

RESOLUTION NO. 4208

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD,
APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY
OF SOLEDAD AND THE STATE OF CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

WHEREAS, a Memorandum of Understanding (MOU) between the City of Soledad and the State of California Department of Corrections and Rehabilitation (CDCR) is needed as an encumbering document for CDCR to submit a request to the State of California Public Works Board to authorize funding of CDCR's pro rata share of the Wastewater Treatment Plant State Revolving Fund project number C-06-4743-110; and

WHEREAS, on April 8, 2008 City staff submitted a final version of the MOU to CDCR for its approval; and

WHEREAS, on April 16, 2008 CDCR returned the MOU fully executed and approved by Deborah Hysen, Chief Deputy Secretary of the Facilities Planning, Construction and Management Division of the State of California Department of Corrections and Rehabilitation.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Memorandum of Understanding between the City of Soledad and the State of California Department of Corrections and Rehabilitation, in the form of the document hereunto attached and marked as Exhibit 1, and by reference made a part hereof, is hereby approved.

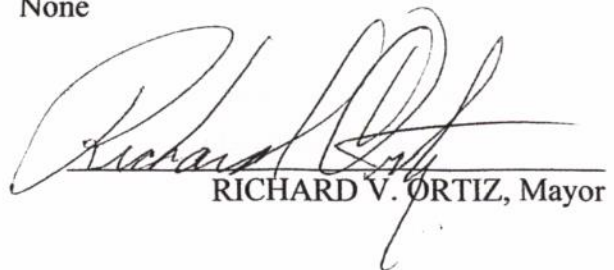
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 7th day of May 2008, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None


RICHARD V. ORTIZ, Mayor

ATTEST:

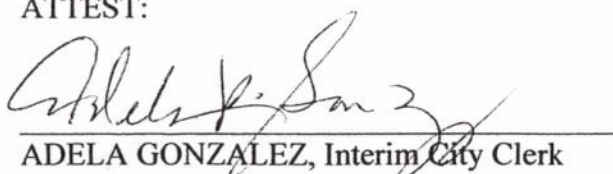

ADELA GONZALEZ, Interim City Clerk

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the California Department of Corrections and Rehabilitation (hereinafter CDCR) and the City of Soledad (hereinafter CITY) on the date set forth herein below, and in recognition of the following:

WHEREAS, CDCR operates the Correctional Training Facility (CTF), and the Salinas Valley State Prison (SVSP), near Soledad, which originally included a wastewater treatment facility that was subsequently abandoned and taken out of service; and,

WHEREAS, in 1993 the CITY and CDCR entered into a Joint Powers Agreement, wherein, inter alia, CDCR and CITY constructed a new wastewater treatment facility ("WWTF") in the CITY, designed to treat and dispose of the flows of both CDCR and CITY, and owned and operated by the CITY; and,

WHEREAS, the discharge requirements of the State Regional Water Quality Board have necessitated an upgrade to the WWTF's treatment capabilities; and,

WHEREAS, pursuant to the terms of the Joint Powers Agreement ("JPA") entered into between the parties, CDCR has an obligation to share in the expenses of WWTF upgrades; and,

WHEREAS, CITY has provided CDCR with its plans for the WWTF upgrades, and CDCR is reviewing those plans and cost estimates; and,

WHEREAS, CITY has represented to CDCR that the initial capital expenditure needed as part of CDCR's pro rata share of WWTF upgrade costs is Six Million Five Hundred Thirty Six Thousand Five Hundred Twenty Six Dollars (\$6,536,526.00), and which number CDCR has not yet verified, and that there will be future, as yet uncertain capital costs in addition thereto.

NOW THEREFORE, and in recognition of the foregoing, the parties do hereby enter into this Memorandum of Understanding, intended by them to be a binding obligation between them.

TERMS

1. This Agreement is entered into on April ____, 2008, and shall be effective as of that date.
2. Pursuant to the provisions of Sections 13 and 16 of the JPA, CDCR shall pay its share of upgrade costs as follows:

A) Initial "up-front" capital contribution: Six Million Five Hundred Thirty Six Thousand Five Hundred Twenty Six Dollars (\$6,536,526.00).

B) Any or collectively all capital contributions paid by CDCR shall not exceed CDCR's pro-rata share of the costs associated with the requisite construction and design environmental documentation, construction environmental monitoring and mitigation, design, bidding, inspection, maintenance easement fees, easement acquisition, construction engineering, construction inspection testing, pre-purchased components, construction, construction management and administration of the WWTF upgrade project and State Revolving Loan Fund ("SRF") costs listed as eligible for SRF loans and the match required for said loan as approved in the final loan agreement between the City and the California State Water Resources Control Board ("SWRCB") for SRF loan number C-06-4743-110 and the match amount for the Proposition 50 Grant of the WWTF upgrade project as approved by the SWRCB, and determined upon the review and acceptance by the SWRCB of detailed project cost documents associated with the WWTF upgrade.

City shall indemnify and hold the State harmless against all liabilities arising from the construction work, and with the exception of any insurance costs, any indemnity or defense costs associated with third party claims or actions

during construction shall be borne by the City solely, and such shall not be used for calculation of construction cost contributions.


All funds in excess of the initial up-front \$6,536,526.00 shall be paid in equitable user fee rate structure based upon actual costs associated with the requisite construction and design environmental documentation, construction environmental monitoring and mitigation, design, bidding, inspection, maintenance easement fees, easement acquisition, construction engineering, construction inspection testing, pre-purchased components, construction, construction management and administration of the WWTF upgrade project and SRF costs listed as eligible for SRF loans and the match required for said loan as approved in the final loan agreement between the SWRCB for SRF loan number C-06-4743-110 and the match amount for the Proposition 50 Grant.

- C) The balance of CDCR proportional share of upgrade expenditures shall be represented by the SRF costs listed as eligible for SRF loans and the match required for said loan as approved in the final loan agreement between the City and the SWRCB for SRF loan number C-06-4743-110 and the match amount for the Proposition 50 Grant obtained by CITY, and shall be ratably paid by CDCR as a portion of their monthly cost of Treatment and Disposal of CDCR flows on a monthly basis during the life of the loan.
3. CITY shall undertake the upgrade of the WWTF in compliance with all laws and regulations of the State and Federal government having oversight over said project, including any oversight by the State of California necessitated by the involvement of CDCR in the project, and construct the plant in conformity with approved plans and specifications.
4. The parties hereto shall use their best good faith efforts to arrive at an agreed amount for the final CDCR capital costs, and the initial payment of the "up front" Six Million Five Hundred Thirty Six Thousand Five Hundred Twenty Six Dollars (\$6,536,526.00) shall be a credit against said amount. Should the final amount

result in a credit to CDCR, that credit may be used as an offset against monthly treatment and disposal costs, until exhausted.

5. This agreement shall not operate to resolve the outstanding claim of CDCR against CITY arising from earlier matters arising between them, which are not directly related to these WWTF upgrades, and the parties shall, in conjunction herewith use their best good faith efforts to concurrently resolve any and all outstanding claims between them that predate this agreement. Said claims are otherwise unaffected hereby.
6. The parties hereto agree that until such time as they amend the JPA to reflect the changes in their respective rights and obligations, this Agreement shall serve as the operative agreement between them as to all matters embraced herein, superseding any and all earlier agreements respecting those matters. Any agreement not in conflict herewith remains unaffected hereby.

**STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

By  _____
Deborah Hysen, Chief Deputy Secretary
Facility Planning, Construction
and Management

Dated April 15, 2008

CITY OF SOLEDAD

By  _____
Noelia F. Chapa, City Manager

Dated April 8, 2008

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

BY

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

BY

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

BY