



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: NOVEMBER 20, 2018

DEPARTMENT: PUBLIC WORKS

FROM: DAVID JACOBS, DIRECTOR

BY: JIM SANDOVAL, ASSISTANT DIRECTOR/CITY ENGINEER

TITLE: CITY OF SALINAS' ONE YEAR NOTICE OF INTENTION TO
WITHDRAW FROM THE JOINT POWERS AGREEMENT WITH
THE SALINAS VALLEY SOLID WASTE AUTHORITY

RECOMMENDED MOTION:

A motion to approve a resolution that authorizes the City Manager to deliver a one year written notice to the Salinas Valley Solid Waste Authority of the City's intent to withdraw from the *Joint Powers Agreement Between the City of Salinas, The City of Gonzales, The City of Greenfield, The City of King, The City of Soledad, and the County of Monterey Creating the Salinas Valley Solid Waste Authority*.

RECOMMENDATION:

It is recommended that the City Council approve a resolution that authorizes the City Manager to deliver a one-year written notice to the Salinas Valley Solid Waste Authority of the City's intent to withdraw from the Joint Powers Agreement. This resolution was requested by Councilmember Craig and Councilmember De La Rosa. This notice will allow the City to continue the process of determining the most efficient and economical method of delivering waste disposal and diversion services to the Salinas community, and it will allow the Salinas Valley Solid Waste Authority to begin the process of assessing how to address the City's potential withdrawal from the Joint Powers Agreement. In the meantime, should the countywide solid waste stakeholders build a timely consensus on the attached proposed MOU, that is in the best interest of the City and the region, the City will have the option to rescind the notice and remain a member of the Joint Powers Authority.

DISCUSSION:

In 2018, the County and all cities in Monterey County are faced with the significant challenges in complying with recent environmental laws that govern the management of solid waste and mandate additional solid waste diversion from landfills. These laws are primarily focused on diverting organic waste (AB 1594, SB 1826, SB 1383) and recyclables (AB 341) from landfill disposal, and will have a profound and long-term impact on all stakeholders involved in paying for and managing Monterey County's solid waste systems.

On August 7, 2018, the City Council approved a resolution that supports collaboration between the Salinas Valley Solid Waste Authority (SVSWA) and the Monterey Regional Waste Management District (MRWMD) to leverage their resources and efficiently maximize the use of the existing solid waste processing and landfill facilities in Monterey County to minimize the impact of the state regulations noted above. This proposed collaboration is summarized in the attached proposed Memorandum of Understanding (MOU), which was developed by County and City of Salinas representatives. On July 17, 2018, the Monterey County Board of Supervisors declared support of the same MOU.

On November 13, 2018, a meeting is scheduled among the key stakeholders to build consensus on the MOU, including representatives from SVSWA, MRWMD, City of Salinas, Monterey County, and South County cities. Given that past intentions to

- a) relocate the Sun Street Transfer Station operations, and
- b) create a partnership between the SVSWA and MRWMD to address solid waste management with a more efficient, countywide approach

have not come to fruition, staff recommends that the City of Salinas develop its own plan for solid waste management in parallel with the MOU negotiations. This will give the City a back-up plan to assure its compliance with the new regulations and to expedite the relocation of the Sun Street Transfer Station, in case regional consensus on the MOU fails as it did with the recommendations in the 2015 countywide study--*Evaluation and Analysis of Monterey County's Solid Waste Management System*.¹

Thus, City staff believe it is in the best social, environmental, and economic interests of its residents and businesses to explore more efficient and economical waste disposal options. Accordingly, pursuant to Section 19 of the attached *Joint Powers Agreement Between the City of Salinas, The City of Gonzales, The City of Greenfield, The City of King, The City of Soledad, and the County of Monterey Creating the Salinas Valley Solid Waste Authority* ("JPA"), staff propose that the City Council authorize the City Manager to deliver a one year written notice to the SVSWA of the City's intent to withdraw from the JPA. This notice will allow the City to begin the process of determining the most efficient and economical method of delivering waste disposal and diversion services to the Salinas community, and it will allow the SVSWA to begin the process of assessing how to address the City's potential withdrawal from the JPA. In the meantime, should the MOU stakeholders build a timely consensus that's in the best interest of

¹ In 2015, the Salinas City Council received the study, developed by R3 Consulting Group, and requested staff to continue work with SVSWA, the County, and other cities to develop Scenario 7 of the study as the preferred option. Scenario 7 provided for direct-hauling Salinas and North County waste to MRWMD, increased solid waste diversion through MRWMD's new materials recovery facility, and hauling the remainder of SVSWA solid waste to Johnson Canyon Landfill.

the City and the region, the City will have the option to rescind the notice and remain a member of the JPA.²

The recommendation herein is made with the intention of

- a) assuring that the City fulfills the requirements of the solid waste regulations referenced above
- b) assuring that the rate-impacts to residents and businesses caused by the state regulations are minimized
- c) meeting the City Council's desire and direction to move the Sun Street Transfer Station out of the City's limits and away from the City's residents and businesses to allow for the revitalization of the Alisal Marketplace area consistent with the Alisal Vibrancy Plan.

CEQA CONSIDERATION:

Not a Project. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

STRATEGIC PLAN INITIATIVE:

The proposed collaboration supports the Council's goal of a "Health, Vibrant Sustainable and Green Community" and its initiative to "Practice environmentally responsible conservation, re-use and recycling of its resources".

DEPARTMENTAL COORDINATION:

Public Works staff has consulted with other City Departments to develop the recommendation herein, including Administration, Finance, and Legal. Should the City Council approve the recommendation, Public Works will continue to collaborate with these departments, along with Community Development.

² The County of Monterey took similar action in 2012, submitting to the Authority Board a letter of its intent to withdraw from the Authority JPA. The County's concerns were ultimately resolved, and the County rescinded its notice to withdraw.

FISCAL AND SUSTAINABILITY IMPACT:

There is no impact on the General Fund or other funds of issuing the notice of intent to withdraw. In the long-term, the recommended motion could minimize the increases to solid waste rates that are inevitable to meet the requirements of AB 1594, SB 1826, SB 1383, and AB 341, and to address other solid waste market factors. It would also enhance the opportunities for economic development in the Alisal community. If the City does withdraw from the SVSWA JPA, the City would be responsible for paying its share of the SVSWA's obligations. The City has options for covering its share of the obligation if the City does withdraw from the SVSWA. As of June 30, 2018, the total obligations of the SVSWA is \$53,215,324, of which, the City would be responsible for about 60%, or \$31,929,194. In addition, the City would be responsible for its share of site remediation, if needed, for the landfills. The estimated cost of remediation is \$13,776,998 as of June 30, 2018. The City's share is about 60%, or \$8,266,199. Again, this remediation cost may never be needed.

ATTACHMENTS:

- Slides - Opportunities for Cooperative Management of Monterey County's Waste Management Infrastructure; R3 Consulting Group, Inc.; July 3, 2018 ("MOU")
- *Joint Powers Agreement Between the City of Salinas, The City of Gonzales, The City of Greenfield, The City of King, The City of Soledad, and the County of Monterey Creating the Salinas Valley Solid Waste Authority*, Agreement No. A-07261, 2008

RESOLUTION NO. _____ (N.C.S.)

**CITY OF SALINAS' ONE YEAR NOTICE OF INTENTION TO WITHDRAW FROM
THE JOINT POWERS AGREEMENT WITH THE SALINAS VALLEY SOLID WASTE
AUTHORITY**

WHEREAS, State regulations AB 1594, SB 1826, SB 1383, and AB 341 mandate additional solid waste diversion from landfills; and

WHEREAS, these regulations, along with other solid waste market factors (e.g., China's National Sword policy on recycled materials), are leading to significant increases in the cost to manage solid waste for all jurisdictions in the state; and

WHEREAS, on August 7, 2018, the City Council approved a resolution that supports a collaboration between the Salinas Valley Solid Waste Authority (SVSWA) and the Monterey Regional Waste Management District (MRWMD) through a Memorandum of Understanding (MOU) to leverage their resources and efficiently maximize the use of the existing solid waste processing and landfill facilities in Monterey County to minimize the impact of the state regulations noted above upon City and county-wide solid waste rate payers; and

WHEREAS, on July 17, 2018, the Monterey County Board of Supervisors declared support of the same MOU; and

WHEREAS, on November 13, 2018, a meeting is scheduled among the key stakeholders to build consensus on the MOU, including representatives from SVSWA, MRWMD, City of Salinas, Monterey County, and South County cities; and

WHEREAS, staff recommends that the City of Salinas develop its own plan for solid waste management in parallel with the MOU negotiations. This will give the City a back-up plan to assure its compliance with the new regulations and to meet the City Council's desire and direction to move the Sun Street Transfer Station out of the City's boundaries and away from its residents and businesses to allow for revitalization of the Alisal Marketplace area consistent with the Alisal Vibrancy Plan, in case regional consensus on the MOU fails as it did with the recommendations in the 2015 countywide study--*Evaluation and Analysis of Monterey County's Solid Waste Management System*; and

WHEREAS, City staff believe it is in the best economic interests of its citizens and businesses to explore more efficient and economical waste disposal options; and

WHEREAS, Section 19 of the *Joint Powers Agreement Between the City of Salinas, The City of Gonzales, The City of Greenfield, The City of King, The City of Soledad, and the County of Monterey Creating the Salinas Valley Solid Waste Authority* ("JPA") enables the City to deliver a one-year written notice to the SVSWA of intention to withdraw from the JPA; and

WHEREAS, Section 19 of the *Joint Powers Agreement* allows for withdrawal so long as the City makes provision for paying its share of the indebtedness and interest thereon and its

share of the closure, post-closure and site remediation costs, which the City plans to make provision for paying; and

WHEREAS, the City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized and directed to deliver a one-year written notice to the SVSWA of the City's intent to withdraw from the Salinas Valley Solid Waste Authority Joint Powers Agency. This notice will allow the City to begin the process of determining the most efficient and economical method of delivering waste disposal and diversion services to the Salinas community, and it will allow the SVSWA to begin the process of assessing how to address the City's potential withdrawal from the JPA. In the meantime, should the MOU stakeholders build a timely consensus that's in the best interest of the City and the region, the City will have the option to rescind the notice and remain a member of the JPA.

PASSED AND APPROVED this 20th day of November 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

Ayes: 7 - Councilmember Barrera, Councilmember Craig, Councilmember Davis, Councilmember De La Rosa, Councilmember McShane, Councilmember Villegas and Mayor Gunter

Enactment No: RES 21507

ID#18-562

Agreement with Monterey One Water - Industrial Wastewater Treatment Facility Improvements

Upon motion by Mayor Gunter, second by Councilmember De La Rosa, Resolution 21508 to approve an agreement with Monterey One Water regarding the funding and mutual responsibilities related to electrical improvements at the Industrial Wastewater Treatment Facility was approved. The motion carried by the following vote:

Ayes: 7 - Councilmember Barrera, Councilmember Craig, Councilmember Davis, Councilmember De La Rosa, Councilmember McShane, Councilmember Villegas and Mayor Gunter

Enactment No: RES 21508

COUNCILMEMBERS' REPORTS, APPOINTMENTS AND FUTURE AGENDA ITEMS

Councilmember Davis announced he is hosting a neighborhood cleanup on November 3, 2018 at Alisal Community School from 9 a.m. to 12 p.m.

Councilmember Craig reported she will be attending the Transportation Agency for Monterey County (TAMC) Board meeting to discuss the Fort Ord Reuse Authority (FORA) transition planning and TAMC's role. She will also be attending the Monterey County Convention and Visitors Bureau (MCCVB) meeting where they will receive information regarding Pebble Beach's 100th year anniversary and information regarding ballot measures.

Councilmember Craig reported she attended the Salinas Valley Solid Waste Authority (SVSWA) Strategic Planning Retreat. She expressed concerns regarding the difficulty in communication among the various entities involved specifically relating to the direction given by the board regarding the transfer station. SVSWA was given three directions as part of the retreat which included the creation of an MOU between SVSWA and Monterey Regional Waste Management District (MRWMD) to presented on November 15 to the board and has not been done. Councilmember Craig requested City staff move forward with beginning the process for withdrawal from SVSWA. She stated that over the last two years serving on SVSWA very little has been accomplished and Salinas' rates continue to increase. Request was second by Councilmember De La Rosa.

Withdrawal
Referral

Councilmember Barrera stated that he will support the recommendation by Councilmember Craig and requested communication among all entities improve. He announced he will be participating in the Halloween festivities at the Senior Center.

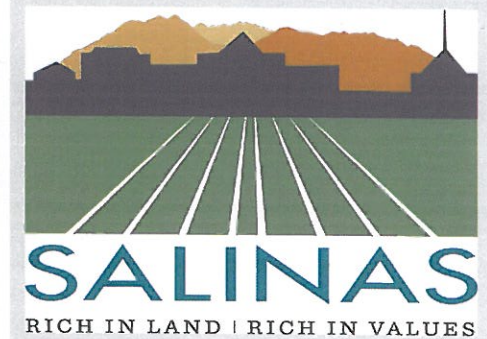
Councilmember De La Rosa reported she had a successful meeting with residents of Chaparral regarding traffic calming measures. Additionally, she reported that she met with SUBA business owners and will be providing them with an updated regarding the transfer station.

Councilmember Villegas stated he attended the Housing Subcommittee where they discussed state housing regulations and farmworker housing solutions. He reported he attended the SVSWA meeting as the incoming board member. Additionally, he reported he met with school board members in efforts to continue the dialogue surrounding the

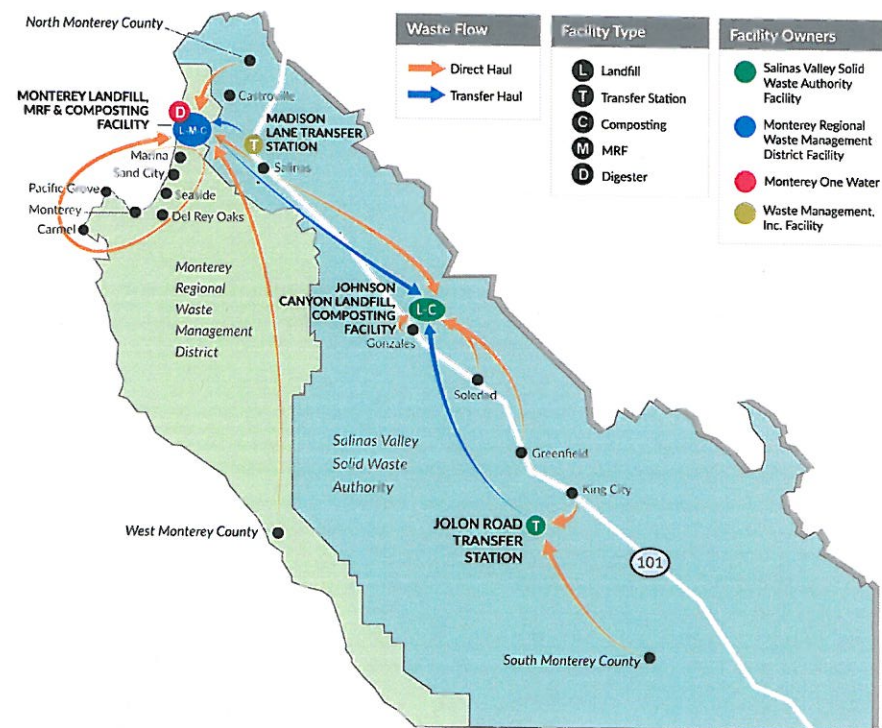
Notice of Intent to Withdraw from the JPA agreement with SVSWA

David Jacobs, Director of Public Works
Public Works

November 20, 2018



Opportunities For Cooperative Management of Monterey County's Waste Management Infrastructure



Reason For This Discussion

- New solid waste regulations
- Minimize customer rate increases
- Revitalize the Alisal Marketplace area
- Salinas needs to develop its own plan for solid waste as a backup to ensure compliance with new regulations.

Alisal Plan Area



History

- **1997** – SVSWA formed by Joint Powers Agreement
- **2005** – Sun Street Transfer Station began operations
- **2008** – MOU executed to relocate Sun Street Transfer Station
- **2009** – Crazy Horse Landfill closed
- **2011** – Evaluation of The Feasibility of Re-Directing Waste from Eastern Monterey County to the Marina Landfill
- **2012** – Monterey County sends Letter to withdrawal from SVSWA.

History

- **2012** – Monterey County Civil Grand Jury recommends shutting down Sun Street Transfer Station
- **2014** – Citizen's Advisory Group formed to find a site for a Materials Recovery Center
- **2015** – Evaluation and Analysis of Monterey County's Solid Waste Management System
- **2017** – Notice of Preparation of an EIR for the Long Range Facilities Needs Study
- **April 2018** – R3 presented joint use opportunities to MRWMD and SVSWA staff

Intentions

- Assure the City fulfills the requirements of the solid waste regulations
- Minimize rate impacts to the residents and businesses
- Move the Sun Street Transfer Station

Fiscal and Sustainability Impact

- Over all cost neutral or cost savings including the legacy cost of SVSWA's obligations:
 - City's Share: \$31,929,194
 - City's Share of additional potential obligation for remediation: \$8,266,199

Financial Options

- Updated Franchise Agreement with Republic
- New Agreement with Republic
- Long-Term Agreement with Monterey Regional Waste Management District
- Conduct rate study to recapture cost of existing obligations and regulatory compliance

Agreement No. A-07261

JOINT POWERS AGREEMENT BETWEEN THE CITY OF SALINAS, THE CITY OF GONZALES, THE CITY OF GREENFIELD, THE CITY OF KING, THE CITY OF SOLEDAD, AND THE COUNTY OF MONTEREY CREATING THE SALINAS VALLEY SOLID WASTE AUTHORITY

This agreement is made and entered into by and between the following public entities:

- (a) CITY OF SALINAS ("Salinas"), a municipal corporation;
- (b) CITY OF GONZALES ("Gonzales"), a municipal corporation;
- (c) CITY OF GREENFIELD ("Greenfield"), a municipal corporation;
- (d) CITY OF KING ("King"), a municipal corporation;
- (e) CITY OF SOLEDAD ("Soledad"), a municipal corporation; and
- (f) COUNTY OF MONTEREY ("County"), a political subdivision of the State of California.

RECITALS:

A. Each of the Parties to this Agreement is a local government entity functioning within the Salinas Valley, in Monterey County, California.

B. Pursuant to Title 1, Division 7, Chapter 5, Article 1 (Section 6500, et seq.) of the Government Code of the State of California, commonly known as the Joint Exercise of Powers Act (the "JPA Act"), two or more public agencies may, by Agreement, jointly exercise any power in common to the contracting Parties.

C. Each of the Parties to this Agreement has the power, in addition to other powers which are common to each of them, to undertake and perform: solid waste planning and program management, including collection services and siting; the development, construction, and operation of solid waste facilities, including materials recovery facilities for the recovery of recyclable and compostable materials; and the transfer and disposal of solid waste generated within each of the Parties' jurisdictional boundaries.

D. The California Integrated Waste Management Act of 1989 (the "Act") requires the preparation of the County Integrated Waste Management Plan which includes: Source Reduction and Recycling Elements and Household Hazardous Waste Elements prepared by each jurisdiction; a Countywide Integration Summary and a Countywide Siting Element.

E. The Parties find that it would be to their mutual advantage and benefit to work together and share costs to plan and implement source reduction, recycling, composting, public education, household hazardous waste management, and other solid waste management programs, facilities, landfills, and collection services.

F. It is the desire of the Parties to use any power that they have in common which is reasonably necessary and appropriate to aid in the accomplishment of these goals.

AGREEMENT

NOW, THEREFORE, based upon the mutual promises contained in this Agreement, the Parties agree as follows:

1. **PURPOSE:** The purpose of this Agreement is to establish a joint powers authority to be known as the SALINAS VALLEY SOLID WASTE AUTHORITY for the purpose of:

- (a) acquiring and managing the landfill assets of each jurisdiction and ensuring long-term landfill capacity for the region;
- (b) providing a unified and coordinated solid waste management system for the Cities and the County, including efficient facility and program planning and development and comprehensive and cost-effective solid waste management services;
- (c) demonstrating a commitment to, and facilitation of, the development of the most efficient and cost-effective strategies for source reduction, achieving recycling goals, expanding composting and encouraging the establishment of markets for recycled products and recycling industries; and
- (d) exercising all other appropriate powers reasonably necessary to carry out the purpose of this Agreement.

2. **ESTABLISHMENT OF THE AUTHORITY:** There is hereby established pursuant to the JPA Act an Authority which shall be a public entity separate from the Parties to this Agreement. The name of said Authority shall be the SALINAS VALLEY SOLID WASTE AUTHORITY (the "Authority"). The boundaries of the Authority shall be coextensive with the boundaries of the cities of Salinas, Gonzales, Greenfield, King, and Soledad, and the unincorporated areas of Monterey County (excluding those portions of the unincorporated areas that are within the boundaries of the Monterey Regional Waste Management District).

3. **MEMBERSHIP OF THE GOVERNING BOARD:** The Authority shall be governed by a nine member Board of Directors (the "Authority Board") composed of three (3) members of the Salinas City Council, two (2) members of the Monterey County Board of Supervisors and one (1) member from each of the city councils of Gonzales, Greenfield, King, and Soledad. Each of the members appointed from the Monterey County Board of Supervisors shall be supervisors whose districts are at least in part within the service boundaries of the Authority.

4. **VOTES:** Each Party to this Agreement shall appoint its respective representative or representatives to serve as a member or members on Authority Board. Each member shall

have one (1) vote. Five (5) votes shall be required for any action of the Authority Board and one (1) of the five (5) votes must be from a representative from Salinas.

5. QUORUM: Five (5) members of the Authority Board shall constitute a quorum for the transaction of business, except that less than a quorum may vote to adjourn a meeting.

6. TERMS OF OFFICE: The term of office of each member of the Authority Board shall be one year and shall not exceed the term of the elective office which the member holds.

7. ALTERNATIVES: Each Party may, in addition to their respective regular appointments, appoint one or more elected officials who will serve as alternate appointees and members of the Authority Board and each such alternate appointee and member shall be empowered to cast votes in the absence of a regular appointee and member or in the event of a disqualification to vote because of conflict of interest. Each alternate appointed shall be a member of the governing body of the Party making such appointment.

8. OFFICERS OF THE AUTHORITY BOARD: At its first meeting and thereafter at the first meeting of each calendar year, the Board of Directors shall elect a President, Vice-President; and such other officers as the Authority Board shall find appropriate, to serve the Authority Board for a term of one year unless sooner terminated at the pleasure of the Authority Board. In the event the officer so elected ceases to be a Director, the resulting vacancy shall be filled at the next regular meeting of the Authority Board held following the occurrence of the vacancy. In the absence or inability of the President to act, the Vice-President shall act as President. The President, or in the absence of the President, the Vice-President, shall preside at and conduct all Authority Board meetings.

9. CHIEF ADMINISTRATIVE OFFICER: The Authority Board shall select a chief administrative officer to serve at its pleasure. The chief administrative officer shall be responsible to the Authority Board for the proper and efficient administration of the Authority as is or hereafter may be placed in the chief administrative officer's charge, or under the chief administrative officer's jurisdiction or control, pursuant to the provision of this Agreement, or of any ordinance, resolution, or order of the Authority Board. The chief executive officer shall file an annual bond in an amount specified by the Authority Board. In addition to the other powers and duties provided, the chief administrative officer shall have the power to:

- (a) Plan, organize, and direct all Authority activities under the policy direction of the Authority Board;
- (b) Enforce strict compliance with the approved annual budget and approve only expenditures authorized in the approved budget.
- (c) Hire and manage such staff as necessary to carry out the provisions of this Agreement;

- (d) Make recommendations to and requests of the governing board concerning all of the matters which are to be performed, done, or carried out by the Authority Board; and
- (e) Have charge of, handle, or have access to any property of the Authority, and shall make an inventory of all Authority property.
- (f) Make all books and records of the Authority in the Chief Administrative Officer's hands open to inspection at all reasonable times by members of the Authority Board or their representatives.

10. ADDITIONAL OFFICERS OF THE AUTHORITY:

- (a) **Treasurer.** The Authority Board shall select a Treasurer to serve at its pleasure. The Treasurer of the Authority shall be the depositor and have custody of all the money of the Authority from whatever source and shall comply strictly with the provisions of the statutes relating to the Treasurer's duties as provided by the JPA Act and shall file an annual bond in an amount specified by the Authority Board. The Treasurer shall ensure that all available cash on hand is at all times fully invested in a cash management program and investment portfolio pertaining thereto and ensure that sufficient liquidity is maintained to meet the Authority's cash disbursement needs.
- (b) **Controller.** The Authority Board shall appoint a Controller of the Authority to serve at its pleasure. The Controller shall advise the Authority Board in connection with any accounting, budgetary, monetary, or other financial matters relating to the Authority. The Controller shall file an annual bond in an amount specified by the Authority Board. The duties and responsibilities of the Controller include, but are not limited to, those duties set forth in the JPA Act and shall include the following:
 - (1) Establish with Authority Board approval of the annual budget format, accounts, and documentation pertaining to the budget and which most nearly reflect the objectives of the Authority;
 - (2) Establish and maintain the particular funds and accounts as required by generally accepted accounting practices applicable to public entities and which most accurately and appropriately record and report the operations of the Authority as represented by the annual budget document;
 - (3) Enforce strict compliance with the approved annual budget and approve only expenditures authorized in the approved budget;

- (4) Make all books and records of the Authority in the Controller's hands open to inspection at all reasonable times by the members of the Authority Board or their representatives.
- (c) Clerk. The Authority Board shall appoint a Clerk to serve at the pleasure of the Authority. The Clerk, at the discretion of the Authority Board, may be the Chief Administrative Officer of the Chief Administrative Officer's designee. The Clerk shall give notice of meetings of the Authority Board in accordance with the provisions of the Ralph M. Brown Act; keep minutes of the open meetings of the Authority Board; and otherwise retain, record, and maintain the official records, files, and documents of the Authority Board.
- (d) Legal Counsel. The Authority Board shall appoint Authority Counsel to serve at the pleasure of the Authority Board. The Authority Board may appoint additional counsel to assist Authority Counsel or provide special services as may be required by the Authority Board. Authority Counsel shall attend meetings of the Authority Board as required to advise the Authority Board in connection with any legal matters relating to the Authority.

11. MEETINGS: The Authority Board shall provide for regular meetings and special meetings in accordance with the Ralph M. Brown Act, Chapter 9, Part 1, Division 2, Title 5, of the Government Code beginning with section 54950, or in accordance with such other regulations as the Authority Board may hereafter provide. The Authority Board may provide for meeting allowances for members or alternates in attendance at meetings. The Authority Board may adopt, from time to time, such rules and regulations, including by-laws, as the Authority Board may deem necessary or appropriate.

12. POWERS AND FUNCTIONS: The Authority shall have any and all powers authorized by law to any of the Parties hereto, and separately to the Authority herein created, relating, but not limited, to the:

- (a) Acquisition, assumption, siting, licensing, construction, financing, disposition, condemnation, use, operation and maintenance of solid waste management facilities, transfer stations, landfills, transformation facilities, materials recovery facilities, composting facilities, and household hazardous waste facilities;
- (b) Closure planning and construction, post-closure monitoring and maintenance, remediation, and demonstration of closure, post-closure and remediation financial assurance for Authority landfills;
- (c) Provision of comprehensive solid waste management services, including, but not limited to, collection, transfer, disposal, source reduction, recycling, composting, and household hazardous waste programs;

- (d) Preparation of and implementation of solid waste management plans that meet all the requirements of the applicable regulatory agencies, including responsibility for setting diversion goals and paying fines;
- (e) Provision of public education and market development programs in support of the diversion programs;
- (f) Establishment of rates, fees, charges, or surcharges for collection, transfer, landfill, and materials recovery facilities, and special local fees and collection permittee fees. Rates, fees, charges, and surcharges shall be collected by direct billing at Authority facilities or by such other methods as the Authority Board may deem appropriate;
- (g) Granting of franchises, concessions, permits, licenses, and other rights and entitlements to, and entering into leases and contracts with, any person, firm, or corporation, or agency of any state and/or federal government;
- (h) Exercise of the power of eminent domain;
- (i) Applying for and receiving any available state and/or federal grants;
- (j) Issuing revenue bonds or other obligations as the Authority Board may deem appropriate and which are note debts, liabilities, or obligations of the Parties;
- (k) Review, comment, recommend, and take such action regarding mandatory collection ordinances and land use restrictions as described in Sections 17 and 18 or this Agreement.
- (l) Adopt by-laws.

Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. All powers common to the Parties are specified as powers of the Authority. The Authority Board is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to make and enter into contracts and franchises; to issue permits; to employ agents and employees; to lease, acquire, construct, provide for maintenance and operation, or maintain and operate, any buildings, works or improvements, to acquire hold or dispose of property wherever located; to incur debts, liabilities, or obligations; to receive gifts, contributions, and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; and to sue and be sued in its own name; to sell off assets and accrue revenues; generally to do any and all things necessary or convenient to provide reasonable options for the management of solid waste collection, transfer, disposal and diversion activities.

Without limiting the foregoing generality, the Authority may:

- (m) Acquire and dispose of all kinds of property and utilize the power of eminent domain;
- (n) Issue, or cause to be issued, bonded and other indebtedness, and pledge any property or revenue as security to the extent permitted by law under Article 2, Chapter 5, Division 7, Title 1 (commencing with section 6540) of the Government Code or otherwise including, but not limited to, bonds or other evidences of indebtedness of a nonprofit corporation issued on behalf of the Authority or any of its Parties;
- (o) Obtain in its own name all necessary permits and licenses, opinions, and rulings;
- (p) Exercise flow control, to the extent permitted by law under Title 7, Division 30, Chapter 1, Article 2, (commencing with section 40059) of the Public Resources Code, to deliver or cause to be delivered all of the solid waste, including construction and demolition materials, concrete, asphalt, woodwaste and yardwaste, and other materials as identified by the Authority Board for diversion from landfill disposal, collected within and by or under contract to or under permit with the cities of Salinas, Gonzales, Greenfield, King and Soledad, County or Authority, to the landfills, transfer stations, materials recovery facilities, or any other solid waste facilities as directed or certified by the Authority Board. The Authority Board shall exercise flow control such that no Party to this Agreement or franchised or permitted collector shall suffer undue economic hardship where any such Party of collector operates resource recovery facilities in conjunction with its collection operation. *(Resolution No. 2008-50, adopted 10/16/2008)*
- (q) Perform such services on behalf of the Parties as the Parties, either jointly or severally, may request.

13. ASSUMPTION OF PROGRAM RESPONSIBILITIES: The Authority agrees to acquire ownership of and assume exclusive responsibility for managing landfill assets and convenience stations of the Parties, including the Crazy Horse Canyon Landfill, the Johnson Canyon Landfill, the Jolon Road Solid Waste Facility, the Lewis Road Landfill, the San Ardo County Convenience Station, and the Bradley County Convenience Station. The exclusive responsibility for managing landfill assets and convenience stations includes, but is not limited to, the establishment of rates, fees, charges, and surcharges for the use of such facilities, and ongoing and potential liability for site remediation for each landfill asset and convenience station. Each of the Parties owning such landfill assets and convenience facilities agrees to sell such assets and facilities to the Authority and to take such actions as may be necessary or convenient to ensure that the Authority Board has the authority to establish rates, fees, charges, surcharges pursuant to any agreement, license, permit, franchise, ordinance, or resolution as provided pursuant to this Agreement. Acquisition, sale, and purchase of such assets will be consistent with the terms generally described in Exhibit "A" to this agreement. It is anticipated that a portion or all of the costs of conveyance will be financed through the issuance of debt subject to the powers of this Authority as described in this Agreement. Upon execution of this

Agreement, or as soon thereafter as practical, the Parties and the Authority Board shall open an escrow, consistent with the terms described in Exhibit "A", for the transfer of the described assets and facilities. The Parties and the Authority Board shall diligently pursue, perform, and complete all of the terms and conditions of escrow in order to ensure that escrow closes in a timely manner. Except for the failure of the Authority Board to arrange or otherwise acquire necessary financing to finance the acquisition of the assets and facilities, such assets and facilities shall be conveyed to the Authority. Upon conveyance of the above assets, the Authority will be solely responsible for the processing of all necessary or desirable permits, licenses, rulings, or any other entitlements, including, but not limited to appropriated environmental assessments, related to the operation of the conveyed landfill assets and convenience stations. The Authority will not assume responsibility for the following programs unless assigned by a Party to this Agreement and agreed to by the Authority Board governing board: collection, preparation of annual reports or integrated waste management plans, liability for fines for a jurisdiction's failure to meet its diversion goals, regional diversion projects, public education, household hazardous waste programs, small quantity generator programs, or billing. In the event the Authority Board assumes such responsibility, the Authority shall only be responsible for obligations or liabilities that arise or occur after the Authority Board agrees to such assignment. The Authority will not assume liability for remediation of landfill sites closed or abandoned prior to the execution of this agreement. Upon the request of a Party to this Agreement, however, the Authority will provide a funding mechanism and project management for site remediation for closed or abandoned landfill sites which were closed or abandoned prior to the execution of this Agreement.

14. BUDGETS: Within 90 days after the first meeting of the governing board, and thereafter prior to the commencement of each fiscal year (defined as July 1 through June 20), the governing board shall adopt a Budget for the Authority for the ensuing fiscal year. The tentative first-year budget is included in Exhibit "B".

15. EQUALIZATION OF RATES: The Authority Board shall establish a schedule of uniform and equalized rates that will not differentiate between geographical or jurisdictional areas within the boundaries of the Authority when the earlier of the following events occurs: (a) On the third annual anniversary of the effective date of this Agreement, or (b) the later of the dates on which the State Integrated Waste Management Board approves a facility permit and the Regional Water Quality Control Board approves a discharge permit that allows the Authority Board to create, construct, expand, or make such other improvement of landfill facilities which would provide at least an estimated additional twenty (20) years of capacity. For the purposes of this Agreement, the phrase "estimated additional twenty (20) years of capacity" shall mean twenty years of additional capacity necessary to serve the waste stream of the entire Authority, as determined by the Authority Board, and such additional capacity shall be measured in relation to the capacity estimated in the Work Program at one of the landfill sites under the jurisdiction of the Authority on the effective date of this Agreement. Nothing in this paragraph shall prohibit or inhibit the Authority Board from establishing rates based on the nature or content of solid waste nor shall this paragraph prohibit or inhibit the ability of the Authority to establish different rates for residents or businesses who reside outside of the jurisdiction of the Authority. In addition,

this paragraph shall not prohibit or inhibit the ability of the Authority to establish or collect a surcharge or other additional fees relating to the payment of an amortized amount necessary to capitalize acquisition costs identified in the Work Program or under the provisions of this Agreement. For the purposes of this Agreement, the term "Work Program" means the Work Program prepared by Brown, Vence & Associates and submitted to, and considered by, the Parties concurrently with this Agreement and the term "rates" includes fees, charges, and surcharges.

16. **LIMITATION OF LIABILITY:** The debts, liabilities, or obligations of the Authority do not constitute debts, liabilities, or obligations of the Parties and the Authority shall hold the Parties harmless and shall indemnify the Parties from any claim of loss that may arise as a result of the Authority's ownership or maintenance of the landfill assets and convenience stations described in this Agreement or the Authority's performance of any of its duties or powers described in this Agreement.

17. **MANDATORY COLLECTION:** The Parties shall maintain mandatory solid waste collection requirements in a form and manner at least as strict and inclusive as the requirements in effect on the effective date of this Agreement. The Parties agree that no ordinance or regulation effecting mandatory solid waste collection within their respective jurisdictions, and which is at least as strict and inclusive as regulations in effect on the date of this Agreement, shall be adopted unless the Authority receives thirty (30) days written notice. Each ordinance or regulation which is less strict and less inclusive than that which is in effect at the time of the ordinance or regulation is proposed shall not become effective until such ordinance or regulation is approved by the Authority Board. The determination of whether a proposed ordinance or regulation is more or less strict or inclusive pursuant to this provision of this Agreement shall be made by the Authority Board and such decision shall be final and binding on the Parties.

18. **RESERVED.** *(Resolution No. 2008-49, adopted 10/16/2008)*

19. **TERM AND WITHDRAWAL:** 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 all Parties, whichever is earlier; provided, however, that:

- (a) A Party to this Agreement may not withdraw from the Authority for a period of 15 years after the execution of this Agreement. After the 15-year initial period, a Party hereto may withdraw from this Agreement by a majority vote of the governing body thereof giving to the other Parties 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 Board pursuant to the law authorizing the issuance thereof or the approval of the debt. The Party withdrawing from the Agreement will retain its fair share of financial liability for

closure and post-closure and site remediation costs based on the tons of material it has contributed to the Authority's solid waste system and as determined by the Authority in its sole discretion and such determination of the Authority shall be binding on the Parties. The Party withdrawing shall be afforded the same rights and ability to use Authority facilities and services as any other governmental jurisdiction which is not a member of the Authority.

- (b) Upon receipt of a Party's one year notice of intention to withdraw, the members who will be remaining in the Authority shall meet and prepare appropriate amendments to this Agreement to reflect the changed membership status. Such amendments shall become effective upon the effective date of the Party's withdrawal.
- (c) This Agreement cannot be amended in any way to the detriment of the holders of any revenue bonds or other forms of indebtedness which are outstanding in accordance with any resolution (or indenture) adopted by the Authority board pursuant to the law authorizing issuance thereof.

20. **TERMINATION OF THE AUTHORITY:** This Agreement shall remain in effect until terminated by mutual consent of all of the governing bodies of all Parties to this Agreement. The resolution to terminate must be passed by a majority vote of each governing board of each of the Parties to this Agreement.

21. **DISPOSITION OF AUTHORITY ASSETS AND LIABILITIES UPON TERMINATION:**

- (a) In the event of termination of the Authority where there is a successor public entity which will carry on the activities of the Authority and assume its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities of the Authority shall be transferred to the successor public entity.
- (b) If there is no successor public entity which would carry on any of the activities of the Authority or assume any of its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities shall be returned in proportion to the contribution of each Party during the term of this Agreement. If bonds are issued or large capital projects, such as closure construction are initiated during the term of this agreement, then in no event shall the exercise of the powers herein granted be terminated until all bonds so issued and the interest thereon shall have been paid or provision of such payment shall have been made.

- (c) If there is a successor public entity which would undertake some of the functions of the Authority and assume some of its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities shall be allocated by the governing board between the successor public entity and the Parties.

In the event the Authority is terminated under circumstances falling within (b) or (c) above, all decisions of the governing board with regard to determinations of assets or liabilities to be transferred to the Parties or any successor shall be final.

22. AMENDMENTS: This Agreement may be amended by the affirmative vote of the governing bodies of each of the Parties.

23. RESTRICTIONS ON AUTHORITY: For the purposes of satisfying the requirements of Government Code Section 6509, the restrictions on the power of the City of Salinas shall be applicable to the Authority.

24. DEFINITIONS: For purposes of the furtherance of this Agreement, unless the context otherwise requires, the definitions in the Act, under Title 7 of the Public Resources Codes, Division 30, Part 1, Chapter 2, beginning with section 40100, govern the construction of this Agreement.

25. COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall be deemed to constitute one and the same instrument.

26. EFFECTIVE DATE: This Agreement shall be deemed effective and in full force and effect on January 1, 1997.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement on the date evidenced below:

(1997 JPA original signatures on file)

(2008 JPA Amendments original signatures on file)