



Agenda Date: 10/13/2015
Agenda Item: 5.1

STAFF REPORT

Date: October 13, 2015
To: City Council
From: Bryan Montgomery, City Manager 
SUBJECT: Resolution Authorizing the City Manager to execute an Agreement for the Temporary Employment of Paul Abelson, a CalPERS Retired Annuitant

Summary

Paul Abelson served as Oakley's Finance Director since 2005, but has recently retired and is now what is called a "CalPERS retired annuitant" (he will be drawing retirement from California Public Employees Retirement System).

State law and CalPERS policies set forth various restrictions for any post retirement services provided by a retired annuitant. Some of these requirements include that the provision of services be of limited duration, be compensated no more than any other employee would be compensated for similar work, that such work not exceed 960 hours in any fiscal year, and that if work is provided within 180 days of the retired annuitant's retirement date that the contract be formally reviewed and presented at a City Council Meeting.

As you well know, Mr. Abelson has been a very capable and invaluable member of the City staff and he is uniquely qualified for various temporary tasks that could be deemed urgent and necessary. While it is unknown if such tasks will be required, the attached agreement provides an avenue to enlist these services, if needed.

Fiscal Impact

The total number of hours needed is unknown at this time, but services would be compensated at \$75 per hour and within budgeted funds.

Recommendation

Adopt a resolution authorizing the City Manager to sign an Agreement for Temporary Services with Paul Abelson.

Attachment

1. Resolution
2. Proposed Agreement

**AGREEMENT FOR THE TEMPORARY EMPLOYMENT
OF PAUL ABELSON, A CALPERS RETIRED ANNUITANT**

THIS AGREEMENT FOR THE TEMPORARY EMPLOYMENT OF A RETIRED CALPERS ANNUITANT ("Agreement") is between the CITY OF OAKLEY, a municipal corporation, organized and existing under the laws of the State of California (hereinafter "City"), and PAUL ABELSON, an individual and a CalPERS Retired Annuitant (hereinafter "Abelson") (collectively, the "Parties"). This Agreement is effective on upon approval of the Oakley City Council.

RECITALS

WHEREAS, Paul Abelson has served as the City's Finance Director since September 19, 2005, and retired on October 1, 2015; and

WHEREAS, during his tenure, Abelson was an integral part of managing the City's finances, its accounting and reporting, budgeting, investments, debt management, risk management, and property management; dissolving the Oakley Redevelopment Agency and the City's continued compliance with the Dissolution Act, preparation of the Successor Agency's Long Range Property Management and Disposition Plan; and preparation of the analysis related to the long-term delivery of Police Services; and

WHEREAS, while performing this work, he gained specific information and experience that makes him uniquely qualified to perform temporary services, as needed, to avoid and/or respond to critical needs that arise in these areas; and

WHEREAS, Abelson will retire from the City at the close of business September 30, 2015, and become a CalPERS retired annuitant; and

WHEREAS, looking forward from his retirement date, it appears likely that during the remainder of Fiscal Year 2015-2016, the City will have a critical need for an employee with his specialized skills to perform extra help or special project temporary assignments in at least one of the categories described above; and

WHEREAS, the City desires an Agreement in place so as to be able to engage Mr. Abelson without delay in the event his services are needed to address a critical need.

WHEREAS, the City and Abelson both desire to comply with the new CalPERS legal requirements, and to separately contract for extra help and project work that requires the aforementioned specialized skills and/or knowledge, if needed; and

WHEREAS, CalPERS legal requirements include that any contract for post retirement services with a CalPERS employer be for a limited duration, that compensation be limited to no more than what another employee performing such

work would be paid, without benefits, that such work shall not exceed 960 hours in any fiscal year, and that if entered into within 180 days of Abelson's retirement, that the Contract and/or Resolution be presented to the City Council for approval in advance, and on its regular calendar (it cannot be presented on the consent calendar).

NOW, THEREFORE, the parties do mutually agree as follows:

1. Both the City and Abelson agree to follow all CalPERS requirements related to post-retirement employment.
2. City shall, if needed, request necessary services from Abelson; and if available, and subsequent to the City Council's approval of the required Resolution required if within 180 days of his retirement, Abelson will perform such services as a City Retired Annuitant Employee.

Such employment is temporary and "at will", and is subject to the terms of this Agreement. Abelson shall perform said duties at the pleasure and under the direct supervision of the City Manager or his designee.

City and Abelson agree that such temporary assignments may occur more than once during the term of this Agreement, and that the Agreement shall be valid and applicable to each assignment, until it expires, Abelson has reached his 960 hour limitation, or it is cancelled by either of the parties.

3. **Compensation and Work Schedule:**
 - a. **Rate of Pay.** Abelson shall be paid at the rate of \$75 per hour, an hourly rate that equates to a \$13,000 monthly salary, and is within the current pay range for a Finance Director. As required under CalPERS law, such compensation shall be the sole compensation for Abelson services under this Agreement.
 - b. **Time keeping and Payment Dates.** Abelson be subject to all applicable payroll taxes and withholdings as other City employees. City shall comply with CalPERS requirements regarding reporting the hours and compensation of retired annuitant employees.
 - c. **Work Schedule and 960 hour limitation.** For work assignments agreed to by the Parties, Abelson is expected to devote necessary time, within and outside normal business hours, to the business of the City; however, pursuant to Government Code section 21224, Abelson is allowed to work a maximum of 960 hours per fiscal year for all public employers that contract with CalPERS for retirement benefits.

The City retains the right to designate, reduce, change, or amend the assignments and/or number of hours assigned to Abelson consistent with the City's workload and other needs. If Abelson's annual hours worked during

the fiscal year are approaching 960, then both the City and/or the Abelson shall suspend Abelson's duties and assignments under this Agreement, to ensure that Abelson does not exceed the legal maximum limit. Abelson shall be responsible for keeping track of the hours worked for the City and any other CalPERS employer, and notify the City Manager if at any time his cumulative hours reach 900 during the Fiscal Year. Should the Abelson's duties and assignments need to be suspended at any time, the City shall be responsible for reassignment of such duties or any scheduled hours, as needed.

- d. **Exempt Position.** The performance of duties under this Agreement is exempt from Fair Labor Standards Act overtime pay requirements.

4. Employment Status.

a. **Benefits.** Other than the compensation described above in Section 3, Abelson will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Abelson understands and agrees that he is not, and will not be, eligible to receive any benefits available to an employee in the regular service of the City, except for Worker's Compensation Insurance coverage. All applicable tax withholdings will be made as if with any other employee.

b. **No Property Right in Employment.** Abelson understands and agrees that the terms of his employment are governed only by this Agreement and that no right of regular employment for any specific term is created by this Agreement.

Abelson further understands that he acquires no property interest in his employment by virtue of this agreement, that the employment is "at will" as defined by the laws of the State of California (meaning that he can be terminated at any time for any reason or for no reason), and that he is not entitled to any pre- or post- deprivation administrative hearing or other due process upon termination or any disciplinary action.

c. **Employment of a Retiree.** Abelson understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer for limited duration assignments not to exceed 960 hours in any fiscal year for all such employers; where (1) the assignments are to supplement the work of regular staff (e.g., extra help work such as elimination of backlog, special project work, or to help with work in excess of that which regular staff can do) and 2) Abelson has the skill set needed.

In addition, prior to any work being performed before the lapse of 180 days after retirement, the City Council must approve a resolution certifying the nature of the assignment(s) and that the appointment is necessary to fill a critically need before 180 days has passed.

Abelson certifies that he has not received any unemployment payments from any CalPERS agency in the last 12 months; and did not receive any special inducement to retire.

5. Effective Date and Term of Agreement. This Agreement shall be effective October 1, 2015 (Effective Date), and shall terminate automatically at midnight on June 30, 2016, or earlier if the Abelson works a total of 960 hours for a CalPERS employer in a fiscal year. Employment is temporary, at-will, and may be terminated with or without cause and with or without notice at any time by Abelson or the City.

6. Non-Assignment of Agreement. This Agreement is intended to secure the individual services of Abelson, if needed; and is not assignable or transferable by employee to any third party.

7. Governing Law/Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Contra Costa County.

3. Enforceability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

9. Conflict of Interest. Abelson agrees that prior to accepting any assignment under this Agreement, he will take steps to divest himself of any financial interest known to him, and separate from any other contract employment, occupation, work, endeavor or association, whether compensated for or not, that would in any way conflict with, or impair his ability to the perform the assignment.

In performing work for the City pursuant to this Agreement, Abelson agrees to abide by the City's moral, ethical and professional standards, as outlined in its Personnel Manual and other policies, including its Conflict of Interest policy.

Prior to accepting any assignment, Abelson shall also disclose to the City Manager whether he is or is expecting to be performing work for any other employer while engaged by the City.

10. Entire Agreement and Modification. This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contract, agreements, negotiations or understandings, whether written or oral, between the parties.

Abelson shall be entitled to no other compensation or benefits than those specified herein, and Abelson acknowledges that no representation, inducements or promises not contained in this Agreement have been made to induce Abelson to enter into this Agreement.

No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Abelson understands that no oral modification of this Agreement made by any officer, agent, or employee of the City is effective.

Abelson specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others.

11. Support Services and Equipment. Abelson shall be provided office space and necessary equipment sufficient to fulfill obligations under this Agreement when they are performed at City Hall, as determined by the City, at no cost to employee.

12. Reimbursement for Expenses. Abelson shall be reimbursed by City in accordance with City policy (and federal and state law) for all authorized and necessary travel undertaken by Abelson in performance of services pursuant to this Agreement. Abelson shall document and claim said reimbursement for such travel in the manner and forms required by the City. Other than as specifically provided herein, Abelson shall receive no other compensation or reimbursements for expenses incurred in performance of assignments under this Agreement.

13. Notices. All notices permitted or required under this Agreement shall be given to the respective parties by hand - delivery or by mail at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the U.S. Mail, postage pre-paid, addressed as follows:

City Manager
City of Oakley
3231 Main Street
Oakley, CA 94561

Paul Abelson
127 Donegal Way
Martinez, CA 94553.

14. Indemnification. The City shall defend, save harmless and indemnify Abelson against any tort, professional liability, claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Abelson's services, except that this provision shall not apply with respect to any intentional tort or crime committed by Abelson, or any actions outside the course and scope of his employment pursuant to this Agreement.

15. Assistance of Counsel. Both parties to this Agreement warrants to the other that they believe the terms and conditions outlined in this Agreement are fully compliant with existing Retirement Law and CalPERS regulations regarding post-retirement employment. The City Attorney has reviewed the Agreement to confirm such conformity.

Signature page to follow -

CITY OF OAKLEY:

By: _____
Bryan H. Montgomery
City Manager

APPROVED AS TO FORM:

By: _____
William Galstan
Special Counsel

Attest:

By: _____
Libby Vreonis
City Clerk

**RETIRED ANNUITANT
EMPLOYEE (ABELSON):**

By: _____
Paul Abelson