

CITY OF BELVEDERE

RESOLUTION NO. 2017-09

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
APPOINTING CRAIG MIDDLETON TO THE POSITION OF CITY MANAGER
AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH
MR. MIDDLETON ON BEHALF OF THE CITY**

WHEREAS, Mary Neilan retired from her position as City Manager of the City of Belvedere on January 2, 2017; and

WHEREAS, on October 10, 2016, the City Council selected Ralph Andersen & Associates to perform a nationwide search for potential candidates for the position of City Manager; and

WHEREAS, the full City Council interviewed several candidates for the position of City Manager; and

WHEREAS, the City Council found Craig Middleton possesses the skills and expertise necessary to perform the duties of City Manager for the City of Belvedere; and

WHEREAS, the City Council desires to enter into an Employment Agreement to set forth the terms and conditions of Craig Middleton's employment with the City; and

WHEREAS, pursuant to requirements of AB 1344, the Employment Agreement for Craig Middleton was presented for approval at a regular meeting of the City Council in open session on April 11, 2017.

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

- 1.** Craig Middleton is hereby appointed to the position of City Manager, effective May 1, 2017.
- 2.** The Mayor is hereby authorized on behalf of the City to execute an agreement with Mr. Middleton, a copy of which agreement is attached hereto as Exhibit A, delineating the conditions of his 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 City Council of the City Of Belvedere on April 11, 2017, by the following vote:

AYES: Nancy Kemnitzer, Robert McCaskill, Marty Winter, and Mayor James Campbell
NOES: None
ABSTAIN: Claire McAuliffe
ABSENT: None

APPROVED: 
James Campbell, Mayor

ATTEST: 
Alison Foulis, City Clerk

CITY OF BELVEDERE EMPLOYMENT AGREEMENT

This Employment Agreement (hereinafter referred to as "Agreement") is entered into on this 11th day of April, 2017, by and between the City of Belvedere (hereinafter referred to as "City") and Craig Middleton (hereinafter referred to as "Employee") (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 Council in open session pursuant to AB 1344 requirements.

1. **EFFECTIVE DATE.** The effective date of this Agreement shall be May 1, 2017, and Employee's first day of employment shall be May 1, 2017.

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. **COMPENSATION.** Employee shall receive an annual base salary of \$187,000.00 (One Hundred and Eighty-seven Thousand Dollars and No Cents), or \$15,583.33 (Fifteen Thousand Five Hundred and Eight-three Dollars and Thirty-three Cents) per month, which shall be paid on the same pay warrant schedule other salaried employees of the City are paid. Employee shall be entitled to participate in all City benefit programs consistent with other management level employees, except that Employee has waived his right to health and dental insurance and any medical insurance rebate as provided for in Paragraphs 4(c), (d) and (h) of Resolution No. 2016-09, in exchange for the City's grant to Employee of additional Administrative Leave as provided for in Section 6 of this Agreement. In addition, Employee shall be entitled to deferred compensation of \$150.00 per month, pursuant to Paragraph 14 of City Resolution Number 2016-09. 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. **CAR ALLOWANCE.** The City agrees to provide Employee a car allowance in the form of a \$400.00 (Four Hundred Dollars and No Cents) gross payment once per month, subject to tax and withholding.

6. **HOURS OF WORK AND ADMINISTRATIVE LEAVE.** Employee shall work a minimum of forty (40) hours per week, based on a standard work week designated as Monday through Friday, except that Employee may work a 9/80 schedule. Employee shall have the option to flex his daily schedule to reduce the impact of traffic and/or commute time, subject to oversight and revision by the City Council on not less than 10 working days notice. Employee shall not be eligible for overtime compensation or compensatory time off. Employee shall be entitled to 40 (Forty) hours of Administrative Leave per calendar year, in accordance with

Paragraph 12 of Resolution No. 2016-09. In addition, Employee shall be entitled to an additional 96 (Ninety six) hours, the equivalent of 12 (Twelve) days, of Administrative Leave per calendar year so long as Employee is not enrolled in the City's health care or dental benefit programs or receives a medical insurance rebate from the City. In 2017, Employee's Administrative Leave shall be prorated based on the number of months of Employee's employment with the City during 2017. Administrative leave shall not accrue from one year to the next year. Administrative leave cannot be cashed out upon separation or other departure from the City.

7. VACATION AND LEAVE BANK. Employee shall be entitled to accrue vacation time per City Resolution 2016-09, Paragraph 10, as if he 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, he may have the option to cash out up to 80 hours of accrued vacation time each year.

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 his 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. Employee shall be entitled to a monthly stipend of \$50.00 (Fifty dollars) for his use of his personal mobile phone for City business, or the issuance and use of a City cell phone for City business. Employee shall also be eligible to receive a laptop computer at City expense. Any City owned mobile phone or laptop computer issued to the Employee shall remain the property of the City and shall promptly be returned to the City upon the conclusion of Employee's employment with the City, unless the City approves Employee's purchase of the equipment at fair market value upon Employee's separation from the City.

9. RETIREMENT. Employee shall be enrolled in the State of California Public Employees' Retirement System (PERS) in the category of Miscellaneous "New Employee," which is the "2% at 62" retirement program. The City shall pay the Employer's portion of the PERS contribution. The Employee shall pay the Employee's portion, also known as 50% of the Normal Cost of the Plan, which is currently 6.25% of salary. The PERS contribution is subject to revision by PERS.

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 November 13, 2017. 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 his 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 in the amount of six months' salary subject to taxes, withholding and/or applicable contributions. 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 his 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 his 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 his legal criminal defense shall be fully reimbursed by Employee to the City if Employee is convicted of a crime involving an abuse of his 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 his employment by City, Employee shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of City and as is or may be necessary, to perform his job responsibilities under this Agreement. Following termination, Employee shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of City. Employee's obligations under this Section shall survive the termination of his 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 Employee's personnel file. Employee agrees to notify City in writing of any change his address during his 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:

Craig Middleton
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 Employee'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 his 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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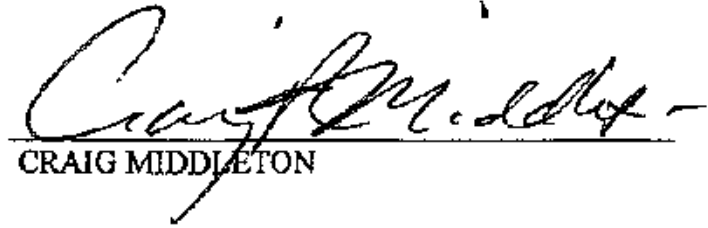
CITY OF BELVEDERE

Dated: 4/11/2017

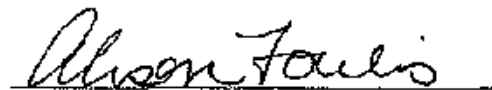

JAMES CAMPBELL, Mayor

EMPLOYEE


Dated: 3/22/17


CRAIG MIDDLETON

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


ROBERT F. EPSTEIN, City Attorney