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RESOLUTION NO. 2013-70

**A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING
THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH
PENELOPE LEACH FOR CITY MANAGER SERVICES**

WHEREAS, the previous City Manager, Beth Pollard, retired effective August 23, 2013; and

WHEREAS, the Albany City Council /Municipal Services Joint Powers Authority Board (JPA) recruited for a new permanent City Manager; and

WHEREAS, the Council/JPA Board has reviewed the qualifications and experience of Assistant City Manager, Penelope Leach, and has determined that she has the skills needed to perform the work of City Manager; and

WHEREAS, the Council/JPA Board desires to contract with Penelope Leach as City Manager pursuant to the terms of the attached Employment Agreement;

NOW THEREFORE, BE IT RESOLVED, that the Albany City Council hereby authorizes the Mayor to execute the attached Employment Agreement with Penelope Leach to serve as City Manager.


MAYOR

**CITY OF ALBANY AND ALBANY MUNICIPAL SERVICES JOINT
POWERS AUTHORITY**

EMPLOYMENT AGREEMENT

With Penelope Leach as City Manager

12/16/13

THIS AGREEMENT, made, entered into and effective on the 17th day of December, 2013, by and between the City Council of the City of Albany, and the Albany Municipal Services Joint Powers Authority, State of California, a municipal corporation, hereinafter called "Employer" and Penelope Leach, hereinafter called "Employee", as part of the second part, both of whom understand as follows:

RECITALS

WHEREAS, Employer desires to employ the services of Ms. Penelope Leach as City Manager of the City of Albany, as provided by the Albany City Charter and Chapter II, Article II of the Albany Municipal Code; and

WHEREAS, it is the desire of the Employer to provide certain benefits, to establish certain conditions of employment, and to set out working conditions of said Employee; and

WHEREAS, it is the desire of the Employer to: (1) secure and retain the services of Employee and to provide inducement for her to remain in such employment, (2) to make possible full work productivity by setting forth the parameters of an employment agreement, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee, and (4) to provide for the conditions under which the employment relationship may be amended or terminated.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1: EMPLOYMENT

Employer hereby agrees to employ Ms. Penelope Leach as City Manager of the City of Albany to perform the function and duties specified in the Albany City Charter, the Albany Municipal Code, and for other legally permissible and proper duties and functions as the Employer shall from time to time assign.

SECTION 2: TERM

A. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, subject only to the provisions set forth in Section 6, paragraph A, of this Agreement

B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the provisions set forth in Section 6, Paragraph B, of this agreement.

C. Employee agrees to commence employment in the exclusive employ of Employer on or about December 17, 2013. The term of the agreement is for a two year period, ending on December 17, 2015, subject to the termination provisions set forth in Section 6, unless the parties mutually agree to an extension of the term by amendment of this agreement.

SECTION 3: COMPENSATION

Employer agrees to pay Employee for her services rendered pursuant hereto an annual base salary of One Hundred Sixty Six Thousand Dollars (\$166,000.00) for the first six months of the agreement, payable in installments at the same time as other employees of the Employer are paid. If, after an acceptable evaluation pursuant to Section 6, A below, the employment continues for the balance of the term, the compensation will be increased to One Hundred Sixty Eight Thousand Dollars (\$168,000.00) annual base salary for the duration of the term, subject to any Cost of Living increases the management employees may be granted by the Employer during the term of this agreement. The annual base salary may be further increased by the Employer from time to time and the amount shall be accurately reflected in the Employer's Salary Schedule.

SECTION 4: RELOCATION & HOUSING COSTS

Employer agrees that Employee may continue to reside outside of the City. Should the employee decide to reside within the City, the Employer agrees to negotiate with Employee for relocation assistance to reimburse Employee for a one time, lump sum payment for her use in regards to relocation costs, moving expenses, temporary housing, and any other costs related to purchase of a family home.

SECTION 5: BENEFITS

A. Except as provided herein, Employee is to be provided the same retirement, medical, dental, vacation, administrative leave, sick leave, holiday, long-term disability and other benefits which are offered to other management employees as more fully described in the Management and Confidential Employees Benefits Booklet, which may be amended from time to time by the Employer.

B. Employee is entitled to carry over existing leave balances earned in her current position of Assistant City Manager/Community Services Director to the new Employee status as City Manager.

C. Employee shall receive a vehicle allowance of two hundred (\$200) dollars per month as reimbursement for use of her personal automobile. The vehicle allowance will be paid in lieu of the existing mileage reimbursement provision, for travel within the nine Bay Area counties (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma).

D. Employee may receive cash payment for any accrued vacation hours in excess of the annual 300 hour cap, payable at the end of the calendar year. And, Employee may receive cash payment of administrative leave balances up to 100% annually.

SECTION 6: INTITIAL TERM, TERMINATION & NOTICE REQUIREMENTS

A. The Parties understand that the Employee is serving at the pleasure of the City Council and the Albany Municipal Services Joint Powers Authority ("Employer"). Notwithstanding such status, the Parties agree that the Employee will be evaluated by the Employer for an initial term of six months for satisfactory performance, and said performance will be reviewed at the end of six months in consultation with the Employee, utilizing a verbal and written Employer evaluation. If the Employee's performance is deemed by the Employer to be unacceptable at the end of the initial six months of employment, then the Employee is entitled to either resume her prior position as Assistant City Manager/Community Services Director, at the same pay and benefits that were applicable at the time this contract commenced, including any adjustments to compensation the Employer may have made in the intervening period for the Management/Confidential Employee group, or may elect to receive six months' severance pay, at the level of initial compensation per Section 3 of this agreement, for termination of all employment with the Employer. This provision does not preclude the Employer from terminating employment at any time "for cause" including violations of the City of Albany Personnel Rules.

Once Employee has passed the initial six month period with a satisfactory performance determination by the Employer, the Employer agrees to give Employee six (6) months' severance payment for termination, which is not "for cause". The option to revert to the prior position of Assistant City Manager/Community Services Director will no longer be in effect. The severance payment will be limited to salary only.

The Employer agrees it will not terminate the agreement without a "for cause" reason within six (6) months after an election.

Notwithstanding the foregoing termination and notice provisions, the Parties agree that in the event that Employer terminates Employee because of a conviction of any illegal act involving personal gains to Employee or for an act of malfeasance in office, just cause,

insubordination or the equivalent, then Employer is entitled to terminate Employee and with an understanding that Employer shall have no obligation to pay the aggregate severance sums designated heretofore or to provide Employee with any notices, except those that may be required by the laws of the State of California.

B. In the event that Employee wishes to terminate her employment with the City, Employee agrees to give Employer at least sixty (60) days notice of her intent to leave.

C. If Employee is permanently disabled for a period of four (4) successive weeks beyond any accrued leave, or is otherwise unable to perform her duties because of sickness, accident, injury, mental capacity, or health, then Employer shall have the option to terminate this agreement, subject to the severance pay requirements of Section 6A. Termination under this Section does not absolve Employer of any requirements to pay for Workers' Compensation or disability benefits related to the employment and as are available to Employee.

SECTION 7: ON-GOING PERFORMANCE EVALUATIONS

A. Following the initial six month performance evaluation, Employer shall review and evaluate the performance of the Employee at least once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific goals and criteria developed jointly by Employer and Employee. Employer, at its sole discretion, may add or delete items from the goals and criteria. Further, the Employer shall provide the Employee with a written statement of the findings of the entire City Council (Employer) and provide an adequate opportunity for Employee to discuss her evaluation with the City Council as Employer.

B. Annually, the Employer and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City of Albany and in attainment of the Employer's policy objectives. Employer and Employee agree to review the salary of the employee along with the goals and performance assessment as part of the annual evaluation, or at such other time as the Parties agree.

SECTION 8: HOURS OF WORK

It is recognized that Employee must devote a great deal of time outside the normal office hours to business of the Employer, and to that end, Employee will be allowed to take compensatory time off as she shall deem appropriate during said normal office hours as long as Employee works a minimum of forty (40) hours per week without using any leave time.

SECTION 9: MEMBERSHIP DUES, CONFERENCES AND PROFESSIONAL DEVELOPMENT

A. Employer agrees to pay the cost for Employee to attend League of California Cities Managers meeting, one other conference (ICMA), the annual ICMA membership, and other short courses or training seminars as are agreed upon by the Parties from time to time.

B. Employer agrees to pay travel and subsistence expenses of Employee for conferences in a manner consistent with the treatment of other management employees.

C. Employer agrees to reimburse Employee for reasonable business expenses to conduct non conference related City business including meals, travel and lodging.

SECTION 10: INDEMNIFICATION

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager.

SECTION 11: BONDING

Employer shall bear the full costs of any fidelity or other bonds required of the Employee under law or ordinance.

SECTION 12: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The Employer, in consultation with the Employee, shall fix in writing any such other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the Albany City Charter or any other law.
- B. Employer shall not at any time during the term of this agreement reduce the salary, compensation or other financial benefits of the Employee, except to the degree of such a reduction is applicable across the board for all management employees of the Employer.

SECTION 13: NOTICES

Notice pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER: City Clerk, City of Albany, 1000 San Pablo Avenue, Albany, CA 94706

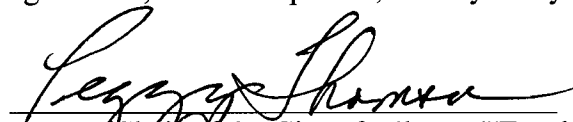
(2) EMPLOYEE: Ms. Penelope Leach: 53 Winterrun Dr, San Ramon, CA 94583; Phone: (510) 528-5710

Alternatively, notices required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.


SECTION 14: GENERAL PROVISIONS

- A. The text herein shall constitute the entire agreement between the Parties.
- B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This agreement shall become effective commencing December 17, 2013.
- D. 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.


IN WITNESS WHEREOF, the City of Albany has caused this agreement to be signed and executed in its behalf by its Mayor, and by the Chair of its Municipal Services Joint Powers Authority, and duly attested by its City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first written above.



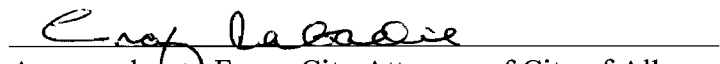
Mayor, Chair of the City of Albany ("Employer")
And Municipal Services Joint Powers Authority



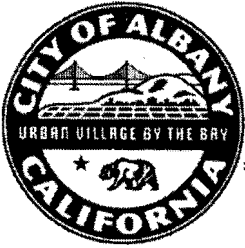
Ms. Penelope Leach ("Employee")



City Clerk of the City of Albany



Approved as to Form, City Attorney of City of Albany



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

RESOLUTION NO. 2013-70

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 16th day December, 2013, by the following votes:

AYES: Council Members Barnes, Maass, Vice Mayor Wile & Mayor Thomsen

NOES: none

ABSENT: Council Member Atkinson

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 19th
day of November, 2013.

Eileen Harrington
DEPUTY CITY CLERK