



SPECIAL MEETING AGENDA

Date: 10/29/2018
Time: 5:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

5:30 p.m. Regular Session (City Council Chambers)

- A. Call to Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. Regular Business**
- D1. Approval of a contract between the City of Menlo Park and Starla Jerome-Robinson for interim city manager services ([Staff Report #18-199-CC](#)).
- F. Adjournment**

At every Special Meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available for inspection at the City Clerk's Office, 701 Laurel St., Menlo Park, CA 94025 during regular business hours. Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at 650-330-6620.

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STAFF REPORT

City Council

Meeting Date:

10/29/2018

Staff Report Number:

18-199-CC

Regular Business:

Approval of a contract between the City of Menlo Park and Starla Jerome-Robinson for interim city manager services

Recommendation

Staff recommends that the City Council appoint Starla Jerome-Robinson as interim city manager and approve a contract between the City of Menlo Park and Starla Jerome-Robinson for interim city manager services.

Policy Issues

The City Council has the responsibility of appointing the city manager. The city manager serves as the City's chief executive officer.

Background

On September 24, 2018, City Manager Alex D. McIntyre announced his resignation from the City to accept the position of city manager in the city of Ventura. On October 9, 2018, the City Council created a subcommittee (Ohtaki and Mueller) to oversee the selection process of an interim city manager and retention of a recruitment firm to manage the outreach and recruitment for a new permanent city manager. The City Council also noted that the new City Council should oversee development of the criteria and selection of the new permanent city manager.

On October 23, 2018, in closed session the City Council conducted interviews of qualified candidates and identified Starla Jerome-Robinson as the top finalist for the interim city manager position pending a full recruitment for a permanent city manager.

Analysis

Ms. Jerome-Robinson previously served as assistant city manager at the City of Menlo Park and retired in 2015. Since Ms. Jerome-Robinson is a CalPERS annuitant, state law imposes restrictions on her ability to work for other CalPERS agencies. She may only work 960 hours in any fiscal year (e.g., July 1 to June 30.) Additionally, she may not earn more than the published salary schedule for city manager. Finally, she may not receive any additional "benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate."

The proposed contract (Attachment A) provides that Ms. Jerome-Robinson shall serve as interim city manager until a new city manager has been appointed, accrued 960 hours or until April 30, 2019, whichever occurs first. If a new city manager is not selected by April 30 it will be necessary to evaluate whether to extend Ms. Jerome-Robinson's contract or appoint another interim city manager. Ms. Jerome-Robinson will earn the same hourly rate as City Manager McIntyre's current base rate (\$111.5406 per hour) and she will not be entitled to any other employment benefits (such as health insurance, incentive pay or housing allowance.) Ms. Jerome-Robinson is responsible for reporting all hours worked to the City for compliance purposes.

Impact on City Resources

There are no additional financial impacts associated with this engagement as the city manager salary is currently budgeted.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is a minor change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Employment agreement

Report prepared by:

William C. McClure, City Attorney

**RETIRED ANNUITANT EMPLOYMENT AGREEMENT
For the Position Of
INTERIM CITY MANAGER**

This Employment Agreement ("Agreement") is made and entered into this 30th day of October, 2018, by and between the CITY OF MENLO PARK ("CITY"), a general law city and municipal corporation, and Starla Jerome-Robinson ("Robinson"), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the services of Robinson as its Interim City Manager, temporarily, to carry out the duties and responsibilities of City Manager, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. Robinson desires to accept employment as Interim City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. Robinson represents that she is a retired annuitant of CalPERS within the meaning of Government Code § 21221(h) and acknowledges that her compensation is statutorily limited as provided in Government Code § 21221(h). Robinson acknowledges that she has worked a total of zero hours for another CalPERS agency in fiscal year 2018-2019 and is restricted to working no more than 960 hours for CITY, a state agency or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2018-2019 fiscal year. Robinson represents that she has not received unemployment compensation from any CalPERS agencies during the 12-month period preceding the effective date of this Agreement. Robinson further represents that her CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Agreement.

D. CITY has determined that it is necessary to hire Robinson, a retired annuitant, because the position of Interim City Manager requires special skills, and Robinson, by virtue of her significant experience as Assistant City Manager in Menlo Park and Interim Director of Finance in other cities, has those special skills.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1 Position and Duties.

1.1 Position. Robinson accepts employment with CITY as its Interim City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. Robinson shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that Robinson, as the Interim City Manager, shall keep the City Council fully apprised of all significant ongoing operations of CITY.

12 Term. This Agreement shall become effective when executed both by Robinson and CITY's Mayor, which date shall be the date first referenced above. Robinson shall commence the performance of her duties as the Interim City Manager on October 30, 2018 or at such later date as the parties hereto shall agree in writing ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) 5:00 p.m. on April 30, 2019;(ii) upon the employment commencement date of a permanent City Manager employed by CITY; (iii) upon Robinson working her 960th hour for CITY during the 2018-2019 fiscal year, including hours worked for other CalPERS agencies during such fiscal year; or (iv) upon termination of the Agreement by either Robinson or CITY as provided in Section 4 [Termination] of this Agreement.

13 At-Will. Robinson acknowledges that she is an at-will, temporary employee of CITY who shall always serve at the pleasure of the City Council during the period of her service hereunder. Nothing in this Agreement is intended to, or does, confer upon Robinson any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate her employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of Robinson, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Robinson to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and Robinson, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Duties. Robinson shall serve as the Interim City Manager and shall for the Term of the Agreement be vested with the powers, duties and responsibilities of the City Manager as set forth in Section 2.08 of the City's Municipal Code, the terms of which are incorporated herein by reference. Robinson shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that the Interim City Manager shall keep the City Council fully apprised of all significant ongoing operations of CITY. Toward that end, Robinson shall report directly to the City Council and will periodically, or as otherwise specifically requested by the City Council, provide status reports to the City Council on her activities and those of CITY. It is the intent of the City Council for the Interim City Manager to function as the chief executive officer of CITY's organization. Robinson shall provide such other services as are customary and appropriate to the position of Interim City Manager, including serving as the Executive Director of the City's Successor Agency to the former Redevelopment Agency, and Director of Emergency Services, with such additional services assigned from time to time by the City Council as may be consistent with California law and the City's Municipal Code. Robinson shall devote her best efforts and full-time attention to the performance of these duties. Notwithstanding Robinson's duties as Interim City Manager, nothing in this Agreement shall be construed to prohibit direct communications between the City Council and employees of CITY in a manner that is consistent with the City's Municipal Code, personnel rules, administrative policies, and City Council policies.

1.5 Hours of Work. Robinson shall devote the time necessary to adequately perform her duties as Interim City Manager. The parties anticipate that Robinson will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings, and attendance at such community events and CITY functions as the City Council may direct. Toward that end, Robinson shall be allowed reasonable

flexibility in setting her own office hours, provided the schedule of such hours provides a significant presence at City Hall, reasonable availability to the City Council, CITY staff, and members of the community during regular CITY business hours and for the performance of her duties and of CITY business. However, in no event shall Robinson be required to work more than 960 hours per fiscal year for CITY, including hours worked for other CalPERS Agencies during the 2018-2019 fiscal year. The position of Interim City Manager shall be deemed an exempt position under California wage and hour law.

1.6 Other Activity. In accordance with Government Code Section 1126, during the period of her employment, Robinson shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict of interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of Robinson's duties as Interim City Manager.

2 Compensation.

21 Rate of Pay. For all services performed by Robinson as the Interim City Manager under this Agreement, CITY shall pay Robinson compensation at the rate of \$111.5406 per hour according to the payroll schedule in place for CITY employees paid bi-weekly subject to the limitations provided below.

2.1.1 Compliance with CalPERS requirements. It is the intent of the parties to compensate Robinson only to the extent permitted under Government Code § 21221(h) and corresponding CalPERS regulations and policy statements. The Rate of Pay is within the established salary range for City Manager of \$246,690.91 per year and \$118.6014 per hour. Robinson acknowledges that she will be compensated at the lesser rate of \$111.5406 per hour and will not receive any benefits, incentives, compensation in-lieu of benefits, or any other form of compensation.

2.1.2 Recordation and Reporting of Hours Worked. Robinson will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, Robinson shall keep CITY continually apprised of any hours worked by Robinson for other CalPERS Agencies during the term of this Agreement.

2.2 Benefits.

2.2.1 No Benefits. Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, Robinson shall not receive from CITY any benefits CITY commonly provides to its employees, including without limitation health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

3. Vacation and Leave.

31 No Leave. Robinson, in accordance with Government Code Section 21221(h) and related CalPERS regulations and policy statements, shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave

benefits.

4. Termination.

4.1 By CITY. This Agreement may be terminated by CITY for any reason thirty (30) days after providing written notice to Robinson of such termination. CITY 's only obligation in the event of such termination will be payment to Robinson of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By Robinson. This Agreement may be terminated by Robinson for any reason thirty (30) days after providing written notice to CITY of such termination. CITY shall have the option, in its complete discretion, to make Robinson's termination effective at any time prior to the end of such period, provided CITY pays Robinson all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing her through the last day actually worked.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. Robinson agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by her incident to her employment belongs to CITY and shall be returned promptly to CITY upon termination of Robinson's employment. Robinson's obligations under this subsection shall survive the termination of her employment and the expiration of this Agreement.

5. Conflict of Interest

In accordance with Government Code Section 1126, during the period of her employment, Robinson shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict of interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of Robinson's duties as Interim City Manager.

6. Expenses.

CITY agrees to pay job related expenses incurred by Robinson for any out of area business and travel expenses incurred in the course of her duties as approved by the City Council.

7. General Provisions.

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. Robinson shall comply with CITY's administrative policies regarding operation of a vehicle on official business. Robinson shall not receive an automobile allowance but shall be eligible for reimbursement for mileage when using her personal vehicle for CITY business in accordance with CITY policy.

7.3 Notices. All notices required under this Agreement shall be in writing and either given in person or delivered by first class mail with postage prepaid and addressed as follows:

City's Notice Address: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: Mayor and City Council

Interim City Manager's Address:
[To be inserted]

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*], CITY will indemnify, defend, and hold Robinson harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Robinson's tenure as Interim City Manager.

7.5 Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the Interim City Manager under any law or ordinance.

7.6 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Robinson's appointment as Interim City Manager by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Robinson as Interim City Manager, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to Robinson and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.7 Amendments. This Agreement may not be amended except in a written document signed by Robinson, approved by the City Council and signed by CITY's Mayor.

7.8 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

7.9 Assignment. Robinson shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to Robinson, assign its rights and obligations hereunder.

7.10 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.11 Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

7.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in San Mateo County, State of California.

7.13 Interpretation. This Agreement shall be construed, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

7.14 Acknowledgment. Robinson acknowledges that she has had the opportunity to consult legal counsel regarding this Agreement, that she has read and understands this Agreement, that she is fully aware of its legal effect, and that she has entered into it freely and voluntarily and based on her own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and Robinson has signed and executed this Agreement, as of the date first indicated above.

CITY OF MENLO PARK

Mayor

APPROVED AS TO FORM

William McClure, City Attorney

INTERIM CITY MANAGER

Starla Jerome-Robinson