

RESOLUTION NO 2403

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF A WATER SERVICES
AGREEMENT WITH SAI, ENERGY, INC., FOR
PROPERTY AT 962 LOS COCHES DRIVE
(BIO MASS II)**

WHEREAS, on September 12, 1994, the City of Soledad approved Conditional Use Permit 93-16 for the establishment of an 18 megawatt co-generation electrical power plant at 962 Los Cochés Drive for SAI Energy, Inc.; and

WHEREAS, the City of Soledad certified a Final Supplemental Environmental Impact Report for the project in August of 1994, pursuant to the California Environmental Quality Act; and

WHEREAS, the Conditions of Approval require that the applicant enter into a Water Agreement with the City of Soledad

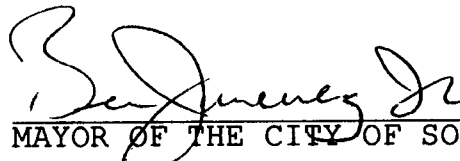
BE IT RESOLVED by the City Council of the City of Soledad that the Mayor and the City Manager/City Clerk be, and they are hereby, authorized and directed for and in behalf of the City of Soledad to execute a Water Services Agreement with SAI Energy, Inc., for property at 962 Los Cochés Drive (Bio Mass II), 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 9th day of January, 1995 by the following vote:

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

NAYES, Councilmembers: None

ABSENT, Councilmembers. None


MAYOR OF THE CITY OF SOLEDAD

ATTEST:


CITY CLERK OF THE CITY OF SOLEDAD

AGREEMENT

THIS AGREEMENT is made by and between the CITY OF SOLEDAD, a municipal corporation of the State of California, hereinafter called CITY, and SAI ENERGY, a corporation, hereinafter called SAI

RECITALS

A On September 12, 1994, a conditional use permit ("CUP") was approved by CITY to SAI for the construction and operation of an 18.5 megawatt bio-mass fueled power plant at 962 Los Coches Drive (APR 022-291-16) located within the Los Coches Industrial Park in the City of Soledad

B Condition No. 18 of said permit requires that "prior to the issuance of a building permit for the project, the permittee (SAI) shall enter into a written agreement with the CITY OF SOLEDAD for the provision of water from the municipal water system. Said agreement shall provide for hold harmless covenants regarding disruptions in water service caused by emergencies, well failure, and accidents to the well(s) or lines. Provisions for allowing or requiring the permittee to use a secondary source of water, such as reclaimed water, shall also be included in the agreement. Said agreement shall provide that the project shall use reclaimed water to the extent feasible when reclaimed water is made available to the industrial park by the City. Said agreement shall also require the participation of the permittee in the preparation of a Citywide Reclamation Plan. The permittee shall participate financially based on a pro rata share of reclaimed water use. Permittee shall be subject to any impact fees established by the City for reclamation."

C The September '94 Final Supplemental Environmental Impact Report (EIR) for the project estimates that the power plant will have a demand of 51,840 gallons of raw water per day of operation, which on the basis of 24 hours operation 365 days a year amounts to 58 acre-feet per year. This

agreement is made pursuant to Condition of Approval No 18 of the "CUP", it being intended that the provisions of this agreement shall supersede CUP Condition No 18 to the extent that it is inconsistent with said Condition, and that by complying with this Agreement SAI will be deemed to have complied fully with all of the requirements of "CUP Conditions No 18

D The City is subject to Monterey County Urban Water Ordinance 3744. Among other things, County Ordinance 3744 establishes the basis for the City water pumping allocation, including but not limited to the amount of water the City can extract from its wells, fees to be paid by the City for pumping water from its wells, and penalties that may be imposed for pumping in excess of the allocation approved from time to time by the Monterey County Water Resources Agency. It is expressly recognized by both parties that the Monterey County Water Resource Agency has jurisdiction over matters pertaining to water and as such has approved Ordinance 3744, and that City has no direct control over such ordinance and actions directed through this ordinance

AGREEMENT

It is therefore mutually agreed by and between the parties hereto, as follows

1 Use of Municipal Water The City of Soledad agrees to supply from its municipal supply system water for normal operation of the project in amounts and delivery rates not to exceed 58 acre feet per year. All water supplied for normal plant operation shall be metered at the point of delivery. The project's water distribution system shall be designed and installed to permit future segregation of water deliveries and to accommodate deliveries of reclaimed water.

2 Use of Water Reclaimed from Municipal Wastewater

Reclamation Facilities The project shall use reclaimed water from City Wastewater Reclamation Facilities to the extent feasible as determined by mutual agreement of City and SAI when reclaimed water is made available by the City at the Industrial Park. Reclaimed water may be used for landscaping, dust suppression, and fire fighting. The costs associated with using recycled water shall be paid by SAI according to standard recycled water fees to be adopted for use in the City-wide rate structure and amended from time to time by City Council action.

3 Reclamation Impact Fees SAI shall be subject to all impact fees adopted by the City for water reclamation at the time said fees are established.

4 Pro Rata Financial Participation in Cost of Reclaimed Water Use. SAI shall pay their pro rata share to the City for reclaimed water use.

5 Monthly Water Fees Each month SAI shall pay the City a meter charge, and each month SAI shall also pay to the City the water fees imposed by the Monterey County Water Resources Agency (MCWRA) related to water used by SAI plus a nominal handling fee as established by the City Council and as applicable to other properties in the City of Soledad, and each month SAI shall also pay the City for water received from the City Municipal Water System according to the water rate structure established by the City Council April 24, 1993. These meter and water consumption charges shall be subject to change at any time by action of the City Council, except that MCWRA charges are not subject to change by the City. Monthly charge for reclaimed water furnished to SAI by the City shall be the same rate as that for other reclaimed water provided to others by the City, or as agreed to by the City and SAI.

6 Limitation on Quantity of Municipal Water The maximum quantity of water to be provided by the City to SAI and used by SAI shall be 58 acre feet, computed from November 1st of each year during the term of this agreement to and including October 31st of the following year. The SAI water meter(s) shall be monitored by the City on a regular basis and meter readings shall be recorded at least monthly.

7 Limitation on Source and Uses of Water SAI may only use municipally supplied water and municipally supplied reclaimed water, on-site, for operation of the power plant and uses incidental thereto, and not otherwise.

(a) Water from the City municipal water system will be provided through a separate metered line, equipped with a backflow valve, at the regular rates from time to time in effect for such uses.

(b) Reclaimed Water for other operations of the power plant and uses incidental thereto, will be provided through separate metered lines, equipped with backflow valves, at the regular rates in effect at the time of such use.

(c) Water for fire protection purposes will be provided through a metered line at the regular rates in effect at the time of such use for municipally supplied water or reclaimed water.

(d) Connection fees and installation charges established by City Council action shall be paid by SAI.

8 Emergency Water Supply Notwithstanding the foregoing provisions of this agreement, SAI shall be allowed to obtain water from adjacent properties for power plant use in case of an emergency which prevents the City from supplying municipal water, but only for as long as is reasonably required to restore the on-site municipal service. For purposes of

this paragraph, an "emergency" is any situation which requires the withdrawal of municipal water services to the site, or which requires the shut-down of municipal water services for health, safety or environmental reasons, or due to restrictions on the supply of water due to federal, state or county action. City must immediately notify SAI, in writing, of the commencement and termination of such emergency. Prior to initiating any emergency use of water, City, SAI and any participating adjacent property owner shall meet and prepare an emergency water use plan, subject to City approval, which at a minimum shall set forth the proposed amount of water to be used, the rate for which said water use shall be charged to SAI or the participating adjacent property owner and the term of such use.

9 Compliance with Laws. SAI shall comply with all applicable laws, rules and regulations of governmental authorities having jurisdiction, including those of the City of Soledad, in all of its operations pursuant to this agreement.

10 Indemnity SAI accepts full responsibility for its on site operation of the Bio-Mass facility water system in a safe and lawful manner and hereby agrees to indemnify CITY, its officers, employees, and agents from and against (a) all liability for, and all legal and other expenses incurred in defending itself against, any violation or alleged violation of any governmental law, rule, or regulation relating to the development, use, maintenance, or its on-site operation, (b) all costs and expenses incurred by CITY in treating or eliminating any contamination of the municipal water supply, or any damage to the municipal water system, resulting from the development, use, maintenance or on-site operation of the involved water system, and (c) all claims, demands and causes of action brought against CITY for personal injury (including death) or for property damage, arising from said development, use,

maintenance or on-site operation, together with legal and other costs incurred in defending the same

11 Assignment. SAI may not assign this agreement, or any interest herein, without the prior written consent of the CITY. Any assignment shall contain the express written agreement of the assignee to keep and perform, and to be bound by, all of the obligations of SAI under this agreement, and a fully executed original of the same shall be delivered to CITY, with a fully-executed copy of said assignment within 72 hours of execution

12 Default. Time is of the essence under this agreement and any of the following events shall constitute a default on the part of SAI, or any successor of SAI hereunder

(a) The failure to pay any moneys due to CITY under the terms of this agreement within thirty (30) days after the date on which the same shall become due.

(b) Any breach or failure to keep or perform any other obligation of SAI hereunder and the continuance of such default for thirty (30) days after receipt from CITY of written notice of the existence of default, or, if the default is such that it cannot with due diligence be cured within that time, the commencement within that time of action to cure the same and the diligent prosecution thereof to completion at the earliest possible time, but in no event longer than six (6) months from the date of said notice

Any such default under this agreement shall constitute a default under Condition 18 of the Conditional Use Permit referred to in Recital A above and shall be cause for the revocation of said Permit.

13 Waiver of Default. The waiver by CITY of any default hereunder shall not constitute the waiver of any subsequent or other default hereunder

14 Disclaimer of Warranties. SAI is entering into this agreement solely in reliance upon its own investigation and judgment as to the kind, quantity, and suitability for its purposes of the water that may be obtained from the municipal water system. It is understood and agreed that CITY has made no representation or warranty, oral or written, in that regard, nor has it made any such representation or warranty as to any other matter or thing not expressly set forth in this agreement.

15 Term of Agreement. The term of this agreement is thirty (30) years from and after the date of issuance of a Certificate of Occupancy, subject, however, to the provisions for earlier termination set forth in Paragraphs 16 and 17 below. After expiration of said thirty (30) years' term, SAI shall have the right, at its election, to do either of the following.

(a) Use water and/or reclaimed water from the municipal system for its power plant operations, at the regular industrial rate applicable to such use, or (b) extend the term for four (4) successive periods of five (5) years each by giving to CITY written notice of its election to do so at least ninety (90) days prior to the commencement of each such period, in which event the compensation to be paid to CITY during those periods of extension shall be a monthly rate equal to that in effect for industrial users of the municipal water system.

16 Termination by SAI This agreement may be terminated by SAI when and if it determines, on the basis of an investigation and report by a qualified consultant satisfactory to CITY that municipal water and/or reclaimed water are not capable of furnishing a sufficient quantity of water to

justify their use for its power plant operations, and for that reason it is necessary to discontinue their business. Notice of such termination shall be given to CITY in writing at least sixty (60) days prior to the effective date thereof.

17 Termination on Cessation of Use. In the event there is a cessation of power plant operations on the subject property and said property is converted to another use, this agreement shall forthwith terminate without the necessity of any action on the part of CITY.

18 Inspection of Premises. CITY by its authorized agents shall have the right at all reasonable times to enter the premises of SAI for the purpose of inspecting the water system and the manner in which it is being used.

19 Hold Harmless Disruption Covenant. SAI agrees to hold the CITY harmless concerning disruptions in water service caused by emergencies, municipal system failure, accidents to City wells, waterlines, or related system components, and actions taken by federal, state or county entities.

20 Notices. All notices hereunder shall be in writing and delivered in person to an officer or agent of the party to which such notice is addressed, or mailed by registered or certified mail to such party at the address shown below such party's signature hereto, or at such other address as such party may designate for the service of notice hereunder.

21 Successors and Assigns. Subject to the restriction on assignment hereinabove set forth, this agreement, and all of the terms, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of, the legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHERE, the said parties have executed this agreement this agreement this 9th day of January, 1995.

CITY OF SOLEDAD, a California Municipal Corporation,

SAI ENERGY, a Corporation

By [Signature]
Mayor

By, [Signature]
Title
President.

ATTEST

[Signature]
City Clerk

Address.
P O Box 156
Soledad, California 93960

APPROVED AS TO FORM:

[Signature]
City Attorney