



Folsom City Council Staff Report

MEETING DATE:	11/22/2024
AGENDA SECTION:	New Business
SUBJECT:	Resolution No. 11300 - A Resolution Appointing Dan Haverty as Interim City Manager and Approving an Employment Agreement for Said Appointment
FROM:	City Attorney's Office

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council pass and adopt Resolution No. 11300 to appoint Dan Haverty as Interim City Manager and approve an Employment Agreement that establishes the terms and conditions of the appointment, including salary and benefits.

BACKGROUND / ISSUE

Folsom City Manager Elaine Andersen has announced her retirement, and her last day working for the City will be December 15, 2024. During its Closed Session meeting on November 7, 2024, the City Council decided to appoint Dan Haverty as Interim City Manager. Dr. Haverty's Employment Agreement is being brought before the City Council for review and approval.

POLICY / RULE

Section 3.01 of the Folsom City Charter provides that the City Council shall appoint a City Manager through the mechanism of an employment agreement to serve as the City's chief executive and administrative officer at the pleasure of the Council.

ANALYSIS

Dr. Haverty holds a Masters Degree from California State University Sacramento in Public Agency Communication and a Masters and Doctorate in Public Administration from the

University of Southern California. He served as Fire Chief of the Folsom Fire Department from 2007 to 2010. After retiring from City service, Dr. Haverty served as Interim Fire Chief with the Lodi Fire Department from 2011 to 2012, Interim Fire Chief with the Sacramento Fire Department from 2013 to 2014, and Interim Fire Chief with the Folsom Fire Department from 2016 to 2017. He last served as Interim Fire Chief for the Sacramento Metropolitan Fire District from 2022 to 2023. Dr. Haverty is a fourth generation Sacramentan and currently serves as a Roman Catholic Deacon at Holy Trinity Parish in El Dorado Hills. He and his wife, Terri, recently celebrated their 50th wedding anniversary. Dan is excited to return to the City of Folsom to serve its citizenry, visitors, and the women and men of the City's team of professional public servants.

Dr. Haverty's appointment shall be effective from December 1, 2024 until March 31, 2025 or the date when the permanent City Manager selected by the City Council assumes that office, whichever first occurs. It should be noted that Government Code Section 20480 places a limit on the length of time a person may serve as an interim appointee for a vacant position, which is 960 hours per fiscal year. If the City exceeds this time limit, a penalty may be due to CalPERS in the amount of three times the difference between the Interim City Manager salary and the salary that would have been received in the regular position.

Dr. Haverty's compensation will be \$140.00 per hour without any benefits customary with City employment such as leave benefits, medical and dental insurance, and retirement contributions.

The terms and conditions of Dr. Haverty's appointment as Interim City Manager are provided in the Employment Agreement attached to this Staff Report.

ORAL REPORT REQUIRED

Government Code Section 54953(c)(3) requires the City Council to orally report in open session a summary of the salary, salary schedules, and compensation in form of fringe benefits for local agency executives, before the City Council may take final action on such compensation. The position of Interim City Manager is a "local agency executive" for whom such an oral report is required. Before taking action on this item, the following script should be read by the City Clerk:

Oral Report

"In accordance with Government Code Section 54953(c)(3), a summary of the Interim City Manager's salary and benefits is reported as follows:

The salary for the temporary assignment of Interim City Manager will be \$140 per hour. The Interim City Manager will not receive any other benefits customary with City employment.

FINANCIAL IMPACT

Compensation for the City Manager is already budgeted in the FY 2024-2025 City budget.

ENVIRONMENTAL REVIEW

The appointment of an Interim City Manager is not a project subject to the California Environmental Quality Act. No environmental review is required.

ATTACHMENT

1. Resolution No. 11300 - A Resolution Appointing Dan Haverty as Interim City Manager and Approving an Employment Agreement for Said Appointment

Respectfully submitted,

Steven Wang, City Attorney

RESOLUTION NO. 11300

A RESOLUTION APPOINTING DAN HAVERTY AS INTERIM CITY MANAGER AND APPROVING AN EMPLOYMENT AGREEMENT FOR SAID APPOINTMENT

WHEREAS, the City Council of the City of Folsom desires to make a temporary appointment to the position of Interim City Manager while searching and selecting the City's next City Manager; and

WHEREAS, the City Council desires to appoint Dan Haverty as the Interim City Manager for the City of Folsom; and

WHEREAS, the City Council desires to set the salary and terms and conditions of employment for the Interim City Manager in an Employment Agreement.

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

SECTION 1. Dan Haverty is hereby appointed to the position of Interim City Manager effective December 1, 2024, at an hourly rate of \$140.00.

SECTION 2. All other terms and conditions of employment for the position of Interim City Manager shall be as provided for in the Employment Agreement.

SECTION 3. The Employment Agreement for the Interim City Manager, attached hereto as Exhibit A, is hereby approved.

SECTION 4. The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions, and all relevant City staff shall take appropriate actions necessary to effectuate this Resolution.

PASSED AND ADOPTED this 22nd day of November, 2024 by the following roll call vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

ABSTAIN: Councilmember(s):

Michael D. Kozlowski, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

List of Exhibit:

Exhibit A – Employment Agreement for the Interim City Manager

CITY OF FOLSOM

EMPLOYMENT AGREEMENT FOR THE INTERIM CITY MANAGER

THIS AGREEMENT, the effective date of which shall be December 1, 2024, is by and between the City of Folsom, State of California, a municipal corporation, hereinafter referred to as “Employer,” and Dan Haverty, hereinafter called “Employee.”

RECITALS

WHEREAS, the City is in the process of recruiting for a new City Manager and desires to hire a qualified person for a limited duration to serve as the Interim City Manager during the recruitment period, and potentially for a brief transition period once the new City Manager is hired; and

WHEREAS, pursuant to the provisions of the Folsom City Charter and Chapter 2.08 of the Folsom Municipal Code, the City Council has determined that Employee shall be the Interim City Manager of the City of Folsom; and

WHEREAS, Employee is a retired PERS annuitant and a former Fire Chief who is qualified to serve in the role of Interim City Manager; and

WHEREAS, the City Council has determined the rate of compensation for this temporary employment as outlined in this Agreement; and

WHEREAS, it is the desire of the City Council to secure and retain the services of Employee to serve as the Interim City Manager on an interim and temporary basis; and

WHEREAS, Employee desires to accept temporary employment with the City of Folsom in the position specified above.

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

Section 1. Duties

Employer hereby agrees to employ Employee as the Interim City Manager to perform such legally permissible and proper duties and functions as prescribed by the City Charter and the Folsom Municipal Code, or as the City Council may designate and/or assign.

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Section 2. Term, Termination and Resignation

A. This Agreement is temporary and short-term, commencing December 1, 2024, while the recruitment process is undertaken for the new City Manager. This Agreement shall expire as of the first of the following to occur: (1) upon the employment announcement date of a permanent City Manager selected by the City Council; (2) upon termination of the Agreement by either Employee of City as provided in subsection C below; or (3) on March 31, 2025.

B. Employee understands and agrees that the maximum number of hours Employee may work under, and during the term of, this Agreement shall not exceed a total of 960 hours. Notwithstanding any provisions to the contrary, there is no guarantee or promise of employment for any specified period of time.

C. Notwithstanding any provisions to the contrary, the City Council shall have the exclusive and sole right and discretion to terminate the services of Employee at any time, with or without cause. Employee may resign at any time from his position with Employer subject to providing thirty (30) days advance written notice to Employer.

D. In the event Employee is convicted of a crime that involves abuse of his position or office as defined in Government Code section 53243.4, Employee must fully reimburse the Employer for specified funds pursuant to Government Code section 53243, *et seq.*, as set forth below:

1. If Employee is placed on paid administrative leave pending an investigation by the City of any potential abuse of his position, Employee shall be required to fully reimburse the City the cost of the paid administrative leave if he is convicted of a crime involving an abuse of his position.

2. Notwithstanding any other provisions of this Agreement, if Employee has been provided legal criminal defense counsel regarding a charge involving the abuse of his position, Employee must fully reimburse the Employer for the cost of that counsel if Employee is convicted of a crime involving an abuse of his position.

3. Notwithstanding any other provisions of this Agreement, if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the Employer shall be fully reimbursed if Employee is convicted of a crime involving an abuse of his position.

Section 3. Compensation

A. Employee's compensation on the effective date of this Agreement shall be \$140.00 per hour, payable at the same time as other hourly employees of the Employer are paid. Employee's compensation is neither less than the minimum nor more than the maximum for the City Manager's position as listed on the Employer's publicly available pay schedule. Employee is not receiving any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

B. Employee shall keep track of hours worked on a daily basis, and submit to the Finance Department for payment on or prior to the time specified by the Finance Department for payroll processing for hourly employees. Employee shall be responsible for payment of all taxes.

C. Employee is solely responsible for complying with the requirements of the California Public Employees' Pension Reform Act by tracking all hours worked during the term of this Agreement, with an express understanding that Employee may not work in excess of 960 hours within a CalPERS fiscal year (July 1 to June 30). Employee understands and agrees that no payment will be made for any hour worked in excess of 960 hours during the term of this Agreement.

D. In the event Employee is providing services to any other CalPERS public agency employer during the term of this Agreement, Employee must notify the City's Human Resources Department of such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Employee is performing for that other public agency to ensure that the maximum number of hours is not exceeded.

E. Employee represents that he has not worked any hours as a retired annuitant for a CalPERS employer in the current fiscal year (July 1, 2024 to June 30, 2025) and will immediately notify the City if he works any hours for another CalPERS employer. Consistent with current Government Code provisions, the City shall not provide any benefits, leave time or compensation in lieu of benefits. Employee represents that he has not received any unemployment insurance payments for prior retired annuitant work for any CalPERS employer within twelve months of the effective date of this Agreement. Employee represents that more than 180 days have passed since his date of bona fide CalPERS retirement.

Section 4. Benefits

A. Employee shall not be entitled to receive any benefit under this Agreement, except for liability and workers' compensation insurance related to incidents occurring during the course and scope of Employee's performance for the City of Folsom.

B. Employee specifically and expressly waives any rights he may have to unemployment benefits following the cessation of the services provided in this Agreement.

Section 5. Official Travel and Professional Development

Employer shall pay the reasonable travel and subsistence, registration and incidental expenses of Employee incurred for official travel, meetings, and events. The payment for such expenses shall be subject to the prior written request of Employee and written approval of the City Attorney.

Section 6. Defense and Indemnification

To the extent required by the state law, Employer shall defend, hold 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 for the positions specified in this Agreement. Employer may,

in its sole discretion, compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon when, in the judgment of Employer such is the most advisable course of action, but in any event, will defend and indemnify Employee. This provision shall survive any termination or resignation of the Employee or expiration of this Agreement. This paragraph is not intended to provide any rights in excess of those rights provided by state law.

Section 7. Notices

A. Notices pursuant to this Agreement shall be given by first class mail addressed as follows:

1. EMPLOYER: City Manager
City of Folsom
50 Natoma Street
Folsom, California 95630
2. EMPLOYEE: Dan Haverty

B. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice.

C. 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 U.S. Postal Service.

Section 8. General Provision

A. The text hereof shall constitute the entire Agreement between the parties and shall supersede any and all prior agreements between the parties. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the Mayor of the City as the authorized representative of the Employer.

B. This Agreement shall be binding on and inure to the benefit of the heirs at law and executors of Employee.

C. If any provision or any portion of the Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

D. The Agreement shall become effective as of the date specified above when executed by both parties.

E. This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this Agreement shall be in the Sacramento County Superior Court.

IN WITNESS WHEREOF, The Mayor of the City of Folsom, California, pursuant to authority granted to him by the City Charter and Folsom Municipal Code, hereby signs this Agreement on behalf of the City of Folsom, as Employer, and Dan Haverty, as Employee, hereby signs this Agreement, both parties agreeing to the terms and provisions set forth herein.

APPROVED AND AUTHORIZED:

Date: _____

Michael D. Kozlowski, Mayor
For the City of Folsom – Employer

ACCEPTED AND AGREED TO:

Date: _____

Dan Haverty
Interim City Manager – Employee

ATTEST:

Christa Freemantle
City Clerk

APPROVED AS TO FORM:

Steven Wang
City Attorney