Soledad's maximum rate for water usage in effect at the start of each measuring year. Any amount payable pursuant to this formula will be calculated at the end of each measuring year through the use of City of Soledad billing information on other source documentation satisfactory to the parties. The amount due, if any, shall be calculated within thirty (30) days after the end of each measuring year. Notice of the amount due, if any, shall be delivered by certified mail to the real parties in interest, with duplicate copies of this information or other source documentation, delivered by certified mail to petitioner and to the Monterey County Flood Control and Water Conservation District ("MCFCWCD"). The real parties in interest shall pay the amount due to the City of Soledad within thirty (30) days after receipt of the notice. For the first ten years of the facility's operation, respondent and/or real parties in interest shall provide duplicate copies of water billing information, or other source documentation, at no cost and within 10 days of request to petitioner and/or the ("MCFCWCD"). The well(s) which furnish water to the facility shall have appropriate devices for monitoring the amount of water furnished to the facility. For the first ten years of the facility's operation, petitioner and/or the Monterey County Flood Control District shall be provided access to these monitoring devices at any reasonable time, and real parties in interest shall pay reasonable costs for

the MCFCWCD to check these devices monthly if MCFCWCD elects to do so.

C. The payment arrangement described in paragraph 3(A) and 3(B) above shall terminate automatically and for all purposes ten (10) years after the date of commencement, as measured from the initial commercial operation date as defined in paragraph 3(B).

D. In the event of an emergency such as a major fire at the facility, water consumed during the emergency shall not be counted toward that for which five times the customary amount is charged in a particular measuring year.

4. Each party to this Settlement Agreement represents and warrants that he or it has the power and authority to enter into this Settlement Agreement, and has taken any and all steps that may be necessary in order to approve, execute and deliver this Settlement Agreement, and that the fulfillment and compliance with the provisions of this Settlement Agreement will not violate any restriction, or conflict with, or result in a breach or constitute a default under any of the terms, conditions or provisions of, any other instrument or agreement to which he, it or they may be a party or by which he, it or they may be bound, and that this Settlement Agreement is binding and enforceable against such party in accordance with its terms.

5. The terms of this Settlement Agreement are contractual in nature and are not mere recitals. This Settlement Agreement has been carefully read by each of the parties hereto, and

reviewed by them with their respective counsel. This Settlement Agreement constitutes the entire agreement among the parties with respect to the settlement of these matters; is binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, officers, directors, employees, successors, assigns, attorneys and agents; and may be changed or cancelled, other than according to its terms, only by a written agreement signed by all the parties hereto. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein.

6. This Settlement Agreement may be executed in several counterparts, each of which shall be deemed an original and together shall constitute one instrument.

7. Each party shall execute and deliver any further instruments that any other party may reasonably request for the purpose of giving full force and effect to the provisions of this Settlement Agreement.

8. The parties shall each be responsible for his or its own costs and expenses incurred in connection with the Litigation, except that the Real Parties In Interest shall pay \$30,000.00 to Jane Haines as reasonable attorney fees in connection with her representation of Petitioner Arthur J. Mitteldorf. Payment of the fees shall be made within ten (10) days after the filing of Exhibit "A".

9. All notices or correspondence required by this Settlement Agreement shall be sent to:

Petitioner: Mr. Arthur J. Mitteldorf
942 Coral Drive
Pebble Beach, CA 93953

Copy to: Jane Haines, Esq.
213 Lighthouse Ave.
Monterey, California 93940

City of Soledad: Mr. Jorge Rifa
City Manager
City of Soledad
P.O. Box 156
Soledad, CA 93960

Copy to: John Hutton, Esq.
Hutton, Foley, Anderson & Bolles
510 Broadway
King City, CA 93930

Real Parties In Interest: Mr. Robert Walther
Industrial Power Technology, Inc.
666 Howard St., Ste. 400
San Francisco, CA 94105

Copy to: Michael C. Normoyle, Esq.
Normoyle & Newman
3340 Tully Road, Suite A
Modesto, CA 95350

10. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed entirely with the state.

11. Any action/proceeding by any party or the successor in interest to any party to this Settlement Agreement, based on or arising under any provision of this Agreement, shall be commenced and maintained solely in the Monterey County Superior Court, and each party hereto waives any objections to personal jurisdiction and venue if any such action/proceeding is commenced in said Court.

12. The parties and signatories hereto, and each of them, agree and acknowledge that if any portion of this Settlement Agreement is declared invalid or unenforceable by a final judgment of any Court of competent jurisdiction, such determination shall not affect the balance of this Settlement Agreement, which shall remain in full force and effect, as such invalid portion shall be deemed severable.

13. Respondent and Real Parties in Interest agree to waive any objections to standing by the County of Monterey to enforce the terms of this Settlement Agreement on behalf of Petitioner. Petitioner brought this action for the benefit of the people of Monterey County and intends that the County of Monterey have standing to enforce the terms of this Settlement Agreement.

IT IS SO AGREED:

Dated: 22 Nov 88

Arthur J. Mitteldorf
Arthur J. Mitteldorf

City of Soledad

Dated: _____

By: _____
Name:
Title

Axel Johnson Energy Development,
Inc.

Dated: _____

By: _____
Name:

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122

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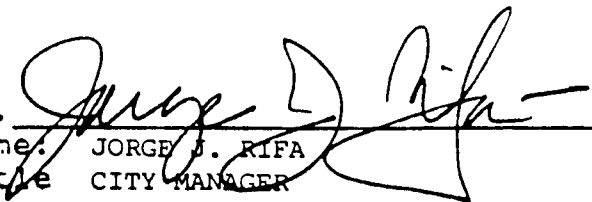
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Arthur J. Mitteldorf

City of Soledad

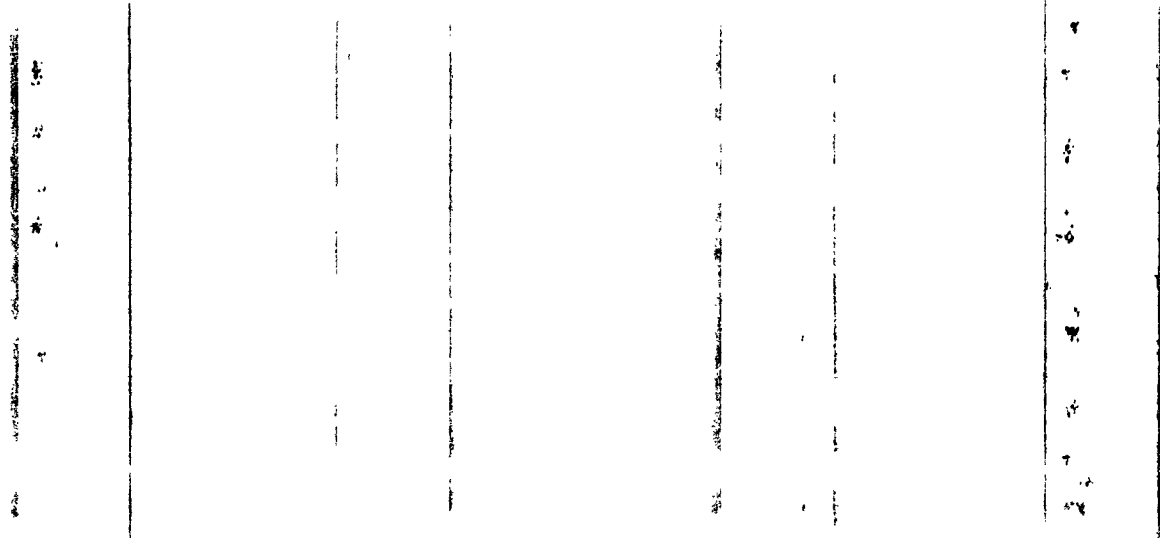
Dated: Nov. 23, 1988

By: 
Name: JORGE J. RIFA
Title: CITY MANAGER

Axel Johnson Energy Development,
Inc.

Dated: _____

By: _____
Name: _____



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Arthur J. Mitteldorf

City of Soledad

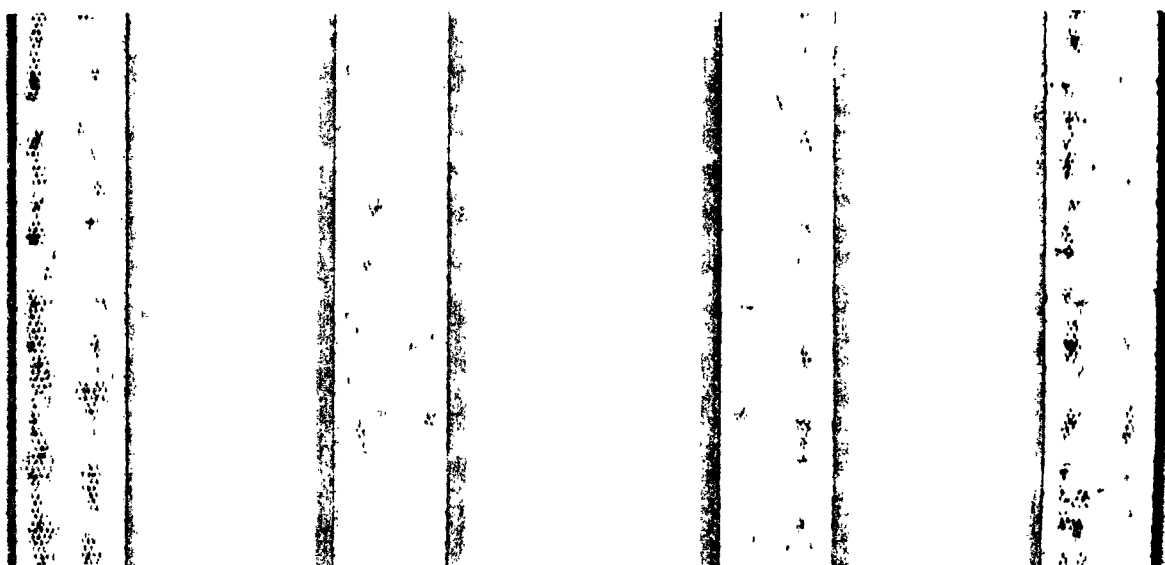
Dated: _____

By: _____
Name:
Title

Axel Johnson Energy Development,
Inc.

Dated: _____

By: _____
Name: _____



Industrial Power Technology

Dated: November 22, 1988

By: Robert C. Walther
Name: Robert C. Walther
Title: President