



# City of Sacramento City Council

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 8/9/2011

**Report Type:** Staff/Discussion

**Title:** City Manager Contract Approval

**Report ID:** 2011-00739

**Location:** Citywide

**Recommendation:** Adopt a Resolution approving the City Manager Contract.

**Contact:** Geri Hamby, Director, (916) 808-7173, Department of Human Resources

**Presenter:** William H. Edgar, Interim City Manager, (916) 808-7213, Office of the City Manager

**Department:** Human Resources

**Division:** HR Administration

**Dept ID:** 08001011

**Attachments:**

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- 1-Description/Analysis
  - 2-Background
  - 3-Resolution
  - 4-Exhibit A-Contract
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**City Attorney Review**

Approved as to Form  
Eileen M. Teichert  
8/8/2011 10:13:58 AM

**Approvals/Acknowledgements**

Department Director or Designee: Geri Hamby - 8/8/2011 9:15:08 AM

Assistant City Manager: John Dangberg - 8/8/2011 10:05:43 AM

## Description/Analysis

**Issue:** Effective April 9, 2011, the City Council appointed William H. Edgar, Interim City Manager. Mr. Edgar was to serve as interim City Manager until a national recruitment for a permanent City Manager was completed. On August 4, 2011 the City Council made a selection and appointed John F. Shirey. The City and Mr. Shirey desire to memorialize the terms and conditions of his employment in a written agreement that requires City Council approval.

**Policy Considerations:** The City Council alone is vested with the authority to appoint a City Manager and establish the salary associated with the position.

**Environmental Considerations:** Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

**Sustainability Considerations:** Not applicable

**Rationale for Recommendation:** The existing City Manager position has been vacated since March 10, 2010. After an extensive nationwide recruitment and interview process, the City Council has selected John Shirey as City Manager for the City of Sacramento and Mr. Shirey's salary and other benefits must be approved by the City Council.

**Financial Considerations:** The City Manager position is an existing budgeted full-time equivalent position and funding is available in the current budget. Mr. Shirey's annual salary will be \$258,000 which is within the City's current salary schedule pay range of \$187,357-\$281,035.

Mr. Shirey's benefit package is essentially the same as for other charter officers and management employees with two exceptions. 1) The City will not be paying his 7% contribution to PERS (approximately \$18 thousand), but rather he will pay his own contribution; and 2) the City will not be making a 4% contribution (approximately \$10 thousand) to a 401a plan and instead will contribute \$15 thousand to a deferred compensation plan.

**Emerging Small Business Development (ESBD):** Not applicable.

## **Background: Recruitment Process**

The City currently has agreements with Wilcox Miller Nelson, CPS Human Resource Services, and David Gomez and Associates, Inc. for Executive Recruitment services to provide diverse and extensive recruitments for executive level City positions as the need arises. In February 2011, through a competitive process, CPS Human Resource Services was selected by Council to conduct the nationwide executive recruitment for City Manager for an amount not to exceed \$27,650.

The recruitment process for the City Manager was aggressive and comprehensive and included advertising in government and management publications and websites. A brochure prepared in collaboration with the City was distributed to over 300 referral sources and potential candidates via email and mailings. Personal contacts were made with strong potential candidates.

The response to the recruitment process was good and included candidates with a variety of relevant backgrounds. A total of 33 resumes were submitted and of the 33 candidates, 14 were selected for further evaluation. The City Council ultimately interviewed five candidates and asked three to return for further discussions.

The Consultant conducted reference checks on the preferred candidate (Mr. Shirey) where they spoke directly with his supervisors, subordinates, colleagues/peers to assess his skills/abilities from those he had worked closely with. Contacts were made with references from both his current position (Executive Director of CRA), and from his past positions (City of Cincinnati and prior) and included supervisors (elected officials, board members, etc.) and those who have reported directly to Mr. Shirey, both past and present. The number of references contacted was significant, and actually more than the consultant would normally speak with in the course of a typical recruitment. Impressions received from this broad array of references were shared with Mayor/Council.

Additionally, a background records' check was conducted (by a licensed firm) to include the candidate's credit history, criminal/civil court searches, driving record, verification of education, and Lexis-Nexis newspaper article search.

According to the Consultant, the recruitment process used is a typical process employed by cities in California in conducting executive recruitments for City Managers, particularly in large, urban cities.

On August 4, 2011, the City Council appointed John F. Shirey as City Manager of the City of Sacramento. The City Council agreed to memorialize his employment terms with a contract.

## **Background: Contract**

The City of Sacramento has not previously entered into employment agreements with its City Manager; however, it is common practice amongst cities, counties and special districts. The term of the contract is 3 years and includes a severance clause which provides for payment of 6 months salary and medical benefits (COBRA) in the event it is exercised.



## **RESOLUTION NO.**

Adopted by the Sacramento City Council

### **APPROVING EMPLOYMENT AGREEMENT WITH CITY MANAGER JOHN F. SHIREY**

#### **BACKGROUND**

- A. On August 4, 2011, the City Council of the City of Sacramento appointed John F. Shirey as City Manager effective September 1, 2011.
- B. City Council and John F. Shirey desire to memorialize in a written Agreement certain benefits, terms and conditions of John F. Shirey's employment.

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

Section 1. The Employment Agreement with City Manager John F. Shirey attached to this Resolution as Exhibit "A" is hereby approved and effective on this date and the Mayor is authorized to execute this Agreement.

Section 2. Exhibit A is attached to and incorporated into this Resolution.

ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this ninth day of August, 2011.



## EMPLOYMENT AGREEMENT

### (CITY MANAGER)

THIS AGREEMENT is made and entered into this \_\_\_\_ day of August, 2011, by and between the City of Sacramento, a California charter city and municipal corporation (“City”), and John F. Shirey (“Employee”).

A. On August 4, 2011, the governing body of the City of Sacramento (hereinafter referred to as “the City Council”), appointed Employee as City Manager effective September 1, 2011 (“Start Date”); and

B. City Council and Employee desire to memorialize in this Agreement certain benefits, terms and conditions of employment of Employee.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the foregoing recitals that are incorporated into this Agreement, the parties agree as follows:

**1. Employment.** City hereby agrees to employ Employee as City Manager of the City of Sacramento commencing on the Start Date, to serve at the pleasure of the City Council subject to the terms and conditions set forth in this Agreement.

**2. Term.**

a. This Agreement shall be in effect on the date first written above until August 31, 2014 (“End Date”) unless the Agreement is earlier terminated in accordance with its terms.

b. No earlier than 60 calendar days and no later than 45 calendar days prior to the End Date, Employee may send City and City may send Employee written notice of a request to renegotiate the terms of this Agreement. Upon receipt of such notice both parties will make a good faith effort to renegotiate the terms of the Agreement prior to the End Date.

c. If neither party sends the written notice provided for in Section 2 (b) or if the parties fail to reach agreement on renegotiated terms prior to the End Date, then the End Date shall automatically extend by one ninety (90) calendar day period. The Agreement shall terminate at the end of the ninety calendar day period if a renegotiated Agreement has not been approved by both parties.

**3. Duties.** Commencing on the Start Date Employee shall perform the functions and duties of the City Manager as specified in Article V of the City Charter and such other legally permissible and proper duties and functions consistent with the office of the City Manager, as City Council assigns.

#### **4. Performance Evaluation.**

a. Not later than three months after the Start Date, in consultation with the City Council, Employee shall develop: a list of goals to attain as City Manager; tools for City Council to measure Employee's attainment of those goals, and processes for the City Council to evaluate Employee's performance as City Manager.

b. The City Council shall make a good faith effort to work with City Manager on development of Employee's goals and performance measurement tools, and to conduct not less than one performance evaluations of Employee per year.

**5. Salary.** City agrees to pay the Employee for services rendered a starting salary in the sum of Two Hundred Fifty-Eight Thousand dollars (\$258,000.00) per year commencing on the Start Date, payable in installments at the same time and in the same manner as other career City employees. City agrees to increase the salary base and other benefits of Employee, by the same percentage and amounts, and at the same time and same manner, as cost of living adjustments granted to other Charter Officers. Additionally, in recognition of Employee's accomplishments and outstanding performance, City Council may grant merit increases and equity adjustments to Employee from time-to-time.

**6. Benefits/Retirement.** The sums payable to Employee under this Agreement are in addition to all other fringe benefits, retirement plans and contributions, expense and subsistence allowance, leaves, reimbursements and allowances, and other perquisites provided to Charter Officers ("Charter Officer Benefits") under City Council Resolution No. 2011-358--The Personnel Resolution Covering Unrepresented Officers and Employees ("Personnel Resolution") (or any superseding resolution) in effect from time-to-time, except where inconsistent with the terms of this Agreement. Any increases to Charter Officer Benefits that City approves from time-to-time shall apply to Employee. Any decreases in Charter Officer Benefits that City approves from time-to-time shall not apply to Employee.

#### **7. Supplemental Benefits/Terms.**

a. **PERS/401(a)/Technology.** Notwithstanding the terms of the Personnel Resolution, Employee agrees: (1) to pay the seven percent (7%) member contribution for the applicable PERS retirement plan; (2) that Employee shall not receive a four percent (4%) or any match by City to a 401(a) account; and (3) that Employee shall not receive a technology allowance from City.

b. **Leave.** In addition to the leave provided in the Personnel Resolution, on Employee's Start Date City shall credit Employee with: fifteen (15) days Management Leave and ten (10) days Sick Leave.

**c. Auto Allowance.** City shall pay Employee a monthly auto allowance of \$500.

**d. Deferred Compensation.** City shall contribute fifteen thousand dollars (\$15,000) annually to Employee's 457(b) Deferred Compensation account deposited during two pay periods per month in 24 equal installments.

**e. Professional Associations:** The City shall pay dues and/or membership fees for Employee for professional associations that are related to the position and duties held by the Employee, subject to budget appropriations.

## **8. Termination.**

**a. Mutual Consent.** This Agreement may be terminated at any time upon the mutual, written agreement of both City and Employee.

### **b. By Employee.**

(1) Employee may terminate this Agreement at any time by giving City not less than thirty days (30) days prior written notice.

(2) Commencing on the date the City's elections official certifies the voters' approval of a Change in Governance (as defined below) and for ninety calendar days thereafter, Employee may terminate this Agreement upon thirty days written notice to City. If Employee terminates this Agreement pursuant to this subsection (b) (2), City shall pay Employee the Severance Payment. A "Change in Governance" is a measure or initiative amending or revising the City Charter that (a) materially reduces the City Manager's authority, duties or responsibilities as presently provided for in the City Charter; (b) changes the City Manager's reporting relationships; or (c) changes the procedures or the person(s) with power to remove the City Manager from office.

### **c. By City without Cause.**

(1) City may terminate Employee without cause, upon the affirmative vote of not less than six members of the City Council or as otherwise provided in the City Charter.

(2) City shall pay Employee the Severance Payment upon termination of Employee without cause.

**d. By City for Cause.** City may terminate Employee for cause, without obligation to make the Severance Payment to Employee, subject to all of the following:

(1) Prior to terminating Employee under this subsection (d), City shall give Employee at least ten (10) working days prior written notice of the charges constituting the cause for termination.

(2) Within the ten-day period, but not earlier than five working days after the notice has been given, City Council shall meet with Employee in closed session lawfully agendized under the

Brown Act and give Employee an opportunity to address City Council regarding the charges consistent with the Brown Act. After hearing Employee's response to the charges, City Council shall make a decision as to whether to terminate Employee and shall inform Employee in writing of its decision.

(3) Provided, however, if the City Charter is changed to give the Mayor sole authority to remove the City Manager for cause, Section 8 (d) (2) above shall not apply, and the Mayor shall make the decision as to whether to terminate Employee. The Mayor shall inform Employee in writing of the Mayor's decision.

(4) "For cause" means Employee's material breach of this Agreement, conviction of a misdemeanor involving moral turpitude or felony under California law (City may place Employee on leave pending resolution of criminal charges brought against Employee), or a final judicial or administrative decision finding that Employee personally committed unlawful acts of sexual harassment or discrimination against a City official or employee.

**e. Severance Payment.** The Severance Payment is equal to the sum of:

(1) Six (6) months of Employee's then current salary, plus (2) six (6) months of COBRA health insurance payments for Employee and covered dependents.

## **9. Nondiscrimination.**

Employee agrees not to unlawfully discriminate in the performance of Employee's functions and duties on the grounds of or because of race, color, religion, sex, national origin, age, marital status, physical disability, sexual orientation or any other characteristic protected under applicable law.

## **10. General Provisions.**

**a. Entire Agreement.** This written Agreement contains the entire understanding between the parties as to the subject matter hereof and supersedes all prior and contemporaneous oral and written understandings or agreements of the parties and as such, is fully integrated. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by any party.

**b. Severability.** If any portion of this Agreement or the application thereof is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect to the greatest extent permitted by law.

**c. Amendments.** This Agreement may be amended only in writing and duly authorized and executed by both parties.

**d. Governing Law and Venue.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the County of Sacramento.

**11. Notices.**

Notices pursuant to this Agreement shall be given by depositing such notice in the custody of the United States postal service, postage prepaid, addressed as follows:

City Clerk  
City of Sacramento  
915 I Street  
Sacramento, CA 95814

John F. Shirey  
7711 River Landing Drive  
Sacramento, CA 95831

Alternatively, any notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice at the date such notice is given. Notice shall be deemed given as of the date of personal service or on the third day after deposit of such written notice with the United States postal service.

The parties have executed this Agreement the day and year first written above.

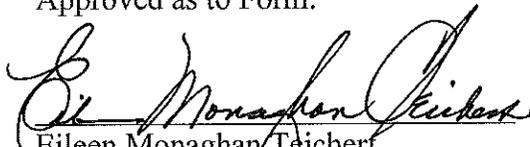
EMPLOYEE

  
\_\_\_\_\_  
John F. Shirey

CITY OF SACRAMENTO

By: \_\_\_\_\_  
Kevin Johnson, Mayor

Approved as to Form:

  
\_\_\_\_\_  
Eileen Monaghan Teichert  
City Attorney

Attest:

\_\_\_\_\_  
Shirley Concolino  
City Clerk