

RESOLUTION NO. 5049

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING AN AGREEMENT FOR INTERIM WASTEWATER OPERATOR
SERVICES BETWEEN THE CITY OF GONZALES AND THE CITY OF SOLEDAD
AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT ON
BEHALF OF THE CITY OF SOLEDAD**

WHEREAS, on Wednesday, December 17, 2014, the City of Soledad received a request from the Public Works Director and City Manager of Gonzales requesting the execution of an Agreement between the two cities for Shared Wastewater Operator Services; and

WHEREAS, the City of Gonzales is currently in need of interim Wastewater Operator services due to the retirement of the City of Gonzales Public Works Director; and

WHEREAS, the City of Soledad and the City of Gonzales have determined that a mutual aid agreement for this purpose is feasible; and

WHEREAS, the term of the Agreement will be from January 1, 2015 to December 31, 2015, unless otherwise amended by mutual agreement of both Parties.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad that the "Agreement for Interim Wastewater Operator Services between the City of Gonzales and the City of Soledad," a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein, is hereby approved in substantial form and content, subject to minor modification approved by the City Manager and City Attorney, and the City Manager is hereby authorized to execute said Agreement on behalf of the City of Soledad.

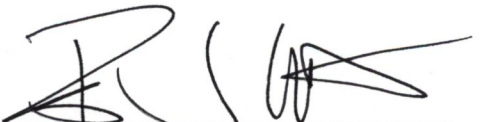
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 7th day of January, 2015, by the following vote:

AYES, and in favor thereof, Councilmembers: Christopher K. Bourke, Richard J. Perez, Patricia D. Stephens, Mayor Pro Tem Alejandro Chavez and Mayor Fred J. Ledesma

NOES, Councilmembers: None.

ABSTAIN, Councilmembers: None.

ABSENT, Councilmembers: None.


FRED J. LEDESMA, Mayor

ATTEST:


ADELA P. GONZALEZ, City Clerk

**AGREEMENT FOR INTERIM CONTRACT CHIEF PLANT OPERATOR (CPO)
SERVICES BETWEEN
THE CITY OF GONZALES AND THE CITY OF SOLEDAD**

This AGREEMENT FOR CPO SERVICES (the "Agreement") is entered into as of January 1, 2015 (the "Effective Date") by and between the CITY OF GONZALES, a general law City and municipal corporation of the State of California ("GONZALES") and the CITY OF SOLEDAD, also a general law City and municipal corporation of the State of California ("SOLEDAD"). GONZALES and SOLEDAD may be referred to separately as "Party" or jointly as "the Parties."

RECITALS

A. GONZALES and SOLEDAD provide wastewater treatment within their respective corporate limits.

B. GONZALES is currently in need of Interim Contract CPO Services due to the vacancy of their existing CPO.

C. Accordingly, SOLEDAD will provide to GONZALES Interim Contract CPO Services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, GONZALES and SOLEDAD agree as follows:

AGREEMENT

Section 1. Interim Contract Chief Plant Operator (CPO) Services.

1.1 Available Services. SOLEDAD agrees to make available SOLEDAD Wastewater Treatment Operator(s) to provide Interim Contract CPO Services, and GONZALES agrees to pay SOLEDAD for said services subject to the terms and conditions set forth in this Agreement.

1.2 Services. Interim Contract CPO Services provided by SOLEDAD shall include, but not be limited to the following:

1.2.1 Provide shared services of SOLEDAD'S Wastewater operations staff, Grade II or higher, as an Interim Contract CPO for the GONZALES Wastewater Treatment Facility.

1.2.2 Provide CPO services as needed for regulatory compliance per the Central Coast Regional Water Quality Control Board (Water Board).

1.2.3 Supervise operations of Gonzales' Wastewater Treatment Plant as required by any and all Regulatory Agency Permits issued to the City of Gonzales in regards to operations per the Water Board.

1.2.4 Advise GONZALES staff in regards to conducting Record Keeping Procedures, Monitoring and Reporting as required by the Water Board.

1.2.5 Schedule operation activities as necessary with Staff and review said scheduling with the Acting GONZALES Public Works Director. Report any unusual circumstances as soon as possible to the Acting GONZALES Public Works Director.

1.3 Term of Services.

1.3.1 The term of this Agreement is from the Effective Date, January 1, 2015 through December 31, 2015 unless terminated or extended pursuant to this Agreement.

1.3.2 Either Party may terminate the Agreement upon thirty (30) days written notice to the other Party. The length of the aforesaid notice requirement may be reduced upon the mutual agreement of the Parties.

1.3.3 This Agreement may be extended by mutual agreement of both Parties, as memorialized in writing.

1.4 Payment for Service and Registration Fees.

1.4.1 GONZALES agrees to pay SOLEDAD for said Interim Contract CPO Services at a rate of \$ 85.00 per hour at a not to exceed amount of \$1,000.00 per week during the Term of this Agreement. This "not to exceed amount" may be adjusted, as necessary, by mutual agreement of the Parties.

1.4.2 GONZALES agrees to pay SOLEDAD for all Contract CPO Registration fees required by the Water Board. SOLEDAD will register with the State a maximum of four Contract CPO staff (Grade II or higher). GONZALES will pay the pre-approved total amount expended by SOLEDAD for registration fees.

1.4.3 The referenced amount shall be the full amount of payment from GONZALES to SOLEDAD for services rendered pursuant to this Agreement, and the Parties understand, acknowledge and agree that SOLEDAD maintains all responsibility to provide all health, welfare, retirement and other benefits to the Interim Contract CPO staff during the term of this Agreement.

1.5 Invoicing. GONZALES shall make monthly payments upon being invoiced by SOLEDAD. If the monthly compensation is not received by SOLEDAD within thirty (30) days of the invoice date to GONZALES, the amount due shall accrue simple interest at the rate of one percent (1%) per month on the outstanding balance.

1.6 Schedule.

1.6.1 The Parties' intent is that the Interim Contract CPO will provide services on an as-needed basis to GONZALES at an anticipated level of effort not to exceed four (4) hours per week, or the minimum number of hours required by regulatory agency permits, unless a greater number of hours is required by problems experienced at the Gonzales Wastewater Treatment Plant.

1.6.2 The Interim Contract CPO will have the discretion to modify this schedule when deemed necessary for Wastewater Compliance upon written approval by GONZALES.

Section 2. Indemnity.

2.1 GONZALES shall indemnify, defend with counsel reasonably acceptable to SOLEDAD, and hold harmless SOLEDAD and its officials, elected officials, officers, employees, agents, volunteers or subcontractors from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of GONZALES or its officials, elected officials, officers, employees, agents, volunteers or subcontractors, by acts for which they could be held strictly liable, or by the quality or character of their work.

2.2 SOLEDAD shall indemnify, defend with counsel reasonably acceptable to GONZALES, and hold harmless GONZALES and officials, elected officials, officers, employees, agents, volunteers or subcontractors, from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of SOLEDAD or its officials, elected officials, officers, employees, agents, volunteers or subcontractors, by acts for which they could be held strictly liable, or by the quality or character of their work.

2.3 The indemnification provisions contained in this Agreement include any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or negligent acts of any Party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.

2.4 It is the intent of the Parties that where negligence is determined by a court of competent jurisdiction to have been shared, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence.

2.5 Each Party shall notify the other Party of any claims or legal actions with respect to this Agreement.

Section 3. Insurance.

3.1 General.

3.1.1 Prior to the commencement of the Services and during the term of this Agreement, GONZALES shall maintain comprehensive general liability insurance coverage in a sum not less than \$2,000,000 per occurrence. GONZALES shall also provide SOLEDAD with a written endorsement to such certificate of policy naming the SOLEDAD as an additional insured, and such endorsement shall also state, "Such insurance as is afforded by this policy shall be

primary as to GONZALES' liability, and any insurance carried by SOLEDAD shall be excess and noncontributory." Any and all insurance coverage may be provided by a Joint Powers Authority or other self-insurance program.

3.1.2 Prior to the commencement of the Services and during the term of this Agreement, SOLEDAD shall maintain comprehensive general liability insurance coverage in a sum not less than \$2,000,000 per occurrence. SOLEDAD shall also provide GONZALES with a written endorsement to such certificate of policy naming GONZALES as an additional insured, and such endorsement shall also state, "Such insurance as is afforded by this policy shall be primary as to the SOLEDAD's liability, and any insurance carried by GONZALES shall be excess and noncontributory." Any and all insurance coverage may be provided by a Joint Powers Authority or other self-insurance program.

3.2 Workers' Compensation. Both GONZALES and SOLEDAD shall, at their sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons that GONZALES or SOLEDAD employs directly. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than One Million Dollars (\$1,000,000.00) per accident.

Section 4. Relationship.

4.1 Contractual Relationship. The Services provided herein are pursuant to a contract between the Parties and are not meant to create an employer-employee relationship. At no time during the term of this Agreement shall the SOLEDAD CPO be considered an employee of GONZALES. Notwithstanding any other GONZALES, state, or federal policy, rule, regulation, law, or ordinance to the contrary, SOLEDAD and any of its employees, agents, and subcontractors providing Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by GONZALES, including but not limited to workers compensation and eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of GONZALES and entitlement to any contribution to be paid by GONZALES for employer contributions and/or employee contributions for PERS benefits.

4.2 No Agents. Except as the Parties may specify in writing, neither Party has authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent. The Parties shall have no authority, express or implied, pursuant to this Agreement to bind the other Party to any obligation whatsoever.

Section 5. KEEPING AND STATUS OF RECORDS.

5.1 Records Created by SOLEDAD as Part of Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that SOLEDAD prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of GONZALES. SOLEDAD hereby agrees to deliver those documents to GONZALES upon termination of this Agreement.

5.2 Records created by GONZALES. Copies of all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that GONZALES prepares or obtains pursuant to this Agreement and that relate to the matters covered shall be furnished to SOLEDAD.

5.3 Books and Records. The Parties shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services charged to either Party under this Agreement for a minimum of three (3) years, or for any longer period required by law.

5.4 Inspection and Audit of Records. Any records or documents required by this Agreement to be maintained shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the other Party.

Section 6. General Agreement Conditions.

6.1 Amendment. This Agreement may be amended or modified in writing duly authorized and executed by both Parties.

6.2 Integration. This Agreement represents the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations and discussions between the Parties hereto and/or their respective counsel with respect to the subject matter of this Agreement.

6.3 Headings. The headings in this Agreement are for convenience only and are not to be construed as modifying or explaining the language in the section referred to.

6.4 Severability. Should any part, term or provision of this Agreement be determined by a court to be illegal or unenforceable, the remaining portions or provisions of this Agreement shall nevertheless be carried into effect.

6.5 Governing Law; Jurisdiction and Venue. The interpretation, validity and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim and legal proceeding of any kind related to this Agreement shall be filed in the Superior Court of Monterey County.

6.6 No Continuing Waiver. No waiver of any term or condition of this Agreement shall be considered a continuing waiver thereof.

6.7 Assignment. This Agreement shall not be assigned without the prior written consent of the other Party. Any attempt to assign this Agreement without the prior written consent of the other Party shall be void and of no force and effect.

6.8 Notice. Notices and communications among the Parties as signed by this Agreement shall be in writing and shall be deemed to have been given when personally delivered or sent by United States Mail, overnight delivery sent to the following addresses:

GONZALES

City Manager
City of GONZALES
P.O. Box 647
GONZALES, CA 93926

SOLEDAD

City Manager
City of Soledad
248 Main Street
Soledad, CA 93960

6.9 No Third Party Beneficiary. The Parties agree that the provisions of this Agreement are not intended to directly benefit, and shall not be enforceable by, any person or entity not a party to this Agreement.

6.10 Counterpart Execution. This Agreement, or any amendment to this Agreement, may be executed in counterparts, each of which shall be deemed to be an original and said counterpart shall constitute one in the same document which may be sufficiently evidenced by one counterpart.

6.11 Nondiscrimination and Equal Opportunity. The Parties shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any Services provided under this Agreement. The Parties shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any Services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of the Parties thereby.

6.12 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

(signatures on following page)

IN WITNESS HEREOF, the Parties have executed this Agreement in the County of Monterey, State of California as of the Effective Date first set forth above.

GONZALES

Date: 1/20/15

By: [Signature]
City Manager

SOLEDAD

Date: Jan. 14, 2015

By: [Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

APPROVED AS TO FORM:

By: [Signature]
City Attorney