

## RESOLUTION NO. 2301

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
AUTHORIZING THE EXECUTION OF AN AGREEMENT AND FEE  
SCHEDULE WITH DOLE FRESH VEGETABLES TO PROVIDE  
EXTRATERRITORIAL UTILITY SERVICE AND  
REVOKING RESOLUTION NO. 2266**

**BE IT RESOLVED** by the City Council of the City of Soledad that the Mayor and the City Clerk be, and they are hereby authorized and directed for and on behalf of the City of Soledad, to execute an Agreement and Fee Schedule with Dole Fresh Vegetables in the form of the document here unto attached, marked "Exhibit A", and by reference made a part hereof.

**BE IT FURTHER RESOLVED** that this Resolution supersedes and revokes Resolution No. 2266, and all action taken thereby, as adopted by the City Council of the City of Soledad on July 26th, 1993.

**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regular meeting duly held on the 27th day of December, 1993, by the following vote:

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

**NAYES**, Councilmembers. None

**ABSENT**, Councilmembers. John Holguin

  
MAYOR OF THE CITY OF SOLEDAD

ATTEST

  
CITY CLERK OF THE CITY OF SOLEDAD

**AGREEMENT TO PROVIDE EXTRATERRITORIAL UTILITY SERVICE**

THIS AGREEMENT is made and entered into this 28th day of December, 1993 and executed in duplicate originals, by and between the CITY OF SOLEDAD, a municipal corporation of the State of California (hereinafter referred to as "City") and DOLE FRESH VEGETABLES, INC., a California Corporation (hereinafter referred to as "Dole").

**WITNESSETH:**

WHEREAS, Dole intends to develop, construct and operate a Salad Processing Plant ("the Plant") within the County of Monterey near Highway 101 and Camphora-Gloria Road in the vicinity of the City of Soledad on property generally known as Assessor's Parcel Number 257-081-009 ("the Subject Property"); and

WHEREAS, the Plant will generate domestic wastewater; and

WHEREAS, Dole desires to contract with the City of Soledad to treat all domestic wastewater from the Plant in the City's Wastewater Treatment Plant ("WWTP"); and

WHEREAS, City has the ability to accept and treat all of Dole's domestic wastewater by means of a transmission line to be constructed from the Plant to the WWTP for the development of the Soledad Prison II, and to treat Dole's domestic wastewater at the City's WWTP; and

WHEREAS, in return for a "First Source Hiring Agreement", approved by the Soledad City Council on 11/22/93, the City of Soledad prepared and submitted a Community Development Block Grant Economic Development Set-aside application for a grant to assist Dole in defraying the cost of construction of the wastewater pipeline and freeway off-ramp improvements at the intersection of Highway 101 and Gloria/Camphora Road;

NOW THEREFORE, in consideration of mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. The City agrees to accept and treat for a fee all domestic wastewater from the Plant
2. Average daily wastewater flow from the Plant, measured in gallons per day (gpd) over a monthly period, shall not exceed 20,000 gpd on an annualized basis
3. Average wastewater Biological Oxygen Demand (BOD) from Dole, measured over a monthly period, shall not exceed 250 milligrams per liter (mg/l)

Exhibit "A"

4. If domestic wastewater flows from the Plant exceed the volume specified in Paragraph 2, or the BOD specified in Paragraph 3, City shall give written notice to Dole, and Dole shall have a reasonable time as mutually agreed upon by the parties to this agreement, to bring the flow or the BOD, as the case may be, into compliance with applicable standard.

5. Dole agrees to pay the City for treatment of the wastewater and connection fees to the WWTP in accordance with the fee schedule attached hereto as Exhibit "A".

6. City and Dole agree to enter into a cooperative effort for construction and completion of the following work, hereinafter referred to as "the Dole Work":

Install a sanitary sewage pump station at the site of the Plant, including pumps, controls, valves and appurtenances with a four inch force main to convey the sanitary sewage from the Subject Property to the WWTP on a path running parallel to and west of the Plant along Camphora-Gloria Road, intersecting with the utility trench for the newly constructed eighteen inch force main connecting the Soledad Correctional Training Facility and the WWTP, and running in said common utility trench thereafter to the WWTP.

For purposes of achieving the Dole Work, City shall act as lead agency and retain responsibility for environmental analysis of the project, inspection of all work performed, and adherence to all competitive bidding requirements for public works projects in compliance with California Public Contracts Code Sections 20162, et seq. and Sections 20688.2.

City and Dole shall cooperate to obtain all necessary permits and licenses for the construction of the Dole Work.

Dole agrees to reimburse City for all costs incurred by City in achieving the Dole Work, including the cost of preparing bid packets, all construction costs, and all engineering, inspection, legal and administrative expenses associated with the Dole Work, including the use of outside consultants where necessary and the cost of obtaining the aforesaid permits and licenses. A reimbursement agreement, with terms mutually acceptable to both parties, shall be prepared and attached hereto as an addendum prior to the issuance of any Notice to Proceed to any contractor for performance of the Dole Work.

Notwithstanding said commitment on Dole's part, City agrees to apply the proceeds of any grant received from CDBG to Dole's monetary obligation to City.

7. Prior to preparation of bid documents, Dole shall submit engineering and construction documents for the Dole Work to City for review and comment. Both Dole and City agree that time is of the essence in both the preparation and review of said

documents, and that such tasks shall be accomplished so as not to delay construction. City shall contract with The Dennis Group, Inc., for inspection and construction management services in connection with construction of the Dole transmission line.

8. Despite City's status as "lead agency", City shall not be responsible for the performance or non-performance of any of the work of construction of the Dole Work, and Dole shall hold City free and harmless from any claim or liability resulting from or arising out of the same.

9. Upon completion of construction of the Dole Work, Dole shall transfer to the City said improvements and the City shall accept any and all interest therein; provided, however, that if the improvements differ materially from the one hundred percent (100%) final construction documents (or subsequent alterations thereto) approved by the City, and such variance renders them materially inoperable, grossly inefficient, or dangerous, the City may refuse to accept them. After transfer of the improvements to the City, the City shall own and have the responsibility for operation, maintenance, replacement or repair of all said improvements. Dole shall assign to the City all off-site easements, licenses or franchises appurtenant thereto.

10. The wastewater treatment services furnished pursuant to this agreement shall only be provided to the Subject Property and no other.

11. Dole and City acknowledge that this agreement provides for the delivery to the Subject Property of services ordinarily rendered only to lands within the City of Soledad; that it may in the long run be advantageous to both City and Dole that the Subject Property be annexed to the City of Soledad; and that either Dole or City may initiate proceedings at any time to annex the Subject Property to the City of Soledad. If Dole initiates annexation proceedings, City agrees to cooperate with Dole and to give such application favorable consideration and support to the extent that City finds annexation to be feasible and in the best interests of the City of Soledad. If City initiates annexation proceedings, Dole agrees to consider the proposal in good faith and not to oppose or object to annexation so long as Dole finds such annexation to be feasible and in the best interests of Dole from a financial and use standpoint. Both Dole and City agree to consider and evaluate an annexation proceeding initiated by the other in good faith and in a spirit of fair dealing.

12. It is understood that at any time after the first five years following the initiation of domestic sewer service to the Plant by City unless and until annexation of the Subject Property, City may charge an outside-the-city-limit rate for service as established by ordinance or regulation of the City of Soledad.

13. Should a court of competent jurisdiction restrict or limit directly or indirectly City's ability to provide domestic wastewater service outside its city limits, the parties agree to modify the terms of this agreement to the extent necessary to permit continued domestic wastewater service to the Plant consistent with the court's orders. If this agreement cannot be so modified by reason of the court order, then City shall have the right to terminate sewer service to the Plant, provided, however, that to the extent allowed by the court, City shall give Dole sufficient advance notice to allow Dole to develop and install a feasible alternate domestic wastewater treatment and disposal system.

14. The Subject Property is situated in the County of Monterey, State of California and is more particularly described in Exhibit "B" attached hereto, and made a part of this agreement.

15. Dole expressly agrees to defend, hold harmless, and indemnify City from and against any and all claims, damages, causes of action, suits or damages (including costs and expenses incurred in connection therewith) on account of death and injury to persons and/or loss of or damage to property of third persons and/or loss or damage incurred by contractors arising from any and all construction or design activities, and all omissions associated therewith, concerning the Dole Work as described in Section 6.

In the event of any claims made or suits filed, City shall provide Dole with notice thereof and Dole shall have the right to defend or to settle the same to the extent of its interest hereunder.

Dole's obligations under this paragraph shall apply only to claims, damages, causes of action, suits or damages arising prior to the date on which City accepts ownership of the Dole Work pursuant to Paragraph 10 above

16. Both parties agree, on the request of the other, to execute, acknowledge and record this agreement, in its entirety.

IN WITNESS WHEREOF the parties have executed this agreement to be effective on the date first set forth above.

CITY OF SOLEDAD, a Municipal Corporation

By: [Signature]  
Its Mayor

DOLE FRESH VEGETABLES, INC., A California Corporation

By: [Signature]  
ALEX LEACH  
Title: Vice President