



AGENDA REPORT

Meeting Date: April 21, 2011
Item Number: G-6
To: Honorable Mayor & City Council
From: City Attorney
Subject: AMENDMENT NO. 4 TO AN AMENDED AND RESTATED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BYRON POPE.
Attachments: 1. Amendment No. 4 to an Amended and Restated Employment Agreement

INTRODUCTION

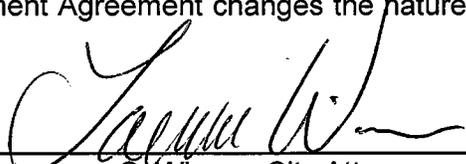
The City Council previously approved performance pay for the City Clerk for calendar years 2010 and 2011 in the total amount of \$30,468.36 in order to reimburse the City Clerk for the purchase of one year of service credit. The City Clerk has requested that this payment be made into his 401(k) deferred compensation account.

DISCUSSION

In connection with its 2010 performance evaluation of the City Clerk, the City Council authorized performance pay for the City Clerk in an amount sufficient to allow the City Clerk to purchase one year of service credit. This amount would be treated as performance pay associated with both the 2010 and 2011 performance review of the City Clerk. Since that time, the City Clerk has been processing his application for service credit. The City Clerk is now purchasing the service credit with funds from his 401(k) deferred compensation account and has requested that the reimbursement previously authorized by the City Council be deposited into that account, rather than paid directly to the City Clerk. The proposed fourth amendment to the employment agreement accommodates this request.

FISCAL IMPACT

There will be no additional fiscal impact on the City because the proposed Amendment No. 4 to the Amended and Restated Employment Agreement changes the nature of the payment, but not the amount of the payment.



Laurence S. Wiener, City Attorney

Attachment 1

AMENDMENT NO. 4 TO AN AMENDED AND
RESTATED EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF BEVERLY HILLS AND BYRON POPE

This Amendment No. 4 ("Amendment") is to that certain Amended and Restated Employment Agreement ("Agreement"), dated September 2, 2008, and identified as Agreement No. 378-08 between the City of Beverly Hills ("Employer" or "City") and Byron Pope ("Employee"), a copy of which is on file in the office of the City Clerk, for services as City Clerk.

RECITALS

A. City and Employee entered into a written agreement, dated December 23, 2005, and identified as Agreement Number 92-06, describing the terms and conditions of Employee's employment with City as its City Clerk. City and Employee previously agreed to two amendments to the December 23, 2005 agreement: Amendment No. 1, executed October 16, 2007, and identified as Agreement Number 423-07; and Amendment No. 2, executed April 15, 2008, and identified as Agreement Number 115-08.

B. City and Employee entered into an Amended and Restated Employment Agreement, executed September 2, 2008 and identified as Agreement Number 378-08; an Amendment No. 1 to the Agreement executed on December 16, 2008 and identified as Agreement No. 514-08; to an Amendment No. 2 to the Agreement executed on June 16, 2009 and identified as Agreement No. 231-09, and to an

Amendment No. 3 to the Agreement executed on February 15, 2011 and identified as Agreement No. 35-11.

C. Section 4 of the Agreement provides that the City will conduct an annual evaluation and salary review, which shall include consideration of whether performance pay, up to and including 10% of Employee's annual salary, is warranted.

D. Pursuant to the terms of Section 4 of the Agreement, the City Council provided, among other items, Employee with reimbursement of the cost of purchasing one year of service credit to recognize his performance and effort over the course of two years.

E. The City Clerk has now begun the process to purchase one year of service credit with funds transferred from a deferred compensation account. The City Council wishes to substitute a City contribution of the same previously authorized reimbursement amount into deferred compensation for Mr. Pope in lieu of other reimbursement of the City Clerk for the cost to purchase one year of Additional Retirement Service Credit from the California Public Employees' Retirement System.

NOW, THEREFORE, the parties do amend the Agreement as follows:

Section 1. Section 4, Paragraph A, Sub-paragraph (3), titled "2010 Annual Performance Review" shall be deleted and the following substituted in its place to read in its entirety as follows:

“(3) 2010 and 2011 Annual Performance Review. Based on its 2010 annual review, pursuant to Section 4, Paragraph A, Sub-paragraph (2), above, Employer agrees to make a nonelective employer contribution in the amount of \$30,468.36 (Thirty Thousand Four Hundred Sixty-Eight and 36/100 Dollars) into Employee’s 401(k) deferred compensation account. The nonelective employer contribution shall be made within ten days after Employee presents evidence that he has made payment of this amount for service credit to the California Public Employees’ Retirement System. This nonelective employer contribution is comprised of performance pay covering both calendar years 2010 and 2011.”

Section 2. Except as expressly amended by this Amendment No. 4, all of the provisions of the Agreement, as amended by Amendment Nos. 1, 2, and 3 to the Agreement between the City and Employee shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the ___ day of April 2011, at Beverly Hills, California.

EMPLOYEE


BYRON POPE

CITY OF BEVERLY HILLS
A Municipal Corporation

BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

LOURDES SY-RODRIGUEZ (SEAL)
Deputy City Clerk