

RESOLUTION NO. 4302

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND SIGN EMPLOYMENT CONTRACTS WITH AT-WILL EXECUTIVE MANAGERS, AND TO ADMINISTRATIVELY DELETE THE REFERENCES TO AT-WILL, EXECUTIVE MANAGERS AND DEPARTMENT HEADS FROM THE COMPENSATION AND BENEFIT PLAN UPON COMPLETION OF CONTRACT NEGOTIATIONS

WHEREAS, the City desires to recruit and retain at-will executive managers with the highest expertise; and

WHEREAS, the City Manager proposes that she be authorized to negotiate and sign employment contracts with at-will executive managers; and

WHEREAS, Employment contracts are a common method for recruiting and retaining highly qualified at-will executive managers; and

WHEREAS, the proposed employment contracts require City Council authorization for the City Manager to negotiate and sign employment contracts with at-will executive managers.

BE IT HEREBY RESOLVED by the City Council of the City of Soledad as follows:

Section 1. The City Council of the City of Soledad hereby approves the contract format attached hereto for at-will executive managers, as reflected in the form attached as Exhibit A, and by this reference incorporated herein.

Section 2. The City Council of the City of Soledad hereby authorizes the City Manager to negotiate and execute employment contracts with at-will executive managers. By this authorization, the Council recognizes that such negotiation may result in minor changes to the form and substance of the employment contract template attached hereto as Exhibit A.

Section 3. The City Manager is hereby authorized to administratively delete reference to at-will, executive managers and department heads from the Compensation and Benefit Plan upon completion of the contract negotiations.

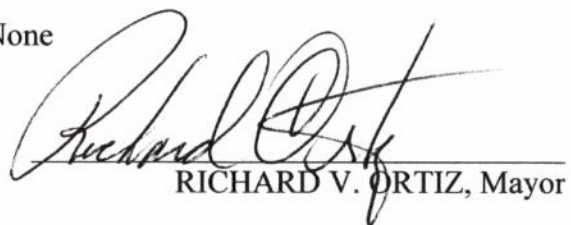
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 5th day of November 2008, by the following vote:

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

NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None


RICHARD V. ORTIZ, Mayor

ATTEST:

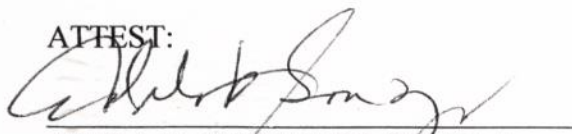

ADELA P. GONZALEZ, City Clerk

Exhibit A

CONTRACT NO. _____

**THIS EMPLOYMENT CONTRACT IS MADE AND ENTERED INTO BY
AND BETWEEN THE CITY OF SOLEDAD, HEREINAFTER CALLED
"CITY", AND _____ (name), (title of classification).**

RECITALS

A. The City of Soledad (Hereinafter "City") desires to employ, as an "at will" employee, the services of _____ (name) (Hereinafter "____") as _____ (title of classification) for the City of Soledad, in accordance with applicable provisions of the Soledad Municipal Code; and

B. The base salary range for the position of _____ has been set by the City Council between \$ _____ and \$ _____ per month; and

C. It is the desire of the City Manager to provide certain benefits, establish certain conditions of employment, and set working conditions for _____; and

D. Both _____ and the City acknowledge that the _____ is an "at will" position and can be terminated with or without cause. Nothing in this contract shall be interpreted to amend or modify any ordinance of the City of Soledad or any state or federal law pertaining to the operation of City government; and

E. _____ agrees to accept employment as an "at will" employee,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, City and _____ agree as follows:

SECTION 1. DUTIES.

(a) City hereby agrees to employ _____ as _____ of the City to perform the functions and duties specified in the job description attached hereto as Attachment "A" and incorporated herein by this reference, and to perform other legally permissible and proper duties and functions as required by law and as the City Manager shall from time to time assign. _____ further agrees to perform all such functions and duties to the best of his/her abilities and in a competent and efficient manner.

(b) _____ agrees to focus 100% (one hundred percent) full professional time, ability and attention to City business during the term of this Contract. Consequently, _____ hereby agrees not to engage in any other business pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, for compensation, without the prior written consent of the City Manager. This

shall not preclude _____ from volunteering his/her services to other entities or individuals as long as such volunteer services are not in conflict with the services to be provided by _____ under this Contract.

SECTION 2. TERM.

(a) Nothing in this Contract shall prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of the _____ at any time, subject only to the provisions set forth in Section 5 of this Contract.

(b) Nothing in this Contract shall prevent, limit or otherwise interfere with the right of _____ to resign at any time from this position with the City, subject only to the provisions set forth in Section 5 of this Contract, during the term of this Contract.

(c) This Contract shall be in full force and effect for a period of three (3) years starting _____, and terminating as of _____, unless terminated as otherwise provided for herein.

(d) Nothing in this section shall preclude the termination of this Contract by mutual consent of both parties hereto.

SECTION 3. SALARY AND COMPENSATION.

The base salary range for the position of _____, as set by the City Council, is between \$ _____ and \$ _____ per month. _____'s monthly base salary shall be \$ _____ per month. Increases, if any, in _____'s monthly base salary during the term of this Contract shall be at the sole discretion of the City Manager based upon _____ job performance and within the base salary range established by the City Council or as otherwise approved by the City Council. The City also agrees to pay expenses for _____ pursuant to the City's travel policy for employees while _____ is representing the City at conferences or meetings outside of the City. _____'s travel and conference requests shall be subject to the prior approval of the City Manager, or upon his request.

The City shall provide _____ with a Travel and Meeting Expense Allowance of \$100.00 (one hundred dollars) per month. Such expense allowance is as reimbursement for out of pocket expenses incurred in the normal conduct of official City business.

SECTION 4. AT-WILL EMPLOYMENT STATUS, EXEMPTION FROM CITY COMPENSATION AND BENEFIT PLAN.

_____ employment is at-will, thus, _____ employment is at the mutual consent of _____ and City and either may terminate the employment at-will. The provisions of the City's Compensation and Benefit Plan shall not be applicable to employment pursuant to this Contract. _____ agrees that no representative of City has made or can make any promises, statements, or representations which state or imply that _____ is hired, employed, or retained

under any terms other than as an at-will employee exempt from the City's Compensation and Benefit Plan except as expressly set forth herein.

_____ status' as at-will may only be changed, revoked, amended, or superseded by a written document, signed by _____ and the City Manager, and with final approval by the City Council.

SECTION 5. TERMINATION OF CONTRACT.

The City and _____ understand and mutually agree that the _____ employment is "at will", and that this Contract may be terminated with or without cause.

(a) In the event that the City Manager terminates this Contract without cause prior to its expiration, then _____ shall be entitled to severance pay of a lump sum payment equal to one (1) month base salary, during the first year of this Contract, two (2) months base salary during the second year of this Contract, and three (3) months base salary during the third year of this Contract, payable within thirty (30) days of the date of termination, subject to restrictions set forth in Government Code Section 53260, that the maximum amount of severance pay that _____ may receive shall not exceed an amount equal to the monthly base salary of the _____ multiplied by the number of months left on the unexpired term of this Contract. In calculating severance pay. No consideration shall be given to years of service provided by _____ to the City prior to the execution of this Contract. _____ hereby agrees that he/she shall accept such payment as full compensation due from the City as severance pay in exchange for a full and complete release of the City, its agents, employees, attorneys, City Council members, or representatives of any kind or nature, from any and all liability or claims of any type or nature relating to the _____ employment and/or termination of same. Said payment of severance pay shall be in addition to any vacation leave or administrative leave, if any, due to the _____ upon his/her severance from City service subject to the City's personnel rules and regulations regarding vacation leave and sick leave which shall apply to _____. The City Manager need not provide _____ with any prior notice of his/her decision to terminate this Contract.

(b) This Contract shall terminate and City shall not be obligated to make any severance payment upon any of the following events:

(1) Upon the death of _____:

(2) Upon _____ service or disability retirement; and/or

(3) When _____ has been unable to perform the essential functions of his/her position due to illness or other disability for a period of (3) months and it is medically determined that the _____ is permanently disabled from performing the essential functions of his/her position, with or without reasonable accommodation.

(i) A determination that the _____ is permanently disabled shall be made by the City Manager based on competent medical evidence and in accordance with applicable California and federal laws pertaining to the protection of disabled individuals.

(ii) If at any time it is determined by the City Manager that a question exists as to the _____'s ability to perform the essential functions of his/her position, the City Manager may require that the _____ undergo a comprehensive fitness for duty medical examination.

(4) If this Contract is terminated for misconduct of the _____ or for his/her having materially breached his/her obligations or neglected his/her duties as required herein or the Contract is terminated for other good cause.

(i) Misconduct means dishonesty, fraud, self dealing, or other malfeasance or misfeasance committed in the performance of _____'s duties and responsibilities under this Contract; or _____'s violation of any law which can be punished as a felony committed at any time. The determination of whether _____ was terminated due to misconduct is in the City Manager's sole discretion.

(5) _____ voluntarily resigns his/her position with the City before the expiration of the aforesaid term of his/her employment.

(c) Nothing in this section shall preclude the termination of this Contract by mutual consent of both parties hereto.

SECTION 6. HOURS OF WORK.

Due to the nature of the employment of _____ as a public employee, the _____ is required to work a full and complete work week of forty (40) hours per week, and devote whatever time is necessary to fulfill his/her employment responsibilities and duties as provided for in this Contract, with no additional consideration of payment for additional hours beyond the forty hour work week. Executive Management is exempt from over time pursuant to Fair Labor Standards Act (FLSA), and is not entitled to compensatory time off.

SECTION 7. SUPPLEMENTAL BENEFITS.

In addition to the compensation provided in Section 3, the City agrees to provide the following in consideration to the _____ for the services provided pursuant to this Contract:

(a) Except as otherwise provided for herein, _____ shall accrue and use vacation days as follows:

<u>Years of Service</u>	<u>Vacation accrual</u>
6 – 30 months	10 hours per month
37-120 months	13.33 hours per month
121 – 180 months	14.67 hours per month

180 months + 16.67 hours per month

(b) Except as otherwise provided herein, _____ shall accrue one (1) day per month, up to a maximum of ninety (90) days.

(c) Except as otherwise provided herein, _____ shall accrue six (6) hours per month of administrative leave. Balance of leave will be cleared at fiscal year end.

(d) City pays the full Employer contract rate and the full Employee's contract rate for its participation in the CalPers Retirement Plan during the period this Contract is in effect.

(e) City pays the full cost of the premium of _____'s, and his/her dependents, for City provided health, vision and dental insurance premiums, but not any deductible for these insurances.

(f) City pays the full cost of life insurance at one and one-half (1.5) times the base annual salary up to a maximum of \$150,000 (one hundred fifty thousand dollars), and long term disability insurance for _____.

(g) For the purpose of calculating _____'s supplemental benefits, the total amount of time of his/her employment with the City shall be used.

(h) The _____ shall be entitled to any other leaves of absence on the same terms and conditions as set forth in the Personnel Policies of the City as currently in place, or as hereinafter amended by the City. (Examples include bereavement leave, holidays, jury duty, time off to vote, Pregnancy Disability Leave, etc.).

SECTION 8. AUTOMOBILE.

The _____'s work requires that he/she have use of an automobile and the City shall provide the limited daily use of an automobile to _____, to be used in performing his/her duties, on as-needed basis. The vehicle shall not be used for personal business.

SECTION 9. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Manager shall fix any such other terms and conditions of employment as City Manager may determine from time to time, relating to the performance of _____, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Contract, the Municipal Code of the City of Soledad, or any other applicable law. This provision allows the City Manager to set other economic terms and conditions of employment on an annual basis, for an amount that does not exceed 5% (five percent) of the total employment package for executive management. All of the provisions of the City of Soledad Personnel Policy Manual shall be applicable to _____'s employment, unless otherwise noted or modified herein. In the case of a conflict between provisions, the language of this Contract shall prevail.

SECTION # 10. PERFORMANCE EVALUATION.

(a) Annually, the City Manager, with the assistance of the _____, may define such goals and performance objectives which the City Manager determines necessary for the proper operation of City's _____ Department and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing and will be reasonably attainable within the time limitations specified by the City Manager and in light of the annually operating and capital budgets and appropriations provided.

(b) The City Manager shall review and evaluate the performance of the _____ at least once annually at the anniversary of this Contract. Said review and evaluation shall be in accordance with any goals that may have been developed by the City Manager, as well as _____'s performance or other goals that may have been developed by the City Manager, as well as _____'s performance of other functions and duties. The City Manager shall provide _____ with a summary written statement of the findings of the City Manager and provide an adequate opportunity for _____ to discuss his/her evaluation with the City Manager.

SECTION 11. GENERAL PROVISIONS.

(a) This Contract supersedes any and all other contracts, either oral or in writing, between the parties hereto with respect to the employment of the _____ by the City and contains all of the covenants and contracts between the parties with respect to that employment in any manner whatsoever except as to those provisions incorporated by reference herein found either in the Soledad Municipal Code or Policies of the City as expressly provided for in this Contract. Each party to this Contract acknowledges that no representation, inducement, promise or contract, orally or otherwise, has been made by any party or anyone acting on behalf of any party which is not embodied herein and that no other contract, statement or promise not contained or incorporated in this Contract shall be valid or binding on either party.

(b) Any modifications or amendments of this Contract will be effective only if it is in writing and signed by the parties. Notwithstanding the foregoing, only the City Manager has the authority to modify the terms of this Contract on behalf of the City.

(c) The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this Contract by the other party shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

(d) If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

(e) If the _____ dies prior to the expiration of the term of this Contract, any sums that may be due him/her as of the date of his/her death, from the City under this Contract, shall be paid to his/her executors, administrators, heirs, personal representatives, successors or assigns.

(f) _____'s duties and obligations under this Contract are personal and not assignable.

(g) This Contract will be governed and construed in accordance with the laws of the State of California.

(h) No interpretation or construction of any provision or provisions of this Contract will be influenced by the identity of the party drafting the Contract.

(i) Section headings used in this Contract are for convenience only and shall not be considered a part of the terms of this Contract.

In witness whereof, the parties hereto have duly executed this Amendment.

DATED this ____ day of _____, 200_

FOR THE CITY:

Adela P. Gonzalez, City Manager

(Insert Dept. Director's name here)

APPROVED AS TO FORM:

Michael F. Rodriguez, City Attorney