

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: December 8, 2022**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION

Approving a Resolution of Appreciation and adopting a resolution appointing Dennis Turchon, Senior Construction Manager for Phase 1 of the Transbay Program, as a Retired Annuitant to fill the critically needed position related to Phase 1 construction closeout and approve amendments to the TJPA Pay Schedule for all employees to align with the recent cost-of-living adjustment.

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.

Dennis Turchon, Senior Construction Manager for Phase 1 of the Transbay Program (Manager III), will retire from the TJPA effective December 31, 2022. There are a number of outstanding pending claims related to the construction of Phase 1 that are in active dispute resolution proceedings and mediation, as well as litigation. Mr. Turchon's institutional knowledge and experience post-retirement are crucial to advance the public's interest in the Phase 1 construction closeout. The Phase 1 construction close out effort is a special project of a limited duration. Given the on-going mediation and litigation schedule, it is not feasible to wait 180 days before retaining Mr. Turchon's services as a Retired Annuitant. Mr. Turchon 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 \$134.32 is consistent with Mr. Turchon's current rate and reasonable for the scope of work. Mr. Turchon's services will no longer be required after Phase 1 construction closeout is complete. The employment agreement with Mr. Turchon 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.

There is no regularly scheduled TJPA Board meeting planned between the date of Mr. Turchon's retirement and the start date of the required Retired Annuitant services.

Amendments to TJPA Pay Schedule

In December 2011, consistent with TJPA's transition to becoming the employer of record for the agency's employees, the TJPA Board approved a contract with CalPERS for the continued

participation of TJPA employees in CalPERS. State law (2 California Code of Regulations (CCR) Section 570.5) requires that all employers reporting compensation to CalPERS have a publicly available pay schedule that meets the requirements set forth in the regulation. In July 2013, the TJPA Board adopted a Pay Schedule for the agency meeting the requirements set forth in the regulation. The TJPA Board has approved updates to the Pay Schedule in September 2015, June 2017, June 2019, June 2020, and December 2021.

Typically, the TJPA Board reviews proposed updates to the Pay Schedule, when necessary, as part of its consideration of the annual budget. On occasion, however, interim updates to the Pay Schedule are warranted to reflect increases in the salary range for existing class/titles based on changes in the consumer price index that exceed the amounts projected during the annual budget setting process.

It is recommended that the TJPA Board approve updates to the existing Pay Schedule effective December 1, 2022 to reflect the impact of the actual consumer price index of 6.4% in all class/titles. The proposed updated Pay Schedule is attached.

RECOMMENDATION

Approve the Resolution of Appreciation and adopt the resolution appointing Dennis Turchon as a Retired Annuitant to fill the critically needed position of Senior Construction Manager for Phase 1 of the Transbay Program to assist with Phase 1 construction closeout and approve amendments to the TJPA Pay Schedule for all employees.

ENCLOSURES

1. Resolution approving amendments to TJPA Pay Schedule
2. TJPA Pay Schedule (effective December 1, 2022)
3. Resolution of Appreciation
4. Resolution appointing Retired Annuitant
5. Retired Annuitant Employment Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency responsible for the financing, design, development, construction, and operation of the Transbay Transit Center Program; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to employ agents and employees, and make and enter into contracts; and

WHEREAS, In December 2011, the TJPA Board approved a contract with the California Public Employees' Retirement System (CalPERS) for the continued participation of TJPA employees in CalPERS; and

WHEREAS, Title 2 California Code of Regulations (CCR) Section 570.5 requires that all employers reporting compensation to CalPERS have a publicly available pay schedule that meets the requirements set forth in the regulation; and

WHEREAS, In July 2013, the TJPA Board adopted a pay schedule meeting the requirements set forth in the regulation; the TJPA Board approved updates to the pay schedule in September 2015, June 2017, June 2019, June 2020, and December 2021; and

WHEREAS, Changes in salary ranges due to cost-of-living adjustments need to be reflected on the pay schedule; and

WHEREAS, The TJPA has developed the attached pay schedule through research of other agencies' salary schedules and consideration of current employees' compensation levels as well as actual consumer price index increases; now, therefore, be it

RESOLVED, That the TJPA Board adopts the pay schedule attached hereto; and, be it

FURTHER RESOLVED, That this pay schedule is effective as of December 1, 2022; and,
be it

FURTHER RESOLVED, That this pay schedule shall remain in effect until such time as the TJPA Board adopts a schedule that amends or replaces the attached.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 8, 2022.

Secretary, Transbay Joint Powers Authority

Transbay Joint Powers Authority
Pay Schedule
Effective December 1, 2022

Class Titles	Hourly Pay Range (Low)	Hourly Pay Range (High)
Executive	109.00	169.00
Manager III	101.00	137.00
Manager II	78.00	114.00
Manager I	65.00	94.00
Associate IV	59.00	87.00
Associate III	49.00	70.00
Associate II	43.00	60.00
Associate I	36.00	55.00
Administrative	29.00	41.00

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

RESOLUTION OF APPRECIATION

WHEREAS, Dennis Turchon joined the Transbay Joint Powers Authority (TJPA) in 2013 as the Senior Construction Manager to oversee the construction of Phase 1 of the Transbay Program; and

WHEREAS, Dennis Turchon is a licensed civil engineer and has dedicated his career to building California's infrastructure, serving over 25 years at the California Department of Transportation (Caltrans); and

WHEREAS, Prior to joining the TJPA, Dennis Turchon was the construction manager of the San Francisco Oakland Bay Bridge (SFOBB) West Approach replacement, the SFOBB West Span superstructure seismic retrofit, the SFOBB South/South detour, and the Doyle Drive Replacement (Phase 1); and

WHEREAS, Under Dennis Turchon's leadership, the TJPA delivered the Salesforce Transit Center, a modern regional transportation hub connecting transit systems throughout the Bay Area and one of the most important pieces of infrastructure to be delivered to the San Francisco Bay Area in a generation; a center at the heart of a new transit friendly neighborhood with new homes, parks and shops, providing access to public transit literally at the foot of people's doorsteps allowing them to travel and commute without the need for a car; and

WHEREAS, The TJPA greatly benefited from the thoughtful leadership, knowledge, depth of experience, and integrity that Dennis Turchon has brought to the TJPA; and

WHEREAS, On December 31, 2022, Dennis Turchon will retire from the TJPA; now, therefore, be it

RESOLVED, That the Transbay Joint Powers Authority expresses its most sincere gratitude to Dennis Turchon for his commitment to the TJPA and the Transbay Program; and, be it

FURTHER RESOLVED, That the Transbay Joint Powers Authority wishes Dennis Turchon continued success in all of his future endeavors.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 8, 2022.

Secretary, Transbay Joint Powers Authority

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

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

Resolution No. _____

December 8, 2022

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, Dennis Turchon is retiring from the Transbay Joint Powers Authority in the position of Senior Construction Manager for Phase 1 of the Transbay Program (Manager III), effective December 31, 2022; and

WHEREAS, Gov. Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 30, 2023 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 Dennis Turchon certify that Dennis Turchon 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 Dennis Turchon as an extra help retired annuitant to perform the duties of the Senior Construction Manager for Phase 1 of the Transbay Program (Manager III) for the Transbay Joint Powers Authority under Gov. Code section 21224 effective January 6, 2023 and there is no regularly scheduled TJPA Board meeting planned between the date of Mr. Turchon's retirement and the start date of the required Retired Annuitant services; and

WHEREAS, The entire employment agreement between Dennis Turchon 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 \$23,746.67.00 and the hourly equivalent is \$137.00, and the minimum base salary for this position is \$17,506.67 and the hourly equivalent is \$101.00; and

WHEREAS, The hourly rate paid to Dennis Turchon will be \$134.32; and

WHEREAS, Dennis Turchon 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 Dennis Turchon as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of Senior Construction Manager for Phase 1 of the Transbay Program (Manager III) for the Transbay Joint Powers Authority by January 6, 2023 because there are a number of outstanding pending claims related to the construction of Phase 1 that are in active dispute resolution proceedings and mediation, as well as litigation; Mr. Turchon's institutional knowledge and experience post-retirement are crucial to advance the public's interest in the Phase 1 construction closeout; the Phase 1 construction close out effort is a special project of a limited duration; and given the on-going mediation and litigation schedule, it is not feasible to wait 180 days before retaining Mr. Turchon's services 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 December 8, 2022.

Secretary, Transbay Joint Powers Authority



EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (Agreement) made this 6th day of January 2023, by and between TRANSBAY JOINT POWERS AUTHORITY (TJPA or Employer), a California Joint Powers Authority and Dennis Turchon (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: Dennis Turchon
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
Email: dturchon@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: _____ 2022

TRANSBAY JOINT POWERS
AUTHORITY

By: _____
Adam Van de Water
Executive Director

DATED: _____ 2022

By: _____
Dennis Turchon
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: _____ 2022

By: _____
Dennis Turchon
Employee

EXHIBIT A Compensation

1. Compensation

1.1 Hourly Compensation

Commencing January 6, 2023 (the effective date of employment), Employee, acting as the Senior Construction Manager for Phase 1 of the Transbay Program for the Transbay Joint Powers Authority, shall be paid an hourly rate of \$134.32 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.

EXHIBIT B Assigned Duties

Employee will act as the Transbay Joint Powers Authority's Senior Construction Manager for Phase 1 of the Transbay Program in the capacity of a Retired Annuitant to fill the critically needed position related to Phase 1 construction closeout. Employee will assist with resolving the outstanding pending claims related to the construction of Phase 1 that are in dispute resolution proceedings and mediation, as well as litigation.

Essential Duties:

- Applying technical principles and practices to architectural, civil, environmental, and transportation projects;
- Works with professional engineers in tasks requiring advanced engineering/architectural skills and/or judgment;
- Performs advance-level work in the construction field and in the office following established design and construction management technical methods and procedures;
- Meeting with the public, contractors, public agencies and other program stakeholders on engineering and construction matters;
- Conducting field inspections of existing structures, construction sites and projects;
- Preparing meeting minutes, correspondence, reports, contract specifications, lists of materials, cost estimates, and schedules;
- Gathering, preparing, and maintaining engineering/architectural data, construction records, and reports;
- Participating in public and project meetings;
- Presenting technical and project information in public and project meetings;
- Drafting correspondence, memos, studies, reports, logs and other program related documents;
- Reviewing contractor invoices and applications for progress payments, maintain logs, update construction schedules, and gather records as necessary for the negotiation of change orders and defense against construction claims;
- Providing updates to the TJPA Board of Directors as necessary;
- Other duties as needed/assigned by the Executive Director.