RESOLUTION NO. 21-022

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AUTHORIZING THE EXECUTION OF CONTRACT AMENDMENT NO. 2 WITH
BENJAMIN HARVEY, CITY MANAGER

FINDINGS

1. City desires to continue its employment of Benjamin Harvey as City Manager of the City of Pacific Grove.

2. The City Council desires to provide certain benefits, to establish certain terms and conditions of employment, and to set working conditions of said Employee to provide inducement for him to remain in such employment.

3. The Agreement authorized by this Resolution shall continue the employment of Benjamin Harvey as City Manager, and to revise and amend terms and conditions of his employment.

4. An employment agreement was entered into between the City of Pacific Grove and Benjamin Harvey with an effective date of December 20, 2017. The employment agreement was subsequently amended (Amendment No. 1) with an effective date of September 23, 2019.

5. The 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 control should any conflict exist pertaining to either this Resolution or the Agreement that it authorizes.

6. The City Manager shall continue to serve at the pleasure of the City Council and this Resolution shall not be construed to suggest or provide guaranteed tenure.

7. This action does not constitute a “project” as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The Mayor is authorized and directed to execute that contract Amendment No. 2 to City Manager Employment Agreement Between the City of Pacific Grove and Benjamin Harvey, as set forth in Exhibit A to this Resolution.
SECTION 3. This resolution shall take effect immediately following passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 21st Day of July 2021, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, McAdams, Poduri, and Tomlinson.

NOES: Councilmember Coletti.

ABSENT: None.

APPROVED:

_______________________
BILL PEAKE, Mayor

ATTEST: 7/26/2021
DATED:_______________________

_______________________
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_______________________
DAVID C. LAREDO, City Attorney
EXHIBT A
AMENDMENT NO. 2
TO CITY MANAGER EMPLOYMENT AGREEMENT

This Amendment No. 2 (Amendment No. 2) to the City Manager Employment Agreement (Agreement), dated December 20, 2017, as amended September 23, 2019 (Amendment No. 1), is entered into by and between the City of Pacific Grove, a California public agency (City), and Benjamin Harvey (City Manager or Employee), on September 5, 2021.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and representations and warranties set forth in this Amendment, City and Employee (collectively the Parties) agree as follows:

1. Provisions of this Amendment No. 2 shall supersede and replace the provisions of Amendment No. 1.

2. Section 3, Paragraph B of the Agreement between the Parties, as amended by Amendment No 1, had provided as follows:

   Benjamin Harvey agrees to well and faithfully perform the duties of City Manager of the City of Pacific Grove as specified in Paragraph A of this Section. He shall at all times endeavor to 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 except when absent in the proper performance of his duties and responsibilities as City Manager, or when utilizing leave. The City Manager shall be authorized to work remotely up to one (1) day each week. He shall endeavor to keep the remote workday static as best he is able.

   This provision shall be deleted in its entirety and shall be replaced by Paragraph 3 of this Amendment No. 2, below.

3. Section 3, Paragraph B of the Agreement between the Parties is hereby amended as follows:

   Benjamin Harvey agrees to well and faithfully perform the duties of City Manager of the City of Pacific Grove as specified in Paragraph A of this Section. He shall at all times endeavor to 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 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excepting holidays or furlough days, except when absent in the proper performance of his duties and responsibilities as City Manager, or when utilizing leave.

4. Section 4, Paragraph D of the Agreement between the Parties had provided as follows:

   This Agreement shall remain in place unless or until it is amended or terminated, by either Party, as provided by its terms.
This provision shall be deleted in its entirety and shall be replaced by Paragraph 5 of this Amendment No. 2, below.

5. Section 4, Paragraph D of the Agreement between the Parties is hereby amended as follows:

This Agreement shall remain in effect until June 30, 2025; thereafter employment terms and conditions must be mutually agreed to by the parties.

6. Section 6 (Salary and Compensation) of the Agreement between the Parties (not amended by Amendment No. 1), had provided as follows:

City agrees to pay Employee, for service as City Manager, a salary of one hundred sixty-eight thousand dollars ($168,000) per year. Payments shall be made in installments in the same manner upon which other City employees are paid. Compensation shall be periodically reviewed as provided in Section 9 of this Agreement.

This provision shall be deleted in its entirety and shall be replaced by Paragraph 7 of this Amendment No. 2, below.

7. Section 6 of the Agreement between the Parties is hereby amended as follows:

City agrees to pay Employee, for service as City Manager, a salary of two hundred sixteen thousand ($216,000) per year. Payments shall be made in installments in the same manner upon which other City employees are paid. Compensation shall be periodically reviewed as provided in Section 9 of this Agreement.

8. Section 7, Paragraph D of the Agreement between the Parties is deleted in its entirety. This former provision had provided:

City agrees to pay Employee a housing/transportation reimbursement in the sum not to exceed four thousand dollars ($4,000) per month.

9. Section 7 of the Agreement between the Parties is hereby amended as follows:

The City Manager is eligible to participate in the I.R.S. Section 457 deferred compensation program (administered by Empower Retirement) in the same manner and extent as is available to Management Employee Association members. In addition, the City shall pay into that deferred compensation program the sum of $1,395.00 per month exclusively for the City Manager's benefit.

10. Except as provided herein, all other terms and conditions of the Agreement, effective December 20, 2017, and as amended by Amendment No. 1, effective September 23, 2019, shall remain the same.

11. This Amendment shall take effect September 5, 2021, following execution by both Parties.
IN WITNESS OF THE FOREGOING, this Amendment No. 2 has been executed by the officers of each of the Parties effective the date first shown above.

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

BY: ______________________
    Bill Peake, Mayor of the City

ATTEST: ______________________
    Sandra Kandell, City Clerk

AGREED: ______________________
    Benjamin Harvey, City Manager

Approved as to form: ______________________
    David Laredo, City Attorney