

CITY OF BELVEDERE

RESOLUTION NO. 2013-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
APPOINTING MARY NEILAN TO THE POSITION OF CITY MANAGER AND
AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MS. NEILAN
ON BEHALF OF THE CITY**

BE IT RESOLVED by the City Council of the City of Belvedere as follows:

1. Mary Neilan is hereby appointed to the position of City Manager effective January 22, 2013.
2. The Mayor is hereby authorized on behalf of the City to execute an agreement with Ms. Neilan, a copy of which agreement is attached hereto as Exhibit A, delineating the conditions of her employment, which agreement may from time to time be amended to reflect adjustments in salary, benefits or other conditions of employment.

PASSED AND ADOPTED at a regular meeting of the Belvedere City Council on January 14, 2013, by the following vote:

AYES: Thomas Cromwell, Claire McAuliffe, Bob McCaskill, and Mayor Sandra D. Donnell
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:



Sandra D. Donnell, Mayor

ATTEST:



Leslie Carpentiers, City Clerk

EXHIBIT "A"

CITY OF BELVEDERE EMPLOYMENT AGREEMENT

This Employment Agreement (hereinafter referred to as "Agreement") is entered into on this 14th day of January, 2013, by and between the City of Belvedere (hereinafter referred to as "City") and Mary Neilan (hereinafter referred to as "Employee" or "Neilan") (collectively, the "Parties").

The Parties enter into this Agreement with the intent that Employee shall be employed by the City in the position of City Manager. This Agreement is subject to approval at a regular meeting of the City in open session pursuant to AB 1344 requirements.

1. EFFECTIVE DATE. The effective date of this Agreement shall be January 15, 2013, and Employee's first day of employment shall be January 22, 2013.

2. PERIOD OF EMPLOYMENT. Employee shall serve as an at-will employee of the City. Nothing in this Agreement, or in the City personnel rules, policies, procedures, ordinances, or resolutions, shall limit the rights of the City to treat Employee as an at-will employee.

3. DUTIES. Employee shall perform the functions and duties of City Manager for the City, as specified in the City of Belvedere Municipal Code, and shall perform such other duties and functions as the City Council may assign.

4. SALARY. Employee shall receive an annual base salary of \$180,000.00 (One Hundred Eighty Thousand Dollars and No Cents), or \$15,000 (Fifteen Thousand Dollars and No Cents) per month, which shall be paid on the same pay warrant schedule other salaried employees of the City are paid and Employee shall be entitled to participate in all City benefit programs consistent with other management level employees. In addition, Employee shall be entitled to deferred compensation of \$350 per month in addition to the deferred compensation of \$150 per month that is available in Paragraph 12 of City Resolution Number 2012-15 for a total of \$500 per month of deferred compensation per month. The Employee's salary and other benefits shall be reviewed by the City Council in conjunction with an annual performance evaluation and may be adjusted to such extent as the City Council may determine desirable and appropriate to do, and subject to the requirements of AB 1344 regarding contracts for public employees.

5. HOURS OF WORK. Employee shall work a minimum of forty (40) hours per week, based on a standard work week designated as Monday through Friday, and shall not be eligible for overtime compensation or compensatory time off. Employee shall be entitled to such Administrative Leave as set forth in Paragraph 12c of City Resolution Number 2012-15. Employee shall have the option to flex her daily schedule to reduce the impact of traffic and/or commute time, subject to oversight and revision by the City on not less than 10 working days notice.

6. HOUSING ASSISTANCE. The City agrees to provide Employee housing assistance in the form of a \$750 gross payment once per month, subject to tax and withholding, conditioned upon Employee securing a residence in Marin County in a location that is not farther

north than the Marin County Civic Center in San Rafael and not farther south than Sausalito. In addition, the City agrees to reimburse Employee for the reasonable cost of overnight hotel accommodations up to four nights per month, or in the event of an emergency, with the continuation of this benefit to be reviewed by the City Council at the time of Employee's six month review, referenced below in Section 10 of this Agreement.

7. VACATION AND LEAVE BANK. Employee shall be entitled to accrue vacation time per City Resolution 2012-15, Paragraph 8, as if she were an employee with more than nine (9) years of service, or at a rate of 13.33 hours per month. If Employee has accrued vacation time, she may have the option to cash out up to 80 hours of accrued vacation time each year.

In addition, Employee shall be allocated 80 hours of administrative leave time upon her start date, as if she had accrued such administrative leave time pursuant to Paragraph 10 of City Resolution 2012-15. Administrative leave time shall not accrue from one year to the next per Paragraph 10 of City Resolution 2012-15, and the 80 hours of administrative leave time set forth in this contract may only be used, and cannot be cashed out upon separation or other departure from the City. Thus, the 80 hours of administrative leave time allocated upon Employee's start date must be used in 2013, or it will expire. Beginning in 2014, Employee will be entitled to the maximum administrative leave time of 40 hours, as per Paragraph 10 of City Resolution Number 2012-15.

8. PROFESSIONAL AND CIVIC MEMBERSHIP DUES, SUBSCRIPTIONS, AND RELATED MEETINGS, MOBILE TELEPHONE, AND LAPTOP COMPUTER. In recognition of the need for Employee to remain current in her profession, particularly in those areas directly related to the City and its business, and to encourage the Employee's active involvement in local community affairs so as to better understand the current needs and desires of the Belvedere community, the City shall include in its annual budget a reasonable amount for membership dues, subscriptions, conferences, and related meetings of professional and community organizations, inclusive of reasonable travel related expenses, taking into due consideration Employee's requests as well as the financial condition of the City. The City shall also include in its annual budget a reasonable amount for Employee's purchase and use of a mobile telephone and laptop computer. The Employee shall return the mobile phone and laptop computer to the City promptly upon the conclusion of Employee's employment with the City.

9. RETIREMENT. Employee shall be enrolled in the State of California Public Employees' Retirement System (PERS). The City shall pay the Employer's portion of the PERS contribution, and Employee shall pay the Employee's portion of the PERS contribution. As of December, 2012, the Employee's portion was 7% of salary. The PERS contribution is subject to revision by PERS. In the event PERS does not allow Employee to pay the Employee's portion, the Salary set forth in Section 4, above, shall be reduced to offset the City's cost of paying 3% of the 7% Employee portion of the PERS contribution.

10. PERFORMANCE EVALUATION. Not less than once per year, the City Council shall review and evaluate the performance of Employee. During the first year of Employee's employment, the City Council shall conduct an interim review at six months, on or about July 8, 2013. Such review and evaluation shall be in accordance with specific written criteria to be developed jointly by and

between the City Council and Employee. Failure of City to provide a performance evaluation shall not limit the City's ability to terminate this Agreement or the employment of the Employee.

11. SEVERANCE. Employee acknowledges that her employment with the City is at will. If the City terminates Employee's employment with the City involuntarily, Employee shall be entitled to severance pay amounting to a gross amount of \$90,000, subject to taxes, withholding and/or applicable contributions, and continuation of health benefits for up to six (6) months, if Employee is not otherwise eligible for health benefits during the six (6) months after separation. During the first 90 days following any City Council election, and subject to the terms of this Agreement, the City agrees that it will not terminate Employee's employment without cause. Payment of severance shall also be subject to requirements of AB 1344.

12. REIMBURSEMENT BY EMPLOYEE TO CITY – AB 1344 REQUIREMENTS.

- i. If this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position as defined by Government Code section 53243.4.
- ii. If any express or implied provision of this Agreement, the Bylaws of the City, or any policy or practice of the City provide paid leave salary to Employee pending an investigation, said paid leave salary shall be fully reimbursed by the Employee to the City if Employee is convicted of a crime involving an abuse of her office or position as defined by Government Code section 53243.4.
- iii. If any express or implied provision of this Agreement, the Bylaws of the City, or any policy or practice of the City provide for payment of funds for the legal criminal defense of Employee, said funds paid for her legal criminal defense shall be fully reimbursed by Employee to the City if Employee is convicted of a crime involving an abuse of her office or position as defined by Government Code section 53243.4.

13. PROPRIETARY INFORMATION. "Proprietary Information" is all information and any idea pertaining in any manner to the business of City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of City in the course of his or her employment or otherwise produced or acquired by or on behalf of City. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of City's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During her employment by City, Neilan shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of City and as is or may be necessary, to perform her job responsibilities under this Agreement. Following termination, Neilan shall not use any Proprietary Information and shall not disclose any

Confidential Information, except with the express written consent of City. Neilan's obligations under this Section shall survive the termination of her employment and the expiration of this Agreement.

14. NOTICES. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in Neilan's personnel file. Neilan agrees to notify City in writing of any change in her address during her employment with City. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address:

City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920-2336

Employee's Notice:

Mary G. Neilan (hand-delivered or to current residence as noted in personnel file)

15. ACTION BY CITY. All actions required or permitted to be taken under this Agreement by City including, without limitation, exercise of discretion, consents, waiver and amendments to this Agreement, shall be made and authorized only the City Council or its authorized designee.

16. INTEGRATION. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Neilan's employment by City. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to her employment with the City, and it may not be contradicted by evidence of any prior to contemporaneous statements or agreement(s).

17. AMENDMENTS. This Agreement may not be amended except in a written document signed by each of the parties hereto. Failure to exercise any right under this Agreement shall not constitute a waiver of any such or other rights of the parties hereto.

18. ARBITRATION OF DISPUTES. Any dispute between the parties concerning the terms or provisions of this Agreement shall be determined by binding arbitration conducted by a single arbitrator agreed upon by the parties; or, failing agreement on selection of an arbitrator, by an arbitrator appointed by the presiding judge of the Marin County Superior Court or his/her designee.

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CITY OF BELVEDERE

Dated: _____

SANDRA DONNELL, Mayor

EMPLOYEE

Dated: _____

MARY G. NEILAN

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

ROBERT F. EPSTEIN, City Attorney