

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: September 14, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION

Adopting a resolution appointing Araceli Harris, Finance Manager II, as an extra help Retired Annuitant to assist with imminent special project work (finance training, oversight, and transition) during a critical time as the Transbay Joint Powers Authority (TJPA) fills several vacant finance positions.

EXPLANATION:

Appointment of Retired Annuitant

Typically, the Public Employees' Retirement Law requires a retiree from a California Public Employees' Retirement System (CalPERS) agency to wait 180 days before the employee may be hired as a Retired Annuitant. The law provides several exceptions, however, that allow a CalPERS retiree to be hired before the 180-day wait period has expired. One of those exceptions, Government Code section 7522.56 and 21224, is for extra help of Retired Annuitants hired to perform work of a limited duration, such as special project work.

Recently, three significant TJPA finance positions (Chief Financial Officer, Accounting Director and Management Analyst) have been vacated, one position is currently on leave and another position has yet to be filled, leaving only two of seven positions filled with one of the two positions being a recent hire. The TJPA needs special project services to ensure robust training, oversight, and transition services, consistent with proper internal controls, for current staff and as TJPA fills these vacant positions. Araceli Harris previously served as the Finance Manager for the TJPA from 2008-2021 and retired from the City of Oakland as the Finance Manager in July 2023. Ms. Harris's institutional knowledge and experience post-retirement are crucial to advance TJPA's imminent need for this special project assistance. The assistance of Ms. Harris is a special project of a limited duration. Given the finance staff vacancies, it is not feasible to wait 180 days before retaining Ms. Harris as a Retired Annuitant. Ms. Harris would solely serve on an as-needed basis for an hourly rate, for no more than 960 hours in a fiscal year, and without any other benefit, incentive, compensation in lieu of benefit or other form of compensation. The proposed hourly rate of \$110.00 is consistent with the current rate for the classification and reasonable for the scope of work. Ms. Harris's services will no longer be required once training, oversight, and transition for finance staffing is fully-implemented. The employment agreement with Ms. Harris is attached.

To rely on this 180-day wait period exception, CalPERS requires the TJPA Board to adopt a certification resolution generally in the CalPERS standard form. Accordingly, staff recommend the TJPA Board adopt the resolution in the form attached.

RECOMMENDATION

Adopt the resolution appointing Araceli Harris as an extra help Retired Annuitant to assist with imminent special project work (finance training, oversight, and transition services) during a critical time as the TJPA fills several vacant finance positions.

ENCLOSURES:

1. Resolution appointing Retired Annuitant
2. Retired Annuitant Employment Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

**RESOLUTION FOR 180-DAY WAIT PERIOD EXCEPTION
Gov. Code sections 7522.56 & 21224**

Resolution No. _____

September 14, 2023

WHEREAS, In compliance with Government (Gov.) Code section 7522.56 of the Public Employees' Retirement Law, the Transbay Joint Powers Authority Board of Directors must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

WHEREAS, Araceli Harris retired from the City of Oakland as the Finance Manager on July 31, 2023, after serving as the Transbay Joint Powers Authority Finance Manager from 2008-2021; and

WHEREAS, Gov. Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is January 29, 2024 without this certification resolution; and

WHEREAS, Gov. Code section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, The Transbay Joint Powers Authority Board of Directors, the Transbay Joint Powers Authority and Araceli Harris certify that Araceli Harris has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, The Transbay Joint Powers Authority Board of Directors hereby appoints Araceli Harris as an extra help retired annuitant to perform the duties of the Finance Manager II for the Transbay Joint Powers Authority under Gov. Code section 21224 effective September 19, 2023; and

WHEREAS, The entire employment agreement between Araceli Harris and the Transbay Joint Powers Authority has been reviewed by this body and is attached herein; and

WHEREAS, No matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, The employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, The compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, The maximum base salary for this position is \$20,799.96 and the hourly equivalent is \$120.00, and the minimum base salary for this position is \$13,519.97 and the hourly equivalent is \$78.00; and

WHEREAS, The hourly rate paid to Araceli Harris will be \$110.00; and

WHEREAS, Araceli Harris has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

THEREFORE, BE IT RESOLVED THAT the Transbay Joint Powers Authority Board of Directors hereby certifies the nature of the appointment of Araceli Harris as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of Finance Manager II for the Transbay Joint Powers Authority by September 19, 2023 to provide special project services (finance training, oversight, and transition assistance) during a critical time as the Transbay Joint Powers Authority fills several vacant finance positions. Ms. Harris's institutional knowledge and experience post-retirement are crucial to advance the agency's imminent need for these special project activities with proper internal controls while finance staffing is stabilized; the training, oversight, and transition assistance that Ms. Harris will provide is a special project of a limited duration. Due to the recent significant finance vacancies, plan to fill the vacant roles with all due speed and need for all finance staff to receive finance training, oversight, and transition support, it is not feasible to wait 180 days before retaining Ms. Harris as a Retired Annuitant.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 14, 2023.

Secretary, Transbay Joint Powers Authority



EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (Agreement) made this 14th day of September 2023, by and between TRANSBAY JOINT POWERS AUTHORITY (TJPA or Employer), a California Joint Powers Authority and Araceli Harris (the Employee).

RECITALS

TJPA is a public Joint Powers Authority organized under the laws of the State of California.

TJPA wishes to enter into an at-will employment relationship with the Employee subject to certain terms and conditions hereinafter set forth and the Employee has indicated agreement to such employment.

NOW, THEREFORE, in consideration of the mutual promises and covenants as hereinafter set forth, the parties hereto agree as follows:

Section 1. Employment. TJPA hereby employs the Employee and the Employee hereby accepts employment with TJPA on the terms and conditions set forth in this Agreement. It is agreed and understood that Employee's employment is at-will.

Section 2. Term.

A. This Agreement shall commence on the date indicated above, and shall terminate as set forth herein.

B. Notwithstanding anything to the contrary herein, this is an at-will employment, and this Agreement may be terminated by mutual agreement of the parties, or unilaterally by either party upon one (1) days' written notice to the other party. Employee shall endeavor to give at least ten (10) days' written notice of intent to vacate the position, although this calls for good faith only, and any failure to do so would not be a breach of this contract.

C. Subject to the provisions for termination as hereinafter provided, the Employee shall be employed by TJPA at the pleasure of the TJPA Executive Director (hereinafter the Executive Director). Employee's employment is at-will and is subject to termination at any time at the sole discretion of the Executive Director. Employee understands and acknowledges that employee's engagement under this Agreement is in an "at-will" capacity. Employee has those rights under any personnel rules which TJPA may adopt which are applicable to "at-will" employees, including rules regarding those statutory rights which are applicable to all employees. Employee may terminate this Agreement and employee's relationship with TJPA at any time upon 10 working days' e-mail notice. Except as expressly indicated in this section, Employee's "at-will" relationship with TJPA cannot be altered by practice, or by oral or written statement, except as provided

below. Nothing in this Agreement shall be construed as requiring cause for termination or conferring property rights on Employee. This Agreement supersedes all prior agreements and practices related to Employee's work on behalf of TJPA. The only way in which Employee's at-will relationship with TJPA may be altered is by a written instrument signed by Employee and the Executive Director, which instrument specifically refers to this agreement and this section.

Section 3. Compensation and Performance Review. For all services rendered by the Employee pursuant to this Agreement, TJPA shall pay the Employee hourly compensation as set forth in **Exhibit A**. The Employee's performance and compensation generally are reviewed at least annually by the Executive Director or designee. TJPA does not participate in the Social Security system.

Section 4. Duties. The Employee is engaged to perform services and specific duties as assigned by the Executive Director, or designated representative. Employee's assigned duties are shown on **Exhibit B** attached hereto.

Section 5. Compliance with Laws. The Employee shall follow all laws pertaining to employment as well as comply with all federal, state, city, and TJPA laws, statutes, ordinances, rules, regulations, policies, and the orders and decrees of any courts, administrative bodies, or tribunals affecting the performance of this Agreement.

Section 6. NOT APPLICABLE. Exclusive Service. The Employee shall devote his/her time and attention during work hours to rendering services on behalf of TJPA only if working full-time for TJPA. Employment or paid work outside this Agreement must be pre-approved by the Executive Director.

Section 7. Resolution Process. Employer and Employee agree to a pre-dispute resolution process. Prior to engaging in any legal or equitable litigation or other dispute resolution process regarding any of the terms and conditions of this Agreement, or concerning the subject matter of this Agreement, Employer and Employee specifically agree to engage, in good faith, in a mediation process at the expense of Employer, complying with the procedures provided for under California Evidence Code sections 1115 through and including 1129, as then currently in effect. Employer and Employee agree to use their best efforts to reach a mutually agreeable resolution of the matter. Employer and Employee understand and agree that should any party to this Agreement refuse to participate in mediation for any reason, the other party will be entitled to seek a court order to enforce this provision in any court of appropriate jurisdiction requiring the dissenting party to attend, participate, and make a good faith effort in the mediation process to reach a mutually agreeable resolution of the matter.

Section 8. Non-Assignable. This Agreement shall not be assignable.

Section 9. Notices. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by email, or (d) by a commercial

courier that guarantees delivery and provides a receipt, and shall be addressed as follows:

TJPA: Nila Gonzales, Chief of Staff
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
Email: ngonzales@tjpa.org

Employee Name: Araceli Harris
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
Email: finance@tjpa.org

Either party may modify the address at which it shall receive notice under this Agreement by three (3) days' prior written notice to the other party.

Section 10. Construction. This Agreement shall be governed by the laws of the State of California. The waiver by any party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This instrument contains the entire agreement of the parties concerning employment and supersedes any previous written, oral or implied contracts. This Agreement may not be changed except by written agreement duly executed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, heirs, and personal representatives.

Section 11. Conflict of Interest. Employee covenants that they have no interest in, nor shall acquire any interest directly or indirectly, which will conflict in any manner or degree with the subject matter of this Agreement or performance of services hereunder. Employee shall file an annual disclosure of economic interest (Form 700) if so required, and shall also file disclosure of economic interest on leaving employment.

Section 12. Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision is determined to be invalid, such invalidity shall not impair or otherwise affect the validity of the other provisions of this Agreement. Moreover, the parties agree to replace the invalid provisions with a substitute provision that will satisfy the intent of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

DATED: _____ 2023

TRANSBAY JOINT POWERS
AUTHORITY

By: _____
Adam Van de Water
Executive Director

DATED: _____ 2023

By: _____
Araceli Harris
Employee

Right to Consult Counsel. The Employee has had the right to seek counsel, and the Employee has been advised to consult independent counsel concerning this Agreement, and the effects of the Agreement.

DATED: _____ 2023

By: _____
Araceli Harris
Employee

EXHIBIT A Compensation

1. Compensation

1.1 Hourly Compensation

Commencing September 19, 2023 (the effective date of employment), Employee, acting as the Finance Manager II for the Transbay Joint Powers Authority, shall be paid an hourly rate of \$110.00 payable in twice monthly increments (1st to the 15th of each month, and 16th to the end of the month). Such compensation may change if Employee's duties are changed or to reflect compensation adjustments as deemed appropriate by the Executive Director. Such compensation cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate.

1.2 Not Full-time Status

Employee is not full-time and will not work more than 20 hours per week on average or more than 960 hours per fiscal year.

1.3 No Other Compensation

Employee is a CalPERS retiree and, as such, will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

2. Overtime and Absences

2.1 Overtime

Employee is exempt from overtime compensation.

2.2 Paid Time Off

Employee is not eligible for any paid time off.

3. Retirement

3.1 Public Employees Retirement System

The Agency is a member of the California Public Employees' Retirement System (CalPERS). The Agency has adopted the voluntary salary reduction option offered by Section 414(h)(2) of the Internal Revenue Service Code and the Public Employees' Retirement System.

3.2 CalPERS Eligibility

All full-time employees, as well as employees who work more than 20 hours per week on average or more than 960 hours in a fiscal year shall be enrolled in CalPERS.

3.3 Social Security Participation

Employer does not participate in social security.

4. Legally Required Benefits

The Employer follows all legally mandated requirements, including providing Medicare, workers' compensation, and following California Domestic Partnership laws, and any other such laws as is required.

5. Rules, Regulations, and Policies

Except as provided in this Agreement or applicable law, employment is subject to the rules set forth in the TJPA's personnel policies and rules which can be found in the Employee Handbook.

6. Transit Allowance

Only full-time employees may participate in the Transit Allowance.

7. Cell Phone Allowance

Only full-time employees may participate in the Cell Phone Allowance.

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EXHIBIT B Assigned Duties

Employee will act as the Transbay Joint Powers Authority's Finance Manager II in the capacity of an extra help Retired Annuitant to assist with imminent special project of finance training, oversight, and transition, consistent with proper internal controls, as the Agency fills several vacant finance positions.

Essential Duties:

- Support transition regarding appropriate administrative and accounting policies, services, structures, controls, and reporting systems for the effective and efficient performance of the fiscal functions of TJPA;
- Support transition regarding coordination of financial activities with other TJPA staff and partners;
- Support transition regarding goals, objectives, and plans for carrying out the functions of TJPA consistent with overall TJPA vision, mission, and goals;
- Support transition regarding the accurate and timely reporting of data to outside funding partners;
- Support transition regarding preparation, review, and approval of detailed correspondence, reports, reconciliations, and statements;
- Support transition regarding actuarial studies and various audits, including annual audit and funding agency audits;
- Support transition regarding accounting procedure questions, which may include researching and interpreting accounting policy and regulations;
- Support transition regarding preparation of annual and periodic financial statements in accordance with generally accepted accounting principles for local government;
- Provides training to finance staff regarding professional standards, work quality and quantity, performance, and accountability;
- Other duties as needed to assist the finance division through the transition.