To: Mayor Farrer and the Honorable Members of the City Council

From: Christi Hogin, City Attorney

Date prepared: November 26, 2019     Meeting date: December 9, 2019

Subject: City Manager Employment Agreement (Salary Provisions)

ACTION: Confirm that Reva Feldman received a positive evaluation within the meaning of her employment contract and determine that her contractual salary increase is retroactively effective as of May 3, 2019.

FISCAL IMPACT: There is no fiscal impact associated with the action. Funding for the increase of $6,000 a year in compensation has been included in the Adopted Budget for Fiscal Year 2019-2020 in Account No. 100-7003 (City Manager).

BACKGROUND: The City Council appointed Reva Feldman as City Manager and entered into an Employment Agreement dated April 25, 2016. The Agreement was for a three-year term. Paragraph 4 of the Agreement set her initial base salary at $215,000 and provided that if she received a positive evaluation from the City Council the base salary would increase by $5,000 in the second (2017) and in the third (2018) years of the Agreement.

On April 24, 2017, the City Council met in closed session and conducted a performance evaluation, which the Council found to be positive. In accordance with the contract, effective May 3, 2017, the City Manager's base salary was increased to $220,000.

On May 14, 2018, the City Council conducted a performance evaluation of the City Manager, which the Council found to be positive. Following the evaluation, at the May 29, 2018, regular meeting, the Council adopted Amendment No. 1 to the City Manager Employment Agreement between the City and Reva Feldman. The amendment extended the expiration date of the Agreement from May 3, 2019 to May 3, 2022. The Amendment also increased the City Manager's salary by $17,000, from $225,000 to $242,000, effective May 3, 2018. The Amendment provides for subsequent salary increases to $248,000 on May 3, 2019, $254,000 on May 3, 2020, and $260,000 on May 3, 2021, each conditioned upon the City Manager receiving a positive evaluation from the City Council.
DISCUSSION: The City Council initially met in closed session on March 25 and April 8 to conduct a performance evaluation; however, it unanimously decided to delay the evaluation until after the City received the Management Partners report, which the Council anticipated would have information relevant to the evaluation period. The Council conducted an evaluation on November 14, 2019. The Council reflected on the evaluation and determined on a vote of 3-2 that the evaluation was positive within the meaning of her employment contract that would trigger a salary increase. Mayor Farrer and Councilmembers Peak and Mullen voted in favor of a positive determination and Mayor Pro Tem Pierson and Councilmember Wagner voted against. Mayor Pro Tem Pierson noted that his vote was against the salary increase at this time. The parties did not reach agreement on any changes to the Agreement. Under the terms of the Agreement, as amended, when the Council determines it has given a positive evaluation, Reva Feldman is entitled to a contractual salary increase as of May 3, 2019. With the City Council's confirmation that it gave a positive evaluation, the City Manager's salary will be increased to $248,000, retroactive to May 3, 2019.

ATTACHMENTS: City Manager Employment Agreement (with Amendment No. 1)
EMPLOYMENT AGREEMENT
Between
REVA FELDMAN and CITY OF MALIBU

THIS AGREEMENT is made and entered into as of the 25th day of April 2016, by and between the CITY OF MALIBU, California, a Municipal Corporation, hereinafter called the "City", and Reva Feldman, hereinafter called "Employee."

RECITALS

A. City desires to employ the services of Employee, and Employee desires to accept employment as City Manager of the City of Malibu.

B. The City Council desires to:

(1) Retain the services of Employee and provide inducement for her to remain in such employment;

(2) Make possible full work productivity by assuring Employee's future security;

(3) Encourage the highest standards of fidelity and public service on the part of Employee; and

(4) Provide a just means for terminating Employee's services at such time as she may be unable fully to discharge her duties, or when City may desire otherwise to terminate her employment.

C. The parties further desire to establish certain benefits and certain conditions of Employee's employment.

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

1. Duties. City agrees to employ Employee as full-time City Manager of City to perform the functions and duties specified in the job specification and the Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign. Employee shall not spend more than five hours per week teaching, consulting or engaging in other non-City connected business without the prior knowledge and express written approval of the City Council.
2. **Term.** The term of this Agreement shall commence May 3, 2016, and shall continue until May 3, 2019, unless otherwise terminated by either party as provided herein.

3. **Termination and Resignation.**

   A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee without cause, at any time, subject only to the City providing 10 days prior written notice to Employee, and complying with paragraph D of this Section 3. The 10-day notice provided for hereinabove shall not be given during or within a period of 90 days next succeeding any general municipal election held in the City or any special election at which a city council seat is on the ballot.

   B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from Employee’s position with City, subject only to Employee providing 30 days prior written notice to the City.

   C. Notwithstanding the provisions of Paragraph A of this Section 3, in the event Employee is terminated by City for "cause", then City may terminate this Agreement immediately and Employee shall be entitled to only the compensation accrued up to the date of termination. As used in this section, "cause" shall mean any of the following:

   (1) Conviction of any felony.

   (2) Conviction of a misdemeanor arising directly out of the Employee’s duties pursuant to this Agreement.

   (3) Willful abandonment of duties.

   (4) Pattern of intentional failure to comply with lawful direction given by City Council at a public meeting or failure to competently discharge duties resulting in below acceptable written performance evaluation two years in a row.
D. In the event Employee is terminated by the City Council at any time during the term of this Agreement that Employee is still willing and able to perform the duties required by the Agreement, and the termination is without cause as "cause" is defined in Paragraph C above, then, subject to the limitations set forth in Government Code Section 53260 and upon delivery to the City of an executed separation agreement and release of any and all claims in a form acceptable to the City within 30 days of her termination, the City shall pay Employee a lump sum cash payment equal to six month's Base Salary. In addition, City shall extend to Employee the right at her expense to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The word "termination" in this paragraph shall include a reduction in salary or other financial benefits of Employee, or elimination of Employee's position (except as provided in Paragraph 4(C)), or Employee's resignation, if preceded by a suggestion by the City Council that she resign. Employee is the City Manager for the purposes of the benefits under the Joint Powers Insurance Authority of which the City is a member.

4. Salary. City agrees to pay Employee for the services required by this Agreement an annual salary of $215,000 payable in equal monthly installments on the City's regular paydays ("Base Salary"). At any time as desired by the City Council, but at least annually, City agrees to review Employee's performance. Conditioned on a positive evaluation from the City Council, Employee's base salary shall increase to $220,000 on May 3, 2017; and, conditioned on a positive evaluation from the City Council, Employee's base salary shall increase to $225,000 on May 3, 2018. Employee shall not be entitled to receive any cost of living adjustments afforded to City's classified staff or salary increase during the term of this Agreement. Employee's compensation is governed by this Agreement.

5. Vehicle allowance. The City shall pay Employee an additional $400 per month as a vehicle allowance in lieu of mileage reimbursement. The vehicle allowance is intended to reimburse Employee for the use of her private vehicle for City business. Employee must provide her own vehicle for her use in performing his duties and is responsible for all maintenance, repair, fuel and insurance expenses for her vehicle.
6. Hours of Work. Employee's duties may involve expenditures of time in excess of eight hours per day, 40 hours per week, and may also include time outside normal office hours such as attendance at City Council meetings, although Employee may manage her time. Employee shall be exempt from paid overtime compensation.

7. Retirement and Insurance Benefits.

A. Retirement. During the term of this Agreement, City shall contribute the employer's and Employee's portion of Employee's membership in the Public Employees Retirement System.

B. Deferred Compensation. City shall contribute to a qualified deferred compensation plan 6% per month of the Employee's monthly installment of her Base Salary for each year this Agreement is in effect.

C. Medical and Other Insurance. City shall pay the full monthly premiums for full family medical, dental and vision insurance for Employee and her dependents.

D. Life Insurance. City shall pay the premium for a term life insurance policy with coverage not more than $400,000.

E. Disability Insurance. City shall pay the premium for a long-term disability insurance plan covering Employee. City shall also pay City's federally required share of Medicare coverage for Employee.

F. Other Benefits. City shall provide and pay for all other insurance mandated by State law.

G. Waiver. Employee waives any other insurance benefits.

8. Sick Leave, Vacation and Holidays.

A. Sick Leave. Employee shall be entitled to 12 days of sick leave per year, with five such days available upon execution of this Agreement. Employee may accumulate a maximum of 30 days of sick leave. In the event of termination or resignation from employment, Employee shall be entitled to compensation for 50% of accumulated and unused sick leave, up to the maximum set forth above.
B. Vacation and Holidays. Employee shall be entitled to 22 vacation days per year, with 10 such days available upon execution of this Agreement. Employee may accumulate vacation days up to a maximum of 30 working days. Employee shall also be entitled to the same number of paid holidays per year as provided in the Municipal Code. In the event of termination or resignation from employment, Employee shall be entitled to compensation for one 100% of accumulated and unused vacation days, up to the maximum set forth above.

C. Administrative Leave. Employee shall be entitled to 10 days of administrative leave per year. Employee may accumulate administrative leave days up to a maximum of five working days. In the event of termination or resignation from employment, Employee shall be entitled to compensation for one 100% of accumulated and unused administrative leave days, up to the maximum set forth above.

D. Jury duty. When called for jury duty and unable to be excused therefrom, Employee shall receive her regular base compensation less all jury fees received excluding mileage for the time required to be spent in court provided that Employee will be so paid once every three years and shall make every effort to delay jury service where such would interfere with important work in progress. Whenever daily jury duty scheduling permits, Employee shall return to her regular daily job assignment to complete her regular work day.

9. Memberships. City agrees to pay Employee's membership dues in the International City Management Association ("ICMA") and the California City Management Foundation, and Employee shall have a reasonable right to attend meetings of the ICMA, the California League of Cities, and the Contract Cities Association at City expense.

10. Expenses. City shall reimburse Employee for all reasonable expenses incurred by Employee in the performance of City’s business and approved within the City’s adopted budget or otherwise approved by City Council. Employee shall also be entitled to the same expense reimbursement benefits as other City classified staff.
11. **Other Terms and Conditions of Employment.** The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or other applicable law.

12. **Revolving Door.** Employee must comply with Government Code Section 87406.3 for a period of one year after separating from service with City. This section will survive termination of this agreement.

13. **Assembly Bill 1344 Compliance.** To the extent CITY provides: (a) paid leave to Employee pending an investigation; (b) funds for the legal criminal defense of the Employee; and/or (c) a cash settlement to Employee related to the termination of the Employee, pursuant to this Agreement and Government Code Section 53243 et seq., Employee shall fully reimburse the City for any and all amounts paid by the City which fall within subsections (a) through (c) in the event that the Employee is convicted of a crime involving the abuse of his office or position.

14. **General Provisions.**

A. The text herein shall constitute the entire agreement between the parties.

B. If Employee dies or becomes incapacitated during the term of this Agreement, any accrued and unpaid wages provided by the terms of this Agreement shall be paid by City to Eden Concoff.

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

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D. This Agreement shall be effective as of May 3, 2016.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

CITY OF CALIBU

By ____________________________
MAYOR

______________________________
LISA POPE, City Clerk

ATTEST:

______________________________
LISA POPE, City Clerk

EMPLOYEE

______________________________
REVA FELDMAN

APPROVED AS TO FORM:

______________________________
CHRISTI HOGIN, City Attorney
Council Agenda Report

To: Mayor Rosenthal and the Honorable Members of the City Council

From: Christi Hogin, City Attorney

Date prepared: April 14, 2016  
Meeting date: April 25, 2016

Subject: Appoint City Manager and Approve Employment Agreement

RECOMMENDED ACTION: 1) Appoint Reva Feldman as City Manager under the terms of the attached employment agreement; and 2) Approve the agreement and authorize the Mayor to execute the Agreement on behalf of the City Council.

FISCAL IMPACT: The economic terms of the Employment Agreement are within the currently approved budget. There will be no additional or unanticipated fiscal impact in this fiscal year.

DISCUSSION: After Jim Thorsen's announcement that he was retiring from his position effective May 2, 2016, the City initiated a search for a new City Manager. The city management profession has developed certain repositories for jobs available information. The City advertised the job opening for 6 weeks through the League of California Cities Western Cities, through the International City Management Association (ICMA), through California News Service (Mike Madrid), and with Public CEO. The City received 71 applications and the City Council interviewed several highly qualified candidates. On April 11, 2016, the City Council unanimously authorized an offer of employment to Reva Feldman. As announced last Council meeting, Ms. Feldman accepted the offer. Attached is a proposed Employment Agreement between the City and Reva Feldman fixing her compensation and other benefits and conditions of employment, which she has signed, indicating her acceptance of the appointment and the Agreement.

ATTACHMENT: Employment Agreement dated April 25, 2016
EMPLOYMENT AGREEMENT
Between
REVA FELDMAN and CITY OF MALIBU

THIS AGREEMENT is made and entered into as of the 25th day of April 2016, by and between the CITY OF MALIBU, California, a Municipal Corporation, hereinafter called the "City", and Reva Feldman, hereinafter called "Employee."

RECITALS

A. City desires to employ the services of Employee, and Employee desires to accept employment as City Manager of the City of Malibu.

B. The City Council desires to:

(1) Retain the services of Employee and provide inducement for her to remain in such employment;

(2) Make possible full work productivity by assuring Employee's future security;

(3) Encourage the highest standards of fidelity and public service on the part of Employee; and

(4) Provide a just means for terminating Employee's services at such time as she may be unable fully to discharge her duties, or when City may desire otherwise to terminate her employment.

C. The parties further desire to establish certain benefits and certain conditions of Employee's employment.

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

1. Duties. City agrees to employ Employee as full-time City Manager of City to perform the functions and duties specified in the job specification and the Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign. Employee shall not spend more than five hours per week teaching, consulting or engaging in other non-City connected business without the prior knowledge and express written approval of the City Council.
2. **Term.** The term of this Agreement shall commence May 3, 2016, and shall continue until May 3, 2019, unless otherwise terminated by either party as provided herein.

3. **Termination and Resignation.**

   A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee without cause, at any time, subject only to the City providing 10 days prior written notice to Employee, and complying with paragraph D of this Section 3. The 10-day notice provided for hereinabove shall not be given during or within a period of 90 days next succeeding any general municipal election held in the City or any special election at which a city council seat is on the ballot.

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   4. Pattern of intentional failure to comply with lawful direction given by City Council at a public meeting or failure to competently discharge duties resulting in below acceptable written performance evaluation two years in a row.
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   F. **Other Benefits.** City shall provide and pay for all other insurance mandated by State law.

   G. **Waiver.** Employee waives any other insurance benefits.

8. **Sick Leave, Vacation and Holidays.**

   A. **Sick Leave.** Employee shall be entitled to 12 days of sick leave per year, with five such days available upon execution of this Agreement. Employee may accumulate a maximum of 30 days of sick leave. In the event of termination or resignation from employment, Employee shall be entitled to compensation for 50% of accumulated and unused sick leave, up to the maximum set forth above.
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D. Jury duty. When called for jury duty and unable to be excused therefrom, Employee shall receive her regular base compensation less all jury fees received excluding mileage for the time required to be spent in court provided that Employee will be so paid once every three years and shall make every effort to delay jury service where such would interfere with important work in progress. Whenever daily jury duty scheduling permits, Employee shall return to her regular daily job assignment to complete her regular work day.

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11. Other Terms and Conditions of Employment. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or other applicable law.

12. Revolving Door. Employee must comply with Government Code Section 87406.3 for a period of one year after separating from service with City. This section will survive termination of this agreement.

13. Assembly Bill 1344 Compliance. To the extent CITY provides: (a) paid leave to Employee pending an investigation; (b) funds for the legal criminal defense of the Employee; and/or (c) a cash settlement to Employee related to the termination of the Employee, pursuant to this Agreement and Government Code Section 53243 et seq., Employee shall fully reimburse the City for any and all amounts paid by the City which fall within subsections (a) through (c) in the event that the Employee is convicted of a crime involving the abuse of his office or position.


A. The text herein shall constitute the entire agreement between the parties.

B. If Employee dies or becomes incapacitated during the term of this Agreement, any accrued and unpaid wages provided by the terms of this Agreement shall be paid by City to Eden Concoff.

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

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D. This Agreement shall be effective as of May 3, 2016.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

CITY OF MALIBU

By ____________________ 

MAYOR

ATTEST:

LISA POPE, City Clerk

EMPLOYEE

REVA FELDMAN

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney
AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 to the April 25, 2016, City Manager Employment Agreement is made and entered into as of the 29th day of May, 2018, by and between the CITY OF MALIBU, a municipal corporation ("City") and Reva Feldman ("Employee").

RECITALS

A. The City employs Employee as the City Manager pursuant to the terms of the April 25, 2016, City Manager Employment Agreement between the parties ("Agreement").

B. The City Council, through its labor negotiator, has negotiated with Employee to amend the Agreement.

C. The parties now desire to amend the term and certain benefits of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and in the Agreement amended hereby, the parties agree as follows:

1. Paragraph 2 of the Agreement is amended to read as follows:

   2. Term. The term of this agreement shall commence on May 3, 2016, and shall continue until May 3, 2022, unless otherwise terminated by either party as provided herein.

2. Paragraph 4 of the Agreement is amended to read as follows:

   4. Salary. City agrees to pay Employee for the services required by this Agreement an annual salary of $242,000, as of May 3, 2018, payable in equal monthly installments on the City’s regular paydays ("Base Salary"). At any time as desired by the City Council, but at least annually, City agrees to review Employee’s performance. Conditioned on a positive evaluation from the City Council, Employee’s base salary shall increase to $248,000 on May 3, 2019; and, conditioned on a positive evaluation from the City Council, Employee’s base salary shall increase to $254,000 on May 3, 2020; and, conditioned on a positive evaluation from the City Council, Employee’s base salary shall increase to $260,000 on May 3, 2021. Employee shall not be entitled to receive any cost of living adjustments afforded to City’s classified staff or salary increase during the term of this Agreement. Employee’s compensation is governed by this Agreement.

3. This Amendment No.1, together with those provisions of the Agreement that are unaffected by this Amendment No. 1, constitute the entire agreement between the parties.
4. This Amendment is effective as of May 3, 2018.

IN WITNESS WHEREOF the parties execute this Agreement this 29th day of May, 2018

CITY OF MALIBU:

[Signature]
RICK MULLEN, Mayor

ATTEST:

[Signature]
HEATHER GLASER, City Clerk
(seal)

EMPLOYEE

[Signature]
REVA FELDMAN

APPROVED AS TO FORM:

[Signature]
CHRISTI HOGIN, City Attorney

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