CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of City Council
FROM:	David C. Laredo, City Attorney
MEETING DATE:	January 20, 2016
SUBJECT:	Appoint Ben Harvey as Interim City Manager
CEQA:	Does not Constitute a "Project" per California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Appoint Ben Harvey as Interim City Manager and authorize execution of an Employment Agreement.

DISCUSSION

The attached Employment Agreement sets forth terms and conditions for the employment of Ben Harvey as Interim City Manager for the City of Pacific Grove. As Interim City Manager, Mr. Harvey shall provide continuity between the prior City Manager and the next City Manager. His actions should enhance that continuity, to the extent feasible.

Functions, duties and prerogatives of the Interim City Manager are specified in City Charter Article 19 and in Chapter 2.06 of the Pacific Grove Municipal Code. Provisions of the City Charter and Chapter 2.06 of the Municipal Code control if any conflict exists with the attached Agreement. The Charter provides the City Manager shall be "appointed by the affirmative vote of five-sevenths of the Council."

This document conforms to the direction of the City Council, the various discussions between Ben Harvey and me, and incorporates all edits proposed by Tom Frutchey, and is ready for execution.

The City Manager serves at the pleasure of the City Council and the Agreement shall not be construed to suggest or provide guaranteed tenure. The City may terminate Mr. Harvey's service during this Agreement in accord with the City Charter, and provisions of the Municipal Code. If he voluntarily resigns, Mr. Harvey shall give City sixty (60) days prior written notice, unless the parties otherwise agree. The Agreement also terminates upon Council appointment and assumption of duties of a permanent City Manager.

FISCAL IMPACT

The salary and benefits for the Interim City Manager are included in the 2015/16 fiscal year City Manager General Fund operating budget.

ATTACHMENT:

1. Draft Agreement

RESPECTFULLY SUBMITTED,

David C. Laredo

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David C. Laredo
City Attorney

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF PACIFIC GROVE AND BEN HARVEY FOR THE POSITION OF INTERIM CITY MANAGER

This Employment Agreement (Agreement) sets terms and conditions for the employment of Ben Harvey (Interim City Manager or Employee) as Interim City Manager for the City of Pacific Grove and Ben Harvey, with an effective date of January 20, 2016.

FINDINGS

1. City desires to employ Ben Harvey as Interim City Manager of the City of Pacific Grove, in accord with the Pacific Grove Charter and Municipal Code.

2. The City Council (Council), desires to provide certain benefits, to establish certain terms and conditions of employment, and to set working conditions of said Employee.

3. The City desires to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment; (2) to make possible full work productivity and independence by assuring Employee's morale and peace of mind; and (3) to provide a just means for terminating Employee's services at such time that City may desire to terminate his employment.

4. Functions, duties and prerogatives of the City Manager are specified in Article 19 of the Pacific Grove City Charter and in Chapter 2.06 of the Pacific Grove Municipal Code. The provisions of the City Charter and Chapter 2.06 of the Municipal Code shall control should any conflict exist pertaining to this Agreement.

5. Ben Harvey intends to well and faithfully perform all duties of City Manager of the City of Pacific Grove in accord with the Pacific Grove City Charter, the Pacific Grove Municipal Code, and Council policy, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

6. The Interim City Manager serves at the pleasure of the City Council and this Agreement shall not be construed to suggest or provide guaranteed tenure.

7. As Interim City Manager, Employee has all of the rights and responsibilities of City Manager. Given the short-term nature of an interim assignment, Employee is to provide continuity between the prior City Manager and the next City Manager. Employee's actions should enhance that continuity, to the extent feasible.

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AGREEMENT

Section 1. Effective Date. This Agreement shall take force and effect as of January 20, 2016.

Section 2. Prior Agreement. This Agreement supersedes and replaces the Consulting Agreement between Ben Harvey and the City, which shall not apply after the effective date of this Agreement.

Section 3. Powers, Duties and Responsibilities of the Interim City Manager

A. The City shall employ Ben Harvey as Interim City Manager for the City of Pacific Grove to perform all functions and duties specified in Article 19 of the Pacific Grove City Charter and by Chapter 2.06 of the Pacific Grove Municipal Code. The Interim City Manager shall also perform legally permissible and proper duties and functions as the Council shall from time to time assign.

B. Ben Harvey agrees to well and faithfully perform the duties of Interim City Manager of the City of Pacific Grove as specified in Paragraph A of this Section. He shall at all times devote reasonable and necessary time both during and outside normal office hours to the business of the City. He shall maintain regular office hours at City Hall during customary business hours, except when absent in the proper performance of his duties and responsibilities as Interim City Manager, or when utilizing leave. Ben Harvey is also authorized to support his former employer with respect to required attendance in legal proceedings, to the extent these efforts are reasonable and necessary. The Parties understand Ben Harvey may exercise flex time during this Agreement such that he may be absent from City Hall on alternate Fridays (or such other day as may be convenient). He shall remain available during all flex time for phone consultations.

Section 4. <u>Term</u>

A. The Interim City Manager serves at the pleasure of the City Council. Nothing in this Agreement shall imply or suggest a guaranteed tenure.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Ben Harvey to resign at any time from his position as Interim City Manager, subject only to the provisions set forth in Section 5 of this Agreement.

C. Ben Harvey shall remain in the exclusive employ of the City of Pacific Grove during the term of this Agreement, and avoid any and all conflicting interests. Employee shall notify the City Attorney, in writing, of any outside activity that may be affected by this provision.

D. This Agreement shall not limit or interfere with the right of the City to terminate services of Ben Harvey in accordance with Section 5 (Termination) of this Agreement.

Section 5. <u>Termination</u>

A. City may terminate Employee during the term of this Agreement in accord with Article 19 of the City Charter, and applicable provisions of the Municipal Code.

B. If Employee voluntarily resigns his position, Employee shall give City sixty (60) days prior written notice, unless the parties otherwise agree.

C. This Agreement shall terminate upon Council appointment and assumption of duties by Employee, or any other person, as permanent City Manager.

D. When this Agreement ends, Employee shall return to the City all equipment and/or records which Employee used or received from City to perform services under this Agreement.

Section 6. <u>Salary and Compensation</u> City agrees to pay salary to Employee for services rendered as Interim City Manager at the rate of twelve thousand five hundred ($12,500) per month. Periodic Payment payments shall be made in the same manner upon which other City employees are paid.

Section 7. <u>Benefits</u>

City shall provide benefits to Employee as specified for City management employees by the Municipal Code, ordinance, resolution, or Memo of Understanding (MOU) except as otherwise provided below.

A. Employee shall accrue vacation (also denominated personal or flex time) at the rate of 6.667 hours per month (eighty (80) hours annually). A vacation accrual cap of four hundred and eighty (480) hours shall apply, and the Employee shall not accrue vacation when the Employee's unused accrual balance reaches that limit. Any accrued but unused balance at or below the accrual cap shall be paid upon separation.

B. Employee's sick leave accrual shall be the same as provided to management employees. Any accrued but unused balance shall be paid upon separation.

C. All tenure related benefits shall be calculated using the January 20, 2016 date of hire.

D. Employee shall observe the following six holidays: Memorial Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas Day, New Year's Day. These six holidays shall be taken in the same manner as the City management employees. In addition, on July 1 each year Employee shall accrue four (4) floating personal days off to be used at his option. Any floating personal day off not used on or before June 30 shall be forfeited.

E. Employee shall pay the same maximum contribution for Cal-PERS retirement coverage as is required of "classic" management employees.

F. City shall provide Employee with the following benefits:

i. Health dental, and vision benefits shall be provided in the same manner as the City provides for non-safety management employees. The City will pay four hundred dollars ($400) per month for this benefit. The Council shall explore with Employee legal and appropriate means to minimize tax impacts related to health and other benefits.

ii. City will pay $1,000 each month into a Cafeteria Plan for the exclusive benefit of Employee. It is contemplated Employee may use funds in this Plan to obtain additional medical insurance, dental or optical insurance, flexible spending account or health savings account expenditures, additional life insurance or any other benefit allowed under the Plan.

Section 8. <u>Expenses</u>

A. City shall pay City-related expenses incurred by Employee in accordance with City policy. City shall pay for unlimited text and voice cell phone service. Employee may also use a City-paid cell phone, laptop and/or tablet for personal use. Employee may use a City vehicle within Monterey or Santa Cruz counties, or to access San Jose International Airport.

B. City shall reimburse Employee's actual and reasonable travel and/or temporary living expenses incurred in 2016 in relation to his tenure as Interim City Manager, not to exceed the total sum of twenty four thousand ($24,000) dollars.

C. City shall reimburse Employee's actual and reasonably incurred expenses associated with relocation during 2016 to or from the City of Pacific Grove, not to exceed the total sum of ten thousand ($10,000) dollars. Relocation expenses may also apply to departure expenses incurred following Employee's tenure as Interim City Manager.

Section 9. <u>Indemnification</u>

City shall indemnify, defend and save harmless 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 or Employee's duties as Interim City Manager. Should the City compromise and settle any such claim or suit, it shall pay the amount of any settlement or judgment rendered thereon. Indemnification shall extend beyond termination of employment and expiration of this Agreement, and shall provide full and complete protection to Employee by the City for any acts undertaken or committed in Employee's capacity as Interim City Manager. Employee shall provide prompt written notice of filing of any claim or suit, and shall fully cooperate with City in the defense of any such action.

Section 10. <u>Conflict of Interest Prohibition</u>.

It is understood and agreed that because of the duties of the Interim City Manager within and on behalf of the City of Pacific Grove and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Pacific Grove, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Pacific Grove, without the prior written consent of the Council.

Section 11. <u>General Provisions</u>

A. The text herein shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between City and Employee as of the effective date of this Agreement. City and Employee agree that each has fully participated in the review and

revision of this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment of this Agreement.

B. This Agreement may be amended or modified only by an instrument in writing signed by the Mayor and the Employee.

C. This agreement shall be binding upon and insure to the benefit of the heirs at law and executor of the employee.

D. Any waiver of the terms or conditions of this Agreement must be in writing and signed by the City and the Employee. A waiver of any term or condition of this Agreement shall not be construed as a waiver of any other term or condition of this Agreement.

E. This Agreement, and any amendment, shall become effective only upon adoption and approval by the Council, taken in open session.

F. In performing this Agreement, the parties shall comply with all applicable federal, state, and local laws and regulations.

G. If any provisions, or any portion thereof, contained in this agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS THEREOF, the City of Pacific Grove has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, in duplicate, on this _____ day of January, 2016.

CITY OF PACIFIC GROVE, a Municipal Corporation of the State of California

By: _____
Bill Kampe, Mayor of the City

ATTEST: _____
City Clerk

AGREED: _____
Ben Harvey

Approved as to form: _____
City Attorney

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