

AGRI: 97.155  
IMH: \_\_\_\_\_  
RESO: 1997-102  
BID: \_\_\_\_\_

JOINT EXERCISE OF POWERS AGREEMENT

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

ARTICLE 1. PURPOSE

A. Purpose of the Agreement. The purpose of this Agreement is to establish, pursuant to the Joint Exercise of Powers Act, Government Code section 6500 et seq., a public entity separate from each of the municipalities creating this Agreement. This public entity is to be known as the West Valley Solid Waste Management Authority (hereinafter referred to as "Authority").

B. Purpose of the Authority. The purpose of the Authority shall be to prepare, adopt, revise, amend, administer, enforce and implement the West Valley Solid Waste Management Plan which was adopted by the municipalities prior to the creation of the Authority.

C. Members of the Authority. This Agreement was entered into on \_\_\_\_\_, 1997, by and between the Cities of Campbell, Monte Sereno, Saratoga and the Town of Los Gatos (hereinafter individually referred to as "Member Agency" and collectively referred to as "Initial Members"), as individual public entities which mutually agree and promise as hereinafter set forth. Membership in the Authority is open to any public entity that is authorized to franchise the collection or handling of solid waste in Santa Clara County and does so franchise.

ARTICLE 2. POWERS

A. General Powers. Each Member Agency retains its own existing and independent authority to franchise or contract for solid waste handling and disposal services and collect the applicable franchise fees and surcharges. In carrying out the purposes of this Agreement, the Authority shall have all powers common to its Member Agencies, and such general powers which include, but are not necessarily limited to, the following:

1. To advise the Member Agencies on issues related to solid waste handling and disposal and related rates and charges;
2. To advocate the interests of the Member Agencies related to solid waste management issues with local, state and federal officials;
3. To regulate and set rates of solid waste collection and disposal, transfer stations, resource recovery facilities, recycling facilities, household hazardous waste facilities, and landfills;

4. To issue Requests for Proposals for the handling and/or disposal of solid waste, green waste and recyclables;

5. To advise public entities as to market conditions affecting the marketability of recyclable commodities;

6. To market and sell recyclable commodities; and

7. To conduct joint studies and/or institute joint programs as may be required by law or are appropriate regarding solid waste handling and disposal including, but not limited to, such efforts as may be required regarding reduction of the waste stream disposed at landfills.

B. Specific Powers. In carrying out its general powers, the Authority is hereby authorized to perform all acts necessary or proper for the exercise of said powers which may include, but are not limited to, the following:

1. To make and enter into contracts and to issue Requests for Proposals necessary to further the purposes of the Authority;

2. To apply for and accept grants, advances and contributions;

3. To employ or contract for the services of agents, employees, consultants and such other persons or entities as it deems necessary;

4. To conduct studies;

5. To review the West Valley Solid Waste Management Plan and other such public planning documents as may be developed, and recommend revisions or amendments thereto;

6. To incur debts, liabilities or obligations subject to limitations herein set forth;

7. To assess and collect, subject to Article 5, Section A, from both Initial Members and future Member Agency, fees for membership in the Authority, so as to provide moneys for the financing of its activities, operations, and expansion;

8. To issue bonds, subject to the provisions and limitations of the laws of the State of California;

9. To adopt annually, by July 1 of each fiscal year, a budget setting forth all administrative, operational and capital expenses for the Authority, together with the apportionment of such expenses by levy against each Member Agency to the extent necessary; and

10. To adopt, as authorized by law, any ordinances or resolutions necessary to carry out the purposes of this Agreement.

ARTICLE 3 ORGANIZATION

A. Board of Directors. The Authority shall be governed by the Board of Directors (hereinafter referred to as the "Board") which shall exercise all powers and authority on behalf of the Authority. The Board shall have the authority to carry out all duties and functions within the power of this Agreement.

1. Membership. The Board shall be composed of one (1) representative from each Member Agency, who shall, by resolution or other appropriate action, be appointed by the members of such agency's governing body. Each Board member shall serve at the pleasure of the governing body of the appointing agency.

2. Duties of the Board of Directors. The Board shall perform all acts necessary or proper to carry out the purposes of this Agreement and to execute the General and Specific Powers of the Authority, which acts include, but are not limited to, the following:

a. Conduct Board meetings pursuant to a schedule adopted by the Board;

b. Consider, modify, and approve the annual work program and budget;

c. Levy, fix, and/or set fees, assessments and charges to the extent permitted by law and by this Agreement;

d. Authorize, review and accept reports and studies;

e. Review, recommend, approve and/or regulate rates for services provided by the Authority or over which the Authority has regulatory power through contract or otherwise;

f. Take appropriate action on:

(1) The West Valley Solid Waste Management plan and any other such public planning documents as may be developed and revisions or amendments thereof; and

(2) The planning, financing, development and operation of Authority activities;

g. Accept agencies as subsequent parties to the Agreement and members of the Authority, and their representatives as Board members(See Article 4C);

h. Authorize the hiring and/or engagement of Authority staff;

i. Declare, from time to time, one of the Member Agencies as the lead agency for specific purposes as may be set forth by the Board or for the general purpose of staffing the Authority and carrying out the Authority's functions. At the time a Member Agency is appointed as a lead agency, the Board shall determine whether the member is to bear the costs of such lead agency activity or be reimbursed therefor. The Authority, in any event, shall reimburse Member Agencies for any Authority authorized personnel costs associated with the staffing of the Authority with Member Agency personnel;

j. Establish committees to carry out Authority purposes, and appoint committee members from the Board, the legislative bodies of Member Agencies, Authority staff, and/or staff of the Member Agencies. The Authority shall reimburse Member Agency for personnel costs associated with the staffing of committees with Member Agency personnel; and

k. Delegate duties to Authority staff and/or Board members, appointed committees and committee members, the City Councils and/or Member Agencies' staff.

3. Voting. Each Board member shall have the right to vote on each issue pending before the Board. Each Board member shall have one (1) vote.

4. Votes Required. All actions undertaken by the Board must be approved by a majority vote of those Board members present, provided a quorum exists, except for such Board actions requiring a two-thirds (2/3) vote as may otherwise be set forth herein.

5. Meetings of the Board.

a. Regular Meetings. The Board shall hold scheduled public meetings at a location selected by the Board. The Board shall hold at least one regular meeting each quarter.

b. Special Meetings. Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code.

c. Notice of Meetings. All meetings of the Board shall be held subject to the current provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq., and other applicable laws of the State of California pertaining to public meetings.

d. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business.

e. Minutes. The Chairperson of the Board shall cause minutes of all meetings to be kept, and shall, as soon as possible after such meeting, cause a copy of the minutes to be forwarded to each member of the Board.

f. Compensation. Each member of the Board shall be paid an amount as established by the Board by a two-thirds (2/3) vote for each meeting, regular and special, he or she attends.

6. By-laws. The Board shall adopt by resolution, with a two-thirds (2/3) vote, such by-laws, rules or regulations, as may be required, for the conduct of its affairs.

7. Officers of the Board. The Board shall, by a majority vote, elect from its members a Chairperson and a Vice Chairperson. The Chairperson and Vice Chairperson shall have one-year terms and may be re-elected so as to serve a maximum of two (2) consecutive one-year terms, unless the Board unanimously approves additional consecutive term(s) as to a particular Chairperson or Vice Chairperson. The Chairperson shall preside over all meetings according to the Rules and Procedures adopted by the Board. The Board Chairperson shall represent the Authority and execute any contracts and other documents when required by the Rules and Procedures.

8. Officers of the Authority. The Board has the power to appoint as staff to the Board the following officers:

a. Executive Director. There may be an Executive Director appointed who will serve as the chief executive officer of the Authority. He or she will be responsible to the Board for the management and administration of all Authority affairs pursuant to the Board's direction.

Until such time as the Board may determine to appoint an Executive Director who is not a staff member of a Member Agency, and for such other times as there is no Executive Director serving, the Board may appoint an interim Executive Director, who shall have such powers and duties as are set forth in this section. An interim Executive Director shall be the City Manager of one of the Member Agencies, or such other agency staff member as the Board deems appropriate.

b. Treasurer and Controller. There shall be a Treasurer and Controller to be the custodian of all Authority funds and to pay demands. Initially, the Treasurer shall be the City of Monte Sereno. A new Treasurer may be appointed by the Board at any time.

c. Secretary. There shall be a Secretary appointed by the Executive Director who shall be responsible for the noticing of meetings and recording

of minutes of meetings as required by the Brown Act and the Rules and Procedures, in addition to such other duties as the Executive Director may assign.

#### ARTICLE 4. TERMS OF THE AGREEMENT

A. Effective Date. This Agreement shall become effective on the date of its execution by all of the agencies identified as Initial Members.

B. Amendments. This Agreement may be amended by a two-thirds (2/3) vote of all members of the Board. Any such amendment shall be effective upon the date of such action.

C. Subsequent Authority Members. Any agency which has the authority to franchise solid waste collection in Santa Clara County, and franchises the same (including cities incorporated and districts formed after the effective date of this Agreement, and including Santa Clara County), may become members of the Authority. Its representatives may become voting members of the Board by: (1) presenting an adopted resolution to the Board which includes a request to become a member of the Authority, (2) receiving a two-thirds (2/3) vote of all members of the Board to accept the new member, and (3) by payment of any charges and execution of all documents as may be required by the Board. Such charges may include such items as compensation to the existing Authority members for previously expended costs in furtherance of Authority purposes, including staffing expenses, capital expenses, financing expenses, and assessments for losses in prior Authority operations. These examples are purely illustrative, however, and are not intended to limit the power of the Authority or the Board to fix whatever buy-in, capitalization or other equalization charges deemed necessary or proper. Payment of such charges may be made in any manner deemed necessary or proper by the Board, including, but not limited to cash payment, a differential rate structure for waste collection, future capital contributions, surcharges or by other plan which might include appropriate security.

D. Withdrawal.

1. Any Member Agency, upon written notice given by January 1 of any year to the Chairperson of the Board, and to all other Member Agencies, may withdraw from the Authority effective no earlier than July 1 of that year; provided, however, that the withdrawal of such Member Agency shall not terminate such Member Agency's responsibility under any obligation of such Member Agency or the Authority or any action taken in connection therewith. The withdrawing agency shall pay to the Authority on the effective date of withdrawal, all money owing to the Authority, and as to those capital expenditures which the withdrawing agency has agreed to participate in by contract or otherwise, its share of such capital expenditures. Such financial obligations of such withdrawing agency may be assumed by another entity upon a two-thirds (2/3) vote of the Board, absent the participation of the representatives of the withdrawing agency.

2. Notwithstanding subsection (1) above, a member shall not be permitted to withdraw from the Authority unless the Board determines by majority vote, absent the participation of the representatives of the withdrawing agency, that as of the effective date of withdrawal, the Authority will have a waste stream sufficient to meet all Authority operating expenses and obligations outstanding as of the effective date of withdrawal, whether capital, operational, maintenance related or otherwise, and to ensure that all Authority operations will not be adversely affected to a material extent by the withdrawal of the withdrawing member.

3. The withdrawing agency shall also continue to be liable for its share of Authority obligations, including, but not limited to, operation costs and the budget, until the effective date of its withdrawal.

E. Expulsion of Members. The Board may, by a two-thirds (2/3) vote of the Board, terminate a Member Agency's membership in the Authority for a material breach of this Agreement after six (6) months notice to such Member Agency. A Member Agency so expelled shall be responsible for capital expenditures and non-capital obligations of the Authority as set forth in Article 4, Section D above.

F. Reinstatement. An agency, subsequent to its withdrawal, or subsequent to expulsion, may seek reinstatement as a Member of the Authority. Application for reinstatement shall be made in writing to the Board. An agency shall be reinstated upon a two-thirds (2/3) vote of all members of the Board as then constituted. The Board may require an agency seeking reinstatement to meet any terms and conditions which the Board deems appropriate.

G. Funding From Member Agencies. Subject to Article 5, Section A, each Member Agency shall provide its share of the Authority's general budgetary obligation.

H. Liability. The tort liability of the Authority, all members of the Board, and all officers and employees of said Authority shall be controlled by the provisions of Division 3.6 of Title 1 of the Government Code of the State of California. Any tort and contractual liability incurred by or imposed upon the Authority shall remain the sole liability of the Authority, rather than the liability of the Member Agencies, to the full extent such allocation of liability is permitted by law. The provisions of said Division relating to the indemnification of public employees and the defense of actions against them arising out of any act or omission occurring within the scope of their employment shall apply to all Authority directors, officers and employees. Notwithstanding the specific terms of this section, the Authority and the Member Agencies shall retain the power to allocate liability between the Authority and the Member Agencies, or among the Member Agencies, in a manner other than as set forth above pursuant to a unanimous written agreement or to do the same for specific projects or undertakings of the Authority.

To the extent that any liability of the Authority, whether based on contract, tort or otherwise, passes through to a Member Agency, or Member Agencies, said liability shall be apportioned based upon principals of fault. If, for any reason, apportionment

between Member Agencies cannot be based upon fault under the circumstances involved, then apportionment shall be based upon each Member Agency's percentage share of the total population of all Member Agencies.

I. Indemnity. The Authority shall indemnify, defend (at the Authority's sole expense), and hold harmless the Member Agencies, their respective officers, directors, employees, and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding, or suit of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising as the sole result of the Member Agency's or Agencies' status as members of the Joint Powers Authority. The Authority's duty to indemnify, hold harmless and defend shall survive the expiration or earlier termination of this Agreement.

J. Insurance. Each Member Agency and its respective officers, directors and employees shall be named as additional insureds to the same extent and degree that the Authority and its officers, directors and employees are named as additional insureds with respect to any insurance as required by the Authority pursuant to the terms of any contract entered into by any other party with the Authority.

K. Term and Termination. This Agreement shall continue in force until terminated as specified by this section. This Agreement may be terminated at the end of any Fiscal Year by consent of all Member Agencies; however, this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, the distribution of assets, and any other functions necessary to conclude the affairs of the Authority. Upon termination, payment of the obligations and division of the property of the Authority shall be conducted pursuant to Section L of this Article.

L. Disposition of Authority Funds Upon Termination.

1. 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 obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, shall be transferred to the successor public entity.

2. If there is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, shall be returned in proportion to the contribution of each Agency during the term of this Agreement.

3. If there is a successor public agency which would undertake some of the functions of the Authority and assume some of its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, shall be allocated by the Board between the

successor public entity and Member Agencies. In the event the Authority is terminated under circumstances falling within (1) or (2) above, all decisions of the Board with regard to determinations of amounts to be transferred to Member Agencies or any successor shall be final.

### ARTICLE 5. FINANCING

A. Apportionment of Expenses. The Member Agencies shall be responsible for providing the requisite funds to the Authority for all activities authorized by this Agreement and the West Valley Solid Waste Management Plan in amounts equal to each Member Agency's percentage share of the total population of all Member Agencies.

B. Funds, Expenditures and Audits. Each and every expenditure of moneys shall be authorized or approved by the Board or by a person designated by the Board to authorize expenditures. The Treasurer shall draw warrants to pay demands so authorized for payment by the Board.

Before the Authority may expend any moneys or incur any financial obligation, it shall adopt a budget showing proposed expenditures for the Fiscal Year and the proposed means of financing such expenditures. The budget shall be for the ensuing Fiscal Year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.

The Board shall periodically cause an audit to be performed with regard to the financial operations of the Authority.

C. Debt. The Authority may issue or cause to be issued bonds and other indebtedness, and pledge any Authority property and/or revenues as security to the extent permitted by law. Any and all debts, liabilities, and obligations incurred by or imposed upon the Authority shall be the debts, liabilities, and obligations solely of the Authority, rather than the debts, liabilities and obligations of the individual Member Agencies.

D. Financial Contributions. For agencies joining the Authority after the effective date of this Agreement, the Board shall determine such agencies' proportionate financial contribution, which is due upon joining the Authority.

### ARTICLE 6. EXERCISE OF THE AUTHORITY'S POWER

This Agreement is entered into under the provisions of Article 1 of Chapter 5, Division 7, Title One of the Government Code concerning Joint Powers Agreements. As to those powers vested in the Authority pursuant to Section 6508 of the Government Code, they shall be exercised in the same manner and subject to the same restrictions as those applicable to a sanitary district pursuant to statutes and laws of the State of California.

WHEREFORE, the parties have executed this Agreement as of the latest date appearing by their respective signatures below.

CITY OF MONTE SERENO,  
MAYOR JACK LUCAS

Date: 9/19/97

By: *Jack Lucas*

CITY OF SARATOGA,  
MAYOR ~~GILLIAN MORAN~~

Date: 10/1/97

By: *Gillian Moran*

CITY OF LOS GATOS,  
MAYOR JOANNE BENJAMIN

Date: 9/23/97

By: *Joanne Benjamin*

CITY OF CAMPBELL,  
MAYOR BARBARA CONANT

Date: 9/27/97

By: *Barbara D. Conant*

(Notarization and Corporate Authorization Required)