



TOWN OF PORTOLA VALLEY

STAFF REPORT

TO: Mayor and Members of the Town Council

FROM: Cara Silver, Town Attorney *Handwritten signature*

DATE: March 24, 2023

RE: Approval of Interim Town Manager Employment Agreement and Budget Amendment

RECOMMENDATION

The Council subcommittee consisting of Mayor Aalfs and Council Member Hasko and the Town Attorney recommend that the Town Council approve an employment agreement for Interim Town Manager with Howard Young (Attachment 1) and approve a budget amendment to hire additional consultants during this transition.

BACKGROUND

The Town Council has indicated its desire to retain the services of an Interim Town Manager while it undertakes the process to recruit and retain a permanent Town Manager. Public Works Director Howard Young has indicated his willingness to serve as the Interim Town Manager until a permanent Town Manager can be recruited. Howard Young has been employed by the Town for approximately 20 years and is familiar with its internal operations.

DISCUSSION

A contract has been prepared which is acceptable to Young and is submitted to the Council for its consideration. The financial terms and conditions of the proposed employment agreement are set forth in the agreement. During the term of the agreement, Young will serve jointly as Interim Town Manager and Public Works Director. However, his duties for both positions will be modified to accommodate both roles. The contract contemplates that 60% of his time will be spent on Interim Town Manager duties and 40% on Public Works duties. The Council also contemplates hiring a retired city manager to

assist the town with some of the administrative functions that Young is not able to perform. Additionally, Young is authorized under the agreement to retain additional consultant support to backfill some of the administrative functions of his Public Works duties in the amount of \$50,000 and to hire a consultant to backfill other interim town manager duties in the amount of \$75,000. The contract will last for 6 months but can be modified to account for the needs of the Council. Young will be paid a 10% premium above his current salary (which equates to \$10,951.38 over a six month period) to account for his expanded duties. At the end of the term of the agreement, Young is entitled to return to his role as Public Works Director.

BUDGET AMENDMENT

The budget will be amended to transfer salary savings in the amount \$50,000 to the Public Works consultant budget and \$75,000 to Town Manager consultant budget.

ENVIRONMENTAL REVIEW

The adoption of guidelines is not considered a project under the California Environmental Quality Act (CEQA).

ATTACHMENTS

1. Interim Town Manager Employment Agreement

EMPLOYMENT AGREEMENT INTERIM TOWN MANAGER

THIS AGREEMENT ("Agreement") is entered into and is effective as of March 18, 2023 ("Effective Date"), by and between the TOWN OF PORTOLA VALLEY, a municipal corporation (hereinafter referred to as "Town"), and HOWARD YOUNG (hereinafter referred to as "Young" or "Employee"), with reference to the following facts:

RECITALS

WHEREAS, prior to the Effective Date, Young was employed by the Town as the Town's Public Works Director;

WHEREAS, the Town Council is desirous of employing Young to act as and perform the modified duties of the Interim Town Manager concurrently with the modified duties of Public Works Director; and

WHEREAS, Young in good faith is agreeable to performing the modified duties of Interim Town Manager and Public Works Director under the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

AGREEMENT

1. **EMPLOYMENT AND SCOPE OF DUTIES.** Town hereby appoints current employee Howard Young to the temporary position of Interim Town Manager, and Young accepts such appointment on the terms and conditions set forth in this Agreement. Young shall perform the following duties and services during the term of this Agreement:

- a. Under the direction and control of the Town Council, Employee shall provide modified services and duties of Interim Town Manager set forth in Exhibit A and such other duties as may be assigned by the Town Council from time to time. Employee shall perform his obligations and responsibilities diligently within the time parameters indicated by the Town Council, applying the highest degree of professionalism, ethics, integrity, and competency to the discharge of every aspect of his obligations.
- b. In addition to the duties of Interim Town Manager, Employee shall also continue to concurrently perform the services and duties of Public Works Director, except the parties acknowledge that such services and duties will be reduced to accommodate Young's additional role as Interim Town

Manager. The parties agree that approximately 40% of Young's time will be allocated to Public Works functions and 60% of the time shall be allocated to Town Manager functions. If the sub-committee and Young desire, this allocation can be modified from time to time. During this Agreement, Young will report to the Town Council, rather than the Town Manager, in his role as Public Works Director. However, the parties anticipate that the Town Council will not be involved in the day-to-day management or contracting of Young's Public Works functions.

- c. Employee shall not make any staff changes in his capacity as Interim Town Manager without consulting with and receiving approval from a sub-committee of the Town Council. This provision shall not prevent Young from promoting or hiring employees within the Public Works department.
 - d. Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission ("FPPC").
 - e. Employee agrees to remain in the exclusive employ of the Town during the term of this Agreement. Employee shall dedicate his full energies and qualifications to his employment as the Interim Town Manager and shall not engage in any other employment except as may be specifically approved in writing in advance by the Town Council.
 - f. Upon the end of this Agreement Young shall have the right and the parties anticipate that he will resume his full responsibilities as Public Works Director unless he is terminated for cause under Section 6(c) It is acknowledged that once this Agreement is over, Young currently intends to return to his full time duties as Public Works Director. Nothing in this Agreement, however, shall foreclose Young from applying for the permanent Town Manager position nor shall the Town Council be precluded from conducting an external search for such position.
2. **TERM.** The term of this Agreement shall begin on the Effective Date and shall terminate on (1) September 18, 2023 ("Expiration Date") or (2) upon the start date of a new Town Manager, whichever is earlier; provided, however, that this Agreement may be terminated before the Expiration Date or extended in writing under terms and conditions mutually satisfactory to the parties. In such cases the new date shall be the Expiration Date.
3. **COMPENSATION.** For the services to be provided pursuant to this Agreement, Employee shall receive the following compensation and benefits under this Agreement:

Compensation

- a. Compensation. As consideration for his out-of-classification work during the term of this Agreement, Employee shall be paid an additional 10% percentage increase over his current base salary as Public Works Director, which as of March 21, 2023 is \$219,027.60 per year. Further, during the course of this Agreement, Employee's base salary shall be increased by the same percentage and at the same time any discretionary across-the-board increase is granted to the Town's exempt management employees covered by the Town's Compensation Plan (Annual CPI and Merit raise). Employee's salary shall be payable in installments at the same time as other management employees of the Town and in accordance with established Town procedures.

Benefits

- a. Deferred Compensation. In accordance with Section 4.1.3 of the Town's Compensation Plan, the Town shall continue to make a contribution to the deferred compensation account of the Employee equal to five percent (5.0%) of his base salary each pay period provided that the Town's contribution when combined with the employee's contribution does not exceed the maximum annual contribution.
- b. General Benefits. Except as may be otherwise provided herein, Employee shall be provided the compensation and benefits offered to all other department heads as provided for in the Town's Compensation Plan. As used herein, benefits include but are not necessarily limited to, vacation, sick leave, holidays, administrative leave retirement, work from home program, 9/80 work schedule, health insurance, dental insurance, car allowance, long-term disability insurance, and life insurance. Employee shall not be compensated for any hours worked overtime because Employee is exempt from overtime under the Federal Fair Labor Standards Act.
- c. Expense Reimbursement. The Town agrees to budget and pay for or reimburse the Employee for general expenses, dues, subscriptions, travel, and subsistence expenses are reasonably incurred by the Employee in the performance of job-related activities, functions, meetings, professional development, and professional conferences; provided, however, that the amount paid under this subsection (d)(i) shall be limited by the amount the Council budgets for such expenditures.
- d. Cash Out of Accrued Leave. Employee shall retain the rights he enjoyed as the Public Works Director under the Compensation Plan in terms of the timing of his right to "cash out" accrued but unused leaves. During the term of this Agreement any cashout shall be at the Employee's current salary rate under this Agreement.

4. **HIRING CONSULTANTS.** During the Term of this Agreement, It is expected that Employee will need to hire additional consultants or temporary employees (collectively "Consultants") to assist Employee and other Department Heads in performing their duties. Prior to hiring such Consultants, Employee shall consult with and receive approval from a sub-committee of the Town Council to hire such Consultants. Unless authorized by the entire Town Council, the total budget for such Consultants shall not exceed \$75,000 during the Term of this Agreement, unless approved by the Town Council. In addition, Employee shall have the right to hire Public Works Department consultants to backfill the administrative duties of Public Works Director without consulting with the sub-committee provided the total contract amount does not exceed \$50,000.
5. **PERSONNEL MANUAL.** The Town's personnel ordinances, resolutions, rules and policies shall apply to the Employee. Employee acknowledges receipt and review of a copy of the Town's Personnel Policies Manual.
6. **RESIGNATION AND TERMINATION.**
 - a. Resignation by Employee. Employee may, upon giving the Town 30 days' advance written notice, resign his position as Interim Town Manager and return/resume to his full duties as Public Works Director. Any benefits or rights that Employee enjoyed as the Interim Town Manager under this Agreement shall terminate upon the effective date of his resignation.
 - b. Termination without Cause. The Town Council has the right, upon thirty (30) days advance written notice to Employee, to terminate Employee at any time during the term of this Agreement without cause. The parties agree that Employee serves at the will of the Town Council. In the event Employee is terminated under this provision, he shall be entitled to resume his full duties as Public Works Director in accordance with Section 6.e below.
 - c. Termination with Cause. The Town has the right to immediately terminate this Agreement with Cause (as defined below). If Town terminates this Agreement with Cause, as determined by the affirmative votes of a majority of the members of the Town Council at a regular meeting of the Town Council, Employee shall not be entitled to any additional compensation or payment, except for accrued vacation pay, and any other accrued and unused benefit allowances according to their terms as provided in the Compensation Plan. As used in this Agreement, "Cause" shall only mean any of the following:
 - i. Conviction of, or plea of guilty or no contest to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the Town or on the Interim Town Manager's reputation;

- ii. Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;
- iii. Any negligent action or inaction by Employee that materially and adversely is detrimental to employees or public safety.

Notwithstanding anything in this Agreement to the contrary, if Employee is terminated as the Interim Town Manager for cause as set forth above, then he shall not be entitled to resume the full duties of Public Works Director and his employment with the Town shall also terminate.

- d. Expiration of Employment. Unless sooner terminated hereunder, Employee’s employment as the Interim Town Manager shall terminate on the Expiration Date. However, the parties may extend the term of this Agreement as set forth in Paragraph 2.
 - e. Resumption of Public Works Director Duties. Unless this Agreement is terminated for Cause under Section 6(c), upon the resignation of Employee under Section 6(a), termination without cause under Section 6(b) or the Expiration Date as set forth in Section 2, Employee shall resume and have the right to return to the position of full time Public Works Director. Employee’s salary and benefits shall be adjusted to match that which would have been in effect at the time of return had he not entered into this Agreement and had, during the term of this Agreement, retained and performed all of the duties of his position as Public Works Director. In addition, Employee’s salary and benefits shall be adjusted to take into account any salary increase or benefit addition Employee would have received as Public Works Director had this Agreement not been in effect.
7. COUNCIL CHECK-INS. The Town Council shall meet with the Interim Town Manager at least once every two months during the term of this Agreement to provide feedback and guidance on Interim Town Manager tasks. As part of the check-in, the Town Council, in consultation with Employee, shall define such goals and objectives that they determine to be necessary for the proper operation of the Town and shall further establish a relative priority among the various goals and objectives.
8. GENERAL PROVISIONS.
- a. Notices. Any notice or communication permitted or required by this Agreement shall be in writing and shall become effective on personal delivery or three (3) days after the mailing thereof by certified mail, return

receipt requested; postage prepaid, to either party at Town Hall, 765 Portola Road, Portola Valley, California 94028.

- b. Indemnification. Consistent with the California Government Code, Town shall defend, hold harmless, and indemnify Manager using legal counsel of Town's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. This provision shall survive the termination of this Agreement.
- c. Waiver. The waiver of any breach of any provision of this Agreement by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- d. Construction of Terms. The language of all parts of this Agreement shall be construed according to their plain meaning and shall not be construed for or against either party. 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 or exhibits hereto.
- e. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be unenforceable, void or invalid, in whole or in part, for any reason, the remainder of this Agreement shall remain in full force and effect. In the event of such entire or partial invalidity, the parties hereto agree to enter into supplemental or other agreements to effectuate the intent of the parties and the purpose of this Agreement.
- f. Controlling Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of San Mateo, State of California.
- g. Entire Agreement. This Agreement constitutes the entire Agreement between the parties pertaining to the matters set forth in this Agreement and supersedes all prior and contemporaneous agreements, representations, promises, and understanding of the parties, whether oral or in writing. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by all parties, and this Agreement may not be altered, amended, or modified by any other means. Each party waives their future right to claim, contend, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver, or estoppel.

- h. Other Terms and Conditions of Employment. The Council, in consultation with the Employee, may fix any such other terms and conditions of employment relating to the performance of the Employee, provided the terms or conditions do not conflict with the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

TOWN OF PORTOLA VALLEY

By: _____

Jeff Aalfs, Mayor

Howard Young

Approved as to form:

Cara Silver, Town Attorney

EXHIBIT A

TOWN OF PORTOLA VALLEY INTERIM TOWN MANAGER

It is understood that this is a list of full duties of the Town Manager which will be modified by the subcommittee and Interim Town Manager to reflect reduced and modified duties for the interim position for flexibility as needed during the interim term. The parties acknowledge that the duties and obligations below will be reduced to accommodate the Interim Town Manager's additional ongoing work as Public Works Director. The subcommittee and Interim Town Manager will work together to prioritize work and duties and recommend to the full Council additional administrative support assistance where needed.

DUTIES AND OBLIGATIONS

The Town Manager shall be the administrative head of the Town government under the direction and control of the Town Council. The Town Manager shall be responsible for the efficient administration of all affairs of the Town and shall assume full management responsibility for all Town operations. The Town Manager shall work with the Town Council to direct the development and implementation of the Town's goals, objectives, policies and priorities. In consultation with the Town Council, the Town Manager shall develop strategic planning processes to guide the future of the Town. The Town Manager shall perform functions directed and assigned by the Town Council.

- A. Performance of Duties. To perform such duties and obligations and exercise such powers as may be delegated to him/her from time to time by ordinance, resolution, or other action of the Town Council. To perform the functions identified in the Portola Valley Municipal Code, including but not limited to the functions of Town Treasurer and Director of Emergency Services.
- B. Attendance at Meetings. To attend all meetings of the Town Council, unless excused therefrom, except when his/her removal is under consideration. To attend, when appropriate, the meetings of Town commissions and committees. To attend and represent the Town at meetings of outside agencies and organizations.
- C. Administration. To provide highly responsible and complex administrative support to the Town Council, including, but not limited to staffing assistance, preparing and presenting staff reports and other necessary documents. To provide staff support to Town commissions and committees. To coordinate Town activities

with those of other cities, counties and outside agencies and organizations.

- D. Authority. To control, order and give direction to all department heads, subordinate officers, and employees of the Town, including those appointed by contract or agreement, except elected officers and the Town Attorney. To appoint, remove, promote, and demote employees of the Town, except the Town Attorney. This function shall be performed under the sub-committee's direction. To recommend to the Town Council such organization of offices, positions and departments as may be indicated in the interests of the efficient, effective, and economical conduct of the business of the Town. To assess and monitor workload, administrative support systems and internal reporting relationships and identify opportunities for improvement. To select, motivate and evaluate personnel and consultants. To resolve personnel concerns and issues unrelated to the Town Manager in accordance with Town policy and to cooperate in the resolution of any concerns and issues related to the Town Manager.
- E. Service Delivery. To monitor and evaluate the efficiency and effectiveness of service delivery methods and procedures and to allocate staffing resources accordingly. To plan direct and coordinate, through staff and consultants, the work plan for the Town. To meet with appropriate staff and consultants to identify and resolve problems. To assess the need for, select and evaluate contract services. To work with, promote and encourage the use of volunteers.
- F. Law Enforcement. To enforce any of the provisions of the Portola Valley Municipal Code or any other ordinance of the Town, or any rule, regulation or order promulgated or issued pursuant to the Portola Valley Municipal Code, and to ascertain that all contracts, permits and privileges granted by the Town are faithfully observed.
- G. Recommendation of Legislation. To recommend to the Town Council for adoption such measures and ordinances as he/she deems necessary or expedient. To monitor State and Federal legislation and recommend appropriate action to the Town Council as needed. To attend and participate in professional group meetings and stay abreast of new trends and innovations in the field of public administration and management.
- H. Finances. To keep the Town Council at all times fully advised as to the financial conditions and needs of the Town. To prepare and submit to the Town Council for its approval the proposed annual budget and the proposed compensation plan. To approve expenditures and implement budgetary adjustments as appropriate and necessary.

- I. Purchases and Expenditures. To purchase all supplies for all the departments or divisions of the Town. No expenditure shall be submitted to the Town Council, except with the report and approval of the Town Manager.
- J. Conduct. To conduct him or herself with due regard to public conventions and morals. To refrain from engaging in any conduct that would reasonably tend to degrade him or herself or bring the Town into public hatred, contempt or ridicule, or tend to offend the community.
- K. Communication. To respond to media inquiries, Town Council concerns, issues and community needs. To respond to and resolve difficult and sensitive citizen inquiries and complaints.