

Resolution No. JPA 20-6

RESOLUTION APPOINTING JAMES P. PREUSCH
AS A RETIRED ANNUITANT
WITH THE 180-DAY WAIT PERIOD EXCEPTION

WHEREAS, in compliance with Government Code section 7522.56 the Alameda Corridor Transportation Authority (“ACTA”) must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, James P. Preusch, CalPERS ID 1059741391, will retire from the Alameda Corridor Transportation Authority in the position of Chief Financial Officer, effective July 1, 2020; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is December 28, 2020 without this certification resolution; and

WHEREAS, 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 Alameda Corridor Transportation Authority, the Alameda Corridor Transportation Authority Governing Board and James P. Preusch certify that James P. Preusch has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the Alameda Corridor Transportation Authority Governing Board hereby appoints James P. Preusch as a Retired Annuitant Extra Help Position (“Retired Annuitant”) for the critical need of continuing training and transitioning the newly appointed Chief Executive Officer, and for training and transitioning the incoming Chief Financial Officer, for a limited duration as authorized under Government Code section 21224, effective July 2, 2020; and

WHEREAS, the entire employment agreement between James P. Preusch and the Alameda Corridor Transportation Authority has been reviewed and approved by the Alameda Corridor Transportation Governing Board and is attached to this Resolution as Exhibit A; 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; and

WHEREAS, the compensation paid to the Retired Annuitant will not 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 Retired Annuitant will be performing duties comparable to ACTA’s Chief Financial Officer during the training period; and

WHEREAS, the maximum base salary for the comparable position of the Chief Financial Officer is \$21,309.75 per month and the hourly equivalent is \$122.9408, and the minimum base salary for this position is \$14,574.16 per month and the hourly equivalent is \$84.0817; and

WHEREAS, the hourly rate paid to James P. Preusch will be \$122.9408; and

WHEREAS, James P. Preusch has not and will not receive from the Alameda Corridor Transportation Authority 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 Alameda Corridor Transportation Authority hereby certifies the nature of the employment of James P. Preusch as described herein and detailed in the attached employment agreement and that this appointment is for a limited duration beginning July 2, 2020 and necessary to meet the agency's critical need for continuing training and transitioning the newly appointed Chief Executive Officer, and for training and transitioning the incoming Chief Financial Officer.

Ayes:

Noes:

Absent:

I HEREBY CERTIFY THAT the foregoing resolution was adopted by the ACTA Governing Board at its meeting held on June 11, 2020.

Maria M. Melendres
Board Secretary

APPROVED AS TO FORM AND LEGALITY

_____, 2020
MICHAEL N. FEUER, City Attorney

By _____
Heather M. McCloskey, Deputy
ACTA Co-General Counsel

AGREEMENT FOR TEMPORARY EMPLOYMENT
OF A CALPERS RETIRED ANNUITANT

BETWEEN THE ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY
AND
JAMES P. PREUSCH

THIS AGREEMENT ("Agreement") is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority ("ACTA"), acting by and through its Governing Board ("Board") pursuant to authority granted by said Board by resolution adopted by the Board at its meeting on June 11, 2020, and JAMES P. PREUSCH, an individual ("Mr. Preusch" or "Retired Annuitant Employee"). This Agreement shall be effective on July 2, 2020.

WHEREAS, Mr. Preusch will retire from ACTA as of close of business July 1, 2020 from the position of Chief Financial Officer, and will become a CalPERS retired annuitant; and

WHEREAS, the California Public Employees Retirement System ("CalPERS") generally does not authorize CalPERS retired annuitants to become employed with a CalPERS employer, such as ACTA, unless the employer reinstates the former employee. However, California Government Code Section 7522.5 provides certain exceptions including the temporary appointment of a CalPERS annuitant to perform work that is limited in duration; and

WHEREAS, Section 21224 of the California Government Code authorizes the Retired Annuitant Employee's employment as a person with specialized skills needed in performing work of limited duration, provided, that (1) the appointment does not exceed a combined total of 960 hours per fiscal year, (2) the compensation does not exceed the maximum monthly base salary paid to other employees performing comparable duties divided by 173.333 to equal an hourly rate, and (3) the retired annuitant does not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate; and

WHEREAS, on July 2, 2020, ACTA will have a critical need for an employee with specialized skills to temporarily assist with the transition and training of ACTA's new Chief Executive Officer ("CEO") hired on April 22, 2020 and a Chief Financial Officer ("CFO") who will begin employment on July 2, 2020 and the Retired Annuitant Employee possesses these specialized skills and is willing to assist in this training and transition for these positions for a limited duration as requested by the CEO on an as-needed basis through September 30, 2020; and

WHEREAS, ACTA has determined that the appointment of Retired Annuitant Employee by no later than the effective date of this Agreement is necessary due to critical need and will submit to CalPERS a resolution of such certification; and

WHEREAS, Retired Annuitant Employee represents that he has not received any unemployment compensation from any CalPERS employers during the 12-month period preceding the effective date of this Agreement, that he has not received a retirement incentive upon retirement within the meaning of Government Code Section 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code Section 21220.5.

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

1. Appointment and Scope of Services: Pursuant to this Agreement, Retired Annuitant Employee shall assist in the training and transitioning of ACTA's CEO hired on April 22, 2020 and a CFO to be hired on July 2, 2020. Such employment is "at will" and is subject to the terms of this Agreement. The Retired Annuitant Employee shall perform said duties at the pleasure of the ACTA Governing Board and under the direct supervision of ACTA's Chief Executive Officer.

2. Compensation and Work Schedule:

a. Rate of Pay: Retired Annuitant Employee shall be paid at the rate of \$122.9408 per hour, which represents the hourly rate of the \$21,309.75 monthly salary that would be paid, under current salary schedules, to the ACTA Chief Financial Officer performing comparable duties. ACTA has confirmed that this rate is not less than the minimum, nor in excess of the maximum, that would be paid by ACTA to any other employee performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the ACTA's publicly available pay schedule. Payments will be made on regularly scheduled ACTA payroll dates, and shall be subject to all applicable payroll taxes and withholdings. As required under CalPERS law, such compensation shall be the sole compensation for Retired Annuitant Employee services under this Agreement.

b. Work Schedule and 960-hour Limitation: Retired Annuitant Employee shall devote the time necessary to adequately perform the services described in this Agreement. The parties anticipate that Retired Annuitant Employee shall work a flexible schedule and a variable number of hours per week based on the needs of ACTA as directed and approved by ACTA's CEO. However, in no event shall Retired Annuitant Employee be permitted or required to work in excess of 960 hours during any fiscal year, including any hours worked by Retired Annuitant Employee for other CalPERS Agencies.

Retired Annuitant Employee will record and report to ACTA all hours worked for ACTA as may be required for purposes of payroll and CalPERS compliance. Additionally, Retired Annuitant Employee shall keep ACTA continually informed of any hours worked by him for other CalPERS Agencies during the term of this Agreement.

Retired Annuitant Employee shall be deemed a nonexempt position under applicable wage and hour laws, and shall be provided with overtime compensation for hours worked in excess of 40 hours per week in accordance with applicable law.

However, Retired Annuitant Employee shall not work any overtime hours without prior written approval from ACTA's Chief Executive Officer.

3. Employment Status:

a. Benefits: Other than the compensation described above in Section 2, Retired Annuitant Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Retired Annuitant Employee understands and agrees that he is not, and will not be, eligible to receive any benefits from ACTA, including any ACTA group plan for hospital, surgical, or medical insurance, any ACTA retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of ACTA, except for Worker's Compensation Insurance coverage. Retired Annuitant Employee expressly waives any claim to any such rights or benefits to the extent allowable by law. Such waiver does not extend to rights or benefits to which Retired Annuitant Employee is legally entitled by direct virtue of his status as a retiree of ACTA.

b. No Property Right in Employment: Retired Annuitant Employee understands and agrees that the terms of his employment are governed only by this Agreement and not by any other ACTA employment agreement and that no right of regular employment for any specific term is created by this Agreement. Retired Annuitant Employee 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. However, nothing in this Agreement shall modify, waive or otherwise compromise any property interest or right or other benefits accrued by Retired Annuitant Employee's service prior to July 2, 2020, vesting as a result of the Retired Annuitant's Employee's service as a regular employee of ACTA beginning September 30, 2004 and ending with normal retirement on July 1, 2020. The terms of ACTA's Policies and Procedures Manual, policies, procedures, resolutions or local rules (collectively "Personnel Policies") shall not apply to Retired Annuitant Employee to the extent such Personnel Policies conflict with this Agreement.

4. Representation of Retired Annuitant Employee: Retired Annuitant Employee represents that he is properly trained to perform the duties required of the position and this Agreement.

5. Effective Date and Term of Agreement: This Agreement shall be effective July 2, 2020 ("Effective Date"), and shall terminate automatically at midnight on September 30, 2020. Employment is temporary, at-will and may be terminated with or without cause and with or without notice at any time by ACTA. Retired Annuitant Employee may terminate this Agreement at any time prior to September 30, 2020 upon providing written notice to ACTA's Chief Executive Officer. ACTA reserves the right to

terminate and may terminate Retired Annuitant Employee's services or the Agreement prior to the date specified in his notice. Upon termination Retired Annuitant Employee shall be entitled to receive compensation for services that were rendered in accordance with this Agreement prior to termination.

6. Termination Obligations: Retired Annuitant Employee 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 him incident to his employment belongs to ACTA and shall be returned promptly to ACTA upon termination of Retired Annuitant Employee's employment. Retired Annuitant Employee's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement. "Proprietary Information" is all non-public information pertaining in any manner to the business of ACTA (or any ACTA affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of ACTA in the course of his or her employment or otherwise produced or acquired by or on behalf of ACTA. Proprietary Information shall include, without limitation, trade secrets, confidential financial data and formulae, attorney client-privileged information, confidential licensing information, software and other computer programs, copyrightable material, and other information exempt from production under the California Public Records Act and or the Federal Freedom of Information Act. All Proprietary Information not generally known outside of ACTA's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by ACTA, Retired Annuitant Employee shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of ACTA and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, Retired Annuitant Employee shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of ACTA. Retired Annuitant Employee's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement. A disclosure of Proprietary Information or Confidential Information by Retired Annuitant Employee in response to an order by a court of competent jurisdiction or in response to a subpoena by a Grand Jury or any state, federal or local law enforcement agency shall not be deemed a breach of this Agreement.

7. Non-Assignment of Agreement: This Agreement is intended to secure the individual services of the Retired Annuitant Employee and is not assignable or transferable by employee to any third party.

8. Governing Law/Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

9. 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.

10. Conflict of Interest: Retired Annuitant Employee agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated for or not, that would in any way conflict with, or impair Retired Annuitant Employee's ability to perform the duties described in this Agreement. Retired Annuitant Employee shall file a disclosure of economic interest (Form 700) if required to do so by applicable law or if requested to do so by ACTA's Chief Executive Officer.

11. Entire Agreement and Modification: This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Retired Annuitant Employee shall be entitled to no other compensation or benefits than those specified herein, and Retired Annuitant Employee acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Retired Annuitant Employee to induce Retired Annuitant Employee to enter into this Agreement. No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Retired Annuitant Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of ACTA is effective. Retired Annuitant Employee specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others.

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

To ACTA:

Alameda Corridor Transportation Authority
3760 Kilroy Airport Way, Suite 200
Long Beach, California 90806
ATTN: Chief Executive Officer

To Retired Annuitant Employee:

James P. Preusch
[Address in Personnel File]

14. Indemnification: ACTA shall defend, save harmless and indemnify Retired Annuitant Employee 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 Retired Annuitant Employee's services in training and transitioning the new Chief Executive Officer and the incoming Chief Financial Officer to be hired on or about July 2, 2020, except that this provision shall not apply with respect to any intentional tort or crime committed by Retired Annuitant Employee, or any actions outside the course and scope of his employment in training the new Chief Executive Officer or the incoming Chief Financial Officer.

15. No Presumption of Drafter: The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

16. Assistance of Counsel: Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

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(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY

Date: _____

By: _____

Michael Leue
Chief Executive Officer

Attest: _____

Secretary

JAMES P. PREUSCH
Retired Annuitant Employee

Date: _____

By: _____

APPROVED AS TO FORM

_____, 2020
Michael N. Feuer, Los Angeles City Attorney

By _____
Heather M. McCloskey, Deputy
ACTA Co-General Counsel