

RESOLUTION NO. 5260

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD/CITY COUNCIL AS BOARD TO THE SUCCESSOR AGENCY TO THE SOLEDAD REDEVELOPMENT AGENCY/SOLEDAD HOUSING AUTHORITY EXECUTIVE BOARD APPROVING AN EMPLOYMENT AGREEMENT FOR CITY MANAGER/SUCCESSOR AGENCY DIRECTOR/HOUSING AUTHORITY DIRECTOR SERVICES DATED JANUARY 9, 2017, WITH MICHAEL MCHATTEN

WHEREAS, with the retirement of City Manager Adela P. Gonzalez in September of 2016, the City/Successor Agency/Housing Authority (hereafter collectively “the City”) was compelled to commence a recruitment process for a new individual to fill said positions; and

WHEREAS, under the assistance and guidance of retained consultant RJA Management Services, Inc., the City conducted a multi-month recruitment process that included the review of over 20 applications, multiple interviews and background checks; and

WHEREAS, at the conclusion of this process, the City is pleased to announce that it has selected Michael McHatten as the next City Manager/Director/Director, and has negotiated an appropriate contract for services.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad, the City Council as the Board of the City of Soledad as Successor Agency to the Soledad Redevelopment Agency and the Board of the Soledad Housing Authority, that the “Employment Agreement” between said entities and Michael McHatten, a copy of which is attached hereto as **Exhibit A** and by this reference incorporated herein, is hereby approved. The Mayor/Chair/Chair is hereby authorized to execute said Agreement on behalf of the City/Successor Agency/Authority.

BE IT FURTHER RESOLVED that the Administrative Specialist is hereby directed to open a new personnel file for McHatten and to place an executed copy of the Agreement therein.

BE IT FURTHER RESOLVED, that the Council/Successor Agency/Authority wishes to extend its gratitude to Donald T. Wilcox for service as Interim City Manager/Director/Director during the recruitment process.

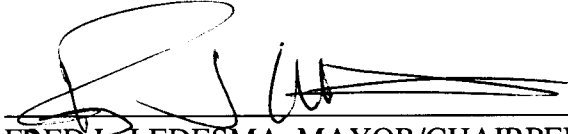
PASSED AND ADOPTED by the City Council/City Council Acting as Successor Agency of the Soledad Redevelopment Agency/Housing Authority at a regular meeting held on the 7th of December, 2016, by the following vote:

AYES, and in favor thereof, Council Members/Successor Agency Members/Housing Authority Members: Christopher K. Bourke, Patricia D. Stephens, Richard Perez, Mayor Pro Tem Alejandro Chavez and Mayor Fred J. Ledesma

NOES, Council Members/Successor Agency Members/Housing Authority Members: None

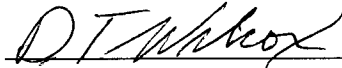
ABSTAIN, Council Members/Successor Agency Members/Housing Authority Members: None

ABSENT, Council Members/Successor Agency Members/Housing Authority Members: None



FRED L. LEDESMA, MAYOR/CHAIRPERSON/CHAIRPERSON

Attest:



INTERIM CITY/AGENCY/AUTHORITY CLERK

**EMPLOYMENT AGREEMENT
CITY MANAGER/SUCCESSOR AGENCY DIRECTOR/
HOUSING AUTHORITY DIRECTOR**

THIS AGREEMENT (the "Agreement") is made by and between the CITY OF SOLEDAD, a municipal corporation, hereinafter called "CITY," the City of Soledad as the Successor Agency to the Soledad Redevelopment Agency, hereinafter called "SUCCESSOR AGENCY," and the Soledad Housing Authority, hereinafter called "HOUSING AUTHORITY," hereinafter collectively called "EMPLOYER," and Michael McHatten, hereinafter called "McHatten." This Agreement shall have an effective date of January 9, 2017. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Employment.** EMPLOYER hereby appoints McHatten as City Manager/Successor Agency Director/Housing Authority Director, and McHatten hereby accepts said appointment upon the terms and conditions hereinafter set forth.
2. **Term.** The term of this Agreement shall commence on January 9, 2017, and shall continue for a term of two (2) years, until December 31, 2018, or until terminated as set forth in Paragraph 13. Notwithstanding said "term," the parties recognize and affirm that: 1) McHatten is an at-will employee whose employment may be terminated by EMPLOYER with or without cause; 2) there is no express or implied promise made to McHatten for any form of continued employment; and 3) this Agreement is the sole and exclusive basis for the employment relationship between McHatten and EMPLOYER.

If the Agreement has not been terminated pursuant to Paragraph 13.A, and City has not provided McHatten with notice of its intent not to extend or renew the Agreement per paragraph 13.B, the parties agree to engage in good-faith negotiations to either extend or enter into an new Employment Agreement at least ninety (90) days before this Agreement's expiration date.

3. **Duties.** McHatten's duties under this Agreement shall be those assigned to the office of City Manager/Successor Agency Director/Housing Authority Director by the general laws of the State of California, by City Ordinance (Municipal Code Chapter 2.08), as from time to time amended, by the provisions of AB 1x26 and applicable provisions of the Health and Safety Code, by other ordinances and resolutions of the City/Successor Agency/Housing Authority, and by City Council/Successor Agency Board/Housing Authority Board direction. McHatten shall devote as much time to said duties as shall be required for their proper performance, regardless of the number of hours involved. Upon direction from the Successor Agency Board/Housing Authority, McHatten shall have the authority to enter into and sign documents on behalf of the City of Soledad acting as Successor Agency for the Soledad Redevelopment Agency, and on behalf of the Soledad Housing Authority.

In order to facilitate the foregoing duties, McHatten shall have the authority to enter into contracts on behalf of the City/Successor Agency/Housing Authority on an administrative

basis in an amount up to but not to exceed Ten Thousand Dollars (\$10,000.00). McHatten shall report all contracts entered into in the amount of Five Thousand Dollars (\$5,000.00) or greater in a weekly administrative report to the Council. In the event City Staff ceases preparation of administrative reports, McHatten shall report such contracts via written communication in each month's Council meeting agenda.

4. Salary and Benefits.

- A. For all services to be rendered by McHatten under this Agreement, EMPLOYER shall pay McHatten One Hundred and Sixty Thousand Dollars (\$160,000.00) per year. Salary shall be payable in equal bi-weekly installments.
- B. A portion of McHatten's total compensation will be paid from the SUCCESSOR AGENCY budget. Said sum will be based on the actual proportion of McHatten's time spent on SUCCESSOR AGENCY duties, and will be paid from SUCCESSOR AGENCY funds on a pro-rata basis. Payment from Successor Agency funds will not cause McHatten's compensation to exceed that established in Subsection 4.A.
- C. McHatten shall be entitled to participate in the CITY's retirement plan and added to the roll of CITY's medical, dental and vision plans, and shall also be entitled to participate in the CITY'S Life, ADD&D and LTD insurance programs. McHatten agrees to pay the entire 7% employee's share of the applicable PERS contribution.
- D. Upon execution of a "Cardholder Agreement," McHatten shall be entitled to obtain a city credit card. The credit card will be subject to the terms and conditions of the City's "Credit Card Utilization Policy," as set forth in Administrative Order No. 4000-14. For purposes of interpretation and administration of said policy, the City Council shall be defined as the "Purchasing Officer."
- E. Upon production of receipts, McHatten shall be entitled to a one-time reimbursement in an amount up to and not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) for relocation expenses. Such expenses shall be limited to the cost of packing, loading, transporting, unloading and unpacking household goods and personal property. Authorized relocation expenses must be repaid to the CITY if McHatten terminates his employment pursuant to Paragraph 13 at the following rate: termination within twelve (12) months of the hire date- 100% of relocation expenses; termination after twelve (12) months but less than 18 months of hire date- 50%. No repayment is required after eighteen (18) months of employment. EMPLOYER is not responsible for taxes due on payment of relocation expenses.
- F. Any request for a change to the foregoing benefits must be made through negotiation with EMPLOYER, and only at the time of the Job Performance Evaluation set forth in Paragraph 9.

5. Extent and Quality of Services. McHatten shall devote his full time, attention and energies to his duties hereunder, and while so employed shall not engage in any other

business activity whatsoever, directly or indirectly, either alone or as a partner, employee or agent of another person, firm or corporation; provided, that nothing in this section shall be construed to prevent McHatten from making business investments which will not require any service on his part. McHatten shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by EMPLOYER.

6. **Vacation-Sick Leave-Administrative Compensatory Time Off-General Leave.** McHatten shall be allowed fifteen (15) working days vacation time each year, with pay, computed from the effective date herein and accrued at the rate of 10 hours per month. McHatten shall be entitled to all leave benefits not in conflict with the language set forth herein, as provided and administered to all Executive Management Employees in the "City of Soledad Personnel Rules and Regulations" in effect on the effective date of this Agreement. Such benefits shall include, but not be limited to, sick leave, bereavement leave, emergency family leave, and sick leave buy back. However, McHatten shall not be entitled to any amendments to such benefits as may be made from time to time by Council action after execution of this Agreement. Any change to such benefits must be made through negotiation with EMPLOYER, and only at the time of the Job Performance Evaluation set forth in Paragraph 9.

In light of the fact that McHatten must devote a great deal of time outside of normal office hours to the business of EMPLOYER, McHatten shall also be entitled to forty (40) hours of compensatory leave per year, allocated in one lump sum on July 1 of each calendar year, which shall be used to supplement regular compensation for hours spent fulfilling McHatten's duties. McHatten shall receive a pro-rata share of his allocation, or twenty (20) hours for Fiscal Year 2016-2017. All such leave must be used prior to, or within thirty (30) days, of June of each year in which it is accrued. McHatten shall not have the right to cash out or have EMPLOYER buy back administrative leave.

McHatten shall generally be expected to be available in City Hall from 8:30 a.m. to 5:00 p.m., Monday through Friday, but shall be allowed to establish an appropriate work schedule upon providing the Council with notice of the same. McHatten shall be responsible for notifying the Council, via electronic mail or telephone, of the use of vacation and/or any form of leave prior to the commencement of his absence.

7. **Automobile.** In recognition of the fact that McHatten will be required to use his personal automobile for EMPLOYER's business during the life of this Agreement, EMPLOYER shall provide McHatten a monthly automobile allowance of Three Hundred Dollars (\$300) during the term of this Agreement. Said allowance will be issued in increments of \$138.46 every two weeks in coordination with the City's salary schedule.
8. **Expenses- Dues and Subscriptions.** EMPLOYER agrees to reimburse McHatten for all travel expenses and conference fees for annual League of California Cities meetings and annual International City/County Management Association meetings.

All other expenses incurred by McHatten in the performance of his official duties shall be reimbursed in accordance with applicable CITY/SUCCESSOR AGENCY/HOUSING AUTHORITY policies.

Upon City Council/Successor Agency Board/Housing Agency Board approval through the budget process, EMPLOYER shall pay a reasonable amount annually for McHatten's dues and subscriptions to professional organizations related to municipal management.

9. **Review of Job Performance.** At the first Council meeting in October of each year, EMPLOYER (acting through the City Council) shall commence a review of McHatten's job performance. The result of such review, including findings and conclusions and the facts upon which they are based, shall be furnished to McHatten in oral or written form, and McHatten shall be given the opportunity to comment upon them. All such information shall be kept confidential by the parties and shall be used by said parties only for the purpose of improving the employment relationship or for the purpose of exercising rights under the terms of this Agreement.
10. **Computer- Telecommunications.** EMPLOYER agrees to provide a portable computer and software for McHatten's exclusive use at home or in the field. Such equipment shall remain the property of EMPLOYER, and upon McHatten's departure, shall be returned by McHatten to EMPLOYER. McHatten is expected to comply with all City rules, regulations and policies concerning the use and care of City-issued electronic communications equipment.
11. **Indemnification.** EMPLOYER shall defend, save harmless, and indemnify McHatten against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of McHatten's duties as City Manager/Successor Agency Director/Housing Authority Director in accordance with the provisions of California Government Code Section 825, and provide a defense in accordance with Government Code Section 995. McHatten's conviction for any felony or misdemeanor involving moral turpitude shall be a basis for exemption from this indemnification. EMPLOYER may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefore.
12. **Bonding.** EMPLOYER shall bear the full cost of any fidelity or other bond required under any law or ordinance.
13. **Termination.**
 - A. ~~Termination Prior to Expiration of Term.~~ This Agreement may be terminated prior to the expiration of the term specified in Paragraph 2 above in any one of the following ways:
 - i. By mutual agreement of the parties hereto, expressed in writing; or

- ii. By McHatten, upon giving EMPLOYER not less than one hundred and twenty (120) days' prior written notice of his election to terminate; or
- iii. By EMPLOYER (by affirmative vote of at least three (3) City Council/Agency Board/Authority Board members), for cause, arising from a willful breach of duty or habitual neglect of duty of McHatten, by McHatten's conviction of a crime involving moral turpitude, or for any conduct by McHatten which makes it impossible or impracticable for him to perform his duties hereunder, or that seriously impedes EMPLOYER's operations. McHatten shall not have any right to appeal or hearing for termination pursuant to this section; or
- iv. By EMPLOYER (by affirmative vote of at least three (3) City Council/Agency Board/Authority Board members), without cause, upon giving to McHatten written notice of termination. Upon termination and execution of a complete release and waiver of all claims and causes of action, McHatten shall be paid forthwith a sum equal to his salary for a period of three (3) months. McHatten shall not have any right to appeal or hearing for termination pursuant to this section.

Notwithstanding the foregoing, McHatten may not be removed from office without cause pursuant to this provision during or within a period of one hundred eighty (180) days succeeding any general municipal election held in the City at which a new city council member is to be elected.


- B. ~~Election Not to Renew or Extend Agreement.~~ Should EMPLOYER elect not to extend or renew this Agreement, EMPLOYER shall provide McHatten one hundred and twenty (120) days written notice prior to the Agreement's expiration date as established herein.


- 14. **Compatibility with State Law.** This Agreement is made subject to all applicable laws of the State of California, specifically including but not limited to Section 34851, et seq. of the Government Code. In the event of any conflict between the provisions of this Agreement and any such state law, the provisions of said State law shall apply.
- 15. **Compatibility with Municipal Code.** Except as noted below, the provisions of this Agreement are subject to the limitations contained in Chapter 2.08 of the Soledad Municipal Code, and in the event of any conflict between the provisions of this Agreement and Chapter 2.08, the provisions of Chapter 2.08 shall be controlling. Notwithstanding the foregoing, the notice provisions of Paragraph 11(b) above, for termination by employee (one hundred and twenty days) shall prevail over the provisions of Section 2.08.120 of the Soledad Municipal Code (thirty days). Additionally, by execution of this Agreement, the provisions of Sections 2.08.130 and 2.08.140, which the Council intends to consider for deletion from the Soledad Municipal Code, shall be considered null and void and of no further effect to the employment secured by this Agreement.


16. Miscellaneous.


- A. The text herein shall constitute the entire Agreement between the parties. The Agreement may not be modified, except by written agreement executed by both parties.
- B. If any provision or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- C. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.
- D. In the event of litigation per the terms of this Agreement, the prevailing party shall be entitled to attorneys' fees and cost.

IN WITNESS WHEREOF, said parties have executed this Agreement on the ___ day of December, 2016.

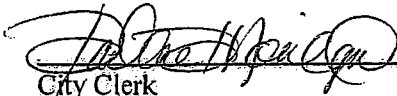
By 
Michael McHatten

CITY OF SOLEDAD
By 
Fred Ledesma, Mayor

CITY OF SOLEDAD AS SUCCESSOR AGENCY TO THE SOLEDAD REDEVELOPMENT AGENCY
By 
Fred Ledesma, Chair

CITY OF SOLEDAD HOUSING AUTHORITY
By 
Fred Ledesma, Director

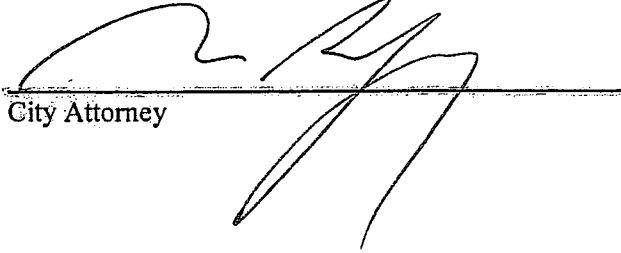
ATTEST:



City Clerk

DEPUTY CITY CLERK

APPROVED AS TO FORM:



City Attorney

