

**Meeting Date:** 9/13/2016

**Report Type:** Staff/Discussion

**Report ID:** 2016-00950

**Title:** Approval of Interim City Manager Employment Agreement

**Location:** Citywide

**Recommendation:** Pass a Resolution: 1) appointing Howard Chan as Interim City Manager; and 2) approving the Interim City Manager Employment Agreement.

**Contact:** Patti Bisharat, Senior Advisor, (916) 808-4762, Office of the Mayor

**Presenter:** Patti Bisharat, Senior Advisor, (916) 808-4762, Office of the Mayor

**Department:** Mayor/Council

**Division:** Mayor/Council

**Dept ID:** 01001011

**Attachments:**

1-Description/Analysis

2-Resolution

3-Exhibit A (Employment Agreement)

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**City Attorney Review**

Approved as to Form

Brett Witter

9/8/2016 4:31:24 PM

## Description/Analysis

**Issue Detail:** . Last year City Manager John Shirey informed the Council that he would not be seeking a renewal of his contract which ends November 18, 2016. Early this year, the Council began a recruitment process for the position of City Manager. In order to assure a seamless transition with City Manager Shirey's departure and to allow the search process to continue, the Council has agreed to appoint Howard Chan as Interim City Manager effective November 19, 2016.

Howard Chan, currently an Assistant City Manager, will work closely with City Manager Shirey to assure the continued strong momentum we have as a City.

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

**Economic Impacts:** None

**Environmental Considerations:** Approval of the agreement is considered an administrative activity by a governmental agency and does not constitute a "project" pursuant to Section 15378(b)(2) of the CEQA's Guidelines and therefore is exempt from CEQA review.

**Sustainability:** There are no sustainability considerations associated with this report.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** The current agreement with the City Manager expires on November 18, 2016. The Council desires to appoint an Interim City Manager to assure a smooth transition while continuing the search for the position of City Manager.

**Financial Considerations:** The City Manager position is an existing budgeted full-time equivalent position and funding is available in the current budget. Mr. Chan's salary will be \$262,627 which is within the approved salary range for the City Manager position.

**Local Business Enterprise (LBE):** No goods or services are being purchased.

**RESOLUTION NO. 2016-**

Adopted by the Sacramento City Council

**APPROVING EMPLOYMENT AGREEMENT WITH INTERIM CITY MANAGER  
HOWARD CHAN**

**BACKGROUND**

- A. On September 13, 2016, the City Council of the City of Sacramento will appoint Howard Chan as Interim City Manager effective November 19, 2016.
- B. City Council and Howard Chan desire to memorialize in a written Agreement certain benefits, terms and conditions of Howard Chan's employment.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL  
RESOLVES AS FOLLOWS:**

- Section 1. Howard Chan is hereby appointed to the position of Interim City Manager.
- Section 2. The Employment Agreement with Interim City Manager Howard Chan 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 3. Exhibit A is attached to and incorporated into this Resolution.

**Table of Contents:**

Exhibit A – Employment Agreement

## EXHIBIT “A”

### EMPLOYMENT AGREEMENT

#### (INTERIM CITY MANAGER)

THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of September, 2016 by and between the City of Sacramento, a California charter city and municipal corporation (“City”), and Howard Chan (“Employee”).

A. On September 13, 2016 the governing body of the City of Sacramento (hereinafter referred to as “the City Council”), appointed Employee as Interim City Manager effective November 19, 2016 (“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 Interim 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.** This Agreement shall be in effect from September 13, 2016, and may be terminated only according to its terms. If this Agreement has not been terminated before June 30, 2017, the City Council will meet to discuss its terms.

**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 the City Council assigns.

**4. Salary.** City agrees to pay the Employee for services rendered a starting salary in the sum of Two Hundred Sixty-Two Thousand Six Hundred Twenty-Seven dollars (\$262,627.00) 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 consider increases to the salary base by the same percentage and amounts, and at the same time and same manner, as those approved for non-represented employees, subject to City Council approval.

**5. 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 allowances, leaves, reimbursements and allowances, and other perquisites Employee receives in his position as an

Assistant City Manager on November 18, 2016, or which are provided to an Assistant City Manager pursuant to City Council Resolution No. 2016-0230--The Personnel Resolution Covering Unrepresented Officers and Employees (“Personnel Resolution”) or any superseding resolution in effect for the duration of this Agreement. Employee will not receive the reimbursements, allowances or other perquisites designated solely for the City Manager in the Personnel Resolution.

**6. 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.**

Employee may terminate this Agreement at any time by giving City not less than sixty days (60) days prior written notice.

**c. By City.**

City may terminate this Agreement with or without cause, upon the affirmative vote of not less than six members of the City Council or as otherwise provided in the City Charter.

**d. Upon Hiring of City Manager**

When the City Council hires a City Manager, this Agreement will terminate on the day prior to the City Manager’s start date.

**7. Return Rights to Previous Position**

Employee shall have full return rights to the position of Assistant City Manager if this Agreement is terminated pursuant to Paragraph 6. If Employee returns to the Assistant City Manager classification after the City hires a City Manager, Employee shall continue to earn the salary set out in Paragraph 4 until June 30, 2017. This paragraph will survive the termination of this Agreement.

**8. 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.

**9. 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.

**10. 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

Howard Chan  


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

\_\_\_\_\_  
Howard Chan

CITY OF SACRAMENTO

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

Approved as to Form:

Attest:

\_\_\_\_\_  
James Sanchez  
City Attorney

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