

ATTACHMENT 2

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**\ BEFORE THE BOARD OF SUPERVISORS IN AND FOR
THE COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. _____

In the Matter of the Salinas)
Valley Solid Waste Authority)
Revenue Bonds, Series 2013,)
and the County's Notices of)
Intent to Withdraw from the)
Authority and the related Waste)
Delivery Agreement.)

RECITALS

A. Pursuant to that certain Joint Exercise of Powers Agreement dated as of January 1, 1997 (the "JPA Agreement") by and among the County of Monterey and the cities of Gonzalez, Salinas, Greenfield, King City and Soledad, the Salinas Valley Solid Waste Authority (the "Authority") has been created and the Authority owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the City members and in the unincorporated area of the County within the Authority boundaries;

B. The Authority has previously issued its \$39,845,000 Salinas Valley Solid Waste Authority Revenue Bonds, Series 2002 (the "2002 Bonds") to finance and refinance certain expenditures of the Authority;

C. In connection with the issuance of certain prior bond indebtedness of the Authority in 1997 (the Series 1997 Revenue Bonds), the County of Monterey (the "County") and the Authority entered into that certain Waste Delivery Agreement as of September, 1997 (the "Waste Delivery Agreement") for the purpose of ensuring that all solid waste controlled by the County may be directed by the Authority to the disposal system of the Authority;

D. In connection with the 2002 Bonds, the County reaffirmed the validity and enforceability of the Waste Delivery Agreement.

E. The Authority has informed the County that the 2002 Bonds and the remaining sum on that certain Note of the Authority in favor of the City of Salinas (the "Salinas Note") related to certain property purchase obligations activity can be refinanced at significant savings to the Authority and its rate payers through the issuance of its refunding revenue bonds, to be issued in an amount sufficient to refinance all or a portion of the Salinas Note and the 2002 Bonds, fund necessary reserves in connection therewith and pay costs of issuance related thereto, including any cost of credit enhancement, if applicable (the "Refunding Bonds"), all pursuant to the Marks-Roos Local Bond Pooling Act of 1986 (the "Bond Law");

F. The County by letters dated July 13, 2012 and July 16, 2012 has previously given notice of its intent to withdraw from the Authority and the Waste Delivery Agreement pursuant to the terms of the JPA Agreement (collectively, the "Withdrawal Notice");

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G. The Authority has asked the County to rescind the Withdrawal Notice for all purposes of the JPA Agreement and the Waste Delivery Agreement, to affirm its obligations under and pursuant to the Waste Delivery Agreement and the JPA Agreement and to furnish information and certify such information and to take such other action to facilitate the issuance of the Refunding Bonds as may be reasonably requested by the Authority in connection with the issuance of the Refunding Bonds, including without limitation execution of any facilitating amendments to the Waste Delivery Agreement as are set forth in that certain Amendment to Waste Delivery Agreement on file with the Clerk of the Board, (the "Amendment to Waste Delivery Agreement"), and attached hereto as Exhibit A, or as may otherwise be determined by the Chief Administrative Officer to be reasonably related to the issuance of the Refunding Bonds, the rating by any nationally recognized rating agency of the Refunding Bonds or the underwriter/initial purchaser of the Refunding Bonds or with respect to establishing and assuring the security for the Refunding Bonds represented by the JPA Agreement and the Waste Delivery Agreement, such actions being referred to herein as the "Member Refunding Bonds Actions;"

H. The Board of Supervisors wishes hereby to facilitate the issuance of the Refunding Bonds and to approve and direct the Member Refunding Bonds Actions for the purpose of facilitating the issuance of the Refunding Bonds and the realization of savings associated with such issuance.

I. The Authority proposes to issue the Refunding Bonds in the aggregate principal amount not to exceed \$38,000,000, the proceeds of which will be used to: (i) refinance the Authority's \$39,845,000 original principal amount Revenue Bonds Series 2002 (the "Prior Bonds") which in turn financed and/or refinanced the acquisition, installation and construction of a south county transfer station; wells, erosion mitigation improvements, leachate storage system, sediment basin, power pole relocation and flare for the Authority's Lewis Road Landfill; two new lined cells, water monitoring systems and pumps, leachate handling system improvements, paving, permitting and administration at the Authority's Johnson Canyon Road Landfill; leachate system improvements, erosion control, groundwater system and monitoring system, liquids handling system, LFG system expansion and flare, burn dump remediation, scalehouse area liner and construction engineering at the Crazy Horse Landfill; gas flare, gas perimeter probes, groundwater monitoring improvements, sediment basin drainage overhaul and access road improvements at Jolon Road Landfill; planning, engineering and permitting for expansion of the Johnson Canyon Road Landfill and certain other capital improvements (the "Project"), refund the Authority's 1997 Revenue Bonds, prepay a part of the Installment Purchase Agreement dated as of September 1, 1997, by and between the Authority and the City of Salinas which in turn financed the purchase by the Authority of the Crazy Horse Landfill, (ii) prepay the remaining balance of Installment Purchase Agreement dated as of September 1, 1997, by and between the Authority and the City of Salinas, (iii) fund a reserve account for the Bonds to be held by the Trustee, and (iv) pay certain expenses related to the issuance of the Bonds; and

J. Notice of a public hearing concerning the Bonds and the nature and location of the facilities to be financed was published in two newspapers of general circulation in the County of Monterey.

K. The Board of Supervisors of the County of Monterey (the "Board") has conducted a public hearing whereby interested parties were given a reasonable opportunity to state their

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views concerning the issuance of the Bonds and the nature and location of the facilities to be refinanced with a portion of the proceeds thereof.

L. Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires, as a condition of the exclusion from income of the holders thereof of interest on the Bonds, that before the Bonds are issued, the Bonds be approved by the Board after a public hearing following reasonable public notice.

M. Pursuant to the Bond Law, and in particular Section 6586 and Section 6586.5 of the California Government Code, the Authority is not entitled to authorize the issuance of Bonds unless a local agency within whose boundaries the Projects are to be located approves the financing and makes a finding of significant public benefit in accordance with the Bond Law.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS IN AND FOR THE COUNTY OF MONTEREY, AS FOLLOWS:

SECTION 1 The County hereby approves the issuance not to exceed \$38,000,000 aggregate principal amount of Salinas Valley Solid Waste Authority Refunding Revenue Bonds, Series 2013 (the "Bonds"), pursuant to Section 147(f)(2) of the Code.

SECTION 2 Pursuant to the Bond Law, the County hereby finds and determines that "significant public benefits" will be experienced by the County and its residents from the issuance of the Bonds and the financing of the Project, including without limitation demonstrable savings in effective interest rate and other bond related costs associated with the delivery of waste disposal services to residential and commercial development within the County's boundaries.

SECTION 3 The Bonds, if any are issued by the Salinas Valley Solid Waste Authority, will be special revenue obligations only of the Authority and will be secured by revenues pledged to repayment thereof by the Authority, and certain other assets of the Authority, but shall not be general obligations of the Authority, the County or the State of California (the "State") for which is pledged the taxing power or the full faith and credit of the Authority, the County or the State. The County, the State and the other members of the Authority will not be obligated to pay, or otherwise be liable for, the payments due on the Bonds.

SECTION 4 The Board of Supervisors hereby approves the Member Refunding Bonds Actions (including without limitation the rescission for all purposes of the Withdrawal Notice pertaining to the JPA Agreement and the Waste Delivery Agreement) and directs the Chief Administrative Officer or his/her written designee, the Chair or Vice-Chair, the Clerk of the Board or any Deputy Clerk of the Board, County Counsel and/or any other authorized officer thereof ("Authorized Officer") to execute and deliver as part of the Member Refunding Bonds Actions such documents, certificates, agreements, opinion letters (in the case of County Counsel) or other instruments (the "Other Instruments") as may be reasonably requested by the Authority to facilitate the issuance of the Refunding Bonds, including but not limited to further amendments to the Waste Delivery Agreement or estoppel certificates with respect to the JPA Agreement, the Waste Delivery Agreement and the rescission of the Withdrawal Notice; provided, however, that such authority and direction is granted solely and exclusively if, in the opinion of the Chief

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Administrative Officer and County Counsel, such Other Instruments do not modify or eliminate material rights of the County under the JPA Agreement, Waste Delivery Agreement, or other related agreements. Without limiting the generality of the foregoing, the Amendment to Waste Delivery Agreement attached hereto as Exhibit A is hereby approved in substantially the form presented and any Authorized Officer (other than County Counsel) is hereby authorized and directed to execute and deliver such instrument in substantially the form presented subject to such further changes as may be consistent with the purposes and limitations of this resolution, such Authorized Officer's execution thereof to be conclusive evidence of such approval.

SECTION 5 This Resolution shall take effect upon delivery by the Authority to the County of a resolution of its Board of Directors, and receipt thereof by the County's Chief Administrative Officer, resolving: a) that, to the extent permitted by law and barring unforeseen exigent circumstances, the Authority shall not raise rates or impose new rates for the disposal or processing of waste of any kind at any facilities owned, controlled, managed or leased by the Authority (including without limitation tipping fees or AB 939 fees) through and including June 30, 2015, without the express approval of both the County's representatives to the Authority's Board of Directors, other than implementation of the previously approved rate increase effective July 1, 2013; b) to participate in and fund its fair share of a Regional Solid Waste Study; and c) the Authority shall not pursue an autoclave, or other developmental or experimental waste disposal technologies, including but not limited to the expenditure of funds on planning or siting activities, without the express approval of both the County's representatives to the Authority's Board of Directors.

PASSED AND ADOPTED on this ____ day of _____, 2013, upon motion of Supervisor _____, seconded by Supervisor _____, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTENTION:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book ____ for the meeting on _____.

Dated: Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____, Deputy

AMENDMENT TO WASTE DELIVERY AGREEMENT

by and between

COUNTY OF MONTEREY

and

SALINAS VALLEY SOLID WASTE AUTHORITY

AMENDMENT TO WASTE DELIVERY AGREEMENT

THIS AMENDMENT TO WASTE DELIVERY AGREEMENT, dated _____, 2013, by and between County of Monterey ("County"), a political subdivision of the State of California, and the Salinas Valley Solid Waste Authority ("Authority"), a joint exercise of powers entity, amends the Waste Delivery Agreement originally entered into as of the 1st day of September, 1997.

RECITALS:

The Authority owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the Authority boundaries (the "Disposal System" as defined herein).

In December 1996, Monterey County and the cities of Gonzales, Greenfield, King, Salinas and Soledad ("Member Agencies") formed the Authority for the express purpose of managing the Disposal System and ensuring long-term disposal capacity for its Member Agencies.

In the Joint Powers Agreement which creates the Authority (the "JPA Agreement"), the Member Agencies transferred to the Authority the right to exercise flow control of solid waste within the Disposal System.

In order to meet its obligations under the Joint Powers Agreement and in reliance on this agreement, the Authority issued certain revenue bonds, and may issue additional revenue bonds to finance or refinance Authority facilities from time to time in the future.

In 1997, the County and the Authority entered into a Waste Delivery Agreement for the purpose of ensuring that all solid waste controlled by the County may be directed by the Authority to the Disposal System.

The Authority is issuing its revenue bonds (the "Refunding Bonds") pursuant to the JPA Agreement, the Marks-Roos Local Bond Pooling Act of 1985 as amended (California Government Code Section 5084, *et seq.*) (the "Bond Act") and pursuant to a Master Indenture and First Supplemental Indenture, each dated as of _____, 2013 (collectively, the "Indenture") to refund certain existing obligations of the Authority.

The MEMBER and the Authority have determined to amend the Waste Delivery Agreement as provided herein.

NOW, THEREFORE, taking into account the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. The Definition of "Disposal System" is amended by inserting the following at the end thereof:

"Disposal System" shall also include any facilities (including transfer stations, landfills, or other waste management facilities) with respect to which the Authority from time to time may make contractual or other arrangements for the processing or disposal of solid waste.

Section 2. Sections 2.1 (a), (c), (d) and (f) are amended to read as follows:

2.1 Delivery of Waste

(a) Waste Disposal Covenant. Except as provided in Section 2.1 (i), below, Commencing on the Effective Date

(b) [no change]

(c) Power to Obligate Waste Disposal and Comply with this Agreement. Except as provided in Section 2.1 (i), below, on or before the Effective Date, Except as provided in Section 2.1 (i), below, On and after the Effective Date and throughout the Term of this Agreement

(d) Waste Flow Enforcement. The County, in cooperation with the Authority, . . . sufficient to assure the delivery of all Controllable Waste, except as provided in Section 2.1 (i), below, to the Disposal System

(e) [no change]

(f) Franchise or Permitted Haulers. The County shall . . . , or franchise and permit terms. This notification requirement will not apply to any changes permitted by Section 2.1 (i), below.

Section 3. Section 2.1 (i) as added to read:

(i) Notwithstanding any other provision of this Agreement to the contrary, on the condition that the County makes the payments specified in subsection (1) and (2) below, the County shall have the right to, and may at its option, annually cause any Controllable Waste generated in the unincorporated area of County Supervisorial District 2 (“District 2 Waste”) to be delivered to facilities owned or controlled by the Monterey Regional Waste Management District (“WMD”). The payments required of the County are as follows:

1) annually, a sum equal to what would have been the County’s proportionate share of annual debt service on the Authority’s Series 2002 Revenue Bonds, or Revenue Bonds issued solely to refinance or refund the Series 2002 Revenue Bonds (collectively, the “Current Revenue Bonds”), based upon District 2 Waste. This sum shall be paid on a semi-annual basis to coincide with the Authority’s debt service payment on the Current Revenue Bonds, and shall be based upon the actual tonnage of District 2 Waste for the prior calendar year. By way of example only, if in 2013 District 2 Waste was 20,912 tons, the total of 2013 Controllable Waste from all Member Agencies (including District 2 Waste) was 166,500 tons, and Authority debt service for the Current Revenue Bonds in 2014 is projected to be \$2,754,000, the County’s annual payment in 2014 would be \$345,895.78 ((2013 District 2 Waste tonnage ÷ 2013 All members’ Controllable Waste (including District 2 Waste) tonnage) x 2014 Current Revenue Bonds debt service); and

2) annually, and for a period of fifteen (15) years, the sum of \$135,193, the total of which represents the proportionate share of post-closure costs to be incurred by the Authority attributable to District 2 Waste delivered to the Authority's facilities. Such annual payment shall be made no later than June 30 of each calendar year. At its option, the County may elect to pre-pay any remaining balance of this amount in a lump sum.

In addition, the County's responsibility for AB 939 fees shall not be based on District 2 Waste should such waste be re-directed as provided in this Section 2.1 (i), but shall be calculated solely on Controllable Waste the delivery of which is not re-directed to WMD facilities.

The County shall provide the Authority thirty (30) days written notice of the exercise of the option to re-direct the delivery of District 2 Waste as described in this Section 2.1 (i).

Section 4. The Members acknowledge the issuance of the Refunding Bonds by the Authority pursuant to the Bond Act and the Indenture and further acknowledge that the Refunding Bonds shall constitute revenue bonds issued pursuant to the Waste Delivery Agreement for purposes of Section 3.1(b) of the Waste Delivery Agreement.

Section 5. This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

Section 6. This Amendment shall become effective immediately upon execution by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

ATTEST:

MEMBER

CLERK OF THE BOARD OF SUPERVISORS

COUNTY OF MONTEREY

APPROVED AS TO FORM:

CHARLES J. MCKEE, County Counsel

by _____

ATTEST:

SALINAS VALLEY SOLID
WASTE AUTHORITY

CLERK OF THE AUTHORITY

PRESIDENT OF THE
BOARD OF DIRECTORS

APPROVED AS TO FORM:

AUTHORITY COUNSEL