



Council Agenda Report

From: Brian Cowen, Interim Chief Building Official

Subject: Authorization for an Agreement for a Temporary Contract Employee to Perform Building Inspection and Plan Check Related Tasks

Date: October 3, 2017

Facts

1. The Community Development Department will experience a staffing shortage for several weeks due to a leave of absence in the position of Interim Chief Building Official.
2. The Interim Chief Building Official position will be temporarily backfilled by the Deputy Building Official.
3. The City has an immediate need for an employee to temporarily perform tasks in the City's Building Program related to building inspections and plan checks, tasks that involve specialized skills related to necessary public services.
4. The Contract Employee is competent and qualified to perform the services required by this Agreement, and the City wishes to have Contract Employee perform certain highly-specialized, critically necessary on-going duties and functions of the Deputy Building Official position.
5. Consistent with City Council policy, all contracts over \$20,000 must be authorized by City Council.

Options

1. Do Nothing.
2. Authorize the City Manager to execute an Agreement (Attachment 2) with California Code Check to have their employee, Howard Bell, temporarily perform inspection and plan check related tasks in the City's Building Department.
3. Amend or modify the foregoing option.
4. Refer back to staff for additional analysis.

Analysis and Conclusions

Option 2 seeks to maintain current levels of inspection- and code check-related services. If the Deputy Building Official position is not backfilled, building permits and inspections are likely to be delayed and customer service levels will be negatively affected. .

Fiscal Impact

Both the Deputy Building Official position and the professional services contract with California Code Check have been previously authorized by Council. Costs related to the agreement with Howard Bell are not expected to exceed \$22,320, which will be recovered from inspection and plan check fees. Under California law, the first week of leave by the Interim Chief Building Official must be covered by the City. The rest of the leave will be covered by the employee drawing down his leave bank and by reimbursement from the California Employment Development Department. Staff will return to the City Council later in the year if the existing budget proves inadequate to fully cover City costs not reimbursed by EDD..

Recommendation

Adopt Resolution 17-XXX, authorizing the City Manager to execute an Agreement with, Howard Bell, an employee of California Code Check, to temporarily perform inspection- and plan check-related tasks in the City's Building Program.

Attachments

1. Draft Resolution 17-XXX
2. Draft Agreement for Interim Appointment

Attachment 1

Draft Resolution

RESOLUTION NO. 17-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH
HOWARD BELL, EMPLOYED BY CALIFORNIA CODE CHECK, TO TEMPORARILY PERFORM
INSPECTION- AND CODE CHECK-RELATED TASKS IN THE
CITY'S BUILDING PROGRAM

WHEREAS, the Community Development Department will experience a staffing shortage due to a leave of absence in the position of Chief Building Official; and

WHEREAS, the Chief Building Official position will be temporarily backfilled with by the Deputy Building Official, and

WHEREAS, the City has an immediate need for an employee to temporarily perform tasks in the City's Building Department related to building inspections and code checks, tasks which involve specialized skills related to necessary public services; and

WHEREAS, Contract Employee is competent and qualified to perform the services required by this Agreement, and the City wishes to have Contract Employee perform certain highly-specialized, critically necessary on-going duties and functions of the Deputy Building Official position; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES
HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby authorizes the City Manager to execute an agreement with Howard Bell, employed by California Code Check, to temporarily perform tasks in the City's Building Department.

Section 3. This Resolution shall take effect on the date it is approved by the City Council.

APPROVED this 3rd day of October 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

Attachment 2

Draft Agreement

AGREEMENT FOR INTERIM APPOINTMENT

THIS AGREEMENT is between the **CITY OF PASO ROBLES**, State of California, a municipal corporation (hereinafter referred to as “City”), and Howard Bell, an individual (hereinafter referred to as “Contract Employee”) employed by California Code Check (hereinafter referred to as “CCC”):

RECITALS

WHEREAS, the Community Development Department will experience a staffing shortage due to a leave of absence in the position of Chief Building Official; and

WHEREAS, the Chief Building Official position will be temporarily backfilled with by the Deputy Building Official, and

WHEREAS, the City has an immediate need for an employee to temporarily perform tasks in the City’s Building Department related to building inspections and code checks, tasks which involve specialized skills related to necessary public services; and

WHEREAS, Contract Employee is competent and qualified to perform the services required by this Agreement, and the City wishes to have Contract Employee perform certain highly-specialized, critically necessary on-going duties and functions of the Deputy Building Official position; and

WHEREAS, Contract Employee is a CalPERS retiree, and his appointment is temporary and subject to the various requirements set forth in this Agreement; and

WHEREAS, Contract Employee represents that he has not received unemployment compensation from any CalPERS agency during the 12-month period preceding the effective date of this Agreement; and

WHEREAS, Contract Employee’s appointment is authorized by Government Code section 21224, which permits the City to appoint a CalPERS retired annuitant in an extra-help capacity; and

WHEREAS, Contract Employee is an employee of CCC and, in that capacity, will be providing services for the City’s benefit.

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

1. Scope of Services: Contract Employee shall serve as Deputy Building Official during the time that the City is experienced an increased workload due to a staffing shortage. In that capacity, Contract Employee shall have responsibility for the job requirements stated in the

Deputy Building Official classification description (a copy of which is attached hereto as Exhibit A), and shall be subject to direction by the Community Services Director and the Chief Building Official.

2. Compensation: Contract Employee shall be compensated as follows:

- A. Hourly Rate of Pay: Contract Employee shall be paid at the rate of \$48.00 per hour (hereinafter referred to as “Hourly Rate”), which is an hourly rate within the range for the Deputy Building Official position. Payments will be made to Contract Employee by California Code Check on their regularly scheduled payroll dates. Contract Employee will be responsible for keeping track of his hours worked on a daily time sheet form (or automated time keeping system), provided by the City. This hourly rate is the sole compensation for services under this Agreement, and Contract Employee will not receive payment for any hours not worked.
- B. Hours per Week: This employment is for full-time, temporary work, with an expectation that Contract Employee will work approximately 40 hours per week.
- C. Payment for Work Done in Excess of 40 Hours per Week: The position is not exempt from FLSA overtime pay requirements. The Contract Employee shall be paid at one and one-half times the regular rate of pay for any time worked in excess of 40 hours per week. Overtime work must be pre-approved by the Chief Building Official or Community Development Director.
- D. Work fewer than 960 hours per year: Pursuant to Government Code section 21224(h) and section 7522.56(d), Contract Employee is allowed to work a maximum of 960 hours per fiscal year for all public agency employers that contract with CalPERS for retirement benefits. The City retains the right to reduce, change, or amend the number of hours worked consistent with the Building Department's workload and other needs. If Contract Employee's annual hours are approaching 960, then the City retains the right to summarily suspend Contract Employee's duties under this Agreement and to reassign any scheduled hours, as needed, to ensure that Contract Employee does not exceed the maximum hours allowed by this Agreement. Contract Employee will be responsible for keeping track of all hours worked on a time sheet (or automated time tracking program) provided by the City and/or CCC.

3. Employment Status:

- A. Benefits: Contract Employee understands and agrees that he is not, and will not be, eligible to receive any benefits from the City, including any City group plan for hospital, surgical, or medical insurance, any City 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 the City, except for Worker’s Compensation Insurance coverage.
- B. No Membership in Bargaining Unit: Contract Employee understands that he is not a member of any bargaining unit and is not covered by the terms of any Memorandum of Understanding with any represented or unrepresented group of City employees.

- C. No Property Right in Employment: Contract Employee 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. Contract 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.
- D. Employment of a Retiree: Contract Employee understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer, by temporary appointment for a limited duration to a position not to exceed 960 hours in any fiscal year for all such employers; either (1) during an emergency to prevent stoppage of public business or (2) because the retired employee has skills needed in performing the work of limited duration. The City has no way of monitoring the hours Contract Employee works for any other CalPERS employers. In the event Contract Employee is providing service to any other CalPERS public agency employer during the term of this Agreement, Contract Employee must notify the City of such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Contract Employee is performing for that other public agency to ensure that the minimum number of hours is not exceeded.
4. Representation of Contract Employee: Contract Employee represents that he is properly trained and certified to perform the duties required of the position and this agreement. Contract Employee further represents that he will maintain, at his expense and on their own time, any certifications necessary to the performance of his employment.
5. Term of Agreement: This Agreement shall commence on October 2, 2017, and shall automatically terminate on November 10, 2017 (unless terminated prior under section 7).
6. At-Will Employee. Employment is at-will and may be terminated with or without cause and with or without notice at any time by the City.
7. Non-Assignment of Agreement: This Agreement is intended to secure the individual services of the Contract Employee and is not assignable or transferable by employee to any third party.
8. 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 San Luis Obispo County.
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: Contract 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 Contract Employee's ability to perform the duties described in this Agreement. The City Manager must approve any work performed for the City outside the terms of this Agreement in advance in writing. Contract Employee agrees to disclose whether he is performing work for any other CalPERS public agency employer as required by section 3.D. of this Agreement.

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

No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Contract Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of the City is effective. Contract Employee specifically acknowledges that in entering into and executing this Agreement, they rely solely upon the provisions contained herein and no others.

12. Reimbursement for Expenses: Contract Employee shall be reimbursed (either by City or by CCC) for all authorized and necessary travel undertaken by Contract Employee in performance of services pursuant to this Agreement. Contract Employee shall document and claim said reimbursement for such travel in the manner and forms required by the City and/or CCC. Other than as specifically provided herein, Contract Employee shall receive no other compensation or reimbursements for expenses incurred in performance of this Agreement.

I, Howard Bell, agree to this Temporary Interim Appointment and hereby warrant that I understand and agree with all of the terms and conditions of employment as set forth in this Agreement. Further, I hereby certify to the City that I have not received unemployment payments within the past 12 months arising from work performed as a retiree for any public employer.

Contract Employee

Date: _____

Howard Bell

City

Date: _____

Thomas Frutchey, City Manager