



City of San Leandro

Meeting Date: February 20, 2018

Staff Report

File Number: 18-082

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Attorney and
Rich Pio Roda
City Attorney

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution to Approve an Interim City Manager agreement with Jeff Kay

SUMMARY AND RECOMMENDATIONS

Approve an Interim City Manager agreement with Jeff Kay.

BACKGROUND and ANALYSIS

While City Manager Chris Zapata is on paid administrative leave, the City Council desires to employ Jeff Kay as the Interim City Manager, to fulfill all of the duties of the City Manager as required by the Charter and Municipal Code. Effective January 23, 2018, City would pay Mr. Kay a salary 15% above his current step as Assistant City Manager as shown in the City Council adopted salary schedule for the San Leandro Management Organization; his new salary will be \$19,395 per month. Effective April 18, 2018, Mr. Kay's compensation will be adjusted as such Baseline Salary is adjusted due to step advancement eligibility.

If Mr. Kay is terminated by the City Council, or the City Manager is permitted by the City Council to retain his position upon return from paid administrative leave, Mr. Kay will have the right to revert to his previously held position as the Assistant City Manager and will be entitled to receive the salary and benefits commensurate with that position, at the salary step he was receiving or due to receive prior to his appointment.

During his tenure as Interim City Manager, Mr. Kay will receive the same health and fringe benefits he received as when he was employed as the Assistant City Manager.

ATTACHMENTS

- Interim City Manager Employment Agreement

PREPARED BY: Emily Hung, Human Resources Manager and Richard D. Pio Roda, City Attorney

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City of San Leandro

Meeting Date: February 20, 2018

Resolution - Council

File Number: 18-078

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving an Employment Agreement for Interim City Manager

WHEREAS, an employment agreement between the City of San Leandro and Jeff Kay as Interim City Manager has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreement substantially in the form presented is hereby approved and authorized; and
2. That the City Attorney is authorized to make non-substantial revisions to said agreement; and
3. That an original executed agreement shall be attached to and made a part of this resolution.

**INTERIM CITY MANAGER
EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made by and between the CITY OF SAN LEANDRO (“City”) and JEFF KAY (“Employee”) and is dated for convenience this__ day of _____, 2018.

Recitals

City desires to employ Jeff Kay as Interim City Manager of the City of San Leandro.

Jeff Kay desires to serve as Interim City Manager of the City of San Leandro.

The City Council, as the appointing authority, and Jeff Kay desire to agree in writing to the terms and conditions of Jeff Kay's employment as Interim City Manager.

AGREEMENT

1. DUTIES

- a. City agrees to employ Jeff Kay as Interim City Manager of the City of San Leandro to perform the functions and duties of the City Manager specified in the City Charter, ordinances and resolutions of City. Employee shall also perform other legally permissible and proper duties and functions as the City Council may from time to time assign.
- b. Employee shall perform his duties to the best of his ability in accordance with the highest possible and ethical standards of the profession and shall comply with all general rules and regulations established by the City.
- c. Employee shall not engage in any activity that is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement, and annually thereafter, Employee must complete disclosure forms required by law.

2. TERM

- a. Employee agrees to serve in the position of Interim City Manager effective January 23, 2018 until the current City Manager is permitted to return to duty by the City Council or a new City Manager is appointed by the City Council and commences his/her duties in the position. If Employee is appointed by the City Council to be the permanent City Manager, this agreement shall terminate upon execution of a new City Manager agreement with Employee.

- b. This agreement may be terminated by either party in accordance with the provisions set forth in Paragraph 3 or terminated in the event of the death or permanent disability of Employee.
- c. Employee agrees to remain in the exclusive employ of the City during the term of this Agreement.

3. RESIGNATION AND TERMINATION

- a. Employee may resign at any time with or without cause and agrees to give City at least sixty (60) days advance written notice of the effective date of his resignation.
- b. Subject to the provisions of the Charter, City may at any time terminate Employee upon thirty (30) days advance written notice.
- c. The parties recognize and affirm that: 1) Employee is an "at will" employee whose employment as Interim City Manager may be terminated by the City, and 2) There is no express or implied promise made to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Employee and City.

4. RIGHT TO REVERT TO PREVIOUSLY HELD POSITION

If Employee is terminated by the City Council, or the City Manager is permitted by the City Council to retain his position upon return from paid administrative leave, Employee shall have the right to revert to his previously held position as the Assistant City Manager and shall be entitled to receive the salary and benefits commensurate with that position, which shall be the salary step he was receiving or due to receive prior to his appointment.

5. SALARY

Effective January 23, 2018, City agrees to pay Employee a salary 15% above his current step as Assistant City Manager as shown in the City Council adopted salary schedule for the San Leandro Management Organization (hereafter referred to as "the Baseline Salary"), which shall be \$19,395 per month. Should Employee remain Interim City Manager past April 18, 2018, Employee's compensation shall be adjusted as such Baseline Salary is adjusted due to step advancement eligibility.

6. OTHER SUPPLEMENTAL BENEFITS

City shall provide Employee the same benefits as Employee received in his position as Assistant City Manager, in addition to any other benefits as included in operative City policies, procedures and applicable agreements for management employees and as they may be amended from time to time. All actions taken by the City relating to benefits for management employees shall be considered actions granting the same benefits to Employee.

7. **OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

The City Council, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

8. **NOTICES**

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY: City Council
 c/o Mayor Pauline Russo Cutter
 City of San Leandro
 835 East 14th Street
 San Leandro, CA 94577

TO EMPLOYEE: Jeff Kay
 Interim City Manager
 City of San Leandro
 835 East 14th Street
 San Leandro, CA 94577

9. **ARBITRATION**

Any controversy or claim arising out of or pertaining to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be enforced as provided by California law.

10. **ENTIRE AGREEMENT**

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein this Agreement cannot be modified except by written mutual agreement signed by the parties.

11. **ASSIGNMENT**

This Agreement is not assignable by either City or Employee.

12. **SEVERABILITY**

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the

Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

13. COUNTERPARTS

This Agreement shall be executed simultaneously in three counterparts, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by the City Clerk. It has also been executed by the Employee.

Jeff Kay, Employee

Pauline Russo Cutter, Mayor
City of San Leandro

ATTEST:

Tamika Greenwood, City Clerk,

APPROVED AS TO FORM

Richard D. Pio Roda, City Attorney